A Mosaic of Faces, Stories: Profiles of Visiting and Adjunct Faculty

By John Fedynsky

There is a story behind every face at the Law School. Some stories are harder to find than others. The visiting and adjunct faculty teaching this semester have stories to tell, but many are here temporarily, and most teach a limited number of students.

We sent an e-mail questionnaire picking the brains of these faculty members, and eleven responded. Here’s a mosaic of some of their more memorable responses to our series of questions. Inside, you’ll find a spread of their biographical data - alma maters, courses and seminars taught, professional background and, where available, portraits. Sorry, but these quasi-trading cards do not come with sticks of hard chewing gum. Feel free, however, to clip and trade them with friends or put them in the spokes of your bike.

Why Michigan?

“I have always wanted to teach at Michigan and we all know the saying ‘don’t wish for something, you might get it.’ Well I got it,” said Barry A. Adelman. “All kidding aside,” he said, “the seminar has been and will continue to be an incredible experience for me, and hopefully for the participants as well.”

“I felt that Chicago was insufficiently cold and snowy,” said Jill Hasday.

Sally Katzen styled her reasons for wanting to teach at Michigan as “a combination of a trip down memory lane and the thought that U of M students might be good candidates to inspire to public service - which is a very noble calling.”

Roberta J. Morris, who merits the distinction of giving the longest, most personalized responses to our questions, said that she teaches at Michigan because she “likes an audience” (she gave up acting in college) and because “I like to learn.” She has been a frequent adjunct professor at the Law School since 1991. She claimed to have written at such length (she even included a footnote!) partly because of “procrastinating” from other work.

According to Lynda J. Oswald, a member of the faculty of the Michigan Business School, “I… enjoy stepping back and looking at the study of law from a purely legal perspective.”

Barry Winograd came to Michigan to “visit a top flight law school” where he can “appreciate the weather” and have greater contact with retired Dean Ted St. Antoine, an expert in Winograd’s chosen field of arbitration.

For Andreas Paulus, a German legal scholar, research in the United States was a primary concern. But in choosing Michigan he adds “I was thrilled (and still am) to have the opportunity to teach in another country - in another language - subjects that I care about.”

Where to next?

They all come to Michigan, but not all of them leave after the academic year. Jonathan Alger will remain as the University’s Assistant General Counsel. But most others have commitments elsewhere.

Orit Kamir will return to Jerusalem and hopes to come and visit again.

Sally Katzen has “no idea” where she will be, “but I know it will be challenging and gratifying - that’s been the pattern for the last decade or more,” she said.

Morris will join her husband during his sabbatical year at Stanford and hopes to return as an adjunct.

“As an adjunct who lives just down the street from the Law School I hope I’m not sent packing anytime soon,” said Leonard Niehoff.

Oswald will “trudge back across the street to the Business School.”

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Legal Academia 101

By Rebecca Chavez

Many, upon graduation from a law school, would be happy if they were never again required to step within its hallowed halls. For others, the pursuit of knowledge never really ends. To those who wish to continue their studies even after commencement, as well as provide for the education of future legal scholars, a career in legal academia may seem the pertinent path. To that end, Professors Bridget McCormack and Richard Primus spoke recently about their experiences as clinical and academic legal professors, respectively, and the backgrounds that led them to their current positions.

Before deciding to pursue a career in teaching the law, they cautioned, one should determine whether or not he/she is cut out for the challenge. First, and perhaps not as obvious as it may appear on the surface, one should have a love of the law. If you don’t enjoy the basic material and the questions it presents, then you are likely to be as bored as an academic as you currently are in your classes. Next, you must be willing to work with students, regardless of whether they are willing to work with you. Finally, and perhaps most importantly, you must love writing. Research upon subjects of particular interest, and publication on those subjects, comprise the majority of the occupation.

It is this aspect of academic work, the speakers suggested, which requires the most of professors. A good article may take between 8 and 14 months to write (if not more) and requires numerous revisions. Additionally, one must be thick-skinned. The writings you produce represent not just an extensive amount of work, but also involve a concept that is distinctly yours and which you must stand by and defend when “the entire legal academy descends upon you to rip it to pieces.” A legal professor must be someone who can roll with the punches and use criticism to become a better writer.

There were other aspects to academic life the speakers urged students to consider. The life of a legal researcher may be a lonely one, filled with hours of introverted research. There are also constraints to geographic mobility. You can join a law firm pretty much anywhere in the country, but good law schools are fewer and farther between. The independence inherent in academic work is a bonus to those who would find a firm environment confining, however others may find difficulty staying motivated without proper direction.

However, for those who find the possibility of a legal professorship intriguing, the speakers suggest that joining a big firm right out of school might not be the best course of action. They suggest, rather, immersing oneself in the culture of the field one wants to teach.

“If you want to be a criminal law professor, be a public defender or a prosecutor. If you want to teach administrative law go to D.C.,” Professor Primus said.

The most important thing is to have done some first-hand work (in a field which is actually of interest to you) and have at least one good paper published in an accredited journal. This paper will be something that you can present to employers as an example of the first step in a larger research agenda. You must also remember that the field you choose must be something you’re willing to spend 6 years becoming an expert in so as to teach the subject efficiently as well as to be able to write up to the minute, crucially important articles that further the area of law as a whole. Law schools are looking for professors who are going to represent the future of law. If you would like to be an instrumental part of that future, perhaps legal academia is the career choice for you.
Legal Champion of Illinois Death Row Inmates Brings Her Story To Michigan

By Sarah Rykowski

MADISON—Hoblay would still be on death row if it weren’t for Andrea Lyon and her arson investigator, Dr. Russell Ogle, Ph.D. Lyon and Ogle investigated Hoblay’s case, and when then-Illinois governor George Ryan granted them the opportunity for a hearing, they put together an 11-minute video tape. The tape went over the evidence, the facts, and the law of the case. It included a juror’s statement that the jury based its verdict on a gas can purportedly found at the scene, evidence that the gas can could in fact not possibly have been at the scene, and a plea from Hoblay’s family for justice. That now-famous tape won Hoblay a pardon and sent him home.

“The governor wasn’t a lawyer—he was a pharmacist,” Lyon told her audience, on February 13, 2004, at the Law School. What bothered the meticulous pharmacist-turned governor, Lyon said, were the mistakes the Illinois capital system seemed unable to correct—13 exonerations; which was one more life, she said, than executions, in fact.

But Hoblay’s case represented a typical day at the office for Lyon, a professor at DePaul University College of Law, and the founder and director its Center for Justice in Capital Cases, as well as the Clarence Darrow Death Penalty Defense College here at the Law School. Lyon has defended over 30 capital cases at the trial level and has taken 19 through the penalty phase, winning all 19.

Although Lyon herself will tell you that defending capital murder cases is a hard life, she “came into law school wanting to save the world,” and still retains the fire and fervor of her calling. In 1976, Lyon joined the Cook County Public Defender’s Office, where she worked with the Chief Homicide Task Force, a 22-lawyer unit representing persons accused of homicides. Since that date, Lyon has tried over 150 homicide cases, and defended over 30 potentially capital cases at the trial level. In 1990, she founded the Illinois Capital Resource Center and served as its director before joining Michigan’s faculty as an assistant clinical professor in 1995. While here, she ran the Criminal Clinic for students. Lyon is a nationally recognized expert on the death penalty, and was awarded the “Justice for All Award” at the National Conference on Wrongful Convictions and the Death Penalty in 1998.

Early on in her career, she fought an uphill battle convincing her peers, friends, and fellow citizens that the capital system in Illinois was in serious trouble. “It was a very political world,” Lyon said. “[I was told] ‘You’re wasting the taxpayers’ money defending bad people.’ There was a push to shut up and sit down and not make any noise. People didn’t believe me, but time proved that I was right for ‘wasting my time investigating cases.’”

But in her investigations, Lyon found more than she bargained for. “I didn’t expect to find the level of prosecutorial misconduct that I saw—even where they had enormous amounts of physical evidence, no single case, out of 112 cases, was without provable subornation of perjury. Even when they didn’t need it, they cheated.”

One of the problems that Lyon sees with the capital system is its very backbone: it has “very conviction-prone juries to start with, juries that believe police officers, and are pro-authoritarian.” Even the process of asking for the death penalty makes the trial process a mere formality, Lyon said.

“You have an emotional conviction-prone jury, listening to the emotional presentation of the prosecutor, including emotional testimony of the family of the person who has died,” Lyon said. “Do you make your best decisions when you are upset? No.”

While Texas is a state with a tarnished reputation in terms of capital punishment, Illinois had its problems as well, according to Lyon. She discussed a study done for the Chicago Tribune by Ken Armstrong and Steve Mills, which reported that 33% of inmates on death row had been represented by attorneys who had lost their license at least once, and 40% were black defendants convicted by all-white juries.

