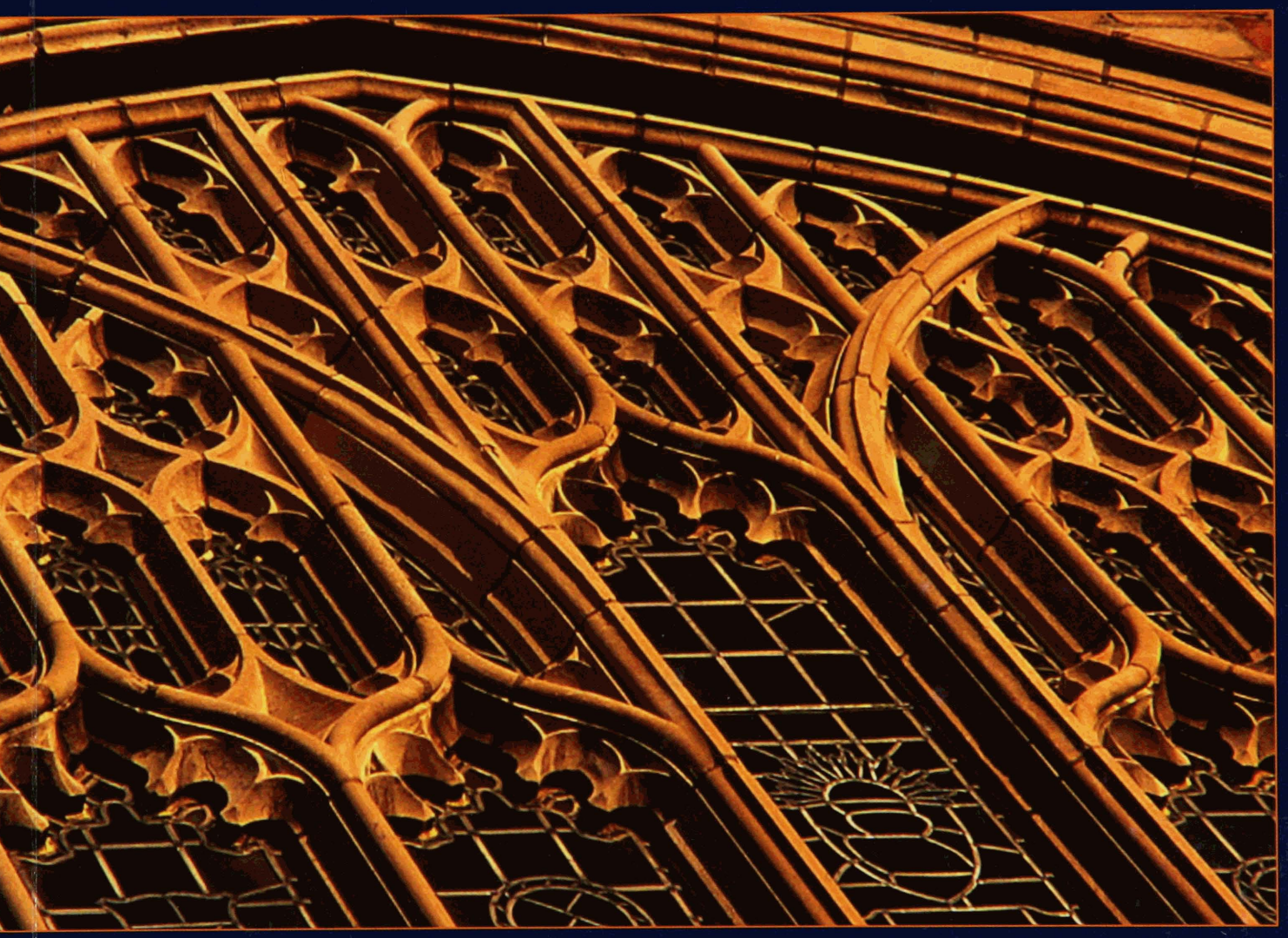
RWR

LAW QUADRANGLE NOTES

- Comparative fiscal federalism:
  What can the U.S. Supreme Court and the
  European Court of Justice learn from each other's tax jurisprudence?
- Offshore outsourcing and worker rights
- Chinese acquisitions abroad—global ambitions, domestic effects



THE UNIVERSITY OF MICHIGAN LAW SCHOOL

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On The Cover: Window on the Quad—a duet of glass and stone. Cover photo by Philip Datillo

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UNIVERSITY OF MICHIGAN

EVENTS

April 6	Campbell Moot Court Competition Finals
April 8	Scholarship Dinner
May 6	Senior Day
August 3–8	ABA Annual Meeting, Honolulu
September 8–10	Reunion of the classes of 1981, '86, '91, '96, and 2001
October 6–7	Committee of Visitors
October 27–29	Reunion of the classes of 1951, '56, '61, '66, '71 and '76
November 3–5	Organization for Economic Cooperation and Development Conference

This schedule is correct at deadline time, but is subject to change.

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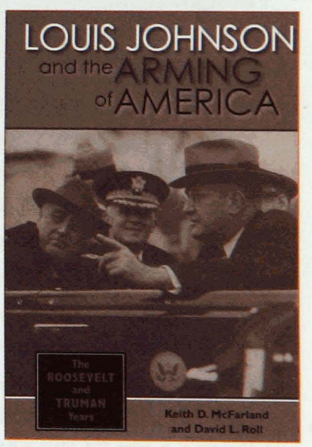
WINTER/SPRING 2006

LAW QUADRANGLE NOTES



A MESSAGE

from Dean Caminker

As did many of you, I devoted time in January to watch (midnight reruns of) the Senate Judiciary Committee hearings on the nomination of now-Supreme Court Associate Justice Samuel Alito. The experience was, at best, disappointing. To be sure, I didn't anticipate forthright dialogue and debate on legal principles and the candidate's judicial philosophy; nor did I expect the Committee members—mostly attorneys themselves—to be as acute in parsing fine points of law as in parsing political opportunity. But the extreme level of bloviating, the many attempts to speak about specific points of law without sufficient knowledge to understand the substance of the response, the widespread inability to discern the difference between an evasive and a fair answer, and a more or less complete failure to frame fruitful follow-up questions all made me want to throw my hands up in despair and switch to ESPN Classic.

I imagine some of you are already wondering whether I was born yesterday. Why would I expect a Senate confirmation hearing to be a forum for enlightening and cogent legal discourse? How could I not grasp the political dimension of the hearings, or appreciate the pressures senators face to follow their own perceptions of electoral self-interest?

I do understand that, of course—to my knowledge, no law school dean in history has been accused of being a Pollyanna—but I'd still note that the amount of light generated, that is, illumination of the nominee's character and legal views, was remarkably scant compared to the heat produced. Why? In part, I think, because many senators did a poor job of interrogating, even with respect to achieving their purely self-interested or partisan political goals. In part because they or their staffs didn't do their homework—for example, Senator Kennedy's gaffe in demanding Library of Congress papers concerning Judge Alito's Princeton alumni group when those had previously been examined with no smoking gun being found. In part because our faculty ethics experts tell us the ethics challenges to Judge Alito's decisions to hear particular cases were weak. In part because some of the questions were so poorly formed—for example, the Democrats' pressing Judge Alito on his beliefs in a "unitary executive" based on the false premise that whether the executive is *unitary* or not has something to do with the executive power's *substantive scope* (such as whether a president can unilaterally order warrantless wiretapping and enemy combatant detention), which of course is what the Democrats were really worrying about. And most of all because the structure and overall dynamic of the hearings was seemingly more geared for senators to secure a sound bite on the evening news than to help them or their constituents assess the nominee's strengths, weaknesses, and probable behavior as a Supreme Court justice. To quote Claude Rains in *Casablanca*, "I'm shocked ... shocked!"

While the Alito hearings were proceeding, so too was a very different exercise in selecting candidates, an exercise almost everyone reading this note once successfully negotiated. I'm speaking, of course, of the Michigan Law School application and selection process, which determines who among a very large pool of candidates will become members of our first-year class. To call our exercise *different* is an extreme understatement, for there's essentially no correspondence at all. What Assistant Dean of Admissions Sarah Zearfoss, '92, and her colleagues do harkens back to a concept Aristotle uses in the *Nicomachean Ethics*—*proairesis*—commonly translated as "deliberate choice." In the Alito confirmation process, arguably there was no true deliberate choice being made: Decisions were foreordained largely on the basis of political affiliation, perception of the nominee's own political and judicial philosophy, and senatorial self-interest. In the Law School selection process, the exact opposite mentality prevails.

For those of you unfamiliar with the intricacies of selecting a student body, the process is lengthy, labor-intensive, analytically rigorous, heavily informed by the experience and intuitions of admissions officers, and perhaps more qualitative and less quantitative than you imagine. To be sure, quantified undergraduate grades and LSAT scores form a critical foundation for evaluation, for those are key instruments in determining whether a candidate can meet the rigorous demands of our educational program. It would obviously do no service either to our faculty or the candidates themselves for us to admit students about whom we can't be completely confident they will benefit fully from the expertise of our faculty and their fellow students.

On the other hand, these quantitative criteria tell us only a bare minimum about a candidate's prospects for excellence and leadership—less even than Judge Alito's past decisions tell us about his. Numerical data alone cannot speak to an applicant's character and ethical compass, his potential as a contributing and productive member of society as well as the profession, her collegiality

(as Michigan prides itself on encouraging law students to work congenially and collaboratively rather than to exhibit the rabid competitiveness that can undermine the learning environment), his public-spiritedness in keeping with our public-focused mission, and not least, her capacity for dealing with pressure, stress, and indeed, occasional failure (since, as some of you may recall with a painful wince little dulled by intervening years, many of our students first meet their true intellectual peers when they reach Michigan Law School and not all of our bright, motivated, high-achieving young men and women can end up at the top of their class). Our admissions officers intelligently and thoroughly probe each applicant's file to assess these and other variables to divine the true set of qualifications and attributes each would bring to enrich the Law School class and later the legal profession.

From our candidates' perspectives, too, the differences in selection process are immense. Judge Alito's presumed goal was to reveal as little as possible about himself. He needed to avoid saying anything that would rally the Left in opposition, as well as saying anything that would undermine support from the Right which balked at the prospect of Harriet Miers. More generally, it was in his interest to say as little as possible that would reveal his true predilections, judicial or otherwise, and the coaching he received made such revelation minimal. For our Law School applicants, the paradigm is very much the opposite. Only by fully revealing themselves can we help them determine if Michigan is where they belong. Indeed, in the occasional case when an applicant chooses to rely solely on quantitative data, even a perfect LSAT score, our tendency is to deny admission.

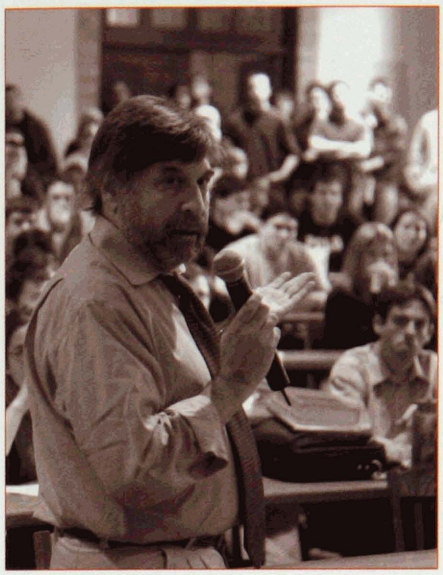
The point isn't that the Law School selection process is a science—just the opposite in fact. But it *is* proairetic, intentional and deliberate, designed to ferret out real attributes and make thoughtful selection decisions rather than to serve political and partisan interests. I need hardly add that the process continues richly to benefit those who matriculate as they ultimately pursue their professional careers and join the distinguished community of Michigan Law alumni.

Perhaps I shouldn't be too hard on those involved in the Alito hearings. Certainly I freely concede that the Michigan Law School selection process would never in a million years make it out of committee were it so proposed as an alternative model. But I'll choose ours any day. I hope many of you agree.

Evan Caminker

SPECIAL FEATURES

IN DETAIL



Mark Rosenbaum conducts his moot court argument before a standing room only crowd.

Public Interest/Public Service Faculty Fellows share expertise, in and out of class

"If I had known this many of you would come," Mark Rosenbaum said with a smile, "I wouldn't have agreed to do this."

Fortunately, Rosenbaum, a veteran member of the Law School's adjunct faculty, this time could turn his back to the standing room only crowd as he worked. He was there in the 172-seat Hutchins Hall lecture room to practice for his upcoming court case (*Jones v. City of Los Angeles*) before the Ninth Circuit Court of Appeals on behalf of homeless people barred from sleeping (or lying, or sitting) on the streets of Los Angeles' Skid Row.

Rosenbaum, director of the American Civil Liberties Union in Los Angeles, knew that he faced an uphill fight—even in front of teaching colleagues Rick Hills and Richard D. Friedman, who were playing the role of appeals court judges for this moot court session. As Rosenbaum faced the podium that was substituting for the courtroom bench, behind him sat and stood nearly 200 law students who had come to watch this popular Public Interest/Public Service Faculty Fellow hone his argument for this next of his many courtroom appearances on behalf of non-paying clients.

Nor did Rosenbaum, who truth be told was pleased by the standing room only turnout, forget those students who had crowded into the room to watch, listen, and learn. "What I'm here for, with your help, is to think about the architecture of an argument," he told the students. He must condense his argument into 10 minutes, which is all the court has given him, he explained.

Rosenbaum's presentation reflected the goal of the Law School's new Public Interest/Public Service Faculty Fellows program to bring home to law students the excitement, satisfaction, and challenges of public interest/public service work through teaching and demonstrations by highly experienced public interest lawyers. And the packed classroom was a testament to the popularity of the new program, which designates a small number of adjunct professors with extensive public service experience as Public Interest/Public Service Faculty Fellows (PIPS).

Six teachers have the designation this year, ranging from a veteran White House staffer to a career environmentalist. The Faculty Fellows teach courses that explore and illuminate the many areas of public service available to lawyers, counsel and advise students, present special programs like Rosenbaum's moot court argument, and generally lend their experience and expertise to helping students appreciate the variety of public service that is available and helping them find a public service position if they wish.

The new PIPS program is the brainchild of Associate Dean for Academic Affairs Steven P. Croley, who said he wanted to expand and better demonstrate the Law School's commitment to teaching students about public service and public interest careers. "We've put together a fantastic group of public service faculty," he explained at the introduction of the program last fall.

Rosenbaum's teaching colleagues, Rick Hills and Richard D. Friedman acting as judges.

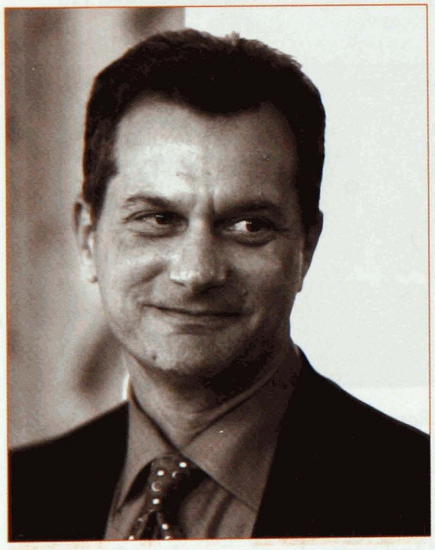
"And we're drawing on them for student mentoring, networking, and programming such as brown bag lunches, panel discussions, and other services."

Rosenbaum, who says he is privileged to serve his clients, teaches courses like Public Interest Litigation, Fourteenth Amendment, and Public Interest Legal Theory: Education. In addition to Rosenbaum, the other Public Interest/

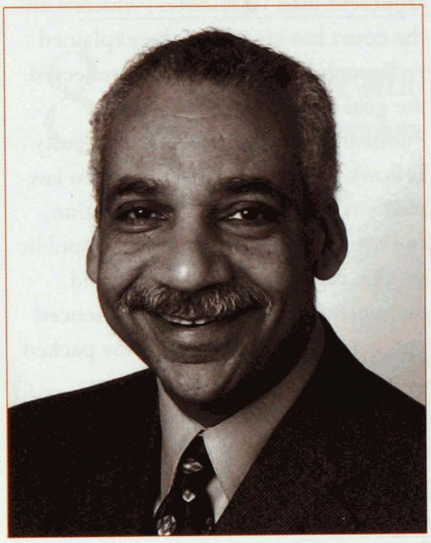
Public Interest/Public Service Faculty Fellows

Public Service Faculty Fellows are:

Bo Cooper, who served as general counsel of the then-U.S. Immigration and Naturalization Service (INS) from 1999-2003, supervising more than 700 attorneys across the country and advising the INS commissioner, the U.S. Attorney General, executive branch agencies, and the White House on immigration law. He currently is of counsel to Paul, Hastings, Janoksky & Walker in Washington, D.C. "Joining the INS was the best decision I ever made," he told those gathered for the public opening of the PIPS program last fall. "There is no more direct way to help improve the performance of the government than to be a part of it," according to Cooper. "As for the pro bono work, the stakes are immense for persons in the immigration system, especially where safety is at stake."



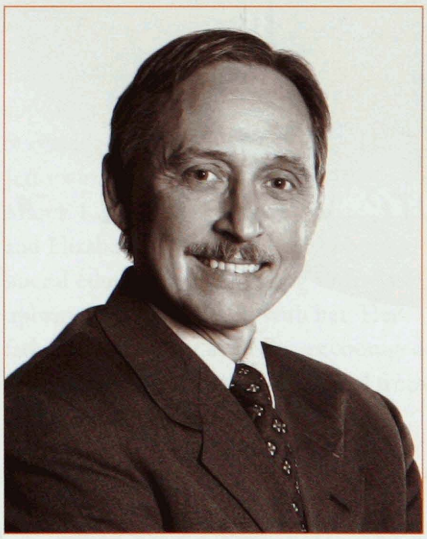
Saul A. Green, '72, senior counsel and director of Miller Canfield Paddock and Stone's Minority Business Group and a former U.S. Attorney for the Eastern District of Michigan. Green's work in the public interest is widely known; he worked on the case leading to Michigan's first release of a prisoner sentenced to life because of new evidence through DNA testing and represented a member of the family of Larry Griffin, who was shown through research led by Ralph W. Aigler Professor of Law Samuel R. Gross to be wrongly convicted of murder and executed.



Sally Katzen, '67, who served in the Carter White House and then for nearly eight years in the Clinton White House, from administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), to deputy assistant to the president for economic policy, and finally as deputy director for Management in OMB. "It really does matter that our government function well," she elaborated on Cooper's explanation that being part of government if the best way to make it work better. "It matters that people get their Social Security checks on time. It matters that veterans, who have given their all, get what they have been promised. You can make a difference." Katzen teaches courses like Regulatory Process, Tech Policy in the Information Age, and How Washington Really Works.

Judith E. Levy, '96, an assistant U.S. attorney in the Eastern District of Michigan, who specializes in civil rights issues. In 2004 Levy won a Department of Justice Director's Award for her work on civil rights investigations. Recounting one case she led, Levy described how she investigated alleged violations of the 1997 Civil Rights of Institutionalized Persons Act at the W.J. Maxey School north of Ann Arbor, a correctional facility for adolescents. "We were able to do a systemic review of a facility no one else had been able to get to change," she related. "There were serious violations of these children's civil rights." Levy teaches Fair Housing Law and Policy.

Mark Van Putten, '82, former president/CEO of the National Wildlife Federation, for a quarter century has been a leader in environmental policy making and nonprofit organizations at the international, national, regional, and local levels. He is the founder and current president of ConservationStrategy LLC, an environmental strategy and organizational development consulting firm based in the Washington, D.C., area. Van Putten explained that he is concerned about how environmental issues have become "wedge issues" that often polarize people and enhance the power of those who oppose environmentalists' goals. He hopes to find ways to build cooperation among traditional ecological opponents like environmentalists and business organizations. He is teaching How to Save the Planet, a course designed to "focus on the challenges posed by current and emerging environmental problems to existing U.S. environmental laws and policies, environmental groups, and business practices."



"The new Public Interest/Public Service Faculty Fellows Program offers new and expanded opportunities to our students who wish to pursue or sample work for the public good," said Dean Evan H. Caminker. "It also reflects the continuing vitality of this School's longstanding commitment to such work."

Student reaction to the new program has been enthusiastic. "With the creation of the PIPS program, the Law School is taking concrete steps to help students discover the opportunities and rewards of lawyering in the public interest," notes Jeremy Hekhuis, co-chair of the Law School's Organization of Public Interest Students. "By learning from legal practitioners who are at the pinnacle of their field, students can gain a sense of how to create a legal career that is in keeping with their values, interests, and goals."

"The overwhelming majority of incoming students express an interest to work for the public good," Hekhuis continued. "This program will enable students to learn from those who acted on similar commitments throughout their careers.

"We are excited by the program. The combination of courses and mentoring opportunities will help us as we seek to examine career opportunities. The courses being taught by PIPS faculty this semester are outstanding and add valuable breadth and diversity to the curriculum."

"There's a special, renewable energy with this program," adds Assistant Dean for Public Service MaryAnn Sarosi, '87, who oversees the PIPS program. "The Fellows' experiences in their law practice and other work are always changing, so the case examples and anecdotes they bring into their discussions with students are fresh and current—they are happening now. Students enjoy the opportunity to interact with lawyers on issues that are relevant today."

Sarah Killgore Wertman

Michigan's First Woman Lawyer

By Margaret A. Leary

Sarah Killgore Wertman was the first woman in the country to both graduate from law school and be admitted to the bar. Thus, she was Michigan's first woman lawyer in two senses: She was the first woman to graduate from the University of Michigan Law School, and the first woman admitted to the Michigan bar. Others preceded her in entering law school, graduating from law school, or being admitted to the bar, but she was the first to accomplish all three. Her story illustrates much about the early days of women in legal education and the practice of law, a history in which the University of Michigan Law School was a leader.

In the late 19th Century there was neither American Bar Association (ABA) accreditation nor Association of American Law Schools (AALS) membership to measure the quality of law schools. And the concept of a "university" which might contain a "law department" or "law school" had not yet matured either. Many law schools arose and disappeared, some merged with each other or with larger institutions. The importance of attending law school at all was much less then, because prospective lawyers could also study law in a law office, and then pass an exam to be admitted to practice.

The first woman in the country to be admitted to practice law was Arabelle Mansfield, in Iowa, in 1869. She did not, however, graduate from law school.

Sarah Killgore Wertman was not

the first woman to be admitted to law school, although she came very close. That honor goes to Lemma Barkaloo, who came from Brooklyn, New York, to the Law Department of Washington University in St. Louis in the fall of 1869, after she was refused admission to Columbia University Law School. Although she did not graduate, she was admitted to the bar of the Supreme Court of Missouri in March, 1870, and became the first woman to try a case in court. Sadly, she died of typhoid fever that September. Also in 1869, and also at Washington University, Phebe W. Couzins began law school, graduated in May, 1871, was immediately admitted to the bar, but never practiced law.

Sarah was also not the first woman to be graduated from law school. Ada H. Kepley, of Effingham, Illinois, was graduated from the Law Department of the old Chicago University (a different legal entity from the present University of Chicago) in June 1870. However, Ms. Kepley was not admitted to the bar because of her sex, following Illinois and United States Supreme Court decisions upholding an Illinois statute. Those cases were brought by Myra Bradwell first to the Illinois Supreme Court in 1869, and on appeal to the U.S. Supreme Court in 1873, both denying her application for a license to practice law because "That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth." And "In view of these facts, we are certainly warranted in saying that when the legislature gave to this court the power of granting licenses to practice law, it was with not the slightest expectation that this privilege would be extended to women." So, Ada Kepley was unable to gain admission to the practice of law in Illinois.

Ada Kepley is now considered a graduate of Northwestern University's School of Law, although the institution which granted her degree was the Law Department of the old Chicago University. In 1873, that Law Department became a joint operation with Northwestern University. In 1886, when the old Chicago University failed and ceased to exist, Northwestern assumed sole responsibility for the Law School and made it the Northwestern University School of Law.

Sarah Killgore, like Ada Kepley, began law school at the law department of the old Chicago University in 1869-70. She then entered the law department at the University of Michigan and graduated in March, 1871, more than a month before Phebe Couzins was graduated from Washington University. Sarah was admitted to the bar in Michigan shortly thereafter, before Phebe Couzins was admitted.

Sarah's reason for going to law school, which she began at age 26, appears to be dissatisfaction with her first career, teaching. She was born in Jefferson, Clinton County, Indiana, March 1, 1843. Her parents, David and Elizabeth Killgore, provided her a liberal education and a strong Christian upbringing which stayed with her. Her father, a prominent attorney, encouraged her to study law. She was graduated from Ladoga Seminary in 1862 and taught school for several years before deciding to go to law school.

After law school, she returned to Indiana, to recuperate from the ill effect on her health of attending law school. She married Jackson S. Wertman, an attorney in Indianapolis, on June 16, 1875. However, she could not practice law there because the Indiana statute required for admission to the bar "male citizens of good moral character," so she did office work, specializing in real estate law while her husband handled public court appearances. The Wertmans moved to Ashland, Ohio, in November 1878, and Sarah bore two children, Shields K. and Helen M., who lived to adulthood, and one, Clay, who died in infancy. Sarah stayed home to raise her children, but when her son and daughter were in their teens she again returned to the law. In September, 1893, she passed the required exam and was admitted to the bar in Ohio, returning to her husband's law office to practice real estate law and the business of abstracting.

The Wertmans followed their children to Seattle, and had a home there in 1905. Sarah chose not to continue to practice law with her husband. She lived, at the end of her life, with her son in Seattle. She maintained a strong interest in University of Michigan alumni affairs and kept a heavy schedule of religious reading. She died in 1935.

Sarah was a member of the Equity Club, a community of women lawyers based at the University of Michigan Law School. The Equity Club letters from 1887-1890 are the subject of *Women Lawyers and the Origins of Professional Identity in America*, edited by Virginia G. Drachman. The club's correspondence reveals that the women who attended Michigan in the 1870s and 1880s were smoothly integrated into all areas of the Law School, welcomed by their male classmates, and graciously received by faculty as well.

Nevertheless, they were a very small group and felt isolated within the large community of male law students, an isolation that brought them closer together and inspired formation of the Equity Club by six women who followed Sarah. The name of the club was inspired by Harry Burns Hutchins, then professor of equity at Michigan (and later, dean of the Law School and then president of the University), who said: "Equity has been the savior of woman." By this, he probably meant that equity softened the hard and rigid rules of common law; that it complemented, rather than competed with, common law; and provided flexibility and fairness and law from the heart, rather than common law's rigid and pure logic.

The admission of women to Michigan was significant because of the quality and size of the Michigan Law School. By 1890, Michigan had graduated more women than any other law school. New York University and Cornell law schools opened to women that year; the University of Chicago from its founding in 1901; Yale Law School in 1918, and others so that by 1920, women had been admitted to 102 of 142 law schools. Not until 1927 did Columbia, and 1950 did Harvard, admit women.

The University of Michigan Law School, when it first admitted women in 1870, was a pioneer if not a literal "first."

Margaret A. Leary *has been with the Law Library since 1973 and director since 1984. She currently is writing a biography of William W. Cook. Leary received a B.A. from Cornell University, an M.A. from the University of Minnesota School of Library Science, and a J.D. from the William Mitchell College of Law.*

There is only one of Sarah's letters in *Women Lawyers and the Origins of Professional Identity in America*, but it echoes the values of the Equity Club. Her letter, written from Ashland, Ohio, on May 7, 1888, is either shy or secretive:

To the Members of the Equity Club,

You asked me to join your society, and write a letter—"Personal experience preferred." The former I will gladly do—the latter, partially decline.

I could not reveal the secrets of my life, even to the Equity Club, and the ordinary routine is too tame for interest. The touch of the Master can alone awaken the truest melodies of our nature, and only this ear is attuned to understand its refrain. His will be done.

Woman's place in the practice of the law, as elsewhere, is not so much to bring to it wisdom and justice, as the purifying graces—lifting the profession to higher and nobler purposes than the selfish aggrandizement that now characterizes so much litigation.

The wrecks of manhood strewn all along the shoals of this occupation tell plainly how much principle has been sacrificed for success.

Ours the part to give to the profession the love-lit hues of Christ's teaching so beautifully set forth in the "Golden Rule," a development of faith and trust in an over-ruling Providence in the practical affairs of life—to which the practice of the law is so opportune.

Daily living, loyal to humanity, to the truth, to the right, and to God.

Mrs. Sarah K. Wertman,
Graduate of the Law Class of
Michigan University of 1871

The information in this article is extracted from:

Women Lawyers and the Origins of Professional Identity in America, edited by Virginia Drachman, Ann Arbor, University of Michigan Press, 1993.

"Women Lawyers in the United States", by Lelia J. Robinson (also a member of the Equity Club), *2 Green Bag* 10-32 (1890), a foundational piece of original research based on her correspondence with deans of law schools around the country, and the basis—whether cited or not—for much of what has been written about "first women in law" since then.

"Michigan's First Woman Lawyer", 63 *Michigan Bar Journal* 448 (June, 1984), which contains a "brief statement [by Wertman] in 1912", with no further attribution.

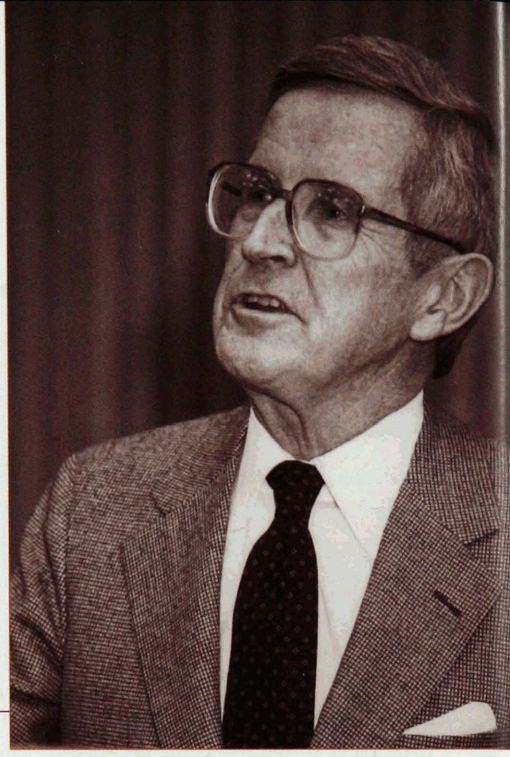
"Sarah Killgore Wertman", in *Women of the Century: Fourteen Hundred Seventy Biographical Sketches Accompanied by Portraits of Leading American Women in all Walks of Life*, edited by Frances E. Willard. (Buffalo, Charles Wells Moulton, 1893; reprinted by Gale Research Company, Detroit, 1967, p. 759.) The portrait accompanying this article is from this work.

Sisters in Law: Women Lawyers in Modern American History, by Virginia G. Drachman, Cambridge, Harvard University Press, 1998.

"Feminist Lawyers", by Barbara Allen Babcock, a review of *Sisters in Law: Women Lawyers in American History*, 50 *Stanford Law Review* 1689-1708 (1997-98), whose footnotes constitute an excellent bibliography on the subject.

In re application of Bradwell, 55 Ill. 535 (1869), affirmed by *Bradwell v. The State of Illinois* 83 U.S. 130 (1873).

The University's first Law Building, completed in 1863 and reconstructed in 1897.



They're playing a tango

By John W. Reed

The following essay, which appears here with permission, is based on a talk delivered by Thomas M. Cooley Professor of Law Emeritus John W. Reed at the State Bar of Michigan's Annual Meeting on September 22, 2005, and published in the November 2005 issue of Michigan Bar Journal, *the journal of the Michigan State Bar.*

This meeting, as I noted, is our 70th. The fourth of these meetings was held the year in which I entered law school, so I have been an eyewitness to our profession for almost all of those 70 years. As a law teacher, I have occasion to visit from time to time with a wide variety of lawyers—big town, small town; big firm, small firm; office lawyers, courtroom lawyers, both sides of the table—and no matter whom I meet with, no matter what kind of practice or specialty, the one common theme I encounter is uneasiness about change and the rate of change — change in the applicable law itself, change in the way law is practiced, change in the society to which the law is applied, and, always, a pervasive sense of unease that the rules of the game are being changed in the middle of the game, usually to one's own disadvantage. It reminds me of my favorite fortune cookie message: a change for the better will be made against you.

This is a different world from the one of your youth. It certainly is vastly different from the world of my youth even longer ago.

Technological changes are perhaps the most obvious. In one lifetime, we have gone from the horse and buggy and the kerosene lamp to space stations, heart transplants, and the information superhighway (where, incidentally, many of us are stuck on the entrance ramp). Whether, by the way, the information superhighway is a good thing depends, I think, on the quality of the information. I was struck by an item some time ago in the *New York Times* stating that in 1849 Henry David Thoreau said, "We are in great haste to construct a magnetic telegraph from Maine to Texas, but Maine and Texas, it may be, have nothing important to communicate."

Social and cultural changes in these 70 years have been no less dramatic. The extent of those changes can be seen simply by comparing the contents of a daily newspaper of the 1930s with today's *Detroit Free Press*. You may remember the old-timer who said to a friend, "I can remember when it used to be that the air was clean and sex was dirty." One of the social changes that has particular implications for law and the administration of justice is the increasing tendency of people to consider themselves members primarily of cultural and ethnic subgroups, often at odds with one another and at odds with the community as a whole. The common loyalty we once felt to the nation and its ideals is diminished if not destroyed by fierce loyalties to the particular clan, each of which considers itself the victim of another group. It's as portrayed by a Richard Guindon cartoon in the *Free Press* showing a flat, treeless wasteland on which are scattered a dozen or so crudely drawn clumps of people hunkered down behind low barricades of rubble, each displaying a small pennant on a pole. Two expressionless men are walking by, and one says to the other, "As a country, we seem to be breaking up into groups of hurt feelings."

Change is everywhere. And because the law affects, and is affected by, all of life, there are concomitant changes in the law and in our profession—such changes as:

- The erosion of the role of the civil jury;
- The politicization of the judiciary;
- The diluting of the adversary system;
- The near-disappearance of the general practitioner;
- The ascendancy of digital forms of information;
- And, or course, most troubling of all to most of us, is the widely-lamented decline of professionalism, as the practice of law seems to become more and more a commercial business—which creates great self-doubt in our profession.

Lawyers as problem solvers

These changes, and countless others, challenge us as individual lawyers and as a profession. I would pose to you the question whether as lawyers we have the necessary talent, the necessary creativity to solve them.

From the first day of law school, lawyers are trained to think in terms of precedent. On the basis of what *has* been decided, we tell clients what they may do and may not do. We are specialists in the past; we are professional antiquarians.

Carl Sandburg, in his poem that contains the familiar line "Why does a hearse horse snicker hauling a lawyer away," writes:

> *The lawyers, Bob, know too much.*
> *They are chums of the books of old John Marshall:*
> *They know it all, what a dead hand wrote,*
> *A stiff dead hand and its knuckles crumbling,*
> *The bones of the fingers a thin white ash.*
> *The lawyers know*
> *A dead man's thoughts too well.*

Despite Sandburg, our role as interpreters of the past lends a certain steadiness, a stability, a calmness to our society, that has served us well through expansion and war, prosperity and depression. And it is especially important in individual cases. But I suggest that the rate of change in our world in this early part of the 21st century is so dizzying that it will no longer suffice to apply the methods of the past when it comes to meeting the larger problems of society, and government, and, yes, our profession. Lawyers defend the status quo long after the quo has lost its status. All too often we fit Mort Sahl's definition of a conservative as one who believes that nothing should be done for the first time. Someone said that stare decisis is Latin for "we stand by our past mistakes." We have a professional bias somewhat like that of the World War II tail gunner who fainted when he went up to the cockpit and saw the world rushing toward him at 300 miles an hour.

Meeting the future with solutions from the past

All too often we try to meet the future with solutions from the past. A number of years ago when the Fifth Circuit included everything from Florida to Texas, the court was falling farther and farther behind in its docket. The remedy proposed was the traditional one: add another judge to the existing 25 to help shoulder the load. Experts in organization management studied the court's operations, however, and discovered an interesting fact: the processes of communication within the court required so much of the judges' available time for each of the 25 existing judges to communicate with yet one more judge would require more judicial time in the aggregate than would be gained by adding a new judge. In short, one more judge would decrease the court's capacity. And so the circuit was split to create two smaller courts—the Fifth and the Eleventh—in place of the larger one. It was a case in which a traditional response would have exacerbated the problem, not solved it. And it illustrated the point that problems of court congestion and delay required for their solution the invention of new mechanisms, not merely the creation of more courts and more judges. If we try to keep up with a burgeoning workload by doing the same things as before, only faster and faster and faster, we fall farther and farther behind and, arguably, produce a less elegant result as well. We are like the woman on the dance floor who knows only the old steps. "Waltz a little faster," says her partner, "they're playing a tango."

I could go on at length, suggesting other areas in which we as lawyers seem content to attack almost intractable problems with tools and habits of thought drawn almost solely from the precedents with which we are so familiar and so comfortable. There isn't time to discuss them in depth, but let me simply mention a few where new learning and new theories and new approaches are sorely needed but are in short supply.

Take complex litigation, for example. Just mentioning names suggests the magnitude of the problems: Johns-Manville, Agent Orange, Dalkon Shield. Yet many lawyers still think of litigation as involving simply a plaintiff and a defendant—of Helen Palsgraf suing the Long Island Railroad; of Hadley and Baxendale arguing over the measure of damages; of Pennoyer resisting eviction by Neff. The extent to which that simple, two-party, bipolar model is ingrained in our thinking seems somehow to diminish our ability to fashion new modes of resolving complex disputes.

"Waltz a little faster...they're playing a tango."

They're playing a tango

Neither have we learned well how to resolve disputes arising out of exotic or highly technical subject matters. We still use methods that were developed to decide who struck the first blow or who was on the wrong side of the road.

