Focus on Faculty

University of Michigan Law School

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OUTSTANDING FACULTY ARE THE CORE OF EVERY GREAT LAW SCHOOL.

Throughout its 140-year history, Michigan has sustained a special pride in the quality of its professors. From Thomas Cooley to Jack Dawson, Edson Sunderland to William Bishop, Michigan professors have made enduring contributions to the world of legal scholarship, to the intellectual development of their students and the practice of law.

To know Michigan, therefore, is to know its faculty. Readers of Law Quadrangle Notes become acquainted with our current faculty members by reading their scholarly writings and following their activities and accomplishments.

In this issue, we present eight members of the current faculty from three perspectives: their own, that of a colleague, and that of a student. The professors profiled in the pages that follow were not selected to be representative of the faculty as a whole. With a faculty as diverse as ours, no gang of eight can begin to capture the full range and quality of the whole.

Nonetheless, one can begin to get a sense of the vibrancy of the faculty community by getting to know Donald N. Duquette, Rebecca S. Eisenberg, Richard D. Friedman, Catharine A. MacKinnon, William I. Miller, Richard H. Pildes, Mathias W. Reimann, and Carl E. Schneider. They speak with radically different voices. They pursue breathtakingly different goals. But they share a passion for their intellectual calling, and an originality and clarity of vision, that are truly in the best tradition of the University of Michigan Law School.
I AM OBSESSED WITH HOW SOCIETY responds when mothers and fathers fail to care for their children. Clinical teaching in the Child Advocacy Law Clinic allows me to pursue this obsession while also serving the "trinity" of the University's mission statement: teaching, research and service.

Teaching/service: Individual child protection cases provide the base and inspiration for all my other professional work. Sometimes I am asked, "Don't you ever get tired of handling child cases? Doesn't it get boring or repetitive?" To which I answer a resounding "No!" Each child is different. Each family, each court — and each team of student attorneys — adds to the diverse mix that fuels the rest of my work. Besides, students like the Child Advocacy experience because of the immense satisfaction they get from using their new legal skills to help a specific child. My satisfaction is doubled because not only do I share in the pleasure of providing the very best legal service for a child or parent, but I also revel in the students' performance and their introduction to a humane and altruistic aspect of the law.

Teaching/research: Real cases ground me in the real world but also provide a data base for the question of "What's wrong with this picture?" Part of my job is to understand the real world and teach students to work effectively in it, but another part of the job, and a part I really like, is the creative "visioning," — that is, seeing things that are not there and devising alternatives to a reality so many accept. People sometimes look askance when I say part of my job is to "see things that aren't there." I suppose this is a variation on the old saw "you don't have to be crazy to do this job, but it helps."

My research and writing rests on the experiences of particular cases and often involves student work of some sort. One of my most influential books, Advocating for the Child in Protection Proceedings, was co-authored by an interdisciplinary group of graduate students in the Bush Program on Child Development. When the U.S. Congress mandated a national evaluation of legal representation of children, that book formed the conceptual framework for a National Center on Child Abuse and Neglect study. In Michigan child welfare reform, the Supreme Court, Governor's office or State Bar have often appointed me to task forces and commissions and I have tried to involve students in various ways when appropriate. Michigan child protection and foster care statutes include sections initially drafted by Michigan law students. Going back to the early '80s, Lisa D'Aunno and her partner Jennifer Levin, both '84, helped draft sections of the bills that made Michigan's child welfare court process one of the most efficient in the nation. One of the best and most recent examples of student involvement in research/public service is a bill to define the role of the child's attorney in child protection cases. Greg Stanton, '95, helped draft a set of recommendations subsequently adopted by the State Bar Children's Task Force, of which I was co-chair. When Lt. Governor Binsfeld asked for our help in drafting legislation, Rachel Lokken,'97, and Kristin Schutjer, '98, developed some very important bill language. Albert Hartmann, '98, wrote a law review article on the topic (Hartmann, "Crafting an Advocate for the Child," 31 Michigan Journal of Law Reform 237 [Fall 1997]) and last March, he and I, at the Lt. Governor's invitation, testified in support of the bills before a joint committee of the Michigan
Senate and House. (See 41.2 Law Quadrangle Notes 32-35 [Summer 1998]). These bills passed the Michigan Senate unanimously and as this is being written, are pending in the Michigan House.

