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LAW QUADRANGLE NOTES



- The court as art studio
- Nobel laureate to grads: Peace is built of democracy and justice
- Maiming the cubs
- For such a time as this
- What's real for law?



The University of Michigan Law School
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Volume 49, Number 1
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On the cover: Court artist Carole Kabrin's drawings (top) depict Professor Richard D. Friedman, standing, and attorney Jeffrey Fisher, '97, preparing for their oral arguments before the U.S. Supreme Court and (in lower drawing) the Supreme Court of the Navajo Nation holding an open session at the Law School. The drawings by Kabrin, who drew herself at work in the upper illustration, are part of the feature "The court as art studio," which begins on page 4.

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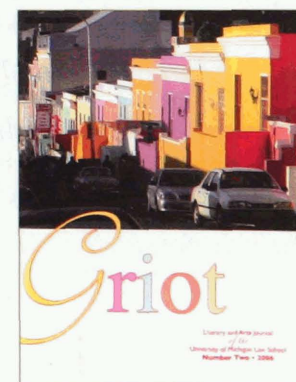
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from Dean Caminker

I rarely find myself utterly speechless when being interviewed on national television. But such was the case recently when I was an expert commentator on the Czech Republic National Morning News. To be sure, the fact that my earpiece—or perhaps the translator herself—malfunctioned and the questions came at me fast and furious in the Czech language probably had something to do with it. But maybe the daunting enormity of the problem I was being asked to discuss played a role as well.

The stimulus for that somewhat surreal interview, and the reason for my visit to Prague, was to participate in an international conference on judicial independence—a topic readers of this column know is one of great interest to me. In this space just one year ago, in fact, I suggested that judicial independence in the United States may be under threat. The point I was trying to

“Models and guidelines are clearly worthwhile, but judicial expert Russell Wheeler argues that what makes judicial independence a reality is a general cultural expectation—the popular understanding that judges should be, and are, independent in their decision-making.”

make then, and still find valid today, is that proclamations about, and even ad hominem attacks on, judges can jeopardize the separation of powers, not to mention rule of law, on which this commonwealth depends. Judicial independence, in other words, isn't a pleasant linguistic construction; it's the sine qua non without which we no longer function as a democratic society.

While I don't believe we can ignore such threats in the United States, my recent travels overseas, meetings with foreign jurists, and the intensified exposure to international news that comes with such travel suggests that judicial independence abroad—at least in certain parts of the world—isn't under threat. There it's either nonexistent or methodically being eliminated.

Consider Turkey, where a senior administrative judge was shot dead and four other judges wounded when an

Islamist lawyer, Alparslan Arslan, smuggled a Glock automatic weapon into court and opened fire. Arslan was protesting a ruling against women wearing the Muslim headscarf—barred from many venues in officially secular Turkey. One of the wounded judges, Mustafa

Birden, had angered religious conservatives by earlier signing a court decision to bar the promotion of a primary school teacher who wore a headscarf on the way to work.

In Egypt, where judges have responsibility to oversee parliamentary elections, two such jurists—Mahmoud Mekki and Hisham Bastawisi—were outspoken in criticism of alleged electoral fraud in which other government-affiliated judges were alleged to be complicit. As a result, Mekki and Bastawisi had to appear before a disciplinary board and are facing disciplinary actions. When supporting judicial colleagues demonstrated against such actions—joined by members of the public—they were confronted by heavy police security which obstructed their march. Some of their number and other lay supporters were injured by police and at least 50 were arrested. Additionally, eight other judges are reportedly facing disciplinary action for having criticized voting irregularities.

The Turkish and Egyptian situations would seem to be a direct assault on judicial independence. In Pakistan, the assault is more indirect and, some argue, has made the judiciary subservient to the legislature and political will rather than to the Constitution. Not only has the judiciary endorsed military coups on three occasions that ended democratic rule, but since the October 1999 coup, judges who might have opposed the military's rule were ousted. Critics further allege that political allies of the administration fill key senior judicial

appointments and thereby control case allocations and assignments.

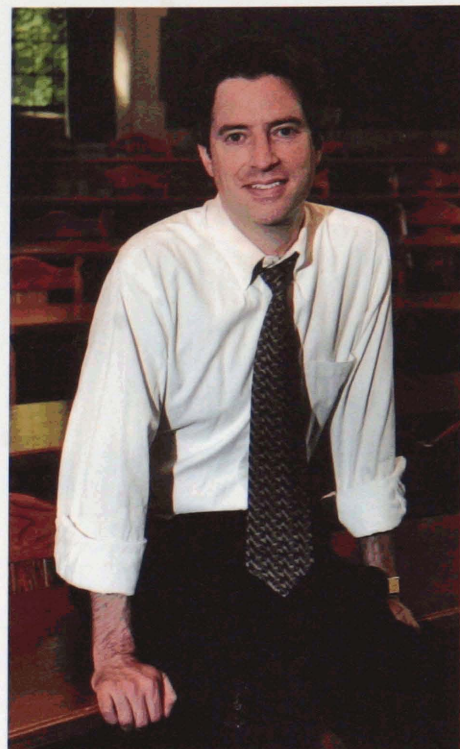
In China, judicial independence can be subject to the will or whim of local Chinese Communist Party (CCP) committees. In one especially egregious case, a successful entrepreneur's business was appropriated by the county government. When the owner objected, the county government used its influence at the local bank to bankrupt the enterprise and, if that were not sufficient, had the entrepreneur indicted on charges of corruption and misuse of public funds. At trial, the presiding judge who rendered a not guilty verdict was subsequently demoted and his verdict overturned. At appeal, and over the objections of the appellate judge, the local CCP committee found the defendant guilty.

Then there are the strategies of court-packing, denial of tenure, mass firings, and replacement of legitimate jurists with political cronies that observers argue have been characteristic of the regimes of Carlos Menem in Argentina, Alberto Fujimori in Peru, and Hugo Chavez in Venezuela.

To be fair, alleged abuses aren't proven abuses; and charges of politically inspired judicial favoritism are not infrequently politically inspired. But trying to rationalize away physical assault, murder, and the use of fear to stifle judicial independence is more difficult to do, and there's no lack of evidence that these phenomena do indeed occur. Still, it's important to point out that

there are bright spots, even in areas where the tradition of judicial independence has not previously existed. In Cambodia, for instance, the United Nations Transitional Authority began rebuilding a legal system effectively destroyed during the Khmer Rouge period. Today, both intimidation by those with power and also corruption by those with money continue, but foreign consultants are providing on-site training and assistance, existing Cambodian laws are being compiled, foreign bar associations are collecting law books and supplies for distribution, and a new generation of lawyers and judges is being trained. Analogous encouraging signs are also being seen in Haiti, El Salvador, and Rwanda, where the UN's 1995 Basic Principles on the Independence of the Judiciary provide a model and guidelines.

Models and guidelines are clearly worthwhile, but judicial expert Russell Wheeler argues that what makes judicial independence a reality is a general cultural expectation—the popular understanding that judges should be, and are, independent in their decision-making. In the United States, of course, that expectation is accompanied by ancillary practices that are no less important, such as lifelong or specific term tenure and secure salaries. In the third world, the enabling conditions for independence are frequently not in place, but the outcry against abuses and the overall direction toward judicial independence are at least positive



enough to sustain hope. What's perhaps also a factor is how well our own judicial system can provide a model for the rest of the world, and in that arena, the jury is still out.

I ended up on Czech TV last May because I was in Prague attending the 14th annual International Judicial Conference, a gathering of more than 150 Supreme Court Justices from over 50 countries focusing on the centrality and importance of judicial independence in emerging democratic societies. The conference, conceived of and supported by Fred Furth, '59, and now co-sponsored by the Law School, will likely be held in Ann Arbor next spring. Let us hope that by that time we can say some more encouraging things about progress being made, both here and around the world.

Evan Caminker

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The court as art studio

The Supreme Court of the Navajo Nation, like the Supreme Court of the United States, forbids photography during its sessions. So when the Navajo court scheduled its session here at Michigan Law in March, we turned to veteran courtroom artist Carole Kabrin to bring you images of the proceedings.

Courts have existed much longer than cameras, and artists like Kabrin (see biography on next page) once were the main providers of courtroom scenes for posters, magazines, newspapers and, more widely, members of the public unable to attend the actual court sessions. Over the years the works of many of these artists have become treasured displays on the walls of judges, lawyers, and professors.

Courtroom activities are integral parts of Michigan Law life, and we quickly found ourselves wondering: Why not offer our readers—and participants in moot and real court activities here—the aesthetically rewarding images of those activities that only hand-drawn images could provide?

Why not indeed?

Thus, on the following pages you'll find Kabrin's images of the Supreme Court of the Navajo Nation; plus drawings of U.S. District Court Judge Bernard A. Friedman's Motions Day, which for the second year brought the federal court for the Eastern District of Michigan to the Law School; the moot court session that Professor Richard D. Friedman and Washington-state-based attorney Jeffrey Fisher, '97, conducted in preparation for their appearance before the U.S. Supreme Court in March; and the final arguments in the annual Campbell Moot Court competition.

We hope the uniqueness of these drawings enhances your appreciation of the activities they depict.

Court artist Carole Kabrin

Carole Kabrin is a nationally known, Emmy award winning artist. She is a native of Detroit, received both her bachelor's and master's degrees in the Fine Arts from Wayne State University, and is currently working as a portrait artist, fine artist, illustrator, freelance courtroom artist, and teacher of figure and portrait drawing at the Birmingham Bloomfield Art Association and the College for Creative Studies in the Detroit area.

In a career spanning three decades of covering trials and hearings, her work in charcoal and pastel has been featured on local and network television as well as in the *Detroit Free Press* newspaper.

ABC network sent her from Detroit to Washington, D.C., as its exclusive artist under contract for 13 years, covering the Supreme Court of the United States, as well as major trials and hearings around the country, such as the Oklahoma bombing trials of Timothy McVeigh and Terry Nichols in Denver, Colorado; the Noriega drug trial in Miami, Florida; the Mike Tyson rape trial in Indiana; the Whitewater trial in Arkansas; Paula Jones; *Gore v. George W. Bush* at the U.S. Supreme Court; the (2000) election hearing at the Supreme Court, and many others.

She has been covering local news for WXYZ and WDIV in Detroit for more than three decades and won an Emmy Award for her courtroom artwork from the National Academy of Television Arts and Sciences, Michigan Chapter. She has also been the recipient of numerous other broadcast awards.

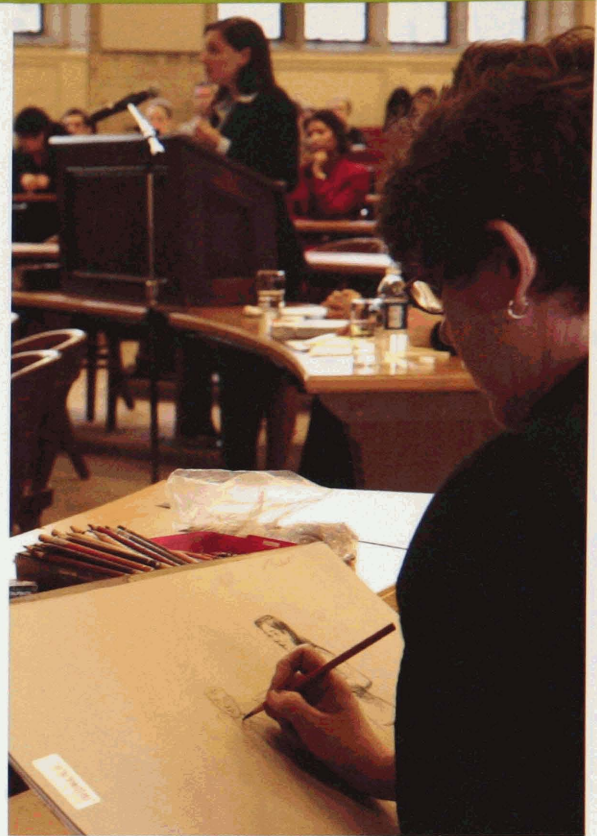
Kabrin's work has appeared in several documentaries including Michael Moore's "Bowling for Columbine"

and the Ann Slutti story that aired on Court TV. NPR radio interviewed Kabrin on her views concerning courtroom artwork versus cameras in the courtroom. The American Bar Association in Chicago included 12 of her works in its exhibit on famous trials.

Most recently, Kabrin was asked to jury the Scholastic Art Awards, which she considered a special honor because of the many fond memories she has of participating in and winning awards as a high school student herself.

Kabrin also:

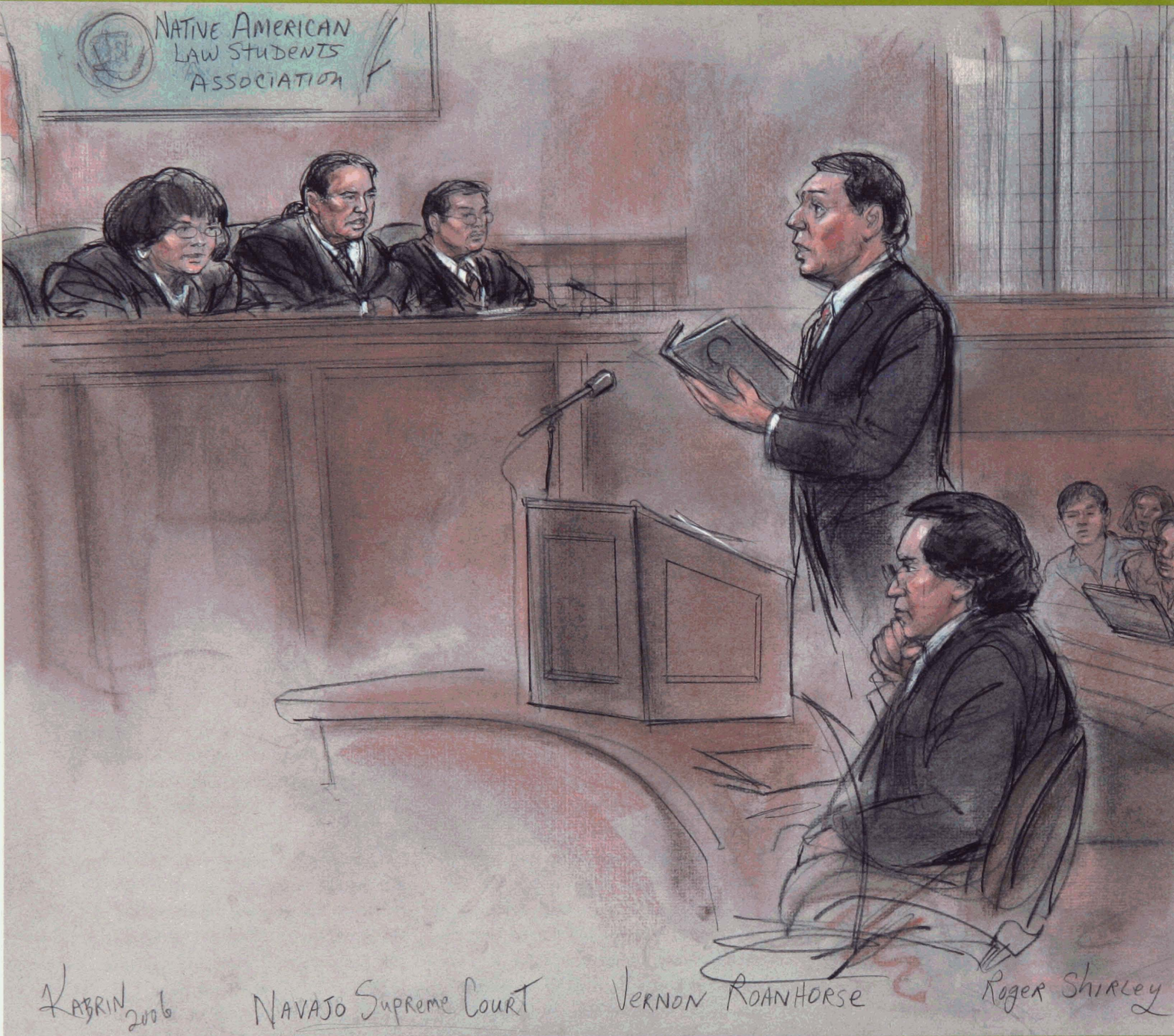
- Was invited and trained at the Walt Disney Studios as an intern, and during creation of "The Lion King" had the opportunity to be trained by Disney animators in the fine art of feature animation;
- Worked with acclaimed make-up artist and designer Mike Westmore at Paramount Studios in Los Angeles, California, creating a painting of "Star Trek the Next Generation" for a published poster licensed by Paramount and sold at Star Trek Conventions and online around the world;
- In 1980 was commissioned by Paramount Pictures to paint a Star Trek painting for their offices in New York City;
- Was invited to be a special guest by news anchor Robbie Timmons of WXYZ-TV on her new afternoon news program, in which Kabrin displayed her courtroom artwork, talked about the challenges of drawing for television news, and demonstrated courtroom art technique by drawing the newscasters on live television.



Kabrin, right, at work

Kabrin has been highlighted and interviewed several times over the years on Detroit's Channel Seven as its exclusive courtroom artist.

Her work is in hundreds of collections nationwide, including those of former President Bill Clinton, the University of Michigan, International Bridge Company (the Ambassador Bridge), Mike Damon, U.S. Supreme Court Justice David Souter, several U.S. District judges in Michigan, including Avern Cohn, '49, Bernard A. Friedman, Julian Cook, and Paul Borman, '62, and hundreds of attorneys nationwide. Her work has been shown at the American Bar Association in Chicago, the Robert Kidd Gallery in Birmingham, Michigan, and other venues.



Oyez! Oyez! Oyez! The Supreme Court of the Navajo Nation is in session

This was no ordinary court session. Three justices of the Supreme Court of the Navajo Nation sat across the raised platform at the front of the room. And the room was not a courtroom; it was Honigman Auditorium, Room 100, in Hutchins Hall.

The Indian nation's highest court came to the Law School last March at the invitation of the Native American Law Students Association, making one of its rare visits to major law schools to give lawyers, professors, and law students the opportunity to see the highest court of a sovereign Indian nation deliberate in the light of both Anglo-American and traditional Navajo jurisprudence.

"The Navajo Nation is a sovereign Indian nation," Chief Justice Herb Yazzie explained prior to the official court session. "It has a treaty with the U.S. government. Through this treaty the government relationships between two sovereigns are established. . . .

"Our task in the modern world is to define and integrate that relationship. This is done in many ways. One is by the establishment and interpretation of laws."

At first the case seemed clearcut. Appellant James Kelly alleged that he was a victim of double jeopardy because he was convicted for vehicular homicide as well as for reckless driving as the result of the same incident. Kelly had been sentenced to 90 days in jail and a \$300 fine for reckless driving and

365 days in jail and a \$2,500 fine for homicide by vehicle. Kelly is a member of the Navajo nation and the incident occurred on the Navajo reservation near Ship Rock, New Mexico.

"We have reviewed the briefs of the parties," Yazzie told the attorneys about to argue before him and his colleagues, Judges Lorene B. Ferguson and Rudy I. Bedonie. "Each side will have 20 minutes for argument. The appellant may reserve five minutes for rebuttal."

The statute "clearly states" that a person can be convicted of vehicular homicide either because he was driving recklessly or driving under the influence, explained appellant counsel Samuel Pete. But in this case the second reckless driving charge was raised "by itself" and Kelly was convicted and fined on both charges. This decision cannot stand because the Navajo Bill of Rights, modeled after the Bill of Rights of the U.S. Constitution, provides that no person shall be put twice in danger of losing his liberty for the same offense.

"It is understood that our statute says that a defendant should not be put twice in jeopardy of his liberty," Yazzie responded. "This sentence [for reckless driving] was immediately suspended and he [Kelly] was put on probation. How do you answer that his liberty twice was put in jeopardy?"

The record shows the conviction and the sentence, Pete answered. These are on his record. It is really expungement that Mr. Kelly is interested in.

All this sounds pretty familiar to legal ears trained in statutory and common law. But when the Navajo Nation's attorneys began to speak, it quickly became clear that the case was not clearcut, because it involved parallel yet unequal legal systems—U.S., state, and Navajo.

There was no doubt of the difference when Navajo Nation Chief Prosecutor Roger Shirley chose to speak in Navajo to explain that there is no concept of double jeopardy in traditional Navajo law. All members of the Navajo Supreme Court must be fluent in English and Navajo, a requirement that reflects how jurists must fuse Navajo traditional law and Navajo, state, and federal statutory law in making their decisions.

The court had not yet handed down its ruling at press time, but Yazzie had shed light on the workings of its deliberations prior to opening the court session.

"The fundamental difference between our laws and what is taught in law schools appears to be that the Anglo-American system is based on the adversarial system," he explained. "The task when a dispute occurs is to see whose version will prevail.

"In the Navajo system we don't view the resolution of disputes that way. The tradition is to see that harmony is re-established, so that when all is said . . . the resolution is understood and consented to by everyone. That's why we don't say that someone won or lost a case. . . .

“Our objective is that there be harmony. . . . The relationship between our governments [U.S. and Navajo] is reflected in the thought that the beauty of America is in its diversity. This diversity often provides the strength of America. If it weren’t for that, then America would not be what it is, or what we hope it is.”

Kelly’s appeal raises this question, he explained: “If the Navajo Nation does not have a specific statute then how should the law be interpreted? Should you look to state law to answer the question. If so, how do you interpret it—as guidance, advisory, mandatory? It is the same with federal law.”

Navajo statutes often adopt nearly word for word the laws of the states that surround the reservation (Arizona, New Mexico, and Utah) as well as the federal laws and founding documents. The Navajo Bill of Rights, for example, is nearly a carbon copy of the first 10 amendments to the U.S. Constitution.

Thus, Navajo law includes civil and criminal codes, and “also all the laws

that have always covered us,” Yazzie explained. “There is unwritten law, most commonly referred to as Navajo common law.”

In Navajo culture, laws come from different sources, he explained:

1. The almighty, the great spirit;
2. The Navajo holy people;
3. The natural world; and
4. Man

“Our task is to resolve the issue using all of these laws, and you will find in any case a discussion of all these laws and how they should be applied.”

Yazzie and others expanded on these subjects during a post court panel discussion moderated by Gavin Clarkson, Indian law specialist who is an adjunct professor at Michigan Law and a professor in the U-M School of Information. In addition to Yazzie, panelists included Frank Pommersheim, an Indian law specialist who teaches at the University of South Dakota School of Law, and Kyme McGaw, who practices with Morrisett, Schlosser, Jozwiak & McGaw in Washington State, specializing

in representing federally recognized tribes.

The concept of double jeopardy is part of the U.S. Constitution, and the Navajo Nation has adopted similar language in its Navajo Bill of Rights and Navajo Nation’s Double Jeopardy Law. But as Chief Prosecutor Shirley argued in Navajo during the court session, traditional Navajo law includes no sense of double jeopardy.

“That’s why this case is significant,” Pommersheim explained. “It’s the first attempt by the Navajo Nation to decide what it means by ‘double jeopardy.’”

“America’s sense of courts and justice was simply imposed on most Indian nations, imposed as a means of control,” said Yazzie.

Today, “there is a transition going on,” he continued. In regard to double jeopardy, for example, “the Indian nation did not participate in the formation of your Constitution, so there is no sense of ownership in this Constitution, but there is recognition that we are part of America and if we are going to survive there is a sense that our own notion of law must be maintained. They’re not all that different.”

Judge Bernard A. Friedman brings U.S. District Court to Michigan Law

“Every day something interesting is going on in our courts,” Judge Bernard A. Friedman told the audience of law students who had just watched the traveling version of his court in session.

Friedman, a judge on the U.S. District Court for the Eastern District of Michigan, had brought his court to the Law School for a day. Law students packed the lecture hall-turned-courtroom where Friedman held his second annual Motions Day, watching and listening as attorneys argued real cases and the judge issued his rulings.

But Friedman also was mindful of his audience, explaining many of the six cases he heard during his visit beforehand and providing time after each case to answer questions from the audience.

The session offered a rich sampling of the variety that is standard fare in courts like Friedman’s. Students who packed the “courtroom” saw live the give-and-take and verbal sparring that can spark between opposing attorneys, as well as the blend of legal knowledge and common sense that Friedman brings to bear on the cases before him. By bringing the real courtroom to the Law School, Motions Day offered law students an unexcelled learning laboratory.

Take the snake case, for instance. The dispute centered on ownership of a rare snake captured in Ghana. The plaintiff’s attorney argued that his client still is part owner of the snake because he never received any money for the snake when he gave it to the defendant to keep, and that the defendant had mated the snake and sold its progeny. He was seeking summary judgment, but documents in the case had been very tardy in coming to Friedman’s court.

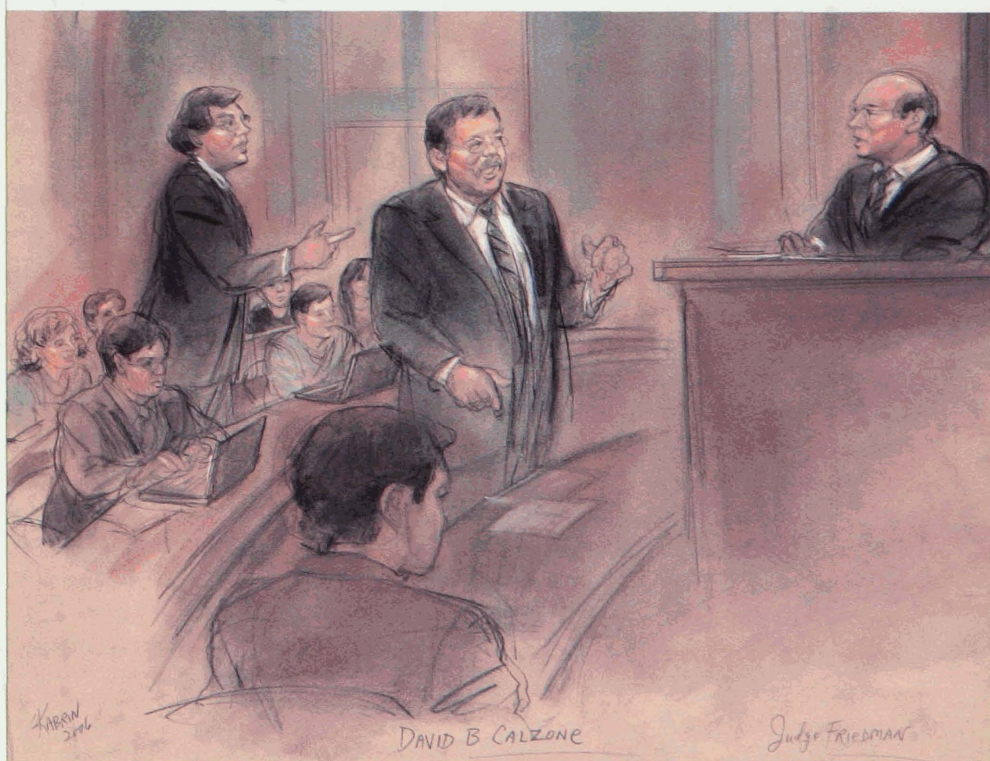
“I can’t decide this case,” Friedman said. “I’ll give (the defendant) an additional 21 days to file a response to your interrogatory.”