Lyon was involved in another case where Anthony Parker was 48 hours from execution. “He looked guilty,” Lyon said. “He looked real guilty.” Parker had been convicted of armed robbery, with 2 witnesses who said he had done it. A stay of execution was granted, and a professor from Northwestern loaned Lyon students to help her and 16 staff members investigate. “The investigator, students, and lawyers found the real killer, who confessed,” Lyon said. “We came within 48 hours of killing someone who was innocent but looked guilty. Even his attorneys thought he was.”

After Parker’s exoneration, in January 2000, Governor Ryan halted all executions, while the system was examined. A committee was created to study the system and make recommendations. Two years later, the

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Professor Herzog Looks at Patriot Act Through First Amendment Lens

By John Fedynsky

It’s a Bambi meets Godzilla problem, and Godzilla wins,” said Professor Don Herzog, illustrating the interplay of civil rights and national security in times of national distress. The National Lawyers Guild and American Civil Liberties Union chapters of the Law School invited him to speak at a lunchtime event on Wednesday, January 28. A standing-room only crowd filled Room 218 to hear him speak on the topic “The USA Patriot Act: What Are Its First Amendment Implications?”

Herzog began his talk with some background on the Patriot Act. It is a 150-page law and “maddening to read,” he said, because much of it is clause-by-clause amendment to other federal laws. It was passed in October 2001 with no congressional hearings just 18 hours after the Bush administration released it.

The Act raises “all kinds of interesting constitutional problems,” said Herzog. He noted that he would not comment on any of its provisions from a policy perspective. But from a First Amendment perspective, the Act “gets interesting 90 pages in,” he said.

Here, the Act aims at removing obstacles to government investigation. Phone bills, financial records and other sensitive, private information is opened to low-level law enforcement officials. Educational records, including those of libraries, an area of traditional First Amendment concern, are also swept in. To obtain many of these records, a court hearing is necessary, but the usual safeguards of probable cause or a specific evidentiary purpose are waived. Officials need only assert that the information will help investigate terror.

The statute protects cooperative libraries from suits by their patrons. Furthermore, there is a gag order that prevents libraries from informing their patrons that the government has accessed the library’s records. As such, this provision is difficult to challenge in court since affected individuals, likely the only ones with standing to bring suit, are unaware of the government intrusion.

Herzog also spoke about provisions of the Act criminalizing offering “expert advice or assistance” to terrorist organizations. Included in the list is “training,” which dates back to legislation from the Clinton Administration. Federal courts in California, the Central District and the Ninth Circuit, have balked at the “expert advice or assistance” and “training” provisions, respectively. Herzog opined that this part of the law raises credible vagueness and overbreadth challenges to the statute. He gave the example of human rights organizations that offer expert advice and training and how their clearly protected activity would be proscribed if directed at a terrorist organization, which was the facts of one of the California cases mentioned above.

The Act has a blanket provision stating that the government cannot use it solely to squelch something that the First Amendment protects. It reads, “provided that such an investigation of a U.S. person is not conducted solely on the basis of activities protected by the First Amendment.” Herzog surmised that this provision could be interpreted in three ways. First, it may be nugatory and meaningless since it bans what the Constitution already bans. Second, it may immunize the statute from First Amendment challenge, which is the position of the Department of Justice. Finally, it may doom the statute, which is Herzog’s position. Herzog favors the third position because the doctrine requires notice and this notice is impossible because, according to Herzog, “John Q. Public” does not know what the Constitution already bans.

Herzog noted another provision of the Act that is open to First Amendment challenge. This provision criminalizes knowingly conveying a falsehood alleging an ongoing or a future terrorist act. The statute reads, “an attempt or alleged attempt being made

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Affirmative Action Panel Discusses Implications of Grutter v. Bollinger

By Erick Ong

Our guest speakers were invited to the Law School to be part of a panel to share their perspectives of how higher education and other areas of life were affected by the Grutter v. Bollinger Supreme Court decision. Visiting professors Daria Roithmayr and Kim Forde-Mazrui co-moderated the event, which occurred in Hutchins 100 on Monday, February 9.

The Grutter v. Bollinger case was a 5-4 Supreme Court case which upheld the University of Michigan Law School's policy to use race as a factor in admissions. The Court also found that the educational benefits to be derived from diversity were a compelling interest. The panel discussed the ramifications of the Supreme Court decision as it related to future litigation, how the case could be interpreted, and its K-12 education and employment implications.

First to speak was Peter Kirsanow, a member of the U.S. Commission on Civil Rights and a partner of Benesch, Friedlander, Coplan & Aronoff LLP in Cleveland, OH. According to Kirsanow, Grutter states that a compelling state interest can consist of educational benefits from a diverse student body at a selective school. Educational benefits are achieved when the school reaches a critical mass of minority students, and selection is achieved by a holistic individual survey of each applicant's file. He viewed Grutter as a narrow tailoring of race, with race being only a plus, and not a predominant factor.

With the Grutter decision, future litigants in affirmative action cases would need to address certain issues. Some of these include articulating a compelling state interest, compiling evidence in support of educational benefit determination, and determining the critical mass needed for a minority group not to feel isolated or inhibited. Kirsanow warned not to favor one minority group over another or to encourage racial separatism. O'Connor's sunset provision of 25 years would necessitate review periods for affirmative action policies, which Kirsanow recommended every 4 years. Kirsanow viewed the Grutter decision as giving guidelines to follow, with diversity being a compelling state interest.

Kimberle Williams Crenshaw, a Professor of Law at both Columbia & UCLA Law Schools, believed that Grutter resulted in a greater loss for the critics of affirmative action than it was a win for the proponents of affirmative action. According to Crenshaw, the critics of affirmative action relied on assumptions which were all repudiated by the Grutter decision. Critics assumed that colorblindness would be the prevailing doctrine and thought that Bakke, which permitted racial considerations for diversity, was no longer good law. The critics likened affirmative action to segregation, as equality meant race should not be taken into account and argued that any attention to numbers is a quota system.

She stated that the Grutter decision showed us that Bakke was still good law and O'Connor's opinion gives us a broader conception of diversity that transcends Powell's Bakke opinion. Her opinion gives diversity legitimacy by linking the integration of institutions to the overall mission of maintaining a democratic society. Grutter also showed that not every decision affected by race is objectionable.

Crenshaw viewed a world where diversity is the baseline with no past discrimination, and affirmative action policies are not discriminatory or preferential, but a correction towards this baseline.

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Are Law School and “Normal” Relationships Incompatible?

By Matt Nolan

My mind has been swirling with this question for over a year now, since I sent out my applications in the fall of 2002. Is it possible to balance a steady romantic relationship with law school, and if so, what kind of sacrifices/changes does it take? Is being alone for three years part of the experience that law school is supposed to give us? Are we supposed to find other lawyers to end up with? Is the whole notion a myth perpetuated by bitter single law students who wanted others to suffer with them?

The general advice that prospective and first-year law students receive is, “Don’t put yourself through that; you’ll have enough on your mind without a relationship to maintain, just focus on law school.” Well, at least that’s the advice I got. I had started a relationship about the time I was applying to schools, and heard the critiques from the very beginning. “She won’t know what it’s like for you.” “You’ll be too busy to make it worth your time.” “Ending it now will be easier than ending it later when you realize it won’t work.”

A lot of us were likely in relationships the spring before we began law school. What I wonder is, how many of them lasted? Did we break up with our significant others because we were going to be far away? Did the majority of us stay with them despite the fact that we’d be making a major life change? How many of us listened to conventional law student wisdom?

One theory I like to toss around is that we doom ourselves before we start. The very fact that the notion is “it won’t work” places doubt in our heads, and when push comes to shove and our lives are changing because of Contracts, CivPro, and memos, we buy into the story. My guess is that quite a few of us ended relationships before law school because of it. I’d be willing to bet even more of us ended them during the first year at some point when the going got tough, or at least had a temporary breakup because of a specifically stressful breaking point.

In a world where we re-prioritize and think all the time about where we’ll work, what we’ll do, and when we’ll make it, would it actually help to have someone there to slow us down and focus on the big picture? How much of law school would we really miss out on by having a relationship instead of being single for three years? Some of us would answer “quite a bit.” Others would say “nothing important.” The vast majority of us are likely somewhere in between these extremes, and wondering what the right balance is. For 1Ls like me we’re mostly guessing; for 2Ls and 3Ls perspective will be colored by which route was taken.

After wavering and questioning my relationship, I personally decided that I didn’t want law school to force me to lose something that had become important in my life. For me, having something stable outside of Hutchins Hall is worth the worry that I won’t get the full experience here . . . and in my estimation, I’m not missing much right now. I may go to the bar a bit less, but I still go. I may not read over the Model Penal Code as many times as the person next to me, but I’ll still learn it. Is my experience common, though, or am I an anomaly? Is the norm to spend law school alone, or with someone from outside the law school, or with someone here? Does it matter? Is there a correlation between success in law school and one of these patterns? None at all?