Research/Service: I just completed a sabbatical year in Washington, D.C., where I worked on President Clinton’s Initiative on Adoption and Foster Care. The Clinton Administration asked me to draft guidelines for state legislation governing permanence for children. These guidelines are technical assistance to the states and address court and legal process and lawyers’ roles in child protection and foster care cases. Recommendations include: enforceable post-adoption contact with siblings and extended family; a new form of permanent guardianship to achieve stable homes for children and non-adversarial case resolution such as mediation and family group conferencing. Extended family are engaged early in the process and given more power to influence the planning for a child. Grounds for termination of parental rights are proposed that reflect the growing consensus that children cannot wait indefinitely for their parents to get it together. The overall effect of the guidelines is nothing short of recasting the entire jurisprudence of child protection to achieve safety and permanence for the child in a disciplined court process.

For over 20 years I have been blessed by challenging students and supportive and insightful colleagues, like Suellen Scarnechia, ’81, and David Chambers. It has been exhilarating to pursue justice for children and to participate in the redefinition of child welfare jurisprudence. Our Child Advocacy Law Clinic is looked upon as the model of such clinics around the nation and we are often called upon to advise other schools in the development of similar programs. Where else but at the University of Michigan Law School could one get the level of institutional and intellectual support necessary to sustain such an enterprise? I look forward to the next 20 years.
AS A TEENAGER, I HAD A PASSION for studying foreign languages. I loved immersing myself in an unfamiliar idiom, struggling to make sense of another system for parsing words and sentences to describe experiences and observations. I reveled in subtle differences in the meaning of words that were sometimes, but not always, equivalents in translation. Most intriguing of all were the occasional insights I gained into the limitations of my own language when I recognized that a foreign locution simply has no English equivalent.

I gave up the study of foreign languages at some point in college, or so I thought. But as I reflect upon what I’m doing in mid-career, I wonder if I’ve become a lifelong exchange student of sorts, continually struggling to make sense of a foreign idiom, and always trying to figure out what is getting lost in the translation.

I am trained as a lawyer and have been teaching intellectual property to law students since 1984. Although I think I carry out this job in plain English, other observers might report that I speak some sort of “IP” dialect of legalese. But my research continually takes me outside the community of lawyers and future lawyers to attempt conversation with people who work in a very different idiom. I study how intellectual property operates in the setting of biomedical research, and that task brings me into communities of research scientists on a regular basis. Sometimes my formal role is more or less that of a guest lecturer or author, trying, without benefit of a translator, to make patent law concepts comprehensible to people who don’t know my dialect. But once my own presentation is finished, I revert to the role of exchange student, listening or reading along while scientists talk to each other in a language that makes a little more sense to me each time I hear it.

What fascinates me in both of these roles — presenter and observer — is not simply trying to follow the scientific jargon, nor even the far greater challenge of following the science that the jargon describes, but rather the challenge of recognizing the similarities and differences in the categories and concepts that are salient in the discourses of intellectual property and research science. Why is it, for example, that a publication announcing the identification and characterization of a new gene may list fifty authors, while the patent application on the same gene will list only two or three inventors? How is authorship on a scientific publication like or unlike inventorship on a patent application? And what are the implications of these similarities and differences for patent controversies within the
scientific community? Patent law repeatedly invokes the judgment of a fictitious practitioner of ordinary skill in the field of the invention in setting legal standards, but is it framing questions that such a practitioner would find meaningful and appropriate, and is it correctly understanding the answers?

