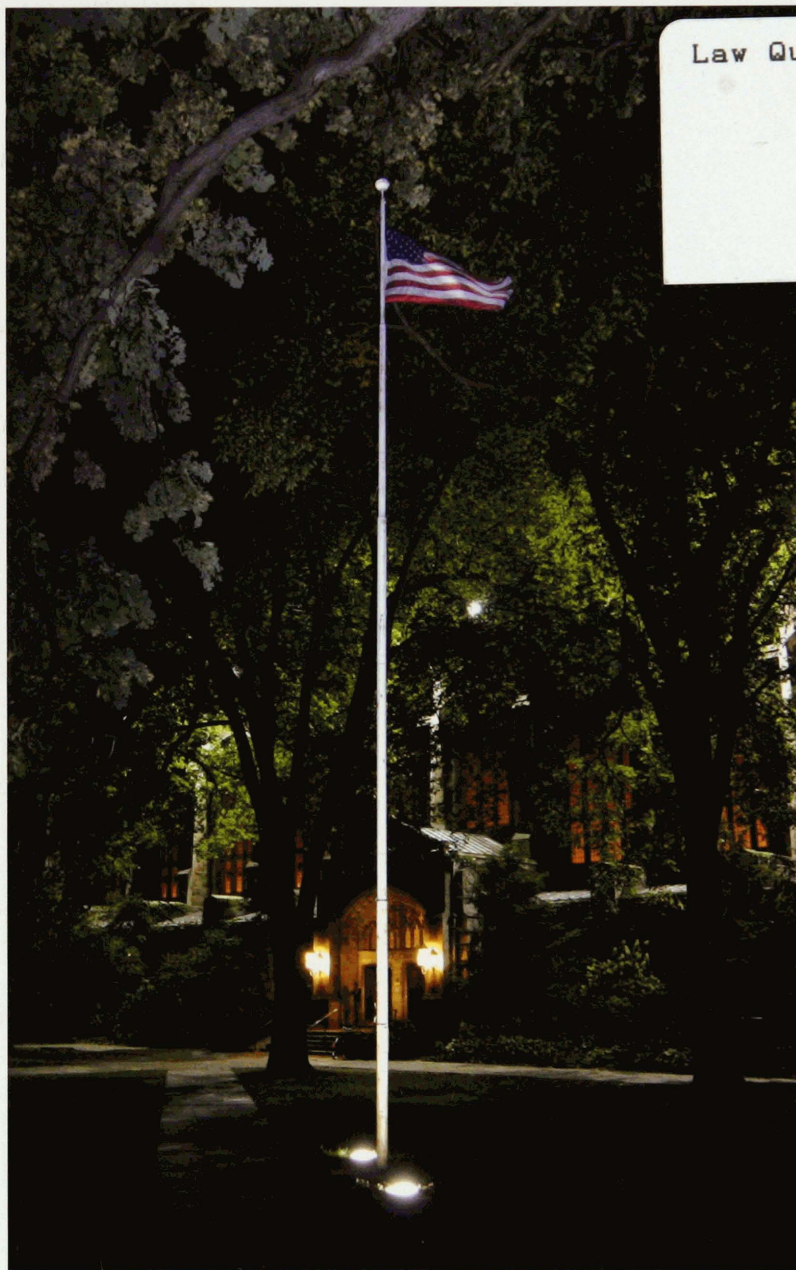


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LAW QUADRANGLE NOTES



Law Quadrangle notes

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**The Law School's
living legacy of service —
A special edition**

The University of Michigan Law School • 48.2 • Fall 2005

**THE UNIVERSITY OF MICHIGAN
LAW SCHOOL**

**VOLUME 48, NUMBER 2
FALL 2005**

ON THE COVER: The flag waving atop the flagpole in the Law Quadrangle is a fitting reminder of the Law School's decision to turn over its facilities to the training of military lawyers during World War II. The plaque at the base of the pole reads:

In Appreciation

Presented by

The Judge Advocate General's School

United States Army

1942 - 1946

Colonel Edward H. Young

Commandant

(PHOTO CREDIT: Gregory Fox)

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UNIVERSITY OF MICHIGAN

FALL 2005

LAW QUADRANGLE NOTES



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public service

from Dean Caminker

As I sit to write this letter, I still visualize images of the devastation recently wrought by Hurricane Katrina. One of the largest national disasters in U.S. history has left the nation emotionally battered and physically bruised, and it will take a resolute and sustained effort to rebuild lives and dreams.

Even though Michigan is a half-country away, we have occasion to feel great pride in the local response of the Law School community. I am relieved to report that, to the best of our knowledge, no member of the Law School student body, faculty, staff, or their immediate families suffered personal injury in the storm, though unfortunately a few have likely sustained serious damage to their homes, and surely some alumni have suffered significant losses as well. But as it has done so often in the past, the Michigan Law School community is rising to the occasion to assist in the ongoing recovery efforts.

As early as two days after the hurricane hit, indeed even before our students returned to Ann Arbor to begin the fall semester, student leaders initiated various disaster relief efforts to assist those in dire need in the devastated Gulf Coast region. Those volunteer efforts continue and have expanded today. And the Law School has opened its own doors to displaced law students from New Orleans area law schools; nine upperclass Tulane and Loyola of New Orleans law students who have connections either to the State or University of Michigan have enrolled as visiting students for the fall semester. Our full-time students and

faculty have welcomed and embraced them, helping them transition and reserving spots in both study groups and bowling teams. Many of our alumni have contacted us to ask if they can pitch in, for example offering places for these new students to stay. The depth of our students' compassion is perhaps best illustrated by their willingness to pool football tickets for the New Orleans transplants. And we are still exploring ways in which students might provide legal or other services to the rebuilding effort during upcoming session breaks or the summer.

All of this charitable activity is fully consistent with the finest and deepest traditions of this institution. The Law School and the lawyers it has nurtured and trained have always embraced an ethic of public-spiritedness. As the devastation wrought by Hurricane Katrina became better known, many of you contacted the Law School to offer support and assistance, and I shared with you the e-mail I sent to students noting that no member of the Law School community had been injured in the storm and expressing the School's pride in the relief efforts students were initiating. Among the many responses was this one from Stanley Lubin, '66, in Texas, where so many storm victims are finding temporary care and shelter: "I am more proud than ever to be an alum of Michigan Law," said Lubin, who also noted that "my partner and I have offered the free use of our Dallas office to one or two displaced attorneys for as long as they need it. I have not forgotten what I learned at Michigan over and

above how to be a lawyer."

In a timely tribute to this tradition, this issue of *Law Quadrangle Notes* provides a special focus on the myriad ways in which the Law School and its alumni have been and remain national leaders in using legal talents to serve the interests of the profession and the public at large. The heartwarming response to Katrina's devastation is just one local chapter in a storied history of compassion and commitment to the betterment of society.

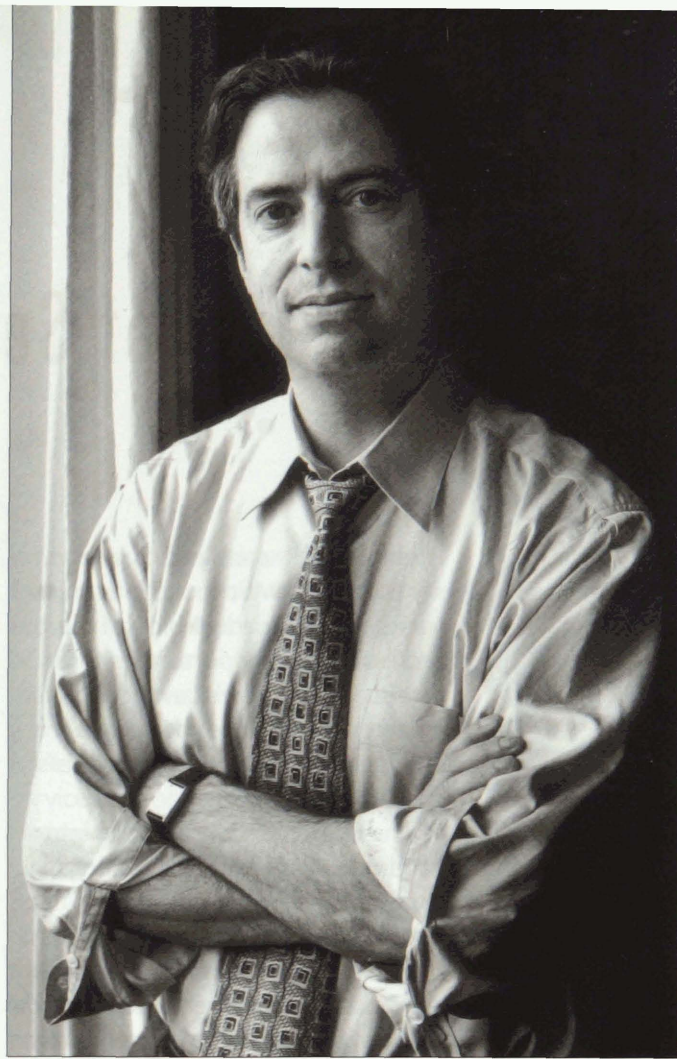
Those who practice law, like those who practice medicine, have long been understood to take on certain obligations of service to the profession and public. Just as the physician is obliged first to do no harm, even the lawyer zealously representing a private client is obliged to remember that he is an officer of the court and that legal representation takes place within a larger public realm. This is why bar associations make clear that lawyers have a duty to use their license and talents to serve the public in some way — whether by serving the bar itself, by representing the public through positions in government, or perhaps by serving underrepresented clients. From its inception, this Law School has encouraged and trained its faculty and students to be generous in the time and energy they devote to serving the profession and the public. We do so by instilling the values of community and social responsibility and commitment, by training students to acquire unsurpassed legal skills, and by providing resources, networks, funds, and other assistance to offer opportunities to use what we teach. The steady decline in our public

public service

funding — now down to just over 2% of our operating budget — in no way has diluted this longstanding public-oriented commitment.

The varieties of such service are virtually limitless, and we explore many in the following pages. To foreshadow just a few, Professor Joe Vining describes his 18-month service as a grand juror, a fundamental duty of citizenship. The Voting Rights Initiative, a new student-initiated and nonpartisan project, will help lawmakers and researchers make important decisions as the momentous time for re-authorizing major portions of the Voting Rights Act draws near. Professor Larry Waggoner, '64, has been active in legal reform for more than 20 years, and many professors have kept their lawyering muscles in shape by periodically returning to the courtroom to try cases, enjoying experiences that in turn enrich their teaching and research.

The Law School also has a proud tradition of sending faculty and students into government, in both Republican and Democratic administrations. I myself served in the Department of Justice as a deputy assistant attorney general in the Office of Legal Counsel during the closing year of the Clinton administration, and adjunct Professor Joan Larsen promptly took my place in the opening years of the Bush administration. Professor Tom Kauper, '60, twice served under President Richard Nixon, first in the Office of Legal Counsel and then as assistant attorney general in charge of the Antitrust Division. Associate Professor Michael S. Barr, on the other hand, served in



the Treasury Department and the White House under President Bill Clinton. Many others on our faculty have served with distinction in various other capacities.

In the end, each of us may have a different vision of the interests of the profession and of the public at large. The Law School's primary mission, of course, is to assist students in becoming outstanding young lawyers with outstanding legal skills with which to advance their clients' interests. But, especially as a public institution, the School should also remind our students that lawyers practice in a public arena, and that their license to practice comes with an obligation to serve the profession and the public good, however defined. And there is no better time to remind us all than the present.

Evan Caminker



A Legacy of Service by Jeff Mortimer

Metaphorically speaking, it's safe to say that the Law School carries in its very genes a broader vision of the profession than opportunities for personal gain. Today's Law School inherits and continues a legacy of service that began with the School's charter leaders.

The Supreme Court of Michigan had been up and running for only two years when the University established what was initially called the Law Department in 1859 and an Adrian attorney named **Thomas M. Cooley**, one of the first three faculty members, was a major reason why it had become possible for the state to have a supreme court: He had been hired by the legislature to compile all of the state's statutes, a job he completed in just a year and that won him the position of reporter of the new court's decisions.

Cooley eventually served on the court himself for 21 years (joining **James V. Campbell**, another member of the founding triumvirate who was already one of the court's first justices when he was appointed to the faculty), including a stint as chief justice, and was appointed by President Grover Cleveland in 1887 to be the first chairman of the Interstate Commerce Commission, doing much to shape its policies and bring order to the chaos of state laws on the subject.

Shortly before that appointment, in a famous address at Harvard Law School, Cooley had told his listeners, "We fail to appreciate the dignity of

our profession if we look for it either in profundity of learning or in forensic triumphs. Its reason for being must be found in the effective aid it renders to justice. . . ."

That perspective permeates the annals of the Law School. Whether as officeholders, as drafters and codifiers of legislation, or as private advocates for public causes that engaged their core beliefs, Law School faculty and alumni have had a profound and pervasive effect on the lives of all Americans.

As a U.S. Supreme Court Justice, for example, graduate **Frank Murphy, '14**, clarified labor's right to strike, held that peaceful picketing is an exercise of free speech, and vigorously dissented in the decision upholding the U.S. government's internment of Japanese American citizens during World War II. Before serving on the high court, Murphy was mayor of Detroit, governor-general of the Philippine Islands, governor of Michigan, Attorney General of the United States . . . and ever an eloquent exponent of civil liberties.

Graduate and Professor **William Pierce, '49**, taught at the Law School for 40 years and, in addition, served for more than 30 years as executive director of the National Conference of Commissioners of Uniform State Laws. In that capacity, he left an indelible legacy on laws that affect each of us daily; he was chiefly responsible for the formulation and adoption of the Uniform Commercial Code, which was eventually enacted

in every state in the union. Says Professor Emeritus **Theodore J. St. Antoine, '54**, Law School dean from 1971 to 1978 and a close associate of Pierce: "In terms of his impact on the everyday lives of ordinary Americans, those of us who buy an automobile today and write a will tomorrow, he may have been the most influential lawyer of his generation."

Happily, criminal and bankruptcy law touch fewer lives, but Professors Emeriti **Francis A. Allen**, dean of the Law School from 1966 to 1971, and **Frank R. Kennedy** had comparable impacts in their respective realms.

Allen's work in the early 1960s as chair of Attorney General Robert F. Kennedy's Committee on Poverty and the Administration of Federal Criminal Justice, which came to be known as the Allen Committee, was incorporated into both the Criminal Justice Act of 1964 and the Bail Reform Act of 1966. In addition, his work on the reform of the substantive law of crime decisively influenced the American Law Institute's Model Penal Code.

From 1971 to 1973, in the middle of his 23-year teaching career here, Kennedy served as executive director of the Commission on the Bankruptcy Laws of the United States, whose recommendations became part of the Bankruptcy Reform Act of 1978. Kennedy also was the principal draftsman of the Uniform Fraudulent Transfer Act.

It's hard to fathom today, but there was a time when arbitration and mediation barely registered on the

dispute resolution radar. No one did more than St. Antoine to relegate those days to the proverbial dustbin of history. "It's a way of handling cases that at its best is faster, cheaper, and a lot less antagonistic than litigation is likely to be," he says. Through his service to, among others, the National Academy of Arbitrators and the United Auto Workers' Public Review Board, St. Antoine devoted prodigious time and energy to making that view the norm in arenas as different as labor relations, domestic disputes, the environment, international business and, perhaps most famously, professional sports.

But the Law School's commitment to public service has not been limited to the activities of dedicated individuals. The United States' entry into World War II placed enormous strains on the U.S. Army, including its ability to provide an adequate supply of judge advocates, or military lawyers, for its vastly expanded numbers. On-the-job training of officers who had been civilian attorneys was no longer sufficient, so the Army authorized the creation of a school to provide the necessary preparation.

When the new school for military lawyers quickly outgrew its original space at the National University Law School in Washington, D.C., the U-M Law School offered its facilities for the duration. Dean **E. Blythe Stason** steered the deal through the University's Board of Regents, and the Judge Advocate General's School conducted its first military

law classes in the Law Quadrangle in February 1942. Regular enrollment in the Law School plummeted from 720 to 71 during the war, but by the time the JAG School closed in January 1946, it had graduated 2,467 Army lawyers. Its success also demonstrated the need for a permanent JAG School, which was re-established in 1950 and eventually sited at the University of Virginia.

The degree to which the principle of public service is embraced and implemented is obviously affected by the needs and attitudes of the larger society. It is, perhaps, closer to the top of the collective consciousness when times are relatively challenging than when they are relatively calm and prosperous. But it endures nonetheless, and it prospers at the Law School today.

Indeed, according to the American Bar Association, Michigan is one of the top three among its peer law schools in the percentage of its graduates who take their first job in some area of public interest. And why not? It's genetic, after all.

Jeff Mortimer is an Ann Arbor-based writer and editor.

In the wake of the storm

Robert Brode and E. Jordan Seidell have known each other since they worked together at a Birmingham, Michigan, movie theater as teenagers. As University of Michigan undergraduates, they first lived in the same dormitory, then shared an off-campus apartment.

They went separate ways after graduation — Brode to Tulane Law School in New Orleans and Seidell to Belgrade, Serbia, and then to the U-M Law School.

“We lost touch for the most part, but had some occasional contact via e-mail,” Seidell recounted.

Little did they expect that the 2005 hurricane season would bring them together again.

Seidell closely monitored Hurricane Katrina’s march toward the Gulf Coast and New Orleans last August. He took special interest because another friend had been stranded when a hurricane closed his medical school in the Caribbean last year — “he

Grand Isle, Louisiana, August 31, 2005



had to brave hordes of looters, no plumbing, no power, etc.” — and he correctly anticipated that Katrina would shut down New Orleans.

“So I thought of Rob and hoped he’d made it out, but couldn’t reach him by phone. I was pretty relieved when he called me from Chicago,” he explained.

Brode missed Seidell’s call because he had been interviewing in New York. On return to New Orleans, and still unaware of the approach of Katrina, he was surprised to find a message from his girlfriend Katie Maskowitz, a fellow University of Michigan graduate, warning him about the storm and offering him shelter in Chicago. Still groggy from interviewing and traveling, Brode accepted her offer. Thinking he’d only be away a few days — last year he was gone three days when he left New Orleans to avoid Hurricane Ivan — he packed lightly and so quickly that he left his interview suit in his suitcase.

Reality struck quickly. The normally 20-minute drive to the airport took an hour. Brode found that airplane seats were scarce and golden. He finally paid \$600 non-return for one of the last tickets to Chicago.

Once in Chicago and caught up on news of Katrina, Brode telephoned Seidell, who sug-



U-M graduates and former roommates re-united by Hurricane Katrina, U-M Law School student E. Jordan Sidell, left, and displaced Tulane Law School student Robert Brode, again attend classes together. Brode is one of nine Katrina evacuees from Tulane and Loyola law schools in New Orleans who are attending the U-M Law School this fall.

gested that he look into attending the University of Michigan Law School while Tulane was closed. After Tulane Law School released its students on September 2, Brode was accepted here under the expedited admissions process that the Law School devised so that students displaced by Katrina could begin studies with their fellow Michigan law students on the first day of classes.

Meanwhile in Ann Arbor, Seidell volunteered to be a mentor for a hurricane evacuee and requested matchup with Brode. “I would always hope to lean on someone else if I were in such a situation,” he explained. “I also have had plenty of mentors in my life when I went through hard times in other jobs, in Serbia, in Germany, in my other travels, and they were very helpful, and some became my best friends. I figure I should pay it forward.

“I asked to be matched with Rob because I figured that since I knew him really well already I would be in the best position to make sure he got what he needed in Ann Arbor and from the Law School.”

Brode took no winter clothing to Chicago, and once in Ann Arbor “I had to buy a complete new wardrobe,” he explained during a break in classes. Just back from job interviews in Los Angeles, he added with a chuckle that inadvertently leaving his suit in his luggage has turned out to be a boon.

“I got out safe,” he told a reporter for the *Michigan Daily*, the U-M student newspaper. “I found a great environment to continue my legal education. I have friends here. Things could be a lot worse. It’s a lot to think about when you watch the news, but I got pretty lucky.”

“The outpouring of offers of assistance from both current students and alumni (ranging from housing to spots in the bowling league) has been incredibly heartwarming.”

Brode's New Orleans apartment is near the Superdome, whose roof was partially blown off as thousands of people sought shelter inside, but it is on the relatively high ground of New Orleans that did not flood. Although his Zip code was among those earmarked for early return residents, by mid-September he had not been able to return to determine what had been damaged or lost.

Enrolling Brode and the other New Orleans law students was just part of the Law School's many-pronged response to the storm.

Members of the Law School community, like people across the nation and the world, were stunned by the devastation that Hurricane Katrina wrought. They quickly responded in the spirit of public service that has marked this School since it opened nearly 150 years ago.

Both Tulane and Loyola law schools canceled fall classes and opened temporary administrative offices in Houston, Texas. Many of their students, like Brode and the others attending the U-M Law School as non-degree visiting students, have found generous acceptance at other law schools for the fall semester with the expectation that the New Orleans law schools can resume classes in the spring.

“We now have enrolled a total of nine such students: eight are from Tulane and one is from Loyola of New Orleans; five are

2Ls and four are 3Ls,” Dean Evan Caminker informed the U-M Law School community through an e-mail during the first week of classes. “The outpouring of offers of assistance from both current students and alumni (ranging from housing to spots in the bowling league) has been incredibly heartwarming. I appreciate your welcoming our new students with open arms.”

The Law School also initiated or joined in a number of other responses to the storm. Among them:

●
The Law School contacted the Mississippi Center for Justice in Jackson, Mississippi, headed by Martha Bergmark, '73 (see profile on page 44), to offer *pro bono* assistance. “As you can imagine, the Center is still assessing the legal needs of the affected communities and Martha will contact us when she has a better sense of the needs and how *pro bono* assistance could meet those needs,” Caminker explained in his e-mail.

●
Caminker communicated with Michigan Governor Jennifer Granholm's office “to see whether there is a productive way in which U-M law students could help coordinate or participate in legal assistance to any Gulf Coast evacuees who have been relocated to Washtenaw County.”

Caminker also reported that Law School student organizations had teamed with the American Red Cross to collect donations for Hurricane relief. (See photo below.)

Like Seidell, many law students volunteered to serve as mentors to visiting students displaced by the hurricane, and each relocated student was matched with a fellow student familiar with the Law School and its faculty, staff, and policies.

Students and graduates, as well as public spirited residents throughout the Ann Arbor area, offered room in their homes and apartments for the displaced students.

Early on, MaryAnn Sarosi, '87, the Law School's director of public service, was involved in talks with the American Bar Association (ABA) to ensure that Law School students be involved in the efforts of the ABA and other legal organizations to harness law students' skills in a coordinated response that meets the legal needs of the judicial system and the citizens of the Gulf Coast.

Sarosi also has been meeting with local disaster relief officials to determine how best to fuse the skills of law students and the Law School with officials' need for

help in dealing with legal issues facing storm evacuees who have temporarily relocated in this area.

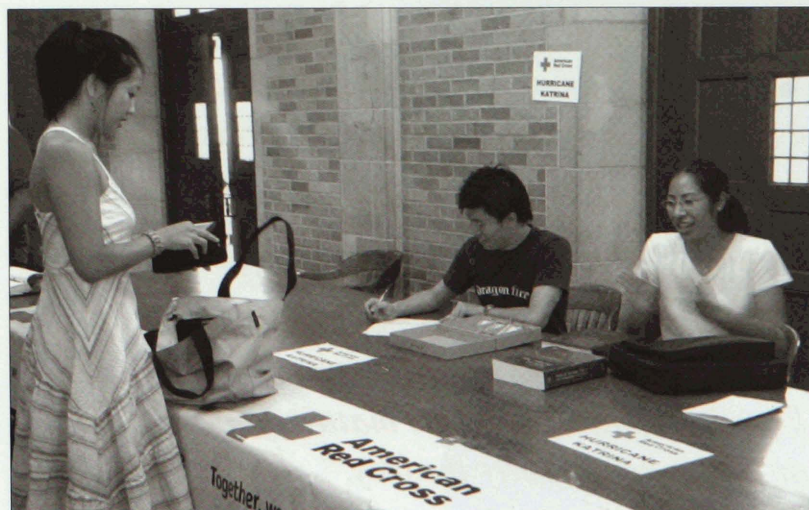
Caminker and U-M President Mary Sue Coleman relayed to the Law School and University communities disaster officials' warning that volunteers should not come to the storm-wracked area yet. Looking ahead, they also opened discussions to determine how students and others could assist after cleanup has eased health risks and begun to stabilize the damaged areas.

The Law School issued an invitation to the University to host a Cajun-themed meal in the

Lawyers Club for the total of more than 90 displaced undergraduate and graduate students who enrolled as visiting students at the U-M as the result of Hurricane Katrina.

As time passes, floodwaters recede, and the skeleton of the once-vibrant Gulf Coast re-emerges, storm victims' legal needs will become increasingly apparent. Rebuilding the Gulf Coast will require a sustained effort with all of the legal expertise and goodwill that a society that operates under the rule of law can command. The Law School, true to its longstanding commitment to public service, stands ready to help. **LQN**

Law student organizations and individuals staffed a donation table during the first half of September and raised more than \$2,300 for Red Cross relief efforts in the wake of Katrina. Here, Grace Lee makes a donation accepted by Asian Pacific American Law Student Association members Brad Wi and Mitoshi Fujio-White. In addition, the Jewish Law Students Association collected school supplies for storm victims, the Muslim Law Students Association collected toiletries, and the Student Animal Defense Fund sponsored a walk-a-thon to aid the Louisiana SPCA. The Muslim and Asian Pacific American law student associations also raised funds to aid victims of the earthquake in Pakistan.



Beyond the podium: Faculty members in the public arena

The rich variety of public service work by Law School faculty members reflects the depth and vitality of their approaches to their profession. From courtroom litigation to forging proposals for legal reform that then must win approval by state legislatures, teachers here regularly leave the pedagogical podium behind to use their skills to achieve a variety of goals for the public good.

Back in the classroom, what they learn and experience returns multi-fold as real-world examples; anecdotes from the arenas of litigation, policy making, and negotiation; and a renewed richness of pedagogy that fills in the spaces between the lines of casebooks, briefs, and journals.

The faculty's experiences enhance the curriculum, and their enthusiasm for public service can be contagious in the classroom. The legal profession itself, through its professional organizations like the American Bar Association and state and other attorneys' groups, stresses the obligation of lawyers to devote some of their efforts to public service, and the Law School's professors convey, reinforce, and encourage this value as an integral part of what it means to practice law. Students are taught both what

"[A]fter hundreds of hours of reading and thinking about critical issues . . . aren't law professors bound to reach some pretty firm conclusions? And shouldn't they tell the public, if the opportunity arises, what their conclusions are and how and why they reached them? I would put it more strongly, I believe . . . that members of the academy who are knowledgeable about these matters have an obligation to enter the fray."

the law is and that taking some *pro bono* cases is part and parcel of legal practice. They are taught that working for a nonprofit agency, which by IRS definition operates in the public interest, is an honorable calling, so highly regarded that the Law School's debt relief program makes it possible for graduates to accept lower-paying jobs by easing their school loan repayment burden. Students learn that working for the government, which makes the entire citizenry their client, is public service of the highest order. And they're taught that the lawyer's calling is a mix of zealous client representation tempered by the attorney's role as counsel and adviser.

It is impossible to exhaustively discuss all of the public service, public interest, and related activities that faculty members engage in. They are as different as the faculty members themselves, and may or may not involve the practice of law. All, however, draw on the legal expertise and clarity of thought directed at solving issues that are part of a legal education. Below, we illuminate some examples. Quotations throughout this section offer further glimpses of the variety of such work on the part of Law

School faculty members.

For instance, Professor **Steven P. Croley**, who also is associate dean for academic affairs, just spent more than two years deeply involved in the legal trenches dug by the prison system's inadequate testing and treatment for hepatitis among inmates. Perhaps 20 percent of Michigan's inmates may have hepatitis, and similarly high rates of infection in many other prison systems across the country have raised alarm throughout the health care community.

Croley worked on the case of Randy Vallad, who had tested positive for hepatitis while in prison but had neither been told of his test results nor been treated for the viral disease. Vallad returned to his live-in girlfriend after his parole in 1999. He did not learn of his test results until 2001, when he accidentally saw his medical records after being returned to prison for a parole violation. By then, his girlfriend also was infected.

Introduced to Vallad's predicament by a faculty colleague, Croley worked tirelessly on the case, and in its latter stages was joined by Law School clinical faculty members Paul Reingold

see "BEYOND", pg. 12

Performing service beyond daily duties is standard operating procedure at the Law School. Here is a sampling.



David Baum, '89
Assistant Dean of Students
Assistant U.S. Attorney, District of Columbia (1990 – 95)

"For several years I have served as a hearing officer and an appeals board member in the central University's non-academic discipline system, run through the Office of Student Conflict Resolution. This year, I started serving as a member of a district committee on character and fitness for the State Bar of Michigan, which . . . recommends or does not recommend particular applicants for admission to the State Bar."



David Chambers
Wade H. McCree Jr. Collegiate Professor of Law Emeritus
Special assistant to the Executive Director of the National Advisory Commission on Civil Disorders (1967 – 68); council member, Cabinet Committee on Price Stability, Executive Office of the President (1968 – 69)

"In 1971, I represented a group of prisoners at the Washtenaw County jail [who were] suing the county commissioners and sheriff over conditions at the old county jail. The suit settled, but helped force construction of the current jail on Hoyback Road.

"In the early 1970s, I represented patients at Ypsilanti State Hospital challenging the constitutionality of committing them to a hospital against their will without providing them with an attorney.

"I filed an amicus brief with the Vermont Supreme Court in support of plaintiffs successfully attacking the constitutionality of Vermont's marriage statute that limited marriage to persons of the opposite sex."

Why do such work? "Because I was interested in the subject matter" and "because I believe in a cause."

Chambers also notes that many people at the Law School have provided volunteer work for the state legislature or the courts. "Over my years at Michigan, I worked on the legislation changing the procedures for committing the mentally ill to hospitals and legislation altering child-support enforcement. I served as the reporter for the State Supreme Court committee proposing court rules on civil commitment."

"BEYOND", cont'd. from pg. 11

and David Santacroce. He prepared the complaint, based on 42 U.S.C. § 1983, charging that Vallad and his girlfriend Marva Johnson had been deprived of their rights. He also drew up and filed motions, briefs, and responses in the case, did a great deal of discovery work, and took many depositions.

Why? As Croley told a reporter for a story about the issue, "They let an infected person walk free without even telling him to be careful."

Although a federal judge dismissed the case on summary judgment earlier this year, Croley feels his work was worthwhile because it helped to bring the issue to the attention of the public and state and federal authorities. It also helped keep his lawyering skills in shape for the next time he exercises them outside of the classroom, which he does regularly.

"I've also worked on other cases, but the one above was the biggest," he explained. Among those other cases, he represented a defendant in a criminal trial and a non-English speaker in a Title VI case against an area hospital. He won a split verdict in the criminal case and voluntarily dismissed the Title VI case following negotiations with some of the defendants.

For trade specialist **Robert L. Howse**, the Alene and Allan F. Smith Professor of Law, the public service arena is not a courtroom,

but the entire globe. For some time, Howse has been putting his expertise to the service of bettering global trade arrangements. For example, he is part of a group of experts brought together by the International Center for Trade and Sustainable Development, a Geneva-based nongovernmental organization (NGO), who work without pay to provide advice and ideas on proposals for special and differential treatment for developing countries in the current round of WTO (World Trade Organization) negotiations.

"The group is led by the South African ambassador to the WTO, who also chairs the negotiations on special and differential treatment," Howse explained. "The third meeting of the group happened in early July in Lausanne, Switzerland."

Howse also chaired the recent gathering in Geneva when a group of NGOs launched a pair of *amicus* briefs in the dispute between the United States and the European Union over genetically modified organisms and foods; he also consulted on one of the briefs.

And a few years ago, drawn to the case by Law School graduate Jared Genser, '01, founder of Freedom Now, which works to free prisoners of conscience around the world, Howse worked with the Free Burma Coalition to

see "BEYOND", pg. 14

Gross: Correcting the past

Sometimes, public service work aims at correcting the past. Such is the case with Professor Samuel R. Gross's investigation of the case of Larry Griffin, who was executed 10 years ago for a murder committed a quarter century ago.

Gross, the Thomas and Mabel Long Professor of Law, drew national attention last summer with release of a report on Griffin's case saying that "the wrong person was arrested and convicted" and "that the real criminals have never been brought to justice." His report named three suspects, all currently in prison, to be investigated for the crime.

Griffin was arrested, convicted, and executed for the murder of 19-year-old drug dealer Quintin Moss in St. Louis in 1980. Griffin was executed in June 1995 at age 40 and maintained his innocence to the end. Griffin's family, through attorney Saul Green, '72, of Detroit, has questioned the correctness of Griffin's conviction and execution.

Spurred by the NAACP Legal Defense and Educational Fund and Gross's investigation, St. Louis Circuit Attorney Jennifer Joyce re-opened the case this year.

"There are cases of people who have been executed who are very likely innocent," Gross told National Public Radio. "There's no case that I know

of where the evidence that's been produced in public is as strong as what we see here."

Griffin's prosecutors relied on the testimony of career criminal Robert Fitzgerald, who was in the federal witness protection program at the time, changed his testimony at a hearing in 1993, and died last year. "Other than Fitzgerald's testimony, no evidence at trial — no other witness and no physical evidence — placed Larry Griffin at the scene of this crime or in the car from which the shots were fired," according to Gross's report, developed in conjunction with Josiah Thompson of Thompson Investigations in Bolinas, California.

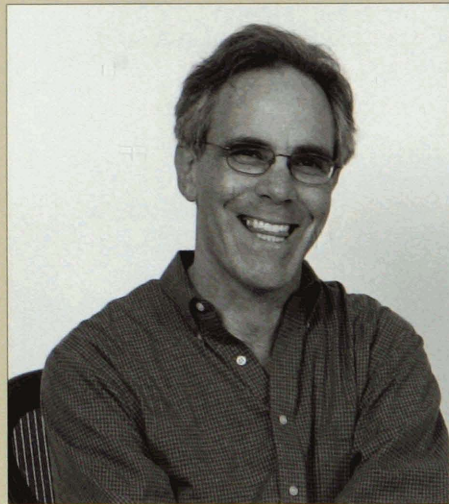
"Fitzgerald was the entire case and now there's very strong eyewitness evidence that Fitzgerald was not there, and what's more, Larry Griffin was not there," Gross told *the New York Times*. "It's hard to imagine why the victim's sister, a man who was shot at the same time himself, and a police officer — who live in three different states at this point and were interviewed separately — would all say, 'Actually, he [Griffin] wasn't there,'" Gross explained.

"There is no real doubt that we have an innocent person," Gross told

the *St. Louis Post-Dispatch*. "If we could go to trial on this case, if there was a forum where we could take this to trial, we would win hands down."

It's too late to reverse Griffin's execution, but Gross's and others' work has accomplished the next best thing — set in motion proceedings that are expected to restore his innocence.

As former U-M Law School faculty member Theodore Shaw, director of the NAACP Legal Defense and Educational Fund, explained when Griffin's case was re-opened: "It's never too late for the truth."



Christine Chinkin

Affiliated Overseas Faculty Member
Professor of International Law at the London School of Economics and Political Science, University of London

"I have worked not on a pro bono basis, but under the Legal Services Commission, which is the legal aid scheme in the United Kingdom. A current case, due to be before the Court of Appeal later this year, addresses the applicability of the European Convention on Human Rights to British forces in Iraq. The claimants are Iraqi civilians. . . ."

"I have done a great deal of informal human rights work. For example, I have written or given oral opinions on a number of issues for Amnesty International (AI) and have read through drafts of various materials for them. I have also given training sessions to AI lawyers on issues of human rights and women's rights. I have done similar work for Interights (a London-based human rights nongovernmental organization) and a number of women's organizations."

public service

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convince congressional skeptics that Burma's human rights violations could justify a trade ban consistent with the WTO's legal framework.

"In fact," Howse reported, "the bill was passed into law by virtual unanimity in both houses, and the resulting law has not been challenged by Burma at the WTO, nor has it been criticized in the WTO Secretariat's review of U.S. trade policy."

Elizabeth A. Long Professor of Law **Catharine A. MacKinnon** is known around the world for her work on behalf of equal treatment for all people, regardless of gender. She played key roles in convincing the world's courts that mass rape, like that which occurred in the Balkans during the Serbo-Croatian wars, is genocidal in intent. She also has been a pioneer in showing that the United States' Alien Tort Claims Act, on the books since the 18th century but ignored until she dusted it off and marched it into litigation, can be used in U.S. courts against foreign nationals like Slobodan Milosevic.

In a non-lawyer's role, **Richard O. Lempert, '68**, the Eric Stein Distinguished University Professor of Law and Sociology, now is in his fourth year as Division Director for the Social and Economic Sciences for the National Science Foundation.

Other faculty members, like Dean **Evan Caminker**, who worked in the White House's Office of Legal Counsel in 2000 – 01, also have taken leaves from their teaching posts to serve in the federal government.

Even longer term, **Lawrence W. Waggoner, '63**, has been involved in national legal reform for two decades through his work with the American Law Institute and the National Conference of Commissioners on Uniform State Laws (NCCUSL). He currently is Reporter for the Restatement Third of Property and UPC Reporter for the Joint Editorial Board for Uniform Trust and Estate Acts, a joint organization of the ABA, the American College of Trust and Estate Counsel, and NCCUSL.

Among the objectives that Waggoner has been working toward are removing formal and entrenched obstacles that traditionally have defeated well-proven intent (see *Law Quadrangle Notes*, Winter 2005, page 30, for a discussion of how this applies to wills) and modifying the law to respond to the changing American family — changes such as the increasing prevalence of divorce and remarriage, of unmarried but committed partners, of non-marital children, of adopted and un-adopted

see "BEYOND", pg. 16

Niehoff: Speaking out

When neighborhood activist Rodney Keteyian encouraged fellow Royal Oak residents to oppose establishment of cabaret-style entertainment at the Royal Oak Music Theater, and then spoke out against the project at the Michigan Liquor Control Commission hearing on the project, no one expected the result to be a lawsuit against him for libel/slander, unfair competition, and RICO infringements.

Turned down for a liquor license, developers of the proposed project sued the City of Royal Oak — and Keteyian.

The developers' lawsuit infuriated Leonard Niehoff, '84, an adjunct professor at the Law School and a shareholder at Butzel Long in Ann Arbor. "I thought it was just outrageous that they had sued this guy for exercising his First Amendment rights," Niehoff explained. "I offered to represent him *pro bono*."

A First Amendment specialist, Niehoff acknowledges that his representation was unusual because he agreed to take the case *pro bono* regardless of Keteyian's ability to pay. He took the case "because of the legal principles it raised."

Niehoff wrote the opposing lawyer asking that the suit be dropped because Keteyian's actions were constitutionally protected. He said he would seek sanctions if the lawyer proceeded with the case. He got no answer, and filed a motion for dismissal.

Judge John Feikens, '49, of the U.S. District Court for the Eastern District


Edward H. Cooper

Thomas M. Cooley Professor of Law
Member, American Law Institute
Council; Reporter for the United States
Committee on the Federal Rules of
Procedure, 1992 – present

"Since 1992 I have been Reporter for the United States Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure. The Committee bears the front-line responsibility for adjusting the Civil Rules to the developing needs of an evolving judicial system. One recent example is provided by a long-deliberated set of proposals to amend the discovery rules to respond to the special problems of discovering electronically stored information."

As to pro bono work, "Professor Dana Muir, '90, of the Business School and I were asked by the Chief Judge of the Fifth Circuit to write an amicus brief for the en banc rehearing of a case that involved complex questions of federal jurisdiction and the preemption of state law by the Employee Retirement Income Act. The parts that were interesting to me were at least these:

"(1) Figuring out how to function as a true 'friend' of the court, not a representative of any identifiable interest;

"(2) Learning — for a short while — a lot of interesting ERISA law from Professor Muir; and

"(3) Tangling with a corner of federal jurisdiction that has been left in an unsatisfactory state by well-intentioned but ultimately unsatisfactory Supreme Court precedent (remembering that as a court of appeals, the Fifth Circuit has to make the best it can of the Supreme Court decisions — it cannot simply opt for a better approach)."

of Michigan, granted the motion last December and scheduled a hearing to consider sanctions. "Plaintiff's claims against Mr. Keteyian are dismissed in their entirety and with prejudice because the speech described in the complaint and reflected in the referenced exhibits is protected from liability by the First Amendment to the Constitution of the United States of America," Feikens said in his opinion.