In other actions:

- Friedman dismissed a case involving copyright infringement to provide time to raise the funds necessary to abide by the settlement attorneys had reached beforehand—but he retained jurisdiction in order to enforce injunctive relief if such enforcement became necessary.
- He upheld a \$200 fine against the Internal Revenue Service for continuing to seek taxes from a person who had filed for bankruptcy, even though he acknowledged that the IRS’ action was a bureaucratic snafu rather than a “willful violation” of bankruptcy protection.
- Ruled that the statute of limitations prevented a plaintiff from proceeding

with his civil rights claim against the City of Detroit that police had used excessive force when they arrested him. The plaintiff’s attorney claimed that his client was insane at the time of his arrest and therefore the statute of limitations did not apply. But Friedman kept open the plaintiff’s claim of malicious prosecution against him by giving attorneys in the case 21 days to file briefs on the issue.

- Dismissed a case in which a pilot claimed that he unfairly was relieved of his employment when he failed to show up at a training site and did not talk beforehand with his supervisor about the issue. The pilot’s employer claimed that federal aviation regulations, which govern pilots’ employment, provide for administrative redress but do not grant the individual pilot standing in the courts.



At the Supreme Court Friedman wins but still comes away 1-1

Professor Richard D. Friedman has come away from his first argument before the U.S. Supreme Court with a mixed victory that guarantees further litigation to clarify the meaning of the Constitution's Confrontation Clause.

The Court ruled 8-1 in favor of Friedman's client in *Hershel Hammon v. Indiana*, holding that a police officer's statements were "testimonial" because he had crossed the boundary from emergency intervention to investigation when he questioned a woman after she claimed that her husband assaulted her.

But the Court ruled 9-0 against Friedman's position in the companion case, *Adrian Martell Davis v. Washington*, argued by Jeffrey Fisher, '97. In *Davis*, the Court upheld the admission of a woman's 911 telephone call that she had been assaulted without offering opportunity for the defendant's counsel to cross examine.

Friedman found the pair of decisions to be bittersweet. As he noted on the Scotusblog (www.scotusblog.com) on June 19 immediately after the opinions were announced, *Davis* "gives police and 911 operators a terrible incentive—get all the critical information—the commission of the crime and the identity of the perpetrator—at the very beginning, before resolving the situation and before separating suspected victim and suspected assailant. Courts are likely to treat *Hammon* as many treated *Crawford*, as a nuisance that has to, and can be overcome by reciting certain words."

On the other hand, "*Hammon* makes clear that some of the more egregious cases of accusations made to the authorities . . . are really off bounds." As he later explained, some courts had refused to hold statements testimonial unless they were made in quite formal circumstances, and in response to police interrogation. Such holdings are now untenable, as are cases that treat accusations of crime as non-testimonial even though made long after any exigency has passed.

In *Crawford v. Washington*, on which Friedman and Fisher collaborated and Fisher argued successfully, the Court ruled in 2004 that a defendant has the constitutional right to cross-examine testimony against him. But the *Crawford* Court explicitly left the definition of what is "testimonial" to a future time, thereby guaranteeing further litigation to clarify boundaries of the concept.

Even with its lack of precision, the *Crawford* ruling went a long way toward what Friedman had been advocating in scholarly articles, lectures, and court briefs for more than a decade—that the Confrontation Clause entitles a defendant whenever possible to be able to cross examine the source of testimony against him, that the clause means what it says—that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."

Friedman, the Ralph W. Aigler Professor of Law, had sat at the attor-

neys' table while Fisher, who until recently practiced with Davis, Wright, Tremaine in Seattle, argued *Crawford*. They returned to the Court last March with clarifying companion cases—Friedman arguing *Hammon v. Indiana*, Fisher arguing *Davis v. Washington*.

Hammon involved admission of a statement given to a responding police officer by a domestic violence victim who did not testify at trial. *Davis* challenged admission of a statement to a 911 emergency operator.

"If the accusation in this case is allowed to secure a conviction without the state providing an opportunity for confrontation, then the Confrontation Clause will be little more than a charade, easily abated by state officers gathering evidence," Friedman argued. "But if the Court proclaims that a conviction cannot be based on an accusation made privately to a known police officer, then it will take a long step to ensure that the confrontation right remains robust, as the Framers intended, for centuries to come."

In his oral argument in *Davis*, Fisher noted that "Michelle McCottry's statements here were testimonial for the simple reason that she knowingly told a governmental agent associated with law enforcement that someone had committed a crime. Prosecutions based on such ex parte statements in place of live testimony strike at the very heart of the evil the Confrontation Clause is



Professor Richard D. Friedman, standing, and attorney Jeffrey Fisher, '97, prepare for argument before the U.S. Supreme Court. Court artist Carole Kabrin, lower left, records the scene

designed to prevent: trials on the basis of out-of-court accusations.

"Indeed, the trial here really can't be described as anything other than inquisitorial in nature. The sole proof that Mr. Davis was at Ms. McCottry's house and assaulted her that day was the four-minute, tape-recorded 911 police incident interview that the state played at Mr. Davis' trial and that it itself described as Ms. McCottry's testimony on the day this happened."

Friedman and Fisher honed their arguments in a moot court at the Law

School prior to their joint appearance at the Supreme Court. Held on a weekday evening and opened to the entire Michigan Law community, the session drew a standing room only audience to Hutchins Hall's Honigman Auditorium

David Moran, '91, who has argued four cases before the U.S. Supreme Court, played the role of respondents' lawyer for the session. Moran, the associate dean of Wayne State University Law School, was a visiting professor at the Law School in October 2004 when he conducted a similar preparation ses-

sion at the Law School for his argument of *Kowalski v. Tesmer* before the Supreme Court.

Friedman and Fisher faced a formidable lineup of Michigan Law faculty members acting as Supreme Court justices: Professors Christina Whitman, '74; Roderick Hills; Richard Primus; and Gil Seinfeld; and adjunct professors Joan Larsen and Mark Rosenbaum, the latter one of the Law School's Public Interest Public Service Faculty Fellows. (See related story on page 44.)

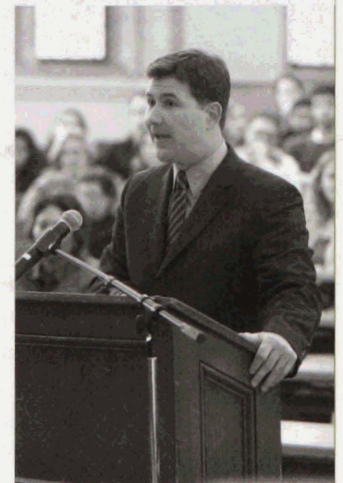
Campbell Moot Court competition finals

The fictitious state of Hutchins successfully defended its position in the appeal of the hypothetical case of *Darling v. Hutchins* in the final competition of the Henry M. Campbell Moot Court series this year.

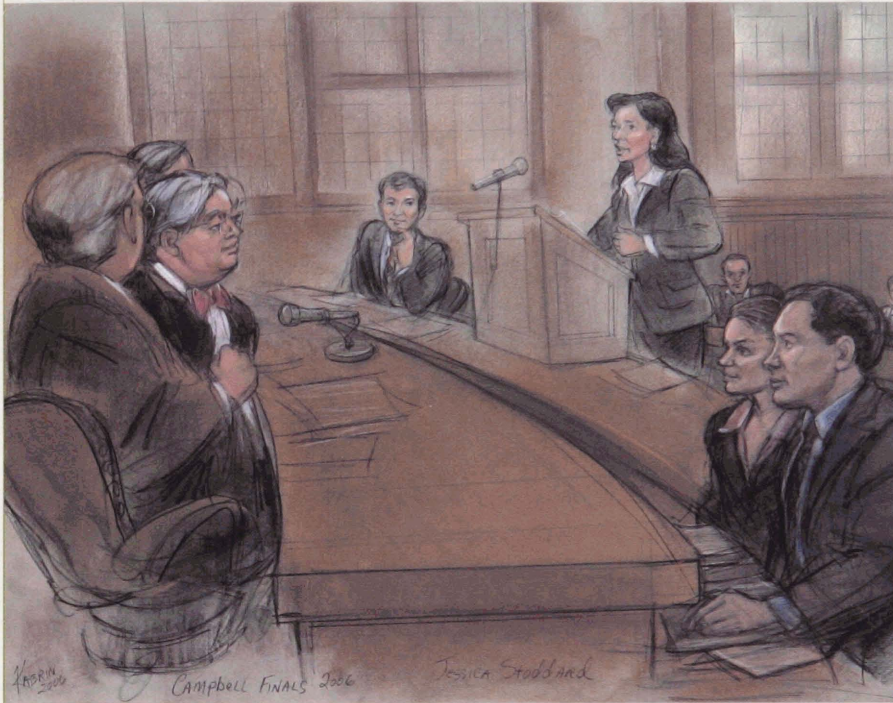
Acting as attorneys for the respondent State of Hutchins, law students Derek M. Milosavljevic and Jessica L. Stoddard argued successfully that the murder conviction in the hypothetical case should stand. The case centered on the appellant's contention that her conviction should be reversed because she had been interrogated without a Miranda warning, evidence was admitted at trial that was obtained as part of a "two-part interrogation," and she had been interrogated without benefit of counsel.

The trial suppressed statements the appellant made before receiving her Miranda warning and also held that the arresting officer's contact with the appellant in jail after her arraignment violated her Sixth Amendment right to counsel. None of these issues was raised on appeal.

Milosavljevic also won the competition's award as best oral advocate. The team of Sarah Bender-Nash and Scott Risner, arguing for the petitioner in the hypothetical case, won for the best brief.



Derek Milosavljevic;
drawing by Carole Kabrin, photograph by Gregory Fox



Judges for the finals were the Hon. Boyce F. Martin of the U.S. Court of Appeals for the Sixth Circuit, acting as chief justice; the Hon. Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit; and the Hon. Stephen Reinhardt, also of the Ninth Circuit Court of Appeals.

Both teams received high praise from the judges. Reaching the finals in the extended competition means winning many preliminary rounds. More than 300 people participated in the competition this academic year, including 92 competitors, 32 faculty judges, and more than 200 Michigan Law graduates who adjudicated preliminary rounds.

This was the 82nd year for the annual competitions, which are supported by Detroit-based Dickinson Wright PLLC and named for a founding member of the firm.



Jessica Stoddard;
drawing by Carole Kabrin, photograph by Gregory Fox



Sarah Bender-Nash;
photograph by Gregory Fox, drawing by Carole Kabrin



Scott Risner;
photograph by Gregory Fox, drawing by Carole Kabrin

Campbell justices enjoy activity-filled week

It's been the tradition for many years that three sitting federal judges preside over the final arguments in the Campbell Moot Court competition—this year it was Judges Alex Kozinski and Stephen Reinhardt of the Ninth Circuit Court of Appeals and Boyce Martin of the Sixth Circuit Court of Appeals—but this year Michigan Law also was fortunate to have the justices here for nearly a week to teach classes, meet with faculty and students, and present programs open to the entire Law School community.

The day before the Campbell Competition finals, the three justices jointly discussed “The State of the Federal Judiciary” in a program sponsored by the student chapter of the American Constitution Society. The jurists’ different judicial philosophies made for a lively, often humorous program: Reagan appointee Kozinski expressed the general thesis that it is better to have Congress make laws—because you can remove members of Congress and change laws—than it is to have courts expand legal interpretations beyond the meaning of the law to fit judges’ consciences.

Carter appointee Reinhardt, on the other hand, said the role of the courts is “to protect people against government” and defend the rights of the minority against the will of the majority. Martin, also a Carter appointee who described himself as “a pragmatist,” noted that there is a significant misbalance of workload among the federal circuits so that “the Ninth Circuit and Sixth Circuit are so different they are about like on

different planets.”

In other activities during their Michigan Law visit, Justices Martin and Reinhardt presented a talk on clerking and clerkships, sponsored by the Office of Career Services; Kozinski and Reinhardt attended a lunchtime program of the Legal Theory Workshop, in which Michigan Law graduate and then-Harvard Law School (now Yale) faculty member Heather Gerken, '94, presented her paper “Dissenting by Deciding;” and all three justices met and dined with Dean Evan H. Caminker, faculty members, and student leaders of the Campbell Moot Court competitions.

Kozinski also was speaker for a program presented by the student chapter of the Federalist Society and each of the justices visited and spoke at Law School classes:

- Kozinski addressed the Constitutional Law class of Adjunct Professor Joan L. Larsen.
- Martin spoke to Associate Dean Stephen Croley’s Civil Procedure class and Professor Christina Whitman’s Federal Courts class; and
- Reinhardt addressed Professor Scott Shapiro’s Constitutional Law class and Professor Rick Hills’ Jurisdiction class.

“It was an exciting and educational week,” Croley reported. “It’s a rare opportunity to have three sitting federal appeals court judges here for several days at the same time and have them so available to students. Students attended the public events enthusiastically, and the judges said they thoroughly enjoyed the chance to meet and mingle with students and faculty.”

KATRINA



Still a need for help

Hurricane Katrina's high winds and high waters have ended, but the swath of destruction the storm sliced through the Gulf Coast has not yet been healed.

Last fall, Michigan Law accepted nine law students from New Orleans so that they could continue their legal studies while their own schools, shut down by storm damage, repaired and prepared to resume operation. In addition, individuals and groups of law students—the Black Law Student Alliance worked with Habitat for Humanity on a project for displaced people during Michigan Law's spring break this year—have done volunteer work in the storm-ravaged area. One group of 14 law students spent the week of their spring break in late February-early March working to alleviate storm suffering in the Gulfport, Mississippi, area. Here, the organizer of the group, who graduated only a few months later, recounts the experience, and two members of the group, who are returning to Michigan Law this fall to continue their studies, reflect on their work with the victims of nature and man in the wake of the storm. Significant support of Michigan Law efforts to assist storm victims came through a generous gift from J. Alan Galbraith, '66.



Spring break: Gulfport, Mississippi By Sarah Bookbinder

The author of the following essay organized and led a group of 14 Michigan Law students who spent their spring break this year working with the Mississippi Center for Justice's (MCJ) new office in Biloxi to help victims of Hurricane Katrina. The Jackson, Mississippi-based MCJ is headed by Michigan Law graduate Martha Bergmark, '73.



On February 28, I waited in the parking lot as 13 Michigan Law students—1Ls, 2Ls, and 3Ls from every region of the country—landed at the tiny airport in Gulfport, Mississippi. The airport itself was an indication of the destruction that Hurricane Katrina had caused in the small city, and of what the week would bring: As the plane pulled up to the gate the students could see that some of the outer walls were still missing and were patched with plywood, and the rental car offices had been relocated to little trailers around the airport. Fallen, rotted branches lined the runways and adjacent parking lots. As I waited anxiously in my rented mini-van to meet these students, who had chosen to spend their spring breaks volunteering here, I was hopeful that they would learn as much from their experience working in the Gulf area as I had over the previous few months.

I myself had arrived a few days earlier and revisited New Orleans, where I had volunteered with two legal organizations over Christmas vacation. Having interned in the South during my 2L summer, I had spent time in courts and prisons in Louisiana just weeks before the storm. After watching the aftermath of the hurricane on the news in Ann Arbor, I was anxious to return to the region and help in any way that I could. In November, I learned of a newly formed informal network of law students called the Student Hurricane Network that was placing other law students with legal organizations in the Gulf area. I joined them for two weeks,

working with the Louisiana Capital Assistance Center and New Orleans Legal Assistance, and then volunteered to serve in a leadership position for the spring semester.

After I returned to Ann Arbor in January, several students approached me and asked me to organize a trip over spring break. Working with fellow law students on the Student Hurricane Network, we decided to volunteer in Mississippi because our spring break coincided with Mardi Gras, a famously unproductive work week in New Orleans.

Like the people of New Orleans, many of the residents of Mississippi are desperately in need of legal assistance for a range of problems including



illegal evictions and rent gouging (because standing property is now such a scarce commodity), family and custody issues that have arisen with family members dispersed all over the country, and denials from FEMA (Federal Emergency Management Agency) for funding and trailers. However, despite all of these new problems, there are only a handful of legal services lawyers left in the Gulf, as many have lost their homes or offices and have relocated away from the coast.

After a series of meetings for all law students, during which I explained the dire need for legal assistance in the Gulf, I faced an overwhelming amount of student interest in volunteering. I garnered support from Assistant Dean Charlotte Johnson, '88, and received a generous grant of funding through Dean Evan Caminker for the trip, which covered our airfare and ground transportation.



On our first night, after renting a few more cars and piling in our luggage, we headed to our home for the week: the First Methodist Church of Gulfport. The church minister had generously offered to allow us to stay on the floors of the Sunday school classrooms for free. This was vital to the success of our trip, as all of the standing hotels and motels in the Gulf housed local residents who had lost their homes. Just around the corner from our church a skeleton of a church that was nearly demolished by the hurricane stood three stories high over a pile of rubble, supported only by a few stubborn beams. Across the street was a dirty beach lined with concrete foundation slabs and shrapnel, though just a few months ago it was a bustling shoreline of beachfront bed and breakfasts, casinos, and seafood restaurants.



Storm Break Gulfport, Mississippi by Sam Kamin

On Monday morning we met with the lawyers with whom we would be working. One was Dita McCarthy, a legal services lawyer who had lost her office in the hurricane and was working out of the new Biloxi office of the Mississippi Center for Justice (MCJ), a Jackson-based legal organization run by Michigan alumna Martha Bergmark, '73.

McCarthy and MCJ attorney Reilly Morse explained how they were trying to document all the damage to low income housing in the Mississippi Gulf Coast so that they can advocate and possibly litigate on behalf of low income renters who lost their homes entirely or are living in unsafe housing conditions because of the storm. Although Mississippi has given both federal and state money to home owners who suffered damage, the state had not yet

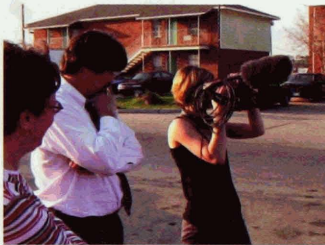
done any survey of renters in similar situations, and therefore had not granted them any of the money that had been specifically earmarked for housing.

Our task was to attempt to visit all the low income housing in the cities that make up the Mississippi Gulf Coast, including Gulfport, Long Beach, Pass Christian, Biloxi, Ocean Springs, and Pascagoula. We were assigned to document the condition of the housing, to interview people about whether their rents had been gouged since the storm or they had been threatened with eviction, and to inform them of their options for legal assistance.

We gathered maps and directions and split up into three groups, each headed to a different city. My group's first destination was the Edgewood housing project in Gulfport.

The Gulfport we had seen until then was a middle class, predominately white community that had suffered some tragic losses but was still functioning. But as we drove through the back streets of the city, away from the formerly upscale beachfront, we began to see the landscape change to abandoned trailers and partially destroyed shotgun houses, sitting alone in overgrown, decaying fields. The few people we saw were African American. Indeed, over the next few days of interviews, we hardly saw any white faces.

Edgewood itself is what we would soon learn is a typical southern Mississippi housing project—several three story brick buildings arranged on a lawn. But here the lawns were covered in rotting garbage—beer cans, dirty diapers, plastic bags, and rotted kitchen



Like Ground Zero
for miles after the storm

appliances—piled high all over the dead grass. Though blue tarps covered many of the roofs, some had enormous, exposed holes. The windows were broken and we could see that the walls inside were covered in thick, black mold. It looked and smelled to us like it should have been condemned.

But, as we parked our car, several residents came out of their apartments, and approached us eagerly. There were senior citizens, teenagers, and toddlers still living there, passing the days by sitting on the stairs and wondering what to do next. Although they had been forced to pay full rent for a few months after the storm despite the severe damage to their homes, they were no longer paying any rent, and had been told to leave, but they had no place to go. There were truly no housing options for these people and so they were staying in these disgusting apartments.

• • •

Edgewood was a sobering introduction to the situation in the region. Our experiences varied: In some cities we found that about 80 percent of the low income housing no longer exists at all. In other cities, people were living in squalor and still being charged for rent, while some, like the Edgewood residents, had been told to leave but had no place to go. In the most frightening complex that we visited, which was in U.S. Senator Trent Lott's hometown of Pascagoula, all of the 200 apartments had been abandoned except for about 20 residents who remained. All of the female residents were sleeping in the top floor apartments, despite the fact that the roofs had blown off and fully exposed these women to rain, because

women had systematically been raped in the bottom floor apartments after most units had been abandoned.

Despite the shocking conditions and hardships we encountered, people were incredibly open and friendly toward us. Many of them had not had any visitors since the storm and were eager to show us the gaping holes in their ceilings or their backyards soaked with raw sewage.

We also heard some amazing stories. Some people stayed in their flooded apartments during the storm because they had no means of evacuation. Others hadn't seen their children since the storm because the children had relocated with their other parent and there was no way to enforce custody rules now. But the most common story was the lack of attention from anyone who could help and the hopeless lack of options for the future.

• • •

In a short week, I believe the 14 of us did make a small difference in



these communities. We visited 110 low-income housing locations—every one on our list. The lawyers now have a complete and accurate picture of the low-income housing situation in the region, and can use this evidence to demand the resources and attention that these residents deserve. We also gave the residents a chance to tell their stories to a patient and interested audience, and to learn more about how they could get the specific help they needed.

But as with most community service projects, my group got at least as much out of the experience as the people we were trying to serve. Many of the students had never set foot inside of a housing project or seen first hand the realities of a four-person legal services

office, and at the end of each day many of our dinner conversations focused on the gross disparity in resources and the racial segregation of the communities.

At the same time, we met some of the most dedicated, tireless lawyers, who continue to do their best to represent as many people as possible, despite the seemingly infinite need for help. I believe that being exposed to such a stark example of both the power of the law and the lack of legal resources for the poor will affect the practice of law for all of these students, no matter whether they pursue careers in the public or private sectors.

In the short term, there is already talk among many of the students of returning to the region next year, as it is clear that many of these problems will remain for years to come. I myself graduated last May, and though I am originally from the Northeast, I now intend to practice law in the South. There are simply too many wonderful people there, and too much good legal work to be done, to turn away now.

Sarah Bookbinder, '06, is originally from Boston and attended Barnard College in New York City. After college she remained in New York, where she worked for the city as an investigator of police misconduct. Last summer she interned at the Southern Center for Human Rights in Atlanta, and is now clerking for Federal Judge John T. Nixon in the Middle District of Tennessee. In May she was given the Law School's Jane L. Mixer Memorial Award, an annual award presented to students who have made the greatest contribution to activities designed to advance the cause of social justice.



Like Ground Zero— for mile after mile after mile

By Andrew T. Wakefield

Day 1: Flying into Gulfport, one can see some piles of debris, blue plastic roofs, and even some small areas still flooded. I arrived a few hours before the rest of the U-M group, and while waiting I struck up a conversation with a parking attendant on duty. He told me that he rode out Hurricane Katrina from his trailer just north of Gulfport and although he “only” had about three feet worth of water damage, he knew a lot of people whose homes were destroyed, as well as people who lost their lives. Many people left before Katrina hit, but many others stayed and faced the inevitable, not realizing just how big and devastating Katrina would become.

Driving through Gulfport to the church that will be our home for the next week, we see stores, restaurants, churches, and offices open, lots of traffic, and people out and about, all of which seem to hide the devastation. Yet we also pass large piles of debris, completely destroyed homes, others still standing with the blue FEMA plastic roofs, mounds of trees and brush uprooted, and boarded up buildings. There’s nothing to say about the destruction, and I found that we all reacted with silence.

This essay is excerpted from the report the author wrote to describe his experiences working in the Gulfport, Mississippi, area during his spring break from Michigan Law.



I'm really excited for the coming week and look forward to using my legal education for something "real", but I can only imagine what we'll actually witness through our work with the Mississippi Center for Justice.

Mid-week

We've now been working on the Mississippi Center for Justice's housing survey project for a few days, and I'm still in awe of the destruction around us, as we drive from complex to complex through southern Mississippi. There is remarkable difference in the current condition of many of the apartment complexes we have encountered. While some sustained tremendous damage, such as a broken roof from wind and falling trees, many feet of flooding, and broken windows, they are almost completely repaired and occupied by tenants; other complexes, which may have sustained the same levels of damage, still look like they haven't been



touched since the hurricane ended, even though people continue to live in them. I saw a woman's apartment in one complex that was infected with ants and roaches, especially in the kitchen, and still had the same moldy carpeting that had been under water when the unit flooded. She pointed out to me that her landlord had repainted her living room walls, yet you could still see the bulging water marks. This woman, as well as the other tenants of the complex, was poor and black, and it seems as though most of the apartments we've seen in need of the most work are those occupied by poor African Americans.

Driving along highway 90 from Cadet Point to Gulfport, I was amazed by the enormity of the destruction along the entire route. And this is six months after the hurricane—I can't even imagine what it looked like the morning after. All I could think of was that if you were to stop on the highway and look at perhaps a block's worth of land, this must be comparable to what Ground Zero looked like right after the World Trade Center attacks. Yet, here, this block's worth of destruction extends mile after mile after mile. And after a while, I found myself becoming desensitized because it all looks the same—block after block of severely damaged buildings, large piles of debris, and torn and twisted trees and brush.

Despite the seeming hopelessness, I'm inspired by residents who, although they have suffered more loss than I may ever know, do what they can to better their condition, rather than simply wait for help that seemingly will never come. One such resident is Ms. Prince, whom I met at an apartment complex

in which probably only half of the units were habitable, while many others were boarded up and had severe roof damage. Ms. Prince's unit has a huge hole in the ceiling outside of its front door, lacks heating or air conditioning, and has moldy carpeting. She told me that although her landlord has repaired many of the problems of her neighbors' units, she feels that her landlord has purposely refused to fix her unit's problems because she is a foreigner. Ms. Prince also said she was denied any financial assistance from FEMA, has been forced to pay higher rent since Katrina, and has not been able to leave because she has no means of transportation since her car was destroyed by the storm. Yet she has worked to repair and clean up her unit, and while I was speaking with her she was bleaching her carpet to remove the mold. She has filled her apartment with beautiful flowers, albeit it plastic flowers, which add wonderful color and character to her unit. She said people like coming over to her place because of her flowers, and it was clear that she takes tremendous pride in them.