To some extent, differences in the vernaculars of law and science correspond to cultural differences between industry and the academy in biomedical research. Much of my work focuses on the role of intellectual property at the public-private divide in research science. Recently I served as chair of a working group on research tools for the National Institutes of Health. In that capacity, I spent many hours talking to people in universities and private firms about difficulties they encounter in negotiating mutually agreeable terms of exchange for research tools — materials, information, and reagents — for use in biomedical research. Just about everyone agrees that there is a growing problem, but they tell different stories about what the problem is. Those who administer the patent system often take it for granted that owners of inventions will be adequately motivated to transfer proprietary technology to potential users if the stakes are high enough, yet in this particular setting, the costs of bargaining seem to be consuming the gains from exchange. Why are exchange mechanisms that have worked tolerably well in other fields less successful in the market for biomedical research tools?

When I left practice for teaching, I worried that after a few years I would be bored in the Ivory Tower, too far removed from emerging problems in the real world. In practice, I was constantly presented with new problems, and my challenge was to describe the issues in a way that made the resolution favored by my client seem like the most modest, unexceptionable increment over prior resolutions of similar problems that had long been settled. In the academy, I feared that I would never see a new problem, that I would instead be doomed to rehashing old issues, and my challenge would be to repackage old ideas in a way that seemed new and unprecedented.

Instead, to my great delight, the field I observe is constantly presenting new problems, shifting in ways that turn my questions around and reveal new angles I hadn’t thought of. My telephone keeps ringing, although I have no clients to control how I spin an issue. My greatest challenge is to be sure I understand all that I’ve heard before I speak, and to be sure that my own words are not misunderstood.

**Ronald J. Mann**
Assistant Professor of Law
B.A. Rice University, J.D. University of Texas, Austin

"As a scholar, Becky Eisenberg has staked out for herself a daunting task: to understand the law-related aspects of biotechnology from the inside out. Unlike many things that we do as law professors, that is not a task that can be carried very far sitting at a desk reading statutes and judicial decisions. All that you can learn by reading law books is what the law says, which does not take you very far toward understanding how the industry works, especially in a rapidly developing scientific field like biotechnology. To master her field, Becky had to learn not only the law of intellectual property (a major task in itself) but also to become sufficiently expert in biochemistry and molecular genetics to understand the forces that drive the lab researchers, universities, private companies, and other institutions that constitute the world of biotechnology.

"Working in that field, Becky has produced a string of impressive articles analyzing many of the most central issues relating to biotechnology research. She has studied topics ranging from the differing cultures in academic and commercial research environments, to the scope of patent exemptions for research, to her current work on the policies that justify public funding of research that competes with privately funded research efforts. In all of those areas, Becky’s work has broken new ground, bringing serious thought to important topics not previously examined in the scholarly literature. Given the seminal quality of her work on those topics, it is not an exaggeration to say that Becky has defined the field in which she works. We are lucky to have her here.

"Having said all of that, consider my state of mind shortly after I accepted the Dean’s offer to come to Michigan to teach commercial transactions. About the time that I decided to come here, I had the novel idea that it would be interesting to start studying intellectual property. I decided that I should call up Professor Eisenberg (whom I had not yet met in any significant way) to see what she would think about my deciding to work in that field. I remember making the call with some trepidation: Will she think I’m intruding into her domain? Will she think I can’t possibly know enough to teach intellectual property at her school? My concerns were completely unfounded. I was overwhelmed immediately with her excitement at the prospect that one of her colleagues had decided to study intellectual property. Since then, she has been one of my closest friends on the faculty, giving generously of her time and expertise in the field.”

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**Ira Finkelstein, ’98**
B.S.E., B.S. University of Michigan

"There have been so many times and ways Professor Eisenberg has had an influence on my law school experience that it’s hard to keep track of them. Of course, she’s a great teacher. Being called on in her classes is more like a conversation than an inquisition, and in going through the cases she is never afraid to let us know when she thinks the court has completely blown the call.