We live in a time when enormous wealth resides in intellectual property —software and electronic data. Vast sums of money are represented by computer impulses and are transferred around the world instantly by satellite. We try to apply to these matters property concepts from the time of Blackstone, and they do not fit very well.

And on and on. You can add your own examples of areas in which the problems are new but the solutions merely traditional and often inadequate, in which lawyers, both individually and as a profession, simply waltz faster when the world in fact is playing a tango.

Managing change

And so I ask, how should you and I, as lawyers, respond to these types of changes and challenges? And how should the State Bar of Michigan respond?

As you would expect, I do not suggest that we rashly adopt a bunch of new procedures, new laws, new institutions, new remedies simply because they are new and, often, touted by enthusiastic "true believers." As someone said, "Never buy a gold watch in the parking lot from a guy who's out of breath." And there *are* zany solutions to all kinds of problems in this world. You may remember the story of the graveside service in a Parisian cemetery. A woman had died, and all the mourners had left but two men. One had been her husband and the other her lover. The widower was grief-stricken, but controlled in his grief. The lover, on the other hand, was sobbing and keening, and appeared about to collapse, when the husband came over to him, placed his arm around his shoulder reassuringly, and said, "Not to worry, M'sieur; I shall remarry." Not all problems are so easily solved.

I don't know whether you have ever thought about the fact that lawyers, as a class, are not notably creative. My late colleague, Andrew Watson, a professor of law and psychiatry, described the brain as a chaotic mass with only a veneer of rationality. He maintained that creativity exists only deep in that disorderly area of the brain, that rationality is the enemy of creativity, and that it is no accident that so many creative, artistic, inventive people are disorderly, iconoclastic, and bohemian. The truly creative person delves into the chaos, finds new things, and then brings them to the surface to rationalize them and make them useful. The problem with lawyers, Dr. Watson suggests, is that, by training and practice, we are so steeped in reason that the rational veneer is greatly thickened; and it is very hard for us to break through that veneer and to move into the creative chaos. Indeed, we are embarrassed even to try. And so we are not very imaginative, not very creative.

Our first task, then, is to try to overcome that barrier, by resolving to think more imaginatively about the problems our profession faces, and by enlisting the interest and efforts of thoughtful experts in other fields whose creativity hasn't been suppressed by years of insistence on competency, relevancy, and materiality.

In meeting these changes and challenges, it is, paradoxically, more important that we be creative about the questions to be asked than the answers to be found. Identifying the question is vastly more important than the answer. One reason a child learns so much so fast is that he is full of questions. Though we think knowledge is power, Thoreau said most of our so-called knowledge is "but a conceit that we know something, which robs us of the advantages of our actual ignorance." In a similar vein, Hector Berlioz said of his fellow composer Claude Debussy, "He knows everything, but he lacks inexperience." Indeed, recognizing the question is the beginning of wisdom.

A vision of the future

And so, even as we celebrate the 70th of our meetings as a family of lawyers, we look ahead. You may have seen another cartoon by Richard Guindon in the *Free Press* that shows five wispy men and women sitting around a table in what I call a quiche-and-hanging-fern restaurant, drinking wine and looking bored. One says, "Is evolution still going on, or is this about it?" Well of course, evolution is still going on—in your personal life and in your profession. As I have said, we live in a time of almost overwhelming change. Change makes us uncomfortable, even angry at times. We have a natural tendency to resist change. But we cannot opt out. Disconnecting from change does not recapture the past; it loses the future. The question simply is whether we will be agents of change or its victims.

I suggest that despite our tendency to be limited by the past, we lawyers, with gifts of intellect, training, craft, and station, are obliged, if we are to be faithful stewards of those advantages, to offer to the republic and to society

our most creative ideas for meeting the world that is rushing toward us at 300 miles an hour—or in today's terms, Mach 2.

Very late in his career, when his vaunted intellect had begun to slip, Justice Oliver Wendell Homes was traveling by train. When the conductor came through the car calling for tickets, Holmes couldn't find his. He searched through all his pockets, his briefcase, his wallet. He searched high and low, but he couldn't find his ticket. "That's all right," said the conductor, "you look like an honest man, and I'm sure you have just misplaced it." "Young man," replied Holmes, "you don't understand. The question is not 'Where is my ticket?' The question is, 'Where am I going?'" As individual lawyers, and as a bar, we don't ask that question often enough. You may recall the old conundrum: "Why did Moses wander in the desert for 40 years?" "Because even then, men wouldn't stop and ask directions." Especially at the personal level, there is the strong possibility that one who neglects to reexamine his goals will come to that condition in late middle age where he's gotten to the top of the ladder only to find that it's against the wrong wall.

The question we neglect is the one of destination. Unless we keep posing that question, all of our reforms and changes will be nothing but improved means to an unimproved end. I pray, therefore, that you will address yourselves not only to the immediate problems of your clients and of the bar, but also to Mr. Justice Holmes's larger question: Where are we going? To which I would add: And how do we get there? Do not commit the error, common among the young, of assuming that if you cannot save the whole of mankind, you have failed. All that is required is constant inquiry, and creativity, and unselfishness, in addressing the challenges that bear upon us. It may even mean actions that are costly to us personally. But it is essential that we address ourselves thoughtfully and intentionally to the future. We shall be overwhelmed by events if we do not anticipate them and if we do not invent new ways of coping with them. Like the woman on the dance floor, we'll merely be waltzing faster while the world is playing a tango.

John W. Reed *is Thomas M. Cooley Professor of Law Emeritus at the University of Michigan Law School. In addition to his decades of service on the Michigan faculty, during which he was repeatedly honored by his students for teaching excellence, Professor Reed has served as dean at the University of Colorado Law School and, in retirement, at Wayne State University School of Law. His visiting appointments have included Harvard, Yale, Chicago, and NYU, among others. He has maintained close contact with courts and the practicing bar in such fields as evidence rules, judicial selection, bar examinations, and continuing education for both lawyers and judges; and he has received distinguished service awards from the American College of Trial Lawyers, the Association of Continuing Legal Education Administrators, and the State Bar of Michigan. He is an Academic Fellow of the International Society of Barristers and serves as its administrative director and editor. Reed's law degrees are from Cornell and Columbia.*

IN DETAIL

Law School report shows Voting Rights Act still needed

The following story is reprinted with permission from the University Record *of November 14, 2005.*

Forty years after Congress outlined provisions to prevent racial discrimination in electoral practices, a U-M report released November 10 indicates violations persist.

The Voting Rights Act (VRA) of 1965 guaranteed equal opportunity for all Americans in the voting process, and Congress reauthorized provisions in 1970, 1975, and 1982. With the central provisions of the VRA expiring in 2007, Congress must determine whether it should renew these provisions, make substantive alterations, or let them lapse. To make this determination, Congress needs information about the past and present status of minority participation in the political process—the impetus for the U-M report.

"Four decades after the enactment of the Voting Rights Act, racial discrimination in voting is far from over," says Ellen Katz, a professor of law and faculty director of the Voting Rights Initiative, a cooperative student/faculty research effort.

The findings were released a week after the Judiciary Committee of the U.S. House of Representatives held VRA renewal hearings. The U-M report is entitled "Documenting Discrimination in Voting: Judicial Findings under the Voting Rights Act Since 1982" and is available at: www.votingreport.org. The report provides the first catalogue of findings of voting discrimination made by federal judges in published lawsuits brought under Section 2 of the VRA since 1982. It also provides a snapshot of complex cases under this provision, representing a larger set of lawsuits filed, since only an estimated 1 in 5 filed VRA lawsuits ended in a court decision that may be analyzed.

The findings included examples of persistent racial discrimination in voting during the past 23 years. Courts found 114

Panelists Nina Perales, associate regional counsel for the Mexican American Legal Defense and Education Fund, and Jon Greenbaum, Voting Rights Project director for the Lawyers' Committee for Civil Rights Under Law, at the public presentation of Voting Rights Initiative findings.

instances in which electoral laws and practices must be changed to remedy discrimination against minorities, including a higher number of statutory violations in jurisdictions subject to Section 5.

Section 5 freezes changes in election practices or procedures in certain states until the new procedures have been determined, either after administrative review by the U.S. Attorney General or after a lawsuit before the U.S. District Court for the District of Columbia.

Some examples of voting discrimination:

- The 2004 decision in a South Dakota lawsuit documents how county officials purposely blocked Native Americans from registering to vote and from casting ballots;
- The Charleston County litigation in South Carolina reveals deliberate and systematic efforts by county officials to harass and intimidate African American residents seeking to vote;
- A Philadelphia lawsuit describes a deliberate and collusive effort by party officials and city election commissioners to trick Latino and African American voters into casting illegitimate absentee ballots that would never be counted;
- Other cases tell of state and local authorities drawing district lines for the express purpose of diminishing the influence of minority voters, or to protect partisan interests knowing that doing so would hinder minority voting strength.

One significant report finding concluded that racially polarized voting, or "bloc voting" persists today, with 91 cases since 1982 that ended in a court decision finding racial polarization. In addition, federal judges have identified racial prejudicial campaign tactics in 31 lawsuits nationwide, such as manipulating photographs to darken the skin of opposing candidates, allusions or threats of minority group "take over" or imminent racial strife, and cynical attempts to increase turnout among voters perceived to be "anti-black."

The courts also have found significant racial polarization in voting at partisan primaries, which can affect the results in the general election.

Congress must include an assessment of the conduct of political party primaries, not just general election outcomes, in considering the reauthorization of the VRA, the study indicated.

More than 100 law students examined Section 2 cases nationwide and identified 323 lawsuits in which plaintiffs failed to pursue their claims; many settled, and others saw their cases go to judgment, but the courts involved did not issue any published opinion or ancillary ruling, according to the electronic databases surveyed.

—Jared Wadley, University Information Services

Professor Ellen Katz, advisor to the student-faculty research project, introduces the program.

Refugee and Asylum Fellows Program names recipients, welcomes new locations

Six law students will work in refugee programs here and abroad this summer as Michigan Fellows in Refugee and Asylum Law.

James E. and Sarah A. Degan Professor of Law James C. Hathaway, who directs the Law School's Program in Refugee and Asylum Law, said he is especially pleased to add two new partner organizations to the program's roster. One Michigan Fellow will spend her six-week internship at the Canadian government's Refugee Policy Development Division in Ottawa, while another Fellow will assist in the drafting of national legislation on asylum as part of the staff of the United Nations High Commissioner for Refugees in Sarajevo, Bosnia, and Herzegovina. In each case, Michigan students will for the first time have a direct role in the development of government asylum policy.

In Hathaway's view, the Law School's increased emphasis on the importance of public service broadly conceived meant that the time was right to expose Michigan students to the value of careers in which refugee law can be creatively promoted within government—thus adding to the non-governmental and judicial internship opportunities traditionally at the heart of the Program in Refugee and Asylum Law.

While national governments may not seem to be on the "front lines" of refugee protection in the same way as organizations working in refugee camps or judges working in hearing rooms, their decisions and policies have major impacts on virtually all aspects of refugee life,

Refugee and Asylum Fellows Program

according to Hathaway. He explained that interning with Citizenship and Immigration Canada will allow Fellow Allison D. Kent to see up close how government officials wrestle with different and often competing issues as they try to fashion policies that both meet refugee needs and respect the priorities of the societies that receive them. Kent will, in particular, take part in the drafting of proposed new international standards on refugee law, to be presented by Canada in July to the intergovernmental Standing Committee of the United Nations High Commissioner for Refugees (UNHCR), in Geneva.

Much the same is true of the opportunities afforded through the program's other new partner, the Sarajevo office of the UNHCR. According to Hathaway, Fellow Carly Goldstone (who came from Australia to study in the Law School's Refugee and Asylum Law Program and take part in its fellowship program) will, among other duties, help draft national legislation on asylum-related issues and see how UNHCR functions as the intergovernmental organization charged with supervising how the Refugee Convention functions in the specific, highly charged environments of rebuilding post-conflict societies in Bosnia and neighboring states.

Other fellows will do their internships in Brussels; Washington, D.C.; Lusaka, Zambia; and Auckland, New Zealand. This year's fellows and their assignments are:

• **Chad Doobay**, who earned his master's degree in public affairs at Princeton University and his bachelor's in global studies at the University of Iowa and also has studied at the Universite de Haute-Bretagne in Rennes, France, has won the fellowship to intern at the national office of Jesuit Refugee Service in Lusaka, Zambia.

• **Talia Dobovi**, a graduate of Amherst College who also has attended the Middlebury College School in Spain and interned in 2004 with the prosecutor's office of the International Criminal Tribunal for the Former Yugoslavia in The Hague, will do her internship with the Refugee Policy Program of Human Rights Watch in Washington, D.C.

• **Carly Goldstone**, who holds bachelor's and law degrees from Monash University in Melbourne, Australia, and in 2004-05 was the refugee advocate and coordinator of the gender persecution program for the Asylum Seeker Resource Center in Melbourne, will do her internship with UNHCR's office in Sarajevo.

• **Allison D. Kent**, who earned her bachelor's degree at Harvard University, studied anthropology in Bolivia as a Fulbright Scholar, and worked as a legal intern in Sierra Leone last summer, will do her internship with the Refugee Policy Development Division of Citizenship and Immigration Canada in Ottawa.

• **Alicia Kinsey**, a graduate in Russian studies from Grinnell College who also has studied at St. Petersburg State Pedagogical University in St. Petersburg, Russia, and at Middlebury College's Intensive Russian Summer Institute, will spend her internship with the European Union office of the non-governmental European Council on Refugees and Exiles in Brussels.

• **Scott Risner**, who earned his bachelor's degree in international relations and Hispanic language and literature at Michigan State University, worked as a legal intern with the U.S. Department of State in Geneva, Switzerland, last summer, and plans to clerk in the U.S. District Court for the Western District of Texas in 2006-07, will do his internship with the New Zealand Refugee Status Appeals Authority in Auckland.

The six Michigan Fellows in Refugee and Asylum Law for 2006, from left, front row: Allison D. Kent, Alicia K. Kinsey, and Scott A. Risner. Back row, from left: Chad Doobay, Talia Dubovi, and Carly Goldstone.

The competitive fellowships are awarded on the basis of a joint recommendation from Hathaway and Assistant Dean for International Programs Virginia Gordan. Each recipient receives a stipend adjusted to the local cost of living at the internship location and reimbursement for airfare from Detroit to the internship site. Past Michigan Fellows in Refugee Law now work with UNHCR and other intergovernmental agencies, hold positions in key non-governmental organizations concerned with refugee protection and human rights, and frequently take the lead on important pro bono litigation in the United States and abroad.

Consensus guides WTO's Appellate Body

World Trade Organization (WTO) Appellate Body member and Brazilian international law professor Luiz Olavo Baptista had a long-delayed homecoming when he returned to the Law School last fall as the DeRoy Fellow to deliver the Dean's Special Lecture, visit a class in International Trade Law, enjoy Michigan Law's hospitality, and participate in an interdisciplinary conference on the WTO's Dohar development agenda at the Ross School of Business.

Baptista, recently named to a second term on the WTO's Appellate Body, was a visiting professor at Michigan Law in 1978-79, early in a stellar career that Dean Evan H. Caminker described as "truly global in scope." In addition to his current Appellate Body service, Baptista also is a professor of international law at the University of Sao Paulo in his native Brazil.

In his Dean's Special Lecture, "Facts and Rules in the WTO," Baptista described the Appellate Body as a panel whose members strive to understand each other's varying viewpoints and to search out the common ground that leads them to consensual agreement.

Yes, he acknowledged, a minority group "can make a dissenting opinion, and it has happened, but we do not wish it to happen. If there is dissent, that shows we didn't agree."

Agreement isn't easy to reach, he noted. It means making your way through the minefield of differing cultural and historical approaches, different interpretations of a law, even different interpretations of what a word means. "Many people laugh when we use dictionaries," he confessed, but sharing the understanding of a word's meaning is critical to the Appellate Body's work.

"We must use English," he said of the Body's language of discussion. "Words have different meanings to different countries. Every word in a law has a meaning to a particular system."

The Appellate Body's members come from many countries and many disciplines—for example, there's an Australian solicitor/banker, Italian and American law professors, an Egyptian professor of public international law, Baptista explained. "It's a mosaic of different cultures, and when its members reach consensus, it is the consensus of every other people of every other culture that has evolved to this point. . . . It is the law of all countries at the same time."

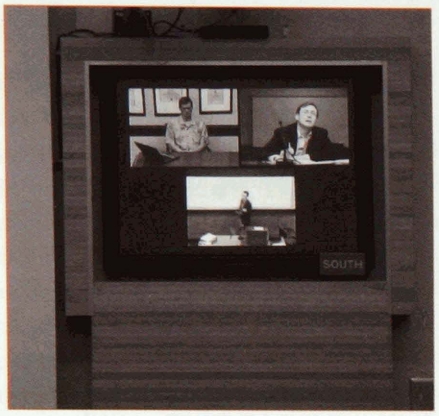
"We have to decide by consensus," he continued. "By deciding by consensus we must convince all the others that we are acting wisely."

Negotiating to consensus can be arduous and frustrating, but in the end leads to better decisions, according to Baptista. "You can agree with people, you can build consensus with people . . . which makes it better and easier to live for all of us," he explained.

During his visit to the Law School Baptista also visited Professor Donald Regan's International Trade Law class and lunched with faculty members. After visiting the Law School, he participated in the conference "Perspectives on the WTO Doha Development Agenda" at the Ross School of Business. The conference was presented by Michigan Law, the International Policy Center, the Gerald R. Ford School of Public Policy, and the U-M Department of Economics, with co-sponsorship from the William Davidson Institute, Butzel Long, and Merck Pharmaceuticals.

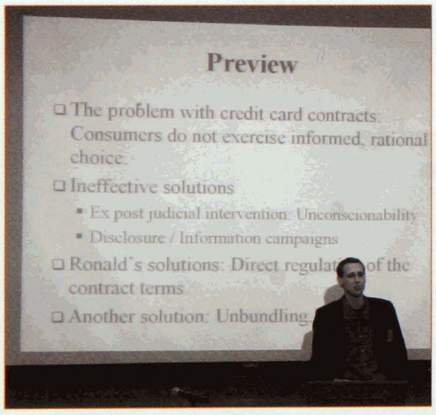
WTO Appellate Body member Luiz Olavo Baptista answers questions from students in Professor Donald Regan's International Trade Law course.

Consensus is the best way to reach decisions, WTO Appellate Body member Luiz Olavo Baptista explains in his Dean's Special Lecture, delivered last fall while he was the DeRoy Fellow at Michigan Law. His talk was titled "Facts and Rules in the WTO."



Via video conferencing equipment, Ronald Mann (at upper left) participates from the University of Texas at Austin, Lucian Bebchuk (at upper right) takes part from Harvard University, and participants in Room 116 of Hutchins Hall (lower image, above) hear and converse with both panelists at their remote locations.

Below, Oren Bar-Gill of New York University discusses Mann's work on credit cards, and (bottom) listens with Professor Omri Ben-Shahar, the conference's organizer and director of the Law School's John M. Olin Center for Law and Economics.



Putting "boilerplate" under the microscope

"Boilerplate." We all know what it is, those words at the end, in the fine print or the software user agreement, that we never read. Like actually agreeing to automatic subscription renewal when we think we're using our credit card to only renew for one year. Right?

Yes, usually, but when you take a closer look, as a group of scholars did at a Law School conference last fall, you find boilerplate to be what Professor Omri Ben-Shahar call "the non-negotiable building blocks of standard form contracts." He identified these hallmarks of boilerplate:

- It's usually not read.
- It seems to be objective, but often is one-sided and may favor the seller or the buyer.
- It is solicited and shaped to meet an agenda and is not negotiated.

Boilerplate holds at least a theoretical distinction from negotiated portions of a contract, according to Ben-Shahar, who organized the conference "Boilerplate: Foundations of Market Contracts" and is director of Michigan Law's John M. Olin Center for Law and Economics. The center sponsored the conference in cooperation with the *Michigan Law Review*, which is printing the proceedings in Volume 104 (March 2006).

Conference panel discussions focused on "Boilerplate in Consumer Contracts," "Boilerplate and Market Power," "Production of Boilerplate," and "Boilerplate vs. Contract."

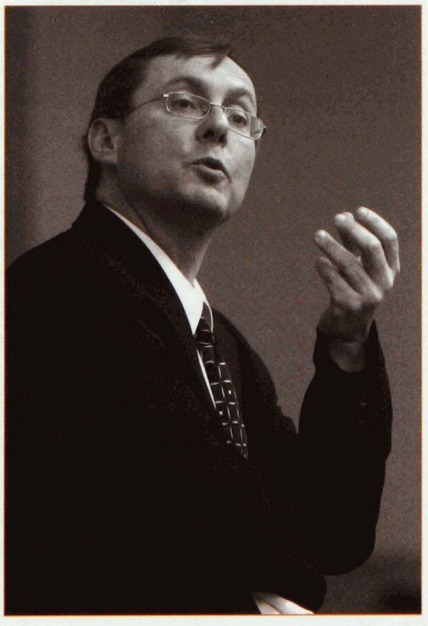
Panelist Robert Hillman, of Cornell University, noted how quickly online shoppers click and make purchases and proposed that terms in the contracts be available before any transaction begins. He said he is working with the American Law Institute to forge a proposal for greater discloser of online terms in contracts.

"Disclosure would probably be helpful over the long run," he predicted.

In a special aspect of the conference, organizers were able to use the conference room's video conferencing equipment, installed with funding provided through the Sam Zell Dean's Tactical Fund, to present a discussion that included two panelists at remote locations. (Donor Sam Zell, '66, received an honorary degree at U-M's commencement ceremonies last December. See story on page 51.)

Using the special equipment in Room 116 of Hutchins Hall that facilitates video conferencing with participants in different locations, panelists Ronald Mann and

Conference participant Lucian Bebchuk of Harvard University also delivered the Olin Lecture at Michigan Law last fall (below), speaking on "The Political Economy of Investor Protection."



Lucian Bebchuk were able to discuss "Boilerplate in Consumer Contracts" in real time even though neither actually was at the Law School. Mann, a former Law School professor, took part from an office at the University of Texas at Austin, where he is a Law School faculty member, and Bebchuk took part from an office at Harvard University, where he teaches.

Mann, who noted his concern over "broader social concerns in the use of credit cards," said "the core of the contracting problem" is that there are many different terms that consumers aren't facing the issue on.

Bebchuk, citing his own book contracts that allow his publisher to go ahead and print his book if he misses his deadline to return proofs, noted that many contracts carry boilerplate like this that no one expects to be enforced. For example, Bebchuk said, such a "reputational restraint" usually means you are not charged for another day if you check out of your hotel room an hour or two late, even though the hotel operator's contract gives him the right to levy such a charge.

Bebchuck also delivered the Olin Lecture at the Law School in November, speaking on "The Political Economy of Investor Protection." His lecture dealt with his research to develop a measure of how corporations and other large organizations use their assets to influence laws and regulations that govern investor protection.

Panelists: Katrina disabled already ailing legal system

Prison inmates in Louisiana got scant attention as Hurricane Katrina ripped through the state last year, and the storm aggravated the weaknesses of the state's already limping justice system, according to a panel of scholars and professionals who spoke at the Law School last fall.

The Pelican State already had "probably the most dysfunctional correctional system in the United States" when Katrina hit, said Stuart P. Green, a visiting professor at the Law School from Louisiana State University, where he is the Louis B. Porterie Professor of Law and director of the Pugh Institute for Justice.

Katrina's wake left the state's legal and correctional system in "a very sorry situation," he said.

Green and fellow panelists G. Ben Cohen, '96, of the Capital Appeals Project, and Hilary Taylor, '99, a public defender in Jefferson and Orleans Parishes in Louisiana, described a legal and correctional system that already was substandard when it was knocked to its knees by Katrina.

By executive order, Louisiana suspended the statute of limitations, and the federal district court in New Orleans suspended speedy trial provisions, moves that put anyone caught in the justice system into a kind of legal limbo, according to Green.

The storm also shut down the state's public defender program, which is funded through traffic citations, he reported. No traffic. No citations. When public defenders were asked to return, they were offered half their previous wages, according to Taylor.

Cohen and Taylor reported that people awaiting legal action for minor violations and misdemeanors were held instead of being released. Nor did authorities release prisoners who had served their time. Other people were held because charges against them could not be processed.

At one correctional facility, prisoners appeared to have been forgotten as the storm waters rose, according to Cohen. "Ultimately, they escaped from the third floor by breaking windows and swimming out," he recounted.

Files, evidence, and witnesses—even inmates and people facing trial—could not be located, according to Taylor. At first officials said trials could resume in November, "now they say April," she observed.

Samuel R. Gross, the Thomas G. and Mabel Long Professor of Law, moderated the discussion, which was presented by the Law School's Office of Public Service.

Visiting Professor Stuart Green of Louisiana State University, G. Ben Cohen, '96, Professor Samuel R. Gross (moderator), and Hilary Taylor, '99, discuss the havoc that Hurricane Katrina brought to the New Orleans area justice system last year.

Saving the Great Lakes

Major principles of water use

- Every new project must include all reasonable feasible water conservation measures.
- No new project can cause significant harm—individually or in combination with other projects—to the Great Lakes, their tributaries, or the people or wildlife they support.

Early this year legislatures in the eight states that touch the Great Lakes began considering a new plan to safeguard the huge inland lakes while also guaranteeing that their precious water—nearly 20 percent of the earth's fresh water supply—is used in an even-handed way both within and outside of the Great Lakes Basin.

The proposal is the result of four years of intense negotiations to satisfy the variety of needs for the lakes' water, from huge commercial uses to small communities' drinking water, according to Andrew P. Buchsbaum, who discussed the proposal in a program presented at the Law School last fall by the Environmental Law Association.

Buchsbaum is director of the National Wildlife Federation's Great Lakes Natural Resource Center in Ann Arbor and teaches Federal Litigation: An Environmental Case Study at the Law School. He said the current proposal, which aims to avoid discrimination in how Great Lakes water is used within the lakes' basin and outside it, is based on these major principles:

- Every new project must include all reasonable feasible water conservation measures.
- No new project can cause significant harm—individually or in combination with other projects—to the Great Lakes, their tributaries, or the people or wildlife they support.

Governors of the eight Great Lakes states—Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin—and premiers of Quebec and Ontario signed the proposed Great Lakes-St. Lawrence River Basin Water Resources Compact and Regional Agreement in December. The Compact binds the eight states and requires congressional approval after all the state legislatures accept it; the Agreement is a non-binding pact among the states and the two Canadian provinces.

A third pillar of the original proposal that grew out of the four-year negotiations—that every project must be designed to actually improve the great Lakes and the tributary lakes, streams, and underground aquifers—does not appear in the proposed Compact and Agreement because of a lack of clarity on how it could be put into action.

"It's a tough principle to understand, and once you understand it, it's a hard principle to apply," Buchsbaum explained.

Farm, business, municipal, recreation, and a host of other interests make claims on Great Lakes water, according to Buchsbaum. Agreeing on the overriding principles came fairly early in the lengthy negotiations, he said. But each one of the states wants something different, and "for the last year it's felt like we were in a massive UN negotiation."

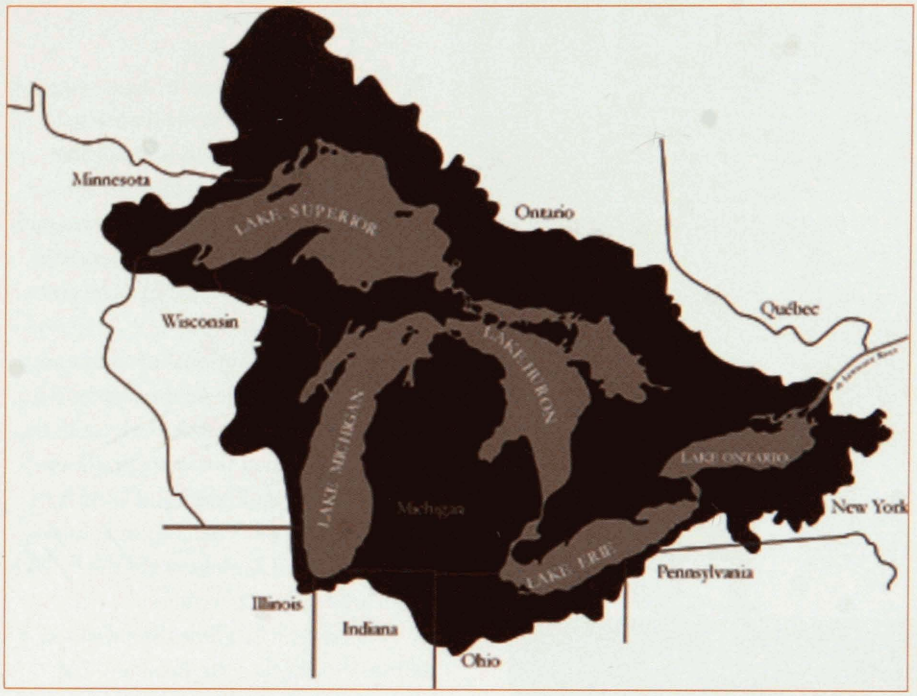
Buchsbaum stressed that negotiators tried to fashion a proposal that applies the same standards—does not discriminate—for water being used in Ann Arbor, for instance, which lies within the Great Lakes Basin, as for water used in locations like Waukesha, Wisconsin, which draws water from the Great Lakes Basin but has sunk several hundred feet within the last century and now drains

water out of the Basin, and locations far enough away to lie unambiguously outside of the Basin.

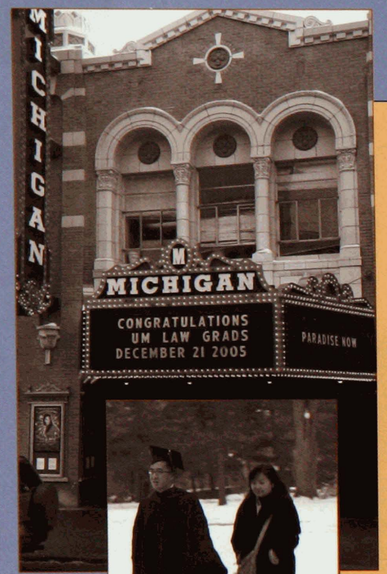
It was the potential for discriminatory regulations that launched the project, called the Great Lakes Charter Annex, according to Buchsbaum. In 1998, when a small Canadian company was denied permission to use Lake Superior water for hotels in Asia, observers like Buchsbaum realized there was a need to strengthen the existing Water Resources Conservation Act's Great Lakes protection as well as to make its regulation even-handed for in-Basin and out-of-Basin users.

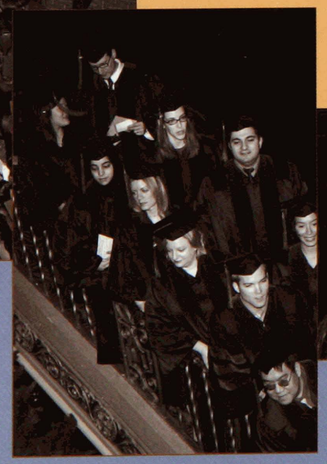
Water shortages affect many parts of the United States, in the Northwest, Southwest and West, the Great Plains, even Florida, where some observers are warning that the state may have to draw from its lakes, streams, and springs to satisfy its booming population. Great Lakes water naturally can look very attractive to such areas.

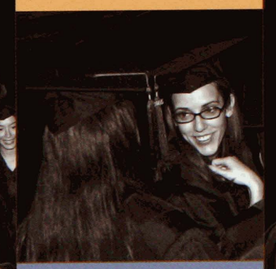
But water shortages also are occurring within the Great Lakes Basin, according to Buchsbaum. Chicago's aquifer, for example, lies lower than Lake Michigan, so the city "is essentially sucking water out of Lake Michigan," he observed. Groundwater drainage and contamination in the Great Lakes Basin also has caused water shortages in Wisconsin, Ohio, New York, and Ontario.

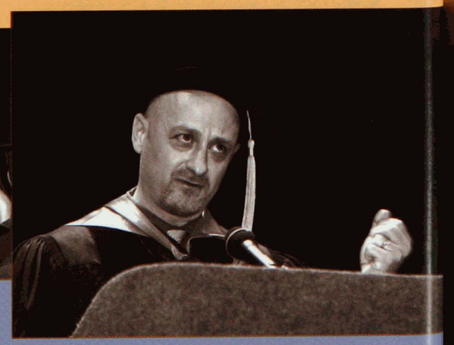


This map from the National Oceanographic and Atmospheric Administration shows the Great Lakes Basin and the states and Canadian provinces that border the lakes.









DECEMBER COMMENCEMENT

New lawyers are entering a complex world that demands their legal skills more than ever, and Michigan Law has given them the tools to see beyond the obvious and solve issues with new and unique insights, speakers told graduates at the Law School's December commencement.

Issues of constitutional protections vs. security needs recur throughout U.S. history, and this is "particularly so in this day and age, when the appropriate line to draw between liberty and security seems ever more debatable and elusive," Dean Evan H. Caminker told the graduates and well-wishers.

"This week's headlines alone raised questions whether the President has power, absent clear approval from Congress, to detain indefinitely persons he labels enemy combatants; whether the President has power, again without clear approval from Congress, to eavesdrop on conversations between Americans on U.S. soil and others abroad without prior judicial permission; and whether Congress, for its part, may strip courts of their jurisdiction to review the legality of some of these presidential decisions.

"When this much is at stake, and legal precedents are this uncertain, it is critical that people versed in the law and trained to argue about its justice and usefulness play an active role in shaping our societal responses to the ever-growing pressures from within and without."

Complexities characterize the modern world, which demands of those who succeed in it the ability to understand that, as commencement speaker Omri Ben-Shahar put it, "reality is not always as obvious as it seems."

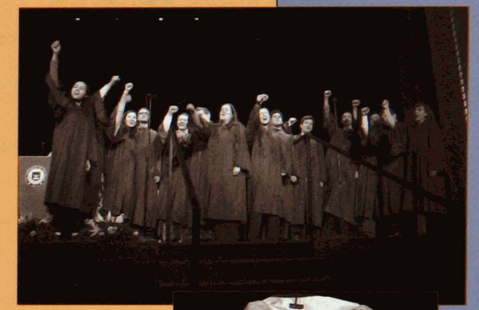
Ben-Shahar, a professor of law and director of the Law School's Olin Center for Law and Economics, told the graduates that the Law School has given each of them the tools to become a "truly excellent" attorney: "The ability to go beyond your intuition; to explore what lies beneath the surface; to recognize, counterintuitively, that things are not always as one would first predict."

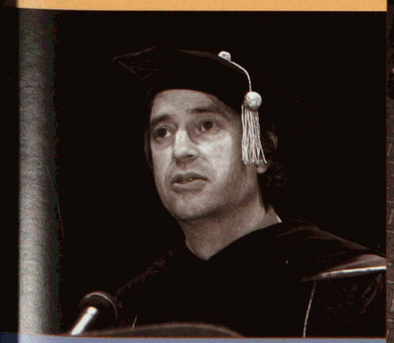
Using his specialty of contracts as a metaphor—and drawing on a recent study that showed in-the-box contracts that buyers could not read before buying the contract product were more pro-buyer than traditional contracts that could be read prior to purchase—Ben-Shahar stressed the value of what Law School students have learned: the ability to think beyond traditional confines.

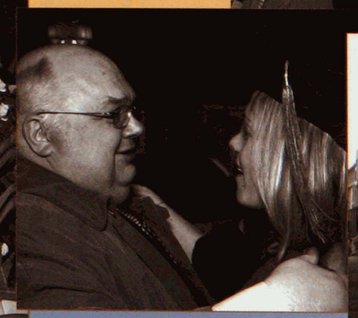
"As attorneys, and perhaps in other capacities of your life, you will face questions for which there will be standard solutions, obvious and intuitive," he explained. "You will see others address challenges by invoking slogans, jumping to conclusions, conforming to standard templates.

"But the reality in which these challenges are set is often more subtle, hiding more possibilities and perhaps more solutions than the naked eye can easily see. It is what distinguishes the outstanding attorney from the mediocre—what distinguishes you, Michigan Law graduates, from so many other attorneys—the ability to search and to uncover the nuanced, textured, counter-intuitive arguments."

Graduates, you're ready to take on the world's complexities

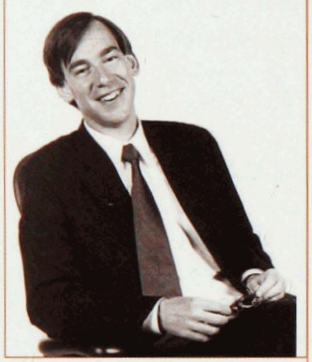






IN DETAIL

Pottow wins inaugural international insolvency research award



John A.E. Pottow

Assistant Professor John A.E. Pottow has been named an inaugural winner of the International Insolvency Institute's (III) first annual prize for international insolvency research. Launched in 2005, the prize in International Insolvency Research is awarded "for original research, commentary, or analysis on topics of international insolvency and restructuring significance or international comparative analysis of domestic insolvency and restructuring topics."

Pottow, a member of the Law School faculty since 2003 and the only North American among the three prize recipients, won for his study "Greed and Pride in International Bankruptcy: The Problem and Proposed Solutions to 'Local Interests.' " The article is forthcoming at 100:8 *Michigan Law Review* (August 2006).

The other winners were Christopher Eng Chee Yang of Singapore for his study "Cross-Border Insolvency Issues in Singapore: Should Singapore Adopt the UNCITRAL Model Law on Cross-Border Insolvency?" and Irit Ronen-Mevorach of London, England, for "The Road to Suitable and Comprehensive Global Approach to Insolvencies with Multinational Corporate Groups."