Final reflection

Listening is so important but it also felt useless at times. The people we met need real help—they need repaired or at least sanitary homes, new furniture and appliances, financial resources, and jobs. One woman told me that she and her boyfriend each worked full time, but since they could only find minimum wage jobs, their combined income was hardly enough to meet the increased rent of their subsidized apartment after Katrina. This woman seems to do everything right—she works, she raises her

kids as well as she can, she has faith, and she has worked really hard to clean up her home. Yet, Katrina took everything from her and she needs real help. It was humbling to hear her survival story and daily struggles, and I found myself feeling so angry when she pointed out the large hole in the part of the roof above her son's bedroom, which had only been covered with a blue FEMA plastic cover in the past week. This woman deserves more than what she has, and she deserves more than what her country has given her to rebuild her life.

Andrew T. Wakefield begins his second year of legal studies this fall. He earned his bachelor's degree at Albion College.



'I am amazed by all we have done and seen'

By Elizabeth W. Wiegman

The following reflections are excerpted from a journal the author kept regarding her work in the Gulfport, Mississippi, area during her spring break from Michigan Law.



I left the South nine months ago, before tragedy, destruction, and mismanagement sent my adopted homeland of Louisiana to the forefront of everyone's mind. I watched CNN coverage of the hurricanes as I moved into my dorm room in the Lawyers Club, and I ached to return to Louisiana. I knew there was nothing I could do if I were there, but I felt even more helpless watching from 1,200 miles away.

I returned to the South for the first time yesterday. I didn't know what to expect. They say you can't go home again, but for awhile I felt that I had. Baton Rouge was relatively unscathed by Katrina, the debris of a Mardi Gras parade littered the streets, and my friends welcomed me back as if I had never been gone at all. Slowly, signs of the subtle but pervasive influence of the storms revealed themselves: a cab driver from New Orleans who swore he would not return, float slogans making jokes about FEMA, talk of whether the crowds were "coming back" for Mardi Gras.

As I drove the two-hour stretch from Baton Rouge to Gulfport, Mississippi, I began to see physical signs of the storm's wrath. Interstate 12 runs parallel to the coast, just a short distance from the Gulf, and I saw large trees that still lay where they had fallen in the wooded areas to the side of the highway, and towering light posts that used to illuminate the interstate now laying on their sides in the grass.

I was the 11th of our group of 14 to arrive in Gulfport. We convened at a Mexican restaurant, and over tortilla chips and enchiladas, we planned for the week. We bought some staple groceries

at the local Wal-Mart, and set up two Sunday school rooms (one for the boys; one for the girls) to be our home away from home.

3/1/06 Time seems to be alternately creeping and flying by. I am amazed by all we have done and seen in three days in Mississippi. We have visited countless apartment buildings, in every condition from the pristinely perfect garden apartments to the complexes that are indicated only by the presence of a concrete slab amidst the rubble. The most disturbing are those in between—complexes that are not inhabitable, yet inhabited. We have seen an apartment without a roof, in which four family members were crowded into a small living room, because the bedrooms were exposed to the elements. We have seen apartments infested with mold and rats, driveways with potholes large enough to fit a fair-sized child, windows broken and boarded up. We have smelled the migraine-inducing stench of sodden and decaying buildings and raw sewage. We visited an apartment ghost town in which a 90-unit complex had about nine lonely inhabitants, surrounded by gutted apartments, trying to eke out a life (while still paying full-price rent) in the tattered remains of their homes.

I worry that I am already becoming desensitized to the destruction around us here in Mississippi. When we drive through streets of rubble and the remains of homes and businesses, I look—I cannot avert my eyes—but although I am saddened, I am not as shocked as I was two days ago. The destruction has started to feel normal because it is ubiquitous.

3/18/06 Now that I have been back in Michigan for two weeks, the true breadth of our group's mission has become apparent. It was not just to survey and gather data to help the Mississippi Center for Justice, although that made a big difference for the Center and its clients. It wasn't only our role as advocates and listeners to those who had suffered and needed to tell their stories to someone—anyone—who was on their side, although I was glad to be able to help fill this human and emotional need as well. Another part of our mission had little to do with changing things in Mississippi, and much to do with changing ourselves. The 14 Michigan Law students who traveled to Gulfport gained an understanding that one cannot achieve through television and newspaper reports. We thought we knew where we were going, but we didn't understand it until we saw the breadth of destruction, the emotion, the hope and continuing despair, the normalcy out of chaos, the uncertainty and upheaval. We return to Michigan with a new understanding—we didn't know where we were going, but now we begin to understand where we have been. The last, and possibly most important part of our mission is to share that understanding with others, and to spread the word about the urgent need for legal assistance in the Gulf. I hope that, through these letters, I have begun to do that.

Elizabeth W. Wiegman begins her second year of legal studies this fall. She earned her bachelor's degree at Indiana University-Bloomington.



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Scholar: U.S. Constitution created world's first continental democracy

Buffered by ocean from the Old World, English colonists in North America created a first-of-its-kind democracy, a constitutional scholar told his Michigan Law audience last winter. But the "3000-mile moat" known as the Atlantic Ocean that provided protective isolation for the United States' first 200 years no longer is adequate defense against international threats, he warned.

The new U.S. Constitution that won approval in 1787 created "a genuine continental democracy," Yale Law School Professor Akhil Reed Amar explained to a packed classroom of students who had flocked to hear him late on a Friday afternoon. "Nothing like this had ever existed on the planet before. Maryland was as independent of Massachusetts in 1760 as India is from Ireland. The Articles of Confederation created [only] a treaty, or alliance. Think 'United Nations' today."

And the Preamble, little studied today and rarely mentioned in court decisions, is an integral part of the Constitution that establishes "We the people" as the primary holders of power, Amar said. He postulated an inverted pyramid of power, with "the people" at the widest part, and Congress, the executive branch, and finally the judicial branch in descending order, the same order in which they appear in Articles I, II, and III of the Constitution.

Introduced as "a public intellectual in the best sense" by his former student Stephen Croley, Michigan Law's associate dean for academic affairs, Amar visited the Law School in conjunction with publication of his newest book, *America's Constitution: A Biography* (Random House, 2005).

Originally, the oceans protected the new and weak infant United States, according to Amar, "but that idea doesn't work today. . . . The idea that we can be a world unto ourselves will not work for the next 200 years, with threats like Asian flu and international terrorism."

The original Constitution has been changed through amendments "pushed by liberal reformers of their day," he added.

Where, he was asked, will the ideas for the next 200 years come from?

"You," he replied.

Through workers' eyes: immigration and social justice

José L. Oliva tells an enlightening story of how the Chicago-based Interfaith Workers Rights Center that he directs came to be. Back in 2002, he and a few others published a workers' manual that for the first time drew together between two covers the bewildering array of employment, health, safety, and other regulations that control and protect workers' lives.

Previously, explained the Guatemalan-born Oliva, workers who tried to determine what their rights were and how to exercise them were shunted among government offices like dust in the wind. Each office worked only in its own specialty, and seldom, if ever, did a worker find someone who knew anything about what different departments and their offices did. For immigrant workers, documented or not, the runaround was even more disquieting.

"Within 24 hours [of the appearance of their workers' rights manual] we were getting a flood of telephone calls regarding this," reported Oliva, who also is coordinator of the Interfaith Workers Justice National Workers' Centers Network. "We realized that this was bigger than what the law alone can address."

For example, he said, there's no law that requires health coverage for workers. And unions, like other organizations, have to husband their resources, so what union would want to invest in organizing a restaurant of 20 employees?

Today, the Interfaith Workers Rights Center tackles these and other issues on behalf of workers, using tools ranging from telephone calls, conferences, and negotiation, to nudging government



Conference organizer/law student Jennifer Hill of Michigan Law's Labor Law Roundtable chats with panelist Fran Ansley during the opening section of the conference "Immigrant Workers and Human Rights," held at the Law School and the School of Social Work early this year. Also shown are panelist José L. Oliva and labor scholar Ellen Dannin, '78. (See story on Dannin on page 55.)

agencies to act, filing legal charges, and entering litigation.

Oliva was one of four panelists who opened the conference "Organizing Migrant and Immigrant Workers" at the Law School with the panel discussion "Globalization, Immigrant Rights and the Law: Stories from the Front Lines." Others on the panel included Fordham Law School Professor Jennifer Gordon; Benjamin Davis, the AFL-CIO Solidarity Center's Mexico-based field representative; and University of Tennessee College of Law Professor Fran Ansley.

Conference participants gathered for a reception at the Lawyers Club following this opening afternoon panel, then shifted to the School of Social Work's Education Conference Center for the second, concluding day of the program. The multiple locations reflected the widespread sponsorship of the conference, whose organization was led by the Law School student group Labor Law Roundtable and the University's student group Migrant and Immigrants Rights Awareness. The conference was the first of three annual programs designed to

address immigration and social justice.

In addition to the Labor Law Roundtable, Law School-associated sponsors included Michigan Law itself and its Office of Public Service (Assistant Dean for Public Service MaryAnn Sarosi, '87, officially opened the conference and welcomed participants), the Latino Law Students Association, the International Law Students Society, the Law School chapter of the ACLU, the student chapter of the National Lawyers Guild, and the American Constitution Society.

The second day's program's included a talk by Farm Labor Organizing Committee (FLOC) President Baldemar Velasquez on "FLOC's New Initiatives in North Carolina," followed by a panel discussion on "Agriculture and Food Processing Sectors," and a talk by Fordham Law School's Gordon on "The Promise and Experience of Workers' Centers" followed by a panel discussion on "Service and Construction Sectors." The day's program also included small breakout sessions and a reconvening of all participants to discuss ideas developed in the smaller gatherings.



SENIOR DAY 2006

Nobel laureate to graduates: 'Be kind to each other'

Nobel laureate Shirin Ebadi delivered a simple and profound message when she addressed Michigan Law graduates and their families and friends at Senior Day ceremonies in May:

"Be kind to each other," said Ebadi, who was awarded the Nobel Peace Prize in 2003 for her human rights work in her native Iran. "This is the heart of happiness. Be happy."

It was a surprising prescription that reinforced her commitment to equality and human rights. Indeed, as Dean Evan Caminker said in introducing Ebadi, she "has undergone more adversity in a decade than most of us will experience in our lives, but has persevered."

Ebadi's golden rule approach has not stopped her from fighting against injustice: as the first woman judge in Iran, then, after Iran's 1979 Islamic Revolution removed her and all other women judges from the bench, as a lawyer representing the family of serial murder victims and journalists who ran afoul of restrictive laws, and as the proponent of the law that Iran's Islamic Consultative Assembly passed in 2002 outlawing all forms of violence against children.

"It is my pleasure to participate in your commencement ceremony," said Ebadi, speaking in Farsi through translator and long-time friend Shirin Ershadi. "I congratulate you on your graduation. I hope that you can give back to your country the knowledge that you have acquired."

"Peace," she continued, "is a basic human right. We all want to live in a society free from violence, but not every silence should be deemed peace. The silence that prevails in a dictatorship . . . may be broken sooner or later and may not result in everyone's benefit. Like the silence that prevails today in so many parts of the world."

"Peace is built on two principles, democracy and justice," she explained. "Obviously democracy cannot be brought to people with cluster bombs. Neither is it merchandise to be given to a victor. Democracy is a culture that must come from within a society."

"The other principle of peace is justice. Justice has a dynamic meaning with a specific dimension. . . . A human being who doesn't have the opportunity to get an education . . . may become hopeless, riot, and create an insurrection in society."

"Peace is not just the absence of war. Peace is living in a society where equality, brotherhood, and friendship prevail."

Ebadi also addressed the issue of using religion as a cover for injustice or terror:

"Let us not attribute the mistakes of human beings to their





Nobel laureate Shirin Ebadi, center, with University of Michigan Regent Katherine E. White and Dean Evan Caminker.

religion. If a few Muslims have used the name of Islam and brought terror, be assured that Islam has been misused. Islam objects to terror and violence. . . . The religions of the world share the same roots. Let's talk about the similarities, not the differences."

In his remarks to graduates, Caminker encouraged them "to consider yourselves as having an obligation to serve the public."

"You've learned a tremendous amount, in fact more than you realize," explained Caminker, who noted that his first official act as dean was to welcome this class three years ago as its members began their legal studies. Learning to "think like a lawyer" by acquiring the skill of openly and completely examining opposing arguments "does not require you to abandon the passion and commitments that brought you to law school in the first place," Caminker noted.

"I hope that you will find some way to make a difference in our society—to paraphrase Martin Luther King—to be a headlight rather than a taillight, a voice rather than an echo."

Other speakers included:

- U-M Regent Katherine E. White, who congratulated the graduates and expressed thanks to Michigan Law's faculty and staff: "Your effort is much appreciated and you are valued."
- Joshua A Deahl, '06, elected by his fellow graduating students to address them: "I genuinely enjoyed my three years here," Deahl said in the kind of humor-laced remarks that have become traditional for this occasion. "Yes, I'm a recovering law student, and I'm happy to report it's been nine days since my last exam and I'll never take one again—except for the bar. Congratulations to the class of 2006."
- Incoming Law School Student Senate President Grace M. Lee, who recalled that Class of 2006 members she met when she visited the Law School as a potential student were "the primary reason I came here. . . . We were lucky to have you and you will be truly missed."

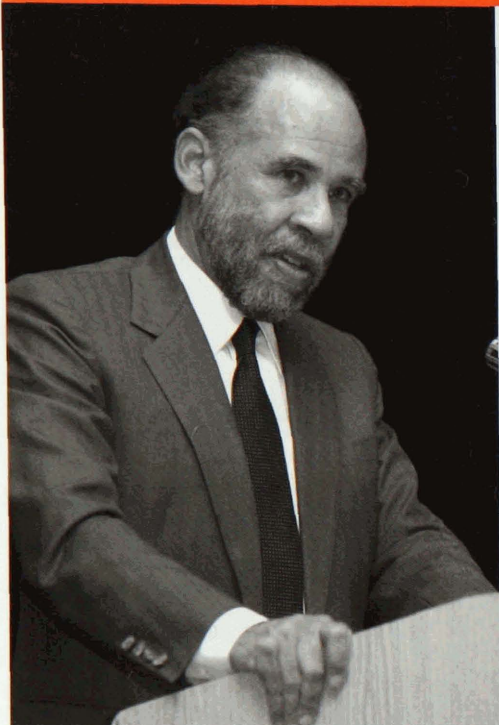
Nobel laureate Shirin Ebadi

Nobel laureate Shirin Ebadi won the Nobel Peace Prize in 2003 "for her efforts for democracy and human rights," according to the Norwegian Nobel Committee that awarded the prize.

"Ebadi is a conscious Moslem," the committee explained. "She sees no conflict between Islam and fundamental human rights. It is important to her that the dialogue between the different cultures and religions of the world should take as its point of departure their shared values. It is a pleasure for the Norwegian Nobel Committee to award the Peace Prize to a woman who is part of the Moslem world, and of whom that world can be proud—along with all who fight for human rights wherever they live."

Throughout her professional life, Ebadi has been guided by her commitment to the rule of law and human rights:

- In 1975, after serving in several positions within Iran's Justice Department, she became the country's first woman judge.
- When the Islamic Revolution of 1979 removed all women from the Iranian bench, she was assigned to clerk in her own court and responded by successfully seeking retirement.
- "Since the Bar Association had remained closed for some time since the revolution and was being managed by the judiciary, I was, in effect, housebound for many years," she said in her autobiography for the Nobel Committee. "Finally, in 1992, I succeeded in obtaining a lawyer's license and set up my own practice."
- During the time she could not practice she wrote several books, among them *The Rights of the Child: A Study in the Legal Aspects of Children's Rights in Iran*, and books on medical, copyright, and architectural law. Since establishing her practice in Tehran, she has continued to write; among her later books are *The Rights of Refugees, History and Documentation of Human Rights in Iran, The Rights of Women*, and *Iran Awakening: A Memoir of Revolution and Hope*, the latter published in May this year.



Keynote speaker John Payton

Carpenter banquet speaker: 'We have to fight this fight over and over and over again'

Civil rights advance slowly, according to the veteran attorney who delivered the keynote for the 28th annual Alden J. "Butch" Carpenter Memorial Scholarship Banquet early this year. And, he warned, "there are no permanent victories."

John Payton, whom Dean Evan Caminker introduced as "one of the leading trial lawyers and civil rights litigators in the country," highlighted many of the courtroom stops that preceded the U.S. Supreme Court's decision to uphold Michigan Law's admissions policy in 2003—and warned that the victory is "certainly not the last chapter" in the legal record of equal opportunity.

African American law students have played an important part in the civil rights struggle, said Payton, a Washington, D.C.-based partner in WilmerHale and a major architect of U-M and Michigan Law's legal defenses of their admissions policies. He noted, for example:

- The 1936 decision of the Maryland Court of Appeals in *Pearson v. Murray* that an African American candidate must be admitted to the University of Maryland Law School because it was the only state-supported law school within his state of residence.
- The 1938 U.S. Supreme Court decision in *Gaines v. Canada* overruling a Missouri court and ordering that an African American candidate be admitted to the University of Missouri Law School because the state's offer to pay his tuition at a school outside of Missouri denied him equal protection of the laws.
- The Supreme Court's 1950 *Sweatt v. Painter* decision that the University of Texas Law School must admit an African American candidate because the state's alternative of providing separate but

equal facilities for black law students, facilities which were to open the year after Sweatt's denial of admission to UT, violated the Equal Protection Clause.

- The Supreme Court's decision in 1954 in *Brown v. Board of Education* that separate educational facilities are inherently unequal. A member of the Court by this time, Thurgood Marshall previously had participated in the *Pearson* and *Sweatt* cases as an attorney on behalf of the students seeking admission.

- *Grutter v. Bollinger*, in which the Court ruled in 2003 that race could be used as one of many factors in bringing diversity to higher education. Payton outlined the successful strategy that was developed for the case to emphasize the value of diversity to education.

- "And now we have Ward Connerly and the so-called Michigan Civil Rights Initiative," Payton said of the effort to pass an amendment to the Michigan constitution that forbids the use of race in determining admission to colleges or universities in Michigan, as well as in other fields. Connerly, then a regent of the University of California system, led that state's effort to end affirmative action in higher education.

"We have to fight this fight over and over and over again," Payton said. "There are no permanent victories."

The *Grutter* decision was a close 5-4, Payton, noted, and the makeup of the Court has changed since the decision was handed down three years ago. "Education still is unequal and the problems of blacks are mounting," he continued. Hurricane Katrina, which devastated the Gulf Coast in 2005, showed that "the conjunction of race and poverty is not an anomaly," he noted. There are twice as many black women in U.S. colleges and



Alden J. "Butch" Carpenter Scholarship winners, from left, Maya Simmons, Ian Labitue, and Tanya Forde-Chandler

universities as there are men, Detroit is more segregated than any city in the South, and "right now 18-year-olds do not know each other across racial lines," he reported.

These problems, he concluded, are "challenges to the democracy that we aspire to be."

In other activities at this year's banquet:

- Law students Maya Simmons, Ian Labitue, and Tanya Forde-Chandler received a total of \$35,000 in Butch Carpenter scholarship awards;
- Assistant Dean for Admissions Sarah Zearfoss, '88, was named the BLSA Faculty Member of the Year; and
- Judith A. Cothorn was named BLSA Student of the Year.

Sponsored each year by the Black Law Students Alliance (BLSA), the Alden J. "Butch" Carpenter Memorial Scholarship Banquet commemorates Carpenter, a law student who inspired others to use their skills to help communities in need but died suddenly before graduating.

Michigan Law clinic aids Native Americans in suit for healthcare

Students working in Michigan Law's Clinical Law Program under the supervision of Clinical Assistant Professor David Santacroce have assisted plaintiffs in filing a class action suit in federal district court in Detroit seeking healthcare for some 40,000 American Indians living in the Detroit area.

The suit contends that federal obligations to provide healthcare to American Indian populations have not been met, especially in urban settings such as Detroit, where the suit claims as many as 27,000 native Americans lack health insurance. Most American Indians now live in urban areas, the suit says.

Such lapses, the suit argues, account for unsettling statistics: American Indians are 650 percent more likely to die from tuberculosis, 420 percent more likely to die from diabetes, and 71 percent more likely to die from pneumonia or influenza than the rest of the U.S. population. Similar outcomes also apply to heart disease and cancer rates among native Americans, the suit charges.

Named defendants include the U.S. Department of Health and Human Services and HHS Secretary Michael O. Leavitt, and the Indian Health Service and IHS Director Charles W. Grim.

Santacroce worked with Michigan Law students for nearly 20 months researching and preparing the filing. He previously had worked with clinic students on prisoners' civil rights and healthcare issues.



Sir Francis Jacobs addressing the International Law Workshop

Sir Francis Jacobs: Europe's move to unity will continue

After nearly 20 years as advocate general at the European Court of Justice (ECJ), Sir Francis Jacobs has an insider's ear to the transformation that Europe has been undergoing since far-sighted leaders established the European Coal and Steel Community in the 1950s. Jacobs, who retired from his AG position last December, offered a seamless and sensitive accounting of Europe's continuing evolution into an economic, and perhaps military, powerhouse on the world stage in a public lecture he delivered during his eight-day visit to Michigan Law last winter as a DeRoy Fellow.

Europe's unifying achievements have been substantial, reported Jacobs, now a law professor at King's College, London, including:

- Establishment of a single market;
- Free movement of people within the European Union;
- Possibilities for adopting common positions, especially on economic issues;
- Common programs in social policy,

environmental issues, general equality, and human rights.

- Peace;
- Economic progress; and
- Closer relations of the peoples of Europe.

But, Jacobs warned, there also are challenges for the future, among them:

- Enlargement of the European Community with the entry of eastern European countries formerly within the Soviet orbit and Turkey makes for "repercussions that will be felt for many years." The culture of the enlarged European Community will become more divergent.
- Having a greater number of member states will make it more difficult to agree on common positions.
- The number of languages used within the Community will increase. It is now up to 20.
- The enlargement and the increase in cultural and linguistic diversity will further strain the fragile political legitimacy—only a minority of Europe's population actually supports the Community—that the European Community enjoys.
- The greater number of institutions involved in the European Community will further complicate the case law that helps to bind together the components of the Community.

"The most important message we can draw [from the last 50 years] is the transformation of the treaty into a form of constitution. That is one of the most significant of all developments," he concluded. "The treaty [that creates the European Community] doesn't talk of a constitution. The [European Court of Justice] did that in its case law. It is the court that transformed the treaty by its case law."

"The most important message we can draw [from the last 50 years] is the transformation of the treaty into a form of constitution. That is one of the most significant of all developments," he concluded. "The treaty [that creates the European Community] doesn't talk of a constitution. The [European Court of Justice] did that in its case law. It is the court that transformed the treaty by its case law."

During his stay, Jacobs also served as guest lecturer for Professor Daniel Halberstam's European Legal Order and Federalism classes, attended talks by Law Professors Nico Howson and Carl E. Schneider, '79, and Ambassador John Bruton, head of the European Commission Delegation to the United States, and enjoyed a concert by the Vienna Philharmonic.

Jacobs has been "probably the single most provocative and influential member of the Court over the past decade" and "a highly respected scholar of European law," according to Assistant Dean for International Programs Virginia Gordan. Jacobs is the author of several books on European law, including *The European Convention on Human Rights* (Oxford University Press), and is general editor of the *Oxford EC Law Library* and founding editor of the *Yearbook of European Law* (Oxford University Press).

Jacobs' address to the International Law Workshop was part of ILW's semester-long series of talks on topics of international concern by leaders in the field, including:

- Susan Weld, former general counsel of the Congressional Executive Commission on China, speaking on "Law and Rights in China: The Work of the Congressional Executive Committee on China."
- Susan E. Rice, senior fellow in foreign policy studies, Global Economy and Development Center, Washington, D.C., "The National Security Implications of Global Poverty."
- Makau Mutua, law professor and director of the Human Rights Center, State University of New York at Buffalo School of Law, "The Spread of the Liberal

Constitution in Africa: The Illusion of Political Participation."

- Michigan Law Professor Vikramaditya S. Khanna, "The Development of Corporate Governance Reform in India."
- George Nolte, professor of law, Institute for International Law, Faculty of Law, University of Munich, "Just a Little Help for My Friend? Europe's Assistance for America's War on Terror and International Law."
- Oona A. Hathaway, associate professor, Yale Law School, "Strong States, Strong World: Why International Law Succeeds and Fails and What We Should Do About it."
- Justice Itsuo Sonobe, former justice of the Supreme Court of Japan and member of the Advisory Panel on the Imperial House Law, "The Queen of Japan: A Monarchy Reinvented and Reinforced" (co-sponsored with the U-M Center for Japanese Studies).
- Ruti G. Teitel, Ernst C. Stiefel Professor of Comparative Law, New York Law School, "Humanity's Law: Rule of Law for a Global Politics."



Examining ethics, civility, and professionalism

You're an attorney who has found an "irrelevant" document in a file whose other materials neatly fit your opponent's discovery request. Do you remove the misfit document? Are you obligated to tell your legal opponent?

Or, you've settled several cases on a similar issue, and then discover in another case a document that was innocently overlooked in the previous cases but most likely would have affected their settlements if its existence had been known. Are you obligated to tell the parties in those earlier cases of your finding? Should you notify any court that oversees any of the settlements?

These are the kinds of real life dilemmas that Detroit-based attorneys James. P. Feeney, '71, of Dykema Gossett, and Dan Scully, of Clark Hill PLC, posed in the third and final program of the "Experts in Ethics, Civility, and Professionalism" series presented during the past academic year by Michigan Law's Office of Student Services.

The series, featuring programs conducted by members of the American College of Trial Lawyers, presented to students real life professional dilemmas through the experiences of practicing attorneys known as some of the best in their respective fields, explained Assistant Dean for Student Affairs David H. Baum, '89.

Feeney and Scully, speaking from the point of view of representing a large corporation in a product liability case, noted that worldwide corporations like General Motors and Ford oversee billions of documents and cannot satisfy a broad brush discovery request for "any and all" documents relating to any single product or activity.