I’ve got all questions and no answers as of now; after being at Michigan Law for a semester and a half, I can say that I’ve got friends who are married, friends who are single, and lots in between, and I can’t discern any noticeable difference in performance yet. For me, holding onto a link to the world outside of the Law Quad has been important; for you, maybe not so much. Regardless, the point I’m trying to make is that different things work for different people – and the uniform “don’t do it” rule we’ve got just doesn’t apply to a significant portion of the law school population.

I think we need to change our mindset, change our advice we give to incoming first-years; the message should not be “it’ll make things hell for you,” but rather, “it’s a personal decision you’ve got to make; there will be tough spots, but some people make it work.” I think changing that initial tone would work to alleviate a lot of first-year troubles for many of our successors, and regardless of what their choice ends up being, the product would be more confidence in making the right call. With the current state of things, those of us who stay with relationships and those who do not both wonder what they’re missing on the other side of the fence. Once it’s recognized that both are legitimate paths, there should be less doubt overall.

The RG would like to know what your thoughts are on this topic. Any good anecdotes? Any good advice? Which side do you fall on, why, and do you think you’re right? Email us at rg.lovelife@umich.edu with your story and if we get enough we’ll throw some feedback in the next issue. No matter what path you’ve taken, some healthy discourse has been absent on this issue for too long.
I Am Fricking Freezing Here
(or)
Oh My God, I Am Freezing To Death Here

By Michael Murphy

Before we get into it, I swear to you, when I wrote this, it was cold.

It was cold enough for me to go on and on about. Once I sent this column in, of course, the temperature shot up 40 degrees to a more seasonable freezing point average... and while I’m not walking around in short shorts and a tank top (you should be thankful for that), it’s not that bad. But it was.

A note on why I don’t commute two minutes to school across a square like most 1Ls:

In my five-year “relaxed pace” undergraduate career I live in a dormitory the whole time. The food was bad, the scenery was unchanging, and the boredom was choking. A steady diet of fish-sticks and tater-tots made me feel like pure grease ran through my veins.

Also, I was a Resident Assistant (see: major dorkus) for 3 years, and ran a whole building I ran; also, there weren’t. My car was vandalized, I got to know the campus police on a first-name basis, and our famous traditional haunted house was interrupted in mid-scare by somebody pulling the fire alarm (among many, many other stories I can’t talk about or may talk about if you get me drinking). It wasn’t much fun. It soured my concept of a dormitory as a positive, supporting living environment.

So when I got in, (and no offense to the good people who live there and work there) the concept of a “Lawyer’s Club” in which I would live, eat, go to class and hang out with the same 300 people sounded, to me anyway, horrific. It’s not the Lawyer’s Club, it’s me.

So then I had to find a place to live. Thing is, even though I grew up 30 miles from here, and spent the summer as a “freelance writer” (heh, heh) I made no attempt whatsoever at learning Ann Arbor geography. But I did know someone whose in-laws owned some apartment buildings. Which was all I needed to make a year-long commitment.

But I didn’t know exactly how far my apartment was from the Law School. I test walked it once or twice before I moved in, like a five minute walk or so, no big deal. Just down Hill, past Elbel, across State and Packard and boom you’re there. A pretty walk, and you pass by a Jimmy John’s. Awesome.

Then the leaves started to change, and the weather got colder. I started to bundle up for my 10-minute walk to school, but the walk was now prettier. I still remember one day where the leaves were just about to fall and the trees were all shades of yellow and red... it was gorgeous, breathtaking, beautiful, enough to make me join ELS.

Then right around finals, the first snowfall. Kind of fun, really. You can’t stand Michigan if you don’t appreciate at least the appearance of snow, if not like it. It was cold, but it wasn’t that cold. How much colder could it possibly get?

The answer, apparently, is: all the way colder.

I freaking freeze in body, mind and soul every morning on my 35-minute walk to school. I slush through badly-plowed sidewalks, inch my way through (my favorite) gray snow, and damn near fall and crush my precious laptop on 3-inch patches of ice. The air is thick with people and cars trying to breathe, further evidence that the earth can no longer sustain life. The sun comes out for 15-20 minutes every week, enough to remind us that it’s shining in happier, more fun places. The tan that covered the permanent circles under my eyes (we call that 8 a.m.-class-face) has faded – I see more Michael Jackson in the mirror these days than I’m comfortable with.

Then there’s the damn snowstorm. In the 75 minutes it took for me to get to school, I had more than an inch of snow on me. I walked in looking like a damn Yeti, and when it all melted, I was soaked.

I think I have an ear infection. I worry that the fluid in my head – there’s fluid in your, head, right? – is going to freeze completely and my brain will stop working. (And if you’ve heard me get called on in class recently, you’d think it’s already happened).

I dread getting a phone call during my hour-and-a-half hike from my apartment to school. I can’t hold the phone with gloves on, and any exposed skin gets somehow both numb AND painful within 30-40 seconds. I think the skin gets numb, but the cold just starts robbing your soul of the will to live. I get to school some mornings feeling like a nihilist, because I’ve had the faith sucked right the hell out of me. And I feel like a Freezie-pop.

But I believe in one thing now. Them fish sticks and tater tots sure sound like good eatin’.
Talking with Trail-Blazing Professor Sallyanne Payton

By Sara Klettke MacWilliams, Andy Daly and John Fedynsky

A biography of Clarence Darrow inspired Sallyanne Payton at an early age to seriously consider a career in the law. She is the William W. Cook Professor of Law, a member of the faculty since 1976, when the Law School hired her and Christina Whitman as the first ever female members of the faculty. She teaches Administrative Law and specializes in several areas of public law, particularly health law. Res Gestae was pleased to interview her about, among other things, her background, health law, guitars, architecture, and big pastrami sandwiches at Zingerman’s. Rest assured, unless the last in that list ever leaves Ann Arbor, Professor Payton plans to stick around.

You teach Administrative Law and Advanced Administrative Law, right?

That’s right.

Which class is more fun to teach?

They’re both fun to teach. I love the big regular Administrative Law class. It’s just fun to talk about the structure of government, how things work and how we maintain the rule of law and the idea of government under law in this country. We don’t talk very much in the Law School about public law and public policy, and I think that we do ourselves a disservice by letting students think that they’re going to be dealing more in private law and that they don’t need to understand how government operates. The fact of the matter is there is a lot of regulation and that one the main functions that lawyers serve is to interface between the private sector and the nonprofit sector and the government, that’s one of our social functions, so everyone needs to have some contact with a course that is about a big regulatory area. So administrative law is the grand daddy of all of these courses, the administrative procedure. So I enjoy it a lot.

You’ve been here since 1976, right?

That’s right.

How has the Law School changed since then?

Without describing what it was like then, let me say that it has become more cosmopolitan and sophisticated. It was always one of the great law schools, in fact when I came it was solidly in the top five, and the secret word was that this was probably the best law school around. I think what’s happened in the last 20 years, 15 years is that other schools have risen, we are not less good than we used to be, but other schools have scooted up, they’ve tried to emulate us. So we have more competition.

You were one of the first female minority professors here, right?

Chris Whitman and I came together in ’76, and we were the first two women on the faculty.

What was that like? How was your reception?

The faculty had invited us to join. I would say this faculty was probably the warmest, most welcoming group I’d ever joined. I mean I was just swamped with dinner invitations and became an extended family member. It was very nice, very cordial, unproblematic at the faculty level. But it is a Midwestern institution, and of course a lot of Midwesterners are not accustomed to having a diverse and cosmopolitan situation, and so the overall situation has not before very recently been hospitable to persons of color in the Law School. It’s really since Lee Bollinger came into the Deanship, that attitude changed, and now I think we’ve come to some recognition that there are lots of ways of being good.

How have the students changed since you’ve been here?

Principally to diminish the proportion of the class that was in-state, and over time it would diminish the number of people who are from the Midwest, and this is because with modern transportation and communication it is much easier for people to come here. It’s now completely plausible for people in Los Angeles to come to school in Ann Arbor, and that would not have been true at the time when I went to law school, for example. Just as it’s easier for people who grew up in Michigan to go to school on the coast, it’s easier for people who grew up on the coast to come to school here, so you have more of a mixture, and that makes a big difference.

I remember that when I was in law school, I had never seen snow because I was from the west – I grew up in Los Angeles. There were people in my classes at Michigan who had never seen the ocean. That wouldn’t be so anymore. That, I think, enhances our range, our experience and therefore our understanding of all kinds of ideas.

Do you like living in the Midwest now?

If you want to think of Ann Arbor as the Midwest (laughs). Ann Arbor is pretty

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much an outpost of the East Coast in the Midwest, and it is a very interesting outpost of the East Coast. I’m very pleased to be in the Midwest because otherwise I would be inside the beltway and wouldn’t know anything except local politics, local government. So I like living out here, I really do. Particularly since from a transportation point of view, this is now kind of a district suburb of DC, Northwest runs flights all the time, and they’re quite affordable, so I can have the advantage of being away, and the advantage of being there simultaneous. This is a nice place – Ann Arbor is a nice town.