"Everyone will appreciate the exceptionally high quality of this year's award-winning papers," the institute said in announcing the winners. "All members can be very pleased with the very significant contribution that the III's Prize in International Insolvency Research has made to analysis and research in the international insolvency area."

An independent, international panel of scholars and practitioners judged the entries.

Friedman 'confronts' the U.S. Supreme Court

Professor Richard D. Friedman's decade-long crusade on behalf of the U.S. Constitution's Confrontation Clause is taking him to the U.S. Supreme Court for the second time—and this time he is making his own oral argument.

Friedman sat quietly at the counsel table when Jeffrey Fisher, '97, argued *Crawford v. Washington* before the Court. When the Court ruled in the case in 2004 that "[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy the constitutional demands is the one the Constitution actually prescribes: confrontation," Friedman knew there would be clarifying followup cases. Indeed, the Court itself invited successive cases by saying that "we leave for another day any effort to spell out a comprehensive definition of 'testimonial.' "

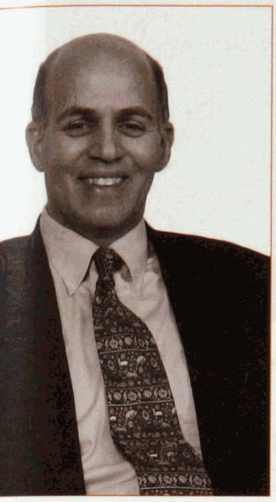
One of those clarifying cases is *Hershel Hammon v. State of Indiana*, which Friedman has been working on since last summer and was preparing to argue on March 20 as this issue of *Law Quadrangle Notes* was going to press.

Hammon is a companion case of *Davis v. Washington*, which Fisher is arguing. The Court granted certiorari for both cases on October 31, 2005, the two will be argued in tandem, and both should help clarify *Crawford*. The question presented in *Davis* is "whether the victim's statements to a 911 operator, which implicated the defendant and were admitted at trial as 'excited utterances,' constitute testimonial statements." In *Hammon*, "the question is whether an oral accusation made to an investigating officer at the scene of the alleged crime is a testimonial statement within the meaning" of *Crawford*.

Herschel Hammon was convicted in a bench trial of domestic battery in 2003 in a consolidated process that also dealt with his probation violation on an earlier battery conviction. His wife Amy was subpoenaed but did not attend the trial and the state made no attempt to show that she was unavailable. The court admitted both the arresting officer's testimony about Amy's oral statements to him when he responded to the call at her home and also an affidavit that the officer asked her to complete immediately afterwards.

In reviewing the case, the Indiana Court of Appeals and then the Indiana Supreme Court took into account the *Crawford* ruling, which the United States Supreme Court issued after Hammon's trial, but they both upheld Hammon's conviction.

The Indiana Supreme Court held that Mrs. Hammon's oral statements were not testimonial, and there was no error in admitting them. The court also held that admission of the



Ralph W. Aigler Professor of Law Richard D. Friedman

signed affidavit violated Herschel Hammon's confrontation right, but concluded that because the bench trial did not involve a jury, which might have been swayed by the affidavit, the error was harmless.

Noting that "the motivations of the questioner and declarant are the central concerns," the court said that what it called the initial verbal exchange between Mrs. Hammon and the police officer who came to her home "fell into the category of preliminary investigation in which the officer was essentially attempting to determine whether anything requiring police action had occurred and, if so, what. Officer Mooney, responding to a reported emergency, was principally in the process of accomplishing the preliminary tasks of securing and assessing the scene. Amy's motivation was to convey basic facts and there is no suggestion that Amy wanted her initial responses to be preserved or otherwise used against her husband at trial."

Friedman counters in his brief that "in assessing whether a statement is testimonial, the critical perspective is not that of the questioner, if there even is a questioner, but that of the speaker, the person who made the statement and whom the accused assertedly has a right to confront. The best standard is whether a reasonable person in the position of the declarant would anticipate use of the statement in investigation or prosecution of a crime. Under this standard, an accusation made to a known police officer is clearly testimonial."

"In short," Friedman says in his brief, "if an accusation made to a police officer, whatever the circumstances in which it was made, may be admitted against an accused without an opportunity for confrontation, then virtually the whole of the confrontation right is lost: Rather than saying that a prosecution witness must testify in the presence of the accused and subject to cross-examination, as the Confrontation Clause requires, we must add a qualifier, that the witness may also testify by making an accusation to a police officer."

"The Court can decide this case by adopting a simple principle: A statement made to a known police officer (or other government agent with significant law enforcement responsibilities) and accusing another person of a crime is testimonial within the meaning of *Crawford*," according to Friedman.

"The Confrontation Clause is an affirmative guarantee that testimony introduced against an accused must be given under a prescribed procedure —in the presence of the accused and subject to cross-examination."

Schneider spotlights law, ethics in consumer-directed health care

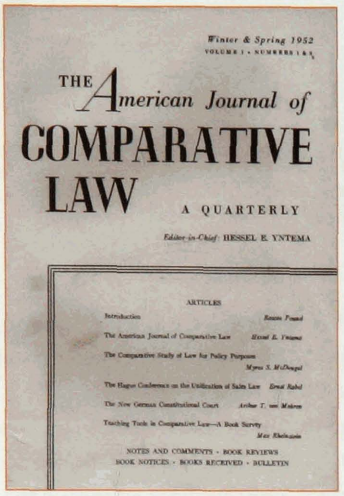
Chauncy Stillman Professor of Ethics, Morality, and the Practice of Law Carl E. Schneider, '79, and his co-researcher have been given an Investigator Award in Health Policy Research by the Robert Wood Johnson Foundation to study "The Law and Ethics of Consumer-Directed Health Care."

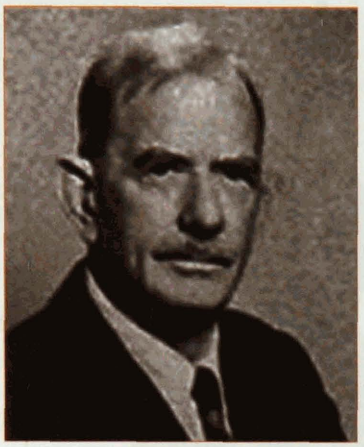
Schneider is conducting the research with co-investigator Mark A. Hall, the Fred D. and Elizabeth L. Turnage Professor of Law and Public Health at Wake Forest University. Their research seeks "to better understand how law and ethics can and should respond to consumer-directed health care" and "probes a range of possible effects on medical practice and treatment relationships when cost-sharing by patients plays a greater role in medical decision-making."

"New developments in health insurance, designed in part to contain costs, require patients to take greater responsibility for making medical spending decisions," their abstract notes. "The mechanisms of this new 'consumer-directed health care' model —health savings accounts, high-deductible catastrophic coverage, and tiered provider networks and pharmacy benefits—have broad policy implications that may challenge conventional understandings of the doctor-patient relationship, the doctrine of informed consent, the medical malpractice standard of care, and other tenets of health care law and ethics."

Schneider and Hall are among 11 scholars awarded a total of $2.5 million to support nine new policy projects in health and health care.

Chauncy Stillman Professor of Ethics, Morality and the Practice of Law Carl E. Schneider





Hessel E. Yntema

Coming home: After 34 years, the *American Journal of Comparative Law* returns to Michigan

by Mathias W. Reimann

On July 1, 2005, the *American Journal of Comparative Law* returned to Michigan, where it was born 53 years ago. The *Journal*, a peer-reviewed quarterly, is among the handful of internationally prestigious comparative law journals in the world. With about 2000 subscribers all over the globe, it is one of the two most widely circulated publications of its kind.

In 1952, a small group of scholars from various American law schools founded The American Association for the Study of Comparative Law (today The American Society of Comparative Law), and the *American Journal of Comparative Law* became the organization's principal organ. Hessel E. Yntema, who served on the Michigan Law School faculty from 1933 through his retirement in 1960, became the first editor in chief. Yntema ran the *Journal* for 14 years, until his death in 1966. Yet, much of the credit for the early growth and success of the *Journal* goes to its executive secretary, Vera Bolgar, a multilingual, Hungarian-born emigrant to the United States. Bolgar survived Yntema by 37 years and died in 2003.

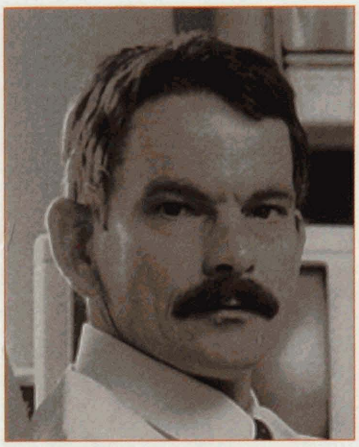
Michigan, recognized as a leading center for the study of comparative law, was a logical choice for the first home of the *Journal*. In the early 1950s, the Law School was the workplace not only of Yntema but also of Ernst Rabel, one of the gods in the pantheon of the discipline. A few years later, Eric Stein, '42, joined the faculty as well and turned it into the preeminent center for the study of European law in the United States and beyond. Of course, even then, the Michigan Law Library's collection of international, foreign, and comparative law materials was among the best in the world.

The first issue of the *American Journal of Comparative Law* opened with an Introduction by Roscoe Pound. It contained articles by Yntema, Myres McDougal, Ernst Rabel, Arthur von Mehren, and Max Rheinstein, a veritable "Who's Who" of comparative law at the time. Other contributions came from Edgar Bodenheimer, Ignaz Seidl-Hohenveldern, and Giogio Bernini, LL.M. '54, S.J.D. '59, who went on to become not only a law professor at the University of Bologna but also Italy's Minister of Trade (1994-95) and who remains a loyal alumnus to this day.

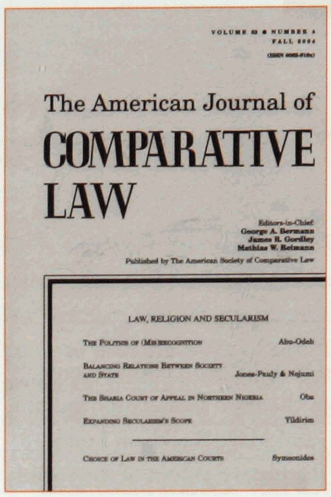
After Yntema's death, the *Journal* remained at Michigan for another five years under the editorship first of James George and then of Al Conard, with the continuing assistance of Vera Bolgar. But in 1971, Conard resigned from his position. He was succeeded by John Fleming of the Berkeley faculty and the *Journal's* operations moved to Boalt Hall. In 1987, after 16 years on the job, Fleming passed the baton to his colleague Richard Buxbaum, who served as editor in chief until he resigned from the job in 2003, creating the need to select a successor.

Comparative law had come a long way in the 50 years following the foundation of the *Journal*. It had hugely grown as a body of knowledge, proliferated as a genre of academic literature, and diversified in terms of the subject matters it addressed, the geographical areas it covered, and methods it employed. Recognizing that running a comparative law journal thus required much broader expertise and entailed an increased workload, the *American Society of Comparative Law* elected a troika of editors in chief, consisting of George Bermann, the Walter Gellhorn Professor of Law and Jean Monnet Professor of European Union Law at Columbia; Jim Gordley, the Shannon Cecil Turner Professor of Law at Berkeley; and myself, the Hessel E. Yntema Professor of Law at Michigan. Each is supported by a half-time editorial assistant at his respective institution.

The original plan was to keep the operations of the *Journal* at Berkeley, simply because there seemed to be no good reason to move it. However, in the spring of 2005, the support structure at Berkeley began to crumble and it became obvious that the *Journal* needed a new home. After some consultation between the local editor in chief and the dean, the Michigan Law School offered to take it back, and the *American Society of Comparative Law* ultimately decided to return the *Journal* to Ann Arbor. The *Journal* now has its office in 831 Legal Research where a production manager



Mathias W. Reimann, LL.M. '83



Far left, Hessel E. Yntema and the first issue of The American Journal of Comparative Law. *Near left, current co-editor in chief Mathias W. Reimann and the Fall 2004 issue.*

runs the day-to-day operations in cooperation with the editors in chief, their editorial assistants, the authors, and the printing company.

The return of the *Journal* to Ann Arbor is another signal of Michigan's continuing commitment to the study of comparative and foreign law. With its wide-ranging study-abroad, externship, and academic exchange programs, its Center for International and Comparative Law, and, last but not least, its large and growing number of faculty members focusing on international and foreign law, the Law School is once again an appropriate home for the *American Journal of Comparative Law*. Running such an enterprise is greatly facilitated, of course, when one can draw on in-house expertise on a wide range of topics including Roman law, the civil law tradition, the European Union, Japanese and Chinese law, the Jewish legal tradition and current Israeli law, Indian law, international trade, comparative human rights, international tax, antitrust, bankruptcy law, and comparative corporate law, not to mention public international law, European and comparative human rights, and private international law and litigation.

Needless to say, hosting the *Journal* is not cost-free. It requires putting one's money where one's mouth is. Thus, the Law School pays not only for a half-time editorial assistant, it also provides office space and logistical support for the *Journal* and some teaching relief for the resident editor in chief.

The *Journal* receives roughly 200 submissions per year and publishes about 20 of them. With a 1 in 10 acceptance rate, it can afford to be discriminating. It also publishes reviews of recent books on foreign and comparative law. Since about half of the submissions come from abroad, the staff faces some daunting challenges beyond the normal problems of running a law review. Many of the authors are not native English-speakers, not to mention writers, which often means massive amounts of editorial work. Virtually all articles and book reviews include citations to an enormous variety of foreign legal sources, which creates constant issues of both citation style and checking for accuracy. Take, for example, one of the more recent issues (vol. 52:4) where a symposium on "Law, Religion, and Secularism" comprised articles dealing with Islamic law, reconstruction of law in Afghanistan, the sharia courts in Nigeria, and secularism in India. The traditional American databases simply don't go very far when it comes to such matters.

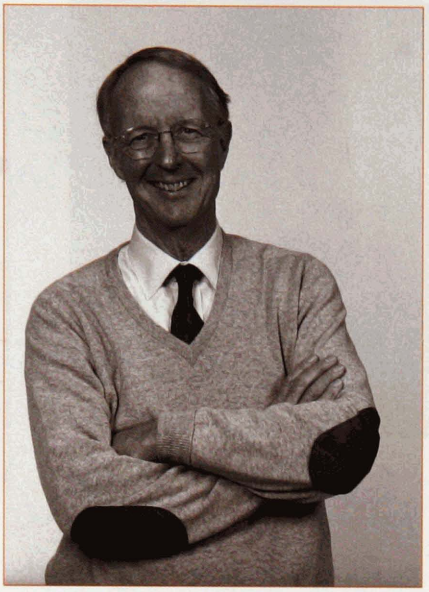
While the production process is up and running and the publication schedule is being maintained, much remains to be done to improve the *Journal*. The current billing system, requiring that checks be mailed to Ann Arbor by subscribers from all over the world, needs to be switched to credit-cards or another electronic medium. At some point, the *Journal* needs to offer an electronic subscription as an alternative to mailing hard copies to all four corners of the earth. More articles should be solicited from experts in the field, and some student involvement in the operation of the *Journal* is under consideration.

A special project already underway is the organization of an international conference jointly hosted by the *American Journal of Comparative Law* and the *Rabels Zeitschrift*, which is published by the Max Planck Institute for Foreign and International Private Law in Hamburg, Germany. The conference will be held in Hamburg in 2007 and focus on the topic "Beyond the State?—*Rethinking Private Law*". The contributions will be published in a joint issue of the *Journal* and the *Rabels Zeitschrift*. The project reflects not only the common interest of the two journals, it also builds on the longstanding connection between the Law School and the Max Planck Institute in Hamburg, where several Michigan alumni served as directors in the past.

Mathias W. Reimann, *LL.M., '83, the Hessel E. Yntema Professor of Law, received his basic legal education in Germany (Referendar, 1978; Assessor, 1981). He is a graduate of and holds a doctorate (Dr. iur. Utr., 1982) from the University of Freiburg Law School, where he taught for several years. He is also a graduate of the University of Michigan Law School (LL.M., 1983). He publishes widely both in the United States and abroad in the areas of comparative law, private international law, and legal history.*

White raises bar, competition for Michigan Society of Fellows

The following story is reprinted from The University Record *of December 12, 2005, and appears here with permission.*



James Boyd White

To measure James Boyd White's impact during 18 years as chair of the Michigan Society of Fellows in the Horace H. Rackham Graduate School, consider that now 400 people typically compete each year for four available fellowships.

"The quality of our program is determined by the quality of those who apply to join it," says White, the L. Hart Wright Collegiate Professor of Law, professor of English language and literature, and adjunct professor of classical studies in LSA [the U-M's College of Literature, Science, and the Arts].

"It has been a great joy for me to be part of the lives of these incredibly talented young people. I have gotten to know faculty from many fields, and have enjoyed lots of serious and sustained intellectual conversation with them; it has been just wonderful," says White, who January 1 handed off the chair position to Professor Donald S. Lopez Jr., the Arthur E. Link Distinguished University Professor of Buddhist and Tibetan Studies in the Department of Asian Languages and Cultures in LSA.

"Under the leadership of James Boyd White, the society has played a valuable and distinctive role in the intellectual life of the University," says Janet A. Weiss, dean of the Rackham Graduate School and vice provost for academic affairs-graduate studies. "Current and former Fellows are deeply appreciative of Professor White's devotion to the Michigan Society of Fellows; all of the faculty have benefited from the many ways the society has enlivened the quality of intellectual discourse at the University."

The Michigan Society of Fellows was established in 1970 with endowment grants from the Ford Foundation and the Horace H. and Mary Rackham Funds. The most distinctive aspect of the society is a multidisciplinary emphasis, which gives the Fellows an opportunity to interact across disciplines and to expand their horizons and knowledge.

White initiated interactions among the Fellows by requiring monthly meetings to discuss their work, and there have been some memorable pairings —one of them current.

"Two of our first-year Fellows are working on analogous projects," White explains. "One is studying music in England after World War II and asking how it affected the restoration of national identity—and at the same time there is a fellow studying the architectural history of post-World War II monuments created in Japan with much the same purpose. They are a natural pair."

While their own scholarship is enriched, Fellows also enrich the University through teaching. Each year the Society selects four outstanding applicants for appointment to three-year fellowships in the arts and humanities, in the social, physical, and life sciences, and in the professional schools. The newly appointed postdoctoral Fellows join a unique interdisciplinary community composed of their peers, as well as senior fellows.

Fellows are appointed as assistant professors in appropriate departments and are expected to be in residence during the academic years of the fellowship; to teach for the equivalent of one academic year; to participate in the informal intellectual life of the society; and to devote time to their independent research.

"It provides them a terrific boost," White continues. "They'd normally begin their careers in jobs where it can be difficult to continue sustained research. Fellows teach in their department one year and the other two are entirely free for research. It gives them a chance to develop their ideas more fully."

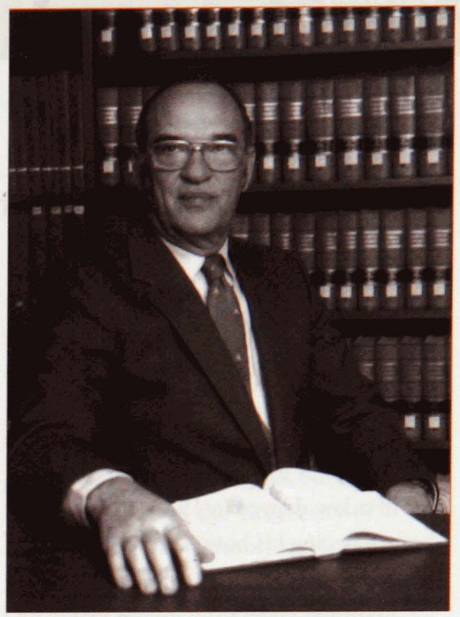
White is an alumnus of Amherst College, Harvard Law School, and Harvard Graduate School, where he obtained a master's degree in English. After graduation from law school, he spent a year as a Sheldon Fellow in Europe and then practiced law in Boston for two years.

He began his teaching career at the University of Colorado Law School, then moved in the mid-1970s to the University of Chicago, where he was a professor in the law school, the college, and the Committee on the Ancient Mediterranean World. He served as a governor of the Chicago Council of Lawyers and is a member of the American Law Institute and the American Academy of Arts and Sciences.

He has received fellowships from the Guggenheim Foundation and the National Endowment for the Humanities, and in 1997-98 was a Phi Beta Kappa Visiting Scholar.

—Kevin Brown, *The University Record*

Waggoner: Dick Wellman, '49, 'changed the legal landscape'



Richard (Dick) V. Wellman, '49

Longtime Law School faculty member Richard (Dick) V. Wellman, '49, who died last summer at age 82, "literally changed the legal landscape in the area of trusts and estates," according to Lewis M. Simes Professor of Law Lawrence W. Waggoner, '63, himself a nationally recognized expert in the field. Wellman was perhaps best known as the Chief Reporter for the 1969 Uniform Probate Code.

Waggoner traces his own involvement in Uniform Code work to the influence and mentorship of Wellman, who taught at the Law School from 1954-73. Wellman then taught at the University of Georgia School of Law, where he held the Robert Cotton Alston Chair in Corporate Law. He took emeritus status in 1990, but remained active in uniform law issues until his death last June.

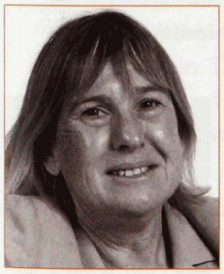
Wellman's "pathbreaking work as Chief Reporter for the Uniform Probate Code and work on many other uniform statutes has had profound influence on law of trusts and estates, as much or more so than the work of any other law professor, practicing lawyer, or legislator of his generation," Waggoner wrote in a tribute to Wellman in *Georgia Law Review.*

"Dick could scarcely visit any state in the union that did not have as part of its law, law that he invented and wrote. One of his great achievements was to make the probate process cheaper and more efficient, anonymously easing the lives of thousands and thousands of grieving survivors."

Waggoner studied Trusts and Estates under Wellman, and "I still pass on to my students many of the insights that I learned from Dick. After I entered teaching, Dick brought me in on *Trusts and Succession*, the casebook that I used as a student and that he coauthored with George Palmer. Although that casebook has gone through several revisions since then, and has been renamed *Family Property Law*, it still contains material that Dick prepared. My coauthors [Greg Alexander, Mary Lou Fellows, '75, and Tom Gallanis—all Waggoner's former students] and I will be dedicating the next edition of that book to Dick's memory."

The next edition of *Family Property Law*, the fourth, is to appear this spring.

Chinkin wins ASIL's Goler R. Butcher Medal



Christine Chinkin

The American Society of International Law (ASIL) has named internationally renowned human rights scholar Chistine Chinkin, an Affiliated Overseas Faculty member at the University of Michigan Law School and a professor of international law at the London School of Economics and Political Science, a recipient of the 2006 Goler T. Butcher Medal.

Chinkin's co-winner of the prestigious award is Hilary Charlesworth, her co-author on *The Boundaries of International Law: A Feminist Analysis* (2000) and a professor of international law and human rights in the Research School of Social Sciences and in the Faculty of Law at the Australian National University.

"Professors Chinkin and Charlesworth were excellent choices for the Butcher Medal," said ASIL Executive Director Charlotte Ku. Their book "is an important contribution to the public policy debate on the status of women regarding human rights and international law. This award is an appropriate, well-deserved recognition of their work, and on behalf of the entire ASIL membership, I congratulate them both."

Chinkin and Charlesworth receive their award at ASIL's special centennial celebration/annual meeting in Washington, D.C., March 29–April 1. The award is named in honor of long-time Howard University professor and international human rights law advocate Goler T. Butcher. It has been presented annually since 1997.

The Boundaries of International Law: A Feminist Analysis, winner of ASIL's Certificate of Merit in 2001, critically examines how and why international law often has failed to address women's needs. It cites the lack of women in national/international positions of power as a cause of the inequality and urges that international law be redrawn to create a more equitable status and treatment of women.

In addition to teaching, Chinkin has been a consultant to organizations such as the International Institute for the Unification of Private Law, the Asian Development Bank, the Commonwealth Secretariat, Amnesty International, the British Council, the International Center for the Legal Protection of Human Rights, the UN Division for the Advancement of Women, and the UN Office of the High Commissioner for Human Rights (OHCHR). She served in the working group that prepared the OHCHR Principles and Guidelines on the Human Rights of Trafficked Persons.

In addition to many articles and other writings, Chinkin's other books include *Third Parties in International Law* (1993); *Halsbury's Laws of Australia, Foreign Relations Law* (2nd edition, 2001), and *Dispute Resolution in Australia* (2nd edition, 2002, co-authored with Hilary Astor). Both Chinkin and Charlesworth serve on the Board of Editors of ASIL's *American Journal of International Law.*

Eric Stein honored by Charles University and a former student

European Union visionary and international law scholar Eric Stein, '42, has been given a special honor by Charles University in Prague, where he earned his first law degree in 1934, shortly before fleeing his homeland in the face of Nazism.

Stein, the Hessel E. Yntema Professor Emeritus of Law, also recently has garnered a teacher's great honor—a former student has dedicated his new book to him.

Stein traveled to Prague last fall to receive Charles University's Golden Medal Award for Excellence in Humanities and Law in ceremonies at the university's historic Karolinum, which dates to the 14th century.

The Golden Medal Award is reserved for Charles University graduates to recognize singular achievement and sometimes is compared to an honorary degree. Among previous award winners are the president of Estonia, an American Nobel prize physicist, the Prince of Orange of The Netherlands, a Czech presidential candidate, and leading Czech and foreign scholars.

In his acceptance remarks, Stein expressed his "profound appreciation for the honor bestowed on me today," calling it "a crowning jewel" to receive recognition "from my own distinguished alma mater."

Continuing, he recalled that as a staffer of the U.S. Department of State Bureau of International Organizations in the 1950s he began to see dispatches from Luxembourg about the new European Community. "I was intrigued: My old Europe taking a new, exciting direction, which turned out to be perhaps the most important event of the century. As Doctor Freud tells us, we are bound to keep returning to the location and dreams of our childhood. This may explain why I have made European Community law a center of my scholarship interest."

The "cruel paradox" at the time was that his native Czechoslovakia was not part of the emerging EC, Stein recalled. But that was remedied in 2004 when "both the Czech and Slovak Republics became members of the European Union."

"I realize that some questions were raised both here and in the West—but one does not have to be a Hegelian to see clearly that the Czech Republic membership in the European Union was historically mandated, unavoidable, and necessary," he explained. "In a sense, I understand the concern of those feeling finally liberated from one despised master, to accept what was represented as 'a submission' to another. But the idea of the European Union as a federation in the image of a centralized body such as the United States, if it ever was a realistic goal, today—not least because of the recent enlargement—is clearly a chimera.

"The European Union is, and, I would assume, shall remain, a multi-level-governance system which must take into account the rich pattern of cultural and historical differences of its component states and in which these states continue to play a determining role. It will be for the government and parliament of this Republic to organize themselves effectively not only to defend the Republic's interest but to employ its novel status for influencing, in alliance with other members, the policies of the Union."

The award ceremony was presided over by the Prorektore of Charles

Hessel E. Yntema Professor Emeritus of Law Eric Stein receives the special Gold Medal from Charles University in ceremonies in Prague last fall. (Photo by Jože Horal)

University and the dean of the Law Faculty in the presence of invited guests that included Czech Republic Constitutional Court President Pavel Rychetsky, Czech Parliament member Zdenek Jicinsky, and members of the Law Faculty. Several of Stein's second cousins also attended.

The award is the fourth honor that Stein has received from the Czech Republic. The others include a First Degree Medal from Czech Republic President Vaclav Havel, an honorary doctor of law degree from the West Bohemian University in Pilsen, and an honorary citizenship of the Czech town of his birth. In addition, Stein earlier this year received the Lifetime Contribution Award from the European Union Studies Association.

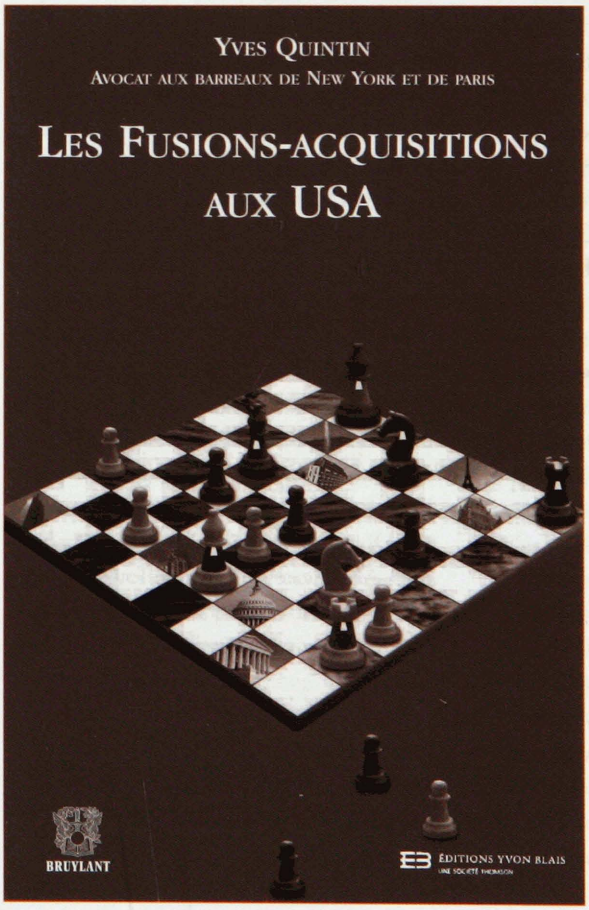
In a different kind of recognition, one that is especially satisfying for a teacher like Stein, his former student Yves Quintin, LL.M. '81, has dedicated his book *Les Fusions Acquisitions aux USA* (*Mergers and Acquisitions in the United States*) to Stein. The book, in French, is published by Editions Bruyland in Brussels and Editions Yvon Blais in Montreal.

Stein "was my professor of International and EU [European Union] Law at the Law School in 1980-81," Quintin explained. "I was also his research assistant during the summer of 1981.

"Eric was instrumental in helping me find my first job at Squire Sanders & Dempsey in Cleveland, where his recommendation was highly prized. He and I have stayed in touch over the years and I am very pleased to have been able to dedicate the book to him. He is one of the legends of the Law School."

Quintin, now a partner with Duane Morris LLP in Philadelphia, Pennsylvania, explained in an e-mail that his book is "intended for a French-speaking public of lawyers and executives who are interested in making acquisitions of companies in the United States. It grew out of my own practice (I am a member of the New York and Paris Bars), representing investors from French-speaking countries and the realization that there was no book, in French, that explained not only the technical aspects of M&A [mergers and acquisitions] in the United States, but also the legal/sociological context in which acquisitions take place and the risks that arise from that context."

Fluent in French and German as well as English, Quintin served as a legal/economic advisor in the cabinet of the governor of French Guiana. He lectures on business law at the University of Pennsylvania Law School, and is the former chair of both the International Law Committee of the Philadelphia Bar Association and the International Law Committee of the Young Lawyers Division of the American Bar Association. He specializes in corporate law, mergers and acquisitions, contracts, project finance, and international transactions.



The cover of the book that author Yves Quintin, LL.M. '81, has dedicated to Stein, his former teacher.

Activities

Irwin I. Cohn Professor of Law **Reuven Avi-Yonah** made the presentations "Tax Treaty Overrides: A Qualified Defense of U.S. Practice" at the OECD conference on tax treaties and domestic law and "*Cuno*, the WTO, and the ECJ," at a conference on tax and trade at Bocconi University, both in Milan, Italy, in November. In October, he organized the U-M conference on comparative fiscal federalism of the jurisprudence of the European Court of Justice and the U.S. Supreme Court (see his story on page 65) and made a presentation at the program. In September, he served as a panelist on "Residence and Source Taxation" at the International Fiscal Association's annual congress in Buenos Aires and presented "The Three Goals of Taxation" at a Harvard University workshop on tax and fiscal research in Cambridge, Massachusetts. In July he participated in the inaugural meeting of the OECD International Network for Tax Research in London (the first substantive meeting on "Taxation and Development" will be held at the University of Michigan in November) and presented "The Four Stages of U.S. International Taxation" at a UCLA conference on tax history. In June he presented "International Tax as International Law" at the political science conference "The Resilience of the State: Taxation and Police Powers" at International University in Bremen.

Assistant Professor **Michael Barr** was a visiting professor at the University of Pennsylvania Law School during fall 2005. His article "Credit Where it Counts: The Community Reinvestment Act and its Critics" (*New York University Law Review*) was chosen for presentation to the 41st Annual Conference on Bank Structure and Competetition at the Federal Reserve Bank of Chicago in May. His article "Banking the Poor" (*Yale Journal on Regulation*) has been translated and adapted as "Bancariser les pauvres: les politiques permettant d'amener les Américains á faible reven dans le courant financier dominant" in (Gloukoviezoff, G.) *Exclusion et Liens Fianciers* (Rapport du Centre Walra 2004, Paris: Economica (2005).

Professor of Law **Omri Ben-Shahar**, who also is director of Michigan Law's Olin Center for Law and Economics, recently has given presentations in workshops and symposia at the University of Texas, University of North Carolina, Columbia, Ohio State, and Hebrew University in Jerusalem. With the *Michigan Law Review*, he organized the conference "Boilerplate: Foundations of Market Contracts," held at the Law School last fall. (See story on page 20.)

Assistant Professor **Laura Beny** spoke on "Diversity Among Elite American Law Firms: A Signal of Quality, Prestige, and Firm Culture" in November at a faculty colloquium at Duke Law School. In October, she was commentator for the *University of North Carolina Law Review* symposium "Empirical Studies of the Legal Profession: What Do We Know About Lawyers' Lives?", and in September she discussed "Reflections on the Diversity-Performance Nexus among Elite American Law Firms: Toward a Theory of a Diversity Norm" at the Law and Economics Seminar at Stanford Law School.

Professor of Law **Daniel Halberstam** has delivered a number of papers recently: "Designing Federal Systems," at the seminar Practical Federalism in Iraq for Iraqi leaders and members of parliament, presented by the International Institute of Higher Studies in Criminal Sciences at Siracusa, Italy, in November; "Comparative Constitutionalism and the European Constitutional Adventure: Are there Lessons to be Learned?", at the program Multiple Sovereignties: Federalism in the 21st Century, part of the American Society for Comparative Law's annual meeting at the University of Hawaii in October; "Of Grace and Dignity in Law," at the Friedrich Schiller and the Path to Modernity International Interdisplinary Conference in Commemoration of Friedrich Schiller (1759-1805) at Princeton University in October; "The Constitutional Challenge in Europe and America: People, Power, Politics" and "Lawyer, Judges, Politician, and Citizens: In Defense of European Constitutionalism," both at the ninth biennial European Union Studies Association International Conference at Austin, Texas, last April; "The Bride of Messina or European Democracy and the Limits of Liberal Intergovernmentalism," at the Law School's Governance Workshop last March; and "Intergovernmentalism and Constitutionalism in European Integration," a lecture in the Seminar on Advanced Issues of European Law at the Inter-University Center in Dubrovnik last February-March. Halberstam also chaired the panel discussion "Multilevel Party Competition" for the Research Conference: New Challenges for Political Parties and Representation at the U-M's Institute for Social Research last May.

In November, **James C. Hathaway**, the James E. and Sarah A. Degan Professor of Law and director of the

Law School's Refugee and Asylum Law Program, traveled to London to lecture on "well-founded fear" and refugee status cessation at the Law Society in London and participate in the launch of his new book *The Rights of Refugees under International Law* (Cambridge University Press) hosted by Garden Court Chambers; he also went to Skopje, Macedonia, to train officials from central and eastern Europe on the international refugee rights regime. In October he addressed the Canadian Deputy Ministers' Committee on Justice, Security, and Human Rights on the challenge of reconciling human rights protection with the prevention of terrorism. In September he taught a course in Valencia, Spain, on international refugee law for 120 lawyer members of the European Council on Refugees and Exiles.

Professor of Law **Roderick M. Hills Jr.** discussed the subject of zoning in an address to the Ann Arbor Downtown Development Authority last fall, serves as adviser to the Michigan Planners' Association, and is co-counsel in the domestic partnership benefits case *Pride at Work v. Granholm*.

Assistant Professor **Jill R. Horwitz** delivered the keynote address at the conference "Does Hospital Ownership Matter in Patient Care? Mapping the Missions: Nonprofit, For-Profit, and Public Hospitals", held at Brooklyn Law School in February. Horwitz discussed how publicly and privately owned hospitals differ in the types of care they provide.

In December, Alene and Allan F. Smith Professor of Law **Robert L. Howse** was a featured guest on Wisconsin Public Radio to discuss "Bush's Speech on the Iraq War;" gave a presentation on standardization, trade, and development at the World Bank Legal Forum in Washington, D.C.; and on behalf of the Renewable Energy and International Law Project presented the paper (coauthored with Petrus van Bork) "The North American Free Trade Agreement and Renewable Energy: Opportunities and Barriers" at the North American Commission on Environmental Cooperation Symposium. In November, he delivered the C.V. Starr Lecture at New York School of Law, speaking on "China's Role in Global Trade and Finance," and also lectured at the University of Paris 1 (Panetheon-Sorbonne) on the thought of Alexandre Kojeve and on hermeneutics and international law: The example of World Trade Organization treaty interpretation. In October, he addressed the colloquium on democracy and global governance at Bremen University, Bremen, Germany, on the meaning of the political in the globalization era, and served as a panelist for the conference "Perspectives on the WTO Doha Development Agenda Multilateral Trade Negotiations" at the University of Michigan. During the summer he participated in the ICTSD-FES Independent Analytical Track Meeting on "Special and Differential Treatment in the Multilateral Trade System" in Lausanne, Switzerland, and presented a paper on modalities for negotiations on trade in environmental goods (coauthored with Petrus van Bork) to WTO delegates/negotiators at the International Center for Trade and Sustainable Development in Geneva, Switzerland. Last spring he was a speaker for the panel "Multilateral trade rules and the Cartagena Protocol: Is there space for domestic public policies?", an ICTSD side event at the second Meeting of the Parties to the Cartagena Protocol on Biosafety in Montreal.