There need not be any malice or willful refusal to comply for this to be the case, the attorneys explained. Global companies simply have too many documents

scattered over too many locations to produce all documents that relate to a specific product. This fact raises many questions about attorney behavior, among them:

- What is a "reasonable" effort to find the relevant documents?
- If you are an outside counsel working with a corporate lawyer as your "client," should you accept that lawyer's word at face value that he has done a reasonable search?
- If you know of a facility whose work you believe may bear on your case, but your client and its lawyer have not searched documents from that facility, should you urge them to expand their search to include that facility?

"There are no right or wrong answers here," Feeney explained as students struggled to answer these and other questions. But you have to protect yourself while zealously representing your client, Feeney advised. Has your client been cited for inadequate discovery content, for instance? "At some point you have to realize your own title can be at stake," he said. "Don't let yourself get manipulated or led astray."

And "get to know your opponent," Scully recommended. When opposing attorneys know each other, practice civility in their relations with each other, and respect each other, it's much easier to work out issues of discovery or other parts of the legal process.

"It's a whole lot better to negotiate questions of discovery than to go to court with them," noted Feeney.

The series' previous two programs featured three Detroit-based attorneys and American College of Trial Lawyers members from Butzel Long PC in Detroit: David DuMouchel, Phil Kessler, and Laurie Michelson.



South African Constitutional Court Judge Yvonne Mokgoro addresses a Martin Luther King Day audience at Michigan Law.

South African Judge: U.S., South Africa approach equality differently

Both the U.S. and South African constitutions embody ideas of equality, but the documents lay out very different government roles for moving society toward that goal, according to the Constitutional Court of South Africa judge who delivered the Law School's Martin Luther King Day lecture in January.

In the United States, people are guaranteed equal civil and political rights, but courts have not interpreted the Constitution in a way that forces the government actively to work toward providing equal access to the exercise of those rights, according to the speaker, Yvonne Mokgoro, who co-taught a course on the South African Constitution at the Law School during the winter term.

In contrast, Mokgoro explained, the South African constitution, adopted more than 200 years later than its U.S. counterpart, obligates the government to work toward that equality and to consider historical inequities in making its decisions.

"American courts today embrace a negative concept of formal equality which essentially levels the field for differently empowered groups to derive equal benefit to available rights," said Mokgoro. "That interpretation of equality, unlike the South African approach, does not depend on examining a socio-economic context; it merely prevents allocations of benefits on the basis of a given characteristic, regardless of whether the benefits aim at redressing past disadvantage."

"It was this interpretation of equality," she continued, "that enabled the United States Supreme Court to decide *Plessy v. Ferguson*, in which it was held that the states could impose racial segregation so long as they provided 'separate but equal' facilities. The Court upheld the

"separate but equal" doctrine for more than 50 years, despite numerous cases in which it found that the segregated facilities already provided by the states were almost never equal, until 1954, when it finally overruled *Plessy* in *Brown v. Board of Education of Topeka*. In the half century since then, the United States Supreme Court has extended the reach of the equal protection clause to other historically disadvantaged groups, such as women and foreign nations.

"The United States Supreme Court, however, has continued to hold that the clause does not allow for courts to second-guess the wisdom of legislative decisions in the area of economic regulation, even where state regulation may be necessary because of entrenched patterns of historical and/or social disadvantage."

As a result, U.S. courts weigh in on social policy decisions only when those decisions infringe on civil and political rights, according to Mokgoro. Judicial restraint of government action is considered obstructive of the government's discretion to provide for its people.

But in South Africa's constitution, "equality before the law is guaranteed under Section 9 of the Bill of Rights," she continued. "Notable is that the equality provision includes not only an anti-discrimination guarantee, but also a positive duty is placed on the government actually to promote equality. Unlike in the United States, in South Africa the government's duty to implement affirmative action programs is a constitutional imperative. . . ."

"In the context of apartheid's lingering socio-economic disadvantages and other social effects of past apartheid laws and policies, it is recognized by South African courts that the formal equality approach used in the

United States may result in the unequal treatment of a group that experiences continued disadvantage.

“For reasons such as this, South Africa does not wholly rely on individual litigation against individual perpetrators of discriminatory acts, resulting in compensation for the victim, but largely on imposing positive duties on government to achieve equality in favor of groups of people who lag behind due to past systemic disadvantage. This is inherently transformative, ladies and gentlemen. It has the effect of restructuring institutions.”

Two significant pieces of legislation have flowed from this legal basis, the Promotion of Equality and Prevention of Unfair Discrimination Act, and the Employment Equity Act, she reported. “A notable result of these efforts is that, whereas before 1994, before the implementation of the new constitutional dispensation, the public service was largely dominated by white males, but now generally black people, and women in particular, including white women, together comprise 72 percent of public service employees at all levels.”

Still, she acknowledged, “the private sector . . . is still predominantly white” and “black people by 2002 held only 22 percent of senior management positions, with black women struggling to escape the lower rungs.”

In a talk a week later, Mokgoro’s co-teacher, Karthigasen Govender, LL.M. ’88, shed further light on the issue in his talk on South Africa’s effort to deal with the exclusionary policies of voluntary private organizations. Govender, a member of South Africa’s Human Rights Commission, is part of a committee charged with coming up with a report and recommendations for dealing with the rules and practices of voluntary

private groups vis-à-vis the demands of the South African constitution.

The glue for most of these voluntary groups is cultural and linguistic identity, as it is for the 170,000-member Afrikaans organization, Govender noted. The commission is not considering religious groups in its study and report, he said.

Commissioners have considered issues like whether a person must be Jewish to enter a Jewish home for the aged, whether Muslims can join a 170,000-member Afrikaaner organization that requires members to convert to Christianity and speak Afrikaans, how exclusionary an organization can be and still get government funds, and how large a private association can be before it should be considered public. In the latter case, the commission ruled that an organization’s membership of 5,000 was too large for it to be considered a private voluntary entity.

Even presentations before the commission have illustrated issues of inequality, Govender noted. “Most comments we got came from better-off people, [but] most people [in South Africa] are just making it,” he said.

“Every one who made a presentation agreed that race could never be the basis for exclusion,” he reported. But after that agreement, there has been little unanimity. For example, although commission staffers believe an association’s rights are secondary to constitutional guarantees, an association lawyer countered that that allows the association to be “captured” [and lose its private voluntary nature].

So, Govender reported, the commission finds itself wrestling with a “test of proportionality” that seeks “a balancing of association rights and individual rights.”





Keynote speaker Pamela Samuelson tells symposium participants that issues of technology vis-à-vis copyright protection, like those addressed in MGM v. Grokster last year will continue to require attention for many years.

Keynote speaker: Digital advances will continue to concern copyright holders

The U.S. Supreme Court's decision in *MGM v. Grokster* last year "is really about technology, not copyright infringement," according to the keynote speaker for a major conference at the Law School this year. "If Grokster had won, MGM would have gone to Congress" and legislation would be "much worse" than what the Court decided, speaker Pamela Samuelson told participants in the symposium "21st Century Copyright Law in the Digital Domain."

MGM and 27 co-plaintiffs won from the Supreme Court a reversal of the Ninth Circuit ruling that distributors of Grokster and Morpheus PSP file-sharing software were not liable for users' violations of copyright. But it was not the clearcut victory MGM and others had sought, said Samuelson, the Chancellor's Professor of Law and of Information Management at the University of California at Berkeley, a director of Berkeley's Center for Law & Technology, and an advisor to the Samuelson Law, Technology and Public Policy Clinic at Boalt Hall.

"For the same reasons that Sony took the staple-article doctrine of patent law as a model for its copyright safe-harbor rule, the inducement rule, too, is a sensible one for copyright," the Supreme

Court said in its decision. "We adopt it here, holding that one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties."

The inducement rule, the Court elaborated, "premises liability on purposeful, culpable expression and conduct, and thus does nothing to compromise legitimate commerce or discourage innovation having a lawful purpose."

In other words, noted Samuelson, MGM et al "did not win the case they wanted to win." Technology and file-sharing developers applauded the decision, which denied MGM and its fellow appellants the legal tool they had sought to wield against other firms and technologies they consider to be infringing on copyright protections.

"They [MGM et al] probably can shut down Grokster [based on this case] but the next ones will be harder to shut down," Samuelson explained. As a result, "file sharing hasn't diminished" since the June 2005 decision, she reported, but litigation has. The issue will be with us for a long time, she predicted.

Following Samuelson's keynote, panel discussions featuring more than a dozen experts from academia, industry, and think tanks focused on three issues: *Grokster* and its aftermath; implications for technological innovation; and international alternatives and enforcement. Panelists included:

Hal Abelson, professor of science and engineering at the Massachusetts Institute of Technology; Michael W. Carroll, associate professor of law at Villanova University; Niva Elkin-Koren, professor of law and co-director of the Haifa Center for Law and Technology, University of Haifa, Israel; Edward W. Felten, professor of computer science and public affairs, Princeton University; Michael Geist, Canada Research Chair in Internet and E-commerce Law, University of Ottawa; Susan M. Kornfield, partner in Godman LLP and adjunct professor at Michigan Law; Lynda Oswald, '85, professor of business law at U-M's Ross School of Business; Richard Owens, executive director, Center for Innovation Law and Policy, University of Toronto; Richard Owens, executive director of the Center for Innovation Law and Policy, University of Toronto; Margaret Jane Radin, professor at Stanford Law School, who joins the Michigan Law faculty next year; R. Anthony Reese, professor at the University of Texas Law School; Fred von Lohmann, senior intellectual property attorney, Electronic Frontier Foundation; IBM Research retiree Barbara Simons, former president of the Association for Computing Machinery; and David Sohn, staff counsel for the Center for Democracy and Technology.

The symposium was sponsored by the Law School and Park Foundation Inc., and presented by the *Michigan Telecommunications and Technology Law Review*.

Marriage and 'diverging destinies'

Framers of the 1996 Welfare Reform Act hoped that work requirements and other features of the new law would "avert the fracture of the nuclear family," but issues like those of divorce and out-of-wedlock births far exceed the capabilities of mere welfare reform, according to a social welfare law specialist who spoke at Michigan Law last winter.

Today half of women without a high school diploma who give birth are not married, and that percentage is rising, University of Pennsylvania Law School Professor Amy L. Wax reported in her talk "Diverging Destinies: Economics, Behavior, and the Decline of Marriage," sponsored by the Federalist Society.

But, Wax stressed, the opposite is true among white, college educated, middle class and upper class Americans, where only some 3 percent of children are born to unwed mothers. This does not hold true among educated, upper status blacks, however, she said.

Demographers are baffled by these apparently contradictory trends, she reported.

"I think what we're seeing . . . is a very important behavioral change, primarily among men, but also among women," explained Wax, who is both a lawyer and a physician. Traditional nuclear family models are eroding, and substitutes are many, varied, and changing, she indicated.

"People have lost the compunction about having children out of wedlock, they are unwilling to commit to one person, there are open and notorious multiple partners," and there is the phenomenon that sociologists call "multiple partner fertility," in which one person has children by several partners.

Women's Week 2006

Many law firms today are using women-friendly and gender neutral policies as recruiting tools, and young women entering the legal profession should ask about such policies as family leave and partner status for part-timers, according to a practicing attorney and mother of three who was a panelist for the discussion "Barriers and Solutions for Women in Professional Life" at Michigan Law last winter.

As more women enter the legal profession, the discussion of their needs and wishes is increasing, said panelist Lisa Rycus Mikalonis, assistant general counsel for Motor City Casino in Detroit and Oakland regional vice president of the Women Lawyers Association of Michigan. Mikalonis noted that women still lack access to some of the informal networks among legal professionals, like the lawyers' hockey teams in Detroit, but "we can exploit our own networks" among women lawyers.

Mikalonis's fellow panelists included Michigan Law School Professor Ellen Katz; Ypsilanti-based attorney Holly Herndon; the Hon. Libby Hines, '77, chief judge of Washtenaw County's 15th District Court; and U-M Ross Business School Professor of Business Law Cindy A. Schipani.

The program was part of a five-day series of programs presented by the Women Law Students Association and a variety of other Law School offices and organizations. Other programs in the series included discussions

of Practical Solutions to Sexual Harassment, Women Under the New Supreme Court, and Multiple Layers of Identity: Minority Women Lawyers; a service day at Safe House in Ann Arbor, a shelter for victims of domestic violence; and evening showings of the films "North Country," "Osama," "Whale Rider," and "The Accused."



Left, Juan Luis Tienda. Below, from left: Scholarship Committee member Paul Zavala, '78; J.T. Canales Award winner José Padilla, '83; keynote speaker Brigida Benitez; Scholarship Committee Chair Marty Castro, '88; and scholarship winners Michelle Gomez and Amanda Fox.

Sharing Juan Tienda's life story

For 11 minutes, the audience sat transfixed as the life and images of Juan Luis Tienda flickered before them through the film that Juan Tienda Banquet organizer Paul Mata had produced to introduce audience members to the namesake for the venerable scholarship awards banquet, which marked its 21st year last winter.

The annual gathering honors U.S. Army veteran and law student Juan Luis Tienda, whose commitment to public service via work with prisoners and migrant workers had become legend before his untimely death in 1976 in an automobile accident before he could begin his last year of legal studies.

Born in Detroit to a Mexican family, Tienda's mother died when he was five and the young boy quickly took on the household leadership role to raise his four younger sisters. A good student, he could not afford college, so he enlisted in the U.S. Army and used his G.I. Bill benefits to attend Michigan State University. He graduated in three years, thereby saving a year of G.I. Bill benefits for his Law School studies. As a law student, he was president of La Raza, the predecessor to today's Latino Law Students Association, which sponsors the banquet and scholarships that commemorate Tienda, and worked with the Milan Prison Project and the Michigan Migrant Legal Assistance Project.

Mata, who won a Juan Tienda Scholarship last year, knew when he saw the photo of Tienda in his military uniform that appeared in last year's banquet program that Tienda's life story was too vital to be contained within that single photograph. When Mata became chair for this year's banquet, he set out

to explore that life and share it with others.

"I first contacted the Tienda family in early October about the idea, and from there it was back and forth dialogues between me, Irene Tienda, and Marta Tienda (two of Juan Luis' sisters)," explained Mata, who worked on the video project with Joey Graves, the brother of a Latino Law Students Association member.

Tienda's sister Irene provided photos, his former fiancé provided a letter and other details about Tienda, his sister Marta sent a book that included a chapter on Juan Luis Tienda, and Paul Zavala, '78, a member of the Juan Luis Tienda Scholarship Committee and a former classmate of Tienda's, shared his memories in the film, calling Tienda "an icon of public service."

"It was really quite the journey," said Mata. "By the end, I felt a very strong connection to the Tienda family." Indeed he should. This year's banquet was the first ever attended by all four of Tienda's sisters, Maggie Chavez, Marta Tienda, Irene Tienda-Rumbaut, and Gloria Trevino.

In the evening's other activities:

- Keynote speaker Brigida Benitez, the first Hispanic partner of Wilmer Cutler Pickering Hale and Dorr LLP (now WilmerHale) and a member of the legal team that worked on the Law School admissions lawsuit that successfully defended the use of race as one of many factors in making admissions decisions, traced the history of the case and stressed the value of education: "Education is something that stays with you the rest of your life. It has an impact each day of your life." She also stressed

commitment: "The years ahead will bring many challenges, and you will stumble. But after you stumble pick yourself up, and when you stumble again, pick yourself up again. It is what you do after you stumble that reveals the character you are made of."

- DePaul University Vice President and General Counsel José D. Padilla, '83, a former aide to U.S. Senator Lloyd Bentsen of Texas and a senior appointee in the Clinton administration, won the J.T. Canales Distinguished Alumni Award, named after an 1899 Michigan Law graduate who became a public leader and lawmaker in Texas. "I speak with great pride that I was an affirmative action admit," said Padilla, who attended the University of Toledo as an undergraduate and spent summers working in the fields with migrant farmworkers. "They took a chance on me. This Law School gave me a chance, and I will be indebted for the rest of my life."

- First-year law students Michelle Gomez, who hopes to enter the military's Judge Advocate General Corps after graduation, and Amanda Fox, the first member of her family to attend and graduate from college, each received a \$5,000 Juan Tienda Scholarship.



KUDOS

Jessup Moot Court team 3rd in nation, 12th in world

After regional victories against entries from Ohio State, Dayton, Toledo, Thomas M. Cooley, Case Western Reserve, and Michigan State law schools, a team of Michigan Law students advanced to the international rounds of the Philip C. Jessup International Law Moot Court Competition in Washington, D.C., where it won a ranking of third among U.S. teams and twelfth internationally. The team, made up of Sarah Bender-Nash, Joshua Deahl, Scott Risner, and Jackie Roeder, was awarded the prestigious Alona E. Evans Award for the best memorials of the international round. The international rounds were held March 26-April 1. Begun in 1960, the Jessup Competition brings together student teams from all over the world. Bender-Nash, Deahl, and Risner graduated in May.

Brandon E. Reavis, '06, teaching in China as Luce Scholar

May 2006 graduate Brandon E. Reavis is spending the next year teaching international law in China as a Luce Scholar, one of only 18 U.S. scholars to receive the prestigious award this year. The Luce Scholars Program provides young Americans the opportunity to work and study in Asia for one year. The awards are based on nominations from 67 colleges and universities.

At Michigan Law, Reavis, who earned his undergraduate degree at Stanford University, was editor-in-chief of the *Michigan Journal of International Law*. Reavis had intensive Chinese language instruction at Middlebury College before beginning his term as a Luce Scholar in August.

He credits Michigan Law with providing him with good preparation for his work in China: "The

University of Michigan international law program is so strong. Without the Law School and the resources here, I wouldn't be prepared for this experience."

New Fiske Fellows work in California, Pennsylvania, Washington, D.C.

Winners of 2006 Fiske Fellowships for Public Service are working in California, Pennsylvania, and the nation's capital. The program, which celebrated its fifth anniversary this year with a special gathering in Washington, D.C., for all current and past winners, provides cash stipends and education debt repayment for three years for graduates who take government jobs after graduation. The fellowships are made possible through a gift from Robert B. Fiske Jr., '55.

This year's fellowship winners and their positions are:

- Peter Mazza, '05, U.S. Attorney's office, Southern District of California, San Diego;
- Kristen McDonald, '06, Philadelphia District Attorney's office, Philadelphia; and
- Joseph Syberson, '05, U.S. Department of Justice Tax Division, Washington, D.C.

Dean's Public Service Fellows Program winners

Developed by Dean Evan H. Caminker and supported by a graduate who believes that "enabling the Law School's students to pursue their dreams of public service benefits everyone," the annual Dean's Public Service Fellows Program awards provide funds for second-year Michigan Law students to devote summer employment after their second year of legal studies to preparation for a public service law career.

This year's winners reflect a diversity of public service interests, from legal aid to public defenders,

to advocates for social justice and women's rights, to rural development and land use.

The 2006 winners and their areas of public service interest are: Margaret Aisenbrey, civil rights/civil liberties; Aisha Anderson Bierma, legal aid; Neil Beck, government; Elizabeth Bray, human rights; Alicia Carra, women's rights/gender-based violence; Katherine Lacy Crosby, legal service in the South; Kyle Fisher, legal services; Anne D. Gordon, civil rights/civil liberties and social justice; Jennifer Hill, workers' rights/labor law; Emily Keller, child advocacy/youth law; Jeffrey Landau, [received job offer from] ACLU in northern California; Taryn Wilgus Null, women's rights/civil rights; Fiza Quraishi, criminal/juvenile justice and immigration law; Kate Redman, rural development, agriculture, and land use; Abby Rubinson, international; Tracy Schloss, child advocacy/youth law; Monica Vela, child advocacy/women's rights; Susan West, government/NGO; and Kate Zell, child advocacy.

Michigan Law team moves to ACS' national championship

Law students Sonya Mays and Adam Litle bested 25 other teams to win the right to compete in the national championship of the Constance Baker Motley National Moot Court Competition in Constitutional Law at the American Constitution Society's National Convention in Washington, D.C. Law students Aron Boros and Osvaldo Vasquez rose to the quarterfinal round in the same competition. At deadline time, the national finals, scheduled to take place in June, had not yet been conducted.

Arts bloom at Michigan Law

Law students are a talented lot, but many find that the rigor of legal education too often leads them to shut the cases on musical instruments and shift their writing talents from poetry, short stories, and essays to briefs, formal legal communications, and resumés. This past academic year, however, has enjoyed a blossoming of artistic activity among law students that has added a very special gleam to Law School life.

Spearheaded by third-year law student Jay Surdukowski, a group of law students, with support from members of the faculty, proposed and won Law School Student Senate approval last fall to create a Humanities Council to support and organize artistic endeavors at Michigan Law. In a letter to supporters afterward, Surdukowski took special note of the fact that Professor Phoebe Ellsworth attended the LSSS session when the vote was taken, and he also noted that “the quiet counsel and camaraderie” of Professors J.B. White, Joseph Vining, James C. Hathaway, Donald Regan, Daniel Halmberstam, “and many others was critical as well.”

LSSS named Surdukowski chair of the five-member Humanities Council for the 2005-06 academic year. Other members included law students Mara Cazars, Antonia Eliason, Justin Van Wormer, and Susan West.

Surdukowski’s commitment to the arts is well-known at the Law School: In addition to shepherding the Humanities Council during this third year as a law student, as a 2L Surdukowski was the force behind the first Term of Arts show last year. Term of Arts transforms Hutchins Hall’s basement hallways into an art gallery that showcases student, faculty, and staff art works, many of which are available to purchase at the Student Funded Fellowships auction that the show promotes.

“The Humanities Council promotes art, music, literature, and student scholarship at the Law School,” according to the resolution LSSS approved last November. “The Council works to ensure that the humanities are very much a part of the educational experience in the Law School community.”

It did just that during its first year, as these photos attest. From the faculty/student reception at the University of Michigan Museum of Art, which drew many students across South University Avenue to the museum for the first time, to support for *Griot*, Michigan Law’s resurrected and energized literary magazine, the council brought law students’ art, music, and literary talents to center stage.

February at the Art Museum

Students and faculty mix and mingle over wine, cheese, and conversation in a reception at the U-M Museum of Art sponsored by the Law School Student Senate. Law students provide the music, Jana Lee Kraschnewski on trumpet and Antonia Eliason on piano, in this case playing the museum’s 1930 Steinway commemorative piano on permanent loan to the museum from the U-M School of Music. “The piano boasts a wholly modern internal structure, its external design (art case) is based on the first Steinway (originally Steinweg) fortepiano built in Germany in 1839,” according to information from the museum. “Art case pianos were popular with well-to-do American households in the late 19th and early 20th century. This piano was lent to the Museum of Art in 1996 on the occasion of its 50th anniversary to enhance the Museum’s ability to provide musical programming.”



Term of Arts

From February 17 to March 16 this year, the hallways students walk to get from the Reading Room and “basement group” offices to Hutchins Hall’s classrooms became The Hutchins Hall Basement Gallery for the second annual Term of Arts show to display law student, faculty, and staff art works and to promote the annual Student Funded Fellowships auction. “This year’s show rises to a new level; besides the inclusion of faculty and staff, another noticeable feature is the sheer scale,” according to the program. “Forty artists are participating, up from 26 last year.”

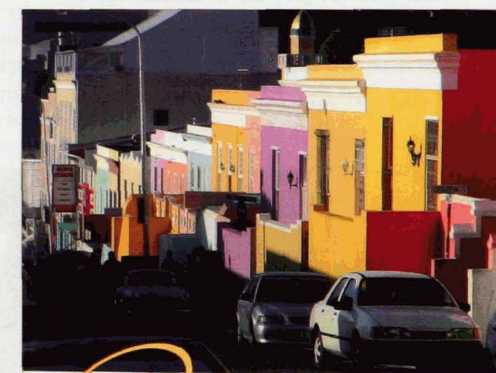


Valentine’s Day

The HeadNotes, Michigan Law’s *a cappella* singing group, regularly performs at December and May commencement ceremonies, the evening before final examinations begin in fall and spring—and on Valentine’s Day, above, when the group enlivens law classes by delivering Valentine’s request songs to students and faculty alike. Here, members of the HeadNotes deliver musical wishes of the day in Professor Richard D. Friedman’s class.

Griot

There even were 3-D glasses with the issues of *Griot* that editor Abam Mambo was handing to people as they filed into the Lawyers Club for the readings that celebrated publication of the literary and arts journal of the University of Michigan Law School last March. Donning the glasses meant you got the full effect of the photos of Kingsley Plantation and an abandoned farm in Florida by law student Molly Rottinhuase that were on the inside front cover of the 40-page journal. Submissions for this year’s edition were three times higher than for last year’s, according to Mambo, and the mix of poetry, fiction, nonfiction, and photography in the magazine offers something for every literary and visual taste. Mambo was in the issue with her short story “Fadda,” about the conflict of church teachings, traditional Cameroonian marriage ways, and common sense.



Griot

Literary and Arts Journal
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In detail

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Public Interest Public Service Faculty Fellow Mark Rosenbaum in his moot court session last fall for Jones v. City of Los Angeles. The Ninth Circuit Court of Appeals ruled in his favor earlier this year.



Practice makes perfect

Mark Rosenbaum, director of the American Civil Liberties Union in Los Angeles, admitted before he began his moot court session last fall that he had an uphill battle ahead of him to win the case he was preparing, *Jones v. City of Los Angeles*.

Rosenbaum, one of Michigan Law's Public Interest/Public Service Faculty Fellows (PIPS), opened the moot court session to the Law School community so that students could see how a practicing attorney prepares to argue his case. PIPS Fellows are designated adjunct professors who have extensive experience in public interest lawyering, and who share that experience in the classroom and special programs like Rosenbaum's moot court session and other special programs and small group gatherings to assist students who want to do public interest work.

In *Jones*, Rosenbaum was arguing before the U.S. Court of Appeals for the Ninth Circuit on behalf of homeless people barred from sleeping, lying, or sitting on the streets of Los Angeles' Skid Row. The court had allotted Rosenbaum only 10 minutes for his oral argument, and every chance he had to hone it was welcome.

It worked.

Rosenbaum argued *Jones* a few days after his moot court session here, and when the court handed down its opinion five months later it agreed with his argument. "Undisputed evidence in the record establishes that at the time they were cited or arrested, appellants had no choice other than to be on the streets," the court said. "Even if appellants' past volitional acts contributed to their current need to sit, lie, and sleep on public sidewalks at night, those acts are not sufficiently proximate to the conduct at issue here for the imposition of penal sanctions to be permissible."