"She has also been among the most accessible of my professors at Michigan: whenever I felt that I needed advice, whether about work, clerkship applications, the bar exam, or law school in general, she has always been willing to make some time to help me.

"Finally, Professor Eisenberg is a superior legal scholar. Her writings on IP (intellectual property) law, her field of expertise, are clear and persuasive and address important issues. I wish everything I read in law journals was like that!"
IF MY WIFE ORDERS A MEAT DISH at a restaurant, I’ll usually get seafood — but if she orders fish I won’t. We’ll share, and I like variety. This may help explain not only why I am dilettantish in the courses I teach but also why my two biggest academic projects have absolutely nothing to do with one another.

A dozen years ago, I agreed to become general editor of *The New Wigmore*, the successor treatise to *Wigmore on Evidence*. And I also decided to write the portion of the treatise on the law of hearsay. As anyone who has taken a course in evidence knows, hearsay is a baffling doctrine, much disliked and manipulated. But I believe that if we dig deep enough under the muck, we find a principle of enormous importance, which lies at the heart of the Sixth Amendment’s Confrontation Clause: the adjudicative system must not allow a person, whether in court or outside, to create testimony for use against a criminal defendant unless the witness is testifying under oath, in the presence of the defendant, and subject to cross-examination. This is a narrow principle — it only applies to a limited set of out-of-court statements, those that are in some sense “testimonial” — and I wouldn’t ring it with an array of exceptions. (The defendant’s right is subject to forfeiture if his own misconduct makes confrontation infeasible.) I believe that if this principle were well understood and protected, we could happily do with a much simpler body of law dealing with secondary evidence, or even with no such law at all. This reconceptualization would work a large change in the way litigation is conducted — but it would be more efficient, better informed, and also more protective of defendants’ rights.

I’ve churned out a fair number of articles on evidentiary law, and two editions of a coursebook, and much of this writing has been on hearsay and confrontation. But working out my ideas in the treatise itself is painfully slow work. I am trying to offer help to lawyers and judges on a vast array of doctrinal issues — but at the same time to nudge the law rather unsubtly from its current framework into the one I favor. I have about 1,000 pages of manuscript done, and I am hoping to publish the first part within a couple of years. Recognizing the finiteness of life, I have taken on a co-author — an excellent scholar from Indiana University named Aviva Orenstein — for the second part.

By the time we get done, I hope to have made substantial progress on my other project. It has an
interesting history. When Justice Holmes died in 1935, he left much of his estate to the government. The principal project that has been sponsored with the money is a multi-volume history of the Supreme Court. Paul Freund of Harvard was supposed to write the volume on the Hughes Court (1930-41), but he was unable to finish the job. I was lucky enough to get the assignment, in part because I had written a doctoral dissertation on Charles Evans Hughes as Chief Justice. This period was one of huge constitutional transformation — I call it “the crucible of the modern Constitution” — with FDR's attempt to pack the court as its dramatic centerpiece. In my view court-packing has less to do with the transformation than is sometimes supposed, a view I have elaborated at some length in "Switching Time and Other Thought Experiments: The Hughes Court and Constitutional Transformation," 142 University of Pennsylvania Law Review 1891 (1994). I love this work; I love dealing with the manuscripts, the personalities, and the disputes of an era that is bygone but still familiar. I can't wait to turn fuller attention to it.

I am very fortunate — above all in my family, and in having the blessings of health and liberty; but also in having work, in the classroom and out, that I wake up to each day with zest, and the opportunity to do it in the stimulating, humane, and supportive environment that the Law School provides.
HOW I DO WHAT I DO in law became clear to me one morning in the winter of 1994 in a dim halting hotel elevator in Zagreb, on the way to my third solid day of listening to women speak the unspeakable atrocities of genocide.