What is your favorite thing to do in Ann Arbor?

Border’s bookstore and Zingerman’s. Actually if I could transport Zingerman’s, I could probably live elsewhere.

What’s your favorite thing at Zingerman’s?

Those ridiculously enormous pastrami sandwiches. They’re bad for me but I love them.

You’re still involved obviously in a lot of things in Washington, mostly working on health care policy, right?

I still work on health policy, and I still do some work with General Accounting Office, because I’m a systems designer. I continue to participate with people who are working with the management of government, I still participate there, it’s interesting and the people are marvelous to work with, very smart.

How much attention does Washington pay to academic policy?

Oh, everything, every idea that they are considering at any given time has come out of some academic institution five to ten years previously. If you look at, for example the New York Times just the other day, was it yesterday, carried a story about how our policy toward Iraq is driven by Bernard Lewis’ theory about the two civilizations. He’s an academic. A huge number of the people in Washington are academics. The universities are the least of it, you’ve got all those think tanks. And there’s a constant flow of transactions between Washington and academia, and the policy establishment in Washington is really a major consumer of academic work.

Now, the question you might ask is, is there a direct correlation between something somebody says in an article, and what actually comes out in U.S. code. And the answer is more frequently than very rarely get put into statute in Washington. The ideas are always vetted through academia and through the think tanks. So there is an enormous academic machine that refines theory and matches theory with operations.

In fact, one of the reasons that I came into academia was that I noticed when I was working for the Department of Transportation that all the ideas seemed to be coming out of academia and so what we were doing as the managers of government was doing the ideas that had been thought of by professors.

Can you detail your background?

When I graduated from law school, I went to work for Covington and Burlington, which was where one went. If you were expecting to go back into academia then Covington was where you went. Covington was the equivalent of a teaching hospital.

Then I went to work for the White House Domestic Counsel staff, which then was headed by John Earlington, so I worked for the Nixon Administration in the White House doing a lot of things, mainly District of Columbia policy and

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2003-4 Visiting and Adjunct Faculty

Andreas Paulus

Classes Taught:
International Criminal Justice, International Law and Use of Force

Law School Attended:
Goettingen and Munich (Germany), Geneva and at Harvard (as a visiting researcher)

Areas of Academic Interest:
Public International Law and its relationship with several branches of domestic law, public (constitutional) and criminal law, European Community and Human Rights law

Taught Previously:
Ludwig-Maximilians-University in Munich

Neil Kagan

Classes Taught:
Director of and teaches the Environmental Law Practicum

Law School Attended:
University of Oregon

Areas of Academic Interest:
“All of my research involves the defense of clean water”

Barry Winograd

Classes Taught:
Labor Law, Labor and Employment Arbitration

Law School Attended:
J.D. UC Berkeley (Boalt Hall), 1971 LL.M., UC Berkeley (Boalt Hall), 1985

Areas of Academic Interest:
Labor and employment law and alternative dispute resolution

Taught Previously:
“As an adjunct at UC Berkeley School of Law (Boalt Hall), teaching labor relations and mediation courses. I’ve also helped develop and teach arbitration training courses throughout the U.S. for the federal mediation and conciliation service.”

Leonard Niehoff

Classes Taught:
Legal Ethics

Law School Attended:
Michigan

Areas of Academic Interest:
“A piece on the constitutional and common law roots of the ‘reporter’s privilege.’ I am also doing a good deal of research in legal ethics.”

Taught Previously:
Wayne State University Law School, and the University of Detroit-Mercy Law School

Sally Katzen

Classes Taught:
“Two courses - one on regulatory process (as a window into how Washington really works), a seminar on technology policy in the information age.”

Law School Attended:
J.D., Michigan, ’67

Areas of Academic Interest:
“I am less interested in research and more engaged with politics and public policy.”

Taught Previously:
“Undergraduates (at Smith College and Johns Hopkins) in the fall, U. Penn Law School last spring. I have also been an adjunct professor at Georgetown Law Center for several years.”
Jill Hasday

Classes Taught:
Employment Discrimination Law and Women's Legal History Seminar

Law School Attended:
Yale

Areas of Academic Interest:
"All of the subjects I teach here, plus constitutional law and sex discrimination."

Taught Previously:
University of Chicago Law School

Barry A. Adelman

Classes Taught:
Anatomy of a Deal

Law School Attended:
Michigan, 1969

Areas of Academic Interest:
Areas involving legal matters relating to transactions

Robert J. Morris

Classes Taught:
Patent Law

Law School Attended:
Harvard

Areas of Academic Interest:
"Finding errors of logic, diction and history in the opinions of the Federal Circuit and Supreme Court on matters of patent law mostly and copyright once in a while, and determining how to point out those errors in the most concise and witty fashion."

Orit Kamir

Classes Taught:
First-year Criminal Law, Feminist Jurisprudence and Theory Seminar.

Law School Attended:
J.D., Hebrew University in Jerusalem, LL. M. and S.J.D., Michigan

Areas of Academic Interest:
Law-and-film, human dignity, rape and sexual harassment and provocation

Taught Previously:
Hebrew University, Tel Aviv University

Lynda J. Oswald

Classes Taught:
Environmental Law and Real Property

Law School Attended:
Michigan

Areas of Academic Interest:
Regulation of private property rights

Taught Previously:
Michigan Business School, University of Florida Law School Was a visiting professor at China University of Political Science & Law in Beijing and L'viv State University in L'viv, Ukraine. Also previously a visiting professor at Michigan Law

Jonathan Alger

Classes Taught:
Higher Education Law (a course that is cross-listed with the graduate school of education).

Law School Attended:
Harvard

Areas of Academic Interest:
Higher education (including affirmative action, intellectual property, cyberspace issues, and academic freedom issues)

Taught Previously:
Graduate Schools of Information and Public Policy at Michigan
LLSA's Annual Juan Tienda Ball Heats Up Otherwise Cold Winter Night
Basement Groups 'Cater' to Students

Outlaws Freedom-to-Marry Day

SALDF Bake Sale

BLSA Soul Food Day
An Open Letter to the Law School Administration

By Outlaws

Lesbian, gay, bisexual and transgender (“LGBT”) people endure discrimination routinely. We dodge heckles and glares as a matter of course; we fear being beaten when strolling sidewalks with our partners; and we labor fruitlessly to protect children in our families from a hostile public. Many of us are harassed when strolling sidewalks with our families, and deprived of spending our final hours with lifelong partners.

The University of Michigan Law School and the Board of Regents are complicit in this discrimination. Though the University has chosen to convey its purported commitment to nondiscrimination by barring employers with formally discriminatory policies from recruiting on campus, it carves out an exception for sexual orientation. It welcomes the Department of Defense to the Law School for recruitment visits, despite its LGBT-intolerant “Don’t Ask, Don’t Tell” policy. Locking our gates to recruiters who discriminate with respect to criteria like race can only be undermined by passing the master key to employers who discriminate with respect to sexual orientation.

That our identities and experiences are overlooked by the University’s irresolute stance on nondiscrimination alienates and stings the LGBT community. Indeed, those of us who are LGBT students of color find ourselves in the curious predicament of having one facet to our identity embraced by the policy and the other facet wholly ignored. The University owes every student, minority or otherwise, equal dignity.

This policy frightens us, demoralizes us, and betrays the trust that we have placed in this University.

To be sure, Congress’s Solomon Amendments hinge vital federal funds on a school’s providing access to military recruiters. But the University’s policy and practices surpass what the American Association of Law Schools has recommended as minimal compliance with this coercive measure.1 Moreover, the Board of Regents implemented its carve-out for sexual orientation well before Congress enacted the Solomon Amendments: The carve-out would presumably survive even if the government repealed or enjoined the Solomon legislation. In addition, the Board of Regents enacted its carve-out in a proceeding for which we have found no written record; and to our knowledge, no input was solicited on it from the students, faculty members, or the administration of the Law School.

The Law School’s practices starkly contrast steps taken by peer institutions. For example, some law schools and law school faculties have recently joined the Forum for Academic and Institutional Rights (“FAIR”) to challenge the Solomon Amendments’ constitutionality.2 This Michigan has not done. Other law schools opt not to proffer formal invitations to military attorneys who want to address students about the benefits of their chosen career paths. This, too, Michigan has not done.

What’s more, the Law School’s policies ignore gender identity discrimination altogether. Like all members of the LGBT community, transgender people endure discrimination at the hands of employers, families, and teachers — discrimination that is, almost without exception, tolerated by the law. That the Law School’s nondiscrimination policies unabashedly omit gender identity is inexcusable.

Outlaws urges the Administration to stop wavering in its purported commitment to nondiscrimination. In the wake of a remarkable Grutter victory, now is the time — more than ever — to stand firmly behind the value of diversity. Now is the time to stand alongside peer law schools who commit unrelentingly to nondiscrimination.