The court emphasized the narrowness of its decision: "We hold only that, just as the Eighth Amendment prohibits the infliction of criminal punishment on an individual for being a drug addict, . . . ; or for involuntary public drunkenness that is an unavoidable consequence of being a chronic alcoholic without a home, . . . ; the Eighth Amendment prohibits the city from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles."

Slavery and freedom in the Atlantic World get a multinational examination

“Five countries, three languages, and two universities.”

That’s how law and history professor Rebecca Scott succinctly described the joint colloquium that she and visiting professor Martha S. Jones organized and presented in March.

Scholars from five countries—the United States, Canada, Cuba, France, and Germany—took part, using the English, Spanish, and French languages and the facilities of the University of Michigan in the United States and the University of Windsor in Canada. Co-sponsored by the two universities, the three-day program, “Slavery and Freedom in the Atlantic World: Statutes, Science, and the Seas,” turned participants into a peripatetic set of scholars who shuttled between Ann Arbor and Windsor on different days of the colloquium.

Colloquium participants from Cuba, who remained in Windsor because they could not get visas to enter the United States, took part in the Ann Arbor sessions via audio/video link from the University of Windsor.

The Cuban scholars’ participation was significant to the colloquium discussions because Spain and its colony in Cuba played pivotal roles in the history of slavery and its aftermath throughout the Atlantic World. For example, a high point of the colloquium involved the program “New Insights from the Archives: The Amistad in Cuba,” a discussion of recently discovered archival material in Cuba that details deep Cuban participation in the voyage of the slave ship Amistad and names Cubans who were buying the 49 Africans aboard. The case has become widely known because the Africans aboard the Amistad, who had been captured in West Africa and sold to a Spanish slave master, revolted,



Colloquium co-organizer Martha S. Jones opens a session in Ann Arbor. Additional participants in Windsor took part via a live audio/video link seen on the screen near the left side of the photo.

seized the ship, and eventually landed in the United States. Slave trading had been outlawed in Spain’s colonies 22 years earlier, although slavery itself remained legal.

The colloquium brought together scholars “whose current work seeks to excavate the daily dynamics of slavery and freedom, while reshaping the broad narratives within which we situate them,” according to material posted by organizers Scott and Jones. Scott, the Charles Gibson Distinguished University Professor of History and Professor of Law, is a renowned scholar of slavery and freedom in the Atlantic world, and author of the recently published *Degrees of Freedom: Louisiana and Cuba After Slavery* (Harvard University Press, 2005), which details the different ways that Louisiana and Cuba responded to the end of slavery. Jones, a visiting associate professor at the Law School and an assistant professor in the U-M history department and the Center for Afroamerican and African Studies, has studied and written of African American women’s public lives in 19th century America and currently is researching the role of African Americans in the pre-Civil War legal culture of the Atlantic World.

Scott and Jones co-teach the Law in Slavery and Freedom seminar at the Law School. Law students, who had read materials related to the colloquium as part of their seminar work, attended the programs. Law Professors Susanna

Blumenthal and Ellen Katz were among the commentators who responded to colloquium presentations.

“Central to our inquiry is legal culture—from legislatures and courtrooms to the jurys cantonnaux of the French Antilles and the office of notaries public in Brazil, Cuba, and Louisiana,” according to the conference organizers. “These were often sites for the exercise of slaveholders’ power, yet they also provided the openings through which slaves and former slaves constructed claims for rights and citizenship.”

For example, Cuban law provided slaves with the loophole of selling themselves to other owners, or even buying their own freedom. Spain made the concession as part of its effort to retain slavery while appearing to yield to growing British pressure to abolish slavery in the early 19th century, according to University of Pittsburgh Professor Alejandro de la Fuente, who presented a paper on the topic at the colloquium.

Colloquium topics included:

- “Slavery and Freedom in the Great Lakes: An Atlantic World Perspective”;
- “Slavery and the Law”;
- “Law and the Meanings of Freedom”;
- “What is the Atlantic?”;
- “Slavery, Race, and Science”;
- “New Insights from the Archives: The Amistad in Cuba”; and
- “News of Freedom: The Circulation of Ideas in the Caribbean.”

New books by Professors Herzog, Miller

When Professors Don Herzog and William Ian Miller put finger to keyboard the result is, well, different. Their newest books continue in the vein of exhaustively researched and unabashedly revisionist freethinking that has marked these scholars' published outings in the past.

For Herzog, the Edson R. Sunderland Professor of Law, his newest is called simply *Cunning* (Princeton University Press, 2006). Herzog is a scholar of political, moral, legal, and social theory, constitutional interpretation, torts, and the First Amendment; his previous books include: *Justification in Political Theory*, *Happy Slaves: A Critique of Consent Theory*, and *Poisoning the Minds of the Lower Orders*, the latter the recipient of an Honorable Mention Award from the Professional/Scholarly Publishing Division of the Association of American Publishers.

This time out, "I want to sharpen our grasp of cunning, to reckon with its twists and turns, allures and horrors, insights and blindnesses," he explains in his Introduction. "But," he adds in a typical Herzogian twist, "I also want to use it for my own purposes and blithely shove it aside when I've exhausted its usefulness. So cunning will be front and center much of the time, but will also be my stalking horse for sidling up to some vexing puzzles about rationality, roles, and morality."

To do that, he divides *Cunning* into three parts: 1) An exploration of some "canonical moments of cunning," including stories about Odysseus and writings by Machiavelli; 2) An exploration of "a host of ways in which the familiar distinction between appearance and reality is an inadequate guide to social life"; and 3) Showing that "cunning is compatible with self-deception,

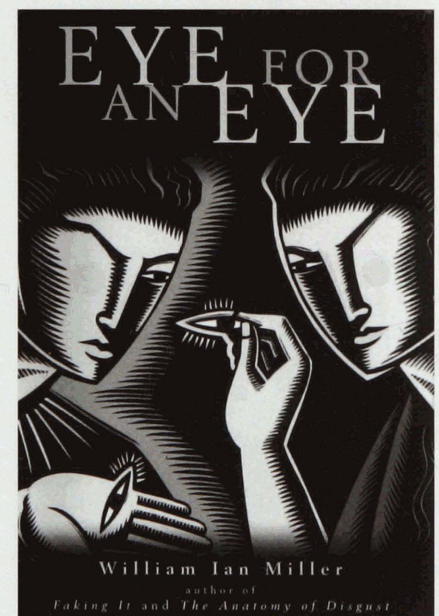
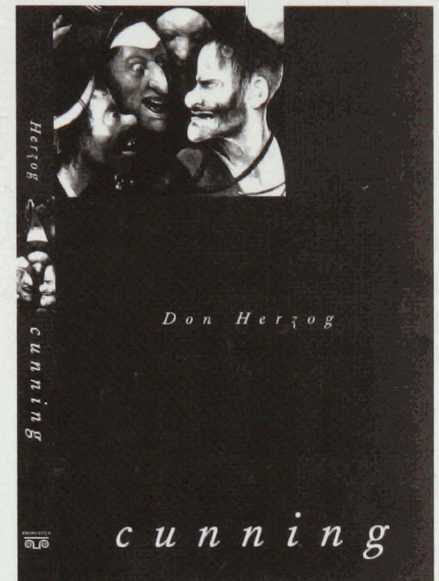
with simple ignorance, too" and that "no consolation is to be found in the prospect of doing one's duty or adhering to the obligations of one's roles, nor in turning to the resources of religion or a familiar strategy of justification from moral philosophy."

For Miller, the Thomas G. Long Professor of Law, the launch site is more apparent, if no less complex in its evolution. For the plumber of emotions that Miller is—his recent books have included *Faking It* (Cambridge University Press, 2003); *The Mystery of Courage* (2000); *The Anatomy of Disgust* (1997); and *Humiliation* (1993)—his newest book takes him back to the cradle of the honor societies that he loves.

Eye for an Eye (2006), according to publisher Cambridge University Press, "takes the law of the talion—eye for an eye, tooth for a tooth—seriously And it finds that much of what we take to be justice, honor, and respect for persons requires, at its core, measuring and measuring up."

"Our tort law has as one of its commonly expressed goals to make the victim 'whole' by substituting money for the body part he lost, just as the talion looks to make someone whole but sometimes in a strikingly different sense," Miller explains in his Preface. "In an honor culture you have a choice about how to be made whole: by taking some form of property transfer as we do today, or by deciding that your moral wholeness requires that the person who wronged you should again be your equal and look the way you now look."

"Ready to trade an eye for an eye?" he asks. "A live man for three corpses? A pound of flesh for three thousand ducats? Back then? You bet. Right now? How do we measure the cost of war? In dollars?



Not so that you will feel the costs. Dollars are not the proper measure of all things. It is still man (and woman) who is the measure: the body count. And in a symbolic way man is also the means of payment: the dead soldier is thus understood to have paid the ultimate price.

"There is so much more to an eye for an eye than meets the eye."



Chinkin wins award

Affiliated Overseas Faculty member Christine Chinkin, above, receives the 2006 Goler T. Butcher Medal from the American Society of International Law (ASIL) earlier this year in Washington, D.C. Chinkin and co-author Hilary Charlesworth, of the School of Social Sciences and the Faculty of Law at the Australian National University, received the medal for their book *The Boundaries of International Law: A Feminist Analysis*. The book "is an important contribution to the public policy debate on the status of women regarding human rights and international law," said ASIL Executive Director Charlotte Ku. (Photo courtesy ASIL)

Activities

Irwin I. Cohen Professor of Law **Reuven Avi-Yonah** taught Advanced Topics in International Tax Law at the Di Tella Law School in Buenos Aires, Argentina, in May, and in March traveled to Paris for a steering group meeting of the Organization for Economic Cooperation and Development's International Network for Tax Research as part of preparation for the inaugural conference on taxation and development to be held in Ann Arbor this fall. During the spring he also presented his paper "The Three Goals of Taxation" at Tel Aviv University School of Law and the University of Toronto School of Law.

Professor of Law **Michael S. Barr** has delivered a number of papers recently: "Living on the Edge of Bankruptcy: Evidence from a New Survey," at Harvard Law School; "Financial Services for Low- and Moderate-Income Households," at Yale Law School; "Global Administrative Law: The View from Basel," at New York University Law School; "Credit Where it Counts: The Community Reinvestment Act and its Critics," at the University of Pennsylvania Law School; "Tax Preparation Services for Low- and Moderate-Income Households: Evidence from a New Survey," at the National Tax Association Annual Conference and at the IRS Annual Research Conference; "The Future of Community Development Financial Policy," at the MacArthur Foundation; "Entrepreneurship in Low-Income Communities: What Have We Learned," at the Federal Reserve Bank of Kansas City and Kauffman Foundation; and "Payments Innovations in Serving Low- and Moderate-Income Households: Policy, Practice, and Evidence from a New Survey," at the

Federal Reserve Bank of Chicago, 42nd Annual Conference on Bank Structure. Barr delivered "Savings and Access to Financial Services: What About Low- and Moderate-income Boomers," as the third address in the AARP Twentieth Anniversary Invitational Lecture Series. This spring, Barr co-organized the World Bank/Brookings Institution Conference "Access to Finance: Building Inclusive Financial Systems," held at the World Bank Headquarters in Washington, D.C.

Assistant Professor **Laura N. Beny** discussed the question of "Diversity Among Elite American Law Firms: A Signal of Prestige and Firm Culture?" in July at the Law and Society annual meeting at Baltimore, Maryland. In May, she presented her "Overview of International Intervention and Obstacles in Darfur, Sudan" and "Genocide in Darfur: Overview and International Response" in programs at the University of California at Santa Cruz.

Phoebe C. Ellsworth, the Frank Murphy Distinguished University Professor of Law and Psychology, in March spoke on "Juries and Expert Witnesses" at the meeting of the Midwestern Chapter of the American Academy of Psychiatry and the Law in Ann Arbor and on "Emotion, Cognition, and Adaptation" at the 9th Sydney Symposium of Social Psychology in Sydney, Australia.

Henry King Ransom Professor of Law **Bruce Frier** has been elected to the Senate Advisory Committee on University Affairs (SACUA), the executive arm of faculty governance structure at the University of Michigan. Frier is also the Frank O. Copley College Professor of Classics and Roman Law in the College of Literature, Science and the Arts.

In December, **James C. Hathaway**, the James E. and Sarah A. Degan Professor of Law and director of Michigan Law's Program in Refugee and Asylum Law, traveled to Tokyo to deliver a speech at the United Nations University entitled "Making Refugee Rights Meaningful: The Challenge for East Asia." While in Tokyo, Hathaway also conducted a workshop on refugee law for lawyers affiliated with the Japan Association for Refugees.

Alene and Allan F. Smith Professor of Law **Robert L. Howse** presented his paper "The Relevance of Sovereignty" at a conference in honor of Ruth Lapidoth at Hebrew University of Jerusalem in June and at an international conference on "Redefining Sovereignty" at Brookes University, Oxford, England, in May. In May he also chaired a panel discussion at the annual meeting of the European Society of International Law in Paris and discussed international trade law rules as they apply to biofuels in a talk to the International Food and Agricultural Trade Policy Council in Budapest. He also led panels and was a panelist for the Yale-REIL Roundtable on Renewable Energy at Yale University April 30-May 1, and earlier in April was a panelist for the future of dispute settlement for the WTO Tenth Anniversary Conference at Columbia University. In March, he was a panelist for discussion of David Kennedy's book *The Dark Side of Virtue* at the annual meeting of the American Society of International Law in Washington, D.C.; he also presented his paper "Leo Strauss-Man of War? Staussonianism, Iraq, and the Neocons" at the International Law Workshop at the University of Chicago Law School and at a conference on the legacy of Leo Strauss at the University of Nottingham.

Paul G. Kauper Professor of Law **Douglas A. Kahn** delivered the Norman Sugarman Lecture at Case Western Reserve University School of Law last winter, speaking on "Gifts, Gafts, Gefts—What Constitutes a 'Gift' and a Principled Tax Policy Justification for Excluding it from a Donee's Income."

Professor Emeritus **Yale Kamisar** discussed "Miranda's Reprieve: How Rehnquist Spared the Landmark Confession Case but Weakened its Impact" in an essay in the June issue of the *American Bar Association Journal* on the occasion of the 40th anniversary of the ground-breaking U.S. Supreme Court decision. Kamisar delivered the keynote address at the Los Angeles Bar Association Criminal Law Section's annual dinner in May and spoke at a criminal procedure conference at Harvard University in April.

Richard O. Lempert, '68, the Eric Stein Distinguished University Professor of Law and Sociology, is editor of *Evidence Stories*, published by Foundation Press in July. In May, he marked four years of service as division director at the National Science Foundation for the social and economic sciences.

Assistant Professor **John A.E. Pottow** addressed the University of Illinois College of Law Bankruptcy symposium in April as part of the gathering of judges and scholars to analyze the new consumer bankruptcy bill. He also discussed his research on elderly consumer bankruptcy filers at the Harvard-Texas joint conference on commercial law research the same month.

Professor **Adam C. Pritchard** spoke on "The Screening Effect of the Private Securities Litigation Reform Act" at the Institute for Law and Economics Seminar

at the University of Pennsylvania Law School in April and in March served as commentator for the Conference on History in Corporate Law at Washington & Lee Law School.

Hessel E. Yntema Professor of Law **Mathias W. Reimann**, LL.M. '83, taught an introduction to U.S.-American Product Liability Law at the University of Freiburg in Germany in July. In February, he spoke at a conference on "The Domain of Legal Science" ("Das Proprium der Rechtswissenschaft") organized by the Max Planck Institute for Collective Goods in Munich. He also is co-editor (with Joachim Zekoll) of *Introduction to German Law*, published by Kluwer late last year.

In May, James E. and Sarah A. Degan Professor of Law Emeritus **Theodore J. St. Antoine**, '54, discussed "Who Cares Whether Arbitration Is Fast, Cheap, and Simple?" as the keynote speaker for the meeting of the Labor and Employment Relations Association in St. Louis. In April, he completed Michigan's four-year teaching program in China on labor arbitration and mediation, this year adding Taipei to Beijing.

In May, Clinical Assistant Professor **David A. Santacroce** spoke on governmental and corporate duties and responsibilities in large scale mass layoffs and plant closings at the U.S. Department of Labor's National Rapid Response Summit in St. Louis. In January, he was named chair-elect—and will become chair in January 2007—of the Association of American Law Schools' Section on Clinical Legal Education.

President Bush has appointed Professor **Carl E. Schneider**, '79, to his Council on Bioethics, a body that advises the President on ethical

issues related to advances in biomedical science and technology. Schneider is the Chauncey Stillman Professor of Ethics, Morality, and the Practice of Law at the Law School and a professor of internal medicine at the U-M Medical School.

Harry Burns Hutchins Professor of Law **Joseph Vining** delivered the Donald A. Giannella Memorial Lecture at Villanova University School of Law in March, speaking on "The Mystery of the Individual in Modern Law." He spoke on "The Question Whether Law Has an Ontology of its Own" at a symposium at Notre Dame University Law School in March. (A version of the talk begins on page 77.) In April, he discussed "Animals in the World of Human Law" in a program sponsored by Michigan Law's Student Animal Legal Defense Fund.

Nippon Life Professor of Law **Mark D. West**, who also is faculty director of Michigan Law's Center for International and Comparative Law and director of the U-M's Center for Japanese Studies, spoke on "Making Lawyers (and Gangsters) in Japan" as part of the "Conference on Legal Education: Past, Present & Future" at Vanderbilt University in April.

James Boyd White, the L. Hart Wright Collegiate Professor of Law, has two publications appearing this summer: His newest book is *Living Speech: Resisting the Empire of Force*, being published by Princeton University Press, and he is editor of *How Should We Talk About Religions? Perspectives, Contexts, Particularities*, being published by Notre Dame Press. In February he delivered the Montesquieu Lecture at the University of Tilburg in The Netherlands, speaking on "When Language Meets the Mind: Three Questions," and late last year he spoke about *Living Speech* at the

University of Toronto Law School. Also, last year the first chapter of his book *Heracles' Bow: Essays in the Rhetoric and Poetics of the Law* (1985) was translated into Spanish as *El Arco de Hercules*.

Robert A. Sullivan Professor of Law **James J. White**, '62, spoke on "Changing Incentives: Changing Law" at the symposium "Interdisciplinary Perspectives on Bankruptcy Reform" at the University of Missouri-Columbia Law School in February. Earlier in the academic year he delivered the Kormendy Lecture at Ohio Northern University, speaking on the subject "Against E-mail."

Visiting and adjunct faculty

Visiting Assistant Professor **Gavin Clarkson** testified in May before the U.S. Senate Committee on Finance's Subcommittee on Long-Term Growth and Debt Reduction, arguing that due in part to restrictions imposed on tribal access to capital markets more than \$50 billion yearly in capital needs remain unmet for Native American infrastructure, community facilities, housing, and development. Clarkson is an assistant professor at the University of Michigan School of Information and in Native American Studies.

Visiting Clinical Assistant Professor of Law **Vivek S. Sankaran**, '01, served on the faculty of the Child Custody and Domestic Violence Institute at Chicago in May and presented the paper "Out of State and Out of Luck: The Treatment of Non-Offending Parents Under the Interstate Compact on the Placement of Children" at a conference presented by the Child Advocacy Project at the University of Oregon Law School.

In detail

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Calling all Michigan Law graduates

By this time next year you can have in your hand the new and up-to-date directory of Michigan Law's 20,000 graduates: name, graduation year, work affiliation, legal practice areas, perhaps e-mail address. You'll be able to track down classmates and other graduates by class year, geographic area and/or professional practice specialty.

Michigan Law has contracted with Harris Connect Inc. to produce its 11th directory, a mammoth data-gathering and compilation effort that requires months to complete. Harris published the Law School's previous directory five years ago.

"Strengthening the ties among graduates, faculty, and the Law School has been one of my primary goals as Dean," according to Dean Evan Caminker. "Toward that end, I invite you to complete the Alumni Directory Questionnaire to help make the directory as comprehensive as possible."

"The directory will become an invaluable resource for your professional life as well as for maintaining and renewing Michigan Law School friendships from your class year and in your part of the world," the dean continued. "Once again, in addition to indexes by class year and metropolitan area, the directory will include an index by field of practice."

The project kicks off this month: All graduates will receive a letter from Dean Caminker explaining the project and a questionnaire to complete and return via regular mail and/or e-mail. **You're asked to return the completed questionnaire by October 1.**

If you prefer to update your information online, please go to www.alumniconnections.com/update. Once the questionnaire page is displayed, you will need the ID number from your printed questionnaire form to access your information.

Other steps in the process include:

- **October:** A reminder postcard goes out to graduates to update biographical information if they have not and to order a directory.
- **November-January 2007:** Telephone verification of biographical information you've provided. During the winter Harris will compile the data and prepare for publication of the directory in June. Delivery is expected by mid summer.

Eli J. Segal, '67

Eli J. Segal, '67, who served as assistant to the president in the Clinton White House and the first chief executive of AmeriCorps, died February 20 at age 63 at his home in Boston, Massachusetts.

A longtime supporter of Democratic causes and candidates, Segal began his political work in the anti-Vietnam War campaign of presidential candidate Eugene McCarthy in 1968. He worked in subsequent Democratic presidential bids, and served as chief of staff for Bill Clinton's successful White House race.

One of his proudest accomplishments was to shepherd through legislation creating the Corporation for National and Community Service, better known as AmeriCorps, which provides young people with payment for college in return for community service. Segal served as AmeriCorps' first chief executive. Many current and past Michigan Law students have served in AmeriCorps.

Segal also headed Clinton's Welfare to Work Partnership, and received the Presidential Citizens Medal for service to the nation after stepping down in 2000. He assumed the board chairmanship of CityYear, which was a model for AmeriCorps, and after meeting South African President Nelson Mandela, led a similar effort in that country. He returned to presidential campaign work in 2004 as manager for General Wesley K. Clark's unsuccessful quest for the Democratic nomination.

A native of Brooklyn, New York, Segal earned his bachelor's degree in history at Brandeis University.

Frank Wu, '91: Start the discussion with agreement

To Frank H. Wu, '91, the way to discuss affirmative action is to begin with what most people agree on, that our society should be inclusive and rich in diversity, and then use that consensus to fuel the development of policies that will accomplish such a goal.

That's the approach that Wu, dean of Wayne State University Law School in Detroit and a former visiting professor at Michigan Law, outlined when he delivered the Nancy Cantor Distinguished Lecture at the University of Michigan in April.

As he elaborated afterward, "Debating affirmative action means making two mistakes: (a) debating, which is polarizing and entertainment and superficial; and (b) starting with the remedy as if it were the problem."

"Race is complex," he continued, picking up on a theme he sounded in his book *Yellow: Race in America Beyond Black and White* (Basic Books, 2002). "It isn't figuratively black and white. We tend to talk about race as if it's all about villains and victims—the KKK and people who are lynched, stabbed, and shot.

"That is important, and we do need to fight villains and help victims. But if we see it as all about villains and victims, we miss the ambiguities and the gray areas. Sometimes, there isn't a closeted bigot around anymore. Maybe there was once, but not now."

Images that we carry in our heads, stereotypes, may seem trivial by themselves, but they have a cumulative effect and also affect the targets of discrimination, according to Wu. He cited an op-ed piece he wrote for the *Detroit Free Press* last year, in which he said:

"Our abstract consensus about racial diversity is threatened by the practical



Frank H. Wu, '91

realities of racial disparities. We may desire diversity, but we are not sure how to address disparities. It turns out that it requires considerable effort to ensure that classrooms, boardrooms, and courtrooms are integrated; it simply doesn't happen automatically.

"Accordingly, we must reframe the question. We might challenge ourselves, especially those of us who are privileged to hold leadership positions, to make good on our shared ideals of democracy and equality. Our public discourse would be transformed if we simply asked, 'What will we do as a society to achieve diversity and eliminate disparities?'"

"Diversity is like democracy, a process rather than an outcome," Wu noted. "It requires engagement, that we stand up and speak out for civil rights, but also that we fulfill civic responsibilities."

Wu's talk was titled "Toward a Diverse Democracy: Affirmative Action and Higher Education." The annual lecture is named for former U-M Provost and current Syracuse University President Nancy Cantor.

Rob Portman, '84, named head of OMB

Rob Portman, '84, was nominated in April by President Bush to be the new director of the Office of Management and Budget (OMB), replacing Joshua B. Bolten, who became Bush's new chief of staff.

Bush said the Ohioan, who had been serving as the U.S. Trade Representative, will "have a leading role on my economic team."

Long active in Republican circles, Portman first came to the White House in 1989, when he was associate counsel and then director of legislative affairs for President George H. W. Bush. Portman was elected to Congress in 1993 when he won a special election to complete the term of a congressman who resigned. He continued to represent his district, near Cincinnati, until Bush named him U.S. Trade Representative in 2005.

When Portman left Congress he was a member of the House Republican leadership team and served as liaison between the current Bush administration and the Republican majority. He was a leader in the passage of a law that changed the Internal Revenue service to establish more taxpayer rights.

At OMB, Portman oversees a \$2.8 trillion annual budget and a staff that reviews nearly all domestic actions of the U.S. government.

Charlotte H. Johnson, '88, joins Colgate University

Charlotte H. Johnson, '88, assistant dean of students at Michigan Law, has become vice president and dean of the college at Colgate University in Hamilton, New York.

Johnson came to Michigan Law in 1997 as director of academic services and quickly won recognition for her sensitivity, tact, and administrative skills. As assistant dean for student affairs, she has supported the extracurricular activities of law students and coordinated those activities with the academic community. She also has been active in the University-wide community, serving on the steering committee for the Center for Institutional Diversity and the academic services board, which advises the provost and president.

In addition, she served on the core teams responsible for developing legal and communication defense strategies in favor of affirmative action after the Law School and U-M's admissions policies were challenged in the *Grutter* and *Gratz* cases. The Law School won its case in the U.S. Supreme Court in 2003.

Johnson began her career practicing law, and became the first African American female partner at Garan Luow Miller in Detroit.

Dean Evan H. Caminker praised Johnson and her work. "In her nine years as an administrator with Michigan Law, Charlotte has brought both professionalism and compassion to her responsibilities—in the process, making a lasting impression not just on her colleagues and associates but on a cohort of law students who today are better lawyers, and better human beings, for her efforts," he said.

"Perhaps none of her duties was as demanding as becoming public and



Charlotte H. Johnson, '88

media spokesperson for the Law School during our *Grutter v. Bollinger* period," Caminker continued. "During that trying and lengthy time, Charlotte invariably represented the School superbly well."