"As for the sanctions," Niehoff said, "our motion was settled out of court when the plaintiff's counsel agreed to pay Mr. Keteyian for the out-of-pocket losses he incurred because of the lawsuit."

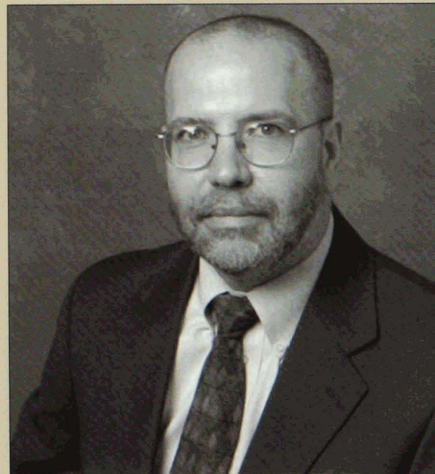
"Businesses build into their business plans litigation expense, but people don't build litigation expense into their lives," Niehoff explained. "The cost of defending yourself hits people really hard. I did not think there was any reason to include Mr. Keteyian in this lawsuit other than to bully him. He was dead square center in what the First Amendment is designed to protect."

Typical *pro bono* rules, which provide for free legal assistance to the poor, can be too restrictive, according to Niehoff, who encourages students in his Ethics classes to discuss this question. "I have very strong feelings about the need to be protective of those in poverty or not able to pay for legal service, and I understand that you don't want people

serving on the board of an operation and bringing in \$1 million a year and claiming it's their *pro bono*," he said.

"But I worry that one of the consequences of this is that people don't consider other kinds of *pro bono*. A proper understanding of the nature of a profession includes within it a fairly broad notion of the idea of public service. You almost have to say that *pro bono* is a small corner of this broader idea that professionalism includes a sense of public service."

Pro bono projects need not be headline grabbers, he added. "The interesting thing about this case is that it was very localized, a small kind of help. Here's a guy who had a problem and there was an opportunity to go in and defend a principle and defend somebody who had a problem in the offing."



"...professionalism includes a sense of public service."

"BEYOND", cont'd. from pg. 14

stepchildren, and of children of assisted reproduction. His current projects include working on the third volume of the Restatement and on revisions of the parent-child provisions of the Uniform Probate Code.

Some faculty members, like Professor **Kyle Logue**, who testified to Congress regarding tobacco taxing, and Assistant Professor **Jill Horwitz** (whose recent testimony to the U.S. House of Representatives' Ways and Means Committee is reprinted beginning on page 94), have drawn on their expertise to contribute to national, state, and local discussions of public policy.

Sometimes, as Professors **James J. White, '62**, and **Rick Hills**, and Adjunct Professor **Susan Kornfield** note, public service and humor can go hand in hand. White, the Robert A. Sullivan Professor of Law, quipped that when he and Hills were visiting professors at a peer law school on the East Coast the previous academic year they performed a significant public service by doubling the number of Republican voters among the school's law faculty. Kornfield, who chairs the Intellectual Property Practice Group of Bodman LLP in Detroit, Michigan, joked that "doing *pro bono* work keeps you thinner and younger looking."

Hills grew up absorbing the ethic of public service. His mother, Carla Hills, was an Assistant U.S. Attorney General under President Richard Nixon, became President Gerald

see "BEYOND", pg. 18

Barr:

We have a duty to advance the public good

Assistant Professor of Law Michael S. Barr, currently chief investigator for a groundbreaking study of how poor and middle income people use financial instruments (see "Detroit Area Study on Financial Services: What, Why & How" in Law Quadrangle Notes, Summer 2005), came to the academy after extensive experience working with the U.S. State and Treasury Departments and as an adviser to the White House. He is a fervent believer in the mutual support that academic activity and practical policy formulation provide to each other. Below, he discusses this symbiotic relationship as well as other aspects of the ties that link academic and public service work.

LQN: You served in government before coming here to teach. Can you explain what you did?

BARR: I served as Treasury Secretary Robert Rubin's Special Assistant, and advised the Secretary on national budget and tax policy and management issues. I later served as a Deputy Assistant Secretary of the Treasury, developing initiatives to expand access to capital and financial services for low- and moderate-income people. I also served as President Clinton's Special Adviser, responsible for galvanizing federal agencies in their work in the District of Columbia. Prior to joining Treasury, I served as Special Adviser and Counselor on Secretary Warren Christopher's Policy Planning Staff at the State Department.

LQN: The academic world is where you earn your living and spend most of your time, but you also have a personal commitment to remain active in the arena of public issues and public affairs. Can you explain how you feel these two complement each other, and why you subscribe to this idea?

BARR: Our graduate, Judge Harry Edwards, '65 [of the U.S. Court of Appeals for the D.C. Circuit], has argued that lawyers have an obligation of "public spiritedness," a duty to advance the public good. I agree

with him, and like many members of our faculty, I am committed to trying to make a difference in the world. Rich Friedman [the Ralph W. Aigler Professor of Law] helped to get the Supreme Court to change its view of the confrontation clause. [Professor of Law] Kyle Logue has provided advice on terrorism insurance issues in the wake of the 9/11 attacks. [Associate Dean for Academic Affairs and Professor] Steve Croley has taken on *pro bono* criminal and civil trials and engaged in law reform in Michigan. So I think it is a commitment that is widely shared among the faculty.

LQN: The work you are doing on the "unbanked" and your current research in Detroit grow out of this commitment. Who are the "unbanked," and what is the research you are conducting in Detroit?

BARR: Low- and moderate-income households, like all of us, need financial services in their daily lives, to get their income, to pay bills, to keep their savings, but these financial services are often expensive and inefficient for these families. In my Detroit study, I'm looking at how households make financial decisions, the financial services they use, and the constraints that they face. My hope is both to shed light on the financial reality facing these households, and to contribute to a broader theo-

public service

retical debate in behavioral economics about how households make financial decisions, which has profound implications for the role of law in such areas as disclosure and bankruptcy.

LQN: You first encountered this issue during your government service, and now you are pursuing it with academic tools. Is this a kind of public arena/academic symbiosis?

BARR: I do think that my government service informs my scholarship. I am interested in theoretical problems whose resolution affects the real world, and I think I have a good feel for whether legal proposals in the academic literature are likely to stand the test of real life.

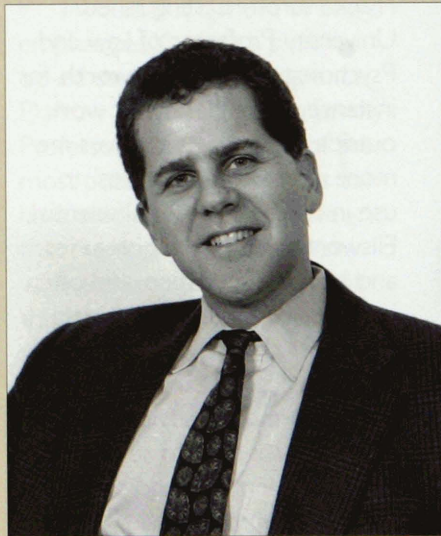
LQN: Is the idea of improving the public good, the community if you will, a prime mover in this effort? If so, are you responding to what you view as a professional obligation, whether as a lawyer in the government or in the academy?

BARR: I do believe that we have a professional obligation, as lawyers and teachers, to engage in public-minded work. My father was a labor lawyer and my mom teaches English to kids with learning disabilities, and I think my work is very much rooted in what I have learned by how they have lived their lives. I think all of us feel a moral responsibility, which we fulfill in very different ways, to our broader community. For me, and for many others, this sort of commitment is integral to what it means to live a good life. One of the things that I admire most about Michigan Law School is our commitment to public service. Dean Caminker has made public interest law a top priority for the School, both by his personal example, and by

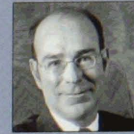
enriching the Law School's support for public service.

LQN: Is there also a mentoring role involved here? For scholar? Practitioner? Both?

BARR: Our students need mentors and role models for entering public service. We're fortunate to have a large number of our faculty with deep experience in a wide variety of public service. A number of us have served in government. Our clinical faculty is widely regarded as among the best in the nation. Many of our faculty engage in public service while they are teaching. Students can and do look to faculty to help get engaged in scholarship and public service about which they are passionate.



"We have a professional obligation... to engage in public-minded work."



James C. Hathaway

James E. and Sarah A. Degan Professor of Law and Director, Refugee and Asylum Law Program

Special Consultant on Legal Assistance for the Disadvantaged for the Canadian Department of Justice (1983 – 84); Founding Director of Services Juridiques Communautaires, an innovative community clinic in New Brunswick, Canada, that provided student-based multidisciplinary assistance (law, social work, and psychology) to poor people and minorities (1980 – 82)

"I have for many years provided annual training in international refugee law at the International Secretariat of Amnesty International (London); to lawyers and nongovernmental advocates under the auspices of the European Council on Refugees and Exiles (ECRE); and to judges around the world through programs coordinated by the International Association of Refugee Law Judges (IARLJ). I have also acted as an adviser to governmental organizations in Canada and the United States seeking to challenge the legality of an intergovernmental arrangement between the countries that denies refugees the right to choose where to make their claim to asylum.

"More generally — and here is where the student involvement comes in — our Program in Refugee and Asylum Law names six Michigan Fellows in Refugee and Asylum Law each year who spend their summers working on refugee protection concerns with official and nongovernmental agencies around the world. As well, the program has now convened and hosted three Colloquia on Challenges in International Refugee Law, each of which has produced a set of Michigan Guidelines on the International Protection of Refugees to guide advocates and judges around the world in resolving tough legal questions in the field."

"BEYOND", cont'd. from pg. 16

Ford's Secretary of Housing and Urban Development, and, under the first President Bush, served as U.S. Trade Representative and the United States' chief negotiator for the North American Free Trade Agreement (NAFTA).

Hills cut his own new lawyer's teeth on *Romer v. Evans*, acquiring a dedication to equal protection that propels much of the public service work he does today. *Romer* was the 1996 Colorado case in which the U.S. Supreme Court overturned a state constitutional amendment that precluded government action to protect people based on their "homosexual, lesbian, or bisexual orientation, conduct, practices, or relationships." The Court ruled 6 – 3 that such a special designation "violates the Equal Protection Clause" of the U.S. Constitution.

Last summer Hills again was working to ensure equal protection, this time as ACLU co-counsel on *Pride at Work v. Granholm*, seeking a ruling that Michigan's new constitutional amendment prohibiting same-sex marriage does not bar counties, cities, state government, or public universities from offering domestic partner benefits to their employees. The trial court agreed.

"I try to do an ACLU case

once per year," he noted. "I care a lot about state constitutions and equal protection, having begun my legal career working on the *Romer* case."

But Hills doesn't limit his public work to brief writing and litigation. He teaches a course in land use law, and this fall he's donning the role of "citizen expert" to present a talk on zoning policy/land use for a series of public design workshops to help forge a downtown development strategy for Ann Arbor. "Land use is my area," he explained. "I need to keep in touch with what's going on in the city in order to have a decent course in land use law."

Good teachers are good storytellers, and firsthand "I" stories rank high with students. Frank Murphy Distinguished University Professor of Law and Psychology **Phoebe Ellsworth**, for instance, reports that her work outside the classroom "gives me more interesting examples" to use in teaching. A social scientist, Ellsworth is an expert on juries and how they function, and often is asked to help clarify the data compiled in social science and psychological research.

"I've provided advice (not legal) and support to several death row inmates, and participated in writing *amicus* briefs," she reported. "The most inter-

esting example of the first is in the case of Paris Carriger, who was eventually released from death row and is successfully managing life on the outside. His story was written up in *The New Yorker* several years ago. . . .

"Probably the most interesting *amicus* brief was for the American Psychological Association (APA) in the 1986 case of *Lockhart v. McCree*, arguing that the process of death-qualification results in juries that are biased toward guilt. I also provide advice to lawyers who want to use empirical research in their cases."

"Prisoners write to me," she continued, "[and I do] *amicus* briefs by request from the APA, or collaborate with other researchers interested in a topic before the Supreme Court. I agree to do briefs because I believe that when the court is faced with a decision that involves empirical questions, they should get all the help they can in interpreting the research."

Whether they pursue their work in the public realm with humor, passion, commitment, intellectual curiosity, or all of these, faculty members find the effort to be satisfying, stimulating, and often a boon to their teaching. For example, "my interest in criminal law and corporate law was sharpened

and my courses and seminars were aided by these experiences," reported Harry Burns Hutchins Professor of Law **Joseph Vining**, who worked at the U.S. Justice Department in the mid-1960s, served as consultant to the Legal Services Program of the Office of Economic Opportunity, concentrating on provision of legal services to people arrested in civil disturbances, and worked on the Medical Committee on Human Rights case against Dow Chemical Company (*MCHR v. SEC*, 432 F.2d 659 [D.C. Cir., 1970]) that established the legal relevance of non-economic considerations in business corporate decision-making. (MCHR, an organization of physicians, opposed the use of napalm, which Dow manufactured, as a weapon of war.)

"For some years, I taught a seminar, Legal Norms and Corporate Policy, that began with the Dow Chemical case" Vining explained. "That seminar became my course in Corporate Criminality, which was one of the first in any law school."

Indeed, professors especially may feel the obligation to contribute to the public good because they enjoy the rare

opportunity to gather, study, and assimilate information as part of their teaching and research. "[A]fter hundreds of hours of reading and thinking about critical issues . . . aren't law professors bound to reach some pretty firm conclusions?" asks Professor Emeritus Yale Kamisar, who served on the advisory committee for the American Law Institute's Model Code of Pre-Arrest Procedure from 1965 to 1974 and also was co-reporter for the Uniform Rules of Criminal Procedure, a project of the National Conference of Commissioners on Uniform State Laws. "And shouldn't they tell the public, if the opportunity arises, what their conclusions are and how and why they reached them?"

"I would put it more strongly," emphasizes Kamisar, a prolific op-ed essayist whose Clarence Darrow Distinguished University Professorship recalls one of the most public spirited lawyers to have studied here. "I believe . . . that members of the academy who are knowledgeable about these matters have an *obligation* to enter the fray." **LQN**

"My interest in criminal law and corporate law was sharpened and my courses and seminars were aided by the experiences."



Jerold H. Israel

Alene and Allan F. Smith Emeritus Professor of Law

Executive Secretary, Michigan Law Revision Committee, 1973 – 93

"From 1973 – 93, while a member of this faculty, I was executive secretary of the Michigan Law Revision Committee, an agency of the Michigan Legislature charged by statute to examine the laws of Michigan in order to eliminate defects and anachronisms and to examine and evaluate reforms adopted in other jurisdictions.

"Like other members of the faculty, I have also served as a member of special committees appointed by executive officials like Michigan Governors Romney and Milliken, judicial bodies like the Michigan Supreme Court, and was a co-reporter on a project of the National Conference of Commissioners on Uniform State Laws (NCCUSL).

"Many of our faculty have been involved in projects of the NCCUSL, and [deceased longtime faculty member] Bill Pierce for many years was executive secretary."



Douglas A. Kahn

Paul G. Kauper Professor of Law

Appellate and trial attorney in the Civil Division (1958 – 60) and Tax Division (1960 – 62) of the U.S. Department of Justice

"I wrote and presented the government's position in appellate cases in the U.S. Court of Appeals. I had a few cases in state supreme courts. I also briefed several cases in the U.S. Supreme Court. . . .

"From my government service I learned a great deal about how the government operates, and I received excellent training in legal writing skills and in lawyering skills."

Vining: On grand jury service

Joseph Vining, the Harry Burns Hutchins Collegiate Professor of Law, served more than a year on the federal grand jury in Detroit, ending his assignment last summer. It was the first time Vining, a member of the Law School faculty since 1969, served on a grand jury, and he found it to be a fascinating and time-consuming job. Grand jury regulations prohibit Vining from revealing or discussing cases that came before his panel.

LQN: How were you notified of your selection to serve on a grand jury?

When and for how long did you serve?

VINING: At the beginning of last year a letter in my mailbox told me to report for jury duty at the Federal District Court in Detroit. Only there did I learn that it was grand jury rather than trial jury service. The term was for 18 months, the first six months three days a week 8:30 a.m. to 4:00 p.m. every other week, the next 12 months on a callback basis to work on cases as needed that had come to the jury in its six months of regular meetings.

LQN: What grand jury did you serve on? Where did you go for your grand jury sessions?

VINING: Several grand juries sat at the same time. Each had its own set of rooms in the federal courthouse in Detroit, a grand art deco building in the center of town, and the physical setting for its work says something about the institution — not unlike the design of old (or new) law school classrooms. The jury room was like a little courtroom, with the jury in tiers of seats at one end, facing the Foreperson and Deputy Foreperson, who were voting members of the jury also, seated as if judges behind a raised bench. Each member of the jury took notes in a notebook, which was collected and locked up at the end of the day, for reference if the case should be continued later. Votes and attendance were tallied by a Secretary appointed by the Foreperson, and discussion and votes occurred without prosecutor or stenographer present.

On one side of the jury room was a box where the prosecutors took their

places, and on the other side a box for the witness, quite close to the front row of the jury. A stenographer was seated below the Foreperson's bench. There was a small kitchen on the wall (jury members brought the refreshments), and outside the jury room were a bathroom, closets for coats, and small waiting rooms for witnesses, police escorts, prosecutors waiting to bring in the next case, and so forth, and for lawyers to confer with their clients. Lawyers were not allowed in the jury room. A witness could, in theory, go out after each question to confer with a lawyer, and return to answer. If a witness resisted answering on grounds of self-incrimination, he or she might be taken to a District Judge, given "use immunity," and required to answer on pain of being imprisoned for the remainder of the term of the grand jury.

LQN: How many jurors made up your panel? Can you describe your fellow jurors? Was there a jury foreman?

VINING: There were 23 jurors, one shy of twice the magic 12 on a petit or trial jury, with a quorum of 16 and a vote of 12 necessary to bring in a "true bill." We lost our quorum (and had to give up for the day) only once, when we had exactly 16 and a juror went out at lunchtime to discover that his car, with his work computer in it, had been stolen. The jury was diversified according to standard categorizations as if very carefully constructed. Jurors were drawn from all over the Eastern District, some coming to Detroit each day from considerable distances, from Jackson, or near Toledo. Grand jurors ask questions on their own, and we ate lunch together, and so we came to know one another

somewhat and acquire given characters (I was called "the professor"). The Foreperson and Deputy Foreperson were appointed by the District Judge who oversaw the jury selection process and instructed it. They administered oaths and recognized speakers, including prosecutors. Formal courtesies were shown them throughout by prosecutors, again, as if they were judges. The grand jury was repeatedly described as "a tribunal of the United States."

LQN: What kinds of cases came before you? Who brought them?

VINING: All federal of course: small cases, e.g., gun possession, that took only a short time, large cases, e.g., money laundering, fraud conspiracies, drug distribution, that involved a great many witnesses spread out over a number of sessions and indeed over our term, some testifying at risk to themselves and demonstrating to us one of the reasons for grand jury secrecy. Assistant United States Attorneys, with varying styles, specialties, and lengths of experience, presented the cases one after another. We generally heard a number of cases each day, sometimes voting out a "true bill," which the Foreperson would sign and take down to a Magistrate Judge, sometimes carrying the case forward to another session.

LQN: What did you think of your role as a grand juror and its place in the American justice system?

VINING: Only rarely did the tenor of questions from the jurors lead the prosecutor to bring in more evidence before asking for a vote, but the very fact that an indictment must be presented in this way should act as some screen against prosecutorial overreaching or harassment, to which jurors were sensitive. The legal question whether the grand jury may exercise some prosecutorial discretion on its own, and decline to indict even though there is probable cause, was mooted in discussion with the judge and prosecutors from time to time but not pursued. What one thinks of the use of the grand jury not just to

test probable cause before proceeding to the next stage in the criminal justice process, but to build up a case for the purpose of encouraging a guilty plea, would depend of course on one's view of the criminal justice system's reliance on guilty pleas and what alternatives to that there might be.

LQN: Will you draw on your experience as a grand juror for your teaching or in your writing?

VINING: Yes. It was a major investment of time and an insight into the actual operations of our system, a view of other worlds of life, and, I should say, a situation where I was forced into close observation, often sympathetic, of fellow human beings under stress and in serious difficulties.

LQN: Did you view service on the grand jury as a citizen's responsibility, like paying your taxes or obeying traffic laws? Or did it seem to be a burden at times?

VINING: Grand jury service was far more demanding than ordinary jury duty — except in trials of extraordinary length — and more akin to responding to the draft than paying taxes or obeying traffic laws. It did not, however, involve the agonies of final decisions about people's lives that trial jury service can. It was made clear at the beginning that no excuses for hardship would be entertained except for those with very young children. One of our members, self-employed, was eventually excused for financial hardship. Whether it was better for individuals to be sitting in the grand jury room than at their regular work depended on what their regular work was, but for more than a few it was a considerable sacrifice. For me, the call came at the beginning of a sabbatical term, and effectively foreclosed what I had hoped to do during the sabbatical. For the two academic terms following the term of regular sessions, when I returned to teaching, my classes had to be scheduled to leave open as much as possible the days when we might be recalled, resulting in the remarkable phenomenon of Friday classes at the Law School.

LQN: Did you consider asking for an exemption from serving or a delay in your assignment?

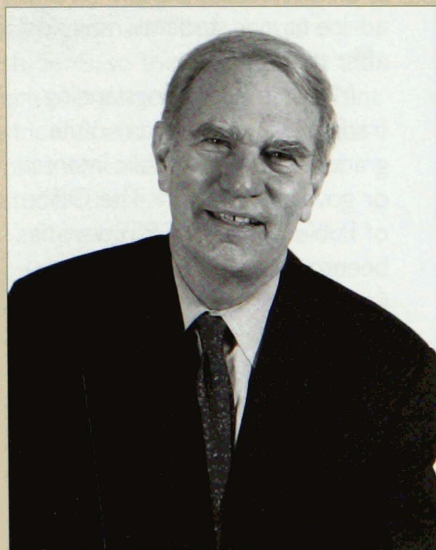
VINING: Exemption or delay was not really possible, but I realized also that combining Law School teaching with service during the first six months of grand jury service would be extraordinarily difficult. I mentioned my opposition to the death penalty on religious grounds. This was handled by providing for my stepping out temporarily if a case that might involve the death penalty was presented.

LQN: Often, lawyers and professors — and you're both — are not welcome as jurors. Is the grand jury different in this respect?

VINING: Yes, it seems to be. I personally felt welcome, and the emphasis was on minimizing grounds for being excused.

LQN: Would you serve again if asked? Would you recommend that others serve if asked?

VINING: I worked on draft law for a time when the draft was in effect. The overall feeling on entering and going through the selection process at the courthouse was much like that on being called up, though of course where one ended up was very different. Grand jury service is public service, but it is not a matter of choice.



Nick Rine
Clinical Professor and Director, Program
for Cambodian Law and Development

"Right now, I'm working with two groups of young women who got cheated out of wages owed when they were put out of their jobs in garment factories just outside of Phnom Penh when the factories closed. We are working on devising strategies to fight back in a legal environment where they have few rights and the legal system is less than enthusiastic about protecting them. They are very smart and perceptive, they even like the process of struggling through our language limits — their little English and my little Khmer — and after we work on one issue for a while they go off and think about the additional things they need to investigate and read more of the labor statute and the Arbitration Council decisions and discuss and think about it. Then they come back with new questions and ideas — some good, some bad — and, although it's frustrating for them, they also think it's very cool that I don't have answers for them but instead they are figuring it out for themselves."

As a teacher in the Law School's clinics, Rine adds that "our clinical teaching work necessarily entails representing poor and powerless clients and working with law students in helping them do that as a vehicle for learning how to practice law. There is no clear boundary in that work between 'job' and 'pro bono'."

A multi-faceted commitment

MaryAnn Sarosi, '87, became the Law School's director of public service last year after earning widespread praise for establishing and directing a legal aid provider service in Chicago and then serving as executive director of the State Bar of Michigan's Access to Justice Program. Here, she discusses her own and the Law School's commitment to encouraging public service and Law School programs to help students and graduates fulfill their goals of working for the public good.

Why public service?

Sarosi: I was interested in doing public interest work since the time I first came to the Law School as a student, largely because of the background that I came from. I came from a working class neighborhood in the southwest side of Detroit and I saw how the law could be used as such an effective tool to help people improve their situations. At the time, I didn't know where I wanted to practice, so having the degree from Michigan gave me the opportunity to go anywhere nationally or internationally and gave me the confidence to pursue public interest work that I'd always wanted to do. Knowing that I had an alumni network that I could tap into in any city around the world was very helpful in deciding to come to Michigan.

I practiced in a Chicago law firm before getting the opportunity to become the founding executive director of a legal services program. Because I was starting a nonprofit from scratch, I relied on my alumni contacts to help me start the legal aid program in Chicago. And if it weren't for the Michigan alumni contacts I'm not sure I would have been

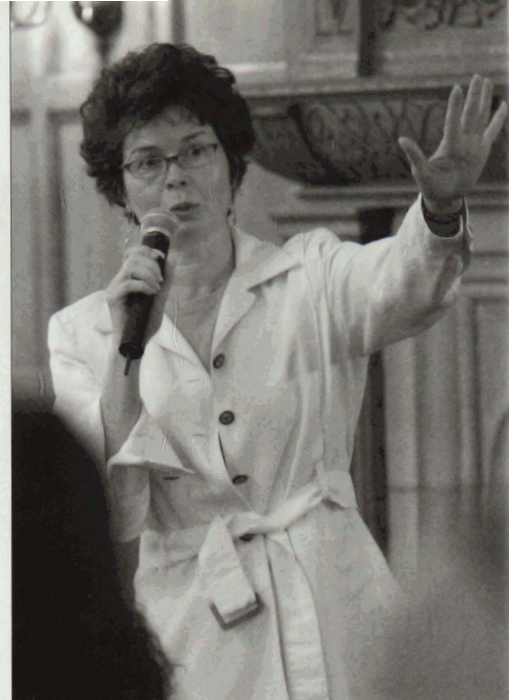
able to get this program off and running. One of the best things for me in coming back to Ann Arbor and the Law School is to be able to take the experience I had in doing public interest work for many years and use it to help students figure out what kind of public interest work they want to do. We have conversations in the hallways, we meet in my office, and in the three years that the students are here we can have three years of conversations not only about the summer positions they're going to take, but also the courses they're going to take, and what they're going to do after they graduate. I feel the Office of Public Service is here to provide a full menu of opportunities and advice to our students, now and after they graduate.

Michigan has a longstanding tradition of having many of its graduates go into public interest or government work. The Office of Public Service (OPS) now has been operating for 10 years as a place for students who want to go into government or public interest work to be able to come to for counseling, for information on careers, for connections to alumni, and to develop *pro bono* projects. We tap our alumni

for mentoring current law students regarding careers in government and public interest sectors of the law, and also to come and speak to our students about what it's like to do the specific job that they have. That gives students the opportunity not only to learn things in a classroom setting but also to learn in a setting where they can interact with practicing lawyers and learn from them in addition to our clinical and classroom work.

You have been here for a year now. Are there public service oriented programs or efforts that seem especially successful or noteworthy?

Sarosi: I have been told by many students that the Dean's Public Service Fellowship had an immediate impact on the student body when it was announced during the past academic year. I witnessed the success of this new fellowship program when we selected 20 second-year law students who were pursuing careers in public service. The public service fellowships provide a \$5,000 summer stipend to the recipients to pursue summer jobs in government and public interest. Most government and public interest summer internships don't pay, so the stipend is the only income students have during their second summer. Knowing that



they had secured funding for their summer, they were able to pursue fascinating job experiences that will certainly enrich their Law School experience.

The Fiske Fellowship is another outstanding program, for graduating students who are serving in government. Not only do the three Fiske Fellows receive significant financial assistance from the fellowship, they also are in contact with Bob Fiske, '55, himself, a person whose own work in government defines public service. I met Bob for the first time when we held the dinner for the new Fiske Fellows last March and it struck me how interested he is in maintaining contact with all of the Fiske Fellows. Here is a man who, despite a vigorous practice at Davis Polk, takes the time to keep in touch with the current and past Fiske Fellows.

While it is easy to list tangible projects, I think the biggest success this year is the intangible — the effort by the students and my office to create a community among the students interested in doing *pro bono* work while they are at a firm or pursuing a public service or government career. It was evident when a group of 3Ls and I collaborated to produce a manual for 2Ls interested in applying for a fellowship or a clerkship. We compiled 25 pages of valuable tips and strategies that these 3Ls used in getting their postgraduate fellowships or clerkships. We didn't stop with the manual. That group of 3Ls developed a panel to help 2Ls interested in public service to consider pursuing a clerkship or fellowship. Can you imagine being on the doorstep to graduating from law school and spending those final days as a stu-

dent developing materials to help other law students? That group of generous 3Ls was tending to the public service community here at the Law School.

It was evident every time a student offered an idea to make the OPS more effective and then followed through by helping me implement that suggestion. It was evident when the upperclassmen and OPS held social gatherings to bring first-year students into the public service community. You can't mandate a community but you can feed it and support it. With the incredible support from the students, we did feed it and have enjoyed watching it grow.

Are there new initiatives you have launched or hope to launch?

Sarosi: I'd have to say that much of my work this year has been focused on developing tools to support our students. The information that we've developed is the foundation upon which the remainder of our work rests. One of the most important things about these resources is that they were created in collaboration with one or more students, so they're based on the actual experiences of our current students and not on my 18-year-old memories of my days as a student here.

For example, one of the first people who befriended me at the Law School was a 3L named Laurel Dumont. She offered me valuable insight into the public service community at the School. Among other things, she identified a need for an electronic

see "MULTI-FACETED", pg. 26



Sarah C. Zearfoss, '92
Assistant Dean for Admissions

Does cases pro bono, often for the American Civil Liberties Union (ACLU). "My favorite (because it was one of the rare ones that I won) was a First Amendment case in which my client, an 82-year-old farmer, called the Michigan Department of Agriculture complaint hotline and left a total of about 10 voicemail messages using some choice language. . . . The state prosecuted him for making obscene phone calls. On appeal, the state court agreed that his language was protected by the First Amendment. I thought it was astonishing that the state would spend the money to install an 800 complaint hotline and then, rather than addressing the complaints in any way (which is why he made so many calls, and why he got progressively more irate), they would spend more money to criminally prosecute for language that I feel pretty certain could safely appear in a prime time sitcom. Plus, I felt a vested interest because I curse. On occasion. A little bit.

"Another favorite one was another First Amendment case (which I took at the request of the ACLU, like the one above), where a Michigan village passed a rule forbidding firefighters from a wide range of speech, including appearing at city council meetings, but also from speaking to any media. The firefighters were concerned about safety issues — basic whistleblowing sorts of things. The federal court said the village's rule was a violation of the First Amendment, so again, a rare win. That was a gripping case because I thought the village's behavior was so extreme and so poorly considered, and would result in such a terrible lack of necessary information for the public.

"I also take on federal criminal appeals, but the issues so far are not as interesting — usually federal sentencing guideline claims. But it's rewarding to do my best to give top-quality legal work to someone for whom so much is at stake."

Why take such cases? "I loved practicing law, and while I love what I do at the Law School, I am not eager to have all the skills Michigan taught me just die out. . . ."

"I don't teach, but I do think pro bono work helps me communicate with the considerable number of prospective students who are interested in pursuing similar work with their law degree."

A wealth of opportunities to support public service

Opportunities for students and graduates to experience public service work, domestically or in other countries, abound at the Law School. For-credit as well as non-credit programs are available. Students also are welcome to develop their own public service proposals and the offices of Public Service or Career Services will help secure support for them. In addition, the Office of Public Service assists students in locating and applying for outside assistance, such as the prestigious Skadden and Echoing Green Fellowships, and others. As students near graduation, many also draw on the Law School's assistance to apply for and secure clerkships at courts ranging from the U.S. Supreme Court to federal, state, and local courts across the United States and overseas. Here are many of the currently available Law School programs that support public service.

APALSA Summer Fellowship

The Asian Pacific American Law Students Association offers competitive fellowships to APALSA members who are first-year law students to work for a public interest organization in a legal capacity during the summer between their first and second years of legal studies. Winners may work at paid or unpaid positions; fellowships will supplement earnings up to a total of \$6,000.

Clara Belfield & Henry Bates Overseas Fellowships

Due to the generosity of Helen Bates Van Thyne, the Law School has an endowment for assisting recent University of Michigan Law School graduates or law students who have had two or more years of law study to travel abroad for study or work experience. Students may apply for grants to enable them to pursue legal studies abroad (including independently designed research projects) or to accept professional internships with international or government agencies, non-governmental organizations, law firms, or other legal or political institutions in foreign countries.

Dean's Public Service Fellows Program

A new fellowship established last fall to support up to 20 law students to do public service work during the summer between their second and third years of Law School as part of preparation for a career in public service. "Enabling the Law School's students to pursue their dreams of public service benefits

everyone," says the anonymous Law School graduate whose generosity made possible the new initiative. "Our students are of the highest quality, just what public service needs. I believe in the value of giving back, and that, coupled with my personal desire to help students pursue their dreams of public service, are the reasons I contributed to this fellowship program."

Externship Program

The Law School's one-semester for-credit externship program provides students with advanced training and research opportunities in areas of particular interest to them that go beyond what is traditionally offered in the classroom. Students have done externships with agencies such as the U.S. Department of State, Office of the U.S. Trade Representative, U.S. Department of Commerce, Overseas Private Investment Cooperation, and at public interest organizations in New York, Washington, D.C., and London.

Robert B. Fiske Jr. Fellowship Program for Public Service

Established by graduate Robert B. Fiske Jr., '55 (see profile on page 42), in 2001, these competitively awarded annual fellowships provide three years of debt repayment assistance and a first-year cash stipend for up to three Law School graduates who enter government service.

International Court of Justice University Traineeship Program

An opportunity has been made available to graduates of a select group of

law schools, including the University of Michigan Law School, by the International Court of Justice (ICJ) to apply for the Court's University Traineeship Program in The Hague for a period of nine months. Jason Morgan-Foster, '05, was awarded the traineeship this year and began in September. The program began in September 2004. Last fall the ICJ selected two Michigan graduates for its university traineeship program: Sonia Boutillon, '03, and Carsten Hoppe, '04. The Court makes its selection from nominees submitted by their schools. Last fall was the first time the Law School participated in the competition, and it was one of only two institutions to have more than one student chosen by the Court. Out of 10 available positions, the Court chose two students from Michigan, two from NYU, and one each from Columbia, Yale, McGill, Max Planck, Strasbourg, and Geneva.

Michigan Fellowships in Refugee and Asylum Law

These fellowships, awarded to top students in the Law School's Program in Refugee and Asylum Law, provide funding for a summer internship at one of the program's six partner institutions (Amnesty International, London; European Council on Refugees and Exiles, Brussels; Human Rights Watch, New York; Irish Refugee Legal Service, Dublin; Jesuit Refugee Services, Lusaka, Zambia; and the UN High Commissioner for Refugees, Washington, D.C.).

Office of Public Service

The Law School's main gateway to information, networking, and assistance for students and graduates interested in public service, public interest, and/or *pro bono* work and/or careers. Established a decade ago, the Office of Public Service offers a wealth of information about fellowships and other support, and serves as the key to a network of graduates and public service professionals who can assist and counsel students and alumni who want to explore the world of service for the public good. (See page 22 for an interview with Office of Public Service Director MaryAnn Sarosi, '87.)

Perry Watkins Fellowship

A new fellowship established by the Law

School this year to support one student for an unpaid summer position with a nonprofit organization dedicated to legal work in the field of sexual orientation or gender identity. The fellowship is named after the plaintiff in a case challenging the military policy against gay soldiers. Paul Mata, the first recipient of the new fellowship, spent the summer as a legal intern with the Legal Services Department of Gay Men's Crisis in New York City.

Pro Bono Cambodia Project

The Pro Bono Cambodia Project, part of the Law School's Program for Cambodian Law and Development, provides supervised research assistance to groups working in Cambodia. The program offers summer internships in Cambodia, and in the last few years, students have worked with the UN Human Rights Center in Phnom Penh, Legal Aid of Cambodia, Cambodian Defenders Project, Cambodian Association for Human Rights, Cambodian Women's Crisis Center, and Cambodia's Ministry of Commerce.

Pro Bono Program

The Law School's Office of Public Service helps connect students with the wide array of public service organizations in southeastern Michigan that welcome student assistance. Such organizations range from the American Civil Liberties Union and the Immigration Legal Services arm of the Archdiocese of Detroit to University of Michigan Student Legal Services and the office of the Washtenaw County Public Defender. In addition, many Law School student groups facilitate their own *pro bono* and community service projects.

Project Comunidad

A new assistance program of the Latino Law Students Association (LLSA) that provides fellowships to do low-paying summer public service work.

Public Interest/Public Service Faculty Fellows

A new Law School program begun this fall. PIPS Faculty Fellows, who have extensive public interest/public service experience, teach courses of special

interest to students planning careers in government or public interest. PIPS Fellows also offer career mentoring, organize events to increase students' understanding of career possibilities, interact with students in small group settings designed to encourage conversations about public service careers, and provide an expanded network of contacts for students interested in pursuing careers in public interest or government. (PIPS Faculty Fellow Bo Cooper is pictured and quoted on page 27 and PIPS Faculty Fellow Sally Katzen, '67, is pictured and quoted on page 29.)

South Africa Externship Program

Students participating in the Law School's for-credit, semester-long South Africa Externship Program have been placed in government agencies and non-governmental organizations, including the Parliament; the Legal Resource Centers in Capetown, Durban, and Pretoria; in law clinics headquartered at various law schools in South Africa; and in human rights organizations.

Student Funded Fellowships

Student Funded Fellowships (SFF) is a student organization that raises money for grants to law students who take unpaid or low-paying summer jobs in the public interest. SFF defines "public interest" jobs as jobs that provide legal services to underserved or disadvantaged people or interests. This broad concept includes positions with nonprofit organizations, public sector agencies, and government organizations in the United States and overseas. The program began in 1977 and is chiefly funded through an annual spring auction that features donated items ranging from autographed books, luncheons with judges, and dinners prepared by faculty members to sailing trips and vacation weekends. It is organized and run by law students with support from the Law School and a network of faculty, graduates, legal professionals, and others who donate generously. (See story on page 34.)



Eve Brensike, '01

Adjunct Professor

Attorney, trial and appellate divisions, Maryland Office of the Public Defender

"I have taken pro bono criminal appeals and habeas corpus cases throughout my career as a public defender and during this past semester that I have been teaching at Michigan. For example, right now I am working on a criminal appeal for a 16-year-old who is serving 14 years in prison for second-degree murder. He had a folding knife and, when a kid who was 90-some pounds larger than he walked toward him in an aggressive manner he took the knife out, stabbed the other kid once in the leg, and ran away. Unfortunately, he struck a major artery and vein and the kid bled to death. This case is interesting because it relates to the mental state required for second-degree murder and whether a person who stabs someone once in the leg with a folding knife actually intends to inflict such grievous bodily harm that death will be the likely result.

"I also just filed a petition for certiorari in the U.S. Supreme Court in a Fourth Amendment case. The issue in that case is whether the Michigan v. Summers, 452 U.S. 692, 101 S. Ct. 2587 (1981), exception to the Fourth Amendment's probable cause requirement extends to nonresidents and permits the detention, handcuffing, and interrogation of an unarmed bystander in the front yard of a house where a search warrant is being executed when the police have no individualized suspicion to believe that the bystander is engaged in criminal activity and the bystander is not named in the warrant, has never been seen in the house, and is affirmatively known not to live there. . . .

"I think that good people sometimes do bad things. We all sometimes forget how lucky we are to have the support network that we do in the middle or upper class of society. As a public defender, I try to provide some support to those in the lower class who don't already have it. . . .

"I think that my practical experience makes me a better professor. I can use examples from my cases and bring law and criminal procedure to life for the students. Additionally, I know the way that things work on the ground, so I can answer their questions about the world outside of law school as well."

"MULTI-FACETED", cont'd. from pg. 23

forum where public service-minded Michigan Law School students could receive and provide information and advice on public interest and government jobs. After canvassing other students who confirmed this need, Laurel and I established such a forum. We launched the public service "CTool" [for students] Web site less than a month after I arrived and Laurel assumed responsibility for updating it. Another resource that OPS developed in collaboration with a group of students and the Law School's Communications staff was our Web site. I worked with a 3L, Andrea Delgadillo Ostrovsky, who held a series of focus groups with students to determine what they looked for in a Web site. The information that Andrea gathered and synthesized from more than 50 students was invaluable. It guided us as we developed the new site. Now a student can go on the OPS site and look at each practice area to find out what courses are offered in that area, what student groups work in that area, and what funding is available. Based on what students told me that they needed, Andrea and I also created a public service manual which we have posted on our Web site (www.law.umich.edu/currentstudents/PublicService/).