Professor of Law **Ellen D. Katz** participated in the roundtable "Reauthorization of the Voting Rights Act" at the Earl Warren Institute for Race, Ethnicity, and Diversity in Washington, D.C., in February and was a speaker in the program marking public release of the final Voting Rights Initiative report "Documenting Discrimination: Judicial Findings Under Section 2 of the Voting Rights Act" at the Law School in November. (See story on page 16.) Katz is adviser to the Voting Rights Project, a public service and research activity of the Law School student group Michigan Election Law Project. In September, Katz presented her paper "Getting It Right: Courts and Partisan Gerrymandering," at the symposium "Independent Election Administration: Who Draws the Lines and Who counts the Votes?" at the Moritz College of Law at Columbus, Ohio. In July, she was a panelist discussing the Voting Rights Act before the National Commission on the Voting Rights Act at its Midwest regional hearing in Minneapolis.

Eric Stein Distinguished University Professor of Law and Sociology **Richard O. Lempert,** '68, continues to serve as division director for social and economic sciences at the National Science Foundation (NSF). He has been elected to the Council of the Sociology of Law Section of the American Sociology Association, to the Board of Trustees of the Law and Society Association, and to a four-year term as secretary of the social science section of the American Association for the

Activities

Advancement of Science. He serves on an interagency task force on regional stability and last May was a member of the first NSF social science delegation to visit the People's Republic of China. He also was a speaker at the annual meeting of the National Communications Association in Boston.

Bridget McCormack, associate dean for clinical affairs and clinical professor of law, served as a panelist at the clinical education section's plenary session program "Practicing Law in the Academy: Clinics, Clinical Faculty, and Principles of Academic Freedom" at the Association of American Law Schools' annual meeting in January in Washington, D.C.

Professor of Law **Adam C. Pritchard** served on a Section on Securities Regulation panel discussing securities fraud class action at the annual meeting of the Association of American Law School in January. Last fall, he presented "The Screening Effect of the Private Securities Litigation Reform Act" at the Eugene P. and Delia S. Murphy Conference on Corporate Law at Fordham University School of Law and at the U-M Law School's Law & Economics Workshop. In September, he presented his paper "Irrational Liability and the Irrational Auditor" at the annual fall business law forum at Lewis & Clark Law School. Earlier in the year he presented "Do Institutions Matter? The Impact of the Lead Plaintiff Provision of the Private Securities Litigation Reform Act" at the Institute for Law and Economic Policy Conference, and "Do the Merits Matter More? The Impact of the Private Securities Litigation Reform Act" at a faculty colloquium at the University of Alabama School of Law.

Professor of Law **Steven R. Ratner** in November was featured speaker for the University of Michigan Center for Southeast Asian Studies' lecture series seminar on the Khmer Rouge genocide trial and a commentator on a paper delivered at the U-M's Bioethics, Values, and Society Faculty Seminar on Physician Involvement in Hostile Interrogations. In October, he discussed "The War Crimes Tribunals for Yugoslavia: Are Trials after Atrocities Effective?" in a lecture for the U-M Institute for the Humanities; in September he spoke on "The Role of Human Rights Law During Military Occupations" for the U-M International Perspectives on Human Rights seminar; and in June he spoke on "Self-Defense and the World After September 11: Implications for UN Reform" at the Fundacíon par alas Relaciones Internacionales y el Diálogo Exterior (FRIDE) roundtable on Building a New Role for the United Nations in Madrid, Spain.

Hessel E. Yntema Professor of Law **Mathias W. Reimann**, LL.M. '83, spoke on "Techniques to Internationalize the First-Year Curriculum" at the annual meeting of the Association of American Law Schools in Washington, D.C., in January. Last fall he spoke on "The CISG in the United States: Why It Has Been Neglected and Why Europeans Should Care" at the biannual meeting of the German Society of Comparative Law in Würzburg, Germany. Earlier in the year he spoke on Michigan Law's Transnational Law course at the conference Globalizing the Law School Curriculum at Lake Tahoe and taught the seminar Product Liability Law in the Transatlantic Context at the Scuola Superiore Sant'Anna in Pisa, Italy

Theodore J. St. Antoine, '54, the James E. and Sarah A. Degan Emeritus Professor of Law, was appointed by U.S. District Judge Avern Cohn, '49, of the Eastern District of Michigan, as an independent fiduciary to evaluate the fairness of a proposed $12 million settlement of a lawsuit charging former Kmart officers and directors with breaching their fiduciary duties by investing funds of the company's 401 (k) plan in now-worthless Kmart stock. Partial compensation for about 150,000 plan participants is at issue.

Clinical Assistant Professor **David Santacroce** has been elected chair of the Clinical Section of the Association of American Law Schools (AALS) after previously serving as treasurer and database manager. Last summer he taught a two-week course, U.S. Constitutional Civil Rights, at the University of Tokyo law school and addressed the law faculty on "Clinical Legal Education in the U.S. Legal Academy: Past, Present, and Future." Last May he discussed "Clinicians and the Academy" at the Clinical Legal Education Association's New Clinicians Conference in Chicago. Last spring he chaired the organizing committee for the Town Hall Meeting of the annual AALS clinical conference in Chicago. He made a presentation on clinicians' status in U.S. law schools at the Town Hall Meeting in May, and is leading the new AALS Clinical Legal Education Taskforce on Clinicians and the Academy in developing and promoting a new empirical study of the status issue.

Philip Soper, the James V. Campbell Professor of Law, spoke "On Why Unjust

Law is No Law at All: A Defense of the Classical Natural Law Position" in a program at Fordham University Law School last spring.

Eric Stein, '42, the Hessel E. Yntema Professor Emeritus of Law, traveled to Prague in October to accept the Golden Medal Award for Excellence in Humanities and Law from Charles University, where he earned his first law degree in the 1930s. (See story on page 32.) Last spring, he discussed "The Magic of the C-word" in his keynote address on the occasion of accepting the European Union Studies Association's fourth Life Contribution in the Field Prize at the association's ninth international conference in Austin, Texas, in April.

Joseph Vining, the Harry Burns Hutchins Professor of Law, spoke on "Law's Own Ontology" in October at the conference "Steven D. Smith's *Law's Quandary*: The Perplexity is Metaphysical" at the Columbus School of Law at Catholic University of America in October.

As Reporter for the Restatement Third of Property, **Lawrence Waggoner**, '63, the Lewis M. Simes Professor of Law, presented his draft of the next portion of the *Restatement* to the Council of the American Law Institute at its meeting in December 2005. The Council approved the draft, which covers the topic of powers of appointment. The draft will now go forward for approval to the full membership of the Institute in May 2006. Once approved by the full membership, this draft will be combined with a previously approved draft covering the topic of class gifts to become the third volume of the *Restatement* project, to be published in 2007. The first two volumes were published in 1999 and 2003. As Director of Research for the Joint Editorial Board for Uniform Trust and Estate Acts, Waggoner is working on revised definitions of the parent-child relationship and other revisions of the Uniform Probate Code. Waggoner led a discussion of the drafts, which are in the mark-up stage, at the Board's November 2005 and February 2006 meetings. Completion of the entire round of revisions is expected to take a couple of years.

Nippon Life Professor of Law **Mark D. West** in October presented his paper "Defamation and Scandal in Japan and American" at the University of Pennsylvania Law School Legal Theory Workshop.

James Boyd White, the L. Hart Wright Collegiate Professor of Law, discussed "When Language Meets the Mind: Three Questions" when he delivered the Montesquieu Lecture at Tilburg University in The Netherlands in February. In November, he gave a workshop at the University of Toronto on his forthcoming book *Living Speech: Resisting the Empire of Force*. He also serves as editor for the book *How Should We Talk about Religion?*, to be published this spring by Notre Dame Press.

Robert A. Sullivan Professor of Law **James J. White**, '62, delivered the Kormendy Lecture at Ohio Northern University's Pettit School of Law in November, speaking on the subject "Against E-mail."

Visiting and adjunct faculty

Law Library Director **Margaret Leary** chaired the panel on "Public Ideas/Private Ownership" at the U-M Sweetland Writing Center's cross-disciplinary conference Originality/Imitation/Plagiarism in September. She also has been elected treasurer of the Ann Arbor District Library Board of Trustees, which she has served on since 2004.

Leonard Niehoff, '84, recently was a presenter at a conference at Wayne State University Law School on the U.S. Supreme Court's Ten Commandments cases and taught a week-long seminar at the Ecumenical Theological Seminar in Detroit on the political, legal, and theological implications of the bombing of Hiroshima and Nagasaki.

IN DETAIL

Barbara A. Grewe, '85, describes the work of the 9/11 Commission.

Reunions marked by thought-provoking programs

An initially hostile White House, eventual congressional approval to organize and proceed, a staff of more than 80 people holding hearings, interviewing witnesses and officials and combing through more than 2.5 million pages of documents. All these things and more are like characters in the highly charged story of the life of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) as told by one of its principal actors—commission senior counsel Barbara A. Grewe, '85.

"On September 11, 2001, nineteen men cleared airport security at three different east coast airports and boarded four transcontinental flights. They turned those flights into guided missiles. They defeated all of the security layers that America's civil aviation system had in place to prevent a hijacking. In the span of less than a few hours 3,000 people were killed."

So Grewe began her tale to Law School reunion attendees last fall. She was the principal speaker for the first of two reunions (September 16-18, for the classes of 1980, '85, '90, '95, and 2000) held at the Law School last fall.

The annual Minority Breakfast, with former Indiana Supreme Court Justice Myra Selby, '80, as featured speaker, was held in conjunction with the September reunion. The second reunion weekend (October 7-9, for the classes of 1950, '55, '60, '65, '70, and '75) featured a presentation on the Law School's new Pediatric Advocacy Initiative and clinic, a program designed to bring together medical, social work, and legal expertise to help poor children.

Dean Evan H. Caminker discussed the "State of the Law School" at both reunions.

In the wake of Hurricane Katrina and questions that the storm raised about national emergency preparedness, Grewe's talk took on added import. "The commission almost didn't exist," she explained. "The administration didn't want a commission looking into what it had done wrong." Current opposition to a similar probe of response to Katrina is "an interesting parallel," she noted.

But Congress came to feel an investigation of the country's response to 9/11 was necessary and created the commission by statute in November 2002, more than a year after the attacks. Led by a Republican and a Democrat who acted as co-chairs, the commission included five members of each party and was charged with investigating how and why the terrorist attacks were successful and directed to make recommendations for preventing future occurrences.

Commission members decided their 585-page report should

be public, be presented in a single volume written in plain English, and be easily available to anyone who wished to read it, Grewe said. "We sold more than 1.2 million copies of the book. You also could download it [the report]—more than 6 million were downloaded. And it was nominated for a National Book Award."

The work was detailed, time consuming, and arduous, Grewe reported, but it also was filled with high points:

- "It really was a moment in history, to see these people who had been sparring . . . come together" to produce a unanimous report.
- Intelligence service field agents often were the "people who actually do the work of protecting our country . . . . It was humbling to meet and talk with these people."
- It was "an amazing moment" when (former national security advisor, now Secretary of State) Condoleezza Rice appeared before the commission under oath "because the White House said it would never happen."
- Throughout the process, "our secret weapon" was the families of victims, who insisted that the investigation proceed and dig deeply enough to insure that others would not similarly lose loved ones in the future.
- Determined negotiation finally made secure information, including presidential briefs, available to the commission.

Answering a questioner, Grewe said the most important commission recommendation to be followed so far has been the creation of the federal position of director of national intelligence. She said the most important recommendation so far not acted on concerns the coordination of federal, state, and local emergency response, a need that "Katrina pointed out."

"We have not learned our lesson, and Katrina proves that," Grewe said. "We see that there is a lot more to be done. Let's make America safe."

Minority Breakfast

Former Indiana Supreme Court Justice Myra Selby, '80, who now practices with Ice Miller in Indianapolis, warned Minority Breakfast attendees that the number of lawyers of color entering the profession in 2005 is shrinking in relation to the overall population of people of color. "Especially among African American males and Native Americans, the population feeding into law schools is drying up at a very fast pace," she noted.

Myra Selby, '80, warns that the number of people of color entering the legal profession is falling behind population growth.

Young people need to be encouraged to seek academic success and plan to enter professions like law when they are in middle school, she said. Take part in programs focused on academics at these levels, she urged, and take part in Law Day and similar programs "so that young students will see you as lawyers of color."

Pediatric Advocacy Initiative

At the second of last fall's two reunions, Associate Dean for Clinical Affairs Bridget McCormack, Clinical Professor Anne Schroth, and U-M Medical School Clinical Instructor of Pediatrics Julie Lumeng outlined operations of the Law School's new Pediatric Advocacy Initiative (PAI) and clinic. (See pages 28-31 of the Fall 2005 issue of *Law Quadrangle Notes* for a story on the new initiative.)

U-M Clinical Pediatric Instructor Julie Lumeng, Law School Clinical Professor Anne Schroth, and Associate Dean for Clinical Affairs Bridget McCormack detailed the Law School's new Pediatric Advocacy Initiative, which joins legal skills and advocacy with health care and social work in the service of children of low-income families.

Partnering the Law School with the U-M Medical Center's C.S. Mott Children's Hospital and the Ypsilanti (Michigan) Health Center, PAI adds what Schroth calls "a new tool—legal advocacy"—to health and social work professionals' options for helping low-income pediatric patients.

"Much of our work is not litigation focused," according to Schroth, who also is the Law School's Poverty Law Outreach director. "This is a much more broadly-based approach, teaching students how to work collaboratively with the patients and their medical

Reunions marked by thought-provoking programs

providers to solve legal problems and bureaucratic quagmires, before litigation becomes necessary.

"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."

State of the Law School

Speaking at both reunions, Dean Evan H. Caminker discussed faculty, curricular, financial, and other aspects of the "State of the Law School." Among Caminker's points:

- Regarding current faculty, he noted that Ralph W. Aigler Professor of Law Richard D. Friedman is arguing a case before the U.S. Supreme Court concerning the Confrontation Clause of the U.S. Constitution, which entitles defendants to confront witness testifying against them. (See story on page 26.) He also reported that many faculty members are producing academic work that draws the attention of peers around the world. Among them, he noted the renowned work being done by Professors Carl E. Schneider, '79, on living wills; Rebecca Eisenberg on intellectual property and her work as an advisor to the Canadian government on pharmaceuticals; Samuel R. Gross on the death penalty; and Michael Barr on access to financial services by the poor.

- Four new full-time faculty members began teaching at the Law School this fall: Professor Scott J. Shapiro, who holds a joint appointment with the Law School and the U-M Philosophy Department; Assistant Professor Nicholas C. Howson, a specialist on China, Chinese law, China's trade, and domestic corporations and business law (an article by Howson begins on page 73); Assistant Professor Madeline Kochen, a specialist in property, theories of justice and obligation, Talmudic law, and constitutional law; and Assistant Professor Gil Seinfeld, a former clerk to U.S. Supreme Court Justice Antonin Scalia who teaches in the areas of federal courts and jurisdiction. (Biographies and photos of these new faculty members appear on pages 72-74 of the Fall 2005 issue of *Law Quadrangle Notes*.)

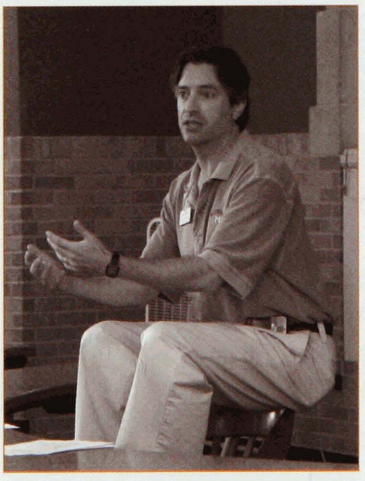
- Nine students enrolled at the Law School for the fall term after Hurricane Katrina displaced them from their New Orleans law schools. Caminker expressed gratitude to the many graduates and students who offered lodging and other help to these and others of the 1,000 people who found refuge in Michigan after the storm drove them from their homes and schools.

- In the curricular area, Caminker reported that some aspects of Michigan Law's highly regarded and pioneering first-year Legal Practice Program are being modified for inclusion in upper level law courses. He also outlined the new Pediatric Advocacy Initiative (discussed above).

- Caminker emphasized the great need for success in the Law School's capital campaign to raise funds to expand current physical and teaching facilities and for faculty and student support. He noted that state appropriations account for less than 2.5 percent of the Law School's $59 million annual operating budget.

- The Law School has launched a new program of Public Interest/Public Service Fellows, teachers with extensive public service experience who teach public service-oriented courses, assist students seeking public service summer or permanent positions, and lend their expertise and experience to expanding students' public service knowledge and opportunities. This year's Public Interest/Public Service Faculty Fellows include: former Immigration and Naturalization Service General Counsel Bo Cooper; former U.S. Attorney Saul Green, '72; Sally Katzen, '67, who served almost eight years in the Clinton Administration as administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) and as deputy director for management in OMB; Judith E. Levy, '96, an assistant U.S. attorney; Mark Rosenbaum, director of the American Civil Liberties Union in Los Angeles; and former National Wildlife Federation President/CEO Mark Van Putten, '82. (See story on page 5.)

Dean Evan H. Caminker outlines the "State of the Law School."



Reunion Giving

The recognitions on these pages reflect all class giving during each class reunion counting period, which began July 1, 2004, and ended two weeks after each class reunion celebration. Total Class Giving demonstrates the generosity of the class during this time period. Photos show activities at the reunions.

Class of 1950

55th Reunion

Chair: Hudson Mead

Committee Members:
Charles M. Bayer; James T. Corden; Robert J. Danhof; Charles E. Day; Robert W. Hess; Herbert E. Hoxie; John L. King; Joseph H. Lackey; Alan C. McManus; Herbert E. Phillipson

Class Participation **36%**
LSF Gifts and Pledges **$48,590**
Total Class Giving **$158,690**

$100,000 and above
Earl R. Boonstra

$10,000 to $24,999
Gerald Bright

$5,000 to $9,999
Charles Hansen
William P. Sutter

$2,500 to $4,999
Tommy F. Angell
Thomas J. Donnelly
Aaron R. Ross

$1,000 to $2,499
Burton C. Agata
James T. Corden
Robert J. Danhof
Stuart J. Dunnings Jr.
Robert H. Frick
Herbert E. Hoxie
Jerome Kaplan
William H. Lowery
James W. McCray
Alan C. McManus
Hudson Mead
Ernest A. Mika
James C. Mordy
William M. Peek
Robert W. Shadd
Robert W. Sharp

$1 to $999
Donald W. Alfvin
David F. Babson Jr.
A. Richard Backus
Charles M. Bayer
Lawrence A. Brown
Bruce D. Carey
James P. Churchill
Charles W. Davidson
Donald D. Davis
Henry B. Davis Jr.
Charles E. Day Jr.
Raymond J. DeRaymond
Howard F. DeYoung
Robert Dilts
George E. Dudley
Albert J. Engel
James B. Falahee Sr.
Fred W. Freeman
Sydney S. Friedman
Joan R. Goslow
Albert J. Greffenius
Robert P. Griffin
Richard B. Gushee
John A. Hay
Harold Hoag
Charles M. Ioas
John M. Jones
John L. King
Howard A. Marken
Robert D. McClaran
John D. McLeod
Edward J. Neithercut
John A. Nordberg
Donald Patterson
Vernon R. Pearson
Colvin A. Peterson Jr.
Morris Seiki Shinsato
Arthur Staton Jr.
William F. Steiner
John W. Steinhauser
Kenneth P. Stewart
Ashman C. Stoddard
Harvey L. Weisberg
Robert D. Winters
Philip Wittenberg
Henry W. C. Wong
James R. Zuckerman

Class of 1955

50th Reunion

Chair: Robert B. Fiske Jr.
Fundraising Chair: Robert I. Donnellan
Participation Chair: Frazier Reams Jr.
Committee: Richard M. Adams; Robert E. Baker; James W. Beatty; Earl E. Borradaile; Lawrence I. Brown; William J. Conlin; Stewart S. Dixon; Robert S. Frey; Daniel L. Martin; Irwin Roth; Robert G. Schuur; Irving Stenn Jr.; John R. Worthington

Class Participation **42%**
LSF Gifts and Pledges **$311,400**
Total Class Giving **$1,811,255**

Over $1,000,000
Robert B. Fiske Jr.

$100,000 to 249,999
Robert E. Baker

$50,000 to $99,999
Irving Stenn Jr.

$25,000 to $49,999
Richard M. Adams
James W. Beatty
Raymond E. Knape
David R. Macdonald
Robert G. Schuur

$10,000 to $24,999
Earl E. Borradaile
William J. Conlin
Irwin Roth

$5,000 to $9,999
Robert I. Donnellan
Jack E. Gallon
Sanford B. Hertz
John R. Worthington

$2,500 to $4,999
Lawrence I. Brown
Charles H. Cory II
Douglas E. Peck
William A. Swainson

$1,000 to $2,499
Stewart S. Dixon
Ivan M. Forbes
Robert Findley Guthrie
William J. Hartman Jr.
Bernard A. Kannen
Roger P. Noorthoek
Martin S. Packard
William L. Randall
Morton Meyer Scult

$1 to $999
Khalid A. Al-Shawi
David Barker
Michael J. Baughman
John W. Bauknecht
Norman I. Brock
James Bulkley
Ross W. Campbell
Douglas E. Cutler
John P. Daley
Ronald V. DeBona
John F. Dodge Jr.
James W. Dorr
Vernon C. Emerson

Reunion Giving

Dominic J. Ferraro
John G. Fletcher
George S. Flint
Robert S. Frey
Richard B. Globus
Harvey A. Howard
Harry G. Iwasko Jr.
Robert H. Levan
Leah R. Marks
Joseph F. Maycock Jr.
William M. Moldoff
John R. Peterson
Leonard J. Prekel
Richard S. Ratcliff
Frazier Reams Jr.
Anthony F. Ringold
Harvey M. Silets
Robert C. Strodel
Donald F. Stubbs
Edward L. Vandenberg
William L. Wilks
Kenneth S. H. Wong

Class of 1960

45th Reunion

Co-Chairs: Joseph D. Whiteman and Clifford H. Hart
Committee: Thomas E. Kauper; H. David Soet; Bert R. Sugar; Kent E. Whittaker

Class Participation 28%
LSF Gifts and Pledges $112,503
Total Class Giving $339,503

$100,000 and above
John F. Nickoll

$10,000 to $24,999
Joseph D. Whiteman

$2,500 to $9,999
Robert W. Appleford
Robert J. Paley
Erik J. Stapper

$1,000 to $2,499
Roger W. Findley
Joseph J. Jerkins
Thomas E. Kauper
Arbie R. Thalacker
David B. Weisman
E. Lisk Wyckoff Jr.

$1 to $999
Colborn M. Addison
Thomas R. Beierle
David A. Benner
Dean L. Berry
Leonard J. Betley
Robert L. Bombaugh
John P. Bure
Robert A. Burns
John F. Burton Jr.
Ward Chapman
Charles N. Dewey Jr.
Richard A. Elbrecht
Alan I. Epstein
Vance A. Fisher
Glenn O. Fuller
John Fuller
Harry A. Gaines
Mervyn S. Gerson
Lawrence H. Gingold
Douglas J. Hill
Allan Horowitz
Dudley Hughes
James T. Johnson
Mark V. Klosterman
Kenneth Laing
William M. Lane
Richard H. May
Richard J. McClear
David H. McCown
Russell A. McNair Jr.
Franklin H. Moore Jr.
Gordon G. Myse
G. Masashi Nakano
Robert B. Nelson
John I. Riffer
Thomas G. Sawyer
Robert L. Segar
Charles R. Sharp
Joel N. Simon
Herman S. Siqueland
Leonard W. Smith
Glenn Sperry
Donald Lee Stoffel
William K. Strong
Leonard W. Treash Jr.
Stevan Uzelac
Guy Vander Jagt
William P. Vogel
Byron H. Weis
Kent E. Whittaker
Clay R. Williams

Class of 1965

40th Reunion

Chair: Eric V. Brown Jr.
Committee: Joan V. Churchill; Amos J. Coffman Jr.; Laurence D. Connor; Terrence Lee Croft; Wilbert F. Crowley; David M. Ebel; David A. Ebershoff; Robert B. Foster; David M. Goelzer; Richard M. Helzberg; Jon H. Kouba; Paul M. Lurie; John W. McCullough; Joseph E. McMahon; Charles F. Niemeth; Alan J. Olson; Lawrence J. Ross

Class Participation 31%
LSF Gifts and Pledges $88,270
Total Class Giving $683,270

$100,000 and above
Charles F. Niemeth

$50,000 to $99,999
William J. Bogaard

$25,000 to $49,999
John W. McCullough

$10,000 to $24,999
Eric V. Brown Jr.
Jon H. Kouba
Paul M. Lurie

$5,000 to $9,999
Richard M. Helzberg
Alan J. Olson (given in memory of James M. Kieffer)
Paul A. Rothman

$2,500 to $4,999
Laurence D. Connor
Phillip L. Thom

$1,000 to $2,499
Bruce R. Bancroft
Helman R. Brook
David A. Ebershoff
Douglas I. Hague
Thomas C. Lee
Alexander Macmillan
Rosemary S. Pooler
Thomas B. Ridgley

$1 to $999
Ronald C. Allan
Charles H. Aymond
Thomas E. Baker
Larry J. Bingham
Richard L. Blatt
John H. Blish
J. Walter Brock
Herbert H. Brown
James R. Brown
Christopher L. Carson
Thomas P. Casselman
Joan V. Churchill
R. Theodore Clark Jr.
Amos J. Coffman Jr.
Charles C. Cohen
Terrence Lee Croft
Robert H. Daskal
Robert G. Dickinson
James T. Dodds
David D. Dodge
L. Garrett Dutton Jr.
Gordon L. Elicker
John W. Ester
Richard L. Fairchild
John C. Feldkamp
John P. Fernsler
Robert B. Foster
John E. Gates
David M. Goelzer
Paul Groffsky
Morris A. Halpern
Patricia M. Hanson
Edward G. Henneke Jr.
John E. Howell
John B. Hutchison
Leon E. Irish
Lance J. Johnson
Jerome H. Kearns

Charles B. Keenan Jr.
James M. Kefauver
John F. Kern
Walter S. Kirimitsu
Mark J. Levick
Richard N. Light
Michael J. Lynch
Roger R. Marce
Sarah Ann Margulies
Michael S. Mathews
J. Gary McEachen
Michael J. McHale
Joseph E. McMahon
Ronald J. Meltzer
Neil R. Mitchell
Charles G. Nickson
Donald E. Overbeek
James K. Perrin
Robert V. Peterson
Richard J. Rankin Jr.
Douglas J. Rasmussen
David F. Rees
Richard A. Rinella
David L. Roll
Jay A. Rosenberg
Lawrence J. Ross
James E. Scanlon
Frederick B. Schwarze
Gary J. Shapira
Jerome M. Smith
Benjamin D. Steiner
Charles S. Tappan
F. David Trickey
Robert G. Wise
Timothy D. Wittlinger

Class of 1970
35th Reunion

Co-Chairs: Steven B. Chameides and Gregory L. Curtner

Committee Members:
Leo R. Beus; James R. Bieke; Diane Sharon Dorfman; Bettye S. Elkins; John M. Forelle; Peter L. Gustafson; John R. Laughlin; David Baker Lewis; Simon M. Lorne; George P. Macdonald; Edward T. Moen II; George B. Moseley; Victor F. Ptasznik; Steven G. Schember; David M. Schraver; John C. Unkovic

Class Participation 35%
LSF Gifts and Pledges $305,950
Total Class Giving $355,950

$100,000 and above
James L. Waters

$25,000-$49,999
David Baker Lewis
Simon M. Lorne

$10,000-$24,999
Leo R. Beus
Steven B. Chameides
Gregory L. Curtner
Edward T. Moen II
John L. Sobieski Jr.

$5,000-$9,999
John M. Forelle
David M. Schraver
John C. Unkovic

$2,500-$4,999
Anonymous
Brett R. Dick
R. Stan Mortenson
Victor F. Ptasznik
Steven G. Schember
Robert H. Swart

$1,000-$2,499
George W. Allen
James R. Bieke
Bettye S. Elkins
Stephen C. Ellis
Barry B. George
Peter L. Gustafson
Richard B. Kepes
Aldis Lapins
John R. Laughlin
Robert A. Prentice
James M. Roosevelt
Mark K. Sisitsky
Martin C. Weisman
Thomas J. Whalen
James W. Winn
Laurence E. Winokur

$1-$999
Gary N. Ackerman
Frederick J. Amrose
James N. Barnes
Patricia S. Bauer
Richard F. Brennan, Jr.
Neal Bush
James N. Candler Jr.
Douglas R. Chandler
Mary Z. Chandler
Tom Arlis Collins
Randall G. Dick
Diane Sharon Dorfman
Richard J. Erickson
George E. Feldmiller
Jane Forbes
James V. Gargan
William E. Goggin
Mark A. Gordon
Daniel S. Guy
John James Hays
Jason Horton
William A. Irwin
James F. Israel
Howard A. Jack
Terrill S. Jardis
C. Clayton Johnson
Marc J. Kennedy
David L. Khairallah
Robert M. Knight
Brian J. Kott
Joel N. Kreizman
Frans J. Lavrysen
George Macdonald
Jon C. MacKay
Ronald E. Manka
John R. McCarthy
Kenneth J. McIntyre
Debra Ann Millenson
Ralph A. Morris
George B. Moseley III
Ivan W. Moskowitz
Patrick J. Murphy
Robert B. Nelson
Thomas R. Nicolai
Stevan D. Phillips
Marshall S. Redman
Susan L. Rockman
Gerald J. Rodos
Edward B. Rogin
Robert J. Sammis
Eric J. Schneidewind
Michael D. Sendar
Lyle B. Stewart Sr.
Michael J. Thomas
Peter Mark Weinbaum
Susan S. Westerman
M. Jay Whitman
Caryl A. Yzenbaard

Class of 1975
30th Reunion

Co-Chairs: Joel E. Krischer and Frederick J. Salek

Fundraising Committee: I. Scott Bass; Robert A. Katcher; Jeffrey Liss; David H. Paruch; Douglas M. Tisdale; Raymond L. Vandenberg; Lamont M. Walton; James L. Wamsley III

Participation Committee: Susan Low Bloch; Donald N. Duquette; Barbara E. Etkind; Susan Grogan Faller; Steven T. Hoort; Shirley A. Kaigler; George A. Pagano; James J. Rodgers; Zena D. Zumeta

Class Participation 32%
LSF Gifts and Pledges $351,834
Total Class Giving $510,534

$100,000 and above
Jeffrey Liss

$50,000-$99,999
Paula H. Powers
Richard C. Sanders

$25,000-$49,999
Steven T. Hoort
Robert A. Katcher

Reunion Giving

Joel E. Krischer
Terry S. Latanich

$10,000-$24,999
Rochelle D. Alpert
I. Scott Bass
Arnold J. Kiburz III

$2,500-$9,999
Scott J. Arnold
Sue Ellen Eisenberg
Barbara E. Etkind
David W. Lentz
Karl E. Lutz
Martin T. McCue
George A. Pagano
John C. Roebuck
Frederick J. Salek
Adrian L. Steel Jr.
Douglas M. Tisdale
James L. Wamsley III

$1,000-$2,499
Lucile J. Anutta
Joyce Bihary
Michael P. Burke
Donald N. Duquette
David Brian Hirschey
Shirley A. Kaigler
Diane L. Kaye
Walter E. Mugdan
David H. Paruch
Dennis G. Ruppel
Mark F. Pomerantz
Raymond L. Vandenberg
Lamont M. Walton
Robert P. Wessely
Nobutoshi Yamanouchi

$1-$999
Penelope Barrett
Charles B. Bateman
Richard M. Bendix Jr.
Susan L. Bloch
Michael H. Boldt
John H. Brannen
Robert C. Bruns
David John Buffam
Lamont E. Buffington
Christopher L. Campbell
Timothy A. Carlson
Sherry L. Chin
Henry B. Clay III
George T. Cole
John Robert Cook
J. Michael Cooney
Gordon W. Didier
James H. Dobson
Daniel P. Ducore
Scott Ewbank
Kenneth R. Faller
Susan Grogan Faller
Lawrence G. Feinberg
Mary Louise Fellows
Rodney Q. Fonda
Catherine H. Gardner
Ralph J. Gerson
Paul L. Gingras
Ronald F. Graham
R. Thomas Greene Jr.
Charles Hair
Alan K. Hammer
Michael W. Hartmann
Mark D. Herlach
Douglas R. Herman
Stephen J. Hopkins
Nina Krauthamer
Nickolas J. Kyser
William V. Lewis Jr.
A. Russell Localio
Susan M. Manrose
Susan D. McClay
Thomas R. McCulloch
John H. McKendry Jr.
Stephen B. McKown
Robert K. Morris
J. Kenneth L. Morse
Michael Murray
Andrew Scott Muth
Hideo Nakamura
Charles F. Oliphant III
David M. Pellow
Bruce N. Petterson
Randall Edward Phillips
Joel F. Pierce
Fred L. Potter
Anne Bowen Poulin
Clark T. Randt Jr.
John C. Reitz
Joseph Alex Ritok Jr.
James J. Rodgers
Peter M. Rosenthal
Gail Rubinfeld
Michael H. Runyan
Larry J. Saylor
Gary D. Sesser
Franklin W. Shoichet
Gary D. Sikkema
Alfred E. Smith Jr.
James D. Spaniolo
Dennis R. Spivack
Elliot A. Spoon
David Y. Stanley
Alison Steiner
James B. Stoetzer
Robert H. Stoloff
Richard B. Urda Jr.
Matthew B. VanHook
Barbara T. Walzer
Peter L. Wanger
Erica A. Ward
Alan Mark Weinberger
Ronald J. Werhnyak
Barry F. White

Class of 1980

25th Reunion

Fundraising Chair: Tillman Lowry Lay

Fundraising Committee: Beverly Bartow; T. Christopher Donnelly; Stewart A. Feldman; James D. Holzhauer; Randall Eric Mehrberg; Darrell W. Pierce; Robert E. Spatt; James Stengel

Participation Chair: Beatriz M. Olivera

Participation Committee: Steven Louis Gillman; Jeffrey R. Liebster; Kenneth B. Roberts; Joseph E. Tilson; Edward P. Timmins

Class Participation 39%
LSF Gifts and Pledges $431,700
Total Class Giving $718,000

$100,000 and above
Randall Eric Mehrberg
Robert E. Spatt

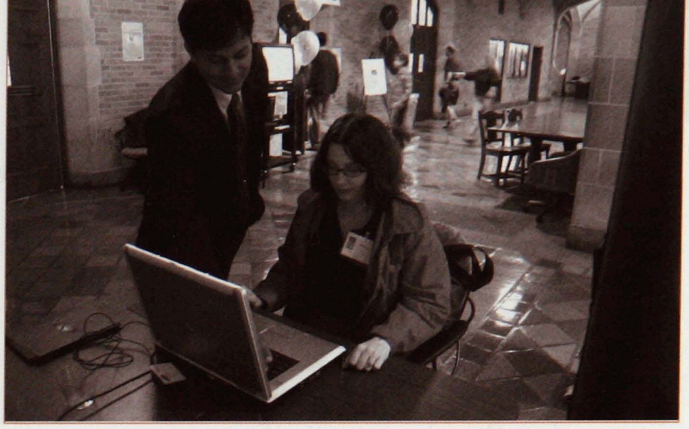
$50,000 to $99,999
Beverly Bartow
James D. Holzhauer
James Stengel

$25,000 to $49,999
Stewart A. Feldman
Deborah Schumer Tuchman

$10,000 to $24,999
T. Christopher Donnelly
Alain Arnold Gloor
Frederic Ross Klein
Tillman Lowry Lay
Ira Sheldon Mondry
Darrell W. Pierce
Kevin A. Russell
Keith Chidester Wetmore

$5,000 to $9,999
Jonathan Scott Brenner
Jill A. Coleman
David W. DeBruin
Charles Lively Glerum
Arthur J. Kepes
David B. Love
Ronald J. Nessim
Dean A. Rocheleau
Brooke Schumm III
Joseph E. Tilson
David W. Wiechert

$2,500 to $4,999
Todd J. Anson
Paul Ehrich Bateman
Sylvia L. J. Bateman
Steven J. Beilke
John Wm. Butler Jr.
Daniel R. Conway
Carl Edward Cormany
Stephen P. Foley
Barbara Jane Irwin
Jesse S. Ishikawa
James B. Jordan



Robert M. Kalec
Michael F. Keeley
Thomas William Porter

$1,000 to $2,499
David A. Arnold
Marc D. Bassewitz
Christopher P. Berka
James A. Burns Jr.
Janet Ruth Davis
Richard M. Dorado
Bonnie M. France
Mitchell H. Frazen
Steven Louis Gillman
David Kantor
Paul Alan Keller
Robert E. Lewis
Carol Nancy Lieber
Richard Patrick Murphy
Beatriz M. Olivera
Alan R. Perry Jr.
John J. Powers
John D. Rayis
Jonathan Rivin
Mark C. Rosenblum
James E. Schacht
Stephen B. Selbst
J. Michael Shepherd
Susan Tukel
Steven A. Weiss