"Nine years may seem like a long time, but as I contemplate leaving the Law School and moving to Colgate University, it's all too brief," Johnson told her colleagues and associates in an e-mail. "I've learned a great deal from all of you, as well as from the many students with whom I've interacted. That knowledge and perspective have enabled me to grow professionally in ways I'd never imagined when I was a law student here, and it has allowed me to prepare to take on the wonderful opportunity that Colgate represents."

Johnson is "fair, accessible, forthright, and passionate about the most salient issues in higher education: ethical leadership, diversity, and global learning," said Colgate President Rebecca Chopp. "In addition to having the precise mind of a litigator, she is sensitive to the nuances that come into play when serving as a counselor and advisor to young people."

Alex Joel, '87, becomes National Intelligence civil liberties protection officer

Alex Joel, '87, has been named the first civil liberties protection officer for the U.S. Office of the Director of National Intelligence. Joel reports directly to John Negroponte, the director of National Intelligence.

Joel, who was a captain in the U.S. Army's Judge Advocate General Corps, practiced law in Washington, D.C., for three years with Shaw Pittman. More recently, he served as an information technology and e-business attorney with Marriott Corporation, where his portfolio included privacy, security, and e-commerce issues.

Inspiring Paths

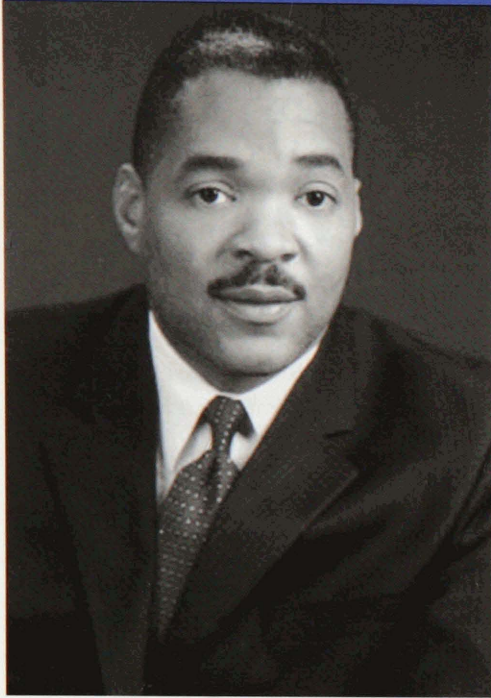
The Office of Public Service's Inspiring Paths Speakers Series presents programs in which graduates who have pursued public service work describe their experiences and career paths and answer questions.

Below, in the program "The Path from Firm to Nonprofit," graduates Dana Roach, '99, and Amy Harwell-Sankaran, '01, outline how their career paths reflect the honing of their visions of their legal careers. Roach, right, a clinical assistant professor with the Law School's Urban Communities Clinic in Detroit, practiced in the commercial real estate area and for an environmental/conservation group, but she said she always loved economic development work and pro bono work, and the clinic is "a wonderful opportunity to come back to the Detroit area." Harwell-Sankaran, who practiced in Washington, D.C., as a litigation associate with a major law firm and then worked with a child advocacy organization in the same city, last summer became assistant director of admissions for the Law School, a post in which she said she draws on all of her previous experience.



Right, Sarah Sohn, '04, a New Voices Legal Fellow at Immigration Equality in New York, and, far right, Megan Mack, '99, associate director of the American Bar Association's Commission on Immigration, describe their current work and the career paths that led them there in the program "The Path to Immigration Law," presented in April.





Reginald M. Turner Jr., '87

Turner, '87: Clinic opens legal doors to Hurricane Katrina victims

Under the leadership of President Reginald M. Turner Jr., '87, the National Bar Association (NBA) in March sponsored a legal clinic for hurricane Katrina evacuees and volunteer lawyers and law students at Tulane Law School in New Orleans.

"The NBA has sponsored similar clinics in other cities for evacuees, but this is the first at 'ground zero' and the first national Webcast where we are providing direct aid to Katrina victims who have remained in New Orleans, as well as to evacuees around the nation," according to Turner, a member of the Labor and Employment Group and Government Practice Group at Clark Hill PLC in Detroit.

The clinic, presented in cooperation with Tulane Law School and George Washington University Law School, was Webcast to Cleveland-Marshall College of Law in Cleveland; Southern University Law Center in Baton Rouge;

Florida A&M College of Law in Orlando; South Texas College of Law in Houston; George Washington University Law School in Washington, D.C.; and the corporate offices of the National Football League in New York.

Turner said the goal of the clinic was "to provide Katrina victims with relevant information and to remove barriers to legal expertise for people affected by this disaster. Enough time has passed that people outside the area are returning to their daily lives—and now more than ever it is important to keep this situation at the forefront."

The three-hour clinic included three panels: 1) To examine how lawyers and law students can assist in hurricane relief efforts; 2) To provide evacuees and volunteers with the latest disaster relief information; and 3) To address evacuees' questions and concerns.

The program provided "an excellent opportunity to inform our law students and lawyers about how they are uniquely qualified to help in this situation," Turner explained. "Every effort is needed and appreciated."

David Partlett, LL.M. '74, named dean at Emory University Law School

David F. Partlett, LL.M. '74, has become dean of Emory Law School at Emory University in Atlanta. He had been dean at Washington and Lee University School of Law since 2000. Partlett assumed his new duties July 1.

"I am truly honored by this appointment," said Partlett. "Emory University Law School is one of America's premier institutions and boasts an absolutely sterling faculty. I am thrilled to be joining the Emory University community."

"This is a tremendous moment for the law school," said Emory Provost Earl Lewis. "The pool of candidates was rich and included many highly accomplished scholars. We are delighted to appoint someone of David Partlett's caliber, who is a proven academic administrator, recognized scholar, and person of high integrity."

Partlett is "a wonderful addition to both the Emory community and the Atlanta and Georgia legal communities," according to Ben Johnson, chairman of the Emory Board of Trustees and a member of the search committee that recommended Partlett. "Not only is he steeped in the law with a broad legal perspective, but he also is a person of substantial personal magnetism and charm."

A native of Australia, Partlett earned his LL.B. degree at the University of Sydney School of Law and his S.J.D. from the University of Virginia School of Law.

Partlett has experience in both government and higher education. He served as senior legal officer with the Commonwealth Attorney-General's Department in Canberra, Australia, and principal law reform officer for the Australian Law Reform Commission. He has taught and served as associate dean at Australian National University, taught and served as acting dean at Vanderbilt University, and at Washington and Lee held the title of vice president, dean, and professor.

Scholar calls for taking NLRA, NLRB back to their roots

Ellen Dannin, '78, fears that working people are losing their best champion—the labor unions—and she urges that those who share her view develop long-term strategies to bring the National Labor Relations Board (NLRB) back to the kind of support of labor that the National Labor Relations Act (NLRA) envisioned when it was passed in 1935.

Dannin, who taught at Wayne State University for many years and this fall becomes a faculty member at Pennsylvania State University's Dickinson School of Law, discussed her views in a talk at the Law School sponsored by the Labor Law Roundtable. She also outlines her views in her newest book, *Taking Back the Workers' Law* (Cornell University Press, 2006).

The NLRA is "the workers' law," according to Dannin, and is supposed to give the employer and employees

"equal bargaining power." But "the courts have re-written the NLRA" to allow employers to circumvent unionization and collective bargaining, she claimed.

Labor unions have been the proponents and champions of many of the benefits we take for granted, like family leave and workplace safety measures, and "are the only group that enters every fight that preserves the workplace," she noted. But "The NLRB and the NLRA are weak today because they have been under assault" by court rulings that have strengthened the position of employers and corporations and weakened the power of workers.

Dannin suggested using the long-term strategies adopted by the National Association for the Advancement of Colored People (NAACP) to promote civil rights as the model for workers and organized labor to regain their one-time standing.

"To take back the workers' law workers should support the institution of the NLRA and NLRB," she recommended. "Unions should file more charges. Unions must identify their friends and take on their foes. There is simply no choice but to take on the judges."

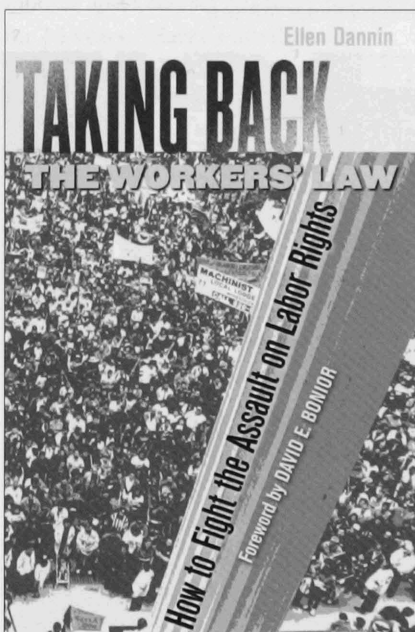
Dannin outlines her approach in her 208-page *Taking Back the Workers' Law*, which has drawn praise from labor scholars across the country. "In this informative and provocative book, Dannin points out what labor and worker advocates can do to more effectively obtain the assistance of the Labor Board despite its shortcomings," according to Charles B. Craver, the Freda



Ellen Dannin, '78

H. Alberson Professor of Law at George Washington University.

Says 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 organizing and bargaining rights for workers. But instead of an easy exercise in denunciation, Dannin sets out a savvy and winnable strategy for fulfilling the law's purpose through creative litigation by the practitioner community."



The (family) ties that bind

There was an unmistakable family thread weaving through Scholarship Dinner activities this year, with three of this year's four new scholarships being established in honor of family members of the donors and both speakers at the annual dinner citing the impact of their families on their commitment to the practice of law.

The new scholarships honoring relatives of the donors are:

- The Ermenag, Dirouhi and Carmen Dadrian Scholarship honors the grandparents and aunt of Charles Gerald Nickson, '65;
- The Jack N. Fingersh Scholarship was established in honor of Jack N. Fingersh, '58, by his children and their spouses; and
- The Faye McFarland LaCava Scholarship was established through the estate of the late Joseph Anthony LaCava, '36, in memory of his late wife.

Law student/scholarship recipient Mia Sussman, speaking on behalf of all scholarship recipients, expressed her thanks to those whose generosity provides scholarships for law students. "Thank you to all the donors," she said. "Like many others, I have taken out loans," and "I can't tell you how much this scholarship means to me."

Sussman explained that her interest in law has deep roots in her own family's history: "My grandparents were holocaust survivors from Lithuania and spent several years in concentration camps. [Eventually] they came to Minnesota, where I grew up. From an early age we engaged in conversations about justice."

Sussman holds the Bernstein Family and Harriette Heller Scholarship, originally established by Carl Bernstein, '64, and his wife, Harriette Heller, to honor his father; it was renamed recently

to embrace the generosity of Carl Bernstein's brother, Alan.

Bernstein said the scholarship honors Irving Bernstein, "a remarkable man" who was one of six children of immigrant parents, rose to teach in medical school, and helped establish the Health Insurance Plan in New York City that served as a model for health coverage across the United States.

For himself, said Bernstein, "it's been a wonderful 43 years" since graduation from Michigan Law. He served as candidate Jimmy Carter's counsel when Carter ran for president in 1976, and has tried murder, rape, real estate, and a host of other cases during his career in New York City.

The high point, Bernstein said, came in 1974 when he represented two inmates involved in the 11-day standoff at Attica Prison in Attica, New York.

More than 70 prisoners were arrested and indicted as the result of that hostage-holding incident, but only one prison official and none of the state troopers who fired into the prison, according to Bernstein. Nearly all of the indictments were dismissed.

Now in semi-retirement but still committed to providing counsel and seeking justice, Bernstein is working on capital punishment cases and expressed high praise for the training he received at the Clarence Darrow Death Penalty Defense College, which Michigan Law co-sponsors with DePaul Law School in Chicago.

He urged others to use their skills as lawyers to help those in need.

"We as lawyers are responsible . . . to make sure that all the rights of all the citizens are protected," Bernstein said.

Carl Bernstein, '64, left, law student and Bernstein family scholarship recipient Mia Sussman, and Alan Bernstein at the annual Scholarship Dinner this year.



Portrait presentation honors Harry T. Edwards, '65

In ceremonies that drew the justices of the U.S. Supreme Court as well as other high-ranking judges and supporters, Judge Harry T. Edwards, '65, of the U.S. Court of Appeals for the District of Columbia Circuit, was honored in a portrait presentation ceremony at the E. Barrett Prettyman U.S. Courthouse in Washington last November.

Edwards, named to the Appeals Court in 1979 at the age of 39, previously had taught at Michigan Law and Harvard. A longtime supporter of the Law School, he has served as the School's Martin Luther King speaker and returned many times to present talks and participate in programs.

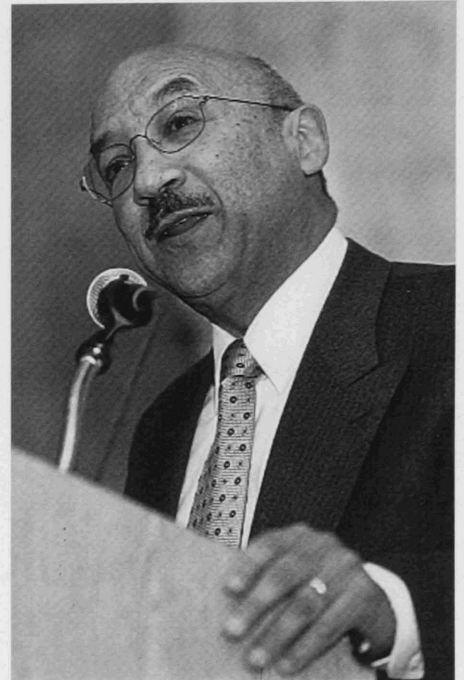
Last fall's ceremonies and portrait presentation marked Edwards' transition to senior status on the court and coincided with his birthday.

U.S. Supreme Court Justice Ruth Bader Ginsburg recalled how she and Edwards came to the D.C. Circuit four months apart and served there together for 13 years. "Harry's intelligence, energy, and experience well equipped him to take the helm of the D.C. Circuit in 1994," she said. "In his nearly seven-year tenure as Chief Judge, he transformed the court into the model of collegiality and efficiency it is today."

Chief Justice John Roberts and Justices Steven Breyer, Sandra Day O'Connor, Antonin Scalia, David Souter, John Stevens, and Clarence Thomas also attended the ceremonies, as did a host of other prominent judges and attorneys and many of Edwards' former clerks.

Edwards' portrait, painted by artist Simmie Knox, portrays the judge and scholar seated in his judicial robes, the barest hint of a smile on his face. "I have been the beneficiary of your goodness and I feel so much the better for it," Edwards noted in his expression of gratitude. "When you see the glimmer of a smile in the portrait, it is my 'thanks' to all of you."

Harry T. Edwards, '65



Edwards' portrait with artist Simmie Knox, right

From top:
William H. Dance, '49; Philip L. Bruner, '64;



1949

William H. Dance has joined the immigration practice, of counsel, at Vercruyse Murray & Malone in Bingham, Michigan. A practitioner of immigration and nationality law for more than 45 years, Dance is a founder of the Michigan Chapter of the American Immigration Lawyers Association. An adjunct professor of immigration law at Wayne State University Law School, he also writes a regular bi-weekly column, "Immigration Insights," for the *Detroit Legal News*.

1950

Stuart Dunnings Jr. was profiled in an article in the February 16 edition of the *Lansing State Journal* about the challenges of beginning his practice and fighting discrimination in court.

1951

55th Reunion October 27 – 29, 2006

Class President: William W. Milligan
Fundraising Chair: Kenneth C. Hamister
Committee: Richard A. Bell; Rex Eames; Richard M. Kaplan; Donald G. Leavitt; S. Noel Melvin; Harry Pincus Jr.; Horace J. Rodgers; Walter J. Russell; Henry C. Ryder; Lloyd J. Tyler Jr.; Howard VanAntwerp III

1952

"Lyn and I are coming up on our 53rd wedding anniversary in December," reports **Robert Tiernan**. With four grown sons and six grandkids, "life has been good to us and we are ever so thankful," he says. Tiernan had a successful career in business and banking, and served in the Navy Reserve, rising to the rank of rear admiral and becoming commander of the Navy Reserve Intelligence Command. He currently serves on a number of charitable and business boards and does pro bono legal work.

1956

50th Reunion October 27 – 29, 2006

Chair: Raymond H. Dresser Jr.
Fundraising Chair: William C. Cassebaum
Committee: William F. Anhut; Jack G. Armstrong; William R. Brashear; Joseph Butler; John C. Cary Jr.; William F. Crockett; Paul R. Haerle; Irving Leon Halpern; James S. Hilboldt; William R. Jentes; John Andrew Kelly Jr.; Robert S. McCormick; John H. McDermott; Richard W. Morrison; Roger H. Oetting; Charles B. Renfrew; Edward L. Shank; Lawrence W. Sperling; Charles G. Williamson Jr.; Norman A. Zilber

1961

45th Reunion October 27 – 29, 2006

Co-Chairs: James N. Adler; Laurence M. Scoville Jr; William Y. Webb
Committee: Harold S. Barron; James H. DeVries; Raymond H. Drymalski; William S. Farr Jr.; Barry I. Fredericks; Irvine O. Hockaday Jr.; James A. Hourihan; Richard M. Leslie; Daniel E. Lewis Jr.; Kenneth Sparks; L. Vastine Stabler Jr.; James M. Trapp (Mack); Lloyd E. Williams Jr.

1962

Robert A. Stein of Robert Stein & Associates in Concord, New Hampshire, has again been included in *The Best Lawyers in America*. Listed in multiple categories, he has appeared in the publication for more than 10 years.

1964

The American College of Construction Lawyers has elected **Philip L. Bruner** its president. He is a senior partner at Faegre & Benson in Minneapolis, Minnesota. Bruner is coauthor of *Bruner and O'Connor on Construction Law* and is an adjunct professor at the University of Minnesota Law School and William Mitchell College of Law.

From top: Thomas E. O'Connor Jr., '67;
Robert M. Vercreyusse, '68; Michael B. Staebler, '69;
Barbara Rom, '75

1966

40th Reunion

October 27 – 29, 2006

Committee: Jonathan L. Birge; Douglas M. Cain; Dewey B. Crawford; Barbara E. Handschu; Fred E. Schlegel; Thomas G. Washing; Richard J. Williams

Amarjit Buttar has been reelected to a four-year term as a member of the Board of Education in Vernon, Connecticut. It is his fourth term on the board. Buttar has also served as president of the New England Sikh Study Circle and chairman of the World Sikh Council.

Thomas E. O'Connor Jr. has joined the Columbus, Ohio, office of McNees Wallace & Nurick. A member of the firm, he is practicing in the technology and intellectual property group. O'Connor also serves on the Board of Governors of the Ohio State Bar Association's Intellectual Property Section.

1968

Robert M. Vercreyusse, shareholder with Vercreyusse Murray & Calzone PC, has been selected in the Labor and Employment Law (Management) category in *The Best Lawyers in America 2006*. He recently addressed the American Employment Law Council on recent NLRB cases and collective bargaining issues.

1969

Michael B. Staebler, a partner in the Detroit office of Pepper Hamilton LLP, has been elected to the firm's governing body. He is head of the firm's SBIC practice and co-chair of its investment funds practice.

1971

35th Reunion

October 27 – 29, 2006

Co-Chairs: Paul Alexander; Howard L. Boigon
Committee: Richard R. Burns; Frederick L. Feldkamp; Dawn Scrivnor Hertz; John E. Jacobs; Muriel Irwin Nichols; William J. Rainey; Julia Rankin Richardson; Sterling "Terry" Ross; Jeffrey H. Smith; David M. Spector; David M. Stahl; Donald F. Tucker; Georgetta Ann Wolff

The Toy Industry Association has appointed **Carter Keithly** as its president. Former president and chief executive of the Hearth, Patio and Barbecue Association, Keithly has more than 30 years of experience in association management.

1972

Chuck Ludlam is serving as a Peace Corps volunteer in Senegal, having served as a volunteer in Nepal nearly 40 years ago. He's an agriculture extension agent, working to enhance the productivity of vegetable gardens in the drought-ridden country. He's launched a food drying project and planted the first flower garden in his village. He's serving with his wife, Paula Hirschhoff, who was also a Peace Corps volunteer in the 1960s. Ludlam retired in June 2005 after a 33-year career as a lawyer in the U.S. Congress and as a lobbyist for the biotechnology industry. He'll return to the United States in early 2008.

Barbara Rom, partner-in-charge of the Detroit office of Pepper Hamilton LLP, has been appointed to the board of directors for the American Board of Certification (ABC). She received certification as a specialist in business bankruptcy from the ABC in 2003.



Richard C. Sanders, '75



1973

B. Haven Walling Jr. has been elected partner at Dickstein Shapiro in Washington, D.C. He practices on telecommunications issues.

1974

Darryl S. Bell, a partner at Quarles & Brady in Milwaukee, has been selected as a Wisconsin Super Lawyer by *Law and Politics* magazine. Bell's practice focuses on antitrust, trade regulation, and distribution law.

1975

Richard C. Sanders has been elected principal at Miller Canfield Paddock and Stone PLC in Detroit. He specializes in commercial litigation.

Thirteen graduates at Varnum among America's best lawyers

Thirteen Michigan Law graduates who are attorneys with Grand Rapids, Michigan-based Varnum, Riddering, Schmidt & Howlett LLP have been included in *The Best Lawyers in America 2006*.

The lawyers and their practice areas are:

John W. Allen, '72, commercial litigation

Timothy J. Curtin, '67, bankruptcy and creditor-debtor rights

James N. DeBoer, '50, corporate law

Charles M. Denton II, '81, environmental law

Frank G. Dunten, '75, corporate law

Marilyn A. Lankfer, '78, trusts and estates

Daniel C. Molhoek, '67, corporate law

Carl Oosterhouse, '83, public finance law

Eric J. Schneidewind, '70, energy law

Fredric A. Sytsma, '68, trusts and estates

Larry J. Titley, '72, employee benefits law

Tim Tornga, '76, employee benefits law

Kent J. Vana, '62, labor and employment law

Curtin has been listed in the annual compilation for all of its 23 years. DeBoer, Denton, Dunten, Lankfer, Molhoek, Sytsma, Titley, and Vana have been listed for 10 or more years.

From top: Jeffrey F. Champagne, '76;
Barbara A. Ruga, '77, Michael G. Campbell, '79

1976

30th Reunion

October 27 – 29, 2006

Co-Chairs: Bertie Butts;
William O'Neill
Fundraising: Karen Clark;
William A. Kindorf III;
Nancy Meier Lipper; Robert
Sheeder; David L. Wolfe
Participation: Robert D. Aicher;
Valorie A. Gilfeather; Corinne
A. Goldstein; Will McLeod;
Nancy Schauer; Renee M.
Schoenberg; William S.
Waldo; Jerome Watson

Jeffrey F. Champagne of
McNees Wallace & Nurick LLC
in Harrisburg, Pennsylvania, has
been named as a 2006 Super
Lawyer by *Law and Politics*. He
practices in the firm's education
law group.

Andrew R. Grainger has
been sworn in as an associate
justice on the Appeals Court of
Massachusetts. He was previ-
ously president of the New
England Legal Foundation.

Jeffrey C. Smith has been
elected chairman of the board
of ADA-ES, a Colorado-based
technology firm. He has prac-
ticed environmental law since
1978.

1977

Barbara A. Ruga has joined
the Grand Rapids, Michigan,
office of Clark Hill PLC as a
member. She is practicing in the
education and municipal law
group.

1978

Ellen Dannin, an expert in
employment and labor law
who formerly taught at Wayne
State University Law School in
Detroit, has joined the faculty of
Pennsylvania State University's
Dickinson School of Law in
State College, Pennsylvania. (See
related story on page 53.)

Fredric N. Goldberg, of Mika
Meyers Beckett & Jones PLC
in Grand Rapids, Michigan, has
been reelected chairman of the
Cascade Township (Michigan)
Planning Commission. He prac-
tices in the areas of corporate
and securities law and technol-
ogy law.

1979

Michael G. Campbell has
been appointed resident director
of the Grand Rapids, Michigan,
office of Miller Canfield
Paddock and Stone PLC. His
practice focuses on commercial
and financial transactions.

Pamela A. Mull has been
elected vice president and
general counsel of the Potlatch
Corporation. She was the com-
pany's associate general counsel
for the previous 10 years.

1981

25th Reunion

September 8 – 10, 2006

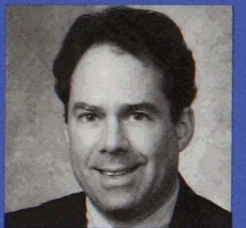
(Correction: The reunion date for
the Class of 1981 was incorrectly
printed as October 27-29 in the
previous issue of *Law Quadrangle
Notes*.)

Fundraising Chair: Kent D.
Syverud
Participation Chair: Jonathan T.
Walton Jr.
Fundraising: Richard Michael
Cieri; Karl R. Fink; Gary C.
Robb; Glenn A. Shannon;
Gregg F. Vignos
Participation: Steven G.
Adams; Natalia Delgado;
Steven S. Diamond; David D.
Gregg; Jason S. Johnston;
Jeffrey S. Lehman; William
C. Marcoux; Barbara Ruth
Mendelson; Kenneth C.
Mennemeier; Marissa
W. Pollick; Janet Susan
VanAlsten; Linda S. Walton

David B. Calzone, share-
holder with Vercruysse Murray
& Calzone PC, has been selected
in the Labor and Employment
Law (Management) category in
The Best Lawyers in America 2006.

1982

Steven R. Gersz, corporate
department chair at Underberg
& Kessler LLP in Rochester,
New York, has written the
*LexisNexis AnswerGuide on New York
Business Entities*.



Top to bottom: Anton N. Natsis, '83;
Arthur H. Siegal, '86



Laurie Laidlaw Roulston has been named chairman of the board of the Greater Cleveland Chapter of the American Red Cross. Former chief operating officer of the Townsend Group, she has been a Red Cross board member since 1999.

Richard D. Snyder has been named chief executive officer of Gateway Computers.

1983

Mark S. Demorest of Mark S. Demorest PLLC in Dearborn, Michigan, has been joined in practice by his daughter, Melissa Demorest.

Anton N. Natsis has become a name partner in the California law firm Allen Matkins Leck Gamble Mallory & Natsis LLP. Natsis, who is located in the firm's Century City office and co-chairs its commercial project group, teaches real estate law at Loyola Law School of Los Angeles, is included in *The Best Lawyers in America 2006* and *Chambers USA*, is recognized as one of the Top 100 Lawyers in Los Angeles County in *Super Lawyers*, is the founding member of the Southern California Landlord/Tenant Subsection

of the State Bar of California, is the chief consultant of the Continuing Education of the Bar Office Leasing Series, and is a member of the American College of Real Estate Lawyers.