What is on the horizon for the Office of Public Service? My biggest hope is that we can develop post-graduate fellowships for our students interested in pursuing careers in public interest. It is very difficult for a student (even

one coming out of a school like Michigan) who wants to work in an environmental nonprofit, a civil rights organization, a legal services program, or any public interest organization to obtain a job right out of law school because most of those programs hire attorneys with experience. Those who want to practice in the public interest sector often seek out clerkships or fellowships to give them the experience that will make them competitive in applying for a position at a public interest nonprofit. Needless to say, there is tight competition for the limited number of fellowships and clerkships. Some of our peer schools have developed post-graduate fellowships open only to their students to give them an entrée into the public interest sector. I'd like to see Michigan Law School develop more post-graduate fellowships so the excellent education that our students receive can be put into practice in every area of the law.

The Office of Public Service regularly helps students. Do you also work with graduates? If so, how?

Sarosi: We don't end our relationships with the students who come through Hutchins Hall. I know because my relationship with the School didn't end when I graduated in 1987. In fact, I believe it's more important to provide assistance to our alumni because a higher percentage than ever switch jobs and even practice areas. For those alumni that are considering a switch into government or public interest work,

I think it's helpful to look at the OPS and Office of Career Services' Web sites, to contact OPS for job search strategies, and to get in touch with other alumni practicing in the area you're investigating. Alumni should also be aware of Alum Network, the online directory of our alumni. It's available at www.law.umich.edu/alumnianddevelopment/AlumNetwork/index.htm. The site is self-populated, which means alumni go in and enter their contact information in order for other alumni to view it. OPS and the Office of Career Services have listservs for students and alumni who want to receive information on government jobs and clerkships. Finally, by the end of the year, we will have the Public Service listserv available. These are some of the ways that we maintain our relationships with graduates.

The Law School reacted quickly and generously to the damage and disruption inflicted by Hurricane Katrina in late August and early September. Can you elaborate on the Law School's response?

Sarosi: In addition to admitting our visiting students in time for the first day of class (think about that, that is less than a week) we knew that we were in a position to assist in other ways using students' legal skills. The Office of Public Service identified ways in which our students could provide *pro bono* services in the affected Gulf Coast region and locally to survivors of Hurricane Katrina. We contacted the ABA Center for Pro Bono and Equal Justice Works and offered assistance through their coordi-

nated effort. We also worked on the state level [and] I am involved with the Legal Needs Committee of the Washtenaw County Emergency Response Team. The Office of Public Service will work with the local legal services program, Legal Services of Southeastern Michigan, whose executive director is Michigan Law grad Bob Gillett, '78, and the Washtenaw County Bar, whose president, Erane Washington-Kendrick, '93, and president-elect, Veronique Liem, '86, both are Law School graduates. (For more details of the Law School response, see story on page 6.)

Lawyers, like all of us, have to earn a living. However, attorneys bring a special expertise, and some would add special professionalism, to how they earn their living. Does this expertise and professionalism bring with it an obligation to do more than just earn a living?

Sarosi: Practicing law is a profession, not just a job, and professions carry some responsibility for serving the public good. As guardians of the justice system, we are called upon to protect its integrity. As guardians, it is incumbent upon us to ensure that access to the justice system is available to all. This is part of why the American Bar Association and many state bar associations have standards for *pro bono* practice, to ensure that access to the justice system is as universal as possible.

Many people have the view that public service work means long hours and low pay in dedication

to a cause, usually in association with a struggling nonprofit organization. Is there more to public service than this?

Sarosi: I think if you asked most lawyers working in government or public interest why they do what they do, they will give you an answer (or some variation) about the interesting work, the knowledge that their work has a tangible impact on the lives of people, the fact that they can go to bed each night satisfied that they made a positive difference, and their work gives voice to groups that have no voice in the justice system. In their answers lies a passion and fervor for a just and equal system that generally outweighs the long hours and meager pay. But not all public service work leaves you at the poverty level. Many positions in public service, especially in government, pay salaries that provide for a quite comfortable lifestyle. **LEN**

Office of Public Service Director MaryAnn Sarosi, '87, chats with law students at the Law School's Public Service Open House in September.



Bo Cooper

*Public Interest/Public Service
Faculty Fellow*

Of Counsel, Paul, Hastings, Janofsky & Walker; General Counsel of the U.S. Immigration & Naturalization Service (1999 – 2003)

"There is no more direct way to help improve the performance of the government than to be a part of it. As for the pro bono work, the stakes are immense for persons in the immigration system, especially where safety is at stake."

Currently, "I have been involved in devising and promoting the International Marriage Broker Regulation Act of 2005. Foreign spouses immigrating to this country as 'mail order brides' fall victim to domestic violence at unusually high rates. This bill . . . would create important controls over the marriage broker industry by requiring disclosure to the immigrating spouse or fiancée, during the immigration process, of any criminal background or other information about the sponsor that might indicate a risk of future abuse. The client for this work is the Tahirih Justice Center, a Washington-area nonprofit providing both policy-level advocacy and individual representation on behalf of refugee women. This project came to me through the Tahirih Justice Center. I serve on its board of directors. (I also serve as a supervisor to attorneys within my firm doing pro bono representation of asylum seekers and applicants for immigration benefits under the Violence Against Women Act.)"

Such work "permits me to appreciate acutely how policies and principles play out in practice, and to help to convey that to students."

Two clinics — two new initiatives

Clinical legal education, the hands-on approach to learning for which the Law School is very highly regarded, is a firsthand —and first rate — training ground for public service. That work is getting a significant boost from two new clinical initiatives at the Law School: Last fall the School launched the Pediatric Advocacy Initiative (PAI) that links a new clinic and legal advocacy with medical and social care for children, and this fall the Detroit-based Legal Assistance for Urban Communities (LAUC) clinic, recently re-named Urban Communities Clinic, is expanding its traditional work in the housing field to begin assisting small and startup businesses.

PAI partners the Law School with the University of Michigan Medical Center's C.S. Mott Children's Hospital and the Ypsilanti (Michigan) Health Center. The collaboration adds "a new tool — legal advocacy — to the healthcare team's available treatment options for low-income pediatric patients

and their families," explained an article in the clinical program's newsletter announcing the new initiative.

"The first year has been a terrific experience," reported Clinical Professor of Law and Poverty Law Outreach Director Anne Schroth, who co-founded the program with Associate Dean for Clinical Affairs Bridget McCormack. This year, Schroth is co-teaching the clinic with Clinical Professor of Law Nick Rine. Also, PAI benefits this year from the addition of staff attorney Debra Chopp.

"The students worked on every issue that came in, and, indeed, were often the initial contacts for referrals at onsite office hours at the medical clinics," Schroth reported of the first year of operation. "We've had a great variety of cases, from legal aid-type cases involving housing, custody, and public benefits to unusual cases that involve relatively obscure benefits programs or legal issues. We have a complicated guardianship case in which we had a trial several months ago to eliminate contact between two little girls and their biological father, a convicted sex offender."

Clinic students also handled appeals for Supplemental Security Income denials and two cases to get Social Security survivor benefits for very ill children whose fathers died before paternity had been established.

"This kind of preventive legal advocacy in a poverty law context is an invaluable learning experience for law students, who tend to think that 'lawyering' is courtroom litigation."

"Much of our work is not litigation focused," Schroth continued. "This is a much more broadly-based approach, teaching students how to work collaboratively with the patients and their medical providers to solve legal problems and bureaucratic quagmires, before litigation becomes necessary."

For example, she explained, "if we can advocate with a patient's Family Independence Agency worker to explain why she should be entitled to a work deferral, or train the social worker or doctor to do this advocacy, our intervention

is more efficient and effective than if we simply get involved to appeal the denial of a work deferral and the client has to wait months to find out if she will have to choose between taking care of a sick child or continuing to receive public benefits. This kind of preventive legal advocacy in a poverty law context is an invaluable learning experience for law students, who tend to think that 'lawyering' is courtroom litigation."

Students in the project also work with their teachers to develop educational materials

see "TWO NEW CLINICS", pg. 30

Clinical Professors Anne Schroth and Nick Rine are teaching the clinic portion of the Law School's new Pediatric Advocacy Initiative.



Sally Katzen, '67

Public Interest/Public Service

Faculty Fellow

Deputy Director for Program Policy, Council on Wage and Price Stability, Executive Office of the President (1979 – 80); and General Counsel (1979 – 80); Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (1993 – 98); Deputy Assistant to the President for Economic Policy and Deputy Director of the National Economic Council, the White House (1998 – 99); Deputy Director for Management, Office of Management and Budget (1999 – 2001); Senior Policy Advisor, Joe Lieberman for President (2003 – 2004)

"Working in government is so rewarding, so gratifying, so fulfilling. It really makes a difference whether you represent an individual, a company, an association, or the public. That's the nation's interest. That's a significant difference between private practice and government."

"The reason I teach is to inspire people to public service," she continued. "I tell them, with case studies, that one person can make a difference, that public service is a noble cause, and it's extraordinarily gratifying. . . ."

"You don't have to do it right away. Going into government service right out of law school may be more interesting, but on the other hand you get better training in a private firm. You can establish your bona fides, and go into government later and use what you've learned throughout your career. [Public service] is not a crossroad that you can only come to once and then its irretrievably gone."

public service

"TWO NEW CLINICS", cont'd. from pg. 29

for providers and patients, and train health care professionals how to combine medical and legal points when writing a letter seeking assistance for a patient or client. In writing to a landlord, for instance, it's more effective to have your letter correctly and professionally express both your client's medical condition and his right to alleviation of conditions that may cause or aggravate it. "A knowledgeable contact from a medical provider is much more effective than an immediately adversarial approach by an attorney," according to Schroth.

U-M Medical School Clinical Instructor of Pediatrics Julie Lumeng agreed. "The program is an outstanding opportunity to train pediatric residents and medical students about advocacy from a different angle from that with which they are familiar," explained Lumeng, who conducts a behavioral/developmental clinic at the Ypsilanti Health Center and refers many complicated cases to the PAI clinic. "These trainees have gone into the field of medicine because they want to help people. The Pediatric Advocacy Initiative provides them with skills and tools with which to do that more effectively."

In the future, Schroth expects the Pediatric Advocacy Initiative and its clinic to investigate ways to work with low income preg-

nant teenagers and teenage parents, and immigrant and non-English speaking people in the community. She also hopes to focus on more substantive legal areas on which the medical providers need more training. For example, she said, "there seems to be some disconnect between seeing domestic violence as a medical or social work issue and as a legal issue."

PAI offers exciting possibilities and "a great potential for growth, both in the outreach to medical sites and in the possibilities for curricular collaboration within University departments," Schroth predicted. "I think we are just scratching the surface of the potential for this project as a Law School course and an innovative approach to the provision of legal service to low income clients."

While PAI this fall is building on the momentum of its first year, the recently re-named Urban Communities Clinic is drawing on its 14 years of successful nonprofit housing development in Detroit to expand its assistance to small, minority, and women-owned businesses in the Detroit area.

The evolution from assisting organizations to helping businesses is a natural one, and the fact that Super Bowl XL will be in Detroit in February makes this a good time to launch such

an initiative, according to Clinic Director Roshunda L. Price, '93.

"We know that the government cannot do it all," explained Price, a clinical assistant professor who previously served as senior counsel with a small private firm in Detroit, where her responsibilities included providing legal services to corporations and partnerships.

The clinic's new initiative is designed to help small businesses avoid legal obstacles by providing legal assistance in a variety of areas:

- Contract review and negotiation;
- Real estate purchase and leasing;
- Equipment purchases and leasing;
- Licensing and trademark services;
- Joint venture agreements;
- Representation in financing transactions;
- Entity selection and formation;
- Stockholder and partnership agreements; and
- Operating agreements.

Price spent last summer contacting Detroit area business and community organizations to acquaint them with the clinic's new services. "I'm focusing on businesses that don't have the resources to get going, either as startups or as young firms prob-

ably no more than five years old," she explained. Helping such operations be successful can be a significant boost to Detroit's economy and the quality of life of its residents through the creation of jobs.

Many small businesses start up informally, their principals often do not keep minutes of business meetings, and they may finalize negotiations and contracts without legal rigor or safeguards, Price explained. Small business leaders also often need legal assistance when they're negotiating loans, leases, and other agreements.

Law students can help in all these areas and learn a great deal of transactional law at the same time, Price noted. "I think the students will really get an idea of what it's like to work with a firm on a small, intimate scale," she said. "That's how you begin. You will know what every paragraph means. I'm really concerned about them seeing things from the beginning to the end."

It's a win-win-win situation. Law students learn firsthand, businesses that need help get it, and Detroit benefits. "Our overall goal is to assist Detroit in its economic development," Price said. "It goes hand in hand with housing. People need housing, but they also need jobs." **LQN**

"I'm focusing on businesses that don't have the resources to get going, either as startups or as young firms probably no more than five years old."

Director Roshunda L. Price, '93, is leading the Urban Communities Clinic's new emphasis on working with small, start-up, and women-owned businesses in Detroit.



Susan M. Kornfield

Adjunct Professor
Bodman LLP, Detroit, Michigan

"Too many to count," she says of her pro bono cases. "Referrals from the Pro Bono Committee of the U.S. District Court for the Eastern District of Michigan, LADA, the Southern Poverty Law Center, Community Legal Resources, the Animal Legal Defense Fund, various indigent persons who somehow found their way to me."

How did these cases come to her? "I typically sought them out. I took them because the issues were important and/or interesting, and because the profession needs us to do this. . . ."

"I find that the students like the fact that I extend my professional reach beyond my for profit activities, and they use some of my 'stories' to engage me in conversation. How many intellectual property professors have stripped the Aryan Nations of the copyright in their white supremacist writings, or their trade name, in a bankruptcy court in Idaho? How many have represented a lesser-spotted white-nosed guenon in court?"

Help over debt's hurdle

Attorneys Pamela Hayman, '91, and Enid Perez, '89, are quick to praise the Law School's Debt Management/Loan Forgiveness Program for making it possible for them to find careers doing the kind of work they most want to do. Both work for nonprofit agencies, both earn less than they could command in the for-profit marketplace, and neither would consider trading away the satisfaction of her work for higher pay alone.

Hayman, who has been an attorney with Legal Aid of Western Ohio since she graduated from the Law School, studied law "for the sole purpose of gaining legal advocacy skills to assist victims of domestic violence and sexual assault." At graduation, a single parent with a six-year-old son, she applied for one job, got it, and today is managing attorney for Legal Aid of Western Ohio's office in Defiance, which oversees seven counties.

Pamela Hayman, '91



She also trains law enforcement officers and is the Northwest Ohio project coordinator for a U.S. Justice Department initiative to develop a national model for combating domestic violence and sexual assault. "We are working in partnership with the San Diego Family Justice Center, the Department of Justice, and the Office of Violence Against Women to develop the most comprehensive 'One Stop Shop' for services to family violence victims that has ever been built," she explains. Her site is the only rural, multi-county participant among the 15 centers in the project.

"The salary from my job, with the assistance from the debt management program, has allowed me to do the most rewarding work I could ever imagine," Hayman says. "I probably would not have been able to accept the job I have now if the debt management program had not been available. I do not have an extravagant lifestyle, but on my salary, without the program, I could not have supported my son, paid my basic bills, and paid my student loans."

"I can't imagine doing anything different from the work

I have done for the last 14 years. . . . Every day, I am thankful that I have the opportunity to help people and provide the tools to help them change their lives for the better. . . . To see the joy in the eyes of the women and

children after the violence stops and they have resources to live independently is more rewarding than all the money in the world. When I go to bed at night, I can close my eyes believing that I have made a difference."

Perez, a staff attorney with Protection and Advocacy Inc., in Fresno, California, is equally passionate about her work with developmentally disabled people and the debt management program's role in helping her do it. "The developmentally disabled community is the most under-represented in terms of legal representation," she notes. "My job fills me with joy when I can help a client that is mentally retarded, autistic, epileptic, and/or has cerebral palsy."

"The [debt management] program is a big reason why I accepted my current position," she explains. "I work for a nonprofit legal services program and the salary is much lower than my colleagues' in the private sector." The program "helps me pay my bills, such as car payment, insurance, etc. These are critical to my job, where a car is required to visit clients in rural areas." Without the program, "I feel I would be obligated to take a higher paying job."

The Debt Management/Loan Forgiveness Program these women praise is held in high regard throughout the country. Graduates commend it and administrators of nonprofit orga-

nizations say it allows them to hire the best candidates even though they cannot pay what these graduates could earn elsewhere. "Many schools would love to have a debt management program such as ours, but few have the resources to devote to such an effort annually," reports Assistant Dean for Financial Aid Katherine Gottschalk, who oversees the program.

Begun in 1986, the program has grown since then and now spends \$375,000 each year to assist 70 – 90 people, Gottschalk said.

Shining like a bright spot in the dark spiral of rising tuition costs, it "provides an opportunity for University of Michigan Law School graduates to accept a lower paying job without feeling overwhelmed by the debt accumulated while earning their degree," according to the Law School Web site (www.law.umich.edu/currentstudents/financialaid/debt-management.htm). "The program will actually contribute to loan payments, making a modest paying job more realistic. Applicants working at least half-time in a law related occupation and graduating from the University of Michigan Law School in 1986 or later can be considered for the program."

The program works by calculating an applicant's annual available income (AAI) from a formula that includes income,



Enid Perez, '89

assets, and deductions like undergraduate debt and childcare costs, the Web site explains. "If the AAI is less than \$36,000, the applicant is not expected to contribute any payments toward the loans that are covered under the program for that year. If the AAI is greater than \$36,000, the applicant's expected contribution is 35 percent of the AAI over \$36,000."

Next, expected monthly payments are calculated on eligible loans incurred during Law School. Payments are calculated according to the lender's standard repayment plan. Based on the applicant's AAI, the applicant's expected contribution is subtracted from the annual loan payment total. The Debt Management Program pays the remainder. **LQN**

*"When I go to bed at night,
I can close my eyes believing that I have made a difference."*



Margaret Leary
Adjunct Professor and
Law Library Director

Formerly worked with Legal Aid of Minneapolis on family law cases

"I believe in giving back, through uncompensated public service, to the institutions that helped me get where I am, and to the place where I live. My law training helped to make me a much more effective member of boards on which I have served or do serve: The place where I received my legal education, and was employed fulltime during half of that time, William Mitchell College of Law, where I was a Trustee, 1993 – 2002. Second, that place where I've lived for over 30 years, the City of Ann Arbor, where I served on the City Planning Commission, 1994 – 2002; on the Habitat for Humanity of Huron Valley Board, 1993 – 2002; and the Ann Arbor District Library as an elected Trustee, 2004 – present."



Student Funded Fellowships Auctioneer Evan Caminker

It's going to shape them for the rest of their lives

by Jeff Mortimer

Student-run programs in the public interest are a hallmark of Law School life. With more than 50 student groups and six journals, opportunities for such service are rich and varied. For many years, groups like the Black Law Students Alliance and the Latino Law Student Association have awarded scholarships based in large part on past and current public service, and LLSA recently inaugurated its Project Comunidad fellowships for winners to use to do work in the public interest. From organized relief drives for hurricane victims to collecting books for poor African schools or clothing and toys for underprivileged children, law students constantly are sharing and working to improve the public good. Many student organizations have special public service committees that welcome proposals for such service. In the article below, student leaders and beneficiaries discuss two of these student-run projects, the venerable Student Funded Fellowships and the three-year-old Wolverine Street Law project.

While a cursory glance seems to show how different the Student Funded Fellowships (SFF) and Wolverine Street Law programs are, what they share is profound.

Since its founding in the 1977-78 academic year, SFF has raised and awarded more than \$2.5 million to over 1,000 law students who would not otherwise have been able to afford taking summer public service jobs — and those jobs have spanned the globe: last summer, for example, the 63 SFF grantees worked in 15 states and five foreign countries.

Wolverine Street Law, founded in 2002, offers a vehicle for students to render educational services to Ann Arbor area organizations during the school year, thus benefiting the community. About 40 students spend two or three hours a week preparing and providing presentations at six sites whose clients range from senior citizens to pregnant teenagers.

Although different in age, size, and scope, both programs are student run and reflect law students' commitment to the ethic of using their growing legal skills to improve the public good. The two programs (and a wealth of other student-initiated, public spirited programs) also mirror the Law School's longstanding commitment to recognizing that the legal profession is defined in large part by how it assists those who can't afford or access its services.

It's not that every SFF grant recipient or Wolverine Street Law volunteer will take up a career in public service. It's that the commitment to public betterment will become part of them. As SFF co-chair Mary Mock puts it: "We want there to be resources available to people who absolutely know that they want to do public interest, either for the summer or after graduation. But even if they never do it again, it's still going to be part of them; it's going to shape them for the rest of their lives."

Alison Kent used her SFF grant to help fund the 10 weeks she spent last summer in Sierra Leone, a country with almost 6 million people, barely 100 lawyers, and a byzantine legal system that's an uneasy blend of tribal, Islamic, and British traditions.

"It's the poorest country in the world," says Kent. "Eighty percent of the people live on less than a dollar a day. And it has the highest rates of infant mortality, child mortality, and maternal mortality in the world. I saw a lot of people die while I was there."

But as she worked in remote villages to help establish a national, community-based paralegal program, she also saw many people whose lives were improved. Some mothers who had been abandoned by their husbands were able to get child support for the first time. Some amputees — victims of the bitter civil war of the 1990s, when anti-government forces routinely hacked off the limbs of civilians as an intimidation tactic — finally started receiving the government aid to which they were entitled.

"Because there are absolutely no services there, you can make such a huge difference in a short amount of time, and that felt good," she says. "I can't imagine anywhere else in the world where as a first-year law student you can go in and do that. Anything you do makes waves."

"The wonderful thing about this is that all the paralegals are chosen from their own chiefdoms," she continues. "You're helping Sierra Leonans help themselves. For those of us who went to law school because we thought that 'justice for all' is what the world is supposed to be about, doing this type of work and trying to make that a reality is the most rewarding thing that you can do."

Among Kent's fellow grantees this year were law students Hugh Handeyside, who worked in Armenia for the Organization for Security and Cooperation in Europe, and Abby Rubinson, who was in Cambodia under the auspices of the East-West Management Institute.

"My work centered on efforts to combat trafficking in human
see "SHAPING THEM", pg. 36

Student Funded Fellowships

questions?
e-mail:
Sffboard@umich.edu

We award \$3000 fellowships to law students who take summer positions in the field of public interest

look for applications during the winter semester

what else do we do? → SPRING AUCTION!
PLEDGE DRIVE!
L-STAR!

"SHAPING THEM", cont'd. from pg. 35

beings, a fairly serious issue in former Soviet states," says Handeyside. "I put together an analysis of Armenian legislative efforts to comply with international conventions addressing the trafficking problem. It was great to contribute in some way."

Rubinson contributed to the Cambodian Land Ministry's efforts to refine and implement a land reform act designed to repair damage done during the Khmer Rouge era of the late 1970s. Her "most fascinating day" involved using the ministry's computer to notify some 80 community leaders how the ministry had incorporated their comments and suggestions to change a policy document it was preparing. "My boss said this was the first time the government had ever distributed documents like this. Here we take it for granted that we can go to a Web site and click on a link and view a whole document. In Cambodia, that's not how things are done."

Locally, service offers similar rewards. "It always amazed me,"

says Aaron Goodman, '05, who participated in Wolverine Street Law all three of his years at Michigan Law and served as its administrative chair in his second year. "There wasn't a week that I wasn't looking forward to going."

Goodman first worked at the Washtenaw County Juvenile Detention Center, then at University Living, a retirement community. "Each site had a different demographic," he explains. Most of the youngsters at the detention center were between the ages of 10 and 15 and, "given the capability and intelligence that some of these children had, it bothered me a lot of times that they were in there for status offenses or just getting caught up with the wrong crowd," he says. "Everyone has something to give and I wanted to nurture some of the skills I knew they had. The people in the retirement community weren't necessarily interested in being taught but in talking. It kind of became a great legal round table."

What he internalized was the common denominator. "My first summer internship was a public interest internship," he says. "My second summer internship and now my job (he's with the New York office of Gibson, Dunn & Crutcher LLP) are both with big

law firms. Working in Street Law not only allowed me to continue working in the public interest through an extra-curricular activity, but it also inculcated a sense of the need to continue that same work in public service, to continue to give and be involved in the community."

"The idea of the program is empowering young people and older individuals in the Ann Arbor-Ypsilanti community," says law student Jeff Landau, a member of the Wolverine Street Law executive board. "We're not acting as lawyers in any sense. We're acting as people who are studying law and interested in helping others facilitate their own knowledge about the law and spark kids' and adults' interest in their rights generally."

In addition to the detention center and University Living, Wolverine Street Law students serve Father Patrick Jackson House, a facility for pregnant and parenting teens; the city of Ann Arbor's Bryant and Northside community centers; and Peace Neighborhood Center, a nongovernmental social services agency.

"It's hard for any of us to do something that's a huge time commitment," Landau says. "This really makes it possible for a lot of students to get involved and feel good about what they're doing." **LQN**

*"Everyone has something to give
and I wanted to nurture
some of the skills I knew they had."*

Service Day gift honors Susan M. Eklund, '73

Law School students experience the satisfaction of providing service for others right from the start, when they spend a day working at nonprofit organizations in the Ann Arbor and Detroit areas as the Service Day portion of their new student orientation.

The fall starters this year also saw a longtime Law School administrator's commitment to service to others honored with a donation in her name to ensure that the Service Day part of orientation always will continue.

The donation from Randy Mehrberg, '80, and his wife Michele M. Schara, which his employer has substantially matched, establishes the Randall E. Mehrberg and Michele M. Schara Fund for Public Service in Honor of Susan M. Eklund, '73, which both ensures continuation of the service component of new student orientation and honors a person for whom serving others has been a byword.

Eklund worked on an American Indian reservation, served some 20 years as the Law School's dean of students, and now has come out of retirement to serve as dean of students for the University of Michigan. During her years at the Law School Eklund counseled hundreds of students and helped establish the School's highly regarded and much imitated Debt Forgiveness/Loan Management Program (see story on page 32.) She also initiated the First-Year Information mentoring program and the peer tutoring program.

"Every day of Susan's professional career has been in the ser-

vice of others," said Mehrberg, executive vice president and general counsel for the energy company Exelon in Chicago. "Sue believed that every problem has a solution, and every solution has a commitment to values."

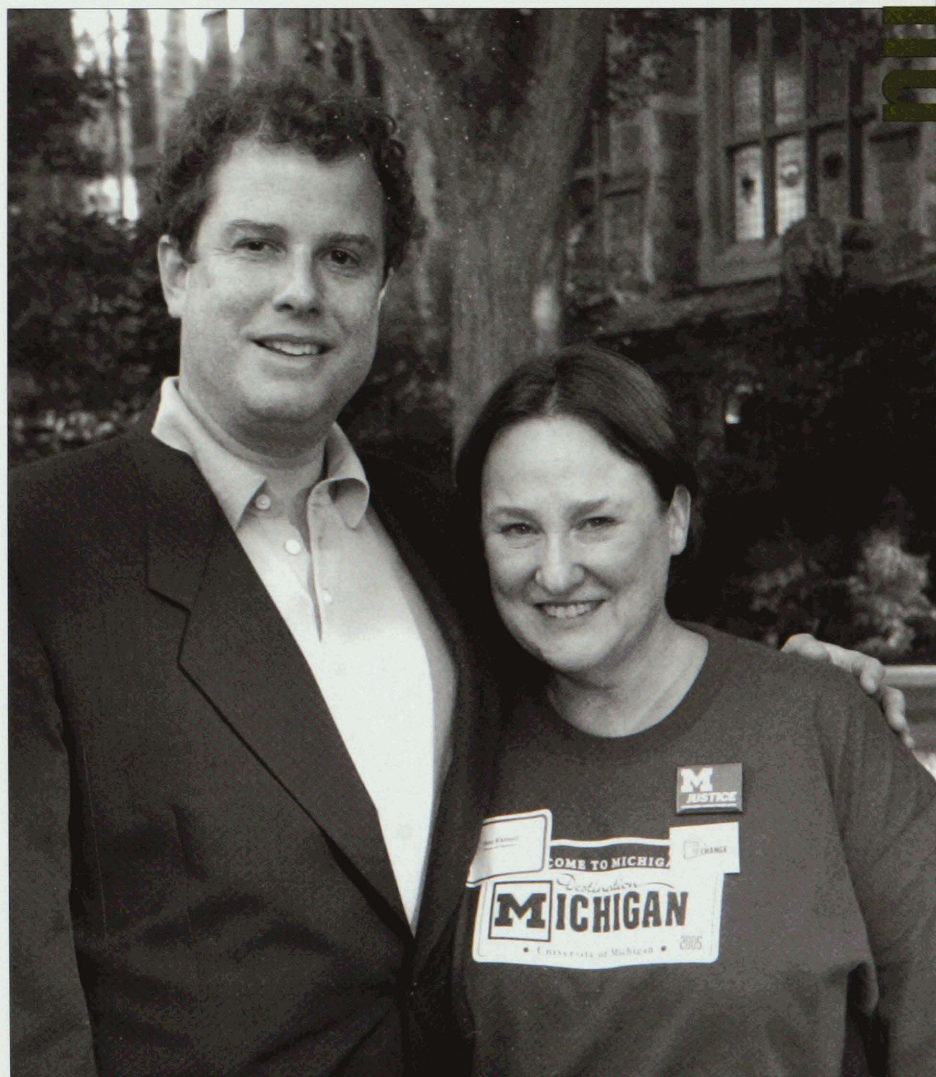
"The most memorable and rewarding experiences you have are when you do service for those less fortunate than you are," Mehrberg, '80, told the new students in remarks delivered at the Service Day banquet in the

Law Quadrangle in September.

"All of you here today are among the fortunate few by virtue of going to school here," he said. "When you leave after three years you will go from being one of the fortunate few to being part of the privileged class. Your opinion will be asked, your counsel will be sought out.

"My question to you is, 'What are you going to do with those gifts?'" **LQN**

Randy Mehrberg, '80, with Susan M. Eklund, '73



Students' Voting Rights Initiative helps protect the ballot box for everyone



Law students began working more than a year ago to track down and compile into a form that you and I — as well as members of Congress and their staffs — can use to evaluate the strengths and weaknesses of the federal Voting Rights Act with an eye toward changing or reauthorizing sections of the 40-year-old law that expire in 2007.

With Professor of Law Ellen D. Katz as adviser, nearly 100 law students of varying political persuasions have squeezed out time between regular classes, summer employment, and other obligations to gather and format the database of court cases brought under the act into an online collection easily navigated by anyone with an Internet connection. "Through this research, the Voting Rights Initiative aims to contribute to the evidentiary record available to Congress and practitioners as they consider the future of the Voting Rights Act," according to a statement of the project's goals.

At this writing, in late summer, the Voting Rights Initiative Web site (www.sitemaker.umich.edu/votingrights) had general information available but organizers still were fine tuning and cataloging the data and had not yet opened the site to the public. The project is scheduled to go public in ceremonies at the Law School on November 10. (See accompanying story.)

But Katz provided a tantalizing preview last summer when she testified at the National Commission on the Voting Rights Act's regional hearing in Minneapolis. When the nonpartisan project is completed and the data available on the public Web site, "if you want to find out how many at-large election practices were challenged in Alabama between 1988 and 1994, you'll be able to do that," she explained. "If you want to find out about how many cases involved African Americans in North Dakota or somewhere else, we'll be able to tell you that."

Noting that "I have the good fortune today to brag about my students," Katz reported that very preliminary findings showed the "overwhelming number" of lawsuits to be brought by black plaintiffs and "the majority of challenges" target local, not state-wide practices.

"The law students who have contributed to Michigan's Voting Rights Initiative hope that the judicial findings we've documented will help reveal the voting rights track record in this country since Congress last reauthorized the law," explained third-year law student Emma Cheuse, lead research director for the project.

The project has shown the students the sweep and complexity of Voting Rights Act issues as well as offered them a satis-

fying sense of involvement in the continuing development of a historically significant piece of legislation. Noted law student Adrienne Brooks, whose research focused on South Carolina and Florida cases: "As I read and analyzed Section 2 cases, I became very aware of all of the individuals involved as parties, advocates, and expert voices in Voting Rights Act litigation and felt that in some way I had a small place in the intricate history of the Voting Rights Act."

President Lyndon Johnson considered the Voting Rights Act, passed in 1965, to be the greatest accomplishment of his presidency. Designed to enforce the Fifteenth Amendment and eliminate racial restrictions to voting rights, the act was amended in 1970, '75, and '82.

Using parameters set by Congress during the 1982 reauthorization process, the law students' research has compiled data on cases brought between 1982 and July of this year. They catalog cases decided under Section 2 of the statute, a permanent provision of the law that covers all jurisdictions and allows any aggrieved person to bring a case in federal court against any "prohibition, voting qualification, or procedure that denies the right to vote because of race, color" or (after the 1975 amendments) "inclusion in a minority language group."

The law students' project fulfills a widely felt need and is destined to play a significant role in the crescendo of national discussion over reauthorization of parts of the act. Noting that the Voting Rights Act "is widely considered the most important and successful piece of civil rights legislation ever enacted," for example, the Lawyers' Committee for Civil Rights Under Law said in a June 2003 report that "in light of the need for Congressional action in four years, it is time to consider the current status of voting rights in our country, and the function of the act in a legal landscape which includes an increased public understanding of voting issues after the disputed presidential election of 2000, recent narrowing of the act by the Supreme Court, and the Court's restrictive view of race-conscious legislation."

"By analyzing Section 2 cases nationally according to the 'totality of circumstances' test set out by Congress in 1982, we've applied the same measuring stick Congress asked judges to use," Cheuse explained. "It's up to Congress and the public to look at our results and see what to make of the fact that courts have found voting rights violations right up to the present day."

"Judges are still finding racially polarized voting, and they are still finding that minority candidates have an uphill battle when running for public office," Cheuse continued. "Nevertheless, in many states, the voting rights landscape looks both quite different and certainly much better than when

the law was first passed in 1965.

"It is exciting for law students to try to help protect the rights of all Americans to have equal access to the democratic process, to try to help Congress have the information it needs when it holds hearings, to look at the facts, and help come up with the best way to move the Voting Rights Act forward at this important point in our history."

The Voting Rights Initiative uses an all-law student team of 15 research directors, 80 researchers, and a technical director. It is part of the Michigan Election Law Project (MELP), a Law School student organization that placed some 200 law students as legal poll monitors in precincts in Detroit, Ann Arbor, and other communities on Election Day 2004. Cheuse and Brooks co-chair MELP. **LQN**

Lead Research Director Emma Cheuse, left, and Professor Ellen D. Katz confer on the Voting Rights Initiative.



Voting law data goes public

The Michigan Election Law Project released the analysis of its Voting Rights Initiative (VRI) data and celebrated the 40th anniversary of passage of the Voting Rights Act in a special program at the Law School on November 10.

At deadline time, confirmed speakers for the program included Chandler Davidson, chair of the National Voting Rights Act Commission and author of *Quiet Revolution in the South*; Jon Greenbaum, of the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law; and Professor Ellen D. Katz, who teaches the course in election law where VRI began and serves as adviser to the project.



*Panamanian Minister of Commerce and Industries,
Alejandro Ferrer, LL.M. '92, S.J.D. '00*

Many voices — one theme

Evan Caminker sounded the call for service to the public in his first Dean's Message in this magazine after becoming the Law School's 16th dean in summer 2003. "I view it as central to our mission that we encourage our students to develop and maintain a sense of public spiritedness, and to incorporate a healthy respect for public values into their professional practices and daily lives long after they leave our magnificent halls," he wrote then.

In many ways, the Law School's graduates are the measure of its success at its mission, and a terrific measure they are. "Show me a job that's more worthwhile than protecting the community," Michigan Attorney General Mike Cox, '89, told a Law School audience last year. "Show me a job that's better than advocating for people who cannot advocate for themselves."

"I think it's very important to encourage students at top-notch law schools like Michigan to pursue government legal positions," former Deputy U.S. Attorney General Larry D. Thompson, '74, said in an interview for this magazine in 2003. "I look at it as a win-win situation for our society and it's good for the students."

The impact is international, too. Rob Portman, '84 (see story on page 87), who previously had



Michigan Attorney General
Mike Cox, '89



Former Deputy U.S. Attorney General
Larry D. Thompson, '74



Former Deputy U.S. Trade Representative
Susan G. Esserman, '77

served in the White House and had represented his Ohio congressional district since 1993, was sworn in last May as U.S. Trade Representative (USTR) with the rank of ambassador, the nation's highest ranking trade official. For Susan Esserman, '77, who now practices law in Washington, D.C., her work as Deputy United States Trade Representative, the second ranking official in the office of the U.S. Trade Representative, meant responsibility for trade policy and negotiations throughout the world. She also served as USTR General Counsel and Assistant Secretary of Commerce.

"I was attracted to government service because of my deep interest in policy development and in the interplay between policy and politics," explained Esserman, now a partner in the Washington, D.C., office of Steptoe & Johnson LLP, where she chairs the firm's International Department. "During my government tenure, it was particularly fascinating to see first hand the different roles of the three branches of government and our international commitments in shaping U.S. policy.

"My antitrust course with Professor Tom Kauper, '60, who had just returned to the Law School after a stint as Assistant Attorney General for Antitrust,

and my internship during the first semester of my third year at Michigan at the Washington, D.C., public interest firm, the Center for Law and Social Policy, enhanced my interest in government service."

Panama's Minister of Commerce and Industries, Alejandro Ferrer, LL.M. '92, S.J.D. '00, explains:

"When I reflect on my time at the University of Michigan Law School, I am immediately reminded of just how often what I learned in its classrooms impacts my work in public service today. At that time, I did not have the slightest idea of the impact international trade was going to have on my life and professional career, and I definitely did not foresee the impact trade was going to have on the social, political, and cultural fabric of Panama.

"In my roles as Deputy Secretary of State and Ambassador before the WTO and now as Panama's Minister of Commerce and Industries, I have been responsible for developing Panama's first-ever national trade strategy and been in charge of the legal process of WTO accession negotiations and negotiating

a Free Trade Agreement with the United States. After many years advocating on behalf of individual clients, the opportunity to serve the greater public interest has been one of the most rewarding experiences of my life. I am grateful for the legal education that provided me the knowledge and valuable skills necessary to play a role in my country's economic and social development plan and make a contribution to the welfare of our entire society, particularly the less well off."

In the profiles that open this section, six Law School graduates share how the spirit of public service that the Law School conveys to its students has translated into their professional practices and daily lives. Their careers vary from lawmaking to providing legal services, from striving to have the law incorporate changing ideas of gender equality and civil rights to serving as special government prosecutor and Native American tribal attorney. Throughout their diversity runs the unifying thread of public spiritedness.

Other portions of this section highlight recognitions accorded to graduates for their work in the public interest. **LQN**

*"Show me a job that's better than advocating
for people who cannot advocate for themselves."*

Robert B. Fiske Jr., '55

Robert B. Fiske Jr., '55, recalls that when he went home for Thanksgiving in his second year at Michigan Law School, one of the dinner guests was J. Edward Lumbard, a friend of his father's and, at the time, the U.S. Attorney for the Southern District of New York.

"He told me he was starting a program that next summer where law students could come to work, basically for nothing, one-on-one as assistants to U.S. attorneys," Fiske recalls. "I thought that sounded like a great opportunity, and I persuaded two of my classmates at Michigan to do it with me."

It was a life-changing decision. "The thing that impressed me the most about the whole summer was the commitment that everyone there had to doing the right thing for the benefit of the public," he says. "They had the highest kind of ethical values and at the same time there was a great sense of gratification in prosecuting people that had committed crimes, trying to bring them to justice. The experience I had that summer is really what incited me to public service."

Two years later, he was back as an assistant U.S. attorney himself. "That experience made me a much more effective lawyer when I went back to practice," he says, but he was far from finished with public service. He eventually followed in Lumbard's footsteps as U.S. Attorney for the Southern District



Robert Fiske Jr. '55, second from left, with the 2005 Fiske Fellows: Adam Kirschner, '05; Rosemary Caballero, '04; and Ona Hahs, '05.

of New York, in the course of which he became well acquainted with a Harvard professor named Philip Heymann.