$1 to $999
Jan Patrice Abbs
Diane Soskin Ash
Loretta T. Attardo
Mary L. Barhite
George I. Brandon
Keefe A. Brooks
Norman J. Bruns
Paul L. Criswell
James A. D'Agostini
Michael J. Denton
William J. Dritsas
Jeffrey Miles Eisen
Frederick Anthony Fendel III
David Foltyn
Martin R. Frey
Brian Eliot Frumkin
Carol Hackett Garagiola
Kenneth W. Gerver
Jonathan I. Golomb
Joan C. Goodrich
Joseph T. Green
John I. Grossbart
Eileen M. Hanrahan
John Campbell Harmon
Jeffrey S. Harris
Philip Herbert Hecht
Ronald I. Heller
Charles F. Hertlein Jr.
Anne Louise Heyns
Judge Jeffrey R. Hughes
Seth R. Jaffe
James B. Jensen Jr.
Dwight B. King Jr.
Peter B. Kupelian
Richard T. LaJeunesse
Robert McCabe Lange
Paula Rae Latovick
Richard P. Layman
Susan Lightfoot Doud
Janet G. Lim
Iris K. Linder
Audrey Belinda Little
Steven B. Lockhart
James K. Markey
David R. Marshall
Edwin D. Mason
Debra Lynn Morison
Mark Smillie Niziak
William John Noble
Judy A. O'Neill
Steven Yale Patler
Donald Louis Perelman
Donald B. Rintelman
Jessie C. Roberson
Kenneth B. Roberts
Mark E. Sanders
Clifford J. Scharman
Ronald B. Schrotenboer
Valentina Sgro
Mary Anne Silvestri
Elise Ellen Singer
Kevin T. Smith
Stephanie M. Smith
T. Murray Smith
Lisa Steinberg Snow
Steve Stojic
Stuart Henry Teger
Beryl Elaine Wade
James F. Wallack
Michael A. Weinbaum
Sharon Carr Winnike
Elizabeth C. Yen

Class of 1985
20th Reunion

Fundraising Chair: Kimberly M. Cahill

Fundraising Committee:
John P. Buckley; Stuart M. Finkelstein; F. Curt Kirschner; William B. Sailer; Robin Walker-Lee

Participation Co-Chairs:
Jerome F. Elliott and Constance A. Fratianni

Participation Committee:
Christian F. Binnig; Arnold E. Brier; Carl A. Butler; James R. Lancaster Jr.; Priscilla A. May; Gail Pabarue; Rex A. Sharp

Class Participation 25%
LSF Gifts and Pledges $167,355
Total Class Giving $169,180

$10,000 to $24,999
Steven J. Aeschbacker
John P. Buckley
Kimberly M. Cahill
Samuel J. Dimon
Stuart M. Finkelstein
David A. Heiner
William B. Sailer
Robin A. Walker-Lee

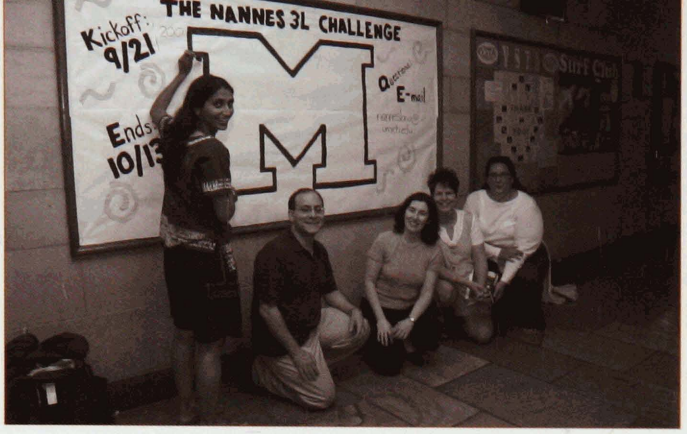
$5,000 to $9,999
Erika Forcione Bucci
Jerome F. Elliott
F. Curt Kirschner Jr.
Carla Schwartz Newell

$2,500 to $4,999
Charles B. Boehrer
Jeffrey D. Kovar
Mark S. Molina
Duncan A. Stuart
Ronald M. Yolles

$1,000 to $2,499
Mark H. Adelson
Denise Arca
Emil Arca
Steven L. Brenneman
Arnold E. Brier
David J. Herring
John M. Newell
Marvin L. Rau
Ronald M. Schirtzer
Douglas F. Schleicher
Carolyn K. Seymour
Xiangyu Zhang

$1 to $999
Rachel Adelman-Pierson
Susan T. Bart
Donald F. Baty Jr.
Christian F. Binnig
Kathleen M. Binnig
Ellen S. Brondfield
Vern A. Brown
Paul A. Carron
Andrew M. Coden
Joseph M. Cohen
Jeffrey R. Coleman
Janet S. Crossen
Don G. Davis
Ellen E. Deason
Jonathan B. Frank
Gregory H. Gach
Jeremy S. Garber
Alison L. Gavin
Thomas J. Gibney
Caroline Seibert Goray
Arnold S. Graber
Joseph R. Gunderson
Laura K. Haddad
Marcia A. Israeloff
Stanley P. Jaskiewicz
Robert J. Jonker
Barbara A. Kaye
Bruce A. Kaye
Eugene Killian
David B. Kopel
Daniel A. Ladow
Ronald A. Lang
David J. Langum
Stephen F. Lappert
Margaret E. Lennon

Reunion Giving



Lauren Barritt Lisi
Benedicte E. F. Mathijsen-Bayi
Kent K. Matsumoto
Deborah A. Monson
Donna E. Morgan
Karl I. Mullen
Mark A. Oates
Ronald S. Okada
Gail Pabarue
Kevin J. Parker
David G. Pine
Paul E. Pirog
Philip J. Quagliariello
Marc M. Radell
Betsy S. Rubinstein
Reed D. Rubinstein
James K. Sams
David W. Schrumpf
Jerry Sevy
Edward S. Stokan
David S. Stone
Dennis G. Terez
Richard S. Tom
George J. Tzanetopoulos
Ernest E. Vargo
Bruce H. Vielmetti
Neal C. Villhauer
Thomas F. Walsh
Richard B. Werner Jr.
Steve M. Wolock

Class of 1990

15th Reunion

Fundraising Chair: Paul E. Glotzer

Fundraising Committee: Andrew S. Doctoroff; John F. Klein; Peter P. Murphy; Mark G. Peters

Participation Chair: Tyler M. Paetkau

Participation Committee: Jeffrey J. Brown; Harold R. Burroughs; Ronald G. De Waard; Susan M. Guindi; John A. Moore; John T. Panourgias; Kenneth A. Wittenberg

Class Participation 16%
LSF Gifts and Pledges $44,722
Total Class Giving $50,322

$5,000 to $9,999
Andrew S. Doctoroff
Paul E. Glotzer
John F. Klein
Peter P. Murphy

$2,500 to $4,999
K. Heather McRay
Ori Rosen

$1,000 to $2,499
Mark A. Butler
Bennett S. Ellenbogen
Mary B. Etrick
Geoffrey H. Genth
Lois A. Gianneschi
Richard K. Kornfeld
Tyler M. Paetkau
Robert K. Steinberg

$1 to $999
Audrey J. Anderson
Eric A. Barron
Timothy W. Brink
Harold R. Burroughs
Christine M. Castellano
Peter D. Coffman
Pamela G. Costas
Tracy D. Daw
Ronald G. De Waard
Jamal L. El-Hindi
David N. Eskenazi
Gregory T. Everts
Andrea C. Farney
Bradley L. Fisher
Michael F. Flanagan
Scott Freeman
Frank J. Garcia
Scott E. Gessler
Stephen P. Griebel
Jonathan M. Heimer
William J. Hoffman
Daniel R. Hurley
Monika D. Jelic
Kathryn L. Johnson
David J. Kaufman
Pamela R. Kittrell
Jenifer A. Kohout
Hideaki Kubo
Steven M. Levitan
C. Thomas Ludden
Jeremy W. Makarechian
Charles McPhedran
James C. Melvin
Richard C. Mertz
John A. Moore
Serge D. Nehama
Marta E. Nelson
Michael N. Romita
Melanie Sabo
Dianne B. Salesin
T. Malcolm Sandilands
Gail C. Saracco
William V. Saracco
Anthony L. Simon
Hiroo Sono
Melanie H. Stein
Molly McGinnis Stine
Lea Ann Stone
Randall M. Stone
Valissa A. Tsoucaris
Stacy H. Winick
Kenneth A. Wittenberg
Colin J. Zick

Class of 1995

10th Reunion

Co-Chairs: Roger A. Hipp and Adam J. Nordin

Fundraising Committee: Vincent Basulto; Robert L. Bronston; Thomas D. Cunningham; Ana Merico; Laurel E. Queeno; Natalie J. Spears

Participation Committee: Anne Auten; Benjamin C. Gilbert-Bair; Kristen A. Donoghue; Greg H. Gardella; Darren J. Gold; Jonathan D. Hacker; Lara Fetsco Phillip; Roopal R. Shah; Denise Ann C. Tomlinson; Christopher H. Wilson

Class Participation 20%
LSF Gifts and Pledges $69, 845
Total Class Giving $70, 695

$10,000 and above
Michele R. Chaffee
Adam J. Nordin

$5,000-$9,999
Vincent Basulto
Roger A. Hipp

$2,500-$4,999
Anne Auten
Kristen A. Donoghue
Jonathan D. Hacker
James M. Wyman

$1,000-$2,499
Anonymous
Katherine D. Ashley
Robert L. Bronston
Thomas D. Cunningham
Christine N. Esckilsen
Reem F. Jishi
Deborah L. McKenney
Lara Fetsco Phillip
Natalie J. Spears
Andrew Z. Spilkin
Joseph P. Topolski
M. Todd Wade
Nicole Jennings Wade
Christopher H. Wilson

$500-$999
Alan B. Brown
Samuel L. Feder
Laurel E. Queeno
Patricia Jones Winograd

$1-$499
Marta B. Almli
Andrew H. Aoki
David J. Arroyo
Elizabeth Feeney Asali
Steven D. Barrett
Peter C. Beckerman
Shelley E. Bennett
Andrew P. Boucher
Jon R. Brandon
Amy M. Brooks
Michael A. Carrier
Ellen E. Crane

Judith G. Deedy
Jeffrey M. Dine
Gregory W. Dworzanowski
Aren L. Fairchild
Darren J. Gold
Devon A. Gold
Mitchell H. Gordon
Eric J. Gorman
Naomi J. Gray
Daniel J. Greiner
William S. Hammond
Sophia S. Hartch
Timothy E. Hartch
Merrick D. Hatcher
Michael J. Heaphy
Sean B. Hecht
James D. Humphrey II
Elizabeth Hurley
Nina L. Jezic
Dara J. Keidan
Edward B. Keidan
Edward Y. Kim
Richard Klarman
Jeryn A. Konezny
Dawn R. Kreysar
Walter J. Lanier
James A. Lawton
Gerald F. Leonard
Melissa A. Leonard
Jennifer W. Lewis
Lynne O. Lourim
David A. Luigs
Helen E. Melia Hammond
Sean A. Monson
Kenju Murakami
Brian O'Donnell
Andrea C. Okun
Sangeeta Patel
D. Andrew Portinga
David L. Schwartz
Roopal R. Shah
Kirsten K. Solberg
Rebecca E. G. Tankersley
Paul J. Tauber
Denise Ann C. Tomlinson
Aylice M. Toohey
Daniel A. Wentworth
Kristine Johnson Zayko

Class of 2000

5th Reunion

Co-Chairs: Christopher G. Evers; Chitta Mallik; and Nora FitzGerald Meldrum

Fundraising Committee: Abhijit Das; Corey R. Harris; William G. Jenks; Ihan Kim; Michael L. Simes; Leslie Hinds St-Surin; Corin R. Swift; Liv N. Tabari

Participation Committee: Rahmah A. Abdulaleem; Adam M. Becker; Rachel E. Croskery-Roberts; Shelly Lynn Fox; Carolyn J. Frantz; Alexandra T. MacKay; Aimee S. Mangan; Michael S. Ponder; Caroline Sadlowski; Lauren E. Schmidt; Hartmut Schneider; Leah J. Sellers

Class Participation 19%
LSF Gifts and Pledges $49, 800
Total Class Giving $50, 900

$5,000 and above
Abhijit Das
Corey R. Harris
William G. Jenks

$2,500-$4,999
Michael B. Machen
Monika Jeetu Machen
Brian Meldrum
Nora FitzGerald Meldrum
Michael L. Simes
Nicole M. Simes
Liv N. Tabari

$1,000-$2,499
Christopher J. Burke
Christopher G. Evers
Rafael U. Gimenes
Ihan Kim
Alexandra T. MacKay
Chitta Mallik
Tom I. Romero II
Corin R. Swift

$500-$999
Adam M. Becker
Matthew Clash-Drexler
Sara W. Clash-Drexler
Rachel E. Croskery-Roberts
David C. Mitchell
Lauren E. Schmidt
Hartmut Schneider

$1-$499
Rahmah A. Abdulaleem
Philip M. Abelson
Pamela Alford
Daniel Bamdas
Marla Schwaller Carew
Rodger K. Carreyn
Abigail V. Carter
Rochelle Tedesco Charnin
Clifford H. Chen
Jennifer A. Chin
Stephanie J. Clifford
Joseph P. Cook
Jenny K. Cooper
Stephen E. Crowley
Anne K. Cusick
Jeannine E. DelMonte
Lea E. Filippi
Meredith L. Flax
Lynda S. Flood
Kevin M. Henry
Leslie Hinds St-Surin
Nicholas S. Holmes
John F. Horvath
Charles T. Inniss
Catherine R. Jones
Paul H. Kim
Denise Kirkowski Bowler
Jeffrey Klain
Kazuhiro Kobayashi
Lloyd J. Lemmen
F. Jackson Lewis, II
Niamh M. Lewis
Gael D. Lindland
Alison B. Macdonald
Michael P. Massey
Matthew B. Mock
Amy M. Morton
Christophe D. Mosby
Jaasi J. Munanka
Krista L. Nunemaker
Eric R. Olson
Nicole S. Pakkala
Seong-Soo Park
Milton L. Petersen
Jeffrey S. Pitt
Mitchell A. Price
Carolyn Barth Renzin
John A. Rosans
Caroline K. Sheerin
Elizabeth A. Stephan
Jean Taylor
Elefteris Velesiotis
Bob J. Waldner
Martin Zimmermann

Corrections to the just-published Report of Giving:

David Callahan, '91, and Alexander MacKinnon, '81, are Firm Captains for Kirkland & Ellis, not for Kirkpatrick & Lockhart.

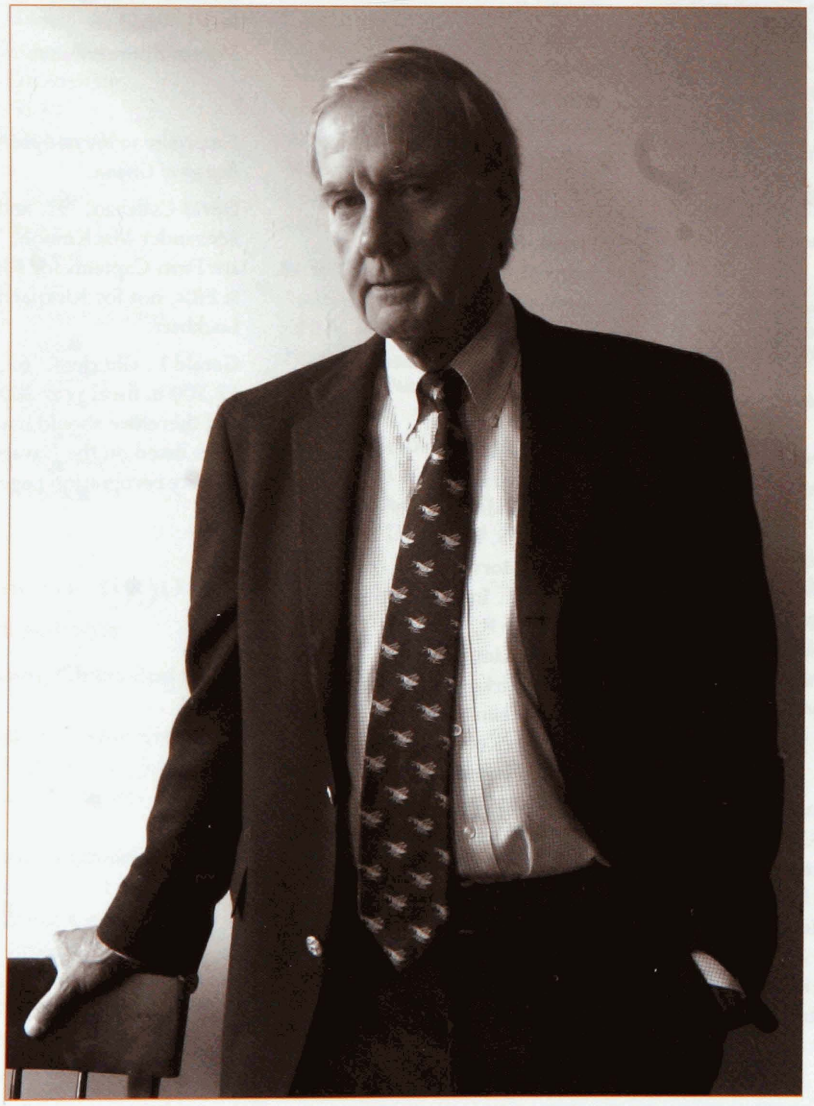
Gerald L. Gherlein, '63, gave $2,500 in fiscal year 2005, and therefore should have been listed on the Cavaedium Society recognition page.

David Roll, '65, illuminates controversial lawyer/politician in *Louis Johnson and the Arming of America*

David Roll, '65, says working on *Louis Johnson and the Arming of America* (University of Indiana Press, 2005) was "the most satisfying thing I've ever done." That's saying a lot for the highly successful Steptoe & Johnson antitrust and administrative law partner, former chair of the firm and assistant director of the Bureau of Competition at the Federal Trade Commission in the '70s.

But then how could you not enjoy unearthing the story of the mover and shaker of the U.S. military complex under two pivotal presidents? Louis Johnson, the founder of Steptoe & Johnson in Clarksburg, West Virginia, who later took the firm to Washington, D.C., was nothing if not self-confident —and confrontational. So bull-headed that his obedience to fulfilling unpopular wishes of the two U.S. presidents for whom he worked led each finally to fire him—FDR from his job as the administration's principal war planner, a role in which he built up the massive military machine that won World War II and launched the "military-industrial complex" that wartime leader and later President Dwight D. Eisenhower would caution against more than a decade later, and Harry Truman from his job as the nation's second secretary of defense, in which he ruthlessly followed HST's orders to downsize that wartime machine, a success story undone nearly overnight when the North Koreans invaded South Korea.

David Roll, '65



But Johnson never wrote his memoirs or fully told his story of working for these very different presidents, and it is only by coincidence that the story comes to light now.

"Our first debt is to serendipity —the unexpected confluence of individuals and events which made this book possible," Roll confesses in the book's first line. "Keith McFarland [his coauthor] began this project nearly 30 years ago, early in his career as a history faculty member. With two books completed and this project well under way, Keith got sidetracked into university administration, beginning as an assistant dean and eventually becoming president of Texas A&M University-Commerce."

"One day in 2001, Dave, who was thinking of writing a history of Steptoe & Johnson, was talking to Judge Frank Maxwell in Clarksburg, West Virginia. The old judge recalled that 'some professor' had been in Clarksburg many years ago and was working on a biography of Louis Johnson. Using the Internet, Dave located Keith and proposed that they join forces to make

this study a reality. Keith is convinced that if Dave had not taken that initiative, this book would have never seen the light of day, and he is grateful that Dave rescued the manuscript and turned it into a published work. On his part, Dave will be forever indebted to Keith for allowing him the pure pleasure of researching and writing about the fascinating and controversial career of Louis Johnson and the two great presidents he served."

Roll and McFarland reveal Roosevelt to be "a sophisticated and steadfast internationalist who was convinced by public opinion to move cautiously, albeit deviously, to prepare the public for war," Truman as "a parochial nationalist who often lacked an understanding of the nations and cultures he had to deal with," and Johnson as a man "driven by politics, power, and personal ambition but rarely by principle."

Johnson, they note, "had the distinction of being the only civilian who was influential in shaping the national security and military preparedness policies used by each of these presidents to confront and carry out extremely unpopular initiatives—massive changes in the size and strength of American military power. And he was the only senior appointee dismissed by both Roosevelt and Truman."

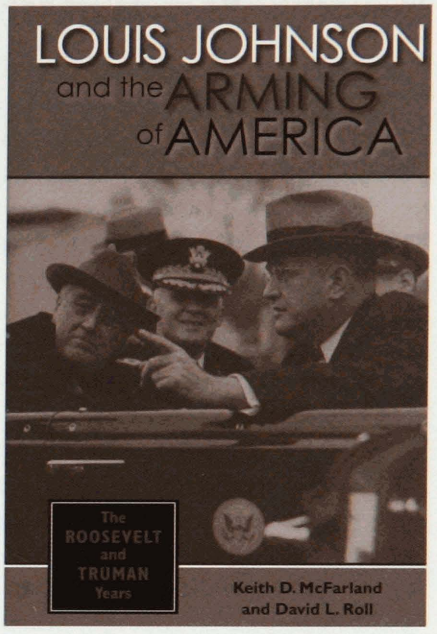
"Johnson's career as an advocate of military preparedness needs to be objectively examined because the battles he waged to advance the goals of these two presidents have resonated in the same profound disagreements between the national defense establishment, the State Department, and Congress in every subsequent administration," Roll and McFarland write.

Tough and resilient, Johnson returned to his legal practice after his dismissal from the Truman administration in 1950 (to be succeeded by then-former Secretary of State George C. Marshall of Marshall Plan fame), established a Steptoe & Johnson office in the nation's capital, and used his experience and legendary rainmaking skills to ensure its success. He remained active almost until his death in April 1966.

Johnson never publicly expressed anything but admiration for the presidents who used him as an instrument of confrontation and then let him go. But as he somewhat wistfully said in a speech two days before departing the Truman administration in 1950, "when the hurly burly's done and the battle is won I trust the historian will find my record of performance creditable, my services honest and faithful commensurate with the trust that was placed in me, and in the best interests of peace and our national defense."

"McFarland and Roll have performed a real service in rescuing from obscurity this Democratic mover and shaker who became the second Secretary of Defense," according to Ohio University Professor of History Alonzo L. Hamby, who has written books on both FDR and HST. "Their account of the rise and fall of Louis Johnson provides us with the fullest depiction yet of an important Washington figure employed for better or worse as a blunt instrument of policy change by both Franklin Roosevelt and Harry Truman."

"All in all," says former secretary of defense and government service veteran James R. Schlesinger, "a fascinating tale."



". . . when the hurly burly's done and the battle is won I trust the historian will find my record of performance creditable, my services honest and faithful commensurate with the trust that was placed in me, and in the best interests of peace and our national defense."

Graduates' books focus on many subjects

Authors abound among Michigan Law graduates. Here are some other graduates and their recently published books:

Ellen Dannin, '78, a professor at Wayne State University Law School and a specialist in labor and employment law and industrial and labor relations, has written *Taking Back the Workers' Law: How to Fight the Assault on Labor Rights* (Cornell University Press, 2006), scheduled for release in April. The book's introduction is by former Congressman David E. Bonier, chair of American Rights at Work. Dannin's book is "a rich store of information and analysis" for "those who care about labor law and workers' rights," according to labor scholar Lance Compa, author of *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*. "Dannin explains U.S. labor law in its real-life application and its failure to live up to the Wagner Act's promise of workers' organizing and bargaining rights. But instead of an easy exercise in denunciation, Danin sets out a savvy and winnable strategy for fulfilling the law's purpose through creative litigation by the practitioner community." Dannin's earlier book is *Working Free: The Origins and Impact of New Zealand's Employment Contracts Act*.

Seton Hall Law School Professor **Rachel D. Godsil, '92,** is co-editor of the new essay collection *Awakening from the Dream: Civil Rights under Siege and the New Struggle for Equal Justice* (Carolina Academic Press, 2006).

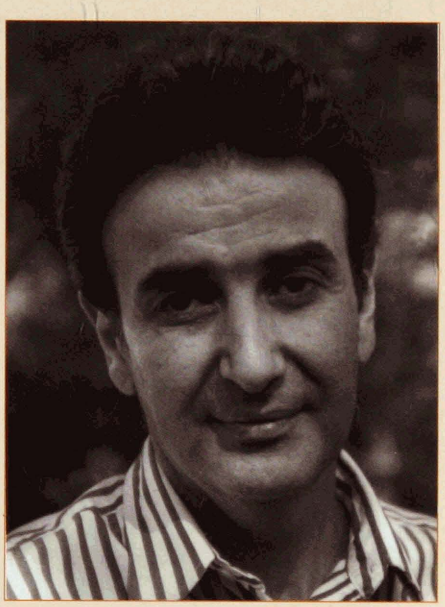
"To us, the term 'civil rights' means the bundle of rights that advance inclusion, equal membership, political participation, and economic mobility in our diverse national community," Godsil and coeditors Denise C. Morgan and Joy Moses write in the book's introduction. Morgan is a law professor at New York Law School and Moses is a staff attorney with the Education Project at the National Law Center on Homelessness and Poverty.

"We use the term 'Federalism Revolution' to refer to the current appeal to states' rights that has been used to justify decisions undercutting Congress' ability to create and enforce civil rights," the editors explain. "Perhaps the term 'Anti-Antidiscrimination Revolution' would be more accurate, as the [U.S. Supreme] Court has regularly abandoned its commitment to states' rights in order to advance an anti-civil rights agenda."

The book grew out of the 2002 Columbia Law School conference marking the birth of the National Campaign to Restore Civil Rights and is divided into five parts: the Rehnquist Court's Federalism Revolution and civil rights; the Federalism Revolution's impact on the lives of Americans; the Federalism Revolution's impact on court access to protect services and rights; the Federalism Revolution: principle or politics?; and reversing the civil rights rollback.

Godsil is coauthor (with South Jersey Legal Services attorney Olga Pomar) of the book's essay "Permitted to Pollute: The Rollback of Environmental Justice."

Rachel D. Godsil, '92



Lawrence Joseph, '75

Lawrence Joseph, '75, recently named the Joseph T. Tinnelly C.M. Professor of Law at St. John's University School of Law, also is a dedicated and prolific poet with two new volumes published last fall by Farrar, Straus and Giroux: *Into It*, his fourth book of poems, and *Codes, Precepts, Biases, and Taboos*, a collection of his previous three books of poetry.

Farrar, Straus calls *Into It* "as bold a book as any in American poetry today—an attempt to give voice to the extremes of American reality in the time since, as Joseph puts it, 'the game changed.' " Joseph's first three books of poetry "dramatized the challenge of maintaining one's self in a world in the hold of dehumanizing forces," according to his publisher, but *Into It* places him where "the immense enlargement / of our perspectives is confronted / by a reduction of our powers of action," where 'wargame' is a verb and "the weight of violence / is unparalleled in the history / of the species."

Codes, Precepts, Biases, and Taboos: Poems 1973-1993 draws together Joseph's previous books of poetry: *Shouting at No One* (University of Pittsburgh Press, 1983), *Curriculum Vitae* (University of Pittsburgh Press,

1988), and *Before Our Eyes* (Farrar, Straus and Giroux, 1993). "Joseph's poems cut to the quick" and "gleam with the sharp edge of their truth; they are hard to forget," James Finn Cotter wrote of this earlier poetry in *The Hudson Review*.

"If the first three books describe the slow working out of a sense of one's place in the world, Joseph's new poems are, though still self-interrogating, more assured in outlook," reviewer David Kirby wrote in *The New York Times Book Review* last September. "Power is the subject of Joseph's new poems," Kirby explained, "and if power is frightening, it can be comely as well."

In one poem, for example, Joseph notes that the dynamo of our time is the computer, which "contains no emblematic / power. You can no more describe the heart / of a computer than the heart of a multinational / corporation."

Robert M. Meisner, '69, of Meisner & Associates in Bingham Farms, Michigan, has written *Condo Living: A Survival Guide to Buying, Owning, and Selling a Condominium*, published by Momentum Books. Meisner is a nationally known expert on condominiums and association living. He teaches on the subjects at Michigan State University Law School and Cooley Law School.

Yves Quintin, LL.M. '81, has written *Les Fusions-Acquisitions Aux USA*, a French-language guide for lawyers to work on mergers and acquisitions in the United States. He dedicated the book to Hessel E. Yntema Professor Emeritus of Law Eric Stein, '42, his former teacher. (See story on page 32.)

U-M gives Sam Zell, '66, honorary Doctor of Laws

Michigan Law graduate and real estate entrepreneur Sam Zell, '66, whose support for the Law School has significantly advanced its video conferencing capabilities, aided a major ongoing speakers series, and assisted the School in many other ways, received an honorary Doctor of Laws degree at the University of Michigan's 2005 Winter Commencement in December.

Zell chairs the Chicago-based Equity Office Properties Trust, whose activities have made him the dominant real estate proprietor in a number of major cities. A first generation American whose father escaped from Poland only hours ahead of the Nazi invasion in 1939, Zell earned both his undergraduate and law degrees at the University of Michigan and he has remained a longtime and generous supporter of the University.

At the Law School, Zell's generosity has established the Sam Zell Dean's Tactical Fund, which has made it possible to renovate a Hutchins Hall classroom so it can facilitate video conferencing involving participants at more than one location. For example, the room has served as the Ann Arbor anchor for a seminar involving participants in England, and last fall organizers of a conference on contracts used the equipment to present a discussion involving panelists at the Law School, Harvard University, and the University of Texas. (See story on page 20.) The fund also supports other programs, among them the International Law Workshop speaker series, faculty participation in a groundbreaking conference in China last spring, and sophisticated self studies for the Law School.

In announcing the honorary degree, *The University Record* said "Zell is a visionary business leader who has accurately predicted and successfully weathered major shifts in the economy." The University publication also noted that *Fortune Magazine* had reported that Zell "controls more commercial real estate than anyone else in the country."

Honorary degree recipient Sam Zell, '66, right foreground, at the U-M's winter commencement

Graduates win Fulbright, Skadden Fellowships

Two Law School joint degree graduates have received Fulbright awards for further study, and a third graduate has won one of 25 Skadden Fellowships awarded this year.

The Fulbright winners are Stephen Hills, '05, and Marisa Martin, '03, both of whom earned degrees from the School of Natural Resources and Environment in addition to their law degrees. The two are among 29 Fulbright winners from the University of Michigan, the largest group from any American university this year, according to the Institute of International Education, which administers the U.S. Student Fulbright Program.

Higgs will use his award to study the practice and performance of environmental mediation in the New Zealand cities of Auckland, Christchurch, and Wellington. Martin will use her award to study the relationship between Switzerland's energy law and its climate change efforts.

Higgs and Martin credit Law Professor Nina Mendelson with teaching them environmental law and supporting their interest in the field. Mendelson said she is "very proud" of both winners and "their commitment to research environmental issues of concern to all of us. Both took advantage of the top-notch environmental science, policy, and legal training offered in our joint Law and Natural Resources program, and they exemplify the qualities of interdisciplinary thinking and leadership that our programs strive to encourage."

The Skadden Fellowship winner, Marisa Bono, '05, a native of San Antonio, will use her fellowship to return there to work with the Mexican American Legal Defense and Education Fund (MALDEF) to provide services and public interest litigation for Latina domestic violence survivors in Texas. The competitively awarded Skadden Fellowships provide salary, fringe benefits, and educational loan repayment for up to two years in support of a law graduate's work in public service.

"Not only is there a shortage of civil legal services for indigent survivors in the state, but MALDEF has documented cases where Latina survivors face additional obstacles to legal and social services," according to Bono.

Bono is the 18th Michigan Law graduate to receive a Skadden Fellowship since 1989.

ABC News President David Westin, '77: Bob Woodruff, '87, 'making progress,' recovery 'a slow process'

As this issue of *Law Quadrangle Notes* was going to press, ABC News' World News Tonight co-anchor Bob Woodruff, '87, was undergoing treatment at Bethesda Medical Center in Maryland for head and other injuries he suffered January 29 in Iraq when a roadside bomb damaged the Iraqi military vehicle in which he was riding.

ABC cameraman Doug Vogt also was wounded in the attack and transported to Germany and then to the United States with Woodruff. Vogt moved into an outpatient facility at Bethesda in February.

"Bob is also making progress," ABC News President David Westin, '77, said of Woodruff, who had begun co-anchor duties on January 3 with Elizabeth Vargas. "The doctors are keeping him sedated for now to help with the healing of his various injuries," Westin said of Woodruff on February 8. "They do adjust the levels of his sedation from time to time, and they have been pleased with how he responds even with somewhat lowered sedation. This remains a long process, but I will continue to let you know when there are important developments."

Westin did not indicate when, or if, Woodruff is expected to resume anchor and news reporting duties.

A former lawyer turned newsman, Woodruff said at the time of his appointment as co-anchor that "I am ecstatic at having been given this opportunity." He has been at ABC since 1996, serving as the network's Justice Department correspondent, reporting from Belgrade and Kosovo in 1999 during NATO's bombing of Yugoslavia, and reporting widely on Europe and the Middle East.

Based for several years in London before moving to New York in 2002, Woodruff reported on the U.S. military invasion of Iraq as an embedded journalist with the First Marine Division, 1st Light Armored Reconnaissance Battalion. His reporting on the aftermath of the terrorist attacks of September 11, 2001—he filed stories from Pakistan and Afghanistan and covered the fall of the Taliban—was part of the ABC coverage that won Alfred I. Dupont and George Foster Peabody awards, the two highest honors in broadcast journalism.

Woodruff also covered the presidential campaign of Senator John Edwards, the tsunami disaster in Asia, and has reported on life in North Korea.

Woodruff practiced corporate law briefly with Shearman & Sterling after graduating from the Law School. His shift to journalism began in 1989 when he was in China teaching American law to Chinese lawyers and CBS News hired him as a translator for its coverage of the Tiananmen Square crackdown. When he returned to the United States he shifted to journalism and worked at an NBC affiliate in northern California.

Avern Cohn, '49, wins Distinguished Alumni Service Award

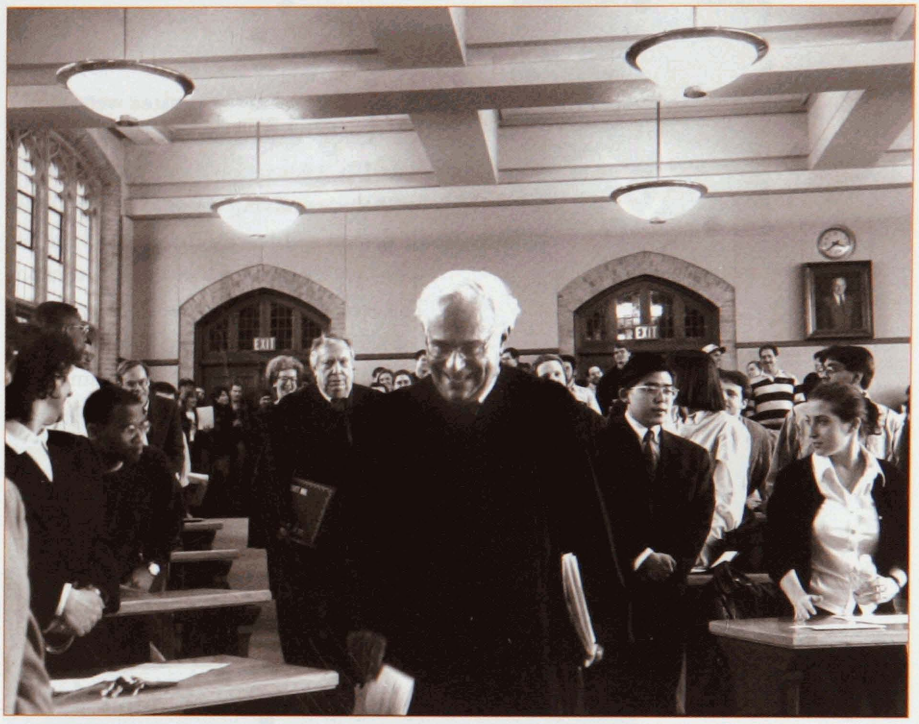
U.S. District Court Judge for the Eastern District of Michigan Avern Cohn, '49, has won the Alumni Association of the University of Michigan's Distinguished Alumni Service Award, the association's highest honor.

One of Cohn's five fellow winners was former President Gerald R. Ford, who received an honorary J.D. degree from Michigan in 1974.

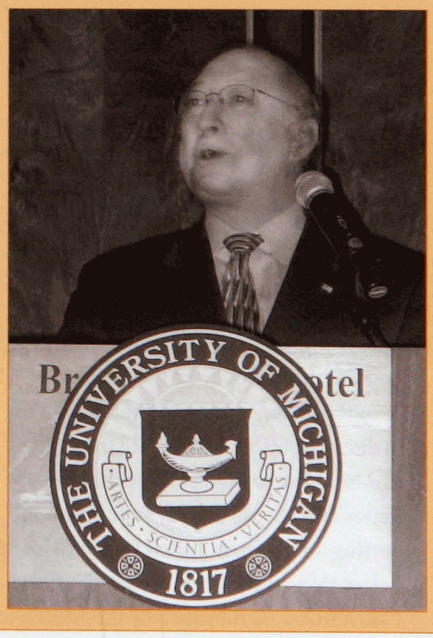
Cohn has been an active supporter of the Law School and the University of Michigan throughout his career. In 1996 he delivered the sixth annual Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom, in 2003 he was a panelist for the Law School's Conference on Judicial Review, and he has been one of three sitting judges who preside at the finals of the annual Campbell Moot Court Competition at the Law School. His generosity established the Irwin I. Cohn Professorship in Law in honor of his father at the Law School, a professorship currently held by Professor Reuven Avi-Yonah.

"To get a sitting judge to come back and be a judge at the Law School is an unbelievably important experience for the students and a real giving of Judge Cohn's time and expertise," said Saul Green, '72, a Law School Public Interest/Public Service Faculty Fellow and a past chairman of the Alumni Association's board of directors.