Outlaws urges the Administration to take the following measures:

1. The Law School should join FAIR.
2. The Law School should minimally comply with the requirements of the Solomon Amendments. Minimal compliance includes, but is not limited to:
   a. providing military recruiters with access to small rooms only;
   b. permitting military employees on campus only for formal recruitment, or for non-career related discussions;
   c. disseminating the military’s discriminatory policy, and the Law School’s objection to it, to all candidates who meet with military recruiters;
   d. notifying students upon each military recruitment visit that Congress requires the Law School to violate its own nondiscrimination policy;
   e. alerting Outlaws before military recruitment visits, so that we may prepare a response;
   f. funding talks by former military attorneys discharged for their sexual orientation, or by legal advocates of LGBT servicemembers, in order to raise awareness in the Law School community.

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Why the Ford F-150 Should Not Be On Your List

By Kellie Hoyt

Looking for a truck? Don't think Ford, think FedEx. FedEx Express, the largest express transportation company in the world, has been working with Environmental Defense to develop a cleaner, more fuel-efficient delivery truck. The new vehicles, part of the "OptiFleet E700", are hybrid-electric vehicles with 90% less particulate emissions (soot), 75% less nitrogen oxides (smog-causing emission), and 50% increased fuel economy over their other trucks. Pre-production vehicles were scheduled to begin operating in 4 U.S. cities this winter, and FedEx Express is looking to replace all 30,000 of its medium duty delivery trucks with the hybrids over the next 10 years.

To make a long story short, a special hybrid-electric powertrain combines a diesel engine with an electric motor. Operating conditions and driver demand are continually relayed to a computer, which then determines the most efficient energy (electricity/diesel) combination. And happily, this innovative marvel still has a local Michigan connection. Eaton Corporation, whose Truck Components leadership facility is in Kalamazoo, (they also have an Ann Arbor facility on First Street, between Williams and Liberty) was chosen to design the lithium-ion batteries. The batteries capture and store energy during the "regenerative braking" phase of the trucks operation, and then redirect the power as electricity for acceleration.

Of course, both FedEx and Environmental Defense are pretty pleased with themselves, and with good reason. As David J. Bronczek, president of FedEx Express comments, "This hybrid electric truck demonstrates that technology is available now... The environmental and business gains of this project signal a revolution in truck technology and set a new standard for the industry." Fred Krupp, president of Environmental Defense, adds, "...FedEx has developed a truck that will deliver cleaner and healthier air, reduce oil dependency, and reduce climate change impacts. Environmental Defense now challenges other companies to step up to the plate and meet the green standard set by FedEx."

The editors of cleanscarcampaign.org explain it well. In summary: the transportation sector in the United States is responsible for about one-third of our nation's total production of carbon dioxide, the greenhouse gas which is a major contributor to global warming. Cars and "light trucks" (which includes SUVs, pickups and most minivans) emit more than 300 million tons of carbon into the atmosphere each year in the United States. Over the past decade, automakers have shifted their fleets to SUVs and other "light trucks" due to the popularity of these vehicles. Unfortunately, these vehicles have fuel economy standards lower than those of cars. With more of the "light truck" gas-guzzlers on the road today, combined with the lack of effective fuel efficiency standards for all classes of vehicles, "cars" (all types) today collectively get worse gas mileage than they did in the mid-1980s. This means more reliance on foreign fuel, as well as more pollution, which in turn means more environmental degradation, more human health problems, etc.

To reverse 15 years of steady increases in greenhouse gas pollution from the U.S. auto fleet, or to stem the nation's continued reliance on fossil fuels, we can't rely on federal proposals to minimally raise fuel economy standards for "light trucks." Recently the National Highway Traffic Safety Administration called for an increase of 1.5 miles per gallon between 2005 and 2007 in federal Corporate Average Fuel Economy (CAFE) standards for "light trucks," but that would only raise the standard to a pitiful 22.2 mpg, far short of the 27.5 mpg rule for passenger cars, and farther still from the optimal fuel efficiency for which we currently have technology.

David Friedman, an engineer and Senior Analyst at the Union of Concerned Scientists, authored a report last year that explains what we should be doing, which (in so many words) includes not buying Ford F-150s. The report states that by the end of the next decade America's cars and trucks could reach an average of 60 miles per gallon, if automakers were to use the best hybrid vehicle technologies and mass-produce hybrids fleet-wide. "Over half of the nearly 20 million barrels of oil products the United States burns each day comes from other countries, including 500,000 barrels from Iraq," Friedman said. "Well-designed hybrids can reduce oil consumption and also bring environmental benefits by cutting heat-trapping carbon dioxide emissions from cars and trucks to below their 1990 levels."

Ford has made some efforts at fuel-efficient vehicles. The Focus is a good start, and Ford claims it will soon have a near zero emission version of the Focus sedan. As for the "light trucks", an Escape Hybrid (SUV) will supposedly be released in dealer showrooms this summer. Fuel economy for the Escape Hybrid is expected to be 35-40 mpg in city driving, which achieves nearly a 50% reduction in CO2 emissions compared to the standard Escape. The Escape Hybrid utilizes a "full" hybrid system that allows

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Getting by Bar Applications with Little Help from My Administrative Friends

By John Fedynsky

Curt Beatles-inspired headline aside, maybe the Law School needs to provide a “3L Orientation” for its soon-to-be graduates. I raise the question because casual conversation with some of my classmates and my own experience suggest that many of us feel like someone somewhere should tell us about issues facing 3Ls. These issues include things like the MPRE (Multistate Professional Responsibility Exam), registering for the bar exam, and signing up for bar review courses.

In my opinion, the administrative response to 3L issues is woefully ad hoc. No one is sure if the Office of Career Services, the Registrar’s Office, the Dean of Students, etc. should be the one taking the lead. Perhaps for that reason, 3Ls get e-mails from one or the other directing us to important web sites or informing us of upcoming deadlines. Worst of all, we sometimes get no communication from the Law School and a thoughtful student e-mails the listserv with helpful information one would have expected should tell us about issues facing 3Ls. The situation seems to be a perennial problem since I remember previous classes expressing some of the same concerns. I would not be surprised if generations of transient students have lamented the same things on the pages of Res Gestae for years, but I have not done the research.

I have looked deeply into the process of applying to take the Michigan Bar Exam. Allow me to recount the hoops through which I must jump, just to illustrate what 3Ls like me face. First, you must purchase the “Bar Applicant Kit” for $10. It is one of many new fees passed by Lansing in lieu of directly raising taxes. It contains 23 pages of instructions (stimulating), 13 pages of forms (some of which not everyone must fill out, like transfer of a score from another bar exam), and a fingerprint card (we’ll get to that one later).

Because the Board of Law Examiners must assess the character of every applicant, there is a long list of questions asking about criminal history, past participation in litigation, mental illness, compulsive gambling, substance abuse, and other such red flags. Answer yes to one of the questions and you have some explaining to do on a “Supplemental Answer Sheet.” You must have five persons who are not related to you and have known you for at least five years serve as references and fill out a form. You must list every job you have worked since high school and state the reason for leaving each job. You must also list your residence history, which means every place you have ever lived or visited for more than two weeks at a time since the age of sixteen.

For each residence, unless it was abroad and was not in Canada, you must obtain a certified driver and criminal record, even if you are certain that you never drove or broke the law in those jurisdictions. That means additional forms for each state, along with fees, which add up and must usually be paid by money order, cashier’s check, gold bullion, or something equally inconvenient, along with a self-addressed stamped envelop, of course. Speaking of fees, if you get the right paperwork in by March 1st for the July bar exam, Michigan charges a $225 investigation fee, a $300 examination fee, and a $54 fingerprint processing fee. That last fee is in addition to what you must pay to whatever agency fills out your fingerprint card for you. The Ann Arbor Police Department at City Hall on Huron Street charges $12 regardless of how many cards you bring, so bring all your cards at once. I needed a second one for obtaining a criminal history from Ohio. Its hours are Tuesdays and Thursdays from 9 to 10:30 a.m. and noon to 3 p.m. and on Wednesdays from 11:30 a.m. to 2:00 p.m. and 3:30 p.m. to 6 p.m. Oh yeah, you will also need to find a notary because some of the Michigan forms need to be notarized and some states require a notarized letter before they will release records. Curiously, some signatures must be in blue ink, others in black.

There are probably plenty of details I am leaving out, but that is precisely the point. There are all kinds of details! I imagine that most other states insist on similar details. It would be nice if the Law School hired someone to know the details rather than see 3Ls year after year reinventing the wheel for themselves. (For all the business entrepreneurs out there, a private “take care of your bar application for you” could be quite the lucrative cottage industry.)