By 1994, Heymann was Janet Reno's deputy U.S. Attorney General. The person he had chosen to head the criminal division was Joanne Harris, who had been Fiske's assistant when he was a U.S. attorney. When Reno asked them to recommend someone she could appoint as an independent counsel to investigate allegations against President Clinton, they gave her Fiske's name.

He had only had the job for nine months when Congress restored the responsibility for such an appointment to a three-judge panel. "They decided they wanted their own person," Fiske says, "and that was Kenneth Starr."

But Fiske's nine months of fame had made him a star, too. "I got inundated with requests from bar associations and other groups to come speak about my experience," he says. The one he accepted first was from the University of Michigan Law School.

"When I came to Michigan to speak, I said the reason I had come to Michigan first was I felt

that everything I had done in my career was attributable to the Law School," Fiske noted, "so I thought it would be very appropriate if that were the first place I would go to talk about my experience."

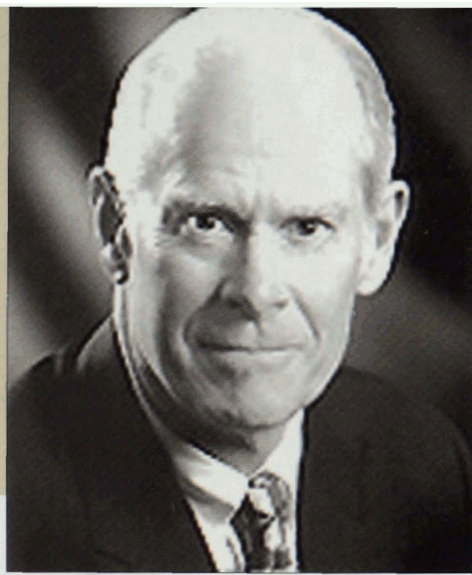
Much the same thinking underlay his endowment in 2001 of the Robert B. Fiske Jr. Fellowship Program for Public Service, which provides three years of debt repayment assistance and a first-year cash stipend for up to three Michigan Law School graduates annually who have decided to enter government service.

"I think both [Deans] Jeff Lehman, '81, and Evan Caminker have regarded this program as very significant because of the statement it makes to students that this is an important thing to do with your life," says Fiske.

It's also personally gratifying: "It blends two of the things that have been most important to me in my life — my experience in government service, and my experience at Michigan Law School."

— Jeff Mortimer

John Porter, '61



John Porter, '61, says, "My father was on the bench before I was born and until the day he died, so public service was always a part of my growing up."

Porter represented his suburban Chicago district in the U.S. House of Representatives from 1978 to 1999, and is now chair of the board of Research!America, a nonprofit organization that advocates for greater investment in medical and health research, and a partner in the Washington, D.C., office of Hogan & Hartson.

"Michigan Law had everything to do with my eventual career," Porter says, "because it inspired me that America was one of the few places where we lived according to the rule of law, where decisions were made by an independent judiciary and the rights of individuals are preserved, and where through the legislature you could make a difference for people who were in need and falling behind."

Porter originally intended to be an engineer; an idea he abandoned midway through his freshman year at Massachusetts Institute of Technology. "I decided that I wanted to be a lawyer like my father," he says. He completed his undergraduate studies at Northwestern University, then attended the University of Michigan Law School.

"My father was expecting me to come back and take over his practice — this is before he was on the bench fulltime — but I

decided I was going to go to Washington and work in the Justice Department," Porter recalls. The appointment came from the Eisenhower administration, but by the time he graduated from Michigan, studied for and passed the Illinois bar, got married, became a father, and got on the train to Washington, D.C., "it was the Kennedy administration and I was working in the Robert Kennedy Justice Department." After two years in Washington, Porter did take over the family practice, but soon his father was urging him to run for circuit judge of Cook County as a Republican. He ran well but lost, and a year later he lost his father to a massive heart attack. "I think he would have talked me out of ever running for legislative office," Porter says, but redistricting and an incumbent's illness had created an open, and safely Republican, seat.

After three terms as both a full-time legislator and lawyer, "I said I'm going to be either one or the other, and I'll let the people decide what they want me to be. So I ran for Congress against Abner Mikva, the incumbent Democrat in our district. It was the highest profile House race in that year, which was 1978 and, in my judgment, the last classic issue-oriented race we've had in the

United States. We had debates on the issues, talked about the things we believed and wanted to do. He won by 650 votes out of 190,000."

Four months later, Mikva resigned to accept an appointment to the federal bench. Porter won the special election to fill the vacancy and was re-elected 10 times before retiring to "make way for a younger person." His proudest achievements in Congress were leading the fight to spare the National Institutes of Health and the Centers for Disease Control from the budget ax in 1995 and founding the Congressional Human Rights Caucus.

"It was very satisfying and inspiring that you could make a difference for people who had nobody looking out for them and lived in totalitarian or authoritarian systems," he says. "The caucus has done and continues to do great work to protect individual rights. All of that came from the understanding of the rules of law and the importance of individual rights, which I learned by being a student at the University of Michigan Law School in addition to learning them from my father's public service."

— Jeff Mortimer

public service

A LEGACY

Martha Bergmark, '73

Martha Bergmark, '73, is president of the Mississippi Center for Justice, a nonprofit corporation that connects community-led campaigns with legal services.

"I learned the Pledge of Allegiance as a first-grader at Boyd Elementary School over on Northside Drive in Jackson, Mississippi," she says. "Every school day, we recited those inspiring words, 'with justice for all,' as if they were true. Even then — in the days of the emerging civil rights movement — it was clear to me that 'justice for all' was not a current reality but an unfulfilled promise, especially if you were black.

"I went to the University of Michigan Law School in the dark ages, when they weren't doing what they do today, which is [to provide] a lot of support for public interest law careers. But the clinic program started my second year at Michigan and I was one of the first participants. That was a big help."

When she and three other Michigan Law School graduates, including her husband and classmate, Elliott Andalman, '73, chose to start a civil rights practice in Hattiesburg, Mississippi, "there were people on the faculty who were very supportive and helpful of my husband and



my decision," she says. "David Chambers was particularly supportive, as was Harry Edwards, '65, who is on the Washington, D.C., Circuit Court of Appeals now. Our whole firm was from the University of Michigan Law School and we were doing civil rights practice in the Deep South."

Bergmark has also been founding executive director of Southeast Mississippi Legal Services, serving low-income people in nine counties; national advocate for federally funded legal services at the National Legal Aid and Defender Association in Washington, D.C.; and president and executive vice president of the Legal Services Corporation, granting federal funds for legal services to local programs.

"As lawyers, we often are overwhelmed by the injustices we see in our communities," she says. "We want to turn away and avoid our responsibility as stewards of justice. We have trouble trusting that our clients — especially when they are community leaders and organizers and activists — have tremendous collective resources. We often fail to see they already have the solutions to problems within their reach. In 32 years of working to expand and improve access to justice for poor and disadvantaged people, I have come to believe that fulfilling America's promise of 'justice for all' is an achievable goal."

— Jeff Mortimer

Julia Ernst, '94



Julia Ernst, '94, with husband Richard Clement and daughter Cosette YiaYin Ernst Clement.

"I've been here since January, learning how to be an executive director," says Julia Ernst, '94, who holds that position with the Women's Law and Public Policy Fellowship Program in Washington, D.C.

Ernst's commitment to working for the public good, however, is nothing new. It dates back to the summer between her junior and senior years as an undergraduate at Yale, when she came to Ann Arbor to work as a research assistant and get a close look at the Michigan Law School.

She read a book called *The Female Advantage: Women's Ways of Leadership*, by Sally Halgesen, that her father and fellow Michigan Law graduate, retired Michigan Judicial Court Judge J. Richard Ernst, '63, had given her. Then she read Professor Catharine MacKinnon's *Feminism Modified*. "I hadn't really thought before about women involved in prostitution or sex work, and the sexual abuse they may have been subjected to when they were younger," Ernst recalls. "How they ended up where they are now is horrifying. I began to think maybe there was something to feminism and there was a need for it, but I just couldn't deal with it."

She did come to Michigan, but she demurred when some friends sought her assistance in starting a women's law journal. "I told them I wasn't interested in working on these issues," Ernst says. "So they said, 'Just

come down and have a cup of coffee and chat with us.'"

It was a pivotal cuppa joe. "I opened my big mouth and said what we need to do to get this off the ground is hold a huge symposium on women's rights issues," she says, "then turn the presentations into articles and that will be our kickoff journal."

Even though, she says, "I had no idea what I was doing," Ernst chaired the conference, it was a success, and the *Michigan Journal of Gender and Law*, as well as a career in public service, was born.

Her path from graduation to her current job looks like this: environmental lawyer with the Detroit firm of Dickinson Wright; member of the board of the Sojourner Foundation, whose efforts support women and girls in the Detroit area; attorney at what is now the Center for Reproductive Rights in Washington, D.C.; and aide to Rep. Louise Slaughter (D-NY), when she co-

chaired both the Bipartisan Congressional Caucus for Women's Issues and the congressional pro-choice caucus.

Her experience at Michigan "was really life-changing," Ernst says. "It had a huge, huge effect. When you really understand what's going on with all these social justice issues, there's no way you can sit in your comfortable world and do nothing about it."

Doing nothing is the antithesis to Ernst's approach, which includes regular returns to Michigan — to give talks to students during preview weekend, to participate in panels, to assist with women's career symposiums.

"I come back to the Law School as much as I can," she says, "because I love it so much and I had such an incredible experience there."

— Jeff Mortimer

Allie Maldonado, '00

Allie Maldonado, '00, says that the only time since she was 16 that she wasn't involved in public service was the two years she studied at Pepperdine University. "They just don't have too many people in need in Malibu," she laughs.

Other than that, it's been a pretty straight line for her from teaching adults to read when she was a teenager to her current job as assistant general counsel to the Little Traverse Bay Bands of Odawa in Harbor Springs, Michigan.

"Committing to go to law school was a commitment to public interest," says Maldonado. Having earned a business degree from the City University of New York because "I thought that was what my tribe would need," she came to Michigan in the same spirit.

"I knew that if I went to law school and practiced law, I'd be giving my life, all of it, to public service," she says. What she didn't know was how enthusiastically Michigan would support her commitment.

"I don't know if it was groundbreaking or not, but I was just shocked by it," says Maldonado. "U of M is an amazing place to go to school. When I got there, there were only four native students in the school and obviously very



Allie Maldonado, '00, right, with U.S. Secretary of the Interior Gale Norton.

little to offer someone who was interested in practicing Indian law.

"But I had a vision, and anything I could imagine — any program, any way to draw more native students to the school — that would make the experience of being at U of M more hospitable to anyone who wanted to commit to the practice of Indian law, the School supported me."

For example, she says, "They didn't know where to recruit native students, but I did, so I pitched going to the Federal Bar Association Indian Law Conference, which is the most important Indian law conference for tribal attorneys in the country, and they sent us. They sent us to Houston to talk to students and do a mentorship program at the largest conference in the country for Native American college students. We wanted to put together a law day in conjunction with the Ann Arbor Pow Wow and they helped fund that. There's a lot of conferences on the East and West Coasts, and we got to offer a very high-caliber one, if I do say so myself, for free in the Midwest. That was terrific."

Through the Attorney General's Honors Program, Maldonado went right from Ann Arbor to Washington, D.C., working for two years in the Indian Resources Section of the Department of Justice Environment and Natural Resources Division before "coming home to work for my tribe."

"I've been here three years and I'm extremely happy and satisfied," she says. "And that conference that was so important to me becoming an Indian lawyer? I'm the chair of it. Law school was the first opportunity I ever had in my life to touch the edges of my own potential. And I want to thank U of M for that."

— Jeff Mortimer

"I knew that if I went to law school and practiced law, I'd be giving my life, all of it, to public service."

Noah Leavitt, '02



Noah Leavitt, '02 with his wife, Helen Kim

When Noah Leavitt received his degree from the Law School in 2002, he also received the Jane L. Mixer Memorial Award for graduating students who have made the greatest contributions to activities designed to advance the cause of social justice. It's easy to see why.

Leavitt spent his first Law School summer as a fully funded intern at the United Nations Office in Geneva, Switzerland, the UN's largest duty station outside of New York. He split his second summer between the Chicago Immigration Court, as part of the U.S. Department of Justice Summer Honors Program, and the Center for Civil Justice in Saginaw, Michigan, supported by one of the three John J. Curtin Jr. Fellowships given annually by the American Bar Association Commission on Homelessness and Poverty. Overall, he worked at that center for a year and a half, and also spent a year with the Legal Aid and Defenders Association in Detroit.

He served as advocacy director for the Jewish Council on Urban Affairs in Chicago after graduation, and now teaches literature and philosophy at Whitman College in Walla Walla, Washington.

"I went to law school wanting to explore how to use legal

training for the greater public good," says Leavitt, "especially for low-income communities that don't usually have access to legal services or familiarity with how the legal system makes a difference, either positive or negative, on their situation. I chose Michigan in large part because of the incredible range of possibilities that it seemed to offer to students who knew they really wanted to do public service work while doing their legal training."

He was not disappointed. "I felt incredibly supported pursuing anything at Michigan," Leavitt says. "I could always find an administrator and a faculty member that would enthusiastically sign off on whatever I wanted to pursue, no matter how unusual it was or how much traveling it involved or how crazy it seemed. And that

was just fantastic. Everybody seemed to be really excited when students came to them with public interest ambitions that they needed a little guidance with."

"The other piece," he adds, "is that because there's loan repayment funding for students that pursue public service work (see story on the Debt Management/Loan Forgiveness Program on page 32), it means there's this unlimited opportunity to pursue meaningful work without having to be limited by 'will I be able to repay my law school loan?' It adds up to a comfort level at Michigan that fosters people's desire to be involved in public interest and public service work that's rare, and very fortunate."

— Jeff Mortimer

"... there's loan repayment funding for students that pursue public service . . . this unlimited opportunity to pursue meaningful work without having to be limited by 'will I be able to repay my law school loan?'"

ABA honors J. Phillip Burt, '61, for 'outstanding commitment' to *pro bono* services

J. Phillip Burt, '61, a tireless advocate for legal services who helped create a statewide system that now involves nearly 25 percent of Indiana's lawyers, has won the American Bar Association's Pro Bono Publico Award.

The annual award, given by the ABA's Standing Committee on Pro Bono and Public Service, is given to five lawyers who have demonstrated "outstanding commitment to volunteer legal services for the poor and disadvantaged." Nominees are "legal professionals who commit their talent and training to improve the quality of justice for those unable to afford a lawyer."

In his acceptance remarks last August, Burt said he was "humbled" by the recognition and thanked all those he had worked with "to establish the direction and goals that will help guide the obligation portion of our profession for future years."

Pro Bono representation is exciting and satisfying, but not easy, Burt noted. It "may involve the lawyer learning new substantive areas of law in order to address other client problems," he explained. "Simply put, the

lawyer must be ready to deal with multiple problems at once. In this regard, the lawyer needs to be prepared to pursue the issues as far as possible, depending on the case's merit and the lawyer's own resourcefulness. The lawyer needs to be flexible and have the ability to respond quickly and aggressively on behalf of the client.

"This flexibility may involve the ability to adjust schedules and priorities when necessary. High quality representation also involves exploring alternative methods of getting services and benefits for clients, such as working with other sectors of the community to address problems that can assist the client and the client's transition into the mainstream of access to justice. This means that the lawyer must be willing to work with the client to make decisions. Key components of this type of quality representation are 'trust' and 'respect' between the lawyer and the client."

"It's something a lawyer has to do," Burt said of providing *pro bono* legal services. "We have the keys to the courthouse, and we've got to see that everybody

has a chance to get in."

But, he cautioned, "access to justice also is access to injustice. You still have to have quality representation from quality lawyers who are willing to put their time in." So he has often conducted seminars for attorneys and worked over the years to develop materials to help them prepare for *pro bono* cases outside of their practice specialties.

Burt, who founded Burt, Blee, Dixon, Sutton & Bloom in Fort Wayne in 1979, "leads by example and represents countless clients, mainly in consumer and bankruptcy areas," the ABA said in announcing the award. "He has maintained three or four *pro bono* cases a year for at least 44 years."

Burt's been dedicated to providing such services since he became a member of his local bar's legal aid committee as a young lawyer just starting his practice. Before there was an organized volunteer lawyer initiative in Fort Wayne, Burt helped establish an assistance program there through a local church, the ABA noted. He has been a member of the Indiana Pro Bono Commission (IPBC) since



its creation in 1999 and concluded his three-year chairmanship of the commission earlier this year.

"Mr. Burt's leadership has helped to build a system that is increasingly encouraging more and more attorneys to see the value of *pro bono* and how it can help their own communities. His energy on this topic is infectious and has encouraged countless others to put their shoulders to the wheel in support of *pro bono*," said Indiana Chief Justice Randall T. Shepard, president of the Conference of Chief Justices and chair of the National Center for State Courts.

Burt helped develop Indiana's unique Interest on Lawyers' Trust

Accounts (IOLTA) system whose income contributes significantly to providing free legal services to the poor through the state's 14 districts, each of which corresponds to one of the state's judicial districts and is chaired by a sitting judge in that district. To increase that revenue in the face of falling interest rates, Burt led the successful drive to convert the IOLTA program from opt-out to universal among Indiana's attorneys, a move the state's Supreme Court approved last January.

Realizing that the conversion would take effect too late to provide sufficient funding for this year, Burt and his wife, attorney Barbara Ann (Burger) Burt, '60,

"... access to justice also is access to injustice. You still have to have quality representation from quality lawyers who are willing to put their time in."

donated \$140,000 to establish the J. Philip and Barbara Burt Access to Justice Fund to assist IPBC and its 14 districts.

"Obviously, Mr. Burt feels very strongly about this area and is willing to put his money where his heart is," Indiana Bar Foundation (IBF) Executive Director Charles Dunlap said at the time. IBF administers the IOLTA program and the IPBC.

Burt encourages lawyers in his firm to do *pro bono* work, and the firm has received the Pro Bono Law Firm of the Year award from Allen County, where Fort Wayne is located, in 1993, '95, and '96, and the Indiana Bar Foundation's Pro Bono Publico Award in 1997 and 2000. **LQN**

Jeffrey Fisher, '97, wins William O. Douglas Award

Jeffrey Fisher, '97, has received the 2005 William O. Douglas Award, presented by the Washington Association of Criminal Defense Lawyers (WACDL). The award was presented in June at the association's annual conference in Chelan, Washington.

Named after the longtime U.S. Supreme Court Justice, the award is WACDL's most prestigious award. It is given in recognition of extraordinary courage and dedication to the practice of criminal law.

Fisher, of the Seattle office of Davis, Wright, Tremaine, successfully provided *pro bono* legal services to defendants in two landmark cases decided by the U.S. Supreme Court in 2004: *Crawford v. Washington*, regarding a defendant's right to confront witnesses, and *Blakely v. Washington*, in which the Court held that the procedures in Washington state's sentencing guidelines for increasing sentences based on "aggravating facts" violated the Sixth Amendment right to a jury trial. Fisher worked closely on *Crawford* with Ralph W. Aigler Professor of Law Richard D. Friedman because of Friedman's expertise in Confrontation Clause issues.

WACDL member Irwin Schwartz said of Fisher that "few lawyers can expect to change the

law much in a lifetime at the Bar. Jeff Fisher has accomplished several lifetimes worth of change in two decisions."

Fisher serves as co-chair of the Supreme Court Oral Argument Committee of the National Association of Criminal Defense Lawyers (NACDL) and as vice chair of NACDL's Amicus Committee. He is also a member of the Legal Committee of the American Civil Liberties Union of Washington. He has been the author of several *amicus* briefs on behalf of the Washington Association of Criminal Defense Lawyers.

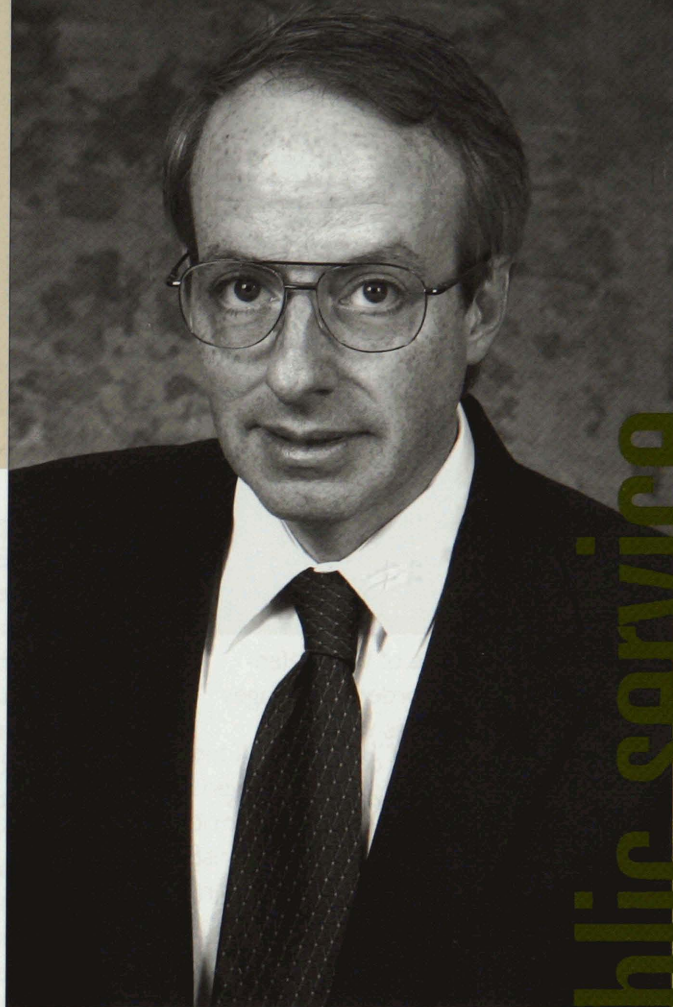
A partner at Davis, Wright Tremaine, Fisher co-chairs the firm's Appellate Practice Group. He specializes in First Amendment issues, criminal defense, and other constitutional matters, and handles appeals and related work at all levels of the federal and state courts. He also is a visiting lecturer at the University of Washington School of Law, where he teaches a class on the U.S. Supreme Court. In 2004, the *National Law*



Journal selected him as runner-up for its Lawyer of the Year Award, and *Lawyers Weekly USA* selected him as a Lawyer of the Year.

Before joining Davis, Wright, Tremaine, Fisher served as a law clerk to Justice John Paul Stevens at the United States Supreme Court and to Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit. During his legal studies at the University of Michigan Law School, Fisher served as notes editor for the *Michigan Law Review*. He received his B.A. in English from Duke University.

WACDL has more than 900 members in public and private practice in Washington State. Its purposes are to improve the quality and administration of justice, to protect and insure constitutional rights, and to improve the professional status of all lawyers. **LON**



At the U.S. Supreme Court: Practice makes perfect for David Moran, '91

For David Moran, '91, the preview that he offered Law School students last fall was a dress rehearsal in more ways than one.

Moran was a visiting professor at the Law School when he was preparing to argue *Kowalski v. Tesmer* before the U.S. Supreme Court in October last year. Graciously, he opened his practice session — with Law School faculty members Samuel R. Gross, Bridget M. McCormack, Paul Reingold, Kimberly Thomas, and Christina B. Whitman, '74, sitting in for the Supreme Court justices — to the Law School community and drew a capacity crowd.

Proceedings were not so gracious for him in Washington, D.C., however. The Supreme Court told him his plaintiffs did not have standing for their effort to strike down the 1999 Michigan law denying indigent defendants the right to an attorney to appeal a case in which they had pleaded guilty or *nolo contendere* at trial. The plaintiffs were two attorneys who might have lost income if the law remained in effect.

What Moran didn't know when he arrived at the Court was that another case, *Halbert v. Michigan*, was challenging the same law and that Halbert, who had been denied counsel, had sought *certiorari*. But the justices

knew, and as soon as Moran began arguing *Tesmer* they began to discuss replacing it with *Halbert*.

They did just that — and last April Moran returned to the Court to argue *Halbert*. Last June the Court announced its agreement with him 6-3.

"I'm very pleased that the Court has rejected Michigan's attempt to gut the fundamental right to an attorney on a first appeal from a criminal conviction, a right that every American state, except Michigan, has scrupulously honored for more than 40 years," said Moran, who argued the case *pro bono* as an American Civil Liberties Union cooperating attorney.

Tesmer, and then *Halbert*, were encore appearances before the Court for Moran, who has taught at Wayne State University Law School in Detroit since 2000 and formerly was an assistant defender for the State Appellate Defender Office in Detroit. He first argued before the Court in 2003 in *Price v. Vincent*, a *habeas corpus* case.

In the U.S. Supreme Court, "unlike some other courts, every

justice is prepared," Moran explained to the *Washtenaw County Legal News*. "They are fully familiar with the arguments, so you don't have long stretches to speak. In *Tesmer* and *Halbert*, I got out less than 40 words before the questions started coming.

"They can be hard and hostile questions. You will be thoroughly grilled. It is a draining experience, but afterward, you find it an intellectually challenging and fun experience." **LQN**

Pro Bono work leads to Young Lawyer of the Year Award for Chris Stathopoulos, '01

Chris Stathopoulos, '01, who logged more than 240 hours *pro bono* on a hate crimes case in which he helped win settlements from three of four defendants and court-ordered damages from the fourth, has won the 2005 Young Lawyer of the Year Award from the Chicago Lawyers' Committee for Civil Rights.

Stathopoulos received his award at the committee's annual banquet in August. He was honored "for his commitment to *pro bono*, including his significant efforts in achieving a victory in one of the first civil claims brought under the Illinois Hate Crimes Act," according to Gregory A. McConnell, director of public interest law for Winston & Strawn LLP in Chicago, where Stathopoulos has practiced since 2002.

Stathopoulos explained his dedication to *pro bono* work this way: "First, it's the right thing to do. There are tons of people who need help and who don't know how to get it. I am in a position to help them, so I can't imagine why I wouldn't.

"Secondly, it's a situation in which everybody wins. The clients get quality representation that they could otherwise not afford, and organizations like the Chicago Lawyers Committee for Civil Rights are able to take more cases, and help more people, because they have more resources at their disposal.

"And young lawyers like me gain experience and have responsibilities that we otherwise would not have so early in our careers."

Stathopoulos joined the team working on what would become *Ray/Klans v. Kovanda* when he became an associate in Winston & Strawn's Chicago office in 2002. Antonio Ray and Jennifer Klans, a mixed race couple, were attacked as they rode their bikes on the northwest side of Chicago. The attackers shouted racial epithets, threatened to kill and hang Ray, and held Klans while they beat Ray. Stathopoulos helped draft and file the complaint in the Circuit Court of Cook County in October 2002.

"During the next year and a half, Chris was the primary attorney on the case dealing with motions for default, discovery, settlement negotiations, and trial preparation," Betsy Shuman-Moore, director of the Chicago Lawyers' Committee for Civil Rights' Project to Combat Bias Violence, said in nominating Stathopoulos for the award. "They included the usual frustrations of these cases, including unrepresented defendants and difficulty communicating with the clients, who had moved out of town."

Stathopoulos recorded "a total of 243 hours of work on this case" and is "a hard-working lawyer who shows devotion and dedication to his *pro bono* clients, providing the same high quality representation as he does to his paying clients,"

Shuman-Moore noted.

While he was working on the Ray/Klans case, Stathopoulos also assisted a team of Winston & Strawn attorneys on appeal of a drug distribution conviction to the Illinois Appellate Court. He also recently assumed representation in a fair housing case for the Chicago Lawyers Committee.

In 2000, as a summer associate at Jenner & Block, Stathopoulos helped win asylum in the United States for a Chinese teenager who was the third child in his family. Stathopoulos helped argue successfully that the juvenile was being persecuted under China's "one child" policy and therefore was eligible for asylum. Before joining Winston & Strawn, he worked at the Volunteer Legal Services Foundation in Chicago as a Public Interest Law Initiative Fellow.

As a law student, Stathopoulos said, he was impressed by the Law School's support for Student Funded Fellowships (SFF) and their role in making it possible for students to gain *pro bono* and public service experience. (See story on page 34.) "I was involved in the Auction, which is student run, and the support by the Law School and its faculty helped make it a success," he explained. "The SFF Auction raises money for living expenses for those students who are taking non-paying or very low-paying summer jobs, often at organizations from which firms get their *pro bono* work. It was a great way for the School to highlight the value of public service work." **LQN**



Chris Stathopoulos, '01, expresses his thanks after receiving the Young Lawyer of the Year Award from the Chicago Lawyers' Committee for Civil Rights. Stathopoulos thanked his mentors at Winston & Strawn LLP and the Lawyers Committee, "all of whom guided me with much needed, and much appreciated, patience." What makes the award especially gratifying, he said, "is that it comes from an organization whose mission is to fight injustice, discrimination, and racism. While it sounds a bit clichéd, being able to work on behalf of such a noble cause is a reward in itself."

(Photo courtesy Winston & Strawn LLP)

Reginald M. Turner, '87, takes reins of National Bar Association

Reginald M. Turner Jr., '87, a member of Clark Hill PLC in Detroit and long active in public and professional affairs, has become president of the 20,000-member National Bar Association (NBA), the nation's oldest and largest association of predominantly African American attorneys.

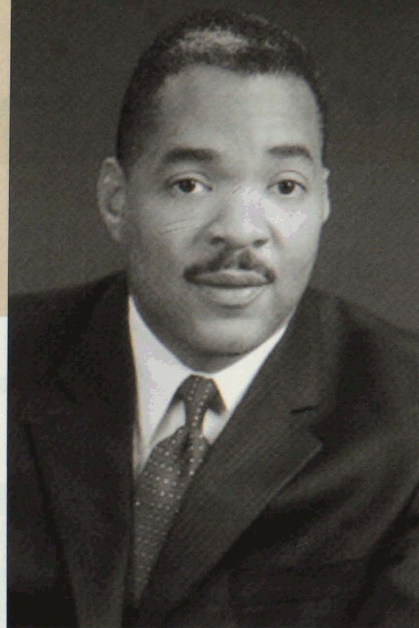
Turner accepted the presidency in ceremonies at the NBA's annual meeting in August in Orlando, Florida. He pledged to be a "tireless, diligent, thoughtful leader, fully dedicated to the mission and goals of the Association" and announced the NBA's 2005 – 06 year theme to be "Raising the Bar: Advancing Justice and Equality."

"The National Bar Association will work this year to promote diversity in the legal system and society, protect the independence of the judiciary, and advance democracy and the rule of law around the world, as we have for generations," Turner promised.

As NBA president, Turner was one of the official witnesses in the recent Judiciary Committee hearings on U.S. Supreme Court Chief Justice nominee John Roberts Jr.

Vice president of the NBA in 2003, Turner faced no opposition when he ran for the normally hotly contested position of president-elect last year. He is NBA's 63rd president.

"Reginald Turner will leave his mark on the National Bar Association," said Immediate Past



President Kim Keenan. "His leadership will hit new strides."

A former president of the Michigan State Bar Association, Turner has been active in public service, civic, and charitable organizations throughout his career: He chairs the City of Detroit Board of Ethics, and in 2003 was named to the Michigan State Board of Education by Governor Jennifer Granholm. He represented Detroit's mayors on the Detroit Board of Education from 2000 – 03, and formerly served on Michigan Governor John Engler's Blue Ribbon Commission on Michigan Gaming and on the City of Detroit's Brownfield Redevelopment Advisory Committee.

Turner is vice chairman of the Detroit Institute of Arts and the Detroit Police Foundation, and is a director of United Way of Southeastern Michigan, the Hudson-Webber Foundation, and Comerica Inc.

At Clark Hill, he is a member of the firm's executive committee, Labor and Employment Practice Group, and Government Policy and Practice Group. He frequently represents clients *pro bono* in matters dealing with civil rights and civil liberties issues, according to the firm. **LQN**

Public Service – Class Notes

Reports of graduates' public service activities and recognitions regularly appear in the Class Notes section of Law Quadrangle Notes along with notices of graduates' professional awards, promotions, and other activities. Here, in keeping with this issue's spotlight on public service in the life of the Law School, we draw together notices of the public service activities of graduates that normally would appear throughout this issue's regular Class Notes. The list is not exhaustive because it includes only reports we have received from law firms, award-granting organizations, and others, but it is representative of the wealth of choices of public service that graduates exercise.

1953

Stanley M. Fisher, Of Counsel to Budish & Solomon



Ltd., in Cleveland, Ohio, has been presented the inaugural Lifetime Achievement Award from the Northern District of Ohio Chapter of the Federal Bar Association (FBA). Fisher is the past president of the chapter, a lifetime member of the FBA board of directors, and served as national president of the FBA. He also is a life member of the National Conference of Commissioners on Uniform State Laws, served from 1992 – 2002 on the Federal Service Impasse Panel, and was president of the American Counsel Association.

1954

Stanley R. Weinberger, Of Counsel with the Chicago office



of Dykema Gossett PLLC, has received the Emily and Richard Alschuler Award from the American Jewish Committee – Chicago Chapter. The award is given to outstanding chapter leaders who promote AJC values of strengthening

mutual understanding among religious, racial, and ethnic groups; combating bigotry and discrimination; and service to their communities.

1956

Stephen C. Bransdorfer



has received the State Bar of Michigan's 2005 Roberts P. Hudson Award for "distinguished career service as a lawyer" and the Grand Rapids (Michigan) Bar Association's 2005 Donald Worsfold Distinguished Service Award for a "career of service to the Bar, the profession, and the community." Now retired, Bransdorfer served with the U.S. Department of Justice in Washington, D.C., and worked in private practice in Grand Rapids.

1959

Scott Hodes, a partner in the Chicago office of Bryan Cave LLP, was honored by the Midwest Region of the American Committee for the Weizmann Institute of Science at its annual banquet in Chicago for his "dedication to civic and charitable causes that improve the community." Hodes recently was elected a trustee of the Mexican Fine Arts Center Museum in Chicago and

is a founder and president of The Lawyers for the Creative Arts. A member of the State of Illinois Savings Board, he co-chaired Illinois' Private Enterprise Review and Advisory Board, chaired Chicago's Navy Pier Development Authority, co-chaired the Illinois Attorney General's Advisory Commission, and served three terms on the Democratic State Central Committee. The American Committee and its regional affiliates develop support for the Weizmann Institute of Science in Israel, a center for science and technology research.

1961

The University of Colorado School of Law at Boulder has presented its eighth annual Clifford Calhoun Public Service Award to **Norton Steuben,** the school's Nicholas Rosenbaum Professor of Law Emeritus. An expert in real estate transactions, Steuben has donated time to the Boulder Housing Authority, been a board member of the Boulder Human Rights Commission, served on the Open Space Board of Trustees, and worked with the governing committee of the American Bar Association's Forum on Affordable Housing and

Community Development Law. When the Ukraine emerged from Soviet control in the 1990s, he and his wife lived in Kiev for nearly two years while he served as a tax policy adviser and helped the government develop a tax code.

1963

Gen Kajitani, M.C.L., has retired from his position as Justice of the Supreme Court of Japan.

Norman Otto Stockmeyer, an emeritus professor at Thomas M. Cooley Law



School, has been elected president of Scribes, the American Society of Writers on Legal Subjects, a national association of published lawyers, judges, law professors, and legal editors who support the organization's goal of promoting and recognizing excellence in legal writing. Scribes publishes *The Scribes Journal of Legal Writing* and the quarterly newsletter *The Scrivener*; co-sponsors legal writing programs at American Bar Association meetings, and conducts three award programs annually. Stockmeyer is Scribes' second president from Michigan; then U-M Law School Professor

Charles Joiner was president of the organization in 1963 – 64.

1964

William B. Dunn has been appointed chair of the American Bar Association Standing



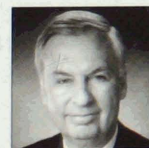
Committee on Ethics and Professional Responsibility. Dunn is a member of the Detroit office of Clark Hill PLC.

1965

Robert V. Peterson, an attorney with Dickinson Wright PLLC of Bloomfield Hills, Michigan, has been elected chairman of the board of Presbyterian Villages of Michigan Foundation (PVMF), headquartered in Redford, Michigan. Founded in 1945, Presbyterian Villages of Michigan is a nonprofit, multi-site system that operates more than a dozen senior living communities, subsidized senior housing, and market rate senior housing, and also sponsors community outreach and health ministry programs. "I am happy to contribute my accumulated knowledge and experience to the foundation," said Peterson, who has been a member of the PVMF board for six years.

1967

A. Vincent Buzard, a Rochester-based partner



in the state-wide law firm of Harris Beach PLLC, in June became the 108th president of the 71,000-member New York State Bar Association (NYSBA), the nation's largest voluntary state bar association. Buzard said during his one-year term he will seek to increase public understanding of the legal system and the role of lawyers, establish a task force aimed at limiting lawyer advertising, and promote programs aimed at emphasizing civility, responsibility, and professionalism within the practice of law. Buzard has held a number of positions with the NYSBA over the past 20 years; as president-elect, he chaired the House of Delegates and co-chaired the President's Committee on Access to Justice. In his local community, Buzard served as City of Rochester corporation counsel, is a past president of the Monroe County Bar Association, and is a recipient of the county bar's Adolf J. Rodenbeck Award for his contributions to the community and the profession.

see "CLASS NOTES", pg. 56

"CLASS NOTES", cont'd. from pg. 55

Governor Rod Blagojevich in June named **Christopher Cohen**, of Cohen Law Firm in Glencoe, Illinois, to Illinois' Department of Employment Security (IDES) Review Board. Until his appointment, Cohen was serving as an IDES hearing referee (administrative law judge). He previously served as Midwest Regional Director of the U.S. Department of Health, Education, and Welfare during the Jimmy Carter Administration and in fall 1992 was a member of President Bill Clinton's national campaign staff at its Little Rock, Arkansas, headquarters. Christopher Cohen is the son of the late Wilbur Cohen, who helped to write the original Social Security Act of 1935 and is well known to the University of Michigan for his long service as dean and professor. The elder Cohen was named assistant secretary of the U.S. Department of Health, Education, and Welfare by President John F. Kennedy, and later became under secretary and then secretary of HEW under President Lyndon Johnson.

Michael Sullivan, Chief Judge for the Milwaukee, Wisconsin, County Circuit Court, has been presented with the Milwaukee Bar Association's Lifetime Achievement Award.

see "CLASS NOTES", pg. 58

'I can retire on this record'

Like many Class Notes entries for this magazine, this 139-word submission at right from Chuck Ludlam, '72, distilled the blood, sweat, and tears of a professional lifetime into its single paragraph. Behind the terse lines lies the story of a career-long devotion to work for the public good.

Young Chuck Ludlam arrived in Washington, D.C., as a Stanford University undergraduate summer intern in 1965, a year he calls "the most productive year in the history of the Congress," a year that saw the enactment of Medicare, creation of the Department of Housing and Urban Development, and passage of the Higher Education and Voting Rights acts.

He graduated from Stanford two years later, served in Nepal with the Peace Corps 1968 – 70, earned his J.D. in 1972 at the University of Michigan Law School in a course of study that included an externship with a public interest law firm in Washington, D.C., and then returned to Washington to launch the career that put him at the heart of some of the most momentous government action that has occurred in the last 35 years:

"For Class Notes, class of '72:

Chuck Ludlam, '72, has retired after a 33-year career in government and lobbying. An oral history of his fascinating career will be posted soon by the Senate Historian. His career included seven years as the principal lobbyist for the biotechnology industry, 20 years as counsel on Capitol Hill, three years at the Federal Trade Commission, and two years in the Carter White House. Over the last four years Chuck was the leading advocate for aggressive steps to prepare for bioterrorism and infectious disease. He and his wife, Paula, have rejoined the Peace Corps (both having been volunteers in the '60s) in Senegal, where Chuck will serve as an agro-forestry extension agent."

Counsel, Senator Joseph I. Lieberman (2001 – 2005); Vice President for Government Relations, Biotechnology Industry Organization (1993 – 2000);

public service

Chief Tax Counsel, Senate Small Business Committee (1985 – 1993); Legal Counsel, Joint Economic Committee (1982 – 1985); Counsel, Musick, Peeler and Garrett (1981 – 1982) and consultant, Alliance for Justice (1981 – 1982); Legal Counsel, Carter White House Domestic Policy Staff (1979 – 1981); Counsel, Subcommittee on Administrative Practice and Subcommittee on Separation of Powers, Senate Judiciary Committee (1975 – 1979); and Trial Attorney, Bureau of Consumer Protection, Federal Trade Commission (1972 – 1975).

Most recently, as counsel to Lieberman, he promoted efforts to ensure the availability of medicines to combat the effects of bioterrorism and epidemics.