My part of the work itself started in the early 1970s when women in New Haven — students, workers, housewives, Black and white — told me about a then nameless oppression that became "sexual harassment" and a law against it. It went on through the 1980s, and is going on still, as women — prostitutes, daughters, wives, more students, anyone, now in the hundreds — tell of being violated through pornography: being used to make it or assaulted or molested by men who use it. Their violations became a civil rights law against pornography, each cause of action silently bearing their names.

In 1991, Muslim and Croat women from Bosnia and Croatia — lawyers, bus drivers, factory workers, resistance fighters, small business owners, children, grandmothers — asked me to work with them, first to tell the world that they had been raped in the Serbian genocide, then to represent them in 1992 in holding the perpetrators accountable. Now rape as an act in genocide is becoming recognized under international law.

In that elevator in Zagreb, I realized that I have spent most of my adult life listening to women, and sometimes men, trust me with their violation, and the rest of the time trying to do something about it.

What I have learned of making life into law, representing hurt people accountably, is this. First there is the women’s movement. You have to be part of a community. Then you don’t find people; they find you. You don’t invent abstractions and go hunt down clients or evidence to fit them; the people who come to you bring the theory that has yet to be born in you. What they know is not in any book and what has happened to them may not be against any law. Sometimes they want you to do something, and believe you will where others haven’t or won’t. Sometimes they just want you to know what is real, and believe it will matter that you know it. They want what happened to them to leave a trace. Most of all, they want what happened to them never to happen to anyone else ever again. Figuring out how is up to you. You do nothing alone, but the responsibility is all yours.

The survivors become part of me. I hear their voices, see their faces. I will not let them down. I will not stop.
CHRISTINA B. WHITMAN
Associate Dean for Academic Affairs
B.A., M.A. University of Michigan,
J.D. University of Michigan Law School

"Catharine MacKinnon is one of those rare thinkers who has fundamentally changed the way we look at the world. In the early days of the second wave of the women's movement, feminist writing by legal scholars fit neatly into the tradition of the racial equality cases by arguing that women and men are similarly situated for legally relevant purposes. This perspective, which promoted gender neutrality, ran into a theoretical and practical wall when faced with cases that concerned problems, such as pregnancy, that were thought to reflect bedrock biological differences between men and women.

"MacKinnon broke through this dilemma by powerfully reconceptualizing the problem in terms grounded directly in the experience of women. She challenged the assumption that legal solutions are to be found by comparing women to men, and argued that feminists should focus instead on the unique mechanisms through which women are made subordinate to men. Witty, prolific, extraordinarily articulate, and willing to talk openly about those matters that define women's lives but are often considered inappropriate for public or academic discourse, Professor MacKinnon argues that the key to understanding the subordinate status of women lies in the social construction of sexuality from a male perspective. Sex coerced in fact but socially described as consensual became, after MacKinnon, the central subject of feminist jurisprudential inquiry because it explains why sex inequality can be seen by law as the consequence of free individual choice. Viewed through this framework, sexual harassment is seen as employment discrimination rather than office romance. Pornography becomes as much a means of silencing women as an expression of rebellious individuality. And abortion rights are an inadequate alternative to the power to say no in the first place.

"MacKinnon's work changed feminist scholarship throughout the academy and has provided both the theoretical groundwork and the legal tools for significant change in the lives of women. Most recently, she has initiated litigation seeking sanctions in international human rights law for rape as a tool of terrorism, war and genocide. It is not an exaggeration to say that for the last 25 years, Professor MacKinnon has had more influence, both inside and outside the academy, than any other American law professor."

Marc S. Spindelman, '95
Reginald F. Lewis Fellow, Harvard Law School
B.A. Johns Hopkins University

"If the measure of a fine teacher is her willingness to take ideas seriously and to encourage her students to do the same for themselves, Professor Catharine MacKinnon is a great teacher. If the measure of an effective teacher is whether she provides her students with a set of analytic tools with which better to understand how to think critically about their own and others' ideas, and, through that process, to grow intellectually and personally