Admittedly, students are adults and should be expected to have autonomy. (Though the alcohol and posting policies, to name the two that I resent most, call this premise into question.) But the autonomy argument does not preclude things like 1L orientation, on-campus interviewing, degree audit reports, panels on lesbian, gay, bisexual and transgender issues in law firms, etc. Random e-mails and reminders in the Docket have proven inadequate. Why not a highly publicized, well-planned and thoughtfully organized two-hour meeting (or shorter) during the second week of the fall semester when on-
Activist Judges: A Response from the Right

By Warren Dodson

The last Res Gestae carried an article criticizing the conservative legal movement. Upon reading it, I discovered that we are naive, “full of phony populist indignation,” “telling a dishonest, oversimplified story,” perpetuating “the essential lie of the conservative legal movement,” “publicly claiming to want more disinterested judicial drones,” and “describing our vocation with slogans and simplifications.” I first considered gathering support from my NRA brethren and initiating a bloodfeud. Thinking better of that, I decided to respond in writing.

Given the above description, some may wonder what our mothers did to make us so evil. I cannot speak for all, but I was lullabied to the words of Minor v. Happersett. Assuming that few have read this opinion, let me summarize. In 1872, Mrs. Virginia Minor of Missouri sought to vote for President. Under Missouri law, she was not allowed to do so. Unhappy about this state of affairs, she sued the registrar of voters for denying her the right to vote. The case reached the Supreme Court in 1874. She there argued that the franchise was a privilege protected by the recently ratified Fourteenth Amendment. In his opinion for a unanimous court, Chief Justice Waite meticulously considered the history of the privileges clause and examined how Mrs. Minor’s argument fit with other constitutional provisions. He concluded that the franchise was not a privilege protected by the Fourteenth Amendment.

Now the modern student has no doubts about what was going on here. 1874: Neanderthals, formalism, patriarchy. So what was the result? History ground to a halt and remained mired in moral darkness to await the coronation of Chief Justice Warren? No.

We deliberated. We engaged in a national dialogue on political morality. We marched, wrote, and spoke. And what was the result? Mrs. Minor got her privilege in 1920 with the ratification of the Nineteenth Amendment.

Why this story? I hope it sheds light on the fundamental disagreement between legal conservatives and legal liberals. Legal conservatives believe that legal texts have discoverable meanings that answer the majority of disputes that come before our courts. The judge begins by looking to the text for an answer. If she finds it, she applies it. If she does not find an answer, what she does next depends upon the situation. If the question is one of common law, she crafts an answer that is in keeping with related textual provisions and with public policy. If a statute has invited the judge to fill a gap, she does so in accordance with the same principles. If the Constitution does not speak to a matter, the constitutional challenge fails and the plaintiff must look to the political process for relief.

Legal liberals see legal texts as invitations for the judge to codify good ideas. Instead of a Constitution, we have “evolving standards of decency,” “penumbras,” “emerging awarenesses,” “rights to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life,” and “values we share with a wider civilization.” These terms of moral discourse are the sort of language used by woman suffragists in seeking the right to vote. But liberals do not believe in Article V. They believe in “constitutional moments” when the constitution is wordlessly amended. They believe in linguistic despair as a shortcut past legal texts to moral philosophy.

Of course, this account might be dismissed by the author of the article as just more hypocrisy on our part. However, his charge of hypocrisy is not sustained by the examples he cites. Post-Adarand and pre-Grutter, Hopwood was reasonably decided under Supreme Court precedent. (And if, as the article said earlier, conservative decisions “almost always comport[. . . ] with the tastes, will, or prejudices of the majority,” how did Judge Smith manage to “overthrow[. . . ] longstanding legal, legislative, and social consensus?”) As to the charge that conservative media figures have failed to provide any legal analysis in support of their criticism of the recent Massachusetts Supreme Judicial Court decision, I suppose we are in agreement that pundits provide the most intelligent representation of a movement’s thought. I can vouch that every time I like a judicial decision, I immediately turn to Franken, Begala, and Dowd to find out what the best liberal minds are thinking.

Finally, I cannot let pass the bizarre attack on Justice Scalia. The article argues that Justice Scalia’s desire to “blow up” Roe v. Wade belies his purported commitment to textualism. Either “blow up” or “textualist” is being used in a way with which I am not familiar, or this argument is meaningless. Textualism is a theory of interpretation that seeks to give effect to the meaning that the language of an authoritative text had at the time it was enacted. The Constitution is such a text. Roe is one attempt to understand what that text means. As a product of the interpretive community, it is entitled to respect. However, no current Justice is required to approach Roe with a strong presumption that it is correct or that it is binding on him. Article VI says that the Constitution is the supreme law of the land. It makes no mention of dubious interpretations of the Constitution, no matter how “settled” they may be. Justice Scalia’s commitment to textualism and his opposition to Roe are related not as contradictions but as principle and effect.
major capital improvements in the District: the Washington Metro, the Air and Space Museum, rebuilding the riot quarters, all that kind of stuff. My background was in building things. I can't describe it any better than that, I had been building things when I was in private practice, and so I went on building things for the government.

And in the second Nixon administration I was moved out into the Department of Transportation and became the chief counsel of the urban mass transportation administration for the Department of Transportation, and so we created the mass transit program for the federal government. This also was great fun. It was at a time, frankly, before the Arab oil embargo and at a time when America still thought it was rich. But the question was, if we can send a man to the moon, if we can send one man 250,000 miles to the moon, why can't we move 250,000 people one mile across town so they can get to work? And so mass transit was the issue, and of course with the pressure from the environmentalists against the highway, mass transit looked like the solution both to the disaggregation of the cities and urban sprawl, and to the problem of excessive highway development. And so we were very much on the cutting edge, it was fun.

Around the end of the Ford Administration, I began to think that it was time for me to move on, after we did the big bill and reorganized the railroads. I so I began to think I have finished there. The things you can do when you are coming out of government, there are a couple things. One is you can go into corporate law, you can go into a law firm, in which case you representing people in the industry you have just been dealing with. But here's the problem - if you have been working for the government doing good policy, you don't want to be representing people who are trying to do not-so-good policy, special interests. So that wasn't so very appealing to me. Fortunately, the Michigan Law School had a long history of having on its law faculty people who had done a lot of policy, so when Michigan made me an offer I thought that this was the perfect academic home for myself. And I have not been disappointed.

When I was walking in, I noticed that you have a guitar case and have quite a bit of music piled up there. Do you consider yourself a musician?

I'm a musician. I'm an enthusiastic amateur musician. I'm not in Steve Croley's league. Do you play guitar?

I had lent that to Peter Westen, who has now returned it. When I was in college, I played blues guitar. Since I've been up here, I've taken up Scottish fiddle, so I've actually played for Scottish dancing at the Ptolemic Valley Scottish Village. And I listen to Mozart, because Mozart is good for your head. But I'm not very good, let me be clear, I'm not making any claims here - I've risen to mediocrity in a wide range of areas (laughs).

What's your favorite part about working here?

The building. The building is a thrill. Now that may sound odd, because it sounds as if I'm not interested in the people. I think buildings have a lot to do with how people are and how they present themselves. I think it makes a difference whether you spend your time in a building like this which has all this classicism and which impresses on you at all times the majesty and importance of what you're doing, rather than spending your time in a modern concrete building of no distinction whatsoever.

I think people stand up a little straighter here, I think they take themselves a little more seriously, I think they take their work a little more seriously. I think architecture matters. And I think our fine, fine buildings are part of the presentation not only of the school but of the subject matter. We are after all the law. We're the people who are entrusted with maintaining government under law and rule of law, and that's what makes self-governance possible. So we are the glue that holds the democracy together.

What would be the best advice that you could give someone coming here as a first-year student?

Never forget that what you're doing is a profession, and you're going to be a professional with the most exalted responsibilities. We handle people's money. We handle their liberty. We handle... 

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their lives. Because those are the things with which the law deals. We handle those things, we are entrusted with those things that get due process protection, are large enough to be secured by the Constitution. Your job as a lawyer is always going to be to be as intelligent as you can be, as prepared as you can be, as disciplined as you can be, and to put yourself in the service of your clients, because most of them have no where to go but to law and to lawyers. We are that interface, and if we don’t do our job, we have an effectively lawless society, we have a society in which power rules, and we believe that everything is about the money. And if we don’t do our job, we’re an achieving person, what you want is the achievement. And everyone who is worthwhile is interested in achievement, and money follows. Or doesn’t follow. You manage the money, but your passion is for the achievement.

I think you find that in all high-achieving people. If you ask them if they’re working for that hundred thousand dollars they’ll say “Oh no, that’s not it.” But the ideology tells us that profit drives everything, and therefore we can believe, especially if we’re taught that during our formative years, that that’s what we ought to be driven by. And it’s not just not healthy to be thinking of yourself all the time in terms of your own personal exchange value. The rewards are much more complex than that. The reward of professional esteem, for example, is what drives a lot of people.

I’m not against money. And I do think that by and large, the world is set up so that great rewards flow to people who figure out how to solve the most important problems that other people have, and other people are appropriately grateful, especially if the producers have a monopoly, which we do. But that’s not it, it’s not the money. It is what the money symbolizes in terms of your own worth as a professional.

How did you get into law?