When he retired last June, the *Washington Post* took notice. "For more than 30 years, Ludlam has not just survived, but also thrived in the high pressure world of political Washington," the *Post* reported.

"He was involved in the enactment of Project Bioshield, legislation passed last year to foster the development and stockpiling of vaccines, antidotes, and diagnostic

devices that can be used to deter or help cope with a biological terrorist attack," the *Post* article continued. "Earlier, Ludlam helped write the Ethics in Government Act of 1978, the law that governs congressional gifts and travel and imposes restrictions on lobbying by former high level government officials."

Four separate times prior to his retirement, Ludlam sat down

with Associate Senate Historian Donald A. Ritchie for extensive interviews on his work in Washington, his evaluations of officeholders, leaders, and others in the politicized topsy-turvy of the nation's capital, and his accounts of his own role in federal law- and policy-making over the past three decades: "I've been

see "I CAN RETIRE", pg. 58

Chuck Ludlam, '72, and his wife Paula Hirschhoff, aboard a traditional Egyptian sailboat known as a felucca on the Nile River last year.



"CLASS NOTES", cont'd. from pg. 56

1969

University of Missouri-Columbia Law **Professor Philip Harter**, who was instrumental in convincing Congress to re-establish the Administrative Conference of the United States (ACUS) last year after its termination 10 years ago, now is leading efforts to secure up to \$10 million in funding for the resurrected agency. Harter said the ACUS can search for new ways to help government agencies function more fairly, efficiently, and effectively; study and adopt recommendations for better rulemaking procedures; propose ways to avoid legal technicalities, controversies, and delays by using alternative dispute resolution; and evaluate judicial review of agency actions and make recommendations for improvement. Said Harter: "A permanent entity such as a renewed ACUS is needed that can be devoted to solving the problems of excess costs, delays, and burdens that are imposed upon the agencies and upon the public by inadequate, inefficient, and duplicative government processes."

1971

The Hon. **Noel Anketell Kramer** has become a judge on the District of

see "CLASS NOTES", pg. 60

"I CAN RETIRE", cont'd. from pg. 57

involved in issues ranging from separation of powers to embryonic stem cells, organization conflict of interest to Social Security funding, patent reform to bioterrorism preparedness, and tax incentives for entrepreneurs to U.S.-China cultural engagement."

(Ludlam's oral history eventually will be available online at the Web site of the Senate Historical Office at: www.senate.gov/artandhistory/history/common/generic/Oral_History_Complete_Collection.htm.) "Overall," he tells Ritchie, in this oral history, "I've outlined what a public service career could entail. I hope it encourages some others to accept public service as a career. It's certainly been a great choice for me. It's been a privilege and tremendous fun. There's been some pain, some risk, and some major defeats. But it's always been

stimulating, given me freedom to fight for good causes. In work and life, it doesn't get any better than that."

"What do you measure as the most satisfying moments of the last several decades?" Ritchie asked.

"Well, establishing the Senate Legal Counsel [to represent the Congress in court] ... was a very satisfying accomplishment," Ludlam began what became an extensive response.

"Killing the airline noise bill [that diverted government tax revenues directly into the hands of private entities] was important and tremendous fun.

"Enacting the first law on organization conflict of interest.

"Killing the constitutional tort claims bill was [a] great victory after losing the COINTELPRO representation fight.

"There's been some pain, some risk, and some major defeats. But it's always been stimulating, given me freedom to fight for good causes. In work and in life, it doesn't get any better than that."

public service

"Eviscerating the Regulatory Flexibility Act [that would have undermined health and safety regulations] when I was in the Carter White House and killing the Bumpers amendment and hybrid rulemaking, were great victories.

"Saving the tax exempt bonds for hospitals and universities was fun and something I believe was due to my efforts.

"When I was at BIO [Biotechnology Industry Organization], enacting the Patent Reform Bill, repealing NIH's reasonable price clause, making the Orphan Drug Tax Credit permanent, defeating the bans on gene patents and the Ganske [patent killing] bill, and defeating the ban on stem cell research were all very satisfying.

"I managed to get BioShield I enacted. It isn't enough, but it's a start.

"I'm proud of my work on industrial policy.

"I hope that before I wrap up my career I can make more progress on BioShield II, the budget process reform, U.S.-China issues, and maybe IDAs [Individual Development Accounts]. My legacy on these initiatives will be written after I retire.

"I have no doubt I can retire on this record. It's enough, it's sufficient for one person in one public service career."

Ludlam says that his decision never to work at a law firm, except for one brief stint in 1982 as a lobbyist with his dad's firm, Musick, Peeler, and Garrett, was the only reasonable choice for him. "I've found my satisfaction in trying to change whole worlds, not just to prevail in a transaction of interest to a single client," he said. "For example, in my work on bioterrorism and infectious disease, I've tried to save the world from hundreds of millions of deaths. That's leverage I have found compelling."

Public service doesn't pay well, that's for sure. Ludlam took a 75 percent pay cut to return to the Senate in 2001 and was earning \$90,000 a year when he retired. "But I've been compensated in knowing that I've always focused on the greater public good and had a substantial impact. I wouldn't trade that for any amount of lucre."

Ludlam is only partially retiring. His next public service will be in Senegal, where he and his wife, Paula Hirschhoff, also a former

Peace Corps volunteer, again will work as Corps volunteers for the next two years.

Sure, he agreed, life will be much more difficult in rural Senegal. "But I'm ready for this transition," he told Ritchie. "I can't wait for the culture shock that this will involve."

"The idea of serving again is to get back to a state where we can be as kind as possible, and as useful as possible, to people who have none of our advantages, and who are suffering in many ways in terms of their health and their economic status, who are probably victimized in many respects by their societies, and to help them, if we can, to find a better life."

Ludlam credits his Peace Corps experience for his commitment to public service. "I know from living in the developing world and traveling in 65 countries that we have the fairest and wisest political system in the world. I've never become jaded or cynical about it." **LQN**

"CLASS NOTES", cont'd. from pg. 58

Columbia Court of Appeals after nomination by President George W. Bush and approval by the U.S. Senate. She previously presided over the Criminal Division of the D.C. Superior Court, where she oversaw creation of the Community Court, a pilot program to match offenders with social service programs to keep them from returning to the court system. A former president of the National Association of Women Judges, Kramer served as an assistant U.S. Attorney in the District of Columbia before joining the D.C. bench.

1973

Kathleen McCree Lewis, leader of Detroit-based Dykema Gossett's Appellate Practice Team and a member of the firm's Litigation Practice Group, has begun a one-year term as president of the American Academy of Appellate Lawyers. The 270-lawyer Academy was founded in 1990 by appellate specialists to promote excellence in appellate practice and to advance the quality of appellate justice. Lawyers elected to membership must have specialized in appellate practice for at least 15 years and be recommended by appellate judges and practitioners.

Curtis L. Mack, a

partner in the Atlanta, Georgia, office of McGuireWoods LLP, has been named to the board of directors of Legal Momentum, the nation's oldest women's legal rights organization. Mack is a former director of the Atlanta Region of the National Labor Relations Board and served as general counsel and later chairman of the Florida Public Employee Relations Commission.



1976

Jonathan D. Lowe, has been named associate director of the Jewish Community Endowment Fund for the Jewish Federation of Metropolitan Detroit. He previously served as vice president of the Beaumont Foundation.

1977

Arturo Cisneros "A.C." Nelson, of Arroyo City, Texas, has announced his candidacy for 138th state District Court judge. A civil and criminal lawyer for 28 years, he has worked at Texas Rural Legal Aid, served as a Brownsville, Texas, Municipal Court judge, and handled a variety of state and federal criminal, medical malpractice, and complex

commercial disputes. This year he received the Texas Center for Legal Ethics and Professionalism Award from the Cameron County (Texas) Bar Association.

George A. Vinyard, a

member of the Chicago law firm Sachnoff & Weaver, Ltd., has been elected president of the Board of Trustees of Illinois Wesleyan University. A member of the board since 1977, Vinyard had served as secretary of the board since 1993. He also is chairman of the board of the Center for Neighborhood Technology in Chicago.



1978

John E. Grenke, a shareholder and member of the board of directors at Monaghan, LoPrete, McDonald, Yakima, Grenke & McCarthy in Bloomfield Hills, Michigan, has been named to the Board of Trustees for Henry Ford Community College Foundation.

1979

Governor Jennifer Granholm has appointed **Amanda**



Van Dusen, a principal at Detroit-based Miller, Canfield,

Paddock and Stone PLC, to the Michigan Council for Arts and Cultural Affairs for a term running until September 2007. Van Dusen is a past member of the Ferndale (Michigan) Board of Education, and continues to serve the board as a citizen member of its finance committee. She also is past president and a board member of Michigan Women in Finance; serves on the board of directors of the Citizens' Research Council of Michigan, which she chaired for three years; is a member of the executive committee of the board of directors of the Detroit Institute of Arts; and is a trustee of the W.E. Upjohn Institute for Employment Research, the Council of Michigan Foundations, and the Hudson-Webber Foundation.

1980

Governor Linda Lingle has appointed **Ronald I. Heller** to the Tax Review



Commission of the State of Hawaii, which is directed by statute to evaluate the state's tax structure and recommend revenue and tax policy. Heller practices with Torkildson Katz in Honolulu.

1982

Mark T. Boonstra, a principal in the Ann Arbor office



of Miller, Canfield, Paddock and Stone PLC, has been elected president of the board of directors of the Christian Montessori School of Ann Arbor (CMSAA). Boonstra also is a director and immediate past chair of the Washtenaw County Economic Club, a member of the board of trustees for Webster United Church of Christ, team manager for the Ann Arbor Wolves travel hockey team, and is active in the Republican Party.

False Claims Section of the California Department of Justice. In March last year, he stood as a candidate for mayor of the City of Sacramento.

1989

Charles J. Vigil, an attorney with Rodey, Dickason, Sloan, Akin & Robb PA of Albuquerque, has been appointed to a three-year term on the ABA Standing Committee on Lawyers' Professional Liability. He also is serving as the 109th president of the State Bar of New Mexico and is active in the Albuquerque Hispano Chamber of Commerce.



1992

Lamont David Satchel has been appointed general counsel and chief legal officer of the Detroit Public Schools, the 11th largest school district in the United States. In his new post he is responsible for all Detroit Public Schools legal affairs, supervision of in-house attorneys and staff, and oversight of matters handled by outside counsel. He previously served as deputy general counsel for the district.

1998

Raj N. Shah, a senior associate in the Chicago office of DLA Piper Rudnick Gray Cary US LLP, has been named Illinois State Bar Association Young Lawyer of the Year for 2005 for his contributions to the practice of law and the legal profession. Shah "is deeply involved in *pro bono* work, having devoted over 300 hours to *pro bono* projects in 2003 and 2004," according to his firm. Shah also represents an indigent federal defendant through the Federal Defenders program, helped create Piper's Juvenile Justice Project, and is representing a child in Cook County Juvenile Court.

David A. Westrup, a shareholder at von Briesen & Roper SC in Milwaukee, Wisconsin, was sworn in last summer as vice president of the Milwaukee Bar Association. He will become president-elect in 2006 and president in 2007. Westrup is immediate past president and former treasurer of the Wisconsin Hispanic Lawyers Association and serves in several positions with the American Bar Association.

2001

David K. Porter, a trial attorney with Varnum, Riddering, Schmidt & Howlett LLP in Grand Rapids, has taken a leave of absence to serve as legal counsel to the United States Senate Committee on Homeland Security and Government Affairs, an opportunity made available to him by Senator Susan Collins (Republican-Maine), who chairs the committee. Porter advises Collins and other committee members, conducts investigations, and assists Collins in preparing for Senate hearings and/or confirmations. "We're proud of David's commitment to public service and look forward to welcoming him back when that service is complete," said Steve Afendoulis, Varnum's trial practice chair.

1985

Stanley P. Jaskiewicz, a member of the Business Law Department of Spector Gadon & Rosen PC in Center City, Pennsylvania, has been elected to a three-year term on the YMCA of Philadelphia & Vicinity's Board of Directors.

1988

Mark R. Soble, of Sacramento, California, has been promoted to Deputy Attorney General IV in the



public service

Conclusion: 'If you don't pull up . . .'

by James J. White

The following essay is based on remarks delivered at the Law School's Honors Convocation last May. It stems from the author's belief that a lawyer's zeal is sometimes best exercised by confronting a client and stopping him from doing something that the client will regret. Not only the client but the public is best served by the lawyer's interposition.

Certain lawyer duties, like the duty to represent a client with warm zeal, are well known to every law student and widely celebrated in the popular culture. To act the part of David against Goliath is glorified in movies and in countless books and on television. I suspect that in your fantasy life some of you picture yourself as a fearless lawyer representing a poor criminal defendant against an overbearing prosecutor or a lowly employee against a large corporation.

Today I am going to talk about a lawyer duty that is just as important as the duty to exercise warm zeal on behalf of a client, but it is a duty that is unknown to the popular culture and rarely touched on in law school. That is the duty to say no to your client, to step in front of a client who is determined to do something stupid, or in violation of the civil or criminal law.

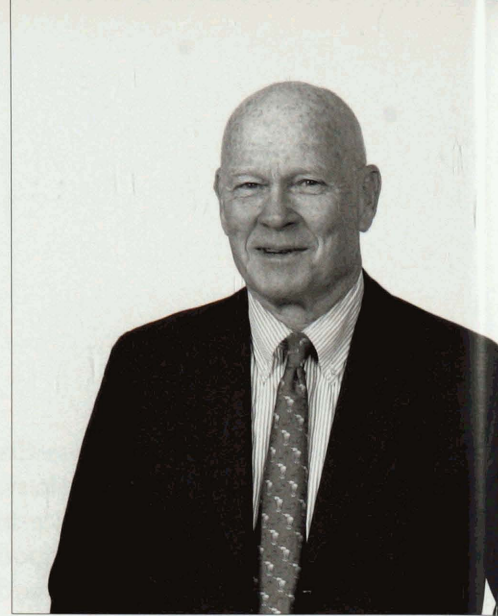
Even though this duty never appears by name in the popular culture, the *New York Times*, the *Wall Street Journal*, and every local newspaper carry stories almost daily that demonstrate the importance of the obliga-

tion. These are stories about Kenneth Lay and Jeffrey Skilling at Enron, about Martha Stewart and Maurice Greenberg at AIG. All were senior executives at major companies. The first two are under criminal indictment, the third has been convicted and served a term in prison and the fourth has lost his job and is facing the possibility of civil or criminal charges. Each of them did things that appeared to be in the interest of their shareholders or in their own interest that they now regret. What seemed clever and brainy, if a bit cunning, is now claimed to be a crime or a civil violation of the law.

Surely lawyers knew of and in some cases even participated in these transactions. If those lawyers had only had the knowledge and intelligence to see the criminal possibilities and had the will to confront their clients, the individual clients, their companies and their shareholders would now be better off.

At least three separate problems will confront you when you need to say no to a client.

First, you will need courage. Telling a good client that he



may not do something that is in his economic interest and that he believes to be important is a risky business. These clients, Skilling, Greenberg, and Stewart are smart, confident, and strong willed. They will not welcome contradiction. I know of one young lawyer in a big firm who failed to get promoted to partnership because of such a confrontation. And the problem goes beyond your personal interest. If you manage to lose a client for your firm, you will put other lawyers out of work who are doing utterly routine and appropriate legal work for that client. You are not likely to be in the position of Clarence Darrow or any other successful solo practitioner who needs only to please himself. The economic fate and well being of others will also depend upon your performance. So you will need courage.

Your second problem is to have sufficient knowledge and intelligence to distinguish clever but legal acts from criminal or civil violations. The modern American commercial world is filled with driven and innovative executives who want to do well for their shareholders and for themselves. To earn money, they employ practices that were

unknown 10 or 20 years ago. Most of these are quite legal even if complicated and clever. A lawyer must be able to cull the minority that bear criminal or civil risks from the majority that do not.

How many of you would have understood that Enron's contracts with related partnerships facilitated fraudulent accounting, or that writing an insurance policy to cover certain "defined risks" was, to proper accounting, a loan and not an insurance contract? And how many would have known that the long practice of rebating part of an insurance premium to high performing brokers would be illegal? These are not easy questions, but one needs to be sure before he confronts a client who sees it in his economic interest to do something.

And do not be fooled by the common law school wisdom that in law there are no right answers, no yes and no answers. When your client is prosecuted, the judge or jury will have a bi-modal answer — guilty or not. There will be no room for equivocation, and your client will expect you to have the intelligence and knowledge to advise him in the face of that cruel possibility. So you can never be too smart or too learned.

Your third problem is to deal with the client in an adept and persuasive way. How do you deal felicitously with a head strong client? Who will teach you the way to dissuade a

client from foolish action without angering and alienating the client?

I wish I knew. Certainly you will not learn it in law school. No book will teach such a subtle and complex skill. Some of you have been born with the right instincts and others may have learned them elsewhere in life. Some of you will learn them by observing your senior colleagues in practice.

Let me stimulate your thinking by suggesting some ideas. First, your job is not to assert moral superiority over your client. In the cases that I am contemplating, it is in the client's interest not to do what he proposes, and you need not and, in my opinion, should not pretend to have higher moral standards than your client exhibits. You need not say to Martha Stewart that it is immoral to lie to the investigators; you need not tell Mr. Fastow that you regard him a scoundrel. You need only explain the likely consequences of the action — e.g., you will be indicted, your company will pay a large fine, and you will be dismissed.

Return to my complete title, "If you don't pull up, you're going to bust your ass." That statement was once made by a friend of mine who was an LSO (landing signal officer) on the deck of a carrier. It was made over the radio by the LSO without raising

his voice, to a pilot who was about to come aboard. The LSO had already told the pilot to pull up twice, and now, in exasperation, told him "you're going to bust your ass." To "bust your ass" is a fighter pilot euphemism for "kill yourself in an aircraft accident." The LSO is attempting to change the behavior of his client, the pilot, but note the absence of any moral claim. He does not say "you should pull up" or "you are a bad pilot" or "if you do not pull up, I will think less of you." He does not even raise his voice. The message is a pure statement of fact, if you don't, you are going to kill yourself.

You could do worse than to copy the LSO's behavior. One might have said to Mr. Skilling, "If you continue to do these transactions that move liabilities off Enron's balance sheet, you and Mr. Lay will go to jail." Or to Martha Stewart, "If you lie to the SEC investigators, the U.S. Attorney will prosecute you."

Depending on your relationship with the client, there might be other things that you could do. If you have had a long standing and close relationship with the client (something that is less frequent in modern law practice than it used to be), you might be more direct. Sometimes you

see "CONCLUSION", pg. 64

"Telling a good client that he may not do something that is in his economic interest and that he believes to be important is a risky business."

"CONCLUSION", cont'd. from pg. 63

might even resort to profanity to express your opinion, "Look fool, stop doing that." Of course, the client has to be familiar enough that he understands that "fool" is a term of endearment.

In less extreme cases there are other possibilities. One is to explain to the client how he can achieve most or all of the economic gain that he seeks by a different means that does not violate the civil or criminal law.

In conclusion, I apologize for doing no better than I have. My suggestions are merely fragments of ideas and practices that might help you face these problems. I do not claim that they are comprehensive or coherent. The best that I can hope for is to get you started, to force you to consider how you will behave when you need to say no to a client. With luck, each of you will have the chance to learn by watching lawyers who are more adept at these things than you or I.

Good luck. **LQN**

James J. White, '62, is the Robert A. Sullivan Professor of Law.

*"... do not be fooled
by the common law school wisdom
that in law there are no right answers,
no yes and no answers.
When your client is prosecuted,
the judge or jury will have a bi-modal answer –
guilty or not."*



EVENTS

- December 21** Senior Day
- 2006**
- January 4 - 8** Association of American Law Schools
(AALS) Annual Meeting
- January 5** Alumni Reception in conjunction with
AALS Annual Meeting
- January 18** Midway Madness
Michigan Union
- ⊙
- February 28 -
March 2** Florida Seminars
Palm Beach and Naples
- ⊙
- April 18** Scholarship Dinner
- ⊙
- May 6** Senior Day
- ⊙
- September 8 - 10** Reunion of classes of
1981, '86, '91, '96, and 2001
- ⊙
- October 6 - 7** Committee of Visitors
- ⊙
- October 27 - 29** Reunion of classes of
1951, '56, '61, '66, '71, and '76

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

ON THE COVER: Fall colors the Law Quad.

(PHOTO CREDIT: Philip Dattilo)



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- Applications buck U.S. trend
- Child welfare training
- Clarence Darrow Death Penalty Defense College
- Library of Congress adds Law Library Web sites

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- New faculty add to Law School expertise
- West's new book: *Law in Everyday Japan*
- Faculty members' new books
- On Robert J. Harris
- Building On . . . The Campaign for the University of Michigan Law School: Looking at legal education

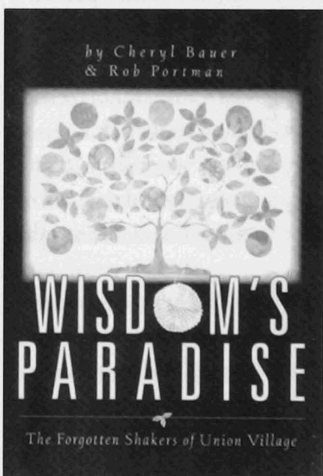


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Applications buck U.S. trend

Bucking a national trend of decreasing applications at the nation's law schools, identified in an August 22 article in the *National Law Journal*, the University of Michigan Law School's applications went up, not down. The *Journal* article looked at 19 of the top law schools in the country and found that Michigan Law, fourth among the schools with the largest increases, saw a 4.5 percent rise in applications for the class of 2008.

"We are delighted to see our applicant pool continue to be an abundant one — filled with high quality candidates," said Sarah Zearfoss, '92, assistant dean and director of admissions for the Law School. This year's applicant pool of 5,772 has resulted in an incoming class of tremendous diversity and high academic quality, Zearfoss noted — entering students have the highest median LSAT and GPA ever for an entering class.

Minority enrollment at many of the 19 surveyed schools also dropped this year. However, Michigan Law reported a four percent increase here as well, making it the leader among the highlighted schools in this category.

Michigan Law's enrolled class totals 366 students; 57 percent are males and 43 percent females.



Child welfare training looks to pioneering science

The Law School's annual summer training for child advocacy workers entered its second decade last May by introducing participants to the cutting edge field of brain development research.

New research shows that brain development is more easily affected, and continues longer than many people had thought, and these findings portend profound effects on the field of child advocacy, according to the behavioral pediatrician who was one of the lecturers for this year's training.

For example, children with fetal alcohol syndrome (FAS) may show the behavioral and learning problems typically associated with FAS, but not have the characteristically flattened face, thin upper lip, and other facial features most professionals use to define the condition, explained Mark Sloane, who is with the Children's Trauma and Assessment Center at Western Michigan University. Sloane lectured on "Neurobiology and Neurodevelopment of Traumatic Stress and Prenatal Alcohol Exposure: Implications for Child Welfare."

In the past, without the physical signs of FAS there was no way to determine that behavior like explosive anger or learning difficulties actually was the result of a pregnant mother's heavy drinking, according to Sloane. But new testing that lets testers see the brain in action, like functional Magnetic Resonance Imaging (MRI), can show that a person suffers the same physical brain damage previously thought only to exist in company with FAS facial characteristics. The difficulty is that some assistance programs only will authorize aid if the facial characteristics are present, Sloane reported.

Similar advances in analyzing the brain at work show that children's problem behavior can stem from brain damage from long ago trauma, he said. Take adult mental illness, for another example.

"If there was abuse in childhood, there's a higher evidence of mental illness in adults," Sloan explained. "The old idea was, 'We can love these kids back to normal.' We know now it's not that way. It's a wired-in phenomenon. Not that it can't be treated. That's the magic of the brain, that it's plastic, and things change if you let them."

"Behavior is just the tip of the iceberg," Sloane explained. "We try to drill down. You've got to drill down. You've got to find out what going on beneath it." This is a "radical change"



Behavioral pediatrician Mark Sloane outlines how breakthroughs in neuroimaging are allowing researchers "to look at brain function while the child is awake." He said the findings have significant implications for understanding brain damage and development and behavior problems, which in turn will affect the child welfare and judicial systems.



Justice Bobbe J. Bridge of the Washington State Supreme Court right, told Bergstrom Child Welfare Law Summer Fellowship participants that "if you have the commitment, you can make a difference not only in the life of a child but also in the system." Bridge was the training program's banquet speaker.

and has "implications for every system," he said. "We really have to re-frame our thinking about why these behaviors are happening."

"We're not thinking about nature *or* nurture anymore," he explained. "We're talking about both."

Sadly, the kind of research Sloane and others are doing is not widely known among child protection specialists, for whom his findings can have profound effect on how they handle and try to resolve cases. That's why training program directors Donald N. Duquette, '75, and Frank E. Vandervort added Sloane to the lecture lineup this year.

In addition to Duquette, a clinical professor and director of the Law School's Child Advocacy Law Clinic (CALC), and Vandervort, who formerly directed the Michigan Poverty Law Program and now also teaches in CALC, other lecturers for the training program included James Henry and John Seita, from the School of Social Work at Western Michigan University; and Professor Carol J. Boyd, director of the Institute for Research on Women and Gender at the University of Michigan.

Justice Bobbe J. Bridge of the Washington State Supreme Court, a tireless worker on behalf of changing her state's laws to better represent the rights of children, was featured speaker for the

training program's banquet.

Lawyers who work in child welfare often feel a conflict between devoting themselves to the case at hand, or trying instead to improve the system in which the case takes place, Bridge explained. "There's always that tension, Bridge reported. "The message is that it's not either/or — ever. If you're a lawyer, you will be asked to be on a commission, to testify to the legislature. Lawyers can and do make a difference."

Bridge cited these arenas for lawyers to have an impact:

- **Family law.** The numbers of cases involving parents' rights, grandparents' rights, and others are growing and colliding, she said. "Through this all, somebody has to talk about the child's rights. Advocacy skills are what you have as a lawyer."
- **Juvenile justice.** "Surprisingly, in many jurisdictions, kids still don't get lawyers." The lawyer's common earlier title of "counselor" often is appropriate in juvenile cases, she said. "Being a counselor-at-law is what it's about many times in juvenile situations."
- **Advocacy.** "Lawyers get services kids are entitled to" in a program called TeamChild in Washington State. The lawyers "go into the schools" as advocates to ensure that a child gets what he is entitled to. TeamChild came about "because of lawyers."

• **Child welfare system.** "Transitional issues are increasing as kids are aging out of the foster care system. There are hundreds of them in every state."

The annual training, followed by participants' placement with child advocacy organizations for the remainder of the summer, presents a combination of lectures and a child advocacy case exercise that includes mock courtroom exercises. The training also features a session in which trainees meet and talk with current clients in the child welfare system.

Begun with a Kellogg Foundation seed grant, the program in recent years has benefited from the support of the Bergstrom Foundation of Pittsburgh. The fellowship is named for the late Henry Bergstrom, '35; his son, Foundation director Hank Bergstrom, attended the entire session this year.

Duquette launched the program because he saw the need for specialized child advocacy training and training internships. A longtime proponent of increased rigor and accountability in the child advocacy system, Duquette also has been instrumental in developing a certification protocol for child advocacy specialists in which the American Bar Association has designated the National Association of Counsel for Children (NACC) to test candidates and award certification.



Andrea J. Lyon, founder and Director
Clarence Darrow Death Penalty Defense College

Clarence Darrow Death Penalty Defense College: A capital success

Attorneys have brought more than 120 capital cases to the Clarence Darrow Death Penalty Defense College since it began at the Law School in 2000, and the director knows of only one of those cases that did not conclude in a plea bargain or a life instead of death sentence.

The exception, according to college founder/director Andrea Lyon, was a case in which the defendant dismissed his attorney and asked to be executed.

"What we're doing here is not about innocence. It's about saving people's lives," Lyon explained, putting the impressive won-lost figures into the context of the college's goals. A player/coach for the college, Lyon had just delivered the college's how-to lecture on closing argument in the penalty phase and soon would be turning her attention to

details associated with the college's move to DePaul University College of Law in Chicago next year.

Lyon was a clinical assistant professor at the U-M Law School when she launched the Clarence Darrow Death Penalty Defense College in 2000. She since has become a clinical associate professor at DePaul, where she directs the Center for Justice in Capital Cases and supervises the Death Penalty Legal Clinic.

Moving to DePaul will simplify the college's administration while allowing it to continue to draw on the resources of the U-M Law School, according to Lyon. The annual college is sponsored by the University of Michigan Law School, which will continue to be a sponsor, the American Bar Association, the National Association of Criminal Defense Lawyers, and the Office of the State Appellate Defender of Illinois.

"I'm very grateful to the University of Michigan Law School for housing it, sponsoring it, and supporting it," Lyon said. "It's very important work. It could not have been done without the support of this Law School."

Law School Dean Evan Caminker joined Lyon in expressing his enthusiasm for the college.

"Whatever one thinks of the death penalty in the abstract, judicial reversals of capital sentences over the past several years underline the importance of providing the best possible criminal defense in death penalty cases. The Clarence Darrow Death Penalty Defense College provides hands-on assistance for attorneys who are currently representing death-eligible defendants," Caminker said.

"The University of Michigan Law School has been pleased to host the college from its inception in 2000. As DePaul University College of Law now assumes the role of host for the 2006 college, we look forward to continuing our sponsorship of this valuable program."

Participants praise the college's programs, both for their efficacy and for the collegial support they provide. Attorney Craig Washington, for example, says the college was instrumental in saving Tyrone Williams' life when he was tried as the driver of the 18-wheeler in which 19 illegal immigrants died in South Texas in May 2003. "They took the death penalty off the table for not finding that he's a principal," Judge Vanessa D. Gilmore said of the jury, which found Williams guilty only of smuggling; the jurors did not attach culpability to Williams for the immigrants' deaths, which resulted in a mistrial on those counts.

Washington, of the 12-member Craig Washington Law Firm in Houston, had brought the case to the Death Penalty Defense College for strategizing. He had tried capital cases in state courts, but this was his first federal capital case.

"I write to thank you so very much for all of the help that you and all of the lecturers, staff, and attendees at the Clarence Darrow College provided," Washington wrote to Lyon last March. "I know that [fellow attorneys] Jennie Roberts, Jonathan Cox, and myself would not have been able to provide the assistance that Mr. Williams needed without your thoughts, your concern, your prayers, and your input. Together, you and all of the rest of us were able to save Tyrone Williams' life."

Although there is no way to be sure in Williams' case, there is no question that scientific advances and weakened public support for capital punishment are reducing the number of death sentences and executions. Recent advances in DNA analysis are

Library of Congress adds Law Library Web sites to Internet collection

making convictions more difficult to achieve and have resulted in exonerations for some previously convicted people, according to Lyon. Public support for death sentences has softened significantly, from the high of 80 – 92 percent in 1989 – 92 to about 50 percent today if the alternative is life imprisonment without parole.

“In some ways our work has become a little easier because of a public sense that there is something wrong with the system, [and] because of exonerations,” Lyon explained. “It’s also true that we’re putting fewer people on death row than in earlier years, and we’re executing fewer people than in earlier years.”

But attorneys in capital cases still must face juries made up of people who do not oppose capital punishment, she explained, so these lawyers still must marshal the best skills possible to save the lives of their clients. “I know that the conversation about the death penalty is changing in this country,” she acknowledged, “but in the meantime we have people to save.”

The U.S. Library of Congress — the largest library in the world — has chosen the portion of the University of Michigan Law School Library’s Web site that catalogs information on the Hon. John Roberts, nominated last summer for the U.S. Supreme Court, for inclusion in its Internet collection.

The Library of Congress’ action — and the Law Library’s contribution — took on added impact after the death of Chief Justice William Rehnquist on September 3 and Roberts’ subsequent nomination and confirmation as chief justice.

The Library of Congress also added the Law Library’s similar site on Harriet E. Miers, which librarians developed after President Bush nominated her to the Supreme Court. The Law Library site for information on Miers is www.law.umich.edu/library/news/topics/miers/miersindex.htm.

With more than 230 entries, the Roberts Web link includes biographical information, opinions, articles Roberts has written, and newspaper stories about him. The site is at www.law.umich.edu/library/news/topics/roberts/robertsindex.htm.

“As an attorney myself, I especially appreciate the thoroughness of the materials,” said Law School Dean Evan Caminker. “Whether visitors to the site are simply curious citizens, interested attorneys, news persons, or people directly involved in the nomination process, this site is an outstanding resource.”

“The value of what we have done lies in collecting all the information in one place in a timely fashion,” explained Law Library Director Margaret Leary.

The compilations on Roberts and Miers were the Law Library’s second and third major projects last summer. The library also introduced its new Web site of Law School faculty publications, with more than 7,000 entries dating back to the Law School’s founding in 1859. The site is a comprehensive historical compilation of the published books, articles, book chapters, essays, introductions, forewords, and book reviews written or edited by U-M Law School faculty while teaching at Michigan. The link to this site is www.law.umich.edu/library/facultybib/.

Corrections

Retired Judge John R. Milligan, ’51, of North Canton, Ohio, wrote to correct a quotation that appeared in the Winter 2005 issue of *Law Quadrangle Notes* and to reinforce the position that the speaker was taking.

“Judges in Ohio are aware that the attribution to [Michigan Supreme Court] Judge Janet Neff that ‘Michigan is the only state where Supreme Court nominees are put forward by political parties but run as nonpartisan’ is incorrect,” Milligan wrote in reference to the story, “Judges: Road to the bench getting too political,” which appeared on page 7. “The paradox continues in Ohio with strong pro and con opinions among the judges, politicians, and media.”

“Attention to the politicalization of the judicial selection process is important,” Milligan concluded, “particularly as we see increased attention and funding from special interest groups.”

U.S. District Judge David D. Dowd Jr., ’54, later wrote to make the same correction, noting that “the state of Ohio follows the identical system. I know this to be a fact based on personal experience. In 1980, I won the Republican primary in a contested election for a seat on the Ohio Supreme Court. I then lost the general election in 1980 on a non-partisan ballot.”

A caller pointed out that it has been incorrectly reported more than once that then-law student Alden J. “Butch” Carpenter died in an automobile accident. An avid athlete, Carpenter actually died suddenly while playing basketball, she said. Carpenter’s exemplary life and untimely death are recalled each year in the memorial scholarship banquet and scholarships given by the Black Law Students’ Alliance.

Umbreen Bhatti, ’05, noted in an e-mail that the Muslim Law Student Association sponsored the talk by attorney Shareef Akeel (*Law Quadrangle Notes*, pages 6-7, Summer 2005). The groups listed as sponsors were co-sponsors.

FACULTY

IN DETAIL

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Looking at courts

Conference Chairman Frederick P. Furth, '59 (standing), of The Furth Firm LLP, and Dean Evan Caminker converse as Caminker prepares to moderate a panel discussion on "Protecting Stakeholders: Racial, Ethnic, Religious, and Political Groups in Democratic Elections" as part of the XIII International Judicial Conference in Kiev, Ukraine, last spring. At left is panelist Ivan Verougstraete, first president of the Supreme Court of Belgium, and at right is Vasily Maljarenko of the Supreme Court of Ukraine, also a conference chairman. Sponsored by The Furth Family Foundation, and co-sponsored by the University of Michigan Law School and the Supreme Court of Ukraine, the conference devoted one day to weighing "The Roles of Courts in Democratic Elections" and its second full day to discussion of the issue of "Maintaining Judicial Independence." U-M Law School Professor Daniel Halberstam served as commentator for the panel "Protecting the Vote: Judicial Supervision of the Electoral Process." Conference participants included judges from the Ukraine, Belgium, Egypt, the Czech Republic, the United States, France, Benin, Jordan, Indonesia, South Korea, Botswana, and other officials. In other international activities, Caminker, Assistant Dean for International Programs Virginia Gordan, and Hessel E. Yntema Professor of Law Mathias Reimann, LL.M. '83, in September participated in separated reunions with Law School graduates in Brussel, Zurich, and Milan.

New faculty add to Law School expertise

Six new arrivals — a professor, three assistant professors, and two clinical assistant professors — have joined the Law School faculty this fall, enriching the Law School's expertise and course offerings in the areas of legal philosophy, Chinese law, property and law, and federal courts and jurisdiction, as well as instruction in the skills of advocacy and document preparation taught in the School's pioneering Legal Practice Program.

In addition, a veteran administrator well known to the Law School community as director of the statewide resource program for child advocacy attorneys headquartered at the Law School has joined the clinical teaching staff to work with the Law School's Child Advocacy Clinic.

The new faculty members are:

Professor Scott J. Shapiro

Professor Shapiro joins the Michigan faculty after nine years at Yeshiva University's Benjamin N. Cardozo School of Law in New York. In 2002 – 2003, he was a visiting professor at the Yale Law School and in 2003 – 2004 was a fellow at the Center for Advanced Study in the Behavioral Sciences.

Professor Shapiro received his bachelor's degree from Columbia College, where he graduated *magna cum laude* and was a member of Phi Beta Kappa. He earned his law degree at Yale and then received his Ph.D. in philosophy from Columbia University, graduating with distinction. He taught social and political philosophy at Columbia, where he received the National Endowment for the Humanities Dissertation Grant and was a Columbia University President's Fellow and Mellon Foundation Faculty Fellow.

During graduate school, he worked as a volunteer attorney at the Center for Battered Women's Legal Services in New York City. Professor Shapiro received the Gregory Kavka award for best published article in political philosophy for the two-year period 1998 – 1999 from the American



Left to right:
 Professor Scott J. Shapiro
 Assistant Professor Nicholas C. Howson
 Assistant Professor Madeline Kochen

Philosophical Association and is the editor (with Jules Coleman) of *The Oxford Handbook of Jurisprudence and the Philosophy of Law*. Professor Shapiro holds a joint appointment with the Law School and the University of Michigan Philosophy Department.

Assistant Professor Nicholas C. Howson

Assistant Professor Howson earned his J.D. from the Columbia Law School in 1988, where he was a Harlan Fiske Stone Scholar, recipient of the David M. Berger Prize for Public International Law and the Samuel I. Rosenman Prize for Academic Excellence and Citizenship, and served as head notes editor of the *Columbia Journal of Transnational Law*. After graduating from Williams College in 1983, Howson spent 1983-85 as a graduate fellow at Fudan University in Shanghai, China, studying and writing on late Qing Dynasty and early modern Chinese literature. After law school, he was awarded a Ford Foundation/CLEEC fellowship to complete research in Qing Dynasty penal law at Beijing University and with scholars at People's University and the China University of Politics and Law.

In late 1988, Howson joined the New York-based international law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, and was elected partner in the corporate department in 1996. He worked out of the firm's New York headquarters from 1988 – 2003, and also had postings in the London, Paris, and Beijing offices, finally as managing partner of the firm's China Practice based in Beijing. In this period, Howson acted for clients in several precedent-setting corporate M&A,

investment, and securities transactions, including the first Rule 144A offering into the U.S. capital markets (Thorn EMI), the first debt issuance by a Chinese state-owned enterprise (Sinochem), many of East Asia's largest project finance transactions (power generation, oil and gas exploration, production and development, and transportation), the first private placement of shares to foreign interests in a newly privatized Chinese company limited by shares (25 percent of Hainan Airlines to George Soros), and the first U.S. registered IPO and listing of shares on the New York Stock Exchange by a PRC-domiciled issuer (Shandong Huaneng Power Development).

Howson writes and lectures widely on Chinese law, focusing on Chinese corporate and securities law developments, and has acted as a consultant to the Ford Foundation, the UNDP and the Chinese Academy of Social Sciences, and Chinese government ministries and administrative departments. He was Lecturer-on-Law at Columbia Law School 1995 – 2003, taught Chinese law at Harvard Law School 2003 – 04, and was a visiting assistant professor of law at Cornell Law School 2004 – 05, where he taught U.S. securities regulation, Chinese investment law, and China's legal reform and public international law. Howson is a member of the New York Bar, Council on Foreign Relations, and Board of Advisors for Columbia Law School. He is a designated foreign arbitrator for the China International Economic and Trade Arbitration Commission (CIETAC) and chairs the Asian Affairs Committee of the Association of the Bar of the City of New York.

Assistant Professor Madeline Kochen

Assistant Professor Kochen's research and teaching interests include property, theories of justice and obligation, Talmudic law, and constitutional law.

Kochen earned her B.A. *magna cum laude* and her J.D. from Yeshiva University, Benjamin N. Cardozo School of Law. She holds an A.M. in Near Eastern Languages and Civilizations, and a Ph.D. in Religion and Political Philosophy, both from Harvard University.