The National Association of Women Lawyers has named **Patricia Lee "Trish" Refo** co-chairwoman of the committee for the evaluation of U.S. Supreme Court nominees. She is a partner with Snell & Wilmer in Phoenix.

1984

Greg Brown was a panel member discussing "New Technologies and the Claims They Spawn - A Risk and Insurance Coverage Perspective" at the 2006 ABA Section on Litigation, insurance coverage litigation seminar. Brown is associate general counsel at the University of Minnesota and is of counsel to Mackall Crouse and Moore in Minneapolis.

1985

James R. Lancaster has rejoined Miller Canfield Paddock and Stone PLC in Detroit as a principal. He returns to the firm after serving two years as senior vice president and general counsel for the Michigan Economic Development Corporation. His practice will focus on business and local government clients and assisting high technology ventures.

1986

20th Reunion

September 8 - 10, 2006

Fundraising Chair: W. Todd Miller

Fundraising: Christopher J. Caywood; Audrey L. Krasnow Gaynor; Andrew G. Klevorn; Michael P. O'Neil

Participation Chair: Arthur H. Siegal

Participation: Susan E. Brock; Patrick C. Cauley; Kerry A. Galvin; Howard B. Iwrey; Amy Lambert; Karen K. Manders; David M. Matuszewski; Lynn M. McGovern; Scott E. Munzel; Megan Pinney Norris; Mark K. Osbeck; Rebecca L. Raftery; Milton L. Williams Jr.

John M. Baker, a partner at Greene Espel PLLP, is now an adjunct professor at William Mitchell College of Law in St. Paul, Minnesota. He teaches land use law.

John J. Hern has been re-elected to the executive committee of Clark Hill PLC in Detroit. He is CEO of the firm and this is his second term on the committee. Hern's practice involves advising domestic and international clients and corporations of all sizes on a wide range of issues.

Arthur H. Siegal, a partner with Detroit-based Jaffe Raitt Heuer & Weiss, spoke on "Brownfield Tax Credits and Landfill Redevelopment" at the National Association of Industrial and Office Properties. He specializes in environmental and administrative law and governmental affairs.

From top: Donald P. Moore, '88;
Nancy L. Little, '88

1987

Reginald M. Turner Jr., of Clark Hill in Detroit was named one of *Michigan Lawyer's Weekly* Lawyers of the Year 2005. The award recognizes his contributions to the practice of law including his work as president of the National Bar Association. Turner also recently served as a panelist at the Griffin Policy Forum at Central Michigan University which examined the proposed ban of affirmative action programs in the upcoming general state election. (See related story on page 54.)

1988

Gary Ballesteros has been promoted to vice president, law at Rockwell Automation. He will be responsible for the company's general, commercial, and product liability litigation matters as well as the global compliance program.

Cathy Ann Bencivengo has been appointed United States Magistrate Judge for the Southern District of California.

Elizabeth Barrowman Gibson has been named managing counsel of Toyota Motor Sales U.S.A.

Kevin W. Manning has been elected secretary at Foster Zack & Lowe PC in Lansing, Michigan.

Donald P. Moore has joined Holland & Knight's Public Companies and Securities Group as senior counsel in the Miami office. His practice includes corporate and securities law, corporate governance, mergers and acquisitions, finance and investments, international transactions, and bankruptcy-related transactions.

Michael S. Gadd has been named associate general counsel of the Potlatch Corporation, headquartered in Spokane, Washington.

Nancy L. Little has been elected vice-president at Foster Zack & Lowe PC in Lansing.

1989

Michigan Law Assistant Dean of Students **David H. Baum** chairs both the Association of American Law Schools' Section on Student Services and the Michigan State Bar's District G Committee on Character and Fitness.

Jack Williams has joined Powell Goldstein LLP as a partner in the firm's Atlanta office. He will practice in the products liability, personal injury, and environmental practice group.

1990

Colin Zick has been re-elected to the board of directors of the University of Michigan Alumni Association. He practices health care law with Foley Hoag LLP in Boston.

1991

15th Reunion September 8 – 10, 2006

Fundraising Co-Chairs: Robert J. Borthwick; Kevin T. Conroy
Participation Chair: Barbara L. McQuade
Committee: David K. Callahan; Michael R. Carithers Jr.; Michael F. Colosi; Theodore E. Deutch; Clinton H. Elliott; Laura J. Hines; Michael J. Lawrence; Martin D. Litt; Christopher D. McCleary; Angel L. Reyes III; Adam C. Sloane; Dehai Tao; Albert L. Vreeland II

1994

Jeffrey M. Alperin has been selected as a partner in the Chicago office of Tressler Soderstrom Maloney & Priess. He practices litigation, insurance coverage, appellate, and municipal law.



From top:
Rick Juckniess, '95; Richard J. Wierenga, '95; Andrew C. McNeil, '96



Heather Gerken is joining the Yale Law School faculty. She specializes in voting law, diversity, and the role of groups in the democratic process. She was previously a professor at Harvard Law School.



Nate J. Kowalski has been named a partner at Atkinson Andelson Loya Ruud & Romo PLC in Cerritos, California. His practice focuses on employment counseling and litigation and labor law.



1995
Christine J. Arasin has been named corporate counsel and vice president of business development at Orthovita Inc., a developer of orthopedic biomaterials.

Eric J. Gorman has been named partner at Skadden Arps Slate Meagher & Flom LLP in Chicago. He practices complex litigation, including corporate, securities, and class action.

Rick Juckniess has become a principal at Miller Canfield Paddock and Stone PLC in Ann Arbor. His practice includes antitrust and intellectual property litigation.

Robert J. Wierenga has been named principal at Miller Canfield Paddock and Stone PLC in Ann Arbor. He focuses his practice on antitrust counseling and litigation.

1996 10th Reunion September 8 – 10, 2006

Co-Chairs: David Cade; Carol Dixon; Jesse Reyes
Fundraising: Louise Brock; Marisa Toso Brown; Richard Earle Charlton III; Drew Grabel; Ross Romero; Jeffrey Torres; Adriana V. Vlasic
Participation: Carrie Fletcher; Christine Gregory; Richard Mrizek; Maureen Sweeney; Jessica Toll

Aline C. Flower, is editor-in-chief of the newly-published book *Intellectual Property Technology Transfer*, which publisher BNA Books describes as a "comprehensive resource on the laws governing the burgeoning field of technology transfer for commercial application." Flower is manager of legal affairs in the invention licensing office at the University of Washington in Seattle.

Andrew McNeil, of Indianapolis, Indiana-based Bose McKinney & Evans, spoke on "Advanced Issues in Indiana Employment Law" as part of an advanced level employment forum in Indianapolis last spring.

David G. Parry has been elected shareholder at Leonard Street and Deinard in Minneapolis. He practices business and commercial litigation and construction law.

Jeff Torres has been named partner at McGuire Woods LLP in Chicago. He is in the firm's technology and business department, focusing on counsel related to telecommunications, emerging technologies, and cable television.

1997
Marko J. Belej has been named partner at Jaffe Raitt Heuer & Weiss PC in Southfield, Michigan. He is a member of the firm's tax group.

Jessica L. Davis, of the Detroit office of Bodman LLP, has been named a partner in the firm. She specializes in asset-based and cash-flow lending issues as well as debt offerings and private placements.

In Memoriam

From top: Freeman L. Farrow, '97; Alicia S. Schehr, '98; David C. Kirk, '99; Benjamin A. Zainea, '99; Marla Schwaller Carew, '00; Eric A. Baker, '02

Freeman L. Farrow, M.D., is now a principal at Miller Canfield Paddock and Stone PLC in Detroit. He is a member of the firm's litigation and dispute resolution practice group and franchise law team. Farrow is also a Michigan state court administrative office approved mediator.

Eric Hecker has been elected partner at Emery Celli Brinckerhoff & Abady LLP in New York City. His practice focuses on civil rights litigation.

Liesl Strieby Maloney has joined Steelcase Inc. in Grand Rapids, Michigan, as senior corporate counsel. Her practice focuses on securities law and corporate governance.

1998

Danielle B. Lemack has been elected partner at Pattishall McAuliffe Newbury Hilliard & Geraldson LLP in Chicago. Her practice concentrates on trade identity, including trademark, copyright, unfair competition, advertising, and trade secret law. She is also an adjunct professor at Northwestern University School of Law.

Alicia S. Schehr has been named partner at Jaffe Raitt Heuer & Weiss PC in Southfield, Michigan. She is a member of the firm's insolvency and reorganization group.

1999

Michael Cahill has joined the Brooklyn Law School as an assistant professor of law. His primary areas of interest are criminal and health law.

Detroit-based **Larry A. Gremel** has been made a partner in Bodman LLP, where he represents lenders in loan originations.

David C. Kirk has been elected partner in the Atlanta office of Troutman Sanders LLP and has been named as a 2006 Georgia Rising Star by *Law & Politics Media*. He represents public and private sector clients on land use issues ranging from annexation to zoning and on other governmental and regulatory matters.

R. Prescott Sifton Jr. has been named partner at Blackwell Sanders Peper Martin in St. Louis. His practice focuses on business and commercial law, securities, intellectual property, and insurance coverage.

Benjamin A. Zainea has been elected to the membership at Mika Meyers Beckett & Jones PLC in Grand Rapids, Michigan.

2000

Marla Schwaller Carew has joined Miller Canfield Paddock and Stone PLC in Detroit as an associate. She is practicing in the federal tax and employee benefits group.

2001

5th Reunion

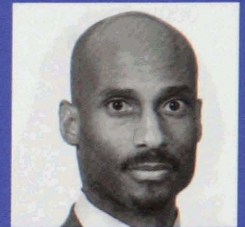
September 8 – 10, 2006

Co-Chairs: Bill Burdett; Elizabeth Goldman; Sarah Riley; Marcela Sanchez
Fundraising: Thomas Blanchard; Kevin Costantino; Joseph Giles; Dan Kelly; Kelly O'Donnell; SallyJean Tews

Participation: George Avila; Eve Brensike; Katy Dobrowitsky; Jami Jarosch; Laura Kacenjjar; Rob Mikos; Angelica Ochoa; Bryce Pilz; Amy Harwell-Sankaran; Maggie Schneider; Joshua Smith

2002

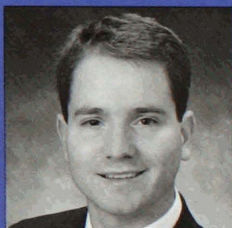
Eric A. Baker has joined Boardman Law Firm LLP in Madison, Wisconsin, as an associate whose practice focuses on general and commercial litigation. Baker previously practiced in Washington, D.C., and served as law clerk in the Judiciary Committee Counsel's Office of U.S. Senator Russell D. Feingold.



From top:
Joscelyn C. Boucher, '03; Garth T. Beavon, '04;
Paul J. Cambridge, '05; Tara H. Lord, '05



Noah Leavitt has become senior attorney with the new Walla Walla, Washington, office of the Northwest Justice Project, a statewide provider of legal assistance on civil matters to low-income Washington State residents.



2003

Joscelyn C. Boucher has joined Miller Canfield Paddock and Stone PLC as an associate in the Kalamazoo, Michigan, office. She is practicing in the corporate and securities group.



Pippin C. Brehler has joined Morgan Miller Blair in Walnut Creek, California, as an associate, with a practice focusing on complex business, real estate, and land use litigation.



2004

Garth T. Beavon has joined Mika Meyers Beckett & Jones PLC in Grand Rapids, Michigan, as an associate.

2005

Paul J. Cambridge has joined Polsinelli Shelton Welte Suelthaus in its St. Louis office. An associate in the general corporate group of the business law department, Cambridge concentrates his practice in general business and corporate matters and related transactions.

Tara H. Lord has joined Miller Canfield Paddock and Stone PLC in Detroit as an associate, practicing in the financial institutions and transactions group.

Brian P. McClatchey has been admitted to the Washington State Bar Association and has joined Workland & Witherspoon, PLLC, as an associate. McClatchey's article on the unionization of tribally-owned businesses will appear in the fall 2006 edition of the *Idaho Law Review*.

In Memoriam

'31	Harold E. Baily	2/17/2006	'60	John I. Riffer	3/10/2006
	Eugene S. Huff	2/13/2006	'62	Charles H. Dever	3/19/2006
'33	Harry B. Aronow	9/8/2005	'63	Dean Richard C. Allen (LL.M.).....	5/27/2005
'35	Harry R. Begley.....	8/22/2005	'64	Philip W. Murray.....	3/23/2006
'38	John O. Hoyt	2/16/2006	'66	Jesse E. Lasken	9/20/2005
'39	Laddy H. Gross	1/16/2006	'67	Eli J. Segal.....	2/20/2006
	Mary Potter Sharp.....	2/24/2006	'68	Richard A. Earle	2/13/2006
	Edward P. Troxell	5/14/2005	'69	Roger C. Siske	1/4/2006
'40	William H. Dahman.....	2/28/2006	'72	Thomas J. Cresswell.....	1/3/2006
	Francis L. Robinson	2/18/2006	'73	Michael D. O'Connor	1/22/2006
'41	Robert E. Jamison.....	2/15/2006	'74	Charles W. Kulikowski	6/28/2005
	Robert O. Smith Jr.	2/19/2006		Larry W. Wolfson	6/3/2005
	William D. Sutton	2/18/2006	'75	S. Joseph Fauman	2/26/2006
'42	Robert H. Potter	6/4/2005	'77	Katherine E. Ward	1/3/2006
'43	John R. Chapin.....	3/1/2006	'79	Theodore Calvin Wallace.....	1/19/2006
	Tom Franklin Hirschauer.....	3/18/2006	'80	Richard P. Layman.....	4/27/2006
'47	Kenneth B. Holm	1/11/2006	'05	Travis A. Skelton	3/26/2006
'48	Howard Allen Ideson.....	12/27/2005			
	Thomas P. Loughlin	1/25/2006			
'49	Charles E. Becraft	3/17/2006			
	John Rowland MacKenzie.....	1/22/2006			
	Thomas M. Rasmussen	12/22/2005			
'50	Edmund W. Reisig Jr.....	1/6/2006			
	I. Robert Schafer	1/4/2006			
'51	John L. Denniston	1/23/2006			
	William L. Mitchell	3/18/2006			
'54	Lawrence A. King.....	3/8/2006			
	Gerald Lynn Prucha.....	12/24/2005			
'55	Charles M. Raphael	2/7/2006			
	James R. Robinson	4/4/2006			
'56	Samuel J. Brookins	2/6/2006			
	C. Russell King.....	2/19/2006			
'58	Allen C. Dewey Jr.	2/24/2006			
	James E. Wolber	4/17/2006			

In detail

- 69 Maiming the cubs
- 73 For a time such as this
- 77 What's real for law?

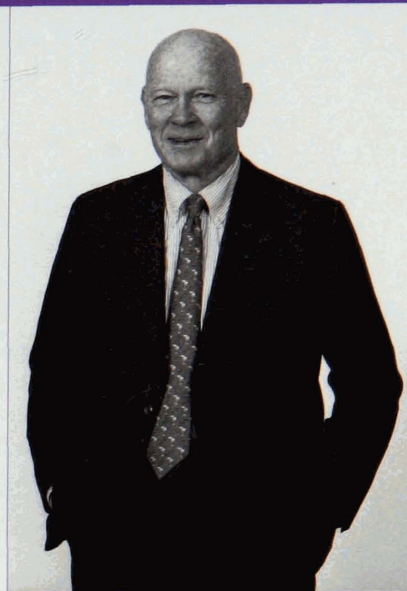
James J. White, '62, has written on many aspects of commercial law and has published its most widely recognized treatise, *Uniform Commercial Code* (with Summers). He is also the author of several casebooks on commercial, bankruptcy, and banking law. Professor White practiced privately in Los Angeles before beginning his academic career at the University of Michigan in 1964. He currently serves as the Robert A. Sullivan Professor of Law. Professor White has served as the reporter for the Revision of Article 5 of the Uniform Commercial Code; he is a member of the National Conference of Commissioners on Uniform State Laws and has served on several American Law Institute and NCCUSL committees dealing with revision to the Uniform Commercial Code. He received the L. Hart Wright Award for Excellence in Teaching for 2001-02 and the Homer Kripke Achievement Award given by the American College of Commercial Finance Lawyers. Professor White earned his B.A., *magna cum laude* and Phi Beta Kappa, from Amherst College and his J.D., Order of the Coif, from the University of Michigan Law School.

John Reed is Thomas M. Cooley Professor of Law Emeritus. 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.

Joseph Vining, the Harry Burns Hutchins Professor of Law, practiced in Washington, D.C., and has served with the Department of Justice and with the President's Commission on Law Enforcement and the Administration of Justice. In 1983 he was a senior fellow of the National Endowment for the Humanities and in 1997 he was a Rockefeller Foundation Bellagio Fellow. He is a member of the American Academy of Arts and Sciences. Vining has lectured and written in the fields of legal philosophy, administrative law, corporate law, comparative law, and criminal law, and he is the author of *Legal Identity*, on the nature of the person recognized and constituted by law; *The Authoritative and the Authoritarian*, on the nature of the person speaking for law and the relation between institutional structure and the real presence of authority; *From Newton's Sleep*, on the legal form of thought and its general implications; and *The Song Sparrow and the Child: Claims of Science and Humanity*, on the place of law and the human individual in the modern scientific enterprise. Vining is a graduate of Yale University and Harvard Law School and holds a degree in history from Cambridge University.

Maiming the cubs by James J. White

The following essay is excerpted from an article published at 32 Ohio Northern University Law Review 287 (2006) and appears here with permission. The complete article expresses the author's skepticism about the meaning of many of the findings reported by proponents of the "humanizing legal education" initiative, and in detail dissects the research methods and conclusions of studies done by G. Andrew H. Benjamin et al in 1986 and by Keenon M. Sheldon and Lawrence S. Krieger in 2004. For more about the "humanizing law school" initiative see www.law.fsu.edu/academic_programs/humanizing_lawschool.html.



In the last 20 years much has been written about the deleterious effect that law school has on the mental well-being of law students. Many have called for "humanizing" law school. In support of their case, the advocates of humanizing cite numerous anecdotes, much scholarly writing in the psychology literature, and even a few rigorous studies of law students.

You should understand that these advocates do not merely claim that we make our students more anxious, more depressed, and generally mentally sicker, but that this sickness may bring about permanent changes that plague our students for years to come. So the claim, at least by inference, is not just that law students are made unhappy by law school, but that they are maimed.

I am skeptical.

In general

It is easy to believe that students are made anxious and even depressed by law school and that the anxiety and depression stay with many students throughout school. It is harder to believe that these stresses cause permanent and irreversible change and that the ills of lawyers are traced in any meaningful way to the stresses of the three years of law school.

Why am I skeptical? A law professor's claim that he or that law school attendance has such influence over his students shows an unbecoming egotism. I am happy if I can get my students to learn some rudimentary rules about the holder in due course doctrine for next week, never mind what effect I might have a year or five years from now. Our students' lives are filled with countless events, dozens of relationships, and a multitude of worries. Only a handful of those events and

worries come directly from law school. How could any law school experience overshadow any one of hundreds of things that happen to each student in the first year after school? Where is the evidence that our pushing them to think like lawyers has turned them permanently off course? To my mind, students are more like sea-going tankers than fragile skiffs; their courses change only slowly and at response to greater pressure than law school and law teachers can muster.

On the other hand, that law school causes stress and that such stress might foster anxiety, depression, and possibly even larger transitory psychological disturbances is easy to believe. Many of our students come from undergraduate disciplines where they earned certain and predictable rewards for hard study and diligent recollection. Recall the common claim of a student who got a low grade despite the fact that he had studied hard and "knew the material." In many law school classes

How could any law school experience overshadow any one of hundreds of things that happen to each student in the first year after school? Where is the evidence that our pushing them to think like lawyers has turned them permanently off course?

students must distill general principles from the cases for themselves and must show some analytical ability on the examination. When one's practiced modes of learning no longer work, stress and anxiety are inevitable.

I wonder, too, whether the anxiety and depression that we observe in some of our law students is the unavoidable consequence of the challenge of hard learning and of confronting the looming need to prepare to behave as a lawyer. Soon after they come to law school, students must sense that however hard Contracts or Torts is, learning to be a successful practicing lawyer is harder, and that the road to success in the profession is even less clearly marked than the road to law school success.

One study suggests that the anxiety caused by medical school is smaller than that created by law school, but there are few other studies that compare law students' psychological state with the state of students who are learning other demanding professions. What do we know about military pilots or candi-

... but it does raise the possibility that anxiety of the kind that we observe in law students is endemic to hard learning.

dates for elite military units like the Seals? Or, what about Ph.D. candidates in philosophy who, at least at my school, suffer a powerful judgmental ranking by the faculty (viz. we will not recommend you for any philosophy department in the top 100)?

My anecdotal experience as an instructor pilot in the Air Force shows that student pilot anxiety (and presumably the accompanying deleterious psychological effects) greatly exceeds that in law students. Student pilots came to me for jet training with between 100 and 150 hours of flight time (including many hours of solo flight time) in propeller aircraft. We referred to their first flight in jet aircraft as a "dollar ride" because the instructor did all of the flying from the back seat in the same way that a barnstormer (who charged a dollar) might have done at a county fair in 1925. About half of my students would vomit on their dollar ride. Remember, these youngsters

were already trained in flying prop airplanes, and most went on to become successful Air Force pilots. Yet, they showed a more extreme response to stress and anxiety than I have ever seen from a law student. Between one-third and one-half of each pilot training class (but none of mine) "washed out," so their anxiety about success was justified.

Of course, a comparison to other places where students must learn a difficult skill does not explain away findings about law students, but it does raise the possibility that anxiety of the kind that we observe in law students is endemic to hard learning. It may not be caused by the way law school teaching is done and it suggests that no change in law school pedagogy will alleviate student anxiety.

The empirical studies

There are two large scale empirical studies of law students' mental health. The studies are entitled: "The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers," published in 1986, and "Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being," published in 2004.

In their 2004 study, Professors Keenon M. Sheldon and Lawrence S. Krieger (hereinafter referred to as S&K) examined one class of students at Florida State and a class at an unnamed Midwestern urban school. They examined 235 members of the entering class at Florida State in August 2000, 193 of those were examined again in March of 2001, 136 in November 2001 (second year), and 134 in November 2002 (third year). At the Midwestern school, the class entering in 2002 was tested only in the first year, in September of 2002 (255 subjects) and in April 2003 (158 subjects).

According to the standards used by S&K, students' "subjective well-being" (SWB) suffered a statistically significant decline during the first semester of law school and never recovered during law school. The study also shows a decline in "intrinsic" as opposed to "external" values and a decline in "self determined" motivation and a rise in motivation from "external" and "introjected" sources. Reasoning from the self-determination theory of optimal motivation and human thriving (i.e., that people are happier when they control their own fates and

For such a time as this

derive their motivation and goals from internal needs rather than external ones), the authors suggest that students' decline in mental well-being is the result of law school's redirection from internal to external values and from intrinsic to external motivation. Since a change in a student's motivation and values might be long lasting, this latter possibility (i.e., that students' newfound unhappiness comes from these changes in values and motivation) is a troubling one. It is one thing to say that law students are anxious and depressed; it is something else to say that law school has worked a long lasting change that can leave them anxious and depressed indefinitely.

The other major study that used the Beck Depression Inventory (BDI) to measure law student depression was done by Professor G. Andrew H. Benjamin et al. in 1986 at Arizona State, where three cohorts were tested. In the fall of the first year (October), the mean score of cohort 1 was 6.91 and in the spring of first year it was 6.22. In the spring of the third year, the score of cohort 2 was 8.25 and in the spring two years after graduation it was 6.83. In the summer before law school, cohort 3 had a score of 5.24 and in the spring of the first year, 8.85.

Particularly in view of the fact that the BDI test is widely regarded as a reliable measure of depression, the two studies convince me that law student depression increases during the first year of law school. However, the increase is not dramatic and some of the data are inconsistent with the hypothesis that depression increases in the first year.

Better to understand the law student scores, compare them to the scores of other groups. The mean BDI scores of law students in the spring of their first year, after suffering the allegedly traumatic effects of the first-year law school, are similar to the mean BDI scores of undergraduates and dissimilar to the mean BDI scores of abnormal groups. Studies of undergraduates report mean BDI scores of 7.28, 7.38, 7.47, and 7.58. While this is not an exhaustive list of studies of undergraduates, nothing in the studies suggested that these results were surprising or aberrant. Law student scores straddle the undergraduate scores; some are slightly higher and some are slightly lower. Contrast this with the score of heroin addicts (19.42), alcoholics (12.80), and psychiatric hospital patients (19.28 and 23.16).

When I compare the law school data to findings from other groups, I conclude that the first year of school probably makes students more anxious and depressed, but the data are not overwhelming. Some findings contradict others, and I could find no studies of students in similarly threatening environments, including studies of military pilot candidates or of officer training candidates. Perhaps a look beyond the medians would show student migration across the line of real depression that is not shown by the median numbers. At least in my opinion, the data do not live up to the claims about serious injury and do not support the exhortations for radical revision of law school teaching.

Rival hypotheses

If law students become more depressed and more anxious during the freshman year but the cause of that depression and anxiety is not that we are exalting Mammon, fame, and beauty, or that we are threatening shame, fear, and guilt, then what causes this depression and anxiety? I see at least two plausible hypotheses. First, there is the possibility that law school attracts a divergent set of students whose personalities dispose them to depression and anxiety. Second is the possibility that all hard learning causes depression and anxiety.

Capitol University Law Professor Susan Daicoff favors the first hypothesis, that our students are different: "[L]awyers' competitiveness, aggressiveness, need for academic achievement, and low interest in emotions are likely to have been present prior to law school, even though they may have been amplified and increased by the legal education process," she

*At least in my opinion,
the data do not live up to the claims
about serious injury
and do not support the exhortations
for radical revision of law school teaching.*

has written. While it appears that pre-law students are no more psychologically distressed than their peers, this finding is entirely compatible with the assertion that many pre-law students possess a unique set of personality traits that, in effect, sets them up for the inevitable decline in mental health that law school brings.

Not all law students will be as academically successful in law school as they were when they were undergraduates. The psychological benefits of undergraduate academic success may at the same time both explain pre-law students' lack of psychological distress and mask the particular underlying psychological needs of pre-law students that will not be met in law school. Daicoff offers the following:

"In law school, if law students equate self-worth with achievement, to the extent that self-esteem depends entirely on continual successes, a less-than-average academic performance equates with personal worthlessness. The law school experi-

... law students are not alone.