I read Irving Stone’s biography of Clarence Darrow when I was in junior high school. I was on my way into a career in science, and I was just very taken by Darrow and the law. Then, as I went along, I developed a personality that is both very combative and problem-solving personality. Lots of grownups began to say to me, “You ought to go to law school.” And so I did. It worked out that they were right.

What advice would you give someone coming to the faculty?

The bottom line for faculty is publish, publish, publish. That’s the one thing you have to do, nothing else really matters. I’m of course being facetious. What I would say for an incoming faculty person is finding subject matter that is worth your life, because you will spend your life on it. And the reason you tell your colleagues, your professional peer group what it is that you think is because you are participating in these communities that are spending their lives on the subject matter. So its not just publish, publish, publish. You want to publish - about your passion.

What would you advise women coming into the faculty now?

It’s a lot easier for women now, because all the authority figures in society are no longer male. Here’s the problem - when you’re young, you’re trying to figure out whom to be, and that is also whom to be like. So you come into an environment like this, and here are all these guys in suits, and they’re old, and you think, “they must be the people to be like.” And then there are these younger women (because all the women were young), and they don’t behave like these old guys. And you think, “they must not be the people to be like.” So the struggles of young women in law academia in particular were pretty tenuous for the first ten or fifteen years after women started being law professors. That is diminished now that you’ve got women doing everything in the law itself. And so it’s possible to think of women as power players who actually know what they’re doing. You’re teaching young people who are trying to figure out who they are and how you fit into who they are and who they want to be. If you don’t look like what they think they want to be like, or if they can’t be like you, then they’re going to turn their heads to people who are more like what they think they want to be. It’s a socialization process, just in the nature of the beast.

What are your opinions on the current Medicare bill?

There is a struggle going on between the right and the left over whether we will have a national health insurance system or not. All health policy, every bit of health policy, is positioned so as to increase or decrease the rate at which we are progressing toward having a national health insurance system.

The specific topic is prescription drug coverage, but the real politics are about
Continued from Last Page

the national health care plan. So when the liberals say, "We think that the prescription drug plan ought to be added onto fee-for-service Medicare, and the government fought to set the prices at which it will buy drugs (just as it sets the prices at which it will buy medical services)," the conservatives go off the wall because that is a national health care plan. Adding on the administrative infrastructure to existing Medicare/Medicaid services to do the prescription drug part of it would enhance their capability and then make it more plausible for them to claim that they would be able to handle a true national health insurance plan.

The problem with the managed competition regime is – that's the old Clinton plan. I know that plan, I wrote that plan in the Clinton [national health care plan] scheme. It's the same thing; they haven't advanced, they haven't learned anything, that's the same managed competition scheme we had for the Clinton plan. The problem is it doesn't work, which is one of the reasons the Clinton plan was rejected by the Congress, they said "and when have we seen anything like this work," and no one ever had. Well, no one still has. The Medicare prescription drug plan as you've seen is unsustainable. The prescription drug part of it is too expensive and badly designed and the Medicare Advantage part of it (the managed competition part of it) requires immediately this huge $15 billion subsidy, its not clear insurers are going to be prepared to participate in this, because they've lost huge amounts of investor capital already trying to do managed care (HMOs). So we'll see how this works out, but I'm not very optimistic.

You know, we had this argument ten years ago with the Clinton plan, the Clinton national health care people lost, and then it was incumbent on the other think to think of a better system. They haven't. But remember whatever happens, its not going to work in your lifetime.

F-150, from Page 15

for a limited electric-only drive mode, and other typical hybrid features such as automatic engine shut-off during idle and regenerative braking. And for all those racers out there, acceleration performance for the 2.3 liter 4-cylinder engine with electric power assist will be comparable to a current Escape with a V-6 engine. However, Ford also admitted it would not meet its much touted 2005 commitment of a 25% improvement in the fuel economy of its SUVs, and Ford still markets a slew of problematic cars, trucks and SUVs, such as the monstrous Ford Excursion, the Land Rover Range Rover, and of course, the infamous F-Series. As of October 2001, the F-Series was the top-selling vehicle for 18 years running (and best-selling pickup for 23 years running). While pickups may be ideal for all your many, hauling, towing and off-road needs, they are in that classification of vehicles ("light trucks") with the lower fuel efficiency standards. So with an average fuel economy of 18 mpg (as of Oct 2001, but don't expect it to have changed for the better) pickup trucks are as inefficient as they were 20 years ago, despite all our advances in technology, our national interest in reducing our need for foreign fuel, and our increasing awareness of the dangers of pollution.

On top of all that

And for the final blow, the Great Lakes region is especially vulnerable, economically and environmentally, to climate change from greenhouse gases and emissions. In a study released in April of last year, a team of scientists concluded that "climate change in Michigan caused by heat-trapping gases from human activities could lead to a 6-10 degree Fahrenheit temperature increase in winter and 7-13 degree warming in summer by the end of this century." Before you get caught up in a deluded winter fervor for increased temperatures, realize that these changes are projected to bring more floods and droughts, lower lake levels, less lake ice cover, increased burdens on farmers, increased conflict over water use, and magnified health and environmental problems in the region. The study also finds that as a result of the projected warming, plants, animals, ecosystems, and the more than 60 million people who live in the region will likely experience impacts such as more heat waves, infrastructure damages, impacts on livestock and crops, loss of boreal forest, loss of wetlands, and the drying up of headwater streams in summer, as well as a loss of revenues from cross-country or downhill skiing, snowmobiling, and ice fishing. Study participant Dr. George Kling, biology professor at this esteemed University, explains, "To avert the worst impacts of global warming, the region can harness its industrial know-how and economic strength to reduce the amount of fossil fuels we burn to produce electricity and drive our cars." Dr. Donald R. Zak, an ecology professor who participated in the study and is also employed here, adds, "our forests may see some short-term growth due to higher concentrations of atmospheric carbon dioxide, but in the long-term, they will be damaged by high levels of ozone, frequent droughts, fires, and destructive insect pests." And remember David Friedman, from the Union of Concerned Scientists? He comments, "with nearly one-third of all heat-trapping emissions coming from transportation in the United States, it is critically important to reduce emissions from the cars and trucks we drive. . . . Because Michigan is the center of the nation's automobile industry, the state has a unique opportunity to take the lead in addressing global warming. Detroit can demonstrate its technological leadership by applying gas-saving technology to its vehicles to spur sales and create new jobs vital to the region."

So there you have it. For more information, check out the Environmental Law Society's current bulletin board in the basement of Hutchins Hall. And see your local dealer for details.
DEATH ROW, from Page 3

A special prosecutor was appointed to look at police misconduct, specifically torture practices. "There are 60 known cases of pattern torture," Lyon said. "I'd like to see something happen—people have to be held accountable."

Prosecutorial misconduct is also a problem in Illinois, according to Lyon. "I am one hundred percent sure that at least one of the prosecutors in Hoblay's case knew the gas can was planted on the scene," Lyon said. "It depends on what gets rewarded in each office." Some offices have a "win at all costs" policy, others hold attorneys accountable, and make them toe the line, with strict consequences for failures to do so.

Largely, the fairness and just quality of a capital trial depends on the type of attorney a defendant is able to obtain, according to Lyon. When an attorney is given only $2,000 to try a case, including paying investigators and experts, it makes it very hard. There is also the quality of police and investigation to consider. For this reason, Lyon is grateful that she is also a professor. "I went into teaching hoping to replace myself," she said. "It's very stressful, but rewarding work. You see a lot of alcoholism, divorces, and other problems because it consumes you."

In addition to her work with the CJCC at DePaul and Clarence Darrow at Michigan, Lyon is training defense investigators and beginning a program for mitigation specialists, also two very important jobs in a capital trial, as well as encouraging students who want to be capital defense attorneys to follow their dreams. "How many other Madison Hoblays are there in the world who have lawyers who have jobs as professors like this who can afford to take this for free?" Lyon asked. "I'm hoping there are people here who will make it a part of their life not to walk by an injustice."

Jana Kraschnewski contributed to this article.

BAR APPS, from Page 16

Still, in Illinois, justice is on the mend. A special prosecutor was appointed to look at police misconduct, specifically torture practices. "There are 60 known cases of pattern torture," Lyon said. "I'd like to see something happen—people have to be held accountable."

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Jana Kraschnewski contributed to this article.
Associate Professor James Forman, Jr., from the Georgetown Law Center spoke of the implications of Grutter on the primary and secondary school system. Forman stated that Grutter was simply the "tip of the iceberg." The pipeline that feeds these schools of higher education is critical if we are to increase competitive minority representation in higher education.

He discussed how increased minority representation could be accomplished through three initiatives, namely integration, school vouchers and school choice, and class size. Grutter has partially revitalized the logic of integration in the primary and secondary school setting. Numerous studies have shown that integration has lasting educational and social benefits for all children. He espoused government vouchers to allow children the opportunity to choose whatever school they wished to attend. Numerous studies have shown that children in small classes performed better than those in large classes with gains especially high for black students and even higher for those located in inner cities. Forman said, "Whether Grutter is viewed as a win or a loss, all of our best efforts should be towards making the minority applicant pool a competitive one, as it is not clear how much longer these programs will be upheld."