After graduating from law school, Kochen worked in New York as a criminal appeals attorney with the Legal Aid Society, and later as staff attorney and legislative counsel with the American Civil Liberties Union. She also founded and directed the New York Civil Liberties Union's Women's Rights/Reproductive Rights Project, and served as law assistant to New York State Supreme Court Justice Elliott Wilk. Before attending Harvard, Kochen taught at Stanford Law School, where she was Director of Public Interest Law, as well as Assistant Dean of Students.

While working on her dissertation, Kochen was a fellow at Harvard's Center for Ethics and the Professions, and taught Talmudic and Jewish law to faculty and to students at Harvard Law School. She spent three years at the Institute for Advanced Study working with Michael Walzer as co-editor of *The Jewish Political Tradition, Volume III: Community* (Yale University Press, forthcoming). Her dissertation, "Beyond Gift and Commodity: A Theory of the Economy

Left to right:
 Assistant Professor Gil Seinfeld
 Clinical Assistant Professor Emily S. Bruce
 Clinical Assistant Professor Paul H. Falon, '83
 Clinical Assistant Professor Frank E. Vandervort



of the Sacred in Jewish Law," is currently under revision for publication. She is a member of the New York and California Bars.

Assistant Professor Gil Seinfeld

Assistant Professor Seinfeld teaches and writes in the areas of federal courts and jurisdiction. He has an A.B. in government from Harvard College and earned his J.D., *magna cum laude*, from Harvard Law School, where he served as managing editor of the *Harvard Law Review*.

Seinfeld served as a law clerk to Justice Antonin Scalia of the U.S. Supreme Court and Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit. In between these clerkships, he was a fellow in the Program in Law and Public Affairs at Princeton University.

Immediately prior to joining the Law School faculty, Seinfeld was an associate at the law firm of Wilmer, Cutler, Pickering, Hale & Dorr, where he focused on appellate litigation. His publications include "The Possibility of Pretext Analysis in Commerce Clause Adjudication," 78 *Notre Dame Law Review* 1251 (2003), and "Waiver-in-Litigation: Eleventh Amendment Immunity and the Voluntariness Question," 63 *Ohio State Law Journal* 871 (2002).

Clinical Assistant Professor Emily S. Bruce

Clinical Assistant Professor Bruce is teaching in the Legal Practice Program. She earned her A.B., *magna cum laude*, in comparative literature from Princeton University and her J.D. from Stanford Law School. In law school, she won

the Hilmer Oehlmann Jr. Award for Superior Legal Research and Writing, was a student volunteer attorney with the East Palo Alto U.C. Community Law Project, served as co-president of the Environmental Law Society, and was panel coordinator for the Shaking the Foundations Conference on Progressive Lawyering.

Bruce came to the Law School from Miller Canfield Paddock & Stone PLC in Ann Arbor, where she was an associate in the Commercial Litigation Group. She clerked for the Hon. Alexander O. Bryner of the Alaska Supreme Court in Anchorage.

She has been a member of the Ann Arbor Human Rights Commission, and was a member of the 2004 – 2005 class of Leadership Ann Arbor.

Clinical Assistant Professor Paul H. Falon

Clinical Assistant Professor Falon, '83, is teaching in the Legal Practice Program. He formerly was a partner in New York and Washington, D.C., with Fried, Frank, Harris, Shriver & Jacobson, where he specialized in insurance issues as counsel to several insurance companies in the United States and Canada. He also served as adviser to the Commonwealth of Massachusetts and New York State.

Falon earned his B.A. in English, M.A. in English, and J.D. at the University of Michigan. He is a member of the editorial review board of *The Journal of Insurance Regulation* and has served as a teaching fellow and lecturer in literature and composition at the University of Michigan.

Falon also practiced as a partner and

associate with Manatt, Phelps & Phillips, with Spiegel & McDiarmid, and with LeBoeuf, Lamb, Leiby & MacRae, all in Washington, D.C.

Clinical Assistant Professor Frank E. Vandervort

Vandervort, formerly program manager of the Law School-based Michigan Child Welfare Law Resource Center, has joined the teaching faculty as clinical assistant professor of law associated with the Child Advocacy Law Clinic. He has served as legal consultant to the University of Michigan School of Social Work's Family Assessment Clinic since 1997 and has been a consultant on three federally funded interdisciplinary training programs for child welfare professionals — The Interdisciplinary Child Welfare Training Program, the Training Program for Public Child Welfare Supervisors, and the Curriculum for Recruitment and Retention of Child Welfare Workers.

Vandervort is a member of the Michigan Child Death Review State Advisory Committee and the Citizen Review Panel on Child Death. He has served as a consultant to the Michigan Judicial Institute, the Office of the Children's Ombudsman, and the State Court Administrative Office's Permanency Planning Mediation Program. His areas of interest include child protection, juvenile delinquency, and interdisciplinary practice.

Prior to joining the Michigan faculty, Vandervort was an adjunct professor at the University of Detroit Mercy School of Law, where he taught courses in family law and juvenile justice. He received his B.A. from Michigan State University and his J.D. from Wayne State University Law

West turns scholar's spotlight to *Law in Everyday Japan*

Eschewing the blockbuster legal issues that dominate headlines, Nippon Life Professor of Law Mark D. West instead illuminates the impact of the law on the daily lives of Japanese people in his new book *Law in Everyday Japan: Sex, Sumo, Suicide, and Statutes* (University of Chicago Press, 2005).

"The book gets away from the 'big' studies of law to look at the things that affect us all, the little ways that law meshes with life, and it turns that lens on Japan," explains West, who recently completed a stint in Japan as a Fulbright researcher. "Until now, scholars have tried to characterize the practice of law in Japan as either culturally unique or rationally calculating, but this book shows that it's not that simple. People in Japan follow the law, break it, get emotional about it, live with it, and contend with it in many of the same ways that people all around the world live with and contend with their countries' laws. But sometimes something 'Japanese' lurks in the details, too."

"Compiling case studies based on seven fascinating themes — karaoke-based noise complaints (a chapter co-written with then-student Emily Morris, '02), sumo wrestling, love hotels, post-Kobe earthquake condominium reconstruction, lost-and-found outcomes, working hours, and debt-induced suicide — *Law in Everyday Japan* offers a vibrant portrait of the way law intermingles with social norms, historically ingrained ideas, and cultural mores in Japan," according to the University of Chicago Press' announcement of publication.

"Each example is informed by extensive fieldwork. West interviews all

of the participants — from judges and lawyers to defendants, plaintiffs, and their families — to uncover an everyday Japan where law matters, albeit in very surprising ways."

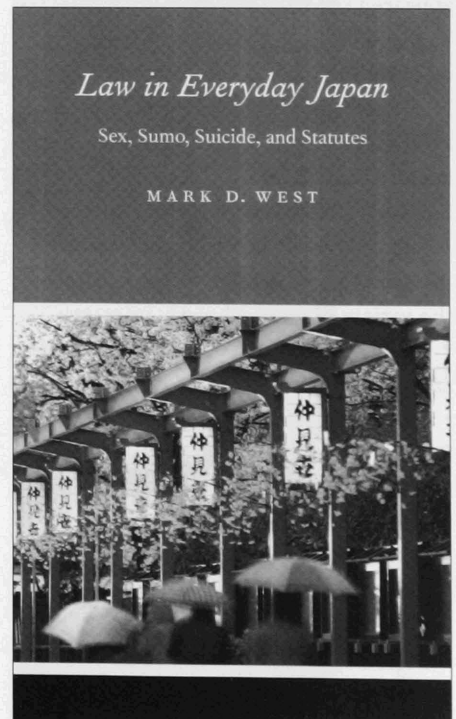
Law in Everyday Japan is West's second book on Japanese law in less than a year. Last Fall, Oxford University Press published *Economic Organizations and Corporate Governance in Japan* (Oxford University Press, 2004), which West co-wrote with Curtis J. Milhaupt, the Fuyo Professor of Japanese Law and Legal Institutions and director of the Center for Japanese Legal Studies at Columbia University. The 262-page book examines the role of formal law and regulations in Japan's economy as well as informal norms and practices and suggests a growing significance for law in the country's economic activities.

"Milhaupt and West show that institutions play a crucial role in the structure of the Japanese economy, which often is portrayed as being governed exclusively by interpersonal relations and bureaucratic fiat," Oxford University Press said in its announcement of the book's publication. The book portrays "a Japanese economy far different from previous accounts. They provide a wealth of previously unexplored data on the Japanese economy and legal system, and demonstrate the importance of a sound incentive roadmap for Japan's economic recovery and transition."

West directs the Law School's Japanese Law Program and is faculty director of the School's Center for International and Comparative Law. He also is director of the University's Center for Japanese Studies.



Nippon Life Professor of Law Mark D. West chats with students. Below, the jacket of his latest book.



Faculty members' new books illuminate variety of subjects



Law School faculty members' research interests range widely, and they regularly share the results of their study via journal articles and books. A glance at the Law Library's newly available list of publications by Law School faculty members dating back to establishment of the University's Law Department in 1859 shows that publication of books, articles, book chapters, essays, introductions, forewords, and book reviews always has been part of the intellectual life of the Law School. (The Web site for the publications list is www.umich.edu/library/facultybib/scope.htm. See related story about other summer projects of the Law Library on page 71.)

In addition to two books on Japanese Law by Professor and Japanese Law Program Director Mark West that appeared recently (see story on page 75), and *Child Welfare Law and Practice*, co-authored by Clinical Professor Donald N. Duquette, '75, (an excerpt appeared as "Representing children: A new national standard" on pages 78 – 80 of the Summer 2005 issue of *Law Quadrangle Notes*), at least five new books by faculty members appeared this year, reflecting the variety of their scholarly interests:

- *The Rights of Refugees Under International Law*, by Professor James C. Hathaway;
- *Federal Income Tax*, co-authored by Professor Douglas Kahn;
- *Women's Lives, Men's Law* by Professor Catharine A. MacKinnon;
- *Securities Regulation: Cases and Analysis*, co-authored by Professor Adam C. Pritchard; and
- *Degrees of Freedom*, by Professor Rebecca J. Scott.

Hathaway's *The Rights of Refugees Under International Law*, just

published by Cambridge University Press, examines the interplay of the 1951 Refugee Convention and international human rights law. Hathaway, the James E. and Sarah A. Degan Professor of Law, is director of the Law School's Refugee and Asylum Law Program.

The new book offers "a delicate and complex integration of two bodies of international law" and is "a comprehensive presentation of the whole corpus of rights owed to refugees and asylum-seekers at the different stages of their search for protection," according to Luis Peral, a senior research fellow at the Center for Constitutional Studies in Madrid, Spain. The book's chapters deal with international law as a source of refugee rights; the evolution of the refugee rights regime; the structure of entitlement under the Refugee Convention; rights of refugees physically present; rights of refugees lawfully present; rights of refugees lawfully staying; and rights of solution.

The Rights of Refugees Under International Law appears "just as advocates, judges, and policymakers are increasingly grappling with the question of what rights refugees can claim" and "lays the groundwork for creative and practical solutions to hard problems," according to Cambridge University Press.

Douglas A. Kahn's *Federal Income Tax: a Student's Guide to the Internal Revenue Code, 5th Edition*, is co-authored with Kahn's son, Jeffrey H. Kahn, '97, a professor of law at Santa Clara University School of Law in California and a recognized scholar of tax issues. Jeffrey H. Kahn is a visiting professor at the University of North Carolina Law School at Chapel Hill this fall. Douglas

A. Kahn is the Paul G. Kauper Professor of Law.

Published by Foundation Press during the summer, the treatise "is a longtime favorite among faculty and students alike," according to its publisher.

"This concise yet comprehensive student guide focuses on explaining the technical workings of the principal Code provisions and common law tax principles that apply to individual taxpayers," Foundation Press said in announcing publication.

The book is designed to supplement casebooks or problem sets used in tax courses, according to the authors. It has two main functions:

- "To provide an overview of the federal income tax laws so that the reader has a blueprint of the structure of the federal income tax system and accordingly is better able to see the role that specific provisions play in that scheme;" and
- "To set forth concise, lucid explanations of the major principles of income taxation and important specific income tax statutory provisions."

MacKinnon's *Women's Lives, Men's Law* was published last winter by Harvard University Press (HUP). The book brings together previously uncollected and unpublished pieces that continue MacKinnon's "clear, coherent, consistent approach to reframing the law of men on the basis of the lives of women" and presents perspectives that have played "an essential part in changing American law and remain fundamental to the project of building a sex-equal future," according to Harvard.

Women's Lives, Men's Law is MacKinnon's fifth book to be published by Harvard,



Left to right:
 Professor James C. Hathaway
 Professor Douglas A. Kahn
 Professor Catharine A. MacKinnon
 Professor Adam C. Pritchard
 Professor Rebecca J. Scott

which said its essays “document and illuminate” many “momentous and ongoing changes” of our time such as recognition of sexual harassment, rape, and battering as claims for sexual discrimination; the redefinition of rape in terms of women’s actual experience of sexual violation; and the reframing of the pornography debate around harm rather than morality.

MacKinnon is the Law School’s Elizabeth A. Long Professor of Law.

Pritchard’s *Securities Regulation: Cases and Analysis*, co-written with Stephen Choi of New York University School of Law, “is completely up-to-date, including detailed coverage of the SEC’s 2005 Public Offering Reforms,” according to Foundation Press, which published the book in August.

Each chapter opens with an essay that lays out the economics of the chapter’s subject, features a “Motivating Hypothetical” that sets up the issues covered in the chapter, and includes a series of hypotheticals that build upon what is set out in the “Motivating Hypothetical.”

A nearly 1,100-page teacher’s manual accompanies the book, and offers teaching strategies, case briefs, questions on the cases, detailed answers to questions and hypotheticals in the book, and classroom exercises to provide students with hands-on experience.

The teacher’s manual also is available to professors via password protected access to the authors’ Web site, www.choipritchard.com, where the manual will be updated more frequently than the annually printed version. “Securities regulation is one of the most bewildering courses in the law school curriculum,” the authors note on their Web site,

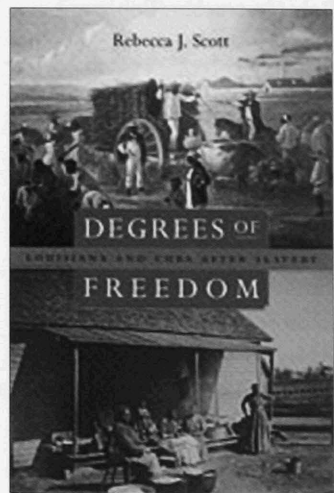
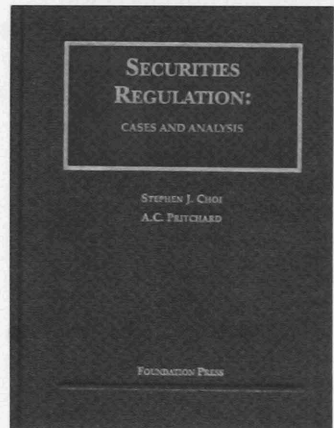
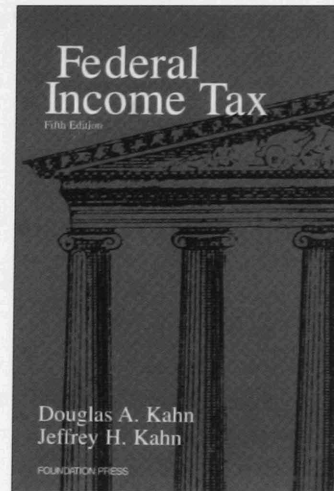
and their new casebook’s brevity and presentation style are designed “to make both securities markets and securities regulation accessible and manageable, helping students to master the basic principles and structure of securities regulation and enabling them to begin their careers as corporate lawyers with confidence.”

Scott’s *Degrees of Freedom: Louisiana and Cuba after Slavery* was published by Harvard University Press in late August. Scott, the Charles Gibson Distinguished University Professor of History and Professor of Law, discussed a portion of her research for this book in her distinguished university professorship lecture in spring 2003; a version of the lecture appeared in the Fall 2004 issue of *Law Quadrangle Notes* (pages 86 – 92) as “Degrees of Freedom: Building Citizenship in the Shadow of Slavery.”

Skillfully plumbing sources in Louisiana and Cuba, Scott “compares and contrasts these two societies in which slavery was destroyed by war, and citizenship was redefined through social and political upheaval,” Harvard says.

“Louisiana had taken the path of disenfranchisement and state-mandated racial segregation; Cuba had enacted universal manhood suffrage and had seen the emergence of a transracial conception of the nation. What might explain these differences?”

Degrees of Freedom brings the historian’s eye and scholar’s rigor to the task of bringing to life the people, places, and events in the two countries that led to these very different results.



On Robert J. Harris by James J. White

Former Law School faculty member and Ann Arbor Mayor Robert J. Harris died July 9 at age 74. Well known in Ann Arbor community and civil rights circles, Harris was a fulltime faculty member from 1959 – 1974 and an adjunct professor from 1974 – 96. He served as mayor of Ann Arbor from 1969 – 73. The following essay by Robert A. Sullivan Professor of Law James J. White, '62, is adapted from remarks delivered at the memorial service for Harris.

I served on the law faculty with Bob Harris for 10 years while he was a permanent faculty member and for another 20 years while he taught as an adjunct professor. I am going to talk briefly about Bob as a faculty colleague but most of my time I intend to devote to Bob as a teacher. Bob brought to the faculty all of the qualities of honesty, intelligence, and good humor that Mike Heyman [former chancellor of the University of California at Berkeley, a friend and Yale Law School classmate of Harris] described and that others will tell you about. Bob was an engaged and influential member of the faculty. He took the lead in our first affirmative action program late in the 1960s. He helped deepen and widen the faculty with new blood after many retirements that occurred in the late 1950s, and he was a fine scholar. Bob's articles on seller's damages published in the *Michigan Law Review* and *Stanford Law Review* between 1963 and 1965 are still cited.

But today I pass Bob's considerable services as a scholar and colleague and talk about Bob as a teacher. Bob was a superlative, an extraordinary teacher. He commenced teaching in the Law School in the fall of 1959 when I was a first-year student. I and 100 others had started law school in the summer of 1959, and in the fall the summer starters were divided into two groups. Half of us were assigned to Bob's Contracts class and half were assigned to a more senior teacher of Contracts. At lunch we often compared notes, and we soon heard stories from our colleagues in the other Contracts class about the pleasures of contract

study. According to them, Contracts was clear, free of ambiguity and uncertainty. Contract doctrines were easy to understand, set out in black and white and separated by bright lines. They portrayed contract law as an island of clarity in a sea of law school confusion.

While we listened to this description with interest, we wondered if we were taking the same course as they were. In our course there was nothing black and white and not much dark gray. In our class it was difficult to distinguish one issue from another; doctrines ran together in unpredictable, messy ways. The resolution of a hypothetical case was never easy and the outcome was seldom clear or free from ambiguity.

Let me tell an anecdote from Bob's class. Some time in October of 1959 we came to the doctrine of mistake. The doctrine of mistake says that when the parties are mutually mistaken about a fundamental issue in the contract, the contract can be voided and is not enforceable. Among others we studied the classic "barren cow" case. In that case the whiskey distiller, Hiram Walker, had a contract to sell a prize cow, Rose 2d of Aberlone, to a buyer for \$80. The price had been set at \$80 because the cow was thought to be barren. Were she capable to reproduce, she would have been worth at least \$800 and possibly much more. After the contract was made but before delivery of Rose, the seller discovered that she was pregnant (and accordingly her value was far more than the \$80 price). When the buyer called for the cow, the seller refused to give her up and the buyer sued. The Supreme Court



Robert J. Harris in the 1968 Law School yearbook *Codicil*.

of Michigan held that the contract was invalid because of mutual mistake. Hiram Walker kept his cow.

Now you will understand that the doctrine of mistake is an important but threatening doctrine in contract law, for if it is too broad it will swallow up contracts that should be enforced and will render contract law unserviceable, particularly for commercial transactions where one needs certainty. You must understand too that at least one party will often be able to argue that he was mistaken, that, for example, he did not understand the subsoil when he agreed to dig the basement, or that he did not understand that his cost of materials would rise dramatically after the contract had been made.

I still remember the Monday morning when we took up the doctrine of mistake in Contracts class. After we had the normal Socratic discourse about the cases, Bob set out his theory about how the cases should be put together. As Mike Heyman made clear, Bob was drawn to innovative and unorthodox interpretations of legal doctrines. In this case he had a particular, peculiar view about how the cases should be put together and he explained that view. Being good obsessive, compulsive law students who yearn for certainty, we eagerly wrote down his interpretation of these cases. Only slightly bothered by the fact that his interpretation did not square with the opinions in the cases or the analysis of the cases in the casebook, we went away

from Monday's class at least moderately satisfied.

On Tuesday Bob commenced the class by saying, "I now think that what I told you yesterday is wrong." He then gave a different analysis of these cases and disavowed what he had said the day before. "Yesterday I told you that the cow case was correctly decided; now I think it was not. Today I believe the buyer not the seller should have won." You could smell the hostility in the air that day. If any of us had had a gun, we would have killed him. Our learning — so carefully put down on Monday — was worthless and, worse, we feared Bob might disavow Tuesday's analysis on Wednesday.

So despite the fact that we were intrigued by this interesting animal and loved Bob, we also hated him. We hated him because he refused to make things simple that were not. We hated him because new ideas spewed forth from his mind in quantity and size too large to swallow or dispute. Most of all, we hated him for the frustration caused by his unwillingness to "lay it out." A lesser man would have given in to student dissatisfaction and would have changed his style, but not Bob. Bob pressed on to the very end.

Eventually even my most frustrated colleagues came to appreciate the service that Bob performed for us by showing us the uncertainty and ambiguity inherent in contract law. Eventually all of us came to love and respect him and to value his teaching. He served us far better than the other professor who made life easy for his students by painting a more simple but less accurate picture of contract law.

For his wonderful teaching, hundreds of graduates of the Michigan Law School owe Bob Harris a debt they will never repay. Bob was truly a superlative, an extraordinary teacher. He was a teacher we will all remember and treasure.

More on Bob Harris

Responding to the death of former Law School Professor Robert J. Harris, fellow professors Theodore J. St. Antoine, '54, and Roderick Hills offered these remembrances.

Bob Harris was a far more important figure in this Law School and this city than his relatively short tenure as a full-time faculty member would indicate. I chose Michigan as a law student because I was advised there was no better place to learn how to become a topnotch private practitioner. My education here more than lived up to my expectations on that score. But I did find the institution in the 1950s somewhat wanting in what I would call a concern about broader social issues. Bob was the leader of a younger generation that changed all that in the 1960s. He was a genuinely exciting intellectual presence and he had a great deal to do with convincing me to leave the exciting political world of Washington for a career here as a law teacher.

When I joined the faculty in the fall of 1965, there was not a single African American in the entire student body. And this was the School that had graduated the second known black university law student and a long distinguished line of blacks thereafter, including Amalya Kearsse [1962, of the U.S. Court of Appeals for the Second Circuit] and Harry Edwards [1965, of the U.S. Appeals Court for the District of Columbia]. Bob was the key person in putting together our first affirmative action program, leading to the admission of eight blacks in the fall of 1966.

During the Black Action Movement in the early 1970s, which disrupted classes

throughout the University and threatened more serious violence, Bob was serving the first of his two terms as mayor of Ann Arbor. He arranged with University officials and more level-headed student leaders to set up a tripartite "flying squad" of troubleshooters who would be dispatched to potential boiling points throughout the campus to defuse explosive tensions. That surely contributed to Michigan's being spared the more destructive effects, including deaths, suffered by other campuses during that period.

Finally, Bob was an outstanding classroom teacher and a highly original scholar. He and I both taught first-year Contracts and he could not have been more helpful in getting me started. His emphasis was on stimulating students' thinking, not conveying information. He also engaged in a massive empirical study of racial segregation in housing that unfortunately got sidetracked when he went into politics. I like to think its ideas still influenced fair-housing legislation in Ann Arbor and elsewhere. Wherever he was, Bob Harris was an ardent, tireless, and persuasive champion of good causes. This Law School and legal education lost someone very special when Bob decided to pursue other paths, and never really returned to us.

Theodore J. St. Antoine, '54

Former dean and
James E. and Sarah A. Degan
Emeritus Professor of Law

I want to echo Ted's words about Bob Harris' importance on this faculty. When I first came to Michigan, I sought Bob out for his advice on how the city of Ann Arbor operates in land-use matters. (He was a former mayor of this town and had played an important role in trying to get affordable housing in the city.) He was a tremendous help — gregarious, energetic, enthusiastic, knowledgeable, engaged. I kept in touch with him ever since and have benefited from his

thoughts on everything from the siting of Briarwood Mall . . . to the possibility of litigation to get this town to relax its zoning restrictions on apartments. I have been as close to Bob as any of my other colleagues, despite the fact that he was emeritus when I came here 12 years ago.

Roderick M. Hills Jr.

Professor of Law

Looking at legal education from all sides of the podium

The following story is based on the faculty panel discussion that was part of the building campaign regional event for Law School graduates in Chicago in May. Dean Evan Caminker moderated. Panelists included Molly Van Houweling, an assistant professor who is an expert in copyright law and the interplay of intellectual property with rapidly advancing technologies that affect them; Mark West, the Nippon Life Professor of Law, director of the Law School's Japanese Law Program and Center for International and Comparative Law, and director of the University of Michigan's Japanese Studies Center; and James J. White, '62, the Robert A. Sullivan Professor of Law and an expert on the Uniform Commercial Code.

Evan Caminker: This afternoon we will have a conversation about one aspect of the way in which the Law School on the one hand, is continuing to provide the finest education in the land, and on the other hand, is doing so in a way that might be different from the time that you were all in law school. Maybe the theme of this afternoon's conversation ought to be that this isn't your father's or mother's law school anymore, that things are, in fact, different. We have brought together today three faculty members who are all terrific in their own right, but who represent, in a sense, different generations of the faculty.

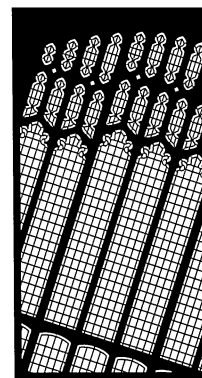
I'm sure almost all of you in this room recognize J.J. White, who has been with us at the Law School teaching since 1964. He's the Robert A. Sullivan Professor of Law and is the nationally renowned expert on commercial law in the Uniform Commercial Code. He's authored leading casebooks and other books on commercial law, bankruptcy, and banking law.

To my right is Mark West, who is the Nippon Life Professor of Law. He is an expert in Japanese studies and Japanese law. He's beginning his eighth year with us. He directs our Japanese Law Program,

is faculty director for our Center for International and Comparative Law, and is director of the University-wide Center for Japanese Studies. His expertise really is actually using a variety of techniques to study everyday life in Japan in a variety of interesting ways. He calls it "scandalology" because a lot of it is really looking into interesting and fun scandals or the quirks of Japanese society. My favorites of his articles are those on Sumo wrestling, Karaoke, and Japanese love hotels.

To my far right is Molly Van Houweling [who now teaches at Boalt Hall, the University of California at Berkeley law school]. She was an undergraduate at Michigan before graduating from Harvard Law School and served as a clerk to Judge David Souter on the U.S. Supreme Court. She then spent a couple of years out west doing some very interesting work in the field of the Internet and technology. She is a rising star on the national scene in the fields of intellectual property and law and technology.

Let me start by saying that there are some obvious ways in which teaching at the Law School is different now than it was 20, 30, or 40 years ago. The numbers of different kinds of classes that we teach at the Law School today that were not

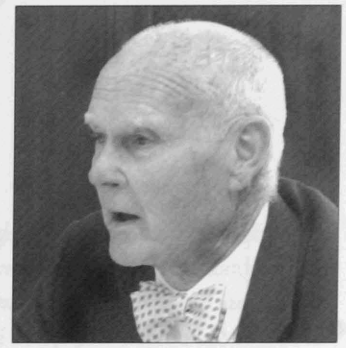


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taught years ago is just staggering. I think that in J.J.'s time there were, maybe, one or two international law courses. We now have probably 20 or 25 courses in a given year that are focused on international law or comparative law related subjects. There are a lot of classes that have to do with intellectual property or law and technology of the sort that Molly teaches, almost all of which are completely new. There's also the whole new clinical program, which was started at the Law School in the 1970s. It really has taken on a life of its own. The idea is that we have students who actually represent live clients under the tutelage of faculty members. They do so with criminal cases, civil cases, transactional cases — a wide variety of different kinds of lawyering.

It's also worth it for us to talk about some of the less obvious, less visible changes in legal education. I thought I would first ask Mark to talk about the ways in which the nature of the teaching itself is a bit different than it used to be.

Mark West: I teach a kind of smorgasbord of seemingly unrelated cases. I teach Japanese Law. Last semester I had 60 students. Usually it's about 30. I teach Enterprise Organization, corporate law, which ranges from about 120 to one



Left to right: Evan Caminker, Dean; Mark West; Molly Van Houweling; James J. White, '62

crazy year I had 260 students. And I teach Criminal Law in the first-year curriculum. I enjoy teaching the first years.

One thing that hasn't changed since you or I were in law school is that when students come in they think they know what they want. But they certainly don't know what they need. A lot of them come in thinking "I want to do international law." They have no clue what that means. But they know they want to do something international, something comparative. And we have offerings for those students. What I think happens is that as they progress, and especially after they spend the first-year and certainly the second-year summer in practice, they realize that what they really need is a combination of things like the international law curriculum and things that will teach them how to actually apply rules, how to actually do the day to day things that they're going to need to do in practice.

I think one difference is that now there is significant emphasis on the practical. Especially on the corporate side, there's significant demand for the practical as well. When I was in practice, one of the senior partners approached me and said, "Well, what we'd really like you to do is teach the first-year associates — especially those who went to Yale — how to practice law." Those were his actual words. I did run a six-week course that turned into a mentoring session for the next five years for first-year associates. And a similar thing was happening on the litigation side with midlevel associ-

ates teaching the junior associates how to write complaints, how to file documents. The point of all this is that the law firms really don't want to be teaching this. The students don't want to be learning it there either. There's a strong demand from the students to learn these kinds of things and have the practical experience in the law school. One of the things that's changing in the methods that we teach is we're seeing a lot more of these practicum kinds of courses. I'm not talking about just the clinics or the legal research and writing. For instance, last year, in connection with the securities regulation course, we had an additional one-hour lab where you sit down and learn how to draft the documents or to fill out the forms as you're learning about the actual securities law. You have lots of different classes, small classes, collaborative classes, these kinds of practicum and seminar kinds of courses. It does make for a very different kind of law school experience.

Just one final thing. I had a group of students three years ago who approached me and said, "We really, really need some kind of practical way to learn how to set up a corporation. Could you please do this?" And I spent about an hour in class telling them first you call the paralegal, then you do this, this, this. They don't know this. They don't know that first you call the paralegal. The students said, there were five of them, "Will you give us an hour of supervisor credit if we go off and each of us takes a different role? I'll be the banker. This guy will be the director.

This guy will be the entrepreneur. We have all these different roles. If we come up with a set of documents and we negotiate amongst ourselves to set up this corporation, and we write all this up, will you do it?" Well sure, I would be happy to do that. And so this group of students came up at the end of the semester with a binder of all the documents and all the negotiations back and forth over e-mail that they had done trying to hammer out what you would do to set up a corporation and how you go about following the laws of Delaware to do it. And that's the kind of thing that even if we're not pushing it, the students are pushing for it. Students are taking the initiative here and realizing that there have to be these different kinds of interactive learning opportunities. And I think that in facilitating them Michigan is really, really on the cutting edge of legal education.

Evan Caminker: Thanks Mark. I want to ask Molly to talk about the role of technology in teaching. It wasn't that long ago that technology in a classroom consisted of a piece of chalk to write on the board and an eraser to throw at the kid who is asleep. But it is a very different story today.

Molly Van Houweling: I still use the chalkboard — not the eraser, although that's a handy idea. I like to use the chalkboard because I find that especially my first-year students seem to talk more the more I write down the things that they say. So the chalkboard comes in handy for that. But in other classes, especially

Copyright, which is my other big class, I use technology that is a little more high tech. I use PowerPoint slides, which aren't at the cutting edge, but I think are particularly useful in that class because of two things. One, it's a statutorily intricate class and I want to be able to direct the students' attention to key points in the statute, which I can do easily using PowerPoint slides. Also, there are things to look at and listen to in a copyright class. So for that class in particular, because there is so much to observe that way, I find technology particularly helpful. In all of my classes I use what I'm sure my colleagues use, too, a Web platform that the University has put together called CourseTools to run a site that gives the students information about upcoming events in the class. And most importantly, it offers a discussion forum for them to launch their own discussions or respond to questions that I post there. It's a good way for students — I find this especially in my Property class — who have had experiences that are pretty relevant, students who have had landlord/tenant disputes, often from the tenant side, but I always have a handful of students who have been landlords and have experiences there to talk about. Lots of key cases in the Property curriculum seem to be from New Jersey. I always have lots of students from New Jersey who can fill us in about the real story behind *Matt Laurel*, which is one of these famous cases. The Web discussion board also is a place for students who don't feel particularly comfortable talking in class but maybe feel more comfortable in writing to express themselves that way.

My most successful use of technology in the classroom so far has been when the Supreme Court heard an important case called *Eldred v. Ashcroft* about the constitutionality of a recent extension of the term of copyright. And I happen to be buddies

with Eldred, the petitioner in the case. So I went down and heard the argument and then did an Internet teleconference between Washington, D.C., where I was with Eldred, and my Copyright classroom back in Ann Arbor. I had a class of about 40 students. They came into class that morning and there was a big video screen at the front of class. We were sitting in Washington so they could see us and we could see them. I think they anticipated that what they'd be getting would be like television, that they'd come in and watch me talk to the Supreme Court petitioner. They were surprised to find that the first thing that happened in class was that, as typically happens, I started calling on them because I could — I could see them and they could respond to me. That's the kind of thing that I'd like to do more of. We have some capacity at the Law School for doing that, although not in every classroom. So I think all of my colleagues don't have the opportunity to take advantage of that.

There are challenges posed by all of this technology. Students have access to wireless Internet in the classrooms, which is important in their minds, I think, for multitasking. I think I sometimes see students who aren't concentrating on my PowerPoint slides or my lecture or what their colleagues are saying. That's a challenge to me as a teacher, to be so engaging that they're not distracted by their multitasking.

They can do lots of research, as you do, not in the library but from their desks, their apartments, their dorm rooms in the Lawyers Club, and so forth. I do that, too, do my research from my office, not in the library. In a way it's a pity because we don't end up running into each other in the library. I'm not sure where our students run into each other because it's so easy to do a lot of the work that they need to do from their

laptops and the Starbucks down the street where they're not likely to run into me or run into their friends.

So those are the challenges. I think we need to figure out how to deal with them because the students are extremely aware of what students at other law schools get from their law schools in terms of various types of services, in terms of what technology is available to them. It's very important to them that their law school be keeping up with what their friends have in other places. It's both a pedagogical opportunity and a challenge.

Evan Caminker: Thanks very much, Molly. Molly touched upon something that I thought I would ask Jim to speak about, which has to do with the broader intellectual culture for students and the ways in which students actually learn much of what they learn outside of the classroom. That was always true. There were always those great late-night conversations, mostly at Dominick's, about the nature of law. As Molly points out, a lot of that conversation now takes place online. And professors can actually help shape that by setting up Internet chat rooms so that students in a given class can talk to each other and the faculty can guide dialogue in a lot of ways. That works wonders in certain areas, but it's not ideal for those of us who continue to think that law and society ought to be personally interactive. As Molly suggests, there are some challenges presented by the technology that actually might decrease the likelihood that students are going to be talking to other students in real time rather than on the Internet.

James J. White: Let me take off on a couple of points that Molly made. As you might imagine, I am not at the forefront of the technological advances. You've heard the story of the banker who was asked, in about 1980, what's the most

significant change in banking since you came in? He said air conditioning.

I even use the Web site. Instead of having to reproduce 72 copies of something you want to hand out, you can put it on the Web site, the students go get it, and they can copy it and read it from there. That's very useful. And, of course, you can send a message out by e-mail to all the students.

There is the downside she just alluded to, that all these students are sitting out there and they all have wireless and they can do e-mail, and play games, play solitaire or Free Cell. So last year at Columbia, where I was a visiting professor, I had my secretary come and sit in the back of the class. She identified a couple of people who were playing Free Cell all the time. I said, "All right, when so and so is playing Free Cell what I want you to do is stand up un-intrusively and walk to the back of the room by the door." So I called on him. And I said, "Are you winning?" He was very cool. He's going to be a very good lawyer. It didn't upset him a bit.

My job here is to talk about what students need to talk with one another and where they need to hang out. I was the Associate Dean when we built the underground library. And I remember having arguments with Margaret Leary, who was then the librarian, about what the library was for. And I said, Margaret, this is an elegant study space. I insisted that we put easy chairs around in different places because I said what this is for is the study space. The students, for the most part, study in the books they buy and from casebooks and things like that. They don't go and look in the library unless they have a specific

research project. And that's even more so now because of electronic research.

The library — the underground library and the Reading Room — is a study space for our students. That's important for them because they need a place to study. They also need a place to interact with one another, talk to one another both for their professional and also for their personal experience. And when this building gets built, we will have the most extraordinary space of that kind. I assume everybody in this room has seen the models and the lounge that will go out to Monroe Street on the south side will have a place for maybe as many as 100 students to sit and talk and have a coffee and talk about what they're doing — talk about their professional stuff and also about their personal stuff and study there and use the computer in that setting. That will be really important for our students. It's important to have a place where the students after class have an opportunity to sit down and talk with one another, and argue and maybe come back and talk with you about that.

The new building will be very important for that. We do a pretty good job at that now, but it will be even better. The problem with the libraries,

more on figuring out how we actually do the best we can to harness this great teaching potential. It's not a bad thing, I suppose, for us to have some reason to have to improve our teaching. But trust me, any of you who have ever been on the Internet know that there are enough really interesting and exciting things out there that we have to be unbelievably fantastic teachers to compete.

There are great opportunities that come along with these changes. But they also present differences that we have to adjust to. Among other things, consistent with what Jim was saying, there really aren't as many places that students gather together anymore around books. That was sort of an old standard thing that you would go to where the books were for your assignments or whatever. And that's where you would run into each other and there are the books and maybe a newspaper. And they hang out. It just doesn't happen as much anymore because so much of what you can do in law school that counts is something you can do by yourself with your computer as long as you've got a place to plug it in. So we do have to be more proactive, not just as educators, but in terms of providing a learning environment that will harness

“ . . . I'm not sure where our students run into each other because it's so easy to do a lot of work that they need to do from their laptops and the Starbucks down the street... ”

of course, is you can't have discussion, at least not loud discussion there. In the new building, you will be able to do that. That will be a very important addition that will come from this building.

Evan Caminker: Thanks very much, Jim. I think that one of the themes you're hearing a lot is that we need to work

this energy in a positive way and continue to figure out how to bring people together for the real important stuff.

At the end of the day, computers are a great tool. But we all know that to be a great lawyer of any sort, you have to be able to think quickly on your feet. You have to be able to communicate very

clearly with other people in small groups and in large groups. And you've got to have developed a good personality for working with other people. Those are all the kinds of skills that we want to make sure that we can continue to teach as well if not better than any other law school in the country. I'll stop there and open up the floor for questions.

Question: Is technology affecting how exams are given, taken, or graded? Or are we still in the blue book era?

Evan Caminker: We are in the electronic blue book era is what I would say. I'd say that at this point 95 percent of our students actually write their exam answers on the computer. And that's actually useful for us because then we don't have 100 that we can't read because somebody was writing so fast it almost became a straight line. I think from the exam perspective, it's actually been wonderful.

James J. White: Can you be on the Internet or not? And how do you keep them off the Internet if you don't want them to be on the Internet? And can they go to the other parts of their hard drive or not? I just say you can do anything you want to. But, of course, you probably would rather not have them e-mailing the guy across the aisle who has a 3.8 GPA.

Molly Van Houweling: It is true that the issue of students speaking [via computer] to each other is a problem not just in exams, but obviously in class as well. You know that happens because sometimes you're teaching and you're talking about something relatively intense or uninteresting. And at the same time six or seven of your students break out into a chuckle. But they're not sitting next to each other as if someone has just muttered something under her breath.