Cohn "cares deeply about his alma mater; he has a great love for the institution, but he also is able to be critical of it," noted U-M Vice President and General Counsel Marvin Krislov, an adjunct faculty member at Michigan Law. "He identifies with the institution, but he is not unafraid to point out when the University should be doing something differently."

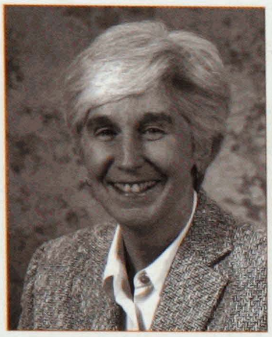


U.S. District Court Judge Avern Cohn, '49, leads the way to open final arguments in the Law School's Campbell Moot Court competition. Cohn's service as judge for these final arguments and a speaker for Law School and University events reflects the kind of dedication to the Law School and the University of Michigan that has won him the Alumni Association's Distinguished Alumni Service Award.



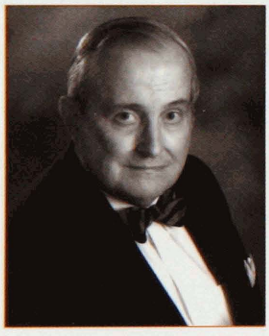
Rocky Mountain High

Back home in Colorado, U.S. Senator Ken Salazar, '81, addresses participants at a Law School/Ross Business School reception in his honor in Denver in December.

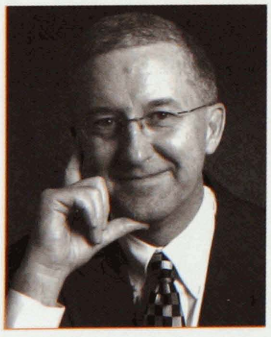


Janet Findlater, '74

Jean Ledwith King, '68



Eugene G. Wanger, '58



Nelson Miller, '87

Graduates win Michigan State Bar honors

Michigan Law graduates were well represented among the Michigan State Bar Association's annual awards for 2005, receiving three of the five Champions of Justice Awards and the John W. Cummiskey Pro Bono Award. The awards were presented at the State Bar's 70th annual meeting last fall.

Janet Findlater, '74, was named a Champion of Justice "for her role as an extraordinary teacher and legal scholar with a national and international reputation in the area of domestic violence and foster care," according to the State Bar. She has been a faculty member for 28 years at Wayne State University Law School in Detroit, where she has been named Professor of the Year 14 times. Coauthor of a textbook on domestic violence that has been described as "an absolute model of clarity in both thought and exposition," she is a member of the National Advisory Council of the National Clearinghouse for the Defense of Battered Women, sits on many committees, and actively contributes time to pro bono work.

Jean Ledwith King, '68, a highly successful litigator and Title IX specialist who bases her practice in Ann Arbor, was honored "for promoting equality in the democratic process in employment, in schools, and in the courts." Founder of the Women's Caucus of the Michigan Democratic Commission and Focus on Equal Employment for Women, King won an administrative order in 1971 to force the University of Michigan to address discriminatory issues and the next year succeeded in getting 11 women added to the Michigan delegation to the Democratic National Convention. A member of the Michigan Women's Hall of Fame, she has taught at Wayne State University Law School, Eastern Michigan University, Washtenaw Community College, and the University of Michigan Institute of Labor and Industrial Relations.

Eugene G. Wanger, '58, was honored "for his devotion to upholding Michigan's long-time public policy of opposition to the death penalty." As the youngest Republican delegate to the Michigan Constitutional Convention in 1961, he authored the state's constitutional prohibition against the death penalty. He is past vice-chair of the Michigan State Bar's Committee on Constitutional Law and author of *Why We Should Reject Capital Punishment*, which many observers consider to be the definitive work on the issue.

To be considered for a Champion of Justice Award, a lawyer must "possess integrity and adhere to the highest principles of the legal profession, have superior professional competence, and [have made] an extraordinary professional accomplishment that benefits the nation, state, or locality in which the lawyer lives."

The State Bar's John W. Cummiskey Pro Bono Award was presented to **Nelson Miller, '87,** assistant dean and associate professor at the Thomas M. Cooley Law School's Grand Rapids, Michigan, campus, for his extensive pro bono work with low income and minority communities in Muskegon, Benton Harbor, and Grand Rapids. The State Bar noted that Miller has served "approximately 1,000 individuals," created a guide to help nonprofit centers seek funding and evaluate constituents' needs, and helped 48 nonprofit organizations offer recreation, mentoring, housing, and food pantry services to their clients.

Mayo Moran, LL.M. '92, named dean of Toronto's Faculty of Law

Mayo Moran, LL.M. '92, has been named dean of the University of Toronto Faculty of Law. An associate professor of law at Toronto who specializes in private law, comparative constitutional law, and legal theory, Moran served as the Faculty of Law's associate dean from 2000-2002.

"Toronto's law faculty is a great Canadian institution and one of the world's leading academic law schools," Moran said. "I am deeply honored to be chosen as its dean."

"Professor Moran is a brilliant academic, a gifted teacher, and very strong institutional leader," noted University of Toronto President David Naylor. "I am confident that she will bring great vision and leadership to the position."

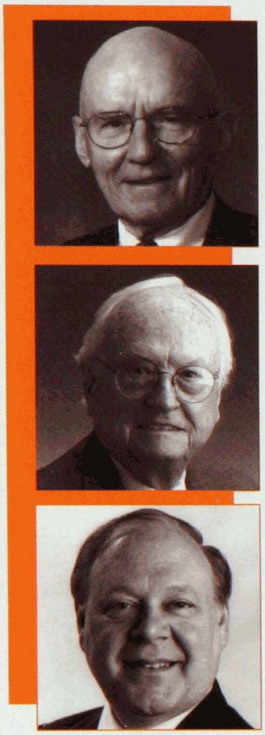
In addition to her LL.M. from the U-M Law School, Moran holds an LL.B. from McGill University and an S.J.D. from the University of Toronto. Her most recent research has focused on how practices and theories of responsibility come to terms with discrimination. She has worked on the Chinese-Canadian head tax claim issue as well as on litigation involving the equality of guarantee under the Canadian Charter of Rights and Freedoms.

While associate dean, Moran initiated a number of innovations, including introduction of first-year electives such as transnational law, introduction to civil law, and feminism and the law. She also developed diversity initiatives, implemented introduction of a laptop computer policy, and worked to expand clinical programs and integrate them into the academic program.

"Thanks to the legacy of visionary academic leaders, we have great opportunities before us and I look forward to working with the outstanding students, faculty, and larger community to make those exciting possibilities a reality," she said.

Mayo Moran, LL.M., '92

Top to bottom:
Joe C. Foster Jr., '49; Harold G. Christensen, '51;
Larry Ross, '65



1949

Joe C. Foster Jr., shareholder in the firm of Foster Zack & Lowe PC in Okemos, Michigan, has been included in *The Best Lawyers in America 2006*.

1950

Jerome Kaplan, of counsel for the Philadelphia firm of Abrahams, Loewenstein & Bushman, has been elected to the Board of Directors of the American Recorder Society. The society is a national organization involved in the development of the art, history, literature, and uses of the recorder, an instrument used primarily in baroque and renaissance music.

1951

55th Reunion

October 27 – 29, 2006

Harold G. Christensen, a shareholder at Snow, Christensen & Martineau in Salt Lake City, has been selected for inclusion in *The Best Lawyers in America 2006*. He has been included in the publication for more than 10 years.

1953

Jean G. Castel, Distinguished Research Professor Emeritus at Osgoode Hall Law School of York University, Toronto, has retired after more than 50 years of teaching public and private international law. An annual lecture, for which he gave the inaugural address, has been established in his honor.

1956

50th Reunion

October 27 – 29, 2006

You're My Boy, a play by **Herb Brown** that examines the relationship between Dwight D. Eisenhower and Richard M. Nixon during the years 1952-61, had its world premiere last October in a production by the Contemporary American Theatre Company in Columbus, Ohio. The play delves into the competing drives of service and ambition that accompany political life, according to Brown, a former Ohio Supreme Court justice and counsel in the $39 million-verdict case of *Guccione v.* Hustler *Magazine* (1980). "In a sense, Ike is the citizen-soldier, the last of his kind (so far) in U.S. presidential politics," says Brown. "Nixon represents politics as it was and is—where the prime drive is to achieve."

1957

Howard Kahlenbeck has retired from the Indianapolis, Indiana, firm of Krieg DeVault LLP.

1961

45th Reunion

October 27 – 29, 2006

1963

Marvin J. Hirn, of counsel for the Louisville, Kentucky, office of Dinsmore & Shohl LLP has been included in *The Best Lawyers in America 2006*.

1965

The Hon. **Joan (Goodman/Arrowsmith) Churchill** has been elected president of District 4 of the National Association of Women Judges for the 2005-07 term. District 4 includes Washington, D.C., Maryland, and Virginia.

Larry Ross, president of Ross Financial Services Inc., has been appointed to the board of the International Intelligence Network, a worldwide association of elite private investigators. Ross Financial Services is a Washington, D.C., based private investigative firm serving the legal and business communities.

1966

40th Reunion

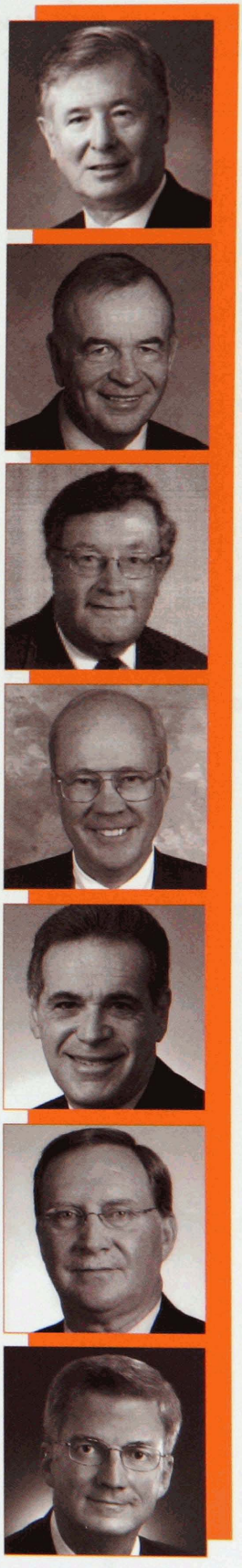
October 27 – 29, 2006

Dewey B. Crawford has joined Foley & Lardner LLP as co-chair of the Chicago Business Law Department.

1967

Lewis T. Barr, partner in the Cleveland office of Ulmer & Berne, is the author of *T.M. 780-3rd, Net Operating Losses* —Sections 269, 381, 383, and 384, published by the Bureau of National Affairs as part of its Tax Management Portfolio series. Bar has also been included in *The Best Lawyers in America* Tax Law section since 2003.

Top to bottom: Peter Dunlap, '67; Robert R. Lennon, '67; Philip A. Nicely, '67; Robert G. Geeseman, '69, Donald P. Ubell, '69; Michael D. Mulcahey, '72; James W. Riley Jr., '72



Peter Dunlap, a shareholder with the Lansing, Michigan, office of Fraser Trebilcock Davis & Dunlap PC, has been awarded the Leo A. Farhat Outstanding Attorney Award by the Ingham County Bar Association.

Robert R. Lennon, senior counsel in the Kalamazoo, Michigan, office of Miller, Canfield, Paddock, and Stone PLC, has been selected for inclusion in the Corporate Law and Real Estate Law sections of *The Best Lawyers in America 2006*.

Philip A. Nicely, partner in the Indianapolis-based firm of Bose McKinney & Evans LLP, has been included in *The Best Lawyers in America 2006*. This is his 11th consecutive year of recognition in the publication.

1968

Edmund M. Carney, partner in the Pittsburgh office of Dinsmore & Shohl LLP, has been included in *The Best Lawyers in America 2006*.

Henry S. Gornbein, partner in Gornbein, Fletcher & Smith PLLC of Bloomfield Hills, Michigan, was a panel speaker at Temple Israel to launch HUGS (Hope, Understanding, Growth & Strength), a four-week support program for families affected by divorce.

1969

Robert G. Geeseman, a partner with the Pittsburgh office of Fox Rothschild LLP, is named in *The Best Lawyers in America 2006*. Geeseman, who was recognized in 2005 as a Pennsylvania Super Lawyer by *Law & Politics* magazine, specializes in health care law.

Donald P. Ubell, Public Finance Group leader with Parker Poe's Charlotte, North Carolina, office, has been named to *The Best Lawyers in America 2006* in public finance law.

1970

Corporate and entertainment law specialist **John Kamins**, a partner in Honigman Miller Schwartz and Cohn LLP, has been re-elected to a second term as chairman of the board of the Leukemia & Lymphoma Society, which has 66 chapters across the United States, and profiled as Volunteer of the Week in the *Detroit Free Press*.

1971

35th Reunion

October 27 – 29, 2006

North Carolina Governor Mike Easley has appointed **Karl Adkins** as a Special Superior Court Judge.

Donald F. Tucker of Clark Hill PLC in Birmingham, Michigan, has been honored as a Friend of the Legal Aid and Defender Association for providing outstanding pro bono service to its clients this past year.

Gerald V. Weigle Jr., partner in the Cincinnati office of Dinsmore & Shohl LLP, has been included in *The Best Lawyers in America 2006*.

Steven H. Winkler has been appointed senior vice president and corporate underwriting counsel with United General Title Insurance Company, a subsidiary of First American Title Insurance Company.

Roger Wotila, a Cadillac, Michigan, attorney, has been named a Fellow to the Michigan State Bar Foundation. The foundation distributes grants to provide legal services to the poor.

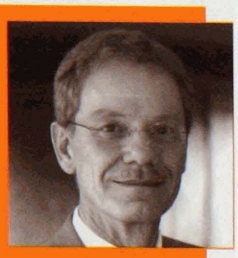
1972

Michael D. Mulcahy, a member of the Bloomfield Hills, Michigan, firm Dawda, Mann, Mulcahy & Sadler PLC, has been included in *The Best Lawyers in America 2006*.

James W. Riley Jr. has been installed as the president of the Indiana State Bar Association. Riley is of counsel to the Indianapolis firm of Riley Bennett & Egloff LLP, where he practices as a commercial litigator and arbitrator.

Mark A. Vander Laan, partner in the Cincinnati office of Dinsmore & Shohl LLP, has been included in *The Best Lawyers in America 2006*.

Top to bottom: Harvey J. Messing, '73; Clarence I. Pozza Jr., '74; Ronald W. Bloomberg, '77



1973

Scott Barnes has joined Harcourt Assessment-based in San Antonio, Texas. Barnes is vice president and general counsel.

Susan M. Eklund, who served as the Law School's associate dean for 15 years and assistant dean for student affairs for eight years, has been named the University of Michigan's associate vice president for student affairs and dean of students for three years beginning July 1. She has been serving in the position on an interim basis since coming out of retirement in 2004.

Herbert Godby, a partner in the Columbus, Ohio, office of Schottenstein Zox & Dunn LPA, has been named in *The Best Lawyers in America 2006*.

Harvey J. Messing has joined the Lansing, Michigan, office of Miller, Canfield, Paddock and Stone PLC as a principal. He works with the firm's Environmental and Regulatory Practice Group.

1974

Michael D. Eagen, partner in the Cincinnati, Ohio, office of Dinsmore & Shohl LLP, has been included in *The Best Lawyers in America 2006*.

Clarence L. Pozza Jr., a principal in the Detroit office of Miller, Canfield, Paddock and Stone PLC, has become a Fellow of the American College of Trial Lawyers. Pozza is leader of Miller Canfield's Litigation and Dispute Resolution Practice Group and is a past chairman of the managing directors of the firm.

Thomas W. Weeks, director of the Ohio State Legal Services Association for 20 years, has received the Ohio State Bar Foundation's Public or Government Service Award, given to a person who has advanced the Foundation's goals and improved relationships among lawyers, citizens, and the justice system.

1975

J. Michael Cooney, partner in the Cincinnati, Ohio, office of Dinsmore & Shohl LLP, has been included in *The Best Lawyers in America 2006*.

Guy F. Guinn, a banking law specialist with Calfee, Halter & Griswold LLP in Cleveland, Ohio, has been selected for inclusion in *The Best Lawyers in America* for 2006. He has appeared in the listing for 10 years.

1976

30th Reunion

October 27 – 29, 2006

1977

Ronald W. Bloomberg has joined the Lansing, Michigan, office of Miller, Canfield, Paddock and Stone PLC as a principal. He works with the firm's Environmental and Regulatory Practice Group.

Eileen R. Scheff of Scheff & Washington PC in Detroit has been honored with an Impact on Domestic Violence Award by the Legal Aid and Defender Association for providing outstanding pro bono service this past year.

1979

Leslie Curry was honored with the Unsung Hero award by the State Bar of Michigan in September. Curry works with Legal Aid of Western Michigan.

1980

G.A. Finch, a partner in the Business Practice Group at Michael Best & Friedrich LLP in Chicago, has been named a Business Leader of Color by Chicago United and authored "Employment Contracts: More Than Just a Handshake," which appeared in the June 2005 edition of *Consulting-Specifying Engineer* magazine.

Charles F. Hertlein, partner in the Cincinnati, Ohio, office of Dinsmore & Shohl LLP, has been included in *The Best Lawyers in America 2006*.

Top to bottom: Mark T. Boonstra, '82; Jeffrey W. Stone, '83

Jesse Ishikawa's book, *Drafter's Guide to Wisconsin Condominium Documents*, won the 2005 Outstanding Achievement in Publications award from the Association for Continuing Legal Education. He is a shareholder in the Real Estate Department of Reinhart Boerner Van Deuren S.C. in Madison, Wisconsin.

Michigan 36th District Court Magistrate **Steve Lockhart** has been voted chief magistrate of the court. He has served as magistrate since 2001 and has presided over more than 42,000 cases.

1981

25th Reunion

October 27 – 29, 2006

Yves Quintin, LL.M., partner with the firm Duane Morris LLP, discussed his book, *Mergers and Acquisitions in the United States*, in October at a talk and reception hosted by his firm and the Philadelphia Chapter of the French-American Chamber of Commerce. The book provides French-speaking investors with an understanding of the issues that arise in M&A deals in the United States. (See story on page 32.)

1982

Mark T. Boonstra, a principal in the Ann Arbor office of Miller, Canfield, Paddock, and Stone PLC, has been elected to a three-year term as a member of the State Bar of Michigan Representative Assembly. He serves as a deputy chair of the Litigation and Dispute Resolution Practice Group.

Andrea Darvas has become a judge with the King County Superior Court in Washington State.

Steven R. Gersz, chair of the Corporate Department and a partner in Underberg & Kessler LLP in New York State, has written *LexisNexis® AnswerGuide™ on New York Business Entities,* in whose Acknowledgements he cited the Law School for providing him "with a firm foundation for the practice of business corporate law." He also serves on the editorial board for White, New York Business Entities, and participated as a revision author for various chapters of that treatise.

George H. Vincent, partner in the Cincinnati, Ohio, office of Dinsmore & Shohl LLP, has been included in *The Best Lawyers in America 2006*.

1983

Jose Padilla has been appointed vice president and general counsel of DePaul University in Chicago, Illinois.

Jeffrey W. Stone, partner in the Real Estate & Finance Group at Hodgson Russ LLP's Buffalo, New York, office, is a member of the United Way of Buffalo & Erie County's Emerging Leaders Society for which Hodgson Russ is a sponsor. He also chairs the Municipal & School Law Committee of the Bar Association of Erie County.

1985

Mark E. Weinhardt, a member of the Des Moines, Iowa, firm of Belin Lamson McCormick Zumbach Flynn PC, has been inducted into the Iowa Academy of Trial Lawyers, an invitation-only association with a limited membership.

1986

20th Reunion

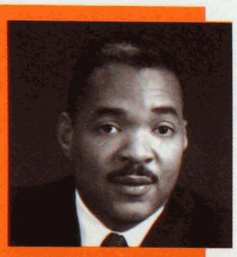
September 8 – 10, 2006

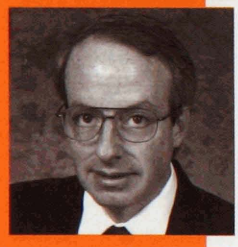
Thomas O. Bean, partner in the Boston, Massachusetts, office of McDermott, Will & Emery LLP, has been appointed by the Supreme Judicial Court to the Clients' Security Board for a five-year term.

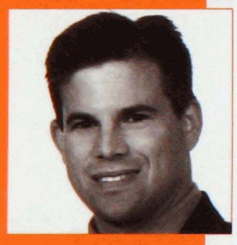
Jenner & Block Chicago office partner **David M. Greenwald** wrote with two Jenner & Block colleagues, Edward F. Malone and Robert R. Stauffer, the third edition of *Testimonial Privileges*. He is a member of the firm's Insurance Litigation and Counseling, Reinsurance, Government Contracts, and Litigation & Dispute Resolution Practices.

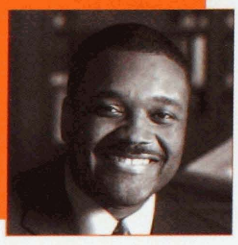
Masashi Oka, LL.M., has been elected to the board of directors for UnionBanCal Corporation and its primary subsidiary,

Top to bottom: Reginald M. Turner, '87; Nancy I. Little, '89; David Moran, '91; Barry Y. Freeman, '93; Otto Beatty III, '94









Union Bank of California. He is vice chairman of the corporation and oversees the administration and support group for Union Bank.

Anthony Pacheco has been named partner in the Los Angeles office of Proskauer Rose.

Andrew C. Richner of Clark Hill PLC's Detroit office has been recognized by the Legal Aid and Defender Association with a Pro Bono Spirit Award for providing outstanding pro bono service this past year

Ross Romero, an attorney with Jones Waldo Holbrook and McDonough in Salt Lake City, has been elected to the Utah State Legislature.

1987

Michael McFerren, who is a writing professor at Wayne State University Law School, has been honored with the school's Donald H. Gordon Award for Excellence in Teaching. McFerren is also of counsel to the firm of Helveston and Helveston, Detroit.

National Bar Association President and Clark Hill attorney **Reginald M. Turner Jr.** has been awarded the Community Peacemaker award from Wayne State University's Center for Peace & Conflict Studies for his work in promoting peace and social understanding within the community.

1988

Michael H. Cramer has joined the Chicago office of Ogletree, Deakins, Nash, Smoak & Stewart PC as a shareholder. Ogletree Deakins is a labor and employment law firm.

1989

Susan A. Cerbins has joined the Law Department of The Northwestern Mutual Life Insurance Company as an assistant general counsel and assistant secretary on the Real Estate Investment Team.

Nancy L. Little, shareholder in the Okemos, Michigan, firm of Foster Zack & Lowe PC has been included in *The Best Lawyers in America 2006*.

1991

15TH REUNION

September 8 – 10, 2006

David Moran, who has taught at the U-M Law School as a visiting professor, has been named associate dean of Wayne State University Law School in Detroit. Moran has taught at Wayne State since 2000.

1992

Nancy A. Brigner, of counsel for health care with Schottenstein Zox & Dunn LPA, has been named as a "Rising Star" among the best up-and-coming attorneys in Ohio. She practices in the firm's Columbus office.

Dinsmore & Shohl LLP attorney **Jeffrey Hinebaugh** has been named as an Ohio Super Lawyers—Rising Star by *Law & Politics Media*. Hinebaugh is a partner in the Cincinnati office.

The U.S. Small Business Administration selected **Rachel M. McCormack**, along with her husband, Mike, as the 2005 Michigan Small Business Person of the Year. McCormack is founder and president of MicroMax Inc., a software engineering services company located in Canton, Michigan.

1993

Barry Y. Freeman, a partner at the Cleveland, Ohio, firm Duvin, Cahn & Hutton, has been certified as a labor and employment specialist by the Ohio State Bar Association. In addition, he was recently selected as an Ohio Super Lawyers Rising Star.

1994

Otto Beatty III has been selected as a Rising Star by the Ohio Super Lawyers, *Law & Politics Media*, 2005. Beatty is a partner with Columbus office of Baker & Hostetler LLP.

Melissa Breger, associate clinical professor of law at Albany Law School of Union University, received the Shanara Gilbert Award from the American Association of Law Schools. In addition, she has an article appearing in the spring issue of the *Michigan Journal of Gender and Law* and is coauthoring a book supplement in the summer of 2006.

Top to bottom: Liam Lavery, '94; Mark A. Shiller, '94; Tamara K. Hackmann, '95; Noah D. Hall, '98

Helene Glotzer has been promoted to associate regional director at the Securities and Exchange Commission, co-heading the New York office's enforcement program.

Liam Lavery has joined the Internet start-up company Zillow.com as corporate counsel. Zillow.com is a consumer-focused real estate business in Seattle, Washington. Previously Lavery was with Preston Gates & Ellis LLP also in Seattle.

Assistant United States Attorney **Thomas Seigel** has been promoted to deputy chief of the Organized Crime Unit, U.S. Attorney's Office, Eastern District of New York.

Mark A. Shiller, who practices in the Mequon, Milwaukee, and Brookfield offices of von Briesen & Roper SC, has been appointed chair of the Estate and Trust Planning & Administration Section of the Wisconsin firm.

1995

Tamara K. Hackmann has joined the Urbana, Illinois, office of Heyl, Royster, Voelker & Allen as an Of Counsel attorney focusing in the defense of civil litigation. She previously was in private practice in Detroit, Peoria, Illinois, and Des Moines, Iowa, specializing in insurance defense, medical malpractice, and employment litigation.

1996

10TH REUNION

September 8 – 10, 2006

Dinsmore & Shohl LLP attorney **Louise Brock** has been named as an Ohio Super Lawyers —Rising Star by *Law & Politics Media*, and to the "Forty Under 40" by the *Business Courier*. Brock is a partner in the Cincinnati office.

Diana Brown has joined the firm of Bricker & Eckler LLP in Columbus, Ohio, as an associate in the firm's Education Group. She previously practiced labor and employment law with Doll, Jansen & Ford in Dayton.

Fred K. Herrmann, a member of the Detroit law firm of Kerr, Russell and Weber PLC, has been elected chairperson of the Antitrust, Franchising, and Trade Regulation Section of the State Bar of Michigan. He specializes in commercial and complex litigation.

Brandon Schmid has joined InfoSpace Inc., located in Bellevue, Washington, as corporate counsel, providing legal counseling to the Search & Directory Division and other information service groups.

1997

IT Outsourcing by **Ole Horsfeldt**, LL.M., has been published by Thomson. The book provides a legal and practical handbook on outsourcing contracts.

1998

Noah D. Hall has joined the faculty of Wayne State University Law School as an assistant professor of law, specializing in environmental law.

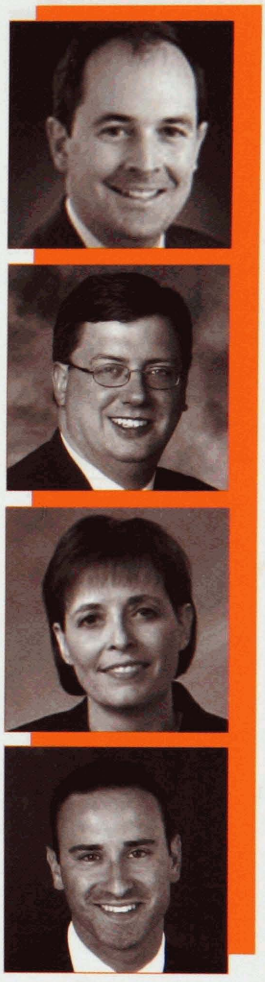
Dina Kallay, LL.M., S.J.D. '03, has joined the Washington, D.C., office of Howrey LLP as an antitrust associate. She previously practiced antitrust and intellectual property law with Naschitz Brandes in Tel Aviv, Israel, and served as an adjunct professor at Bar Ilan University and the Hebrew University of Jerusalem.

2000

Kenneth M. Kalousek has joined Bodman LLP as an associate in the Ann Arbor office in the Real Property Practice Group.

Michael Machen, director of admissions and financial aid at the University of Chicago Law School, and **Monika Jeetu Machen,** who practices with Sonnenschein, Nath & Rosenthal in Chicago, announce the birth of their daughter Maya, who arrived October 3, 2005.

Jason Stover, who practices general and franchise litigation with Gray, Plant, Mooty, Mooty & Bennett PA in Minneapolis, has been made a principal of the firm.



Top to bottom:
Katherine A. Weed, '02; Richard D. Hoeg, '05

2001

5th Reunion

September 8 – 10, 2006

2002

Katherine A. Weed has joined Fraser Trebilcock Davis & Dunlap P.C. as an associate practicing in the Litigation Department out of the firm's Detroit office.

2003

Peter E. Chung has been appointed Deputy Public Defender I with the Law Offices of the Los Angeles County Public Defender.

Dinsmore & Shohl LLP attorney **Jessica Hylander** has been named as an Ohio Super Lawyers—Rising Star by *Law & Politics Media*. Hylander is an associate in the Cincinnati office.

2004

Larissa Wakim, LL.M., has been appointed to the International Criminal Court's legal team to investigate incidents at Darfur.

2005

Alicia A. Halligan has joind the Litigation Practice Group with the Detroit office of Dykema Gossett PLLC. She focuses her practice on general litigation matters.

Richard D. Hoeg has joined Miller, Canfield, Paddock, and Stone PLC's Ann Arbor office as an associate in the Corporate and Securities Group.

Michael J. Krautner has joined McAndrews, Held & Malloy as an associate in Chicago.

Jeremy C. Lay has joined the Cincinnati office of Dinsmore & Shohl LLP, practicing in the Litigation Department.

Ali H. Shah has joined McAndrews, Held & Malloy as an associate in Chicago.

Lindsey M. Stetson has joined the Detroit office of Miller, Canfield, Paddock, and Stone as an associate practicing in the Corporate and Securities Group.

In Memoriam

'21	Jose Maria Cajucom	
'25	Chuan Pi Wange (LL.M.)	
'36	Joseph J. DeLuccia	10/15/2005
'37	Louis E. Maggini	12/10/2005
'38	Thomas R. Clydesdale	9/11/2005
'39	David L. Canmann	12/8/2005
	Milton W. Wallace	11/27/2005
'40	Robert P. Stewart	11/22/2005
'41	Emanuel H. Hecht	9/13/2005
	James K. Lindsay	5/30/2005
'42	Edward W. Adams	12/2/2005
	Robert F. Sauer	8/16/2005
'43	Robert L. Ceisler	11/29/2005
'44	Robert M. Barton	12/12/2005
	Raymond J. Rosa	11/17/2005
'46	William T. Atkinson	10/28/2005
'47	Robert Hyde Busler	12/3/2005
	James S. Thorburn	12/26/2005
'48	Francis C. Burns	12/14/2005
	James E. Tobin	11/30/2005
'49	Myron J. Nadler	9/14/2005
'50	Walter R. Boris	10/12/2005
	Julius Finegold	9/23/2005
	Sidney E. Pollick	11/3/2005
	Charles M. Waugh	9/22/2005
'51	William D. Barense	9/17/2005
	Alan C. Boyd	10/29/2005
	John Joseph Gordon	11/9/2005
	Richard L. Meyer	10/14/2005
'52	Sam F. Massie Jr.	11/13/2005
	John E. McDowell	12/16/2005
'53	Will J. Bangs	7/4/2005
	Edward G. Madden Jr.	9/15/2005
	Irwin S. Smith	9/29/2005
'56	Theodore Earl Dunn	10/9/2005
'57	Earl Terman	11/2/2005
'58	Gerald D. Rapp	11/27/2005
'59	George Q. Hardwick	9/20/2005
'60	Harold E. Berritt	12/5/2005
	Spencer L. Depew	12/15/2005
	Willliam W. Fisher Jr.	12/1/2005
	John A. LaFalce	10/18/2005
'64	Michael A. Wa	11/3/2005
'65	James Allen Rendall (LL.M.)	8/11/2005
'66	Edward C. Gray	10/10/2005
	David Warner Hortin	11/2/2005
'72	Iraline G. Barnes	11/26/2005
'77	Katherine E. Ward	1/3/2006

ARTICLES

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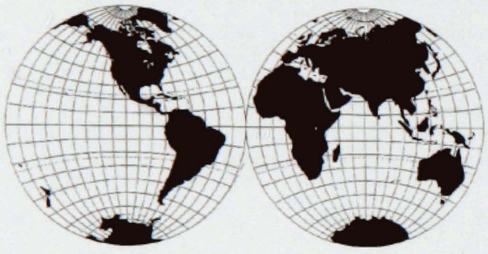


Comparative fiscal federalism: What can the U.S. Supreme Court and the European Court of Justice learn from each other's tax jurisprudence?

By Reuven S. Avi-Yonah

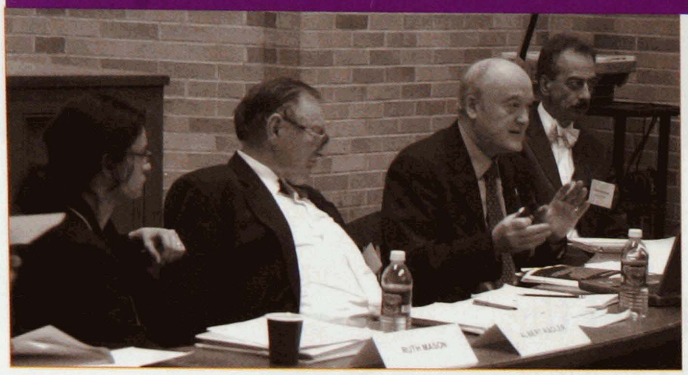
This article previously was published in The Journal of the International Institute, *a publication of the University of Michigan International Institute, and appears here with permission. The* Journal *is also available at www.hti.umich.edu/j/jii.*

Last October, a group of distinguished tax experts from the European Union and the United States convened at the University of Michigan Law School for a conference on "Comparative Fiscal Federalism: Comparing the U.S. Supreme Court and European Court of Justice Tax Jurisprudence." The conference was sponsored by the Law School, the European Union Center, and Harvard Law School's Fund for Tax and Fiscal Research. Attendees from Europe included Michel Aujean, the principal tax official at the EU Commission, Servaas van Thiel, chief tax advisor to the EU Council, Michael Lang (Vienna) and Kees van Raad (Leiden), who run the two largest tax LL.M. programs on the European continent, and many other distinguished guests. The U.S. contingent included Michael Graetz of Yale Law School, Alvin Warren of Harvard Law School, Walter Hellerstein of the University of Georgia (widely recognized as the preeminent U.S. state tax scholar), and other important academics. Michigan was represented by Professors Kyle Logue and Daniel Halberstam of the Law School, Jim Hines of the Economics Department, and myself as conference organizer.

The impetus for the conference, the first of its kind, was a series of decisions by the European Court of Justice (ECJ) in the last 20 years, but with increasing frequency in the last five. In those decisions the ECJ interpreted the Treaty of Rome (the "constitution" of the EU) aggressively to strike down numerous member state income tax rules on the grounds that they were discriminatory. For example, the ECJ ruled that Finland cannot grant tax credits for corporate tax paid to Finnish shareholders, but refuse them to foreign shareholders. In another case, the ECJ struck down Germany's rules that restricted the deductibility of interest to foreign lenders, even though the rules also applied to tax-exempt domestic lenders. Other examples of provisions struck down by the ECJ are:

- a dividend tax credit granted to resident companies but refused to the branch of a company having its seat in another member state;
- a refund of overpaid income tax granted to permanent residents but refused to taxpayers moving to another member state during the tax year;
- personal reliefs granted to residents but refused to non-residents even where they could not benefit from such reliefs in their member state of residence;
- a business relief (a tax deduction for transfers of funds to a pension reserve) granted to residents but refused to non-residents.

When we compare this line of cases to the U.S. Supreme Court's treatment of state taxes under the U.S. Constitution (most often under the Commerce Clause, but sometimes under the Equal Protection and Due Process Clauses), the difference is striking. In general, the Supreme Court has granted wide leeway to the states to adopt any tax system they wish, only striking down the most egregious cases of discrimination against out of state residents. Thus, for example, the Court has refused to intervene against rampant state tax competition to attract business into the state. It has twice upheld a method of calculating how much of a multinational enterprise's income can be taxed by a state that is widely seen as both incompatible with the methods used by the federal government and other countries, and as potentially producing double taxation. And it has allowed states to impose higher income taxes on importers than on exporters through the use of so-called "single factor sales formulas," under which a business pays tax to the state only if it makes sales to residents of the state, but not if it makes sales outside the state.



Discussing the European Court of Justice's tax decisions: Panelists Ruth Mason of New York University; Albert Raedler of Linklaters, Oppenhoff & Raedler; Claudio Sacchetto of the University of Turin (speaking); and Kees van Raad of the University of Leiden.

Conference participant Servatius van Thiel of the EU Council comments during discussion. Behind him are Michel Aujean of the EU Commission; Michael Graetz of Yale Law School; and Alvin Warren of Harvard Law School. Graetz and Warren were co-principal presenters for the panel on the future of nondiscrimination: EU and U.S. perspectives. Van Thiel and Aujean were discussants for the panel.

On the face of it, this contrast is surprising. After all, the ECJ is dealing with fully sovereign countries, and taxation is one of the primary attributes of sovereignty. Moreover, the authority of the ECJ to strike down member state direct taxes is unclear. The Treaty of Rome generally reserves competence in direct taxation to the member states, and all EU-wide changes in direct taxation have to be approved unanimously by all 25 member states. Nevertheless, the ECJ has since the 1980s interpreted the "four freedoms" embodied in the Treaty of Rome (free movement of goods, services, persons, and capital) to give it the authority to strike down direct tax measures that it views as incompatible with the freedoms.

The Supreme Court, on the other hand, has clear authority under the Supremacy Clause to strike down state laws that are incompatible with the Constitution. As Justice Oliver Wendell Holmes observed, the United States will not be hurt if the power to review federal laws were taken away from the Court, but it could not survive if the Court lost its power over state legislation. Moreover, the states are not fully sovereign, and (unlike member states that are represented in the EU Council), are not even directly represented in Congress, so that the Court could strike down their laws without (in most cases) expecting an outcry from the other branches of the federal government.

What is the explanation for the contrast? Part of the reason is that member state taxes in the EU are more important than state taxes in the United States, because most taxes in the United States are paid to the federal government, whereas all taxes in the EU are paid to member states. Thus, even high tax states like New York or California have income tax rates in the low double digits, whereas member state tax rates can reach 40 percent for corporations and 60 percent for individuals.

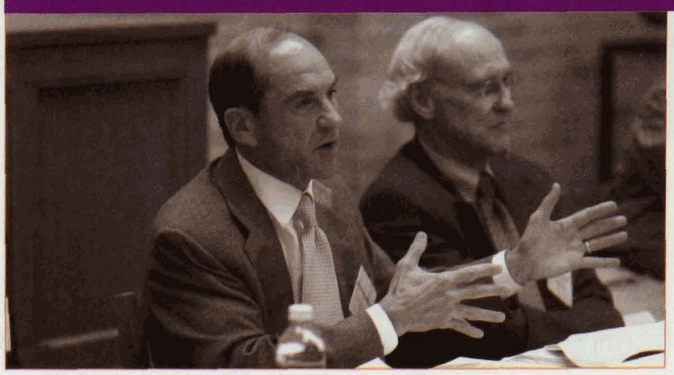
However, this cannot be the whole answer, because the U.S. Supreme Court adopted its lenient attitude to state taxation before there were federal taxes (the federal corporate tax only began in 1909, and the federal income tax in 1913, long after the states began taxing income). Instead, the answer lies in different conceptions of federalism.

In the United States, the country began as a loose confederation of sovereign states. The issue of state sovereignty loomed large in the formation of the Constitution and thereafter through the Civil War, and the concept of state rights still resonates strongly today. As a result, in the United States, federalism means that the federal government should respect the sovereignty of the states as much as is compatible with the need to have a unified country. Taxes are essential to sovereignty, and therefore the Supreme Court has always maintained a deferential attitude to state choices in matters of taxation, even if it resulted in some level of discrimination against out of staters. The Court intervenes only when the tax is blatantly discriminatory, such as New Hampshire's attempt to adopt an income tax only for non-residents who commute into the state.

In the EU, on the other hand, there is no unified central government, but there is a background of bitter wars between sovereign states. As a result, there is a wish among some for the creation of a "United States of Europe." That goal has so far proven elusive, but the focus of the federalists has been to advance it by enhancing the economic union that underlay the formation of the EU. Thus, the ECJ has taken the lead in trying to create a meaningful single market. It, and the EU Commission (which brings many of the tax cases before the ECJ), see discrimination in direct tax matters as a major obstacle to the achievement of this goal. Ultimately, many observers feel that the ECJ is trying to force member states to abandon the unanimity rule for direct tax matters and even to achieve direct tax harmonization, such as the harmonization already used for indirect taxes (consumption taxes, such as VAT, are harmonized in the EU by the Sixth Directive, adopted by unanimous consent when the EU was much smaller).

Given this divergence of political context, can the ECJ and the Supreme Court learn something from each other's tax jurisprudence? I believe the answer is yes, and that the conference showed some of the lessons each can learn from the other.

For the U.S. Supreme Court, I believe the EU experience



Conference participants Walter Hellerstein of the University of Georgia (speaking) and Charles McClure of the Hoover Institute at Stanford University.

Discussing the U.S. Supreme Court's state tax decisions: Moderator and Law School Professor Kyle Logue; Tracy Kaye of Seton Hall University; principal presenter Walter Hellerstein of the University of Georgia (speaking); Charles McClure of Stanford University's Hoover Institute; and Michael McIntyre of Wayne State University.

shows that it is sometimes too lenient in state tax matters. In particular, permitting states to compete for the location of investment by multinationals by granting tax incentives has proven to be very costly for the states, while not bringing any benefit to the United States as a whole (since the multinational typically has decided to invest somewhere in the United States already). Such tax competition creates a "race to the bottom," in which states only grant incentives to prevent the multinational from going elsewhere, not because they believe the benefits of the investment truly justify the cost in foregone tax revenue. In Europe, such incentives are banned by the state aid provisions of the Treaty of Rome, which are strictly interpreted by the Commission and the ECJ to prohibit all tax incentives that are targeted at particular taxpayers.

Fortunately, the Supreme Court has just accepted a case from Ohio that raises this issue directly. In 1998, the City of Toledo granted DaimlerChrysler $280 million in tax incentives to expand its factory there, rather than move it to Michigan or elsewhere in the United States. The Sixth Circuit Court of Appeals in *Cuno v. DaimlerChrysler* held that such targeted tax incentives violate the Commerce Clause of the U.S. Constitution. If the Supreme Court is willing to learn from the ECJ in this regard, it should affirm that decision.

What about the ECJ learning from the Supreme Court? Here as well, a recent decision illustrates a learning opportunity. In *Marks and Spencer*, the issue was whether the UK is obligated to allow losses incurred by Marks & Spencer's foreign subsidiaries to offset income earned by the UK parent, because under UK rules it can use losses by domestic subsidiaries to offset income of the parent. The big difference, of course, is that the domestic subsidiaries are subject to tax at the same rate as the parent, while the foreign subsidiaries can be in Estonia, where there is no corporate tax, or in Ireland, where the tax rate is only 12.5%. The ECJ ruled on December 13, 2005, that the UK must allow the loss offsets even though it cannot tax the foreign subsidiaries.

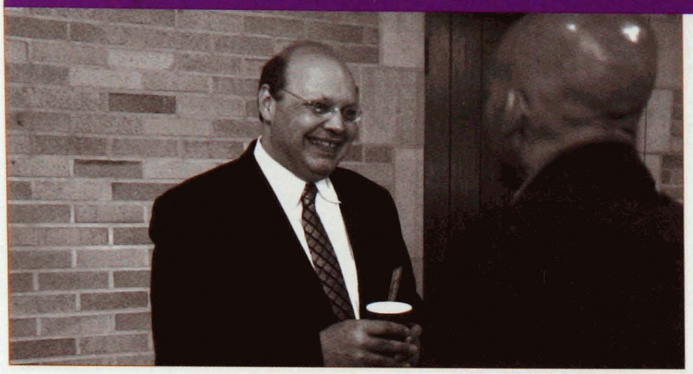
It is widely believed that the ECJ ruled the way it did in order to force the political branches of the EU to move toward corporate tax rate harmonization, as the Commission has advocated (to no avail) for many years. But here the ECJ can learn a lesson from the U.S. Supreme Court: Deciding cases in order to force action by the legislature can be dangerous.

This rule can be illustrated by the *Quill* case, decided by the Supreme Court in 1991. The case involved a question that had confronted the Court before: Under what circumstances can a state force retailers that sell into the state by remote means, such as catalogues or (nowadays) via the Internet, to collect the sales tax due on the purchases? The tax is clearly due, but relying on the buyers to pay it voluntarily is hopeless, so collection by the remote vendor is the only practical way to enforce the tax.

In 1967, the Court held that the vendor cannot be made to collect the tax unless it had a physical presence (like a warehouse) in the state, relying on both the Due Process and Commerce Clauses of the Constitution. Most observers expected when the Court accepted the *Quill* case that it would overturn that decision, given the phenomenal growth of the remote sales industry between 1967 and 1991. Instead, the Court held that the physical presence test still applies, but only under the Commerce Clause, not the Due Process clause.

The reason the Court adopted this approach is clear: Commerce Clause decisions can be changed by Congress through simple legislation, since the Constitution gives Congress the power to regulate commerce among the states, but Congress is powerless to overcome decisions under the Due Process Clause. The Court thus expected Congress to intervene and set rules under which states can force remote vendors to collect sales taxes.

Fourteen years have passed, and Congress has not acted. The reason is simple: The states are not represented in Congress, so Congress cares more about the remote sales industry with its powerful lobby than about state tax revenues. In the meantime,



Conference organizer and Law Professor Reuven Avi-Yonah chats with a conference attendee above, and at right with participants James Hines of the University of Michigan's Ross Business School and Hugh Ault of Boston College Law School.

the Internet has sprung into existence, remote sales now top $100 billion per year, and state sales tax revenues are rapidly shrinking.

The lesson for the ECJ is thus not to decide cases in the expectation that the political branches will act. Many member states are vehemently opposed to direct tax harmonization. The UK, for example, is more likely to react to losing *Marks and Spencer* by abolishing its domestic loss offset rules than by giving up on the unanimity requirement in direct taxes. Thus, the lesson for the ECJ is that it should be more careful about dismantling member states' income taxes, because such decisions can have unexpected consequences.

More broadly, I believe comparing the U.S. and EU experiences shows that there is more than one way of constructing a single market without tax distortions, and that some level of distortion can be accepted. Thus, the U.S. Supreme Court can afford to be a bit more harsh without trampling down on state sovereignty on tax matters, and the ECJ can afford to be more lenient without creating unacceptable barriers to trade and investment within the EU.

I hope this conference is just the beginning of a series of discussions between EU and U.S. tax experts on these issues. A conference volume will be published next year, and a follow-up conference is tentatively scheduled for 2007—by which time we will also know how *Cuno* came out.

Reuven S. Avi-Yonah, *the Irwin I. Cohn Professor of Law and director of the International Tax LL.M. Program, specializes in international taxation and international law, and is widely published in these subject areas. He also served as consultant to the U.S. Treasury on tax competition and OECD on tax competition, and is a member of the Steering Group of the OECD's International Network for Tax Research and of the Michigan Governor's Commission on Tax Tribunal Reform. Professor Avi-Yonah earned his B.A., summa cum laude, from Hebrew University and then earned three degrees from Harvard: an A.M. in history, a Ph.D. in history, and a J.D., magna cum laude, from Harvard Law School. Avi-Yonah has been a visiting professor of law at the University of Michigan, New York University, and the University of Pennsylvania. He has also served as an assistant professor of law at Harvard and as an assistant professor of history at Boston College. In addition, he has practiced law with Milbank, Tweed, Hadley & McCloy, New York; Wachtell, Lipton, Rosen & Katz, New York; and Ropes & Gray, Boston. His teaching interests focus on various aspects of taxation and international law, on the origins and development of the corporate form, and on China and globalization.*

Offshore outsourcing and worker rights

By Theodore J. St. Antoine

The following essay is based on the author's keynote address to the annual meeting of the Labor and Employment Law Section of the California State Bar in fall 2005. A version appeared in the September 2005 issue of California Labor and Employment Law Review *and appears here with permission of the Labor and Employment Law Section of the State Bar of California.*

For the workers in the Rust Belt of the United States, concentrated in Southern New England, Western New York State, Pennsylvania, Ohio, Michigan, Indiana, and Illinois, it doesn't make much difference whether their jobs are outsourced or lost to North Carolina or Mexico or China. In any event the sources of income that have existed for generations are gone and the economic and psychic pains are much the same. Nonetheless, for purposes of national policy it plainly matters whether the work is moving to another part of the country or is leaving the United States entirely. I am going to focus on what has become a growing concern everywhere in this country—the flight of jobs abroad as business seeks the advantages of dramatically lower wage scales. That is known as offshore outsourcing or contracting.

Domestic labor law will have little if any effect on this process. *Dubuque Packing Co.* [303 N.L.R.B. 386 (1991), *enforced sub nom. Food & Commercial Workers Local 150-A v. NLRB*, 1 F.3d 24 (D.C. Cir. 1993)] may require an employer to bargain with a union representing its workers about the relocation of operations. But that obligation does not apply in various circumstances, for example, if there is a basic change in the nature of the employer's operations or if the union would not have offered labor cost concessions that could have changed the employer's decision to relocate. And if the employer must negotiate, a study I have made indicates that the duty to bargain can be fulfilled on the average in a mere four to six weeks. So, even if we assume *Dubuque* would be applicable, it is not going to constitute a significant barrier to offshore outsourcing. Similarly, the Worker Adjustment and Retraining Notification (WARN) Act of 2002, which requires larger employers to notify employees 60 days in advance of mass layoffs, would do no more than impose a modest additional procedural step on a business decision to switch to offshore operations.

Nature of the problem

Everyone seems to recognize that American manufacturing jobs have been hard hit by foreign competition and by the decisions of domestic producers to shift their operations overseas. Seriously affected are such highly visible industries as autos, steel, textiles, and electronics. Less conspicuous until recently is the movement abroad of such service jobs as computer consulting and even medical and legal research and analysis. Despite this, the Department of Labor in its first study of the subject reported that only 2.5 percent of the "major" layoffs (50 workers at one time) in the first quarter of 2004 were the result of jobs going overseas. Far more losses were attributable to automation. Even so, Forrester, an information technology consulting firm, projects the loss in U.S. jobs to offshoring to total around 3 million over the next decade, or about 250,000 layoffs a year. That would be 25 percent of the country's annual layoff rate of 1 million, or considerably more than the Labor Department's estimate.

In terms of global wage differentials, the stark fact confronting American workers is that 1.2 billion persons throughout the world earn less than $1 a day. In China the average pay rate is about 32 cents an hour (50 cents in manufacturing) in contrast to our $17 an hour. Of course these raw figures can be deceptive since they do not take into account sharp differences in the cost of living and other variables. The "iron rice bowl," for example, has long been a tradition in China (though it is now being eroded). Under it many Chinese workers have received such nonwage benefits as free food and subsidized housing. But regardless of any of these refinements, wide wage differentials in real dollars in most of the rest of the world will remain for the foreseeable future a major attraction to American business and a daunting challenge to American labor standards. (One recent study suggests that the

labor-cost advantages of offshore outsourcing may be exaggerated. A report released in July 2005 by Ventoro, an outsourcing consulting and market research company, found that only nine percent of cost savings from offshore outsourcing of information technology resulted from lower overseas labor costs. The principal savings came from the quality of the offshore systems and products.

International labor standards

In a keynote speech at a conference on globalization held at the University of Michigan Law School in April 2004, Editor Robert L. Kuttner pointed out that all the advanced economies in today's world have evolved into what can fairly be described as *mixed* economies. While the systems remain basically capitalist, they are tempered by governmental regulation, not only to ensure equity but also to enhance efficiency. Kuttner observed that unconstrained markets erroneously price many essential elements for economic development, including education, health, research, environmental quality, and public governance. The lesson we have learned is that unregulated capitalism is inherently unstable. Thus, in the late 19th and early 20th centuries, the United States proceeded to adopt antitrust laws, securities regulation, trade regulation, and labor laws to avert recurrent economic downturns. Kuttner went on to say that international markets, left to themselves, are especially volatile. The recent Southeast Asian financial crisis is an example. Kuttner then asked the provocative question: "By what alchemy does the market system, which is not optimal as laissez-faire within nations, somehow become optimal as laissez-faire between or among nations?"

For me and many others, the first basis for recognizing international labor rights is a moral one.

In 1998 the International Labor Organization (ILO) made something of an effort to counter this laissez-faire philosophy by securing the unanimous commitment of its 177 member nations to four "core" labor standards. As spelled out in the ILO's Declaration on Rights at Work, they are:

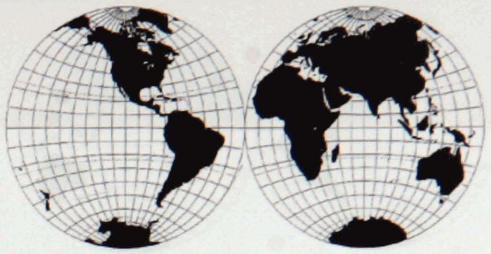
- freedom of association and the right to collective bargaining;
- elimination of all forms of forced or compulsory labor;
- abolition of child labor; and
- elimination of employment and occupational discrimination.

That is a noble set of standards but it suffers from at least two major deficiencies. First, it omits any provision regarding labor costs—a minimum or living wage. That of course would not mean a single worldwide minimum pay rate but rather one that took into account the variations in living costs and subsistence needs from country to country. Second, the core set fails to provide for effective enforcement. The ILO can appeal to the conscience of the world, but that is often a weak reed against the lure of seeming economic advantage. The World Trade Organization (WTO) has a variety of trade sanctions it can impose against the violators of trading or *property* rights, but the ILO has no counterpart in dealing with violations of worker or *human* rights.

For me and many others, the first basis for recognizing international labor rights is a moral one. They are inherent in the dignity and worth of the individual human being. That is the same rationale as the rationale for the Universal Declaration of Human Rights, vigorously promoted by the United States and adopted by the United Nations in 1948. The Universal Declaration itself spells out a number of labor rights, including the "core" rights of nondiscrimination in employment, the right to form labor organizations, and the prohibition of slavery and child labor.

Despite these grand pronouncements on international human rights, I am skeptical enough about human motivations to fear that moral grounds, however exalted and appealing in the abstract, will not be sufficient to carry the day in the market place. Ultimately, I believe that an *economic* justification will be needed to rally support for an enforceable set of globally recognized worker rights. Here a principal champion has been Ray Marshall, former U.S. Secretary of Labor and now professor of economics at the University of Texas.

In several books and articles, Professor Marshall has argued that the establishment and enforcement of labor standards are



key components of a high-skilled, high-wage, and value-added development strategy that promotes productivity and economic stability. The prosperity of the United States in the post-World War II era is cited as a prime example of this phenomenon. Collective bargaining and minimum wage laws sustained aggregate consumer demand and that in turn spurred solid economic growth. By contrast, countries that rely on low wages instead of skills development to attract investment will find restless investors moving elsewhere whenever they discover areas with still-lower wages. In the absence of international labor standards, however, the temptation for many countries will be irresistible to resort to the lure of low-wage costs to attract business and investment. The race to the bottom would be in full flight. In addition to offsetting that race to the bottom, internationally generated standards would have the advantage of allaying the fears of developing countries that the specified labor standards were simply a disguised exercise in protectionism on the part of the richest, most economically advanced nations.

Perhaps the crucial element would be a realistic set of mandatory minimum wage levels. There obviously could not be a single universal standard. The requirements would have to reflect the current wide variations in living standards and economic conditions throughout the world. At least a fair subsistence wage should cover the basic needs of a family, including food, shelter, clothing, health care, education, and transportation. The European Social Charter calls for the member countries of the European Union to ensure all workers a "decent standard of living." In April 2005 a group of researchers from France, Germany, and Switzerland proposed that implementation of this right should require a minimum pay rate equal to 60 percent of the average national wage.

Developing countries complain that any effort to impose such minima impairs their low-wage comparative advantage. But as Professor Sarah Cleveland has stated: "[I]t is simply disingenuous for countries to dismiss the payment even of subsistence wages as protectionist or infringing on their legitimate low-wage competitive advantages." The line may not always be easy to draw, but surely one exists between a particular economy's appropriate competitive edge and the sheer exploitation of workers.

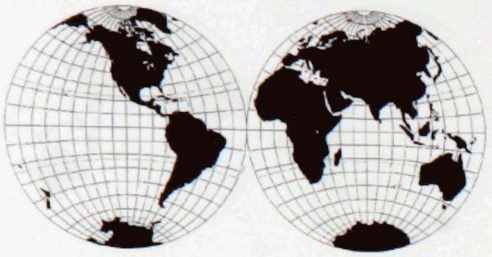
Enforcement

Existing United States domestic law does provide some means of enforcing minimum labor standards abroad. Thus, in the Generalized System of Preferences (1984), Congress required developing countries to comply with "internationally recognized worker rights" in order to qualify for special tariff benefits. And Section 301 of the 1974 Trade Act was amended in 1988 to impose on this country's foreign trading partners the duty to observe "core" human rights. But enforcement of the Trade Act has often been lax, especially with such substantial trading nations as China. Indeed, in today's rapidly expanding and complex global markets, and with the increasing power and business flexibility of multinational corporations, the capacity and willingness of ours or any government to enforce labor standards unilaterally is severely limited. Some system of international enforcement is needed.

As noted earlier, the ILO is the international body charged with promulgating substantive labor standards, and technically they are legally binding on ratifying member states. (All ILO members are bound by the organization's constitution. Individual conventions are binding only on the countries that ratify them. The United States is notorious for the small number of conventions we have ratified. We have not even ratified such basic conventions as those guaranteeing freedom of association [ILO Convention 87] and the right to engage in collective bargaining [ILO Convention 98]).

The ideal, in my mind, would be to have the "core" labor standards that are developed by the ILO become enforceable by the WTO. Violations would constitute unfair trade practices.

But the ultimate enforcement power of the ILO is practically nil. Its appeal is to a nation's conscience, its national pride and concern about the reputation the country enjoys among the other nations of the world. On the other hand, the World Trade Organization (WTO) does indeed have the authority to impose such sanctions as fines or embargoes on countries that violate



WTO rules by committing unfair trade practices. The ideal, in my mind, would be to have the "core" labor standards that are developed by the ILO become enforceable by the WTO. Violations would constitute unfair trade practices. (Despite the WTO's rejection to date of trade-labor linkages, the inaugural Singapore Ministerial Declaration in 1996 committed the WTO's members to observance of "internationally recognized core labor standards" and encouraged the WTO and ILO secretariats to "continue their existing collaboration.")

Such trade-labor linkage has been heatedly opposed by a variety of interested parties. For free marketers, it amounts to a matter of ideology. Any value other than pure laissez-faire, whether it be labor rights or environmental quality, must be brushed aside as an unjustified and harmful intrusion on global trade. The lessons we have learned about the importance of government regulation of markets within countries are dismissed as inapplicable to the international scene. A second major group resisting any trade-labor linkage consists of the developing countries. They are convinced that any linkage is inherently protectionist and designed to deprive them of their natural low-wage comparative trade advantages.

Protectionist tendencies plainly exist in the richer countries, as exemplified by steel tariffs in the United States and agricultural tariffs elsewhere. But that does not mean that all trade-labor linkage is protectionist. A good part of it is based on a genuine, disinterested concern for the physical and economic well-being of workers worldwide. Moreover, if practically minded scholars like Ray Marshall and Robert Kuttner are right that governmental (or, here, intergovernmental) regulation of the market may enhance rather than impede productive efficiency and promote consumer demand, the most utilitarian grounds also exist for enforcing the ILO's core labor standards. Such a marriage of morality and enlightened self-interest deserves the support of everyone who wishes to promote both workers' rights and a stable global economy.

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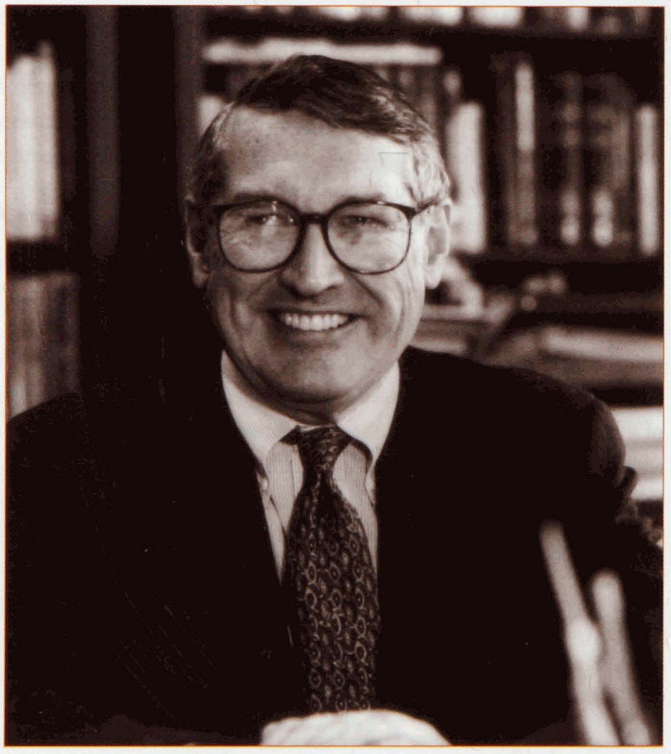


China's acquisitions abroad– global ambitions, domestic effects

By Nicholas C. Howson

The following essay is based on a talk delivered to the Law School's International Law Workshop on October 17, 2005.

In the past year or so, the world has observed with seeming trepidation what appears to be a new phenomenon—China's "stepping out" into the world economy. This move, labeled the "Going Out Strategy" by Chinese policy makers, sees China acting in the world not just as a trader of commodities and raw materials, or the provider of inexpensively-produced consumer goods for every corner of the globe, but as a driven and sophisticated acquirer of foreign *assets* and the *equity interests* in the legal entities that control such assets. *The New Yorker* magazine, ever topical and appropriately humorous, highlighted this attention with a cartoon in its October 17, 2005 edition. That drawing shows two prosperous and no doubt Upper East Side-dwelling matrons holding cocktails before a fireplace. Above the fireplace hangs the formal portrait of a balding, well-fed, elderly, man. Looking at the portrait, one lady says matter-of-factly to the other: "*That's Karl, before he was purchased by the Chinese.*"

The CNOOC bid for Unocal

This concern, and the slightly nervous humor it engendered, was inflamed by a Chinese oil company's summer bid for the control of an iconic American oil company, in direct competition with a U.S. oil company suitor. That transaction was of course the Hong Kong-domiciled and listed China National Offshore Oil Corporation Ltd.'s (CNOOC Ltd.) June 2005 all-cash US$18.5 *billion* bid for Unocal of California—at a more than 10 percent premium to Chevron's competing stock and cash deal, already the subject of a binding merger agreement.

The anxiety—at least as articulated in the press, the U.S. Congress, and at anxious hearings in Washington—focused on an eclectic but eye-catching range of issues. Some thundered grave warnings about the threat to America's "national security" generally, and U.S. "energy security" specifically (meaning U.S. access to worldwide hydrocarbon production and control of downstream refining, supply, and distribution); others worried vaguely about the transaction as a harbinger of China's increasing economic, political, and military influence; still others pointed to the phenomenon of a long-feared "China Inc." using Communist-led government funds to finance an all cash deal to better the American champion's cash and stock offer. This latter characterization was fueled by the prospect of huge borrowings—perhaps a third of the cash offer—from a consortium of banks led by the Industrial and Commercial Bank of China (ICBC), a People's Republic of China (PRC) state-owned commercial bank, and from the CNOOC Ltd.'s 70 percent shareholder, state-owned, and PRC-domiciled China National Offshore Oil Corporation (CNOOC). Still others, perhaps trade lawyers sensing a rhetorical or business opportunity, went so far as to cry foul under the World Trade Organization (WTO) accession deal which China completed in November 2001—labeling the proposed financing of the Unocal bid as a breach of WTO prohibitions against state subsidies, and thus actionable under the WTO (and the separate China-specific) countervailing duties regime.

In a different environment, each of these points could have been rebutted fairly easily. The worry about the "takeover" of a U.S. oil company might have been answered by pointing out that more than 70 percent of Unocal's petroleum production, and more than 75 percent of its petroleum reserves, remain *outside of the United States* (ironically, mostly in Asia), and all of the Unocal production is promised to various foreign buyers (again, primarily Asian buyers) under long-term production sharing or production sales contracts. (In fact, Unocal's worldwide oil and natural gas production represented only a measly *one percent* of entire U.S. consumption.) For downstream assets (refining, pipelines, distribution, and retail)—where control issues become marginally more relevant—Unocal has *no* downstream assets whatsoever in the United States (having sold them almost a decade ago). The attack which portrayed CNOOC's soft or government-provided financing as an illegal subsidy was a stretch from any honest international trade lawyer's standpoint, as nothing about the proposed CNOOC acquisition, and its financing, violated WTO rules on *trade* (not

investment)-related subsidies, or the PRC's specific commitments upon its accession to the WTO, or under trade-related investment measures (TRIMS) norms. The focus on Chinese providers of finance, whether state run banks, or the 70 percent state-owned shareholder of the bidder, somehow uniformly failed to identify the critical bridge financing provided by such all-American financial institutions as Goldman Sachs and JP Morgan, to be refinanced with CNOOC with debt issuances (and significant underwriting fees for the same financiers) soon after completion of the deal. Clearly something else, something rather pernicious, was at work given the hostile reception that greeted CNOOC's effort to act on the world stage.

The new/old rallying cry— "China isn't playing by the rules!"

The CNOOC bid for Unocal also gave renewed voice to what already seems a tired refrain: "*China doesn't play by the rules*." Peter Robinson, the vice chairman of Chevron who led the public relations effort for the CNOOC competitor, remained "on [this] message." Whereas formerly the refrain had been heard on international trade matters and intellectual property rights protection and enforcement, it was now suddenly part of a heated chorus framing the far more sensitive sphere of cross-border acquisitions of controlling interests in U.S.-domiciled mega-corporations.

The truth is that the CNOOC bid signaled something rather different, and given China's reforms over the past two decades, something more profound. Not only did the CNOOC effort represent another significant step in China's complex and broad-ranging interaction with the world generally, but far more critically, it signaled a striking new phase of the PRC's behavior-changing entanglement with foreign and international legal, commercial, and governance norms, all with *direct* reform effects inside China. Thus, the CNOOC bid implicated precisely the *opposite* of a critique which accuses the PRC of "not playing by the rules." With the Unocal bid, China, its government, and various Chinese commercial instruments were forced for the first time to take cognizance of, and play by, internationally-accepted rules—not merely in their business operations and external contracting, public disclosure, accounting practices, or the conventions of international M&A, but even with respect to internal corporate governance at the firms themselves. In this way, we might see China's new acquisition activity outside of its borders rather more grandly—as an important mechanism for the encounter with, and absorption of, bedrock "rule of law" concepts and practices.

American perceptions of China and the Chinese, Chinese perceptions of foreign capital in China

In the 1950s, American journalist and historian Harold Isaacs published an important book on American perceptions of China and India titled *Scratches On Our Minds*. The book synthesized the results of numerous surveys of Americans with respect to common ideas of those two great civilizations. Importantly, the surveys were directed to an "elite" population in America—diplomats, academics, well-traveled writers and intellectuals, and multinational business leaders. Isaacs' idea was that the perceptions of this group were in some ways more important than those of the American "everyman." First, the elite group had in many ways encountered the reality of China and India, and might be thought to have realistic, nuanced impressions arising from such experience. Second, such persons would —by virtue of their leadership positions—have an ongoing involvement in dealings with those societies and making or implementing U.S. policy towards China and India. Isaacs' sad conclusion was that even these notionally well-educated, informed, and experienced policy makers and leaders operated with heads literally stuffed with damaging and simplistic clichés about China and India. In the Chinese case, these deep-seated attitudes swung between wildly divergent images of the "good" and "bad" Chinese, with no nuanced middle ground. On the good side: Pearl Buck's on-the-cusp Christians, or cheerful, diligent, poor, innocent, peasants, and Charlie Chan—benign, humble, problem-solving, intelligent, and deferential; on the bad side, the diabolical, mysterious, shadowy, cannibalistic, sinister, Dr. Fu Manchu, or, collectively, the rampaging hordes constituting a "Yellow Peril" threatening to swamp and overrun American "civilization," or at least the American order. While the dichotomy that Isaacs identified may seem absurd or anachronistically racist in what we assure ourselves is a more enlightened age, it does seem to track nicely the dizzying swings in U.S. perceptions over the three decades between President Nixon's visits to Beijing and Shanghai in 1972, and current ideas about China as a distinct military, economic (commercial), and ideological "threat" or "strategic competitor." It does not seem an exaggeration to identify these deeply-ingrained and easily processed ideas as one set of views informing American approaches to China's accelerating investigation of overseas acquisitions.

Turning the mirror, we might also point out that Chinese elites have long had equally negative perceptions of foreign (and particularly Western) involvement in China—politically, militarily, and of course commercially. This is a very long story, not easily elaborated in this kind of presentation. Suffice to say that this shared attitude was (and is) determined equally by xenophobia and the bitter experience of Western incursions into Qing Dynasty China from the early 19th century, and through the Opium Wars and the "unequal treaties" which pried treaty ports and sovereignty over Hong Kong Island from China, which in turn served in large measure to de-legitimize and topple the last Imperial dynasty. Even people in China who regret the abuses and chaos of the Maoist era approve of how the Communist victory in 1948-49 forced out of China the "imperialist-colonialist" powers, the United States included. So it is not surprising then that on the eve of China's 1979 history-changing "Reform and Opening to the Outside World" strategy, China's premier foreign language propaganda organ would proclaim: "*We do not allow foreign capital to exploit China's resources nor do we run joint enterprises with foreign enterprises, still less beg them for foreign loans*" (from a 1977 *Beijing Review*). And yet, even before this statement was contradicted by thousands of Sino-foreign joint ventures, and China's rise to the status as the World Bank's largest borrower, there was an exception. Chinese policy makers had in fact started very early in the 1970s to set the groundwork for cooperation with foreign oil companies. This cooperation, focusing on hard-to-exploit "offshore" oil and gas fields (i.e., within China's sovereign seas, but not onshore or dry land), started in the late 1970s, yet only after very significant Chinese internal disputes about a potential loss of sovereignty, China's control of a strategic energy assets, and hidden foreign agendas seeking economic and political (and military) control. In fact, Chinese Communist Party elites in 1977 were saying exactly the same things about foreign participation in Chinese oil and gas production sharing arrangements as Senator Chuck Schumer, Chevron, and a large part of the U.S. House of Representatives were saying about a Chinese company's bid for control of Unocal almost three decades later. That is one irony revealed in this particular corner of history; the other is that the commercial entity the Chinese government set up to bargain with and enter into production sharing contracts with the likes of Exxon, Mobil, Chevron, and others for the exploration, development, and production of these *Chinese* offshore oil and gas resources was none other than the China National Offshore Oil Corporation, then as now known by its acronym, CNOOC.

Acquisitive China—not falling "dominoes" but "falling icons"

Some of the uglier visions conjured by the Isaacs survey in the 1950s seem to have been reanimated in 2004-05 by the spectacle of China's global ambitions. For Americans of a certain age, the present climate recalls U.S. attitudes towards Japanese ambitions in the late 1970s and early 1980s, which were hostile even though Japan was a political and military *ally* for the United States. The signal transaction in those days was the acquisition by Japanese interests of an American icon—Rockefeller Center in New York City (perhaps closely followed by the Japanese takeover of the most American of businesses—Hollywood's Columbia Pictures.) Today, Chinese companies also seem to be chasing America's icons, with the ready help of America's own financial institutions acting as lenders, bridge lenders, or private equity co-investors. At the same time, many American companies, iconic or not, are actively seeking to be bailed out by Chinese capital—another interesting and ironic reversal on China's own use of foreign multinationals to finance or save bankrupt state-owned enterprises in China in the very earliest days of the Chinese reform. And what icons they are: CNOOC's bid for Unocal, one of the original Standard Oil petroleum companies (the Rockefellers again); Shandong Hai'er's US$2.5 billion bid for Maytag (the defenseless Maytag repairman); Beijing Lenovo's US$1.75 billion acquisition of IBM's personal computer business (for Wolverine fans, a lesser "Blue"). And the falling "icons" are not only American. In recent years, the world has witnessed other developed economy properties coming under PRC control: TCL's acquisition of Thomson France's TV business (RCA); Shanghai Automotive's purchase of Korea's number four auto-maker (Ssangyong Motors); the Minmetals bid to take over Canada's Noranda (also owner of Falconbridge); Nanjing Auto's takeover of the MG Rover assets in the United Kingdom; Huawei Technology of Shenzhen's stalking of Marconi. . . . The list seems to goes on and on, and worryingly for some outside China, seems to get longer.

How we got here from there

These acquisitions of iconic foreign industrial properties are in fact the culmination of a 25-year process of investment and financing-related interaction between China and the outside world. China's "Reform and Opening to the Outside World" policy of the late 1970s featured, among other things, domestic economic reform (and the slow march to a semi-marketized

economy), construction of a legal system (promulgation of substantive law and recovery of legal institutions), increased trade with foreign nations, and the attraction of foreign direct investment (FDI) into the PRC.

At least from the Chinese side, FDI was understood from its earliest days as a way to attract hard currency financing for China's bankrupt state-owned or controlled assets, and gain additional benefits like foreign technology, management know-how, distribution and marketing skills, and foreign sales channels for hard currency-earning exports. Foreign capital seemed happy to do its part, by donating capital, technology, and management expertise into China, all for a chance —however tightly restricted—at the rumored *nirvana* of one billion Chinese consumers. Regardless of the motivations on either side of the equation, the FDI program did serve as the exclusive vehicle for early introduction of great areas of commercial, corporate, and financial law into China, including items as basic as corporate legal personality, transferable equity interests, separation of owners and management (and in management, between a board and an executive corps), and a market for equity interests in enterprises.

In the early 1990s, China began to look to another mechanism to raise finance for the same moribund state assets —the domestic and then international capital markets. These ambitions spurred "corporatization" of asset groupings in China, and the issuance of stock by such new corporations to both domestic and foreign investors buying on China's new stock exchanges, and very quickly, foreign investors buying on foreign exchanges—in Hong Kong, then New York, then London, then Tokyo, and so on. Overall, this second interaction with the international capital markets—again, featuring Chinese issuers raising funds from foreign capital providers—proved beneficial for Chinese commercial legal developments, by introducing foreign securities laws and exchange regulation, a new world of disclosure and legal enforcement (both administrative and through private rights of action), international accounting standards, and internal governance requirements.

And yet, even as China saw the establishment of ever greater numbers of in-country FDI projects, or listings of China- or Hong Kong-domiciled issuers on the New York Stock Exchange (NYSE) via Securities and Exchange Commission-registered offerings, the Chinese government proved positively shy in calling Chinese enterprises to fulfill their destiny outside of the embrace of the PRC—allowing only tentative forays first into Hong Kong, and then in Southeast Asia. While large Chinese companies established offices and sometimes subsidiaries throughout the West beginning in the mid 1990s, these were almost uniformly shell companies used to facilitate simple trading activities with foreign purchasers or vendors. That situation changed radically in the late 1990s, when individual Chinese enterprises—some old-style state-owned or controlled actors, others fiercely independent Chinese companies—began to look actively for investment deals abroad, a set of ambitions only subsequently sanctioned and supported by central policy makers under the so-called "Going Out" strategy. It is again beyond the scope of this presentation to speculate in detail on what is behind the now acknowledged fact of the "Going Out" strategy, or what high policy aims call for its rhetorical support by the central government. Here, one might point to the need of these companies to procure stable access to certain kinds of resources, and/or technology. Other, more manufacturing oriented companies are clearly after foreign distribution channels and thus access to foreign markets, better profit margins in better-developed product markets, and use of established "global" brand names. And certainly many bold and rather far-seeing Chinese managers believe they need to "Go Out" to test and strengthen their companies in a truly competitive, and global market, far removed from the cozy monopoly-based market that remains a substantial part of China's industrial economy.

For present purposes, it is most important to recognize that the "Going Out" strategy is in most cases being led by Chinese enterprises themselves, rather than the central government. (For instance, in late 2005, it was revealed that the CNOOC bid for Unocal was undertaken almost entirely at the initiative of CNOOC, and over the fierce objections and stubborn hesitations of PRC central government actors. This may have lulled CNOOC executives [and their advisors] into a false sense of achievement. Perhaps they thought if they had managed to convince their political masters to allow them to proceed with the bid, it would be so much easier to convince Unocal shareholders to accept the higher price offered.) In addition, the Chinese government has in the last two years also created or ameliorated the legal basis for such outbound investment activity, and thus conformed the law (or removed legal restrictions) which had previously worked to restrain such activity. (Here, most of the restrictions were sourced in foreign exchange regulation and government permissions for offshore holdings.) Most important, this outbound push has caused the

Initial contest
UNOCAL and its suitors (to April 4, 2005)

2004

- **End of 2004**—Unocal is "shopped"—discussions with both Chevron and CNOOC;
- **December 26**—Unocal and CNOOC Chairman meet to discuss a possible deal (CNOOC Ltd. board not advised of the meeting);

2005

- **January 6**—*Financial Times* reports that CNOOC is considering making a bid for Unocal; *Los Angeles Times* reports a CNOOC bid of US$13 billion;
- **January 6**—Chevron delivers a letter to Unocal, indicating strong interest in purchasing Unocal;
- **January–early February**—CNOOC lobbies PRC government departments in preparation for a possible bid for Unocal;
- **February 26**—Chevron's initial bid: all share deal, 0.94 Chevron shares for each share of Unocal;
- **February 26**—Unocal board determines that Chevron's offer is insufficient;
- **March 1**—Unocal notifies Chevron that the February 26 Chevron bid is refused;
- **March 1**—Unocal in contact with CNOOC and ENI (Italy) as alternative bidders, and gives each until March 7 to offer a price;
- **March 7**—CNOOC Ltd. communicates preliminary bid range of US$59.00-62.00 per Unocal share (US$16.0-16.8 billion)—immediately rejected by Unocal;
- **March 29**—Chevron raises its February 26 bid 10 percent—still an all share deal, 1.03 Chevron shares for each share of Unocal;
- **March 29–30**—two-day meeting of CNOOC Ltd. board; foreign, non-executive, directors are informed of a potential bid for the first time, and vote to block CNOOC Ltd. bid; CNOOC signals to Unocal that a bid will not be forthcoming on March 30;
- **March 30**—Unocal board, upon receiving Chevron's revised offer of March 29, decides to terminate negotiations with ENI, and gives CNOOC until April 2 to make an offer;
- **March 31**—CNOOC Ltd. board meets, but is still unable to agree on the making of an offer, or a price; one foreign, non-executive, director resigns for "health reasons";
- **April 1**—CNOOC board in disarray, not even able to convene a board meeting;
- **April 1**—the day before an anticipated bid from CNOOC Ltd., Chevron agrees to sweeten its bid again, by giving Unocal shareholders a choice of an all share deal, cash and share deal, or all cash deal: (i) 0.7725 Chevron shares plus US$16.25 for each Unocal share; (ii) 1.03 Chevron shares for each Unocal share; or (iii) US$65.00 per Unocal share;
- **April 2**—Unocal board meets, decides to make a final decision on April 3;
- **April 3**—CNOOC Ltd. board meets again, but is still unable to make an offer;
- **April 4**—Unocal and Chevron sign a definitive merger agreement for combined cash/stock deal with Unocal, at value of US$60.65 per share (US$16.5 billion) (this includes "force-the-vote" clause [Chevron as acquirer can force Unocal board to put the Chevron bid to a Unocal shareholder vote] and US$500 million "break up" fee).

full range of Chinese actors—from government departments to enterprises to individual managers and investors—to encounter a whole menu of laws, regulations, institutions, customs, and more, that govern and shape investment and commercial activity in political economies outside of China.

The CNOOC bid for Unocal—the facts

We now turn briefly to the very specific situation which caused so much worry in the United States, the CNOOC Ltd. bid for Unocal during the summer of 2005. As it developed, the proposed transaction involved CNOOC Ltd.—the Hong Kong-domiciled, 70 percent-controlled , subsidiary of Beijing's purely state-owned enterprise, China National Offshore Oil Corporation or "CNOOC"—making an *all cash* bid for Unocal, that bid supported by proposed financing of more than US$7 billion from CNOOC (to be swapped for shares in CNOOC Ltd. within two years) and US$6 billion from a syndicate led by

the Industrial and Commercial Bank of China (ICBC), but with JP Morgan Chase and Goldman Sachs participating with bridge financing (to be taken out with the issuance of debt by CNOOC Ltd. after completion of the acquisition of Unocal).

The major points timeline for the rise and fall of CNOOC's efforts may be recited as follows: At the end of 2004, Unocal was being "shopped" in America and internationally. In December of 2004, CNOOC was approached by Unocal, with Unocal executives asking CNOOC if the Chinese company would be interested in acquiring the American company. At the beginning of 2005, the *Financial Times* reported (falsely as it turned out) an imminent bid for Unocal from CNOOC. This, perhaps by design, conjured an immediate indication of "strong interest" from Chevron on January 6, and then a formal all stock bid from Chevron on February 26, valuing Unocal at over US$16 billion. All through this period, and then March, CNOOC was not able to make a bid—*the bid requested of it by Unocal*—because independent directors on the board of CNOOC Ltd. could not be persuaded to vote in favor of such an action. (Their formally articulated concerns focused on the crushing debt load CNOOC Ltd. would have to take on to complete the purchase, and the hugely dilutive effects for non-CNOOC shareholders of future, necessary, issuances of stock by CNOOC Hong Kong. These outside directors may in truth have been alienated by the way in which the proposal was brought to them by CNOOC executives and CNOOC Ltd. executive board members at the last minute, and seeking a "rubber stamp.") Insiders also report real battles between CNOOC executives and the highest-level Chinese central government actors, many fiercely opposed to the proposed takeover bid by a Chinese company for an American oil company. Unocal finally gave CNOOC Ltd. until April 2 to post a bid, which caused Chevron to raise its own offer on April 1. CNOOC Ltd. remained stymied at the board level, and thus with no Chinese bid forthcoming over the night of April 2-3, Unocal signed a binding merger agreement with Chevron on April 3, 2005, valuing Unocal at approximately US$16.5 billion. In an example of skilled lawyering, the Chevron lawyers included in the merger agreement a "force the vote" clause, which contractually obligated Unocal, *at Chevron's direction,* to convene a shareholders' meeting to approve the sale to Chevron. (This made the Chevron strategy going forward rather simple—if and when a competing Chinese bid was forthcoming, Chevron needed only to introduce doubt into the minds of Unocal shareholders about eventual U.S. government approval, force a shareholders' meeting, and allow the Unocal shareholders to approve the bird in hand (Chevron's lower-priced deal) over a possibly unstable but richer option [CNOOC's higher bid].) Soon thereafter, the shareholders' meeting required under the governing merger agreement was set for later in the same summer—August 10, 2005.

More than two months later, CNOOC management finally cajoled the dissenting CNOOC Ltd. board members into place,

Revised contest
CNOOC re-enters the fray

(June 1 to August 10, 2005)

- **June 1**—Fu Chengyu, Chairman of CNOOC and CNOOC Ltd., works to convince CNOOC Ltd. board that CNOOC Ltd. should make offer for Unocal;
- **June 10**—U.S. Federal Trade Commission raises no objection to Chevron-Unocal merger;
- **Early June**—Continued resistance on CNOOC Ltd. board from foreign-citizen independent directors—they articulate concern about the crushing debt load CNOOC Ltd. would have, and the dilutive impact on minority shareholders, etc.;
- **June 22**—CNOOC Ltd. board votes unanimously to make bid (Goldman Sachs-employed independent director abstaining to avoid "conflict of interest");
- **June 22–3**—CNOOC Ltd. makes bid for Unocal—US$67.00 per share or US$18.5 billion, all cash (11 percent higher than Chevron's signed US$16.5 billion offer);
- **June 22-mid July**—CNOOC Ltd. and Unocal negotiate draft Merger Agreement in New York;
- **June 24**—41 members of U.S. Congress send letter to President Bush urging a "thorough review" of the CNOOC Ltd. offer;
- **June 30**—U.S. House of Representatives votes 333-92 to bar the U.S. Treasury from using any of its funds to "recommend approval" of the CNOOC Ltd. bid per the CFIUS process; and 398-15 non-binding resolution, expressing concern that the CNOOC Ltd. bid, if completed, could "threaten to impair national security" (CFIUS standard);
- **June 30**—U.S. Securities and Exchange Commission approves proxy and tender offer materials for Chevron-Unocal deal;
- **July 1**—CNOOC Ltd. makes pre-emptive request of CFIUS to commence investigation of announced CNOOC Ltd. bid and proposed transaction;

- **July 7**—NSC Director Steven Hadley indicates that CFIUS review will only occur once the deal is "finalized in some way" (contradicting U.S. Department of Treasury, which had indicated review could start before);
- **Mid-July**—PLA General Zhu Chenghu quoted as saying that the PRC might use nuclear weapons against the United States if the United States intervenes over Taiwan;
- **July 13**—CNOOC Ltd. board authorizes CNOOC Ltd. Chairman Fu Chengyu to increase all cash offer, from US$67.00 to US$69.00 per share, but not exceeding US$70.00 per share;
- **July 13**—U.S. House of Representatives Armed Services Committee holds hearings at which the CNOOC bid is uniformly denounced;
- **July 14**—CNOOC does not raise its bid;
- **July 14**—Unocal board meets to consider competing Chevron and CNOOC Ltd. offers;
- **July 15**—Unocal board continues to meet—it does not recommend CNOOC Ltd.'s higher all cash offer over existing Chevron cash/stock offer, but resolves to continue looking at a CNOOC Ltd. offer, certain conditions being met (promise of Unocal divestitures in the United States to get government approval, and some kind of escrow fund to assure CNOOC performance and funding of Unocal-Chevron "break up" fee);
- **July 15**—CEO of Unocal calls Chairman of CNOOC Ltd., asks for CNOOC Ltd.'s "best offer";
- **July 16**—Chairman of CNOOC Ltd. responds: CNOOC Ltd. agrees to raise its offer to US$69.00 per share, but only if Unocal pays the Unocal-Chevron "break up" fee (US$5 million) and works with CNOOC to convince the U.S. government to approve the deal;
- **July 19**—Chevron formally increases its offer to US$63.00 per share;
- **July 19–20**—CNOOC Ltd. does not raise its bid;
- **July 20**—U.S. Congress passes Schumer amendment to the foreign operations spending bill; amendment holds that the President may not approve proposed acquisitions by foreign government-controlled entities in the United States until the U.S. State Department reports to Congress on whether or not the foreign government permits U.S. firms to "purchase, acquire, merge or otherwise establish a joint relationship" with a company based in the country, such report to be delivered 30 days prior to the proposed acquisition;
- **July 25**—U.S. Congress adds amendment to the proposed energy bill, authorizing the Department of Energy, the Department of Defense, and the Department of Homeland Security to undertake a four-month investigation of the effects of China's worldwide energy demand, and providing for a three-week period after delivery of this report before which CFIUS would be permitted to submit a recommendation to the President (lengthening the CFIUS review period from a maximum of 90 days to 141 days);
- **Late July**—rumors on Capitol Hill that the Department of Defense, not the Department of Commerce, will undertake CFIUS investigations;
- **Late July**—U.S. Senate asks Secretary of Commerce to investigate whether or not CNOOC Ltd. proposed financing violates WTO rules on subsidies;
- **August 2**—CNOOC Ltd. formally withdraws its tender offer for the stock of Unocal (only eight days from the Unocal vote on the Chevron transaction). In its withdrawal statement, CNOOC Ltd. said that it would have considered raising its bid for Unocal prior to the Unocal board vote, but for the fact of the "impact of the U.S. political environment" (*meiguo zhengzhi huanjing de yinxiang*);
- **August 2**—six percent rise in CNOOC Ltd.'s share price on the NYSE;
- **August 10**—Unocal shareholders vote, accepting Chevron's amended offer.

and on June 22 CNOOC Ltd. announced a much higher bid for Unocal (US$18.5 billion), and an *all cash* one at that. Chevron immediately went into action, conjuring the anxiety, fear, and concerns alluded to at the start of this presentation. At this point, CNOOC's only hope was that the political uncertainty immediately rumored for the Chinese bid could be made a non-issue by early, *hypothetical*, approval of the Chinese acquisition by the Commission on Foreign Investment in the United States (CFIUS), the U.S. government interagency group tasked with analyzing foreign bids for American assets or equity interests under Exon-Florio. (If Unocal shareholders were permitted to believe that the acquisition would be approved by the U.S. government, they would likely have rejected the lower Chevron bid to take more value [and all in cash] under the CNOOC offer.) Those hopes were dashed when, on July 7, the Bush administration's National Security Advisor let it be known

publicly that CFIUS would not make a pre-transaction review of the bid or CNOOC's pre-filed Exon-Florio submission. Unocal directors were still required to fulfill their fiduciary duty to Unocal shareholders however, and so on July 15 refused to recommend either the agreed Chevron deal or the higher CNOOC bid, but asked CNOOC for its final "best offer." That was forthcoming a day later, when CNOOC raised its bid to US$69.00 per share. Three days later, Chevron raised its own agreed offer—albeit to a level still lower than the Chinese bid, or US$63.00 per share. In these couple of weeks, the anti-China and "China threat" rhetoric in the American Congress grew almost unbearably over-heated, with several legislators introducing bills specifically targeting CNOOC's proposed acquisition of a U.S. energy company. CNOOC decision makers saw that no bid from a Chinese company, no matter how stable, or how rich, would be allowed to pass over the significant political hurdles now in place. Accordingly, CNOOC formally withdrew its offer for Unocal on August 2, 2005. On August 10, 2005, Unocal shareholders approved the merger of Unocal with Chevron.

CNOOC specifically—poster child of enmeshment with "the rules"

In many ways, the critiques and fear-mongering targeted on CNOOC proved almost cruelly ironic. For CNOOC is not the mere agent of a newly rapacious Chinese superpower, or the servant of its insatiable appetite for energy resources. Instead, CNOOC represents one of the first and best examples of a significantly independent modern Chinese enterprise, exposed very early in China's "Opening to the Outside World" to commercial and investment activity under law, and fully implemented notions of transparency, disclosure, and internal firm governance.

CNOOC's development path provides a perfect example of why observers simply *must* differentiate between the origins and control of the Chinese players now stepping onto the world stage. For instance, Lenovo, which acquired IBM's PC business, is uniformly referred to as a "PRC state-owned" or "government controlled" entity in the press and business literature. This is a reference to the fact that the Chinese Academy of Sciences—a Chinese social academic unit under the State Council—was one of the original promoters of Lenovo (then "Legend") when it became the first successful low cost producer of computer hardware in China. (The Chinese Academy of Sciences acted in much the same way by providing seed funding and technical expertise to the Stone Corporation, which has not achieved the success of Lenovo.) How different Lenovo—even with the participation of a government-run academic think tank—is from Air France or PetroCanada or any entity that is traditionally conceived of as "state owned." Similarly, Hai'er, which made a run at Maytag in partnership with U.S. private equity funds, is government financed and promoted, but the "government" in this case is a provincial level government in China which has

The CNOOC Unocal bid discourse

- "One of the reasons your price of gasoline is going up is . . . economies like China and India are demanding more oil in a limited supply—in a market that's of limited supply." (President George Bush)
- "They're not playing by commercial rules; it's not fair trading. . . . Clearly this is not a commercial competition. We are competing with the Chinese government, and I think that is wrong. . . . We [Chevron] will produce more oil and gas, and put it into the world supply. . . . We'll put oil on the market in a commercial way and it'll be sold to the highest bidder. [CNOOC will use the oil it produces for domestic consumption, which will yield] less oil on the world market, which means higher prices for U.S. consumers and all consumers." (Peter Robinson, Vice Chair of Chevron)
- "My biggest concern is the preservation of Unocal's energy assets in friendly hands. If a company is owned by a foreign government, its loyalty is going to be to that government." (Rep. Richard Pombo, Republican, California)
- "Should we work with China? Yes. Should we turn over our government, our business to China? No, we shouldn't." (Rep. Carolyn Kilpatrick, Democrat, Michigan)
- "Do we want a foreign power, whose military intentions in the long term are not clear, to own energy assets inside our border?" (Larry Wortzel, U.S. China Economic and Security Review Commission)
- "I'm a free trader, but being a free trader isn't synonymous with being a chump. He [U.S. Secretary of the Treasury John W. Snow, making no comment on the CNOOC bid] should have said, 'You bet we're going to look at it.'" (Sen. Ron Wyden, Democrat, Oregon)
- "Remember, to the Chinese everything is related: the economics, the diplomacy, the military posture. It's all one." (Senior Administration Official, *The New York Times*)

• "[CNOOC is] an organ, effectively, of the world's largest communist dictatorship. [This transaction] should be beyond the pale, given the nature of the Chinese government." (James Woolsey, former director, CIA)

• "Does anybody honestly believe that the Chinese would let an American company take over a Chinese company?" (Sen. Charles Schumer, Democrat, New York)

• "[China] already has too many Treasury [bonds]. So they're looking to buy assets. Chinese companies are growing, they are ambitious, they want to be global players, they want to have global brands, and in the case of oil they are kind of obsessed with assuring energy security for the long run so they're buying up all the oil and oil rights they can find." (Clyde Prestowitz, former U.S. Trade Representative)

• "With China on a buying binge for raw materials to feed its ever-expanding economy, it was inevitable that it would eventually go beyond the more modest corporate purchases it has already begun and make a grab for something the United States really cares about." (*New York Times* editorial, June 26, 2005)

• "There are a lot of what I call 'silk purse' deals, in which multinational companies sold divisions which weren't profitable, and in many cases Chinese companies were the only logical buyers of these dog divisions. Their owners could not make them profitable, but the Chinese use them to help jump-start their own international presence." (Jack Lange, Paul, Weiss et al.)

• "[China's drive to acquire assets] is consistent with government policy to secure long-term supplies. But China is too chaotic and fragmented to think that there is one central coordinator. China does not have a central ministry like Japan's Ministry of Economics, Trade, and Industry. A lot of what is happening is a bottoms-up [*sic*] phenomenon with companies under pressure from their shareholders to grow, and since they are cash-rich, to deploy that cash efficiently." (Fred Hu, Goldman Sachs)

• "The assets involved in the Unocal transaction are not on the scale or geographic location to make them of critical importance to U.S. energy security. Many of the important Unocal assets are actually located in Asia, and the energy produced there would never flow to the United States." (Amy Jaffe, James A. Baker III Institute for Public Policy)

• ". . . Unocal is not 'an American energy asset' . . . . The United States does not own or control Unocal and has no claim on the company's gas and oil reserves, which are dotted across the globe. And Unocal does not reserve its oil for American consumers. Like every other oil company, it sells to the highest bidder. In the end, its responsibility is to its shareholders, not to American national security, as some of Unocal's recent activities (such as working with the Taliban on a potential pipeline) might indicate." (James Surowiecki, *The New Yorker* magazine)

• "A lot of politicians are leveraging China bashing. The only thing [CNOOC] can do is bid higher." (Unocal shareholder, quoted in the *Wall Street Journal*)

• "It's essential that we not put . . . our future at risk with a step back into protectionism." (Alan Greenspan, Chairman, Federal Reserve)

• "CNOOC's bid to take over Unocal of the United States is a normal commercial activity between enterprises and should not fall victim to political interference." (PRC Foreign Ministry)

• "I think this is a normal business activity. The relevant people should not make a fuss and should not interfere in business deals for political reasons." (Liu Jianchao, PRC Foreign Ministry)

• "The idea of buying Unocal was purely initiated by our company. The idea did not come from the government, and not one cent of government money is involved in the deal. I don't think there's anyone in the government who understands our business." (Fu Chengyu, Chairman and CEO of CNOOC)

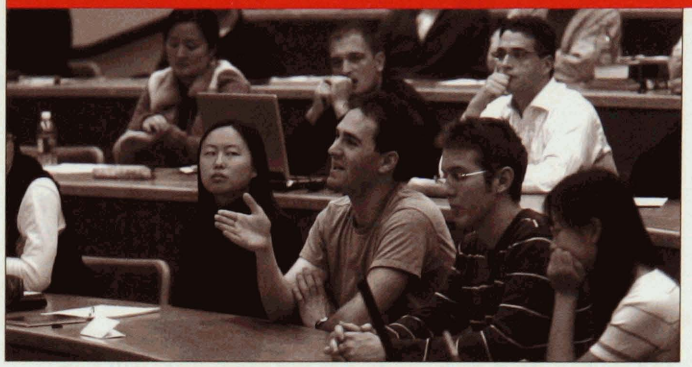
acted to facilitate capital accumulation and investment, and foregone some tax revenues in exchange for a small equity interest, but not kept a strong hand in the running of what is an entrepreneurial business controlled by a charismatic individual. (This of course is not to say that all PRC entities identified as "state-owned" are innocent of state or government control —MinMetals, the proposed acquirer of Noranda in Canada, is in fact a direct creation [as the name indicates] of the former Ministry of Metallurgy.)

Each of these examples should prod us to examine closely the genesis and nature of Chinese enterprises increasingly active on a global scale, such as CNOOC specifically. For if CNOOC is representative of anything, it is for identification of domestic and internal firm effects arising from China's or "China Inc.'s"

Nicholas C. Howson delivers his lecture . . .

participation in the global economy and commercial legal order. CNOOC's path is emblematic of the path future Chinese enterprises will walk as they truly "Go Out" into the world —first, developing their business in an increasingly marketized domestic economy functioning under law; then, after corporatization, pursuing business activities under a host of objectively-rendered commercial, legal, financial, and corporate governance constraints; then raising capital on developed overseas capital markets and encountering the significant demands of foreign securities and exchange regulation; and finally, in the process of making offers for public and private foreign companies, working with and being shaped by a wholly different legal, contractual, and regulatory context, from the negotiation of sophisticated acquisition agreements (enforceable before courts or arbitral bodies) to the complete range of takeover regulation and proxy rules. In addition, there will no doubt be serious and sustained enmeshment with other regulatory systems if and when Chinese companies are successful in gaining control of foreign industrial properties—for example, other than ongoing corporate disclosure and securities regulation (in the post Sarbanes-Oxley [SOX] United States, increasingly pertaining to internal firm governance), environmental, occupational health and safety, labor, pension, etc. stipulations. (Consider the experience of Lenovo as it moved its headquarters to the United States, and suddenly found its operations and work force largely subject to a whole nest of foreign laws and regulations.)

The CNOOC case specifically is highly instructive. CNOOC was conceived in the late 1970s, and formally established in the early 1980s, as a corporate representative of the sovereign, or the People's Republic of China. (This happened even before there was a corporate law in China, much less a law formally governing state-owned enterprises [or "enterprises owned by all the people"].) Having made the politically sensitive decision to invite foreign oil companies into commercial production sharing arrangements to explore, develop, and hopefully produce from China's then untapped offshore oil and gas resources, China needed to create, from whole cloth, an entity which could sign production sharing contracts with interested foreign concerns. CNOOC was thus established, given franchise rights over exploration areas (and contract blocks within those areas), and commenced accepting bids from foreign parties for the negotiation and implementation of such production sharing arrangements. (Distinguish the other two large national oil companies from the PRC: China National Petroleum Corporation [CNPC], now known as PetroChina, was effectively the encapsulation of the "upstream," onshore-focused, line ministry, the Ministry of Petroleum Industry; Sinopec, the other major Chinese oil company, was the monopoly participant in all "downstream" activities. A reorganization in the late 1990s saw CNPC and Sinopec swapping some [onshore] upstream and downstream assets, while CNOOC aggressively developed greenfield downstream projects but gave up none of its offshore production sharing contracts entered into with foreign concerns). Over more than two decades of work, CNOOC concluded a large number of production sharing deals, entered into with some of the world's most sophisticated oil and gas companies, all focused on finding and extracting hydrocarbons from offshore blocks. In those two decades, many saw CNOOC as the exemplar of a new kind of Chinese concern—admittedly a corporate front for the state, but forced to enter into detailed production sharing *contracts* (subject to binding international arbitration) modeled closely on contractual forms used by Indonesia and Brazil, with key input from Norway's national oil company. (CNPC, the state-owned enterprise successor to the Ministry of Petroleum Industry, was never forced to do this in its upstream work, and was only permitted to enter into production sharing contracts with foreign oilers in 1994.) While a step forward for the introduction of law and legal instruments into the basic life of one of China's largest concerns, many of these facially sophisticated contracts were not subject to a great deal of negotiation (except for a narrow set of commercial terms, and the negotiable "X factor" which divided up production based on different volumes achieved). And yet, these contracts did provide, for the first time in reform-era China, extremely detailed contractual arrangements governing a joint project's exploration, development, and production phases, sophisticated tracking of expenses and investment to effect cost and then investment recovery, and allocation of revenue sharing (after investment and cost recoveries were fully paid out) very similar to the "waterfalls" seen in U.S.-style partnership agreements. Moreover, these relationships between CNOOC and foreign oilers were implemented as commercial contracts subject to binding dispute resolution



. . . and the audience members ask questions.

(as opposed to state-to-state relationships or bureaucratic commands), and were (and are) actually contested in several arbitrations or threatened arbitrations over the years.

CNOOC's second major brush with law, and markets operating under some kind of rule of law, was the listing on the Hong Kong Stock Exchange of a newly-created and 70 percent-owned subsidiary—CNOOC Ltd., the summer 2005 suitor for Unocal. (The benefit of many of the better production sharing contracts originally entered into by CNOOC with foreign companies was assigned to this Hong Kong-domiciled listing vehicle.) That phenomenon left CNOOC, *qua* the representative of the PRC on numerous production sharing contracts, learning many of the same hard lessons absorbed by other Chinese state-owned firms seeking finance in developed capital markets. CNOOC went through a difficult period of corporate reorganization, property (contract) rights transfers, and abundant public disclosure, all in the service of capital raising from mostly foreign investors (granted relatively little governance power in exchange for their share investment). The process even allowed CNOOC to encounter the fickle capital markets, with CNOOC Ltd.'s first attempt at an IPO in 1999 pulled back at the last minute and then re-launched in 2001.

Some may object to any portrayal of the 2001 CNOOC Ltd. listing in Hong Kong as progress in the terms argued here, pointing to the unhealthy phenomenon of an entirely dominated listing subsidiary, and a 30 percent body of passive and disempowered public shareholders positioned alongside an unconstrained and 70 percent controlling (Chinese state) shareholder. This would be wrong, as it fails to take account of the Hong Kong, U.S. and NYSE securities and exchange law and regulation which immediately impacted CNOOC Ltd.'s internal governance (especially after the passage of SOX), the real rights of minority shareholders under those external regulatory systems, and transactional rules which call for disinterested director or shareholder votes, exchange approvals, or the like, prior to implementation. Again, realists might see shareholder votes mandated at any 70 percent single shareholder-controlled company as an empty formality. CNOOC itself disproved this view when in 2004 another of its Hong Kong-listed subsidiaries —China Oilfield Services Inc.—was blocked from diverting 40 percent of its US$148 million revenue to another CNOOC-controlled PRC-domiciled finance entity. Sixty-three percent of the China Oilfield Services Inc. shareholders voted to block the diversion of funds from one CNOOC subsidiary to another, that shareholder vote being required by Hong Kong Stock Exchange rules. (It is fascinating to see these same transactional rules, many of which limit the opportunism of controlling shareholders, subsequently imported directly into the domestic Chinese legal system, via China Securities Regulatory Commission and Shanghai Exchange regulation.)

Aspects of the Unocal bid experience itself support the idea that CNOOC and its top management, in seeking to act outside of China, encountered serious constraints on their behavior that they would never have faced were CNOOC acting as a large SOE in a purely Chinese context. CNOOC was forced to engage directly with accepted or mandated corporate governance norms and rules designed to protect real (and minority) shareholders. It is now known that CNOOC executives were intent on having CNOOC Ltd. launch a bid for Unocal in the early part of 2005, but that the transaction was frustrated solely due to the opposition of at least one and perhaps several independent (and all foreign national) board members at the CNOOC Ltd. level. (While various rationales are rumored for the objections, suffice to say that the non-executive CNOOC board members may have harbored resentments over the way in which the parent company and its leaders went to the full CNOOC Ltd. board at the very last minute as a "rubber stamp.") Observers outside China must recognize what a profound difference this represents: When previously would any Chinese state-run giant, even if "corporatized" (or "reformed" into a corporation with a board of directors, executive management, shareholders, etc.) have been constrained in any way on a proposed acquisition, especially by board-level actors? CNOOC Chairman Fu Chengyu, by June of 2005 forced by his non-executive directors to delay the bid for 6 long months, and then re-enter the battle with an offer for Unocal that was for US$2 billion higher than the bid CNOOC might originally have made, said tellingly, if rather wistfully, "*Our independent directors believed they needed more time to further evaluate the value of Unocal. This showed the good practice of corporate governance.*" Rarely in the history of China's reform has the "good practice of corporate governance" been so keenly felt—or so costly! Even when the board of CNOOC Ltd. was finally cajoled into launching the bid (and not without some continued resistance

from CNOOC Ltd. board members and aspects of the PRC central government), the Hong Kong-listed company would have been forced to gain the approval of a sufficient number of its public shareholders, as required under Hong Kong corporate law and rules governing issuers listed on the Hong Kong Stock Exchange. And finally, of course, if the bid was to be allowed to go forward, it would have had to comply with the web of U.S. public takeover regulation, including the Williams Act (Section 14(d) of the Securities Exchange Act of 1934 (34 Act)) and the tender offer rules, the notifications required under Section 13(d) of the 34 Act, continuing disclosure by the bidder and *its controlling shareholders,* and been subject to the full scope of U.S. anti-manipulation and anti-fraud rules and jurisprudence, not to mention the rather sobering civil liability provisions implicated.

And ultimately the bid would have required approval by a shareholders' vote of the target, Unocal, with or without the recommendation of the Unocal board. Again, to outside observers, this may seem to be an insignificant process, or at least one where Unocal shareholders could have been bribed with an all cash Chinese offer (that "bribe" being financed, directly and indirectly, by the PRC's treasury). Yet, that understanding does not take into account what has been business as usual for the largest and most privileged Chinese state-owned enterprises in the decade or so that they have grown to their current size and ambition. Never, in the internal Chinese domestic markets, have players of the size and influence of a CNOOC implemented transactions (including large scale corporate M&A or even public markets financing transactions) other than in accordance with the explicit command and say-so of the central government (or its line-ministries), without any real thought of what target shareholders might think, or public rules and regulations, much less contractual constraints, designed to inform participants' behavior and protect owners. By seeking to acquire the shares of Unocal, CNOOC placed itself at the relative mercy of the many shareholders of Unocal who—regardless of the relentless public relations campaigns being fought by both CNOOC and Chevron—had real decision-making power in respect of CNOOC's ambitions.

We're all rule abiders now . . .

CNOOC's bid for Unocal then placed "China Inc." into a brave new world, and entangled a previously unconstrained, state-created, oil giant in a web of laws and regulations governing everything from internal corporate governance to external market transactions. Whether or not people in the United States recognize this immediately, or understand the deep and abiding effect such constraints and procedures will have on the behavior of Chinese corporations as they step into the world, the fact is certain. It is for this reason that any late-stage denial of a successful offer for Unocal by CFIUS in the United States (were CNOOC to have gained approval of the deal at the Unocal shareholder level)—*on anything other than legitimate and well-considered national security grounds*—would have been a disaster for the ongoing socialization of CNOOC and "China Inc." An unreasoned denial by a supposedly objective U.S. agency would have signaled that the laws and governance rules which CNOOC and other Chinese corporate actors are just coming to terms with do not really matter and—in the style of many Chinese ministries which have in the past denied or limited foreign investment in China on an entirely discretionary (or plainly xenophobic) basis—raw political power, rhetorical heat, and foreign "threat" concepts rule the day. That would be a terrible lesson for China's emergent companies to learn at this time in world history, or more importantly, from such a teacher.

China is changing domestically, and specifically in the way it is being governed by rule of law, as opposed to pure political or bureaucratic power. Of course, much of this change is due to organic development inside China as its economic system comes to resemble more closely a market economy, and participants in that economy demand property and contractual rights, and a stable legal system to protect those rights. However, these domestic legal system changes are also clearly due to China's increasing involvement in the global market for ownership interests and corporate control of industrial and service properties. Without doubt, China has worked hard over more than 20 years to implement "legal construction" at home. However, it is equally certain that the effect of China's "Going Out Strategy," and the resulting entanglement with *external* legal requirements and norms, is having a direct effect in binding China and Chinese actors to radically different ways of acting *inside* China—ways which affect everything from internal boardroom dynamics, the status and powers of the previously ignored minority shareholder, and the individual acting to protect his or her rights "under law."

Nicholas C. Howson *is an assistant professor at the University of Michigan Law School, and was formerly a partner at the international law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, where for over a decade he represented clients in upstream and downstream negotiations with CNOOC.*

Speakers program brings the world home

When Assistant Professor of Law Nicholas C. Howson addressed the International Law Workshop last fall, he joined the lineup of one of the Law School's most popular continuing speakers programs. The workshop, designed to introduce "today's most debated issues in international and comparative law," is presented most weeks during the fall and winter semesters and features experts speaking on a variety of cutting edge topics. Although the programs feature speakers who are experts in their fields, the lectures are designed for non-specialists and attract listeners from a variety of disciplines. The question-answer session that follows each lecture adds to the richness of the exchange.

Howson's talk (a version is reproduced on the preceeding pages), was one of 15 International Law Workshop lectures presented this academic year.

THE TOPICS AND SPEAKERS

Fall 2005

The 'War on Terrorism' and International Humanitarian Law
by Louise Doswald-Beck, professor and director, University Center for International Humanitarian Law, Graduate Institute of International Studies, Geneva, and member, International Commission of Jurists; former head of the Legal Division of the International Committee of the Red Cross.

The European Constitutional Treaty R.I.P. (What Next for Europe?)
by Joseph H.H. Weiler, former Law School faculty member and Joseph Straus Professor of Law; European Union Jean Monnet Chaired Professor; chair and faculty director, Hauser Global Law School Program; and director, Jean Monnet Center for International and Regional Economic Law and Justice, New York University School of Law.

China's Acquisitions Abroad: Global Ambitions, Domestic Effects
by Assistant Professor of Law Nicholas C. Howson.

Facts and Rules in the WTO
by Luiz Olavo Baptista, member, Appellate Body, World Trade Organization (WTO) and professor of international trade, University of Sao Paulo, Brazil. (The ILW talk by Baptista, who was the DeRoy Fellow at the Law School last fall, also was the Dean's Special Lecture for the fall term. (See story on page 19.)

Foreign Ministry Lawyers and the International Legal Order
by Sir Michael Wood, K.C.M.G., Office of the Legal Adviser, Foreign and Commonwealth Office, London, United Kingdom.

Well Before and Well Beyond George W. Bush: European Anti-Americanism's Prominent Pedigree and Bright Future as a Lingua Franca for European Identity Formation
by Andrei S. Markovits, Karl W. Deutsch Collegiate Professor of Comparative Politics and Germany Studies, Department of Political Science and Department of Germanic Languages and Literatures, University of Michigan.

International Standards and the WTO: Trading Away the Consumer?
by Kamala Dawar, senior trade policy and representation officer, Consumers International, London.

Winter 2006

Law and Rights in China: The Work of the Congressional-Executive Commission on China
by Susan Weld, former general counsel of the Congressional Executive Commission on China.

The National Security Implications of Global Poverty
by Susan E. Rice, senior fellow, foreign policy studies, Global Economy and Development Center, Brookings Institution, Washington, D.C.

The Spread of the Liberal Constitution in Africa: The Illusion of Political Participation
by Markau Mutua, professor of law and director of the Human Rights Center, State University of New York at Buffalo School of Law.

Just a Little Help for My Friend? Europe's Assistance for America's War on Terror and International Law
by Georg Nolte, professor of law at the Institute for International Law, Faculty of Law, University of Munich.

From the Sovereignty of Nations— Towards a European Constitution
by Francis Jacobs, advocate general, Court of Justice of the European Communities.

Strong States, Strong World: Why International Law Succeeds and Fails and What We Should Do About It
by Oona A. Hathaway, associate professor of law, Yale Law School.

The Queen of Japan— A Monarch Reinvented and Reinforced
by Justice Itsuo Sonobe, former justice of the Supreme Court of Japan and member of the advisory panel on the Imperial House of Law.

Humanity's Law: Rule of Law for a Global Politics
by Ruti G. Teitel, Ernst C. Stiefel Professor of Comparative Law, New York Law School

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