Professor Cynthia Estlund, of Columbia Law School, spoke of the employment implications of the Grutter case. Estlund noted that even though affirmative action was a hot topic in the higher education setting, there is a paucity of lower court cases on affirmative action in the workplace. Cases of reverse discrimination are very rare as employers usually defend their hiring or promoting decisions on some other motive instead of affirmative action.

As Professor Forman had noted, the Grutter case is really the "tip of the iceberg," as the social ramifications extend beyond the higher education setting. It will be interesting to see how the lower courts will interpret the Supreme Court's decisions in future litigation and how this ruling will apply to life outside higher education. As the late Rene Dubos once said, "Human diversity makes tolerance more than a virtue; it makes it a requirement for survival." And so perhaps our survival as a society is furthered by this monumental case.

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LETTER, from Page 14

3. The Law School Administration should urge the Board of Regents to remove the carve-out for sexual orientation from the University's nondiscrimination policy and pursue ongoing strategies toward this end.

4. The Law School Administration should urge the Board of Regents to include "gender identity" in its nondiscrimination policy and pursue ongoing strategies toward this end.

Outlaws also recommends these measures:

1. The Law School should file an amicus brief in the FAIR litigation.
2. The Faculty of the Law School should consider joining the FAIR litigation.
3. The Law School should lobby Congress to repeal the Solomon Amendments and the military's discriminatory policy, and pursue ongoing strategies toward this end.

A career with the Department of Defense would doubtless prove rewarding. But it is a career wholly unavailable to LGBT candidates. Openly LGBT law students who aspire to work for the Department of Defense – and indeed there are many, including students on this campus – cannot do so. Permitting access to military recruiters, while simultaneously barring access to other employers who discriminate, is an affront to the dignity of all LGBT students and raises questions about the Law School's commitment to diversity and expressive freedom for all students. We urge the Law School and the Board of Regents to take immediate, concerted measures against the government's, and their own, egregious policies.

Signed,

Outlaws, The Law School's LGBT Student Alliance

1 "Where state law or university policy requires the law school to provide assistance to military recruiters, the school should, to the extent possible, disassociate itself from the military's discrimination and should take steps to ameliorate any adverse effects of non-compliance with regard to the educational atmosphere for gay and lesbian students. In this situation, it is especially important that the law school maintain an inclusive and supportive atmosphere for all students regardless of sexual orientation and that it take steps to educate students on the importance of nondiscrimination, as by hosting forums and events that illustrate the importance of the principle. Other appropriate ameliorative steps include prominently displaying the school's generally applicable non-discrimination policy (even though it may not be enforceable as to military recruiters) and accompanying any circulation of military recruitment materials within the law school with a declaration of the inconsistency between military employment practice and the law school's non-discrimination policy. The school should also limit the level of service provided on law school premises as much as possible; for example, a law school may provide scheduling services to the military and arrange that the interviews take place at another location. The active involvement of a gay and lesbian students organization and the acceptance of openly gay and lesbian faculty and staff are also important factors in establishing a general climate of nondiscrimination." American Association of Law Schools, Memorandum 00-2, from Carl Monk, to Deans of Member and Fee-Paid Schools, January 24, 2000, quoting Memorandum 96-15, May 28, 1996, at http://www.aals.org/00-2.html.

2 Information on the litigation challenging the Solomon Amendments can be found at www.solomonsresponse.org.

3 See also American Association of Law Schools, Memorandum 98-23 from AALS Deputy Director Bari Burke, to Deans of Member and Fee-Paid Schools, May 14, 1998, at http://www.aals.org/98-23.html (posing minimal compliance measures taken at peer law schools).
**VISITING, from Page 1**

**How do our students compare?**

Some said “favorably” and a few, like Neil Kagan, had “no basis for comparison.” According to Kamir, who teaches 1Ls in criminal law and 2Ls and 3Ls in a seminar, “Some [students] are outstandingly dedicated and interesting.” She added, “I wish they were more talkative in class.”

“The students at Michigan are more likely to ‘push back’ and to question the faculty than at other institutions at which I’ve taught,” said Neihoff. “I like that.” Paulus commented, “I find them more open-minded than some other students I’ve met at, let’s say, Harvard.” Oswald said that the Business School has more international students and fewer women.

Winograd considers student here “excellent . . . prepared, committed, responsive.”

**Fun, Ann Arbor**

Diverse opinions were expressed on the topics of where to go to eat and relax near campus (though Zingerman’s Delicatessen was a favorite) and good (parks were a hit) and bad things about Ann Arbor (cold and snowy weather was not a favorite, though some claimed to like it).

“I love to cook and live on a small lake out in the country, so when I want to eat or relax I go home,” said Niehoff. “Now, how boring is that?” he asked.

According to Morris, “[Ann Arbor] has three things in abundance, maybe in even greater density than my neighborhood on the west side of Manhattan, that are important for the maintenance of the good life: coffee places, book stores, and ice cream stores.”

Kagan said that he enjoys “the small town feel and the big city amenities.” For casual eating, he likes NY Pizza Depot and Le Dog.

Hasday dislikes that “across the street from the gym is both a supermarket and a bookstore.”

Hill Auditorium impresses Paulus, a fan of classical music. But as far as dining, he is less enthusiastic. “As most Germans, I miss decent German Bread,” he said.

**Finally, not a softball**

To wrap up, we asked what our respondents would like to change about the Law School. Six said nothing, left the answer blank, or otherwise avoided the question.

Three professors had issues with facilities. Kamir would change “the elevator in Hutchins Hall” and Morris would change “the aluminum panels on the Legal Research addition.” The latter is expected to be demolished in the coming years when the Law School expands. Oswald would “run powers strips under all of the desks so that the students with laptops could sit in the middle of the room and not cluster against all the outside walls, leaving a gaping hole up the center of the classroom.”

Niehoff “would try to create more opportunities for faculty and students to interact at a social level.” He has “been very impressed by many of my students, and regrets that [he does] not get to know them better. I think this is particularly true for visiting and adjunct faculty.”

Paulus agrees. “People should have time for reflection and socializing rather than filling their schedules to the extreme.” He adds, “But maybe this is just a reflection of the anxiety not to miss something important - and there are so many things to do.”

There is a story behind every face at the Law School. You’ve just had a glimpse of eleven of them.

Michael Murphy and Jessie Grodstein Kennedy contributed to this story.

**HERZOG, from Page 4**

or to be made.” He called the provision “clearly unconstitutional.” “I am about to violate the Patriot Act,” said Herzog. He then said that Osama Bin Laden was about to blow up the Golden Gate Bridge. The only possible argument in defense of the provision that Herzog could articulate was to analogize the provision to earlier laws banning false bomb and hijacking threats in airports. These laws have been upheld largely because of the special social context of airports and the government interest in orderly transportation without the fear of passenger hysteria. But since the Act references no special social setting, Herzog said that he doubted that a court would expand the airport cases and make them generally applicable.

Before engaging in an answer and question session, Herzog concluded with the observation that now people seem to file suits instead of engaging in the political process. “And that’s a shame,” he said.
Announcements

Wednesday, Feb. 18

APALSA
GENERAL MEETING
6 PM
250 HUTCHINS
FOOD PROVIDED

Fri-Sat, March 5-6

**THE LAW STUDENTS FOR REPRODUCTIVE CHOICE WILL HOST A CONFERENCE ENTITLED "REPRODUCTIVE RIGHTS UNDER SIEGE: RESPONDING TO THE ANTI-CHOICE AGENDA."**

This conference is a major national event among the reproductive rights community and law schools nationwide. The purpose of the conference is to mobilize law students to engage in activism for reproductive choice. It features eighteen speakers from major advocacy organizations nationwide including our keynote speaker, Nancy Northup (President of the Center for Reproductive Rights) and our closing speaker, Dr. Sarah Weddington, who successfully argued Roe v. Wade in front of the Supreme Court.

U of M law students interested in registering for the conference should visit: www.studentsforchoice.org

Please contact Andrea Gold (argold@umich.edu) or Patty Skuster (pskuster@umich.edu)

Monday, March 8

**DISCUSSION: ISRAEL’S RELATIONSHIP WITH THE UN**

**PROFESSOR EMILIO CARDENAS**

12:15 PM, ROOM 218

PIZZA & POP PROVIDED!

Tuesday, March 30

**THE ANNUAL LAW REVUE**

(A.K.A. TALENT SHOW)

MENDELSOHN THEATER

MICHIGAN LEAGUE

Send Your Student Organization Announcements to rg@umich.edu

Saturday, March 6

**LSSS WINTER FORMAL**

"ENCHANTMENT UNDER THE SEA"

8PM - MIDNIGHT

MICHIGAN LEAGUE BALLROOM

TICKETS ON SALE NOW!