Mark West: I should admit that when I

taught that 260-person class in Enterprise Organization (EO) I gave an all multiple choice exam. I made it clear the first day: "Sorry, I know this isn't really what you want, but again, there're 260 of you. It's going to be multiple choice." I think one of the reasons why there weren't a lot of complaints is because of the rigidity of the curve. The students want a rigid curve. In fact, they're pushing now for even more particularity in the grades. Some of them are saying, "We don't want this A-plus, A, A-minus stuff. We want a 1 to 100 scale." I think that's nuts, I think it's not in their best interest, but that's what they're saying

Question: I have to preface this by saying I just came off a frustrating experience drafting with one of my younger associates. That prompts me to ask what kinds of things you're doing in the area of writing and how that fits in with the rest of legal education?

Evan Caminker: Let me share a couple of things. The first is that about a decade ago, Michigan shifted to a fully professionalized system from the old system called Case Club, which was where you had third-year students helping to teach the first-years students how to do basic legal research and writing, maybe some oratory, that sort of a thing. We actually have fulltime members of the faculty who specialize in teaching what we now call the Legal Practice Program. The content of it is much more rigorous and sophisticated than with Case Club in the sense that we cover many more types of things. It's not just research and writing. It also includes client counseling, how to interview a client to find out what that client is interested in or needs, how to negotiate with an opposing council or an opposing client, things like that. The idea is to recognize that third-year students, while they know something more than

first-year students, do not know nearly enough. We need to have people who are really specializing in this. Over the last year or two we have started to experiment with developing upper division classes as well. Some of those are really for people who want to do a particular kind of transactional practice, or might want to do a certain kind of litigation.

There are some other things that would have been around when you were in law school that we think are useful — the moot court competition, for example, and a lot of students still do the Campbell competition. That's a great area for them to learn to do some more research and writing. Today, there are four or five national moot court competitions of that sort that we have students participate in. There's an international law program, there's an environmental law program, there's a Native American law program. We just agreed as a faculty to expand the number of credit hours for the first-year Legal Practice course, in part because we want to give our students more opportunity to do in-depth research and writing.

Question: But that's writing not drafting?

Evan Caminker: Drafting is the kind of thing we want to work on more with the kind of courses that Mark talked about.

Mark West: In my course, for instance, we do a couple of experiences which if you don't do in EO there's a good chance you're going to get somebody who doesn't even know what a board resolution is, much less how to draft one. There is room, certainly for improvement. The question is where do you do that? Do you do that in the writing and research class? I think probably not. I think that's probably where you do a little bit more of pleadings and so on. I think

probably the best place for it is with this kind of practicum that goes along with EO or goes along with Securities. Or maybe you do it in this deals class. But I think the deals class is probably going to be more oriented toward examining particular mergers and acquisitions, that sort of thing. I think probably the best place is in conjunction with EO, but it's one of the things that frankly is not taught very well. There are schools that have courses in drafting and they're awful. I think probably the best way to do it is in conjunction with these corporate classes.

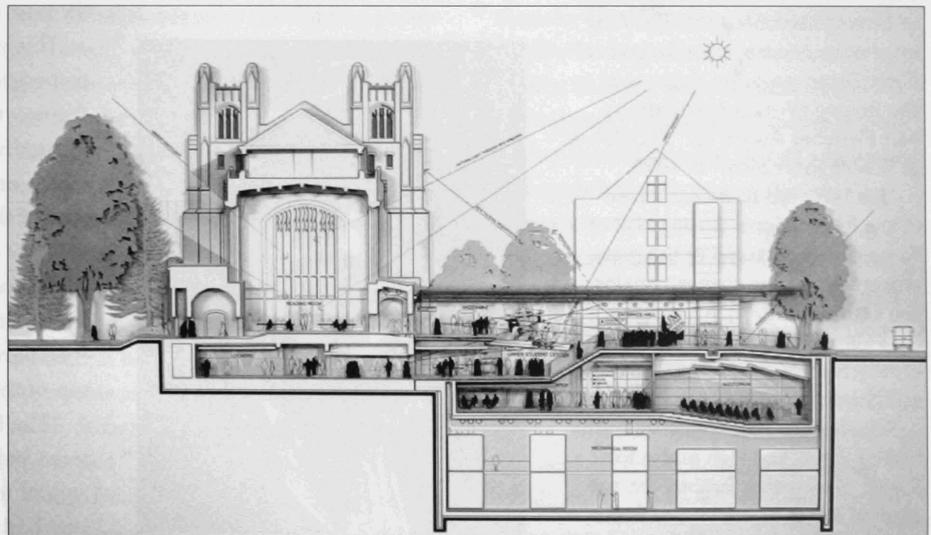
Evan Caminker: Let me expand upon that in a general sense. There always was, back in your day and still today, a heavy emphasis on common law reasoning. And many of the classes that you would have taken and that we still teach, certainly the classes that dominate the first-year curriculum, are courses where students learn how to read judicial opinions. That's basically the material upon which they build their understanding of law. But we know over the past four or five decades the law itself has become much more based on statutory law, regulatory law, and contract law. Maybe that isn't a change in the actual contract part in the underlying law, but I think our emphasis in trying to teach it is — and so it's important for us. We have a curriculum committee thinking about the ways in which we need to be predicting where the changes are coming in practice and figuring out how we have to move ourselves to continue to provide a top flight legal education. One of the things that we discussed a lot is whether or not we need to do more to give our students facility with reading and interpreting and writing words in a non-judicial context, whether that's actually drafting a transactional document, drafting a contract, understanding a regulation, or whether it's reading or drafting a

statute. My guess is that many of you spend more time working with those kinds of materials than you do reading judicial opinions, or at least in any given problem you have to read that in addition to the judicial opinions that may have interpreted the language. But the basic first-year curriculum still hasn't shifted over to that kind of a focus. We're still thinking about what's the right way to teach it. It isn't going to be true that in the first-year curriculum we're going to do drafting of a corporate document. You've got to learn a little bit more about the theory of the corporate form before you can do that, but to make sure that we do more work in the Legal Practice Program itself, working with at least statutes or relatively simple contracts to get people to really go back and focus on how do you interpret words to apply those ago-old canons that may sound so ancient, but we all know still matter. You know, if the word appears twice in two different sections is that an argument for interpreting the word the same way both times? What's your freedom to say the answer is no because it just doesn't

make sense to do so. All those kinds of things that really top-flight lawyers need to know, and today need to know when they're first-year associates, not need to know after they've been at the firm for five, six, seven years.

James J. White: When I teach contracts, there's a section in every contract case on interpretation. Usually it winds up being cases about mistake or some crazy thing like that as opposed to interpretation of contract. Appellant decision isn't a very good way to learn how to do that. What I've done the last few years — and now we're putting out a casebook and putting these materials in our teachers manual — is I've taken actual contracts where I've been an expert witness or I've been a consultant and put them in the book and then put in the arguments and then hand them out to the students and divide them up and make them argue for each position. It still doesn't work perfectly because they don't have the kind of incentives that the lawyer whose client is going to win or lose \$300 million has. But it's better than nothing.

A drawing of proposed new Law School facilities viewed from Monroe Street to the south.



Third-year Challenge adds new dimension, meets goal

IN DETAIL

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Writer Bert Sugar, '60, named to International Boxing Hall of Fame

Prolific boxing writer Bert Randolph Sugar, '60, has been named to the International Boxing Hall of Fame.

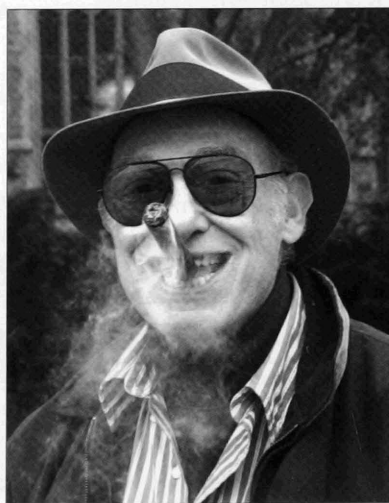
Affectionately known in ring circles as "The Hat" because of his trademark fedora and cigar, Sugar's writing has appeared in *Sports Illustrated*, *Sports Business Journal*, *The New Yorker*, and many other periodicals. He has authored more than 80 books, including *Sting Like a Bee*, *Inside Boxing*, and *The 100 Greatest Boxers of All Time*. A former editor of *Boxing Illustrated* and *The Ring* magazines, he also is the founder of *Fight Game* magazine. Sugar won the Boxing Writers Association's Nat Fleischer Award for "Excellence in Boxing Journalism" in 1990.

"I'm honored to be enshrined in the International Boxing Hall of Fame alongside some of the great writers who have covered boxing, like Damon Runyon, A.J. Liebling, Bill Heinz, and Budd Schulberg — writers I've been compared to," said Sugar.

Schulberg, a 2003 inductee to the Hall of Fame, had high praise for Sugar: "Seeing that famous hat and cigar of Bert's in the Hall of Fame will be great. His style is breezy and

always funny. He's one of the quickest wits I've ever met in boxing. At the same time, underneath the wit and the jokes he is very serious about the sport and he knows what he's talking about. He's well deserving of being in the Hall of Fame."

"Bert Randolph Sugar is a big, big plus for boxing" and an "excellent choice for the Hall of Fame," said 1992 inductee Angelo Dundee, who trained both Muhammad Ali and Sugar Ray Leonard.



Students at the University of Michigan Law School achieved their fund-raising goal for a unique program designed to promote support of the Law School by recent graduates. Under the program funded by John Nannes, '73, third-year law students pledged to make an annual contribution to the Law School Fund for the first three years following their graduation. In return for their promise of future support to the School, Nannes allows the student to designate a portion of his gift to the Law School student organization of her/his choice.

As an active member of the Law School's alumni, Nannes had observed a steady decline over the years in the number of graduates contributing to the Law School. He developed the Third-Year Challenge in an effort to demonstrate to law students the importance of alumni financial support to daily activities at the Law School. This year's Nannes Third-Year Challenge set and fulfilled an ambitious goal: to sign-up 200 law students, which is more than 50 percent of the graduating class. Participating students have designated their portions of Nannes' contribution, \$250 for each pledge, to various student groups to underwrite visiting speakers, travel expenses to public interest job fairs, and a variety of other activities that would not be possible without alumni support.

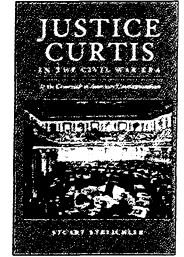
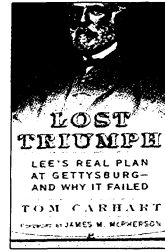
"This program is a labor of love," says Nannes, a partner with Skadden, Arps, Slate, Meagher & Flom in Washington, D.C. "In concept, it has been terrific, but in the past we've struggled a little with follow-through."

This year, for the first time, a student executive committee ran the program and Nannes thinks this is the way to go. "The student committee did a fantastic job at drawing their classmates into signing up, and the same committee will see to it that students fulfill their part of the bargain," he explained.

"This is only the beginning," said law student/executive committee member Matt Nolan. "Hopefully by the time I'm funding it, the Challenge will have a 75 – 80 percent participation rate that can propel us to the top of the fundraising heap."

"The Law School Fund's health is critical to the long-term and short-term ability of the dean and the Law School to control our direction and maintain our lofty standards of excellence," he notes.

Beaming new light onto the past



Law School graduates often turn their significant writing talents to projects other than briefs and other legal documents. Three graduates, for example, recently have published books that shed new light on 19th century America, two of them focusing closely on the turbulence born of the Civil War.

- Military historian **Tom Carhart, '73**, has published a new interpretation of Robert E. Lee's strategy for the Civil War battle at Gettysburg that portrays the young cavalry officer George Armstrong Custer as the under-recognized hero of the engagement;
- U.S. Trade Representative and former longtime Ohio Congressman **Rob Portman, '84**, has written a history of the western reach of the Anabaptist group known as the Shakers; and
- Historian **Stuart Streichler, '82**, a Fulbright Lecturer in the graduate School of Law and the Department of American Studies at Tohoku University, Japan, has written the first book-length biography of U.S. Supreme Court Justice Benjamin R. Curtis, who until now has been best known for dissenting in the *Dredd Scott* case.

Carhart's *Lost Triumph: Lee's Real Plan at Gettysburg — and Why it Failed* (G. Putnam's Sons, 2005) restores a well-deserved luster to the reputation of George Armstrong Custer, who by the end of the Civil War was known as "one of the best battlefield generals on either side." Portman's book, *Wisdom's Paradise: The Forgotten Shakers of Union Village* (Orange Frazer Press, Wilmington, Ohio, 2004), provides a chronological tracing of the western expansion of "one of America's great experiments in religious freedom." It details the western thrust of the religious group known as the Shakers,

whose members "were at first persecuted for their beliefs, later ridiculed, and finally romanticized." Streichler's *Justice Curtis in the Civil War Era: At the Crossroads of American Constitutionalism* (University of Virginia Press, 2005) uses Curtis' view of the U.S. Constitution as an adaptable instrument able to fit changing times as a window to examine the legal issues of the Civil War era as well as to shed light on contemporary questions like presidential impeachment and the use of military tribunals to try civilians.

Drawing on painstaking research, and displaying no reluctance to criticize the self-serving shortcomings of official accounts of Gettysburg — even those of J.E.B. Stuart and Lee himself — Carhart makes his case that Lee's launch of Pickett's charge was part of a larger strategy using Stuart's cavalry to come in behind Union lines and force them to break between the double attacks of Stuart's horsemen and Pickett's 15,000 infantrymen. Instead, Pickett's troops were cut to bits because Stuart was unable to get his cavalry into position.

"The major reason for the failure of this masterful plan is that Lee and Stuart both failed to consider the fighting power of Custer," writes Carhart, a West Point graduate and Vietnam war veteran. They did not anticipate "that some brash young Union cavalry leader might do the truly unexpected and throw his regiment of 400 into the face of Stuart's oncoming column of some 4,000 horsemen. When that happened, Custer stopped their movement, and when they were then assailed in both flanks by his other three regiments as well as a few other Yankee units, Stuart and his men became fatally entrapped."

"*Lost Triumph* sets forth an intriguing theory and goes on to prove that it might

just have been possible for General Lee to defeat the Union Army at Gettysburg but for the intervention of George Armstrong Custer," Gail Frey Borden, the author of *Easter Day, 1941*, writes of Carhart's book. "Tom Carhart's grasp of the Civil War is firm, and his writing is lucid and has splendid pace."

Portman's book, written with journalist Cheryl Bauer and published to coincide with the bicentennial of the founding of Union Village, traces the community from its beginning in 1805 in southwestern Ohio as the first Shaker settlement west of the Alleghenies to its signover to the United Brethren Church in 1913. The Shakers, who moved from England and established themselves in New York State in the 18th century, were a communal, celibate, pacifist, and apolitical group recognized for efficient production of clothing, shoes, and other products; their agricultural research and high yields; and religious services in which worshippers sometimes danced themselves into a frenzy of jerking and shaking that led to the group being called "Shakers."

Portman's history covers much more than the Civil War era, but the divisive conflict had significant impact on the pacifist Shakers, and Portman devotes several pages of *Wisdom's Paradise* to how Shaker leaders tried to thread a humane and apolitical path among the warring factions.

Remnants of Shakerism survive today, in Maine, where the dwindling number of faithful remain, and at Shaker Village at Pleasant Hill, near Lexington, Kentucky, where visitors can step into the living history of a restored Shaker village and take overnight lodging in Shaker buildings.

See "BEAMING" on pg. 88.

Chambers recognizes firm, shareholders

"BEAMING" from previous page

Shaker Village President and CEO James C. Thomas calls Portman's book "a marvelous contribution to Shaker scholarship." "The Shakers of Union Village may bemuse or inspire you, but their story will remain with you long after your read this book," adds Michael O'Bryant, author of *The Ohio Almanac*. "The authors have recovered an incredible saga of American history that reads like a movie script."

Streichler's 304-page book on Curtis is the first scholarly examination of the legal views of a U.S. Supreme Court justice who until now has been little known to most historians. Curtis was the lead attorney defending President Andrew Johnson in his impeachment trial, but he is best known for disputing Chief Justice Taney's position in *Dredd Scott* that no black person could become a U.S. citizen. Curtis resigned from the Court in the wake of the decision, and remains the only justice to leave the Court on grounds of principle. But Curtis was no abolitionist idealogue; he also clashed with Boston abolitionists over enforcement of the Fugitive Slave Act and opposed the Emancipation Proclamation.

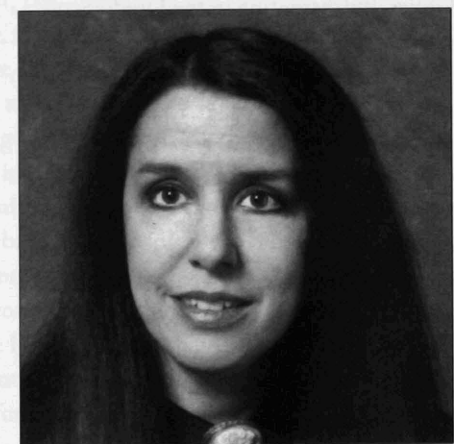
"Curtis was an extremely important political and legal figure during the 19th century, yet he remarkably lacks a serious biography. . .," according to Mark Graber of the University of Maryland, author of *Transforming Free Speech: The Ambiguous Legacy of Civil Libertarianism*. "Professor Streichler does a first-rate job. No need exists for a further biography."

The 2005 edition of *Chambers USA, America's Leading Lawyers for Business* has recognized the Bingham Farms, Michigan-based law firm Vercruyse Murray & Calzone as one of the three best Employment Law Firms in Michigan, and also has named three of its shareholders who are Law School graduates among Michigan's leading management employment lawyers.

A "cream of the crop" law firm, "this boutique was highly endorsed by market observers for its depth, breadth, and consistency of high quality advice," according to *Chambers*.

The publication recognized shareholder Robert M. Vercruyse, '69, as one of the top three management employment lawyers in Michigan and cited shareholders David Calzone, '81, and Diane Soubly, '80, for their accomplishments.

Robert M. Vercruyse, '69
David Calzone, '81,
Diane Soubly, '80





From left, Joe C. Foster Jr., '49; Mark Shaevsky, '59; Lee Hornberger, '68; Robert A. Stein, '71; Michael D. Mulcahy, '72; Barbara Rom, '72

CLASS NOTES

1949

Joe C. Foster Jr., shareholder in Foster Zack & Lowe PC, in Okemos, Michigan, has been selected for inclusion in the Tax Law section of *The Best Lawyers in America 2005 – 2006*.

1951

55TH REUNION

The reunion of the class of 1951 will be October 27 – 29, 2006

1956

50TH REUNION

The reunion of the class of 1956 will be October 27 – 29, 2006

1953

Alfred and the late **Ruth Gerber Blumrosen**, of Rutgers Law School in Newark, New Jersey, have jointly published on the Web “The Realities of Intentional Job Discrimination in Metropolitan America-1999,” and also have published a new book, *Slave Nation: How Slavery United the Colonies and Sparked the Revolution*.

1959

Mark Shaevsky, of counsel in the Corporate and Securities Law Department of Detroit-based Honigman Miller Schwartz and Cohn LLP, has been named in *The Best Lawyers in America 2005 – 2006*. He has been included in the last five editions of the publication.

1961

45TH REUNION

The reunion of the class of 1961 will be October 27 – 29, 2006

1966

40TH REUNION

The reunion of the class of 1966 will be October 27 – 29, 2006

1967

Joseph F. Page has been named head of Cox, Hodgman & Giarmarco PC’s Business Practice Section. The firm is located in Troy, Michigan. Page specializes in health care, general corporate, and business law.

1968

Lee Hornberger, who practices in Traverse City, Michigan, completed a specialized mediation program at Pepperdine University School of Law. He also recently spoke on Settlement Agreements at the Institute of Continuing Legal Education’s Annual Labor and Employment Law Institute in Troy.

1969

Parker Poe Adams & Bernstein LLP attorney **Donald P. Ubell** has been recognized in the Public Finance Law section of *The Best Lawyers in America 2005 – 2006*.

1971

35TH REUNION

The reunion of the class of 1971 will be October 27 – 29, 2006

Robert A. Stein of Robert Stein & Associates PLLC, Concord, New Hampshire, is listed in *The Best Lawyers in America 2005-2006*, and has been included for the last 10 years.

Michael D. Mulcahy, a member of the Bloomfield Hills,

Michigan, law firm Dawda, Mann, Mulcahy & Sadler PLC, has been recognized in *Chambers USA, America’s Leading Lawyers for Business*.

Barbara Rom, who was earlier in the year named partner-in-charge of the Detroit office of Pepper Hamilton LLP, also has been named in *The Best Lawyers in America 2005 – 2006*. Rom has appeared in every edition since 1989 when she was the first female attorney from Michigan named to the list.

1973

Sterling Speirn, who is currently president and chief executive of the Peninsula Community Foundation in San Mateo, California, has been selected as the next president and CEO of the Kellogg Foundation. He will begin his new duties upon the retirement of the current president, William C. Richardson, at the end of this year.

1974

The College of Management at the Georgia Institute of Technology has named **Jerome A. Atkinson** to its Academy of



From left, Philip Ahrens, '75; Joseph M. Polito, '75; Joseph A. Ritok Jr., '75; George A. Lehner, '76; Jerome R. Watson, '76; William R. Bay, '78; Charles M. Greenberg, '85

Distinguished Alumni. Atkinson is executive vice president, general counsel, and chief compliance officer for Assurant Solutions, located in Atlanta. He is also a member of the Georgia Tech College of Management Advisory Board and is a trustee of the Georgia Tech Foundation Inc.

Michael A. Snapper has joined Barnes & Thornburg LLP to establish its Labor and Employment Practice in its Grand Rapids, Michigan, office.

1975

Philip Ahrens, a partner at Pierce Atwood LLP in Portland, Maine, has been ranked among the best attorneys in the nation by *Chambers and Partners*.

Lawrence Joseph is the author of two new books of poems, *Into It*, and *Codes, Precepts, Biases and Taboos: Poems (1973 – 1993)*, published in September by Farrar, Straus, and Giroux. He also has been named the Reverend Joseph T. Tinnelly C.M. Professor of Law at St. John's University School of Law.

Joseph M. Polito, a partner and past chair of the Environmental Law Department of Detroit-based Honigman Miller Schwartz and Cohn LLP, has been recognized in *The Best Lawyers in America 2005 – 2006*. He is listed as a top practitioner in both environmental

and natural resources law and has been included in the publication since 1989.

Joseph A. Ritok Jr., managing member of the Detroit office of Dykema Gossett PLLC, has been inducted as a fellow of the College of Labor and Employment Lawyers of the American Bar Association.

Matthew B. Van Hook has joined the law firm of Engel & Novitt, located in Washington, D.C., as a partner. He was previously senior counsel at the firm Holland & Knight LLP.

1976

30TH REUNION

The reunion of the class of 1976 will be October 27 – 29, 2006

Barry M. Kaplan has moved from Perkins Coie LLP to Wilson Sonsini Goodrich and Rosati in Seattle.

George A. Lehner, a trial lawyer and mediator in the Washington, D.C., office of Pepper Hamilton LLP, has been elected to the firm's executive committee.

Jerome R. Watson, a principal in the Detroit office of Miller, Canfield, Paddock and Stone PLC, has been elected to a two-year term as a managing director of the firm. Watson is a

member of the firm's Labor and Employment Law Group.

1978

Leslie W. Abramson, LL.M., has received a University of Louisville President's Award for Outstanding Scholarship, Research, and Creative Activity. Professor Abramson is on the faculty of the University's Brandeis School of Law and is a leading scholar in judicial ethics in the United States.

William R. Bay, partner with Thompson Coburn LLP, was named Marketing Partner of the Year as part of the 2005 Thompson Elite Excellence in Legal Marketing Awards. He works in the St. Louis, Missouri, office and is chairman of the firm's Client Relations Committee.

1980

G.A. Finch has been selected by *Chicago* magazine and *Law & Politics* magazine as one of Illinois' Super Lawyers. Finch, a shareholder of Querrey & Harrow in Chicago, is chair of both the firm's Real Estate Group and Governmental Affairs Group.

1981

25TH REUNION

The reunion of the class of 1981 will be September 8 – 10, 2006

1983

James G. Martin, former U.S. Attorney for the Eastern District of Missouri, has joined Armstrong Teasdale LLP in St. Louis as an equity partner in the firm's Criminal Defense and Compliance Practice Group.

The Chicago, Illinois, office of Holland & Knight has announced that **John Mussman** has joined its Banking & Finance Group as a partner.

1985

Susan T. Bart has been named one of the top 50 women attorneys in Illinois. She is a partner in the Private Clients, Trusts & Estates Group at Sidley Austin Brown & Wood LLP in Chicago.

Charles M. Greenberg, a corporate partner in the Pittsburgh, Pennsylvania, office of Pepper Hamilton LLP, has been re-elected to the firm's executive committee. Greenberg heads the firm's sports practice.

1986

20TH REUNION

The reunion of the class of 1986 will be September 8 – 10, 2006

Jenner & Block partner **David M. Greenwald** has authored, with fellow partners Edward F. Malone and Robert R. Stauffer, the third edition of *Testimonial Privileges*. This comprehensive resource book addresses the



From left, Andrew O. Crain, '87; Nancy L. Little, '89; Robert Ouellette, '91; Christopher J. Peters, '92; Emily J. Auckland, '93; Paul Kitch, '93; Kimberly A. Clarke, '94

broad array of privileges that can impact civil and criminal litigation.

1987

Andrew O. Crain has been named managing director at Tully & Holland Inc., a Wellesley, Massachusetts, investment bank. He was previously president and CEO of The Whipple Company and began his career practicing corporate law at Foley Hoag LLP in Boston.

Felisia A. Wesson has been named vice president for administration for the Los Angeles County Museum of Art. She was previously associated with the Museum of Natural History in Chicago.

1988

Michelle Roberts has joined Bracewell & Giuliani LLP as a partner in the Trial Section of its Dallas, Texas, office.

Kent Syverud has been named dean of the School of Law at Washington University, St. Louis, Missouri. He was previously dean of Vanderbilt University Law School.

1989

Timothy Connors has been elected to partnership in the Cleveland, Ohio, firm of Calfee, Halter & Griswold LLP. Connors practices information technology and intellectual property law.

Nancy L. Little, shareholder in Foster Zack & Lowe PC, located in Okemos, Michigan, has been named in the area of Trusts and Estates in *The Best Lawyers in America 2005 – 2006*.

1990

Greg Heller has recently formed a law firm named Young Ricchiuti Caldwell & Heller in Philadelphia. He and his partners represent plaintiffs in catastrophic personal injury litigation.

David Rugendorf has made partner at Mitchell Silberberg & Knupp LLP's Los Angeles, California, office. He practices immigration and nationality law.

Ron Wheeler, a faculty law librarian who is the head of faculty and public services at the University of New Mexico School of Law as well as a lecturer at the law school, has received the American Association of Law Libraries 2005 Minority Leadership Development Award.

1991

15TH REUNION

The reunion of the class of 1991 will be September 8 – 10, 2006

Robert Ouellette, chair of the Corporate Practice Group at Schottenstein Zox & Dunn in Columbus, Ohio, has served as contributing editor and coauthor of *The M&A Process: A Practical Guide for the Business Lawyer*. The

book is available through the American Bar Association.

1992

In April 2005, **Christopher J. Peters** received two awards from Wayne State University, where he is on the Law School faculty. He received the President's Award for Excellence in Teaching and also a Career Development Chair Award.

1993

Oscar Alcantara, partner in the Chicago, Illinois, law firm of Goldberg Kohn Bell Black Rosenbloom & Moritz Ltd., has been elected to the board of Meritas Law Firms Worldwide. He will serve a three-year term.

Emily J. Auckland has joined the Phoenix, Arizona, based law firm of Gust Rosenfeld PLC. She practices in the area of real estate and environmental law.

Christopher B. Gilbert, who is with the Houston, Texas, office of Bracewell & Giuliani LLP, has been named as a "Texas Rising Star" by the *Texas Monthly*.

The law firm of Jenkins & Gilchrist recently appointed **Paul Kitch** as co-practice group leader of the firm's Intellectual Property Department. Kitch is an IP shareholder in the Chicago, Illinois, office.

1994

Kimberly A. Clarke has attained partner status in the Grand Rapids, Michigan, office of Varnum, Riddering, Schmidt & Howlett LLP. She practices labor and employment relations law.

Mark A. Shiller has been appointed chair of the Estate and Trust Planning & Administration Section at Briesen & Roper SC in Milwaukee, Wisconsin.

Mark C. Witt, a shareholder and member of the Corporate Practice Group in the Milwaukee, Wisconsin, office of Godfrey & Kahn SC, has been included in *The Business Journal's* "40 Under Forty" listing.

1995

Thomas D. Cunningham has been elected to partnership in the Insurance and Financial Services Group of Sidley Austin Brown & Wood LLP's Chicago, Illinois, office.

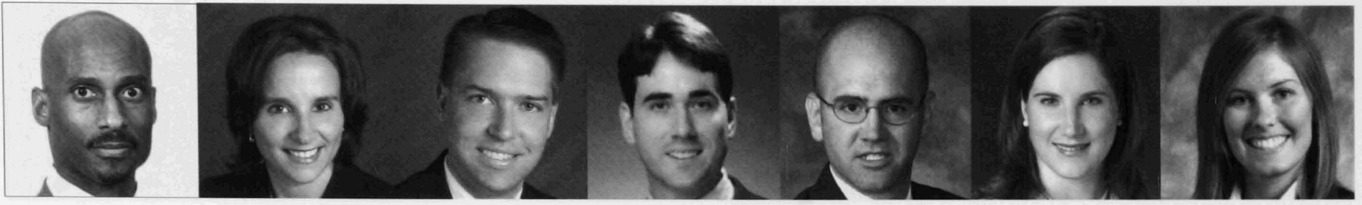
Bentina Chisolm Terry has been named general counsel and vice president of external affairs of Southern Nuclear, a subsidiary of Southern Company, located in Birmingham, Alabama.

1996

10TH REUNION

The reunion of the class of 1996 will be September 8 – 10, 2006

Kristin A. Hermann of the Detroit, Michigan, office of Miller,



From left, Freeman L. Farrow, '97; Stephanie R. Settingington, '97; Bryan R. Walters, '97; David L. Skidmore, '98; Kevin C. Boyle, '04; Julia Sutherland, '05; Kathryn A. Wood, '05

Canfield, Paddock and Stone PLC has been elected a principal. She is a member of the firm's Financial Institutions and Transactions Group.

Travis Richardson, of the Law Offices of Travis Richardson in Chicago, Illinois, was presented the Junius Williams Young Lawyers of the Year Award by the National Bar Association's Young Lawyers Division at the NBA's mid-year conference in Orlando, Florida, last summer. Richardson also has been named one of the "40 Illinois Attorneys Under Forty to Watch" by the Chicago-based *Law Bulletin* Publishing Company.

Lucy M. Snyder has joined Fausone, Taylor & Bohn LLP's Livingston County, Michigan, office as an associate attorney. She was formerly a shareholder of Cooper & Walinski LPA of Ann Arbor and Toledo, Ohio.

1997

Chris Falkowski has resigned as partner in Honigman Miller Schwartz and Cohn LLP in Detroit to found Falkowski PLLC, a "virtual" law firm focusing on intellectual property and information technology matters. One of the goals for the new firm is to make the patent system more accessible to clients by leveraging technology to reduce the costs associated with patent filings. The Web site for the new venture is www.falkowskipllc.com.

Freeman L. Farrow, M.D. and an associate at Miller, Canfield, Paddock and Stone PLC, has graduated from Leadership Oakland's Cornerstone Program. A member of the Detroit office's Litigation and Dispute Resolution Group, he also practices medicine with Michigan's Emergency Physicians Medical Group.

Stephen M. Ryan has joined the Houston office of LeBoeuf, Lamb, Greene & MacRae LLP as an associate in the Litigation Group. Ryan is also a Lieutenant Colonel in the U.S. Air Force Reserve and the Texas Air National Guard and serves as the Staff Judge Advocate for the Houston-based 147th Fighter Wing.

Stephanie R. Settingington has attained partner status in the Grand Rapids, Michigan, office of Varnum, Riddering, Schmidt & Howlett LLP. She practices labor and employment relations law.

Bryan R. Walters has attained partner status in the Grand Rapids, Michigan, office of Varnum, Riddering, Schmidt & Howlett LLP. Walters is a litigation and trial services attorney.

1998

Jennifer Boulton has been elected a shareholder of Briggs and Morgan PA in Minneapolis. She is a member of the firm's

Public Finance Section, which Thomson Financial ranked 10th in the nation for number of bonds issued in 2004.

Scot Hill has been named a partner in the Kansas City, Missouri, office of Stinson Morrison Hecker LLP. He practices in the firm's General Business Division.

Lisa Meengs Joldersma has rejoined Crowell & Moring LLP's Washington, D.C., office as counsel in the Health Care Group. Prior to returning to the firm, she served in the Office of Legislation for the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services.

Stuart D. Lurie has joined the Litigation Department at Stradley Ronon Stevens & Young LLP's Philadelphia office. He was previously an associate at Pepper Hamilton.

David L. Skidmore, an attorney with the Grand Rapids, Michigan, office of Warner Norcross & Judd LLP, is the author of the "Wills" section in the second edition of the *Michigan Law and Practical Encyclopedia*, published by LexisNexis.

2000

Paul S. Kemp's latest book, *Resurrection*, was published in 2005.

2001

5TH REUNION

The reunion of the class of 2001 will be September 8 - 10, 2006

2004

Kevin C. Boyle has joined the Milwaukee, Wisconsin, office of Godfrey & Kahn's Environmental and Energy Practice Group.

Daniel B. Davis has joined Jones Walker's Baton Rouge, Louisiana, office as an associate in the litigation practice. Davis previously was in the litigation section at Varnum, Riddering, Schmidt & Howlett in Grand Rapids, Michigan.


2005

Julia Sutherland has joined Howard & Howard's Bloomfield Hills, Michigan, office. She concentrates her practice in commercial litigation and labor and employment law.

Kathryn A. Wood has joined the Grand Rapids, Michigan, office of Warner Norcross & Judd LLP as an associate.

IN MEMORIAM

'21	Vincente Delrosario (LL.M.) Harry W. Rudine		'51	Melvin C. Holmes Carl J. Suedhoff Jr. Arnold W. Tammen	8/22/2005 8/3/2005 5/3/2005
'23	Yuan Mei Chang (LL.M.)		'52	William E. Palmer W. Bruce Thomas	8/1/2005 6/5/2005
'25	Rufino Luna		'53	Frank W. Hoak Dean E. Richardson	7/4/2005 6/3/2005
'29	John William Garvy Juan Laurel Lanting (LL.M.)	5/1/2005	'54	Jerome V. Sluggett	7/25/2005
'31	Dan A. Manason	4/30/2005	'57	James E. Pohlman	5/17/2005
'35	K. Raymond Clark (LL.M.)	7/20/2005	'58	James E. Crowther	7/4/2005
'37	F. Carl Daehler Sr. Albert J. Tener	7/17/2005 6/5/2005	'59	Richard Anthony Baenen Robert A. Vaughn	7/23/2005 5/29/2005
'39	Bernard E. Hart Henry L. Pitts Allan A. Rubin Allison K. Thomas	8/2/2005 7/7/2005 4/1/2005 5/7/2005	'60	Philip A. Clancey Robert C. Neal	7/5/2005 6/4/2005
'40	Wilson E. Best Alonzo W. Clay Jr. J. Thomas Guernsey	8/7/2005 7/22/2005 6/19/2005	'63	John D. Ketelhut Leonard Shulman William R. Thompson	4/17/2005 7/24/2005 6/19/2005
'41	Robert V. Hackett	5/30/2005	'65	Raymond G. Esch James M. Kieffer Emerson B. VanDoren	6/16/2005 6/21/2005 7/12/2005
'42	Horace W. Adams James R. Davis	6/1/2005 6/18/2005	'66	Kenneth F. Snyder William C. Steuk	7/8/2005 3/16/2005
'46	Rosemary Scott	5/24/2005	'67	Norman G. Peslar	8/1/2005
'47	William E. Pfau Jr.	6/16/2005	'68	Ronald J. Lang	2/28/2005
'48	Peter P. Darrow Eugene N. Hanson (LL.M.) Richard McCormack Jeanne Tabb	7/27/2005 4/18/2005 6/6/2005 6/12/2005	'70	James I. DeGrazia	4/19/2005
'49	Charles Earl Brown Andrew H. Marsch Richard V. Wellman	6/4/2005 3/9/2005 6/3/2005	'72	J. Dorian Sonnenschein	7/18/2005
'50	Robert R. Finch Wyolean S. Geffrard Fred L. Hamric	8/8/2005 6/30/2005	'78	Robert L. Kamholz Jr.	5/28/2005
			'79	Jean Jones Porter	7/10/2005
			'85	Susan E. Hamilton	
			'91	Brian E. Mazurek	6/9/2005



Do different types of hospitals act differently?

By Jill R. Horwitz

The following is based on testimony delivered before the U.S. House of Representatives Committee on Ways and Means on May 26, 2005

Mr. Chairman, in its review of the tax-exempt sector, this committee has heard many distinguished witnesses discuss the legal requirements governing nonprofit organizations, the advantages that come with nonprofit status, and whether nonprofit organizations provide sufficient public benefits to justify these advantages. These are particularly important questions for the hospital industry, where for-profit, nonprofit, and government hospitals operate side by side.

I will discuss two questions about the implications of the mix of hospital types: First, do different types of hospitals act differently? Second, are there significant competitive issues raised by having different hospital types competing in the same market together?

Medical service provision

Underlying many of the policy questions about the legal treatment of nonprofit hospitals is one basic issue: Do they act the same as for-profit hospitals — and if not, what are the differences and are they big enough to matter?

There are good reasons to expect hospitals of different ownership status to act alike. They all share common goals of treating sick people; they all employ large numbers of doctors and nurses, using medical technology; they contract with the same employers and insurance companies, and are subject to the same health care regulations. Superficially, they resemble each other so much that a patient admitted to a hospital is unlikely to be able to tell whether it is a for-profit or a nonprofit.

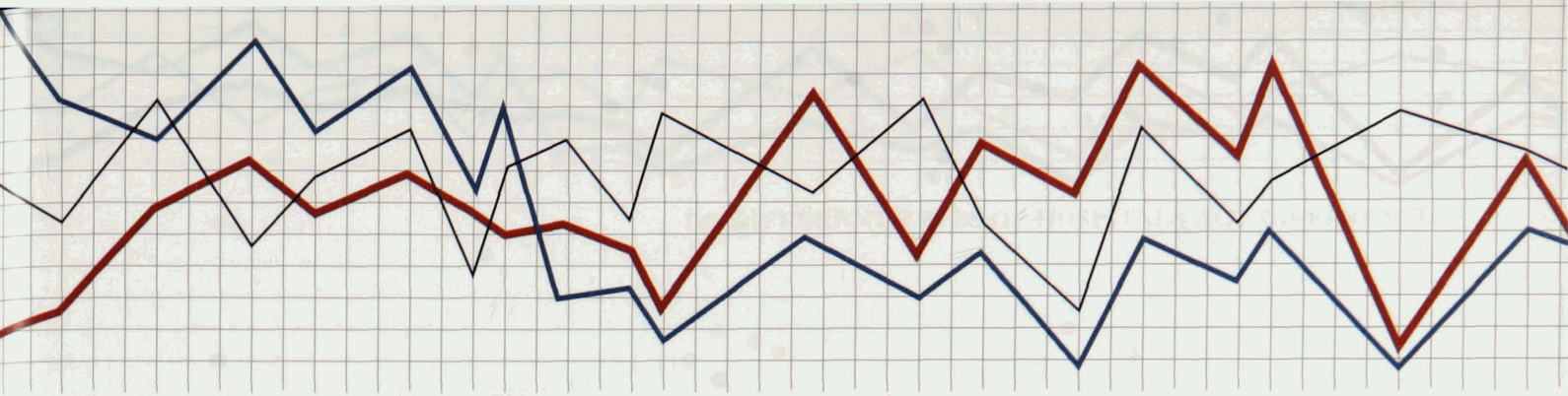
However, whether you find differences between nonprofit and for-profit hospitals depends on where you look. Most studies

of hospital ownership have examined financial measures, and have found little difference among hospital types. For example, research has shown that nonprofit and for-profit hospitals are quite similar in their costs, sources of capital, exercise of market power and adoption of certain types of technology. Although for-profit hospitals pay higher wages and offer incentives to top managers, nonprofits are increasingly using performance-based pay as well. Finally, during the early 1990s, for-profit hospitals and nonprofits had similar margins, although for-profit margins were higher than those of nonprofits by the late 1990s. There is some evidence that in the most recent years the average nonprofit hospital had a negative income per admission, while the average for-profit had a positive income per admission.

Such financial measures, however, provide an incomplete picture of a hospital. Because they are first and foremost providers of care for the sick and injured, to evaluate whether nonprofit hospitals earn their keep we must also know how hospitals differ in the *medical care* they provide.

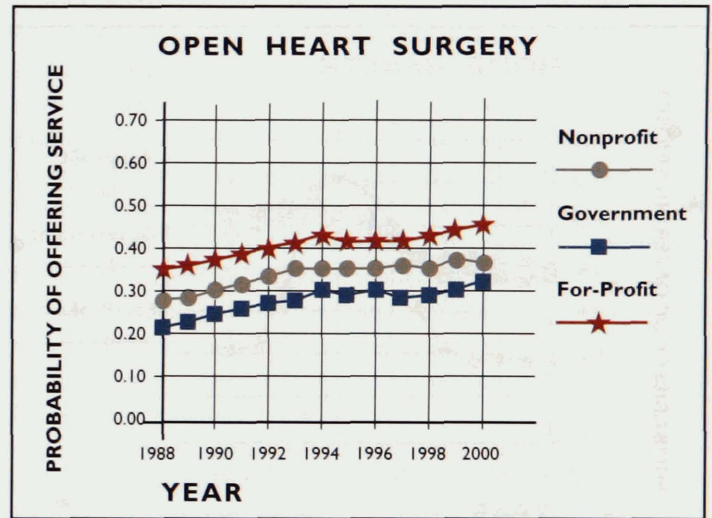
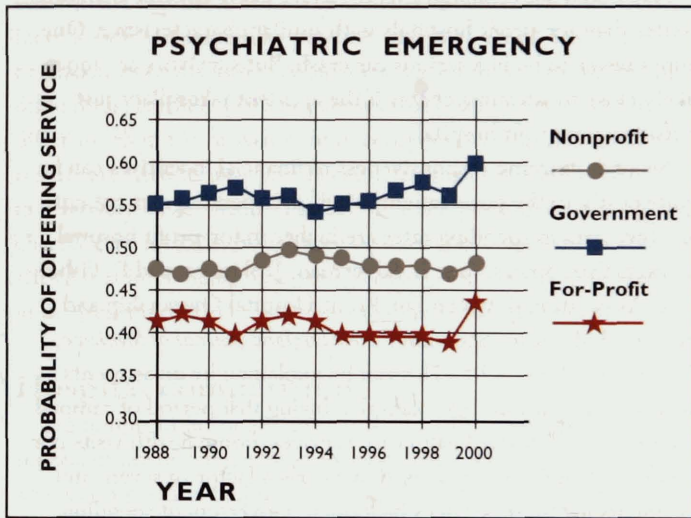
In my research on medical services, I have found large, systematic, and long-standing differences among hospital types. For-profit hospitals are more likely than their nonprofit counterparts to offer the most profitable services, and less likely than either nonprofits or government hospitals to offer services that are unprofitable yet valuable, even essential.

I will offer a few examples. Psychiatric emergency care is considered an extremely unprofitable service, both because of low reimbursements and because its patients tend to be poor and uninsured. Comparing hospitals that are similar in terms of size, teaching status, location, and market characteristics, for-profit hospitals were seven percentage points less likely than nonprofits and 15 percentage points less likely than government hospitals to offer psychiatric emergency services.



Probability of offering psychiatric emergency services

Probability of offering open heart surgery

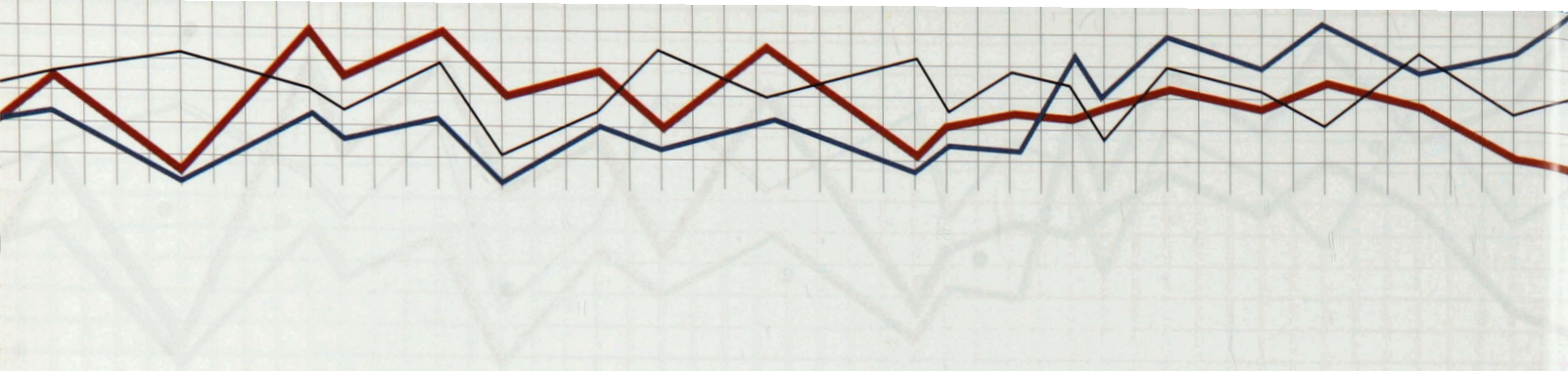


SOURCE: Jill Horwitz, "Making Profits and Providing Care: Comparing Nonprofit, For-Profit, and Government Hospitals," *Health Affairs*, v.23, n.3 (2005): 790-801.
 NOTES: Controlling for size, teaching status, location, and market characteristics.

SOURCE: Jill Horwitz, "Making Profits and Providing Care: Comparing Nonprofit, For-Profit, and Government Hospitals," *Health Affairs*, v.23, n.3 (2005): 790-801.
 NOTES: Controlling for size, teaching status, location, and market characteristics.

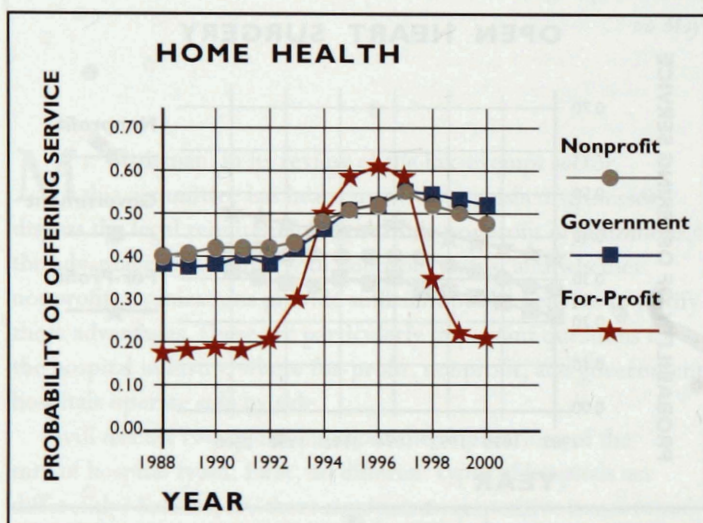
Compare these results to open heart surgery, a service so profitable that it is often referred to as the hospital's "revenue center." For-profit hospitals are over seven percentage points more likely than similar nonprofit hospitals and 13 percentage points more likely than government hospitals to provide open-heart surgery.

Perhaps what is most striking about for-profit hospitals is how strongly and quickly they respond to changes in financial incentives. The best illustration of this comes from a set of post-acute care services, such as home health care and skilled nursing services, whose profitability changed sharply over time. These services became highly profitable in the early 1990s, then reversed and became less profitable with the 1997 Balanced Budget Act. All three types of hospitals increased their offerings of home health care when it became profitable, but for-profits did so to a striking degree. From 1988 to 1996, the probability of a for-profit hospital offering home health services more than tripled — from 17.5 percent to 60.9 percent. During the same period, nonprofit and government hospitals increased their investment at a much lower rate (nonprofits went from 40.9 to 51.7 percent, government



hospitals went from 38.1 to 51.9 percent). When these services became unprofitable, for-profits were also quick to exit the market, roughly five times quicker than nonprofits. This finding provides evidence that for-profits move quickly and strongly in response to financial incentives.

Probability of offering home health service



SOURCE: Jill Horwitz, "Making Profits and Providing Care: Comparing Nonprofit, For-Profit, and Government Hospitals," *Health Affairs*, v. 23, n. 3 (2005): 790-801.
 NOTES: Controlling for size, teaching status, location, and market characteristics.

In sum, for-profit and nonprofit hospitals act quite differently. For-profit hospitals are considerably more responsive to financial incentives than nonprofits, not just with respect to their decisions to offer services but also in their willingness to operate at all. Under financial pressure, for-profit hospitals are more likely to close or restructure than nonprofits.

The most important aspect of these findings is that nonprofits are more willing than for-profits to offer services even though they happen to be unprofitable. These services include not just psychiatric emergency care, but also child and adolescent psychiatric care, AIDS treatment, alcohol and drug treatment, emergency rooms, trauma services, and obstetric care.

There are a few clear implications of these findings for

the question of whether nonprofits provide valuable benefits to society. First, if the mix of medical services available in a community is strongly determined by the profitability of the services, this is potentially worrisome for all patients — rich and poor, insured and uninsured. Patients need what they need depending on their medical condition, not on the price of a service. Even rich and insured patients sometimes need services that are unprofitable for hospitals to offer.

As I noted above, nonprofits are more likely to offer a trauma center than for-profit hospitals with similar characteristics. One hopes never to be in a serious car crash. But survivors are more likely close to a trauma center if the accident takes place just outside a nonprofit hospital.

Second, extreme responsiveness to financial incentives can be quite costly to the government. Medicare spending per patient and increases in spending rates are higher in for-profit hospital markets than others. (See E. Silverman, J. Skinner, and E. Fisher, "The Association Between For-Profit Hospital Ownership and Increased Medicare Spending," *New England Journal of Medicine*, 341, no. 6 [1999]: 420.) This can be explained by investments such as home health. For example, during that period of ramped up provision of home health care services, home health visits per Medicare beneficiary increased by nearly a factor of seven, and payments for those services ballooned. Government spending on post-acute care went from three percent of Medicare hospital payments to 26 percent. This increase was not patients getting better care, but hospitals double-dipping — receiving two reimbursements for the same treatment.

Perhaps more troubling is evidence that the relative responsiveness to financial incentives has led to fraudulent billing through a practice known as "up-coding." Up-coding occurs when a hospital shifts a patient's diagnosis to one that receives higher reimbursement from Medicare. For example, a hospital may label a case of pneumonia as a case of pneumonia with complications, at increased cost to the government of about \$2,000 per discharge. Although all types of hospitals have done this, for-profit hospitals have done this more than nonprofit hospitals. (See E. Silverman and J. Skinner, "Medicare Up-coding and Hospital Ownership," *Journal of Health Economics* 23 [2004]: 369-389.) Moreover, up-coding is contagious. Nonprofit hospitals are more likely to up-code when they have for-profit hospital neighbors than when they do not.

As a final point on differences in hospital behavior, let me say a word about charity care. Over the past 50 years, the legal require-

ments for nonprofit hospitals seeking tax exemption have increasingly shifted from narrow requirements that hospitals relieve poverty to broader demonstrations of charitable benefit. Yet, public attention to the provision of what is called “charitable care” has remained robust. Whether nonprofit and for-profit hospitals differ in their provision of charity care is difficult to say — in large part because what is typically measured is overall uncompensated care. Uncompensated care provided by hospitals represents items that most of us would not consider charitable. These include bills left unpaid by patients who have the ability to pay or discounts to insurance companies. Given these measurement difficulties, credible evidence shows that hospital types do not differ much in the provision of uncompensated care. Even these results are hard to interpret because for-profit hospitals locate in relatively better-insured areas. My main point in discussing charity care is that although free care for those who are unable to afford it is important, other differences — in services, in quality, in medical innovation — are valuable to all members of society.

Hospital competition

Do nonprofit hospitals have anti-competitive effects, or represent unfair competition to for-profits? The arguments about competition boil down to the idea that the nonprofit tax exemption is either unfair or distortionary. An older generation of research claimed, for example, that the tax exemption gives nonprofits an extra financial boost that makes it difficult for for-profits to compete. Newer research has dismissed this notion by demonstrating that income tax exemptions do not lower input prices. Furthermore, as an empirical matter, if there were anti-competitive effects we would not see mixed markets with both for-profit and nonprofit hospitals, but we do.

Some argue that nonprofits are less efficient than for-profits and are able to stay in business because they use their surpluses, including tax savings, to offset higher production costs. This idea, too, has little foundation. In determining whether an organization is efficient, it is centrally important to answer the question “efficient at what?” For-profits are more efficient at earning profits. In the hospital sector, we care about efficiency in providing health care. Overall, empirical evidence shows no appreciable differences in efficiency at providing health care between for-profit and nonprofit hospitals.

A final idea is that tax savings lead nonprofits to produce too many goods of too little value. That is, nonprofits use their financial savings to lower costs and, therefore, patients will buy

too much health care. This argument implies that the health care provided by nonprofit hospitals is too cheap. The idea that health care is too *inexpensive* is generally not of great concern, particularly when annual medical inflation rates are back on the rise at 4 percent per year.

The best evidence shows that nonprofit hospitals, rather than using their financial savings to offset inefficient management or lower prices to drive for-profit competitors out of business, provide unprofitable and essential services that are valuable to society. These come not only in the form of more valuable medical services like trauma care, but also in training physicians and nurses. It is the vigorous competition *among* nonprofit hospitals that has produced virtually all the medical innovations on which we rely. Imagine where we would be without the first smallpox vaccination developed at the nonprofit Harvard Medical School or the first brain surgery at Johns Hopkins. We can thank nonprofits for robotic surgery, pacemakers, artificial skin, kidney transplants, and new technology to save premature infants. Finally, along with the competition among nonprofit hospitals, having for-profits in the mix provides another dimension of competition, competition between organizational types.

An important lesson of the research I have summarized today is that what you find depends on where you look. If you look at financial behavior, you will find few differences that justify tax exemption. If you look at medical treatment, you will find some striking differences of the sort that need to be included in any thorough discussion of nonprofit benefits.

*The research and teaching interests of Assistant Professor **Jill R. Horwitz** include health law, nonprofit corporations, torts, and economics. Horwitz is also a faculty research fellow at the National Bureau for Economic Research (NBER). She has recently won dissertation awards from AcademyHealth and the National Academy of Social Insurance for her work on hospital ownership and medical service provision. Horwitz holds a B.A. from Northwestern University with honors in history, and an M.P.P., J.D., magna cum laude, and Ph.D. in health policy from Harvard University. Following law school, she served as a law clerk for Judge Norman Stahl of the U.S. Court of Appeals for the First Circuit. Horwitz has held graduate fellowships at Harvard University’s Hauser Center for Nonprofit Organizations and Center for Ethics and the Professions, and a post-doctorate fellowship at the NBER. She is a member of the bar of the Commonwealth of Massachusetts. She joined the Michigan Law faculty in 2003.*





After 70 years of the NLRB: Warm congratulations — and a few reservations

By Theodore J. St. Antoine

The following essay is based on a talk the speaker was invited to deliver to the National Labor Relations Board on June 3 in Washington, D.C., on the occasion of the agency's 70th anniversary.

At one time or another, the National Labor Relations Board (NLRB) has been almost everybody's whipping boy. But on a celebratory occasion like this, we should accentuate the positive. I'll start off by citing a lecture several years ago at the Michigan Law School by Harvard's Louis Jaffe, one of the country's foremost authorities on administrative law. Professor Jaffe voiced the opinion that the NLRB and the Securities and Exchange Commission were the two best federal administrative agencies. If, as seems appropriate, we classify the agencies as primarily either adjudicative or regulatory, then I think the NLRB could rightfully claim that Professor Jaffe ranked it the No. 1 federal adjudicative agency. That is a proud heritage for all of you associated with the Board. Like all legacies, of course, it should be wisely invested and augmented, not squandered.

Now let me go further with a salute for everyone involved in the labor relations field. When students have asked me about choosing a career, I tell them there are three good reasons for going into labor and employment law rather than some dreary specialty like tax or antitrust. First, labor law is intellectually challenging. Wending one's way through the labyrinthine secondary boycott provisions, or even unpacking such a seemingly simple but slippery concept as "discrimination," can be every bit as demanding as anything in the Internal Revenue Code. Second, labor and employment implicate profound human and philosophical values. At stake are matters of social justice and sound economic policy, the effort to balance fairly the assorted vital needs and interests of employees, employers, and the general public. And finally there is the colorful, engaging cast of characters, from both the union and the management sides, that one finds in this ever lively field.

About this third element, the cast of characters, I cannot resist the temptation to give a few examples. Several corporation or union presidents would provide memorable stories but I am going to stick to the group I know best, the lawyers. Tom Harris was a tall, handsome Southern aristocrat with a rapier wit, a former clerk for Justice Harlan Fiske Stone, who wound up as the Associate General Counsel of the AFL-CIO. Arthur Goldberg

said he was looking for a new partner, and specifically he wanted “an Irishman who can talk loud and fast about things he knows nothing about!” Harris immediately responded, “That’s David Feller!” And so began a partnership that had a major hand in the shaping of American labor law, most notably with the *Steelworkers Trilogy* of 1960. Needless to say, Harris had no misconception about the ethnic ironies of recommending Dave Feller (who most definitely did not spring from the Emerald Isle). Harris once remarked to me, way back in pre-Vatican II days as I was duly eating my seafood on a Friday at the old Chez Francois, “You know, St. Antoine, I may be the only union lawyer in the District of Columbia who can eat pork on Friday!” Fred Anderson was a very brilliant, able, and quite conservative management lawyer from Indianapolis. He and I worked together on the ABA Labor Section’s Practice and Procedure Committee. After I went into teaching, he began urging me to do some arbitrating. I put him off for a while but finally thought he deserved an explanation. “Fred,” I said, “I really think I need to let some time elapse to wear off the taint of my union-side practice before I try to arbitrate.” “Oh, no, Ted,” Fred replied. “Quite the contrary. You let me know as soon as you start arbitrating. I want to have you while you are still leaning over backwards to be fair!”

On a more serious note, I should mention the warm personal and professional relationship that has existed over the years between Christopher Barreca, formerly General Electric’s top labor attorney, and Max Zimny, a leading New York union lawyer. Both Chris and Max represented their respective clients with great skill and dedication. Yet they have jointly put together numerous conferences on labor arbitration and co-edited a couple of books on the subject. They also co-chaired the drafting of the 1995 Due Process Protocol on the Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship. Chris and Max represent the very best of the practicing bar in the labor field, demonstrating that highly successful advocates can rise above ideology or client interests to promote the greater good of the legal profession and the public at large.

Finally, I must tell you how I owe to a staff member here at the Board my only chance to represent a principal party, as distinguished from an *amicus*, before the U.S. Supreme Court. My clients consisted of several African American civil rights leaders who were convicted of trespass for sitting in at a “whites-only” lunch counter in Alexandria, Virginia. I won’t name the friend who passed the case on to me because he may have been violating some General Counsel edict in representing the group at the state level, even though he did so on his own time and of course *pro bono*. But whether or not the Board staff member involved had technically run afoul of some agency rule, he represented for me the finest traditions of our profession, doing just the sort of thing I would expect from a member of the labor bar, private or governmental. As for me, the result was a bittersweet victory. The Supreme Court summarily vacated and remanded the Virginia

Supreme Court’s affirmance of the conviction — without oral argument.

You now have a sense of the respect and even affection in which I hold most of the persons who, like those in this room, have devoted themselves to such a richly human field as labor relations rather than some more mundane but also more remunerative specialty. It’s time to talk about the NLRB as an institution. Most commentators focus on the controversial decisions and the deficiencies as seen from one perspective or another. I wish to start by stressing the routine tasks performed day after day by the Board, without fanfare or headlines, in both Democratic and Republican administrations, in routing out employment discrimination perpetrated by either employers or unions. In the decade beginning in 1994, the Board entertained more than 300,000 unfair labor practice charges. During that period discriminatees received a total of over \$900 million in back pay. In a fairly typical recent year about 2,400 victims were entitled to reinstatement. The same decade saw the handling of around 5,000 to 6,000 election petitions each year.

There is, unhappily, a dark side to all this. Fifty years ago only about 6,000 unfair labor practice charges were filed in a year while today that figure is around 30,000, or five times as many. Perhaps not entirely coincidentally, union density in the private-sector workforce today is less than eight percent while it was about 35 percent in the mid-1950s, or almost four and one-half times as great. This dramatic and deplorable decline in union membership continues even though the officially declared policy of the United States remains “encouraging the practice and procedure of collective bargaining.” There is no need to elaborate on the many reasons for the long downhill slide of the American labor movement. They include the loss of mass production jobs, the movement of industry to the nonunion South and Southwest, technological advances, the rise of the union-resistant service sector, employee apathy, and aging, unimaginative union leadership.

There are, however, other reasons for union weakness that I believe have something to do with the law and employer conduct. In my one and only oral argument before the full Board, shortly before leaving for the academic world in 1965, I presented the carefully prepared position of the AFL-CIO and made a major concession. We were arguing for greater access by union organizers to employees on employer premises, at least when employers had made captive audience speeches a week or two prior to a representation election. But we also practically invited the Board, as a trade-off, to spend less time scrutinizing employer speeches for supposedly coercive or threatening statements. In short, our professional organizers had reached the conclusion that unions were losing elections not so much because of employer-incited fear but because of an inadequate opportunity to get the union message across to the employees.

Although I still feel that lack of access to the employees has

been a severe handicap in labor organizing, I now believe I was dead wrong in dismissing or downplaying the factor of employer intimidation, subtle or otherwise. I would point to two sets of facts. First, on the basis of my own extrapolations from figures presented to Congress by Harvard's Paul Weiler, I concluded that workers in the early 1980s were about four to six times more likely to be fired for involvement in organizing drives than their counterparts in the halcyon days of the 1950s (depending on the particular year). Second, I cannot escape the realization that unionization in the public sector has stood at a steady 36 – 37 percent while it has plummeted to less than eight percent in the private sector. And the public sector contains entire groups that would formerly have been regarded as “unorganizable” — doctors, lawyers, and technicians, for example, not to mention schoolteachers. Why such a difference? Almost surely one of the explanations is that once a legislature and a chief executive have adopted a statute authorizing employee organization and collective bargaining, no agency head is going to try to thwart it. And despite the current low rate of private-sector unionization, several studies indicate that a substantial percentage (44 – 57%) of the country's employees would actually prefer to be unionized.

I break no new ground when I assert that the most serious problem with the National Labor Relations Act is probably the inadequacy of remedies and the long delays in getting any relief. Especially for an employee out of a job, with a family to feed and clothe and house, lack of a timely remedy is tantamount to no relief at all. A recalcitrant respondent can easily prevent a discriminatee from getting an enforceable backpay order for two or three years or more. Yet in recent times the Board has seemed reluctant to seek the immediate balm of Section 10(j) injunctions and the courts have seemed hesitant to grant them. In addition, the most recent figures I have seen indicate that during the last decade the time from the filing of a charge to the issuance of a complaint has gone from 52 days to 90 days. That may simply reflect the staffing problems of a severely underfunded agency but it is a distressing symptom nonetheless.

In my opinion the Board missed a major opportunity to put some genuine teeth in an order to bargain when it declined by a 3-to-2 vote to fashion a make-whole remedy in *Ex-Cell-O Corp.*, 185 N.L.R.B. 107 (1970). Why should a rogue employer bother to bargain when it knows that all it faces, after two or three years of Board and court proceedings, is a judicial pronouncement to the effect: “Go ye and sin no more”? By then the union has probably disintegrated anyway. But here too the courts

have been at least as timid as the Board in promoting or countenancing realistic remedies. There are both theoretical and practical arguments against make-whole orders in a Section 8(a)(5) context. But against the imperative of ensuring meaningful remedies for proven wrongs, often egregious wrongs, I find it easy to answer those arguments. In essence, a make-whole remedy would not be imposing a contract on the parties; it would be a backpay award from the date of the refusal to bargain to the resumption of good-faith bargaining. And the amount awarded, based on the contracts of similar parties in the industry and geographical area, would be no more speculative than the damages regularly assessed in antitrust cases. Employees' rights to organize and bargain collectively are just as precious and as entitled to protection as the right of businesses to compete without being subjected to unlawful restraints of trade.

Most parties before the NLRB, especially the victims of union or management coercion or discrimination, are probably most concerned about Board processes and remedies in the run-of-the-mill case. But the media, the scholars, and all manner of conferences tend to concentrate on the big, headline-making, controversial decisions. About these I have quite mixed feelings. First of all, I do not think they are the product of some sinister cabal on the part of one faction or another to enervate unions and disrupt collective bargaining, or, on the other hand, to disable management from running their business. Let me be specific. It happens that I have personally known rather well seven Chairmen of the NLRB: Frank McCulloch, Ed Miller, Betty Murphy, John Fanning, Bill Gould, John Truesdale, and Bob Battista, '64. They were very different people and they had quite different ideas about certain aspects of the law. But anyone acquainted with them would vouch that each in his or her own way, and whatever their political affiliation, was deeply committed to enforcing the law as best they could. On such fundamental matters as extirpating coercion or discrimination against employees from whatever quarter, all seven would have stood united. Yet in an area as divisive, even polarizing, as labor law, it was inevitable that at the margins they would diverge on just what constituted coercion or discrimination or a refusal to bargain or what was an appropriate remedy. The big, headline-making cases are nearly always at the margin.

That brings me to my second point. Much as I value unions and collective bargaining, I find it hard to be shocked or outraged by any one of the Board (or court) decisions of recent years that have made it more difficult to organize or that have otherwise

reduced the Act's protections. I might have disagreed with most of these results but I could not consider them irrational or malicious. They reflected differing philosophies, differing values. Any one of them might be justified on its own and might be considered no more than a nibble at established doctrine and accepted union or employee rights. What is vitally important, however, is the cumulative effect of these decisions. A multitude of smallish nibbles can add up to a large bite and eventually to a badly chewed — if not eviscerated — organism. Against the background of a national policy “encouraging the practice and procedure of collective bargaining,” anything that might have contributed to a drop in the organized private-sector workforce from 35 percent to less than eight percent surely ought to be closely scrutinized.

Protections of the NLRA begin, of course, only with the classification of an individual as an “employee” rather than a supervisory or managerial worker or an independent contractor. A miserly approach to statutory coverage can be said to have begun with the Taft-Hartley Congress, which excoriated the Supreme Court for having treated newsboys at fixed street locations as “employees” and which proceeded to create the new category of “independent contractors” to exclude them. More recently, the Court in several 5 – 4 decisions has checked the Board's inclusion of licensed practical nurses and registered nurses as “employees” and instead excluded them as “supervisors.” *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571 (1994); *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). See also *NLRB v. Yeshiva University*, 444 U.S. 672 (1980) (faculty of “mature” university excluded as “managerial employees”; 5 – 4 decision). These precedents concededly diminish the Board's culpability, but in my view do not fully exonerate it, for its recent decision in *Brown University*, 342 N.L.R.B. No. 42 (2004) (3 – 2 decision), holding that graduate student teaching and research assistants are not employees. Ask some professors in a major research university (under terms of confidentiality) whether the place could handle the rest of the students without employing teaching assistants and see what they have to say. See also *Brevard Achievement Center*, 342 N.L.R.B. No. 101 (2004) (“disabled” persons from sheltered workshop assigned to janitorial jobs in training program not employees; 3 – 2 decision). *Brown* and *Brevard* are quite logical and understandable, like the Supreme Court's nurses and faculty cases, but their net effect is to reduce the potential number of organizable employees. In my view, they are resolving the doubts in borderline cases in the wrong direction.

A somewhat similar situation arose in *IBM Corp.*, 341 N.L.R.B. No. 148 (2004), still another 3 – 2 decision, which overruled *Epilepsy Foundation of Northeast Ohio*, 331 N.L.R.B. 676 (2000), and held that the *Weingarten* right of an employee to have a representative present at a disciplinary interview did not apply to a nonunion employee. It seems to me that if a Section 7 right of the individual is at stake, then the right to representation, like the right to strike itself, should accrue regardless of the existence of a union. On the other hand, if the right is more a matter of the bargaining rights of the union under Sections 9(a) and 8(d), then a quite logical case can be made that the right does not extend to a nonunion worker. The latter, however, does not seem to be the analysis employed by the Board. In any event, my basic point is that once again a marginal case is being decided in a way that nibbles away at the rights protected under the Act.

Nonetheless, I continue to sympathize with the Board because it has often been rebuffed by the courts when it dares to extend employees' rights. For the judiciary, employer property rights have traditionally trumped organizational rights under the NLRA, keeping unions from gaining access to employees in plants, shops, stores, and other work sites. Exceptions have been recognized when a plant and the employees' living quarters were so isolated that there were no reasonable alternative means for the union to communicate. In *Lechmere, Inc.*, 295 N.L.R.B. 92 (1989), enforced, 914 F.2d 313 (1st Cir. 1990), a unanimous panel of Reagan-appointed Board members found such an exception. The union had placed handbillers on a parking lot jointly owned by a retail store in a shopping plaza in a large metropolitan area. When ordered to leave, the organizers relocated to a grass strip of public property abutting a four-lane divided turnpike, and tried to pass out leaflets to cars entering the parking lot. There were also some attempts to contact employees by mailings, telephone calls, or home visits. None of these efforts were fruitful. The Board concluded the employees were effectively inaccessible to the union by means other than on-site approaches, and held the employer in violation of the NLRA for barring organizers from its parking lot.

A 6 – 3 majority of the Supreme Court reversed *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992). Speaking for the Court, Justice Thomas declared that the burden of establishing the “isolation” necessary to justify access to an employer's property was “a heavy one.” It wasn't satisfied by “mere conjecture or the expression of doubts concerning the effectiveness of nontrespassory means

of communication.” “[S]igns or advertising” were suggested as “reasonably effective.” In light of the realities of the wide dispersal of employees throughout large metropolitan areas, and the difficulty of luring them from their television sets or backyard barbeques to gather at a union meeting hall, one might fairly ask whether the workplace is not the most natural forum for the exchange of views about the merits of unionization. At the same time, however, Justice Thomas is entitled to more than “mere conjecture.” A national union would be well advised to invest in some genuine sociopsychological studies to demonstrate empirically the futility of attempting to reach today’s urban, suburban, and ambulatory work force by the conventional methods that the majority of the Supreme Court apparently feels are still adequate. One hopes that the Board would be receptive to such a presentation.

Looming next are cases that could make for some very big, headline-making, and extremely controversial decisions. In *Dana Corp. and Metaldyne Corp.*, Cases 8-RD-1976, 6-RD-1518, and 6-RD-1519 (2004), and *Shaw’s Supermarkets*, 343 N.L.R.B. No. 105 (2004), the Board invited argument on such issues as the validity of an employer’s voluntary recognition of a union as a bar to a decertification petition and the validity of an “after-acquired” clause as a waiver of the employer’s right to an election. I suppose not far behind could be an invitation to argue the validity of employer “neutrality” clauses. As I see it, a perfectly logical argument, in an abstract sense, could be constructed that any agreement is invalid that precludes employees from voting in a secret-ballot election concerning union representation, or that precludes them from hearing all the employer’s reasons for opposing unionization. Indeed, I might even find some practical appeal in such a position if we were dealing with a well-entrenched labor movement exercising overweening power, instead of one that, in the words of a partisan, is “flat on its back.” But I think one must be realistic about the social, psychological, and economic pressures that operate in the world in which we live. The lawyers on the staff of the NLRB are unionized. The young associates in the great Wall Street and LaSalle Street law firms are not. Assuming that the voluntary agreements of some employers and unions do provide a little counterweight favoring unionization for certain employees, I would not be at all troubled if the agency enforcing a statute officially encouraging collective bargaining allowed those agreements to stand.

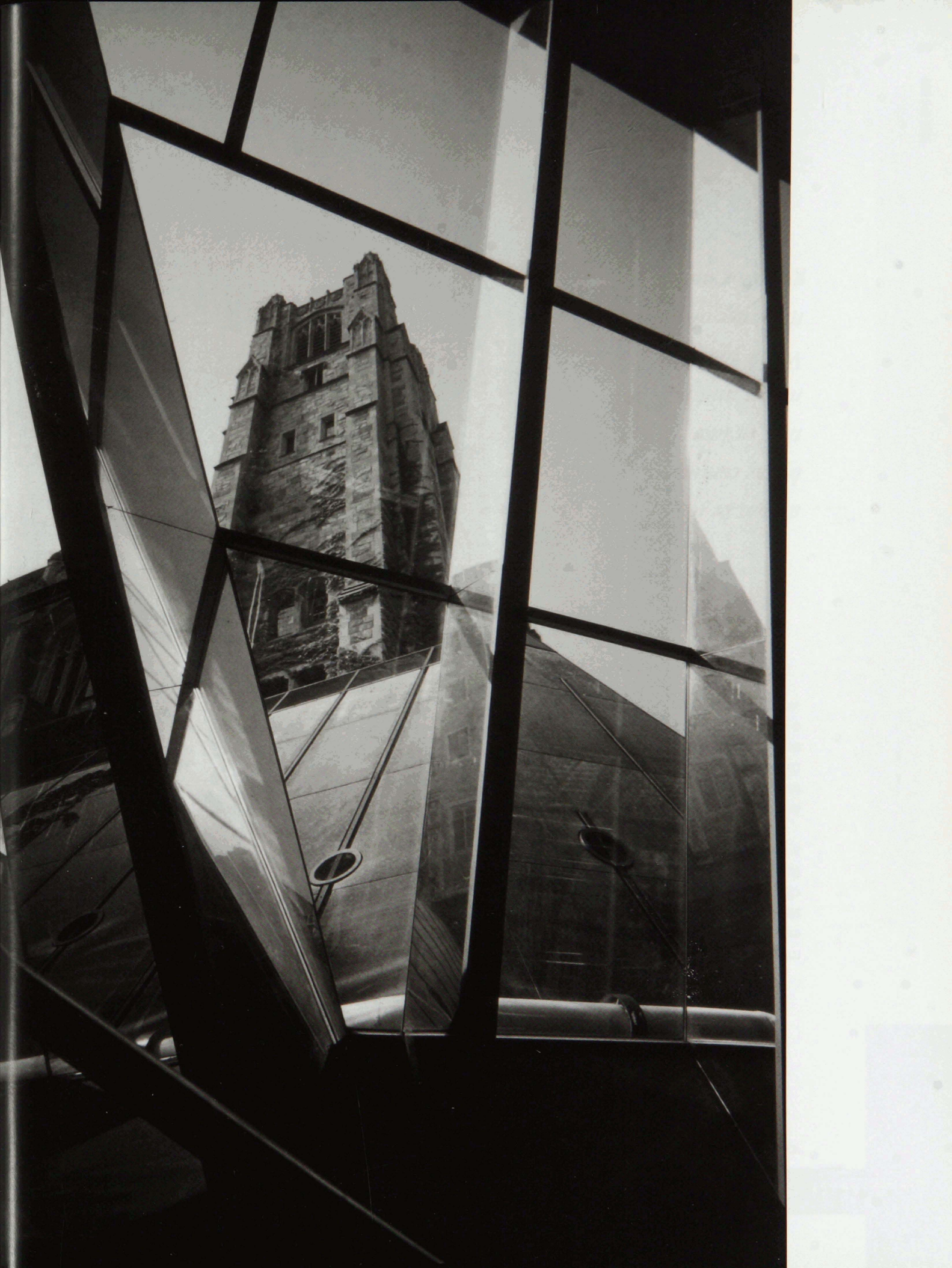
Lastly, a few quick words about the future. It may well be that a substantial part of the American workforce is no longer desirous

of traditional representation by an exclusive bargaining agent. Yet I cannot believe it is healthy for any group to be deprived of all voice in something as essential to their personal identity and human dignity as the occupations by which they make their living and indeed by which they define their very being. I can easily envisage a whole range of developments. At one end of the spectrum we may see a loosening of the strictures of Section 8(a)(2) and increasing resort to employee involvement committees or quality-of-life programs. At the other extreme there might be more full-fledged bargaining by minority unions, either voluntary or mandatory. Or a future Congress could look to Europe and require all employers of any size to establish the equivalent of work councils, selected by the employees to perform varying functions, from the merely consultative to some form of co-determination.

If I may be allowed to peer ahead a few decades, I see an American workplace in which all types of status or categorical discrimination, based on race, sex, religion, age, and the like, have been reduced to such insignificance that they no longer call for a separate agency to police them. Nevertheless, I feel there will always be a need, human nature being what it is, for some governmental oversight of the employer-employee relationship. The United States, for example, will eventually join most of the rest of the civilized world in requiring employers to have “good cause” for discharging workers after some reasonable probationary period. What should be more natural than that the granddaddy of federal labor agencies would take on the whole gamut of these tasks, with of course the new title of the National Labor and Employment Board? And so the golden age of this great agency may not, after all, have been the 1930s or thereabouts. Perhaps the golden age of the NLRB is yet to be.

Theodore J. St. Antoine, '54, is a graduate of Fordham College and the University of Michigan Law School. He also spent a year as a Fulbright Scholar at the University of London. He practiced in Cleveland, in the U.S. Army, and for a number of years in Washington, D.C. St. Antoine is known for his writing in the field of labor relations and has engaged in arbitration. He was President of the National Academy of Arbitrators in 1999 – 2000. He began his academic career at the University of Michigan Law School in 1965 and served as its Dean from 1971 to 1978. He is the James E. and Sarah A. Degan Professor Emeritus of Law. He has also taught as a visitor at Cambridge, Duke, George Washington, and Tokyo Universities, and in Salzburg.





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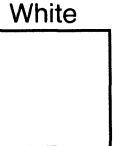
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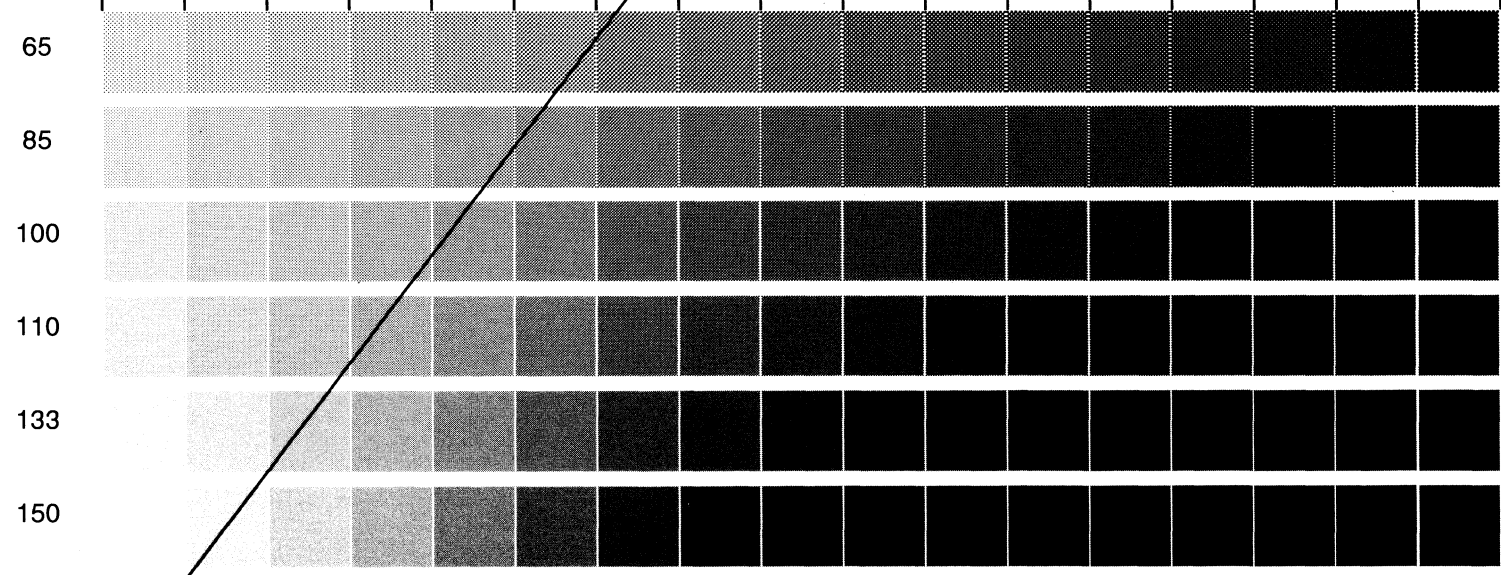
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