*The stress that we observe in law school
may be endemic to learning
a demanding skill.*

ence itself frustrates individuals' need for achievement, since formerly top students in college may now be average students in law school. Due to law students' demonstrated high needs for achievement, success, and dominance, this phenomenon may have devastating effects on their self-esteem and self-worth."

Thus, law school may be a necessary but not sufficient reason for the anxiety that we observe.

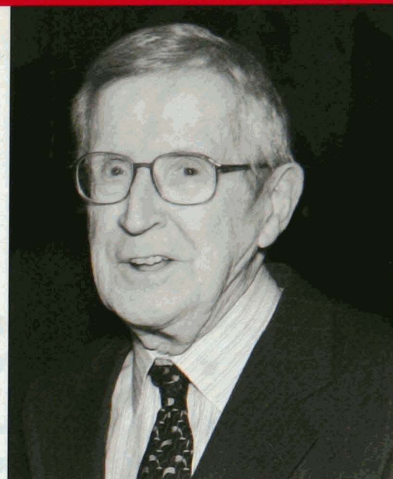
The second hypothesis, that hard learning causes psychological misery, is supported not only by my pilot anecdote but also by a small number of studies of students in other curricula. A study of graduate and professional students published in 2004 found high rates of depression, stress, and substance use among graduate and professional students. Although this study used different measuring scales than S&K and is therefore difficult to translate, the fact that 25 percent of all respondents reported a score on that depression scale that "may be indicative of depression" lends support to the hypothesis that law students are not alone. The stress that we observe in law school may be endemic to learning a demanding skill.

Conclusion

Assuming for the sake of the argument that law school causes anxiety and depression in students, I am not persuaded either that that anxiety and its associated psychological ills persist after law school or that they can be prevented by even Herculean efforts at making law school more humane. Until better data come forward, I will continue the traditional law teacher's reign of pillage and abuse. I do that happy in the belief that my hectoring will leave my students better, if momentarily sicker, lawyers.

For such a time as this **by John W. Reed**

The following essay is based on the talk the author delivered to the annual meeting of the International Society of Barristers at Scottsdale, Arizona, on March 17, 2006.



I want to preface my remarks by expressing my deep appreciation for the long association the Barristers and I have had with each other.

That association began in 1975, when you asked me to speak at your meeting in Puerto Rico. Three years later, I spoke again and was elected as the Society's first Academic Fellow. But the really rewarding relationship began when I became your editor in 1979, and in 1981 also your administrative secretary and general factotum. No group has been more enjoyable, no relationship has been more rewarding than this one.

I cannot adequately express my pride in having been accepted so warmly as part of this distinguished company. Thank you for all your kindnesses to Dot and me over these three decades.

You who have been here before will recall that typically I have commented on changes—usually negative changes—in the nature of trial practice and in the quality of our lives as lawyers. These changes have often centered around a perceived loss of professionalism and the clouding of our ideals. And so we have talked about such matters as law practice as business, or the take-no-prisoners mode of litigation; and if I were to talk about that today, I would be tempted to describe for you the recent practice of holding law firm retreats at firing ranges, where firm members and associates not only practice marksmanship but also learn how to use sub-machine guns; or to tell you about the Florida lawyer whose telephone number advertised on billboards is 1-800-PIT BULL—but not today. We've also talked about the bureaucratization of the courts, the steady diminution of the role of the jury, the displacement of trials by alternative modes of dispute resolution, and the like.

But I have always sought to encourage you to reclaim the ideals with which you entered upon your lives as lawyers and to return home with optimism and new dedication to the roles you play in helping to achieve a just and compassionate society,

both one on one with your clients and collectively in your communities and nation and world.

I want to do something similar again this year, but this time the problems I want you to consider are not the arguably parochial problems of our professional circumstance but rather problems that arise in the public sphere—hot button issues such as criminal investigations without probable cause, warrantless searches, telephone and Internet surveillance, indefinite detentions, extraordinary renditions, and government infiltration into private groups such as churches, mosques, and political action groups. Although discussion of such issues may have a political cast, there is no denying that these things exist and that they invite legal challenge—which is where you come in.

My knowledge of these issues is neither broad nor deep; but, like you, I have a general, overall awareness which is enough to alarm me, and enough to suggest that, as the cream of trial lawyers, some of you, perhaps many of you, will play a role in the ultimate resolution of these issues. That is because, despite the recent marginalization of the judiciary in major policy areas, it is still the trial lawyers and the courts that stand between the oppressors and the oppressed.

. . . I have always sought to encourage you to reclaim the ideals with which you entered upon your lives as lawyers and to return home with optimism and new dedication to the roles you play in helping to achieve a just and compassionate society . . .

The broad sweep of problems is so daunting that you and I may well doubt that we can affect or change what we see as a betrayal of core principles; and so we are tempted to sit on the sidelines, thinking that our only possible role is to watch television news and mutter increasingly crude epithets. But we must not confuse cynicism with intelligence. The good news—if there is good news—is that these egregious policies that so offend our notions of justice and of the rule of law have meaning only in their application to one case at a time, which generally means one lawyer at a time. And a change in the environment, in the climate of justice, usually comes gradually, like global warming, not like a tsunami. In the words of the familiar adage, “Life by the inch is a cinch; life by the yard is hard.”

There is, of course, a notable tradition of courageous representation of the unpopular client or cause, and you well know many of the more famous instances—instances such as:

- John Adams’ representation of the British Captain Thomas Preston after the Boston Massacre;
- Clarence Darrow’s representation of Leopold and Loeb charged with the murder of Bobby Franks; and Darrow’s defense of John Scopes, the Tennessee high school biology teacher who had committed the crime of teaching the theory of evolution;
- Lloyd Paul Stryker’s defense of Alger Hiss;
- Joe Welch’s confronting of Senator Joseph McCarthy;
- And, almost as real to us as a real person, Atticus Finch’s defense of a black man accused of raping a white girl.

Each age has its challenges and its heroes.

*And it’s satisfying to reflect on them
and to congratulate ourselves
that we are part of a profession
that includes such heroes.*

Two who defended unpopular clients at considerable personal risk have met with us in the recent past and recounted their experiences:

- Stephen Jones’ defense of Timothy McVeigh, the Oklahoma City bomber, and
- Lt. Col. Charles Swift’s courageous representation of Salim Ahmed Hamden, Osama Bin Laden’s personal driver, challenging the presidential order that he be tried by a Guantanamo military tribunal.

Among our own members, I would mention two modern examples of lawyers seeking to assure due process in cases where the public thought little process was due. I refer to

- Jim Brosnahan’s defense of John Walker Lindh, who was known in the press as the American Taliban, and
- Bill Gray’s representation of Dan Aravelo, charged with the Boulder, Colorado, murder of a three-year old child—a representation so unpopular that his family had to move out of their home for their safety. Bill’s representation of Aravelo was recognized by the American College of Trial Lawyers Courageous Advocacy Award, one of only 13 such awards in 41 years.

One could go on and on, recounting stories of courage and heroism in doing what trial lawyers do so well—standing with those who face forces far larger than themselves. Each age has had its challenges and its heroes. And it’s satisfying to reflect on them and to congratulate ourselves that we are part of a profession that includes such heroes.

But you and I cannot afford to view this tradition only as in a rear view mirror. The problems of our time are at least as daunting as those of both the recent and distant pasts. We live in the midst of a world on fire with violence and appalling greed and endless insanities of senseless death. Great wrongs are taking place around us, some of them perpetrated by our own government. If we were to seek a musical characterization of our circumstance, surely we would choose Franz Josef Haydn’s famous choral work entitled “Mass for Times of Distress,” for we are indeed distressed.

To be merely spectators in such a time can reduce us to despondent exhaustion. But to understand these wrongs as a call to arms gives you and me a sense of life and purpose that both serves those who need our help and also regenerates our will to preserve the rule of law and to achieve a juster justice.

What's real for law? by Joseph Viner

During the Montgomery bus boycott inspired by Rosa Parks and led by Martin Luther King, carpools took some people to their jobs, but there weren't enough cars for them all; in addition, many people simply preferred to walk as a witness to their cause even though they had to walk great distances. Dr. King became concerned about one of these. They called her Mother Pollard, and she was well into her 80s but still needed to work; she was walking miles every day to and from her place of work. Dr. King pleaded with her to ride the bus. She replied that she would walk till it was over. He said, "But Mother Pollard, aren't your feet tired?" She said, "My feet is tired, but my soul is rested." Resisting the wrongs around us may be tiring and even dangerous, but I submit that it will rest your soul.

The need for courageous advocacy is undiminished, whether in defense of individuals accused of wrongdoing, or in attacking social issues like those we have heard about from our guests this week: immigration, penal systems, judicial independence, our relationship with native American peoples, and national security. There is need for your advocacy in countless settings, especially in this time of greater exercise of governmental power. I want, however, to emphasize the opportunity and responsibility that are yours at the level of representing individual clients, especially in those matters where emotions run high.

Just to give flesh to my point, let me describe a single case that highlights the desperate need for courageous representation by lawyers like yourselves and that illustrates, also, what will occur if we somehow allow the system to shut you out. I use this particular episode as an illustration, out of scores of possible examples, because it is recent, having come to my attention only last week, and also because it is to me so shocking. It is the case of a man named Maher Arar.

Maher Arar was born in Syria 35 years ago. He moved to Canada at age 17, apparently to escape the Syrian draft; and he holds both Canadian and Syrian citizenship. He has computer engineering degrees from McGill and the University of Quebec. His wife has a Ph.D. in finance from McGill, and they have two young children. According to all evidence, he has led an exemplary life.

In September of 2002, Arar was returning to Montreal from a family vacation in Tunisia. During a stopover at JFK Airport,

he was seized and shackled by U.S. immigration officials, who suspected that he was an al Qaeda member. Despite holding a Canadian passport, Arar was held in solitary confinement in Brooklyn; he was not allowed to contact his family, was not allowed access to consular services, and especially, was not allowed access to a lawyer; and 12 days later he was deported to Syria—a move that is called extraordinary rendition, whereby terrorism suspects are sent to countries where torture is practiced. Held in a dungeon near Damascus, he was abused physically and psychologically.

There is need for your advocacy in countless settings, especially in this time of greater exercise of governmental power.

According to court papers, "The cell was damp and cold, contained very little light, and was infested with rats which would enter the cell through a small aperture in the ceiling. Cats would urinate on Arar through the aperture, and sanitary facilities were nonexistent." Reportedly, his captors beat him savagely with an electrical cable. He was allowed to bathe in cold water once a week. He lost 40 pounds while in captivity.

Despite this barbaric treatment, no confession was forthcoming, and after 10 months, he finally was released when no link to any terrorist organization or activity emerged.

The revolting mistreatment of Mr. Arar was, of course, illegal under our Constitution and treaties. Indeed, it would have been illegal even if the suspicions of his al Qaeda connection had proved true. But he was never given access to a lawyer who might have challenged his detention and torture and raised those constitutional and treaty issues.

After his release, Mr. Arar retained a lawyer and sued [then] Attorney General Ashcroft and other members of the administration in federal court in Brooklyn, seeking damages. Now that, at long last, he has a lawyer to stand with him, all should be well, with the government called to account for its oppressive dealings with Arar. But not yet. Two weeks ago, the trial

judge, not disputing that U.S. officials had reason to know the Syrian torture was likely, nevertheless dismissed the suit for two reasons: first, he said, the use of torture in rendition cases is a foreign policy question not appropriate for judicial review, and second, he said that going forward with the suit would mean disclosing state secrets.

The decision seems to say that a defense of state secrets trumps all, but that even if it doesn't, the court must abstain in the face of a defense that the issue is a foreign policy question which is for the executive alone. It really says that an individual who is sent overseas by us for the purpose of being tortured has no claim in a U.S. court—that if we outsource torture, the victim is remediless.

If my reading of the case is correct, surely it is a shocking decision and ripe for reversal, since the Supreme Court—in a pair of 2004 opinions which rebuked the government for its policies of holding foreign terrorism suspects in indefinite legal limbo in Guantanamo and elsewhere—made it clear that even during the war on terror, the government's actions are subject to court review and the government (the executive, that is) must adhere to the rule of law.

So lawyers and the courts are indispensable to the maintenance of our liberties. If we do not provide due process for those in need, or if, as in the Arar extraordinary rendition, we are not allowed even to demand due process and fairness for these unpopular clients, our liberties are diminished. And if somehow we are unable to persuade our courts to enforce the rule of law and due process, our liberties and our humanity are at risk. Benjamin Franklin's famous aphorism may have become a cliché, but it is powerfully true nonetheless: "They who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety."

*In Winston Churchill's words,
"You will make all kinds of mistakes,
but as long as you are generous and true,
and also fierce, you cannot hurt the world
or even seriously distress her."*

I know that relatively few of you have a significant criminal practice, but I urge you to seek opportunities to represent those who are persecuted and prosecuted largely because of public emotion, and if not personal representations, then to use your considerable talents to persuade the larger public of the critical importance of due process of law even in times of distress.

And if, because you may have little experience with cases of a politically sensitive nature, you doubt your capacity to make a difference, then I would remind you of an ancient story that some of you know by heart. It is perhaps apocryphal, but instructive nevertheless. In this age-old story, Ahasuerus, better known to Western ears as Xerxes, was king of Persia—today's Iran—which held the Jews in captivity. One of the king's many wives—indeed, his favorite—was Hadassah, or, more familiarly, Esther. Esther was a Jew, but the king didn't know that fact (which should tell you something about the quality of communication in those ancient royal marriages!).

As a result of intrigue in the royal court, Ahasuerus decreed the death of all Jews in the kingdom. Esther's cousin and guardian, named Mordecai, pleaded with her to ask Ahasuerus to relent, and thus to save her people. She was reluctant to do what Mordecai asked of her, which was understandable since to approach the king unbidden carried the death penalty unless the king chose to extend his golden scepter; and she hadn't been invited. Mordecai pressed her, however, and concluded his plea to Esther with the familiar words: "Who knows but that you are come to the kingdom for such a time as this." She then consented to go, saying, "And if I perish, I perish."

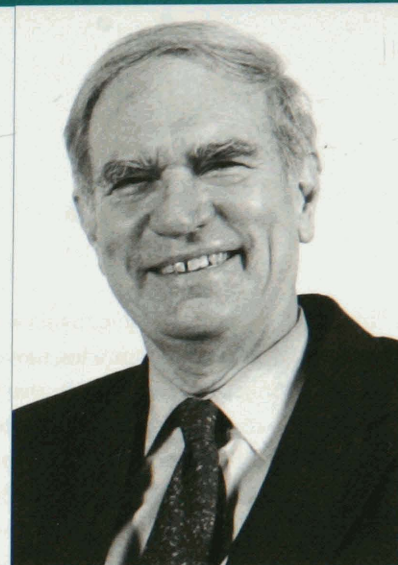
The story ended well, of course, the king not only holding out his scepter to Esther but also authorizing the Jews to arm and defend themselves, which they did with overwhelming success.

No one can guarantee you equal success; but the world's need is critical, and you have no choice—as Esther had no real choice—but to face that need. Although victory is not assured despite our best efforts, defeat is assured if we do not join the battle. In Winston Churchill's words, "You will make all kinds of mistakes, but as long as you are generous and true, and also fierce, you cannot hurt the world or even seriously distress her."

With your talent and dedication, who knows but that you have come to the bar for such a time as this.

What's real for law? by Joseph Vining

The following essay is adapted from a paper the author presented this March, at a Lilly Foundation conference at Notre Dame Law School, and a lecture given last October, at a symposium at the Center for Law, Philosophy, and Culture, Catholic University Law School. The October symposium and March conference explored issues and questions raised by University of San Diego Law Professor Steven D. Smith's *Law's Quandary* (Harvard University Press, 2004). The complete lecture, together with lectures responding to the book given by Professor Patrick McKinley Brennan, Justice Antonin Scalia, and Professor Lloyd Weinreb, and a further presentation by Professor Smith, is being published in 55 *Catholic University Law Review* No. 3, 671-685 (Spring 2006).



Law is not academic. The university is not its home. Law is in the wider world and is pervasive there, in language, thought, and action. Everyone is imbued with it. I want to raise here the question whether law might have an ontology of its own. In his elegant and accessible new book, *Law's Quandary* (Harvard University Press, 2004), Steven Smith groups our various senses of what is real for us into three "ontological families," the "mundane," the "scientific" including mathematics, and the "religious." Law today operates in an "ontological gap," he suggests, unless its practitioners are in fact drawing upon the resources of the third of these families, the religious, in understanding and explaining what they do and their authority for what they say.

There may be an additional and fourth such "ontological family," law's own.

When we turn to contemporary scientific and mathematical description and discussion we see how overt the ontological is all around us. Ontological claims are signaled generally by the verbs "is" and "exists" and of course by the adverb "really." They may be negative or positive. For instance, a prominent physicist, pleading recently to the general reader for greater understanding and acceptance of "indirect scientific evidence," presents "field theory" as "the theory I use that . . . describes objects existing throughout space that create and destroy particles." She speaks of "observing" as "involving a train of theoretical logic by which we can interpret what is 'seen'" and, with regard to space and the dimensions of space, "establish the existence of extra dimensions." In the end she turns to a form of majority rule, "the bulk of the scientific community" determining the "true story," but that her own claims are "ontolog-

ical" in character is evident. "Do I believe in extra dimensions?" she writes elsewhere. "I confess I do. . . . Sometimes . . . an idea seems like it must contain a germ of truth. . . . I suddenly realized that I really believed that some form of extra dimensions must exist." (Lisa Randall, "Dangling Particles," *New York Times*, September 18, 2005; *Warped Passages* [2005], 3).

Against this background of overt ontology let me slip into law's with an example that cuts across the scientific, the legal, and the religious. A *New York Times* op-ed comment by Bernd Heinrich ("Talk to the Animals," August 26, 2005) on the popular 2005 documentary on the Antarctic penguin, *March of the Penguins*, argued with approval that we have become more comfortable calling what we see there "love." The comment was of the kind that proposes easing or eliminating the line between human beings and animals by pulling us across it toward them, rather than them across it toward us.

"I've long known the story of the Emperor penguins," the commentator says, "having told it to generations of biology students as a textbook example of adaptation. . . . In a broad physiological sense, we are practically identical not only with other mammals but also with birds . . . except for differences in detail of particular design specifications."

Then comes the ontological statement of interest. "Functionally," he says, "I suspect love is an often temporary chemical imbalance of the brain induced by sensory stimuli that causes us to maintain focus on something that carries an adaptive agenda." The ontological claim is made by the "is" in "love is. . . ." It is modified slightly by his term "functionally," but the point of his commentary is to urge us, the "us" that appears in his definition of love, not to be shy about using the word

“love” for what moves the penguin—what moves the penguin need be no different from what moves us, an often temporary chemical imbalance of the brain that is adaptive.

This is a textbook example of ontology that wishes to be thought scientific, chosen for wide publication. To reflect here for a moment on how law might approach this statement and claim may bring out aspects of law’s own ontology.

What would the legal mind do with a statement like this, in thinking about coming to some conclusion about love? In law we are all witnesses, as we often are also in personal life. When presented in law with this sentence about love, there would be interest in what this same individual said at home, what he meant when heard to say “I love you” to his wife or child, friend, or sister. Putting the two statements together, the one made at home and the one made professionally, as would be done in cross-examination on a witness stand, a lawyer or jury would conclude, I think, either that the word “love” in the one statement, made in class when teaching the penguin’s love as a textbook example of a system operating in an adaptive way, means something different from “love” in the other statement at home, or, if the two words are meant to convey the same, that he doesn’t believe what he is saying in class. It would not affect thinking about love, in the latter case, any more than any witness’s statement is taken seriously if shown on cross examination to be one in which he does not believe. As for whether he might consistently conceive of love and himself in this way, a lawyer or jury would hear him speaking too in asking for trust and authority as a teacher, and in his gestures and in his self-restraint toward those he says he loves.

Law does not have a special sense of love, though if law did, it would be expressed in John Noonan’s very beautiful response to Richard Posner’s view of moral and political theory. But law does not stop with a scientific sense of love, if this teaching is in any way an example of it. Law could not stop with the scientific, not because law is intrinsically ordinary on the one hand or religious on the other, but because of law’s own various underlying commitments that can be fairly called ontological:

- Commitment to the presence of persons whose statements and actions may be spread over time both within and beyond an individual span of life;
- Commitment to the possibility of authenticity in those statements;
- Commitment to the sense of language Smith explores in *Law’s*

Quandary, that linguistic meaning is the meaning of a person, always, whatever we pretend—is always metaphorical if you will; and, finally,

- Commitment to a first fact, basic, on which other conclusions are built, the fact we are more than one, and, when one of us speaks, about anything, he or she is only one.

It is true that many call “love” the something more in the very structure of the universe than form (that merely is). I have mentioned John Noonan in law. This something more—call it love—makes possible a human mind that cares. It is necessary to human authority and authenticity toward which lawyers work, as necessary to lawyers’ work as oxygen. Since it has no place in the ontological family of science and mathematics (as oxygen has), its reality for law, lawyers, and legal thought may be drawn from the “resources” of the other ontological family that is not mundane, linking law directly in the most basic way to what is beyond both law and science. But all that is necessary to law is not in law’s own ontology. All that is necessary to science is not in science’s own. What is perhaps most necessary to scientific work, individual freedom, even creativity and trust, would be hard to find “existing” there. Science remains distinct, as can law. The human individual remains distinct, one’s reality one’s own, even though one’s own resources of mind and spirit are manifestly inadequate.

Pulling ontological claims generally into the open, as Smith does in his book, will I think bring what is real for law into the open over time, its “ontological inventory,” in Smith’s nice phrase. Authority is there, as a reality. Purpose is there, and inquiry into purpose, significant against the background of current presentations of scientific method in ontological terms—Jacques Monod’s is the classic statement of this kind, that postulates of purpose anywhere in nature, which would include us, “exist at odds with objective knowledge, face away from truth, and are strangers and fundamentally hostile to science.”

The legal mind has its own sense of time, very much associated with supra-individual persons in law, and with the connection of any conclusion in law to action, which follows acknowledgement of authority. Time is the realest thing in the world, we may be inclined to think and continue to think despite hearing some in physics happily making the ontological statement that it can be shown to be only an illusion. But the definition or sense of this “it” in one context—ordinary indi-

vidual life or the astronomical or the religious or the musical—may not serve at all well in another, even through carried from context to context is the experience of reaching to express the same thing, “time.” Law is one of these contexts in and of itself.

Perhaps most irreplaceably, the individual lives in law’s ontological inventory, the human individual and, to an increasing degree, the individual animal. Law’s commitment to the fact we are more than one is fundamental, not to be shut out of thought methodologically or ontologically. This can be said noting, all the while, that violent imposition of pure will occurs through legal processes, and that power is exercised in the name of the law by those who can secure for the moment some extension of their individual strength. But this is what “the law,” ontologically speaking, sets its face against. So often this is just what legal argument is about. Law contains the terms of its own powerful and effective criticism, which look to and maintain the individual in the world, along with the person, purpose, and living value. The strength of the individual in legal thought is not unlike the strength of natural selection in biological thought, or of force in physics.

We can go so far as “reason” itself, on which Smith has written eloquently here and elsewhere. Reasoning or the rational has for most an ontological aspect. Its presence is often thought to differentiate the human from the animal. Rationality might be viewed as everywhere and essentially just consciously staying open to the evidence and fitting means to ends. But it is split into kinds—reasoning “scientific” or “logical” often involves capturing a perception or phenomenon, “time” for instance, or “love,” or “life,” so that it can be boxed and manipulated, and then unitizing it so that it can be put with other “like” phenomena in a class or group that can also be manipulated. Any kind of probability or statistics involves both these, capture and unitizing. They seem to be necessary whenever seeing something as a system or part of a system, which may in turn be necessary for manipulation.

Legal thought eventually departs from this. Capturing eliminates the continuous unfoldingness of things and the reality of the necessity of assent to characterizations of perception, unitizing eliminates the reality of individuality—both realities, again, being part of the “ontological inventory” of law. The signal of a move from the rational and reasoning in law to the rational and reasoning as it proceeds in other fields often is substitution of an abstract symbol for a word, phrase, or sentence of human language. This is not to say that capturing and unitizing are not

useful in human affairs. But it may be to say that the usefulness in human affairs of such reasoning extends only to the point where the force of law, that proceeds from human imagination and creativity, is brought to bear on a situation and the future emerging from it.

Large words these, creativity, time, person, reason, individual, purpose, value, authority. But they are no larger than dimension, universe, reason, time, or force in scientific and mathematical discussion. Can these be realities as well as words for law, without making a commitment to law into a religious commitment? *Law’s Quandary* more than suggests there is an implicit commitment to the “existence” or “reality” of these things that are not just things when one acts and takes responsibility in the name of the law. It is commitment in the absence of which one could often not bring oneself to do what one does, I think, or be able to do it needing the help or forbearance of others who are also implicitly so committed and who judge the authenticity of one’s own. Can the affinities between the world of law and the world of religious commitment be as close as they are—so close that lawyers may be said to work at the very least in an anteroom to the home of religious commitment—without leading one empirically or introspectively to conclude they are in fact the same?

Law contains the terms of its own powerful and effective criticism, which look to and maintain the individual in the world, along with the person, purpose, and living value.

EVENTS CALENDAR

In detail

- August 3-8.....ABA Annual Meeting, Honolulu, Hawaii
- September 8-10.....Reunion of the Classes of 1981, '86, '91, '96, 2001
- September 29.....Symposium: The Great Lakes
(Environmental Law Society)
- September 29-30.....Conference: Patents and Diversity in Innovation
- October 6-7.....Dean's Advisory Council
- October 20-21.....Michigan Difference Weekend
- October 27-29.....Reunion of the Classes of 1951, '56, '61, '66, '71, '76
- November 3-5.....Conference: Tax and Development
(International Network for Tax Research)
- November 9-10.....Symposium: Practical Impact of the Sarbanes-Oxley Act
(*Michigan Law Review*)
- December 21.....Senior Day

2007

- January 24.....Midway Madness
- February 5-8.....Michigan Difference Seminars, Naples, Florida
- February 9-10.....Symposium: International Law and State Intelligence Gathering
(*Michigan Journal of International Law*)
- March 17.....Scholarship Dinner
- March 23-24.....Symposium
(*Michigan Law-European Journal of International Law*)
- March 29-April 1.....Symposium: Child Advocacy Law Clinic's 30th Anniversary Celebration
- May 5.....Senior Day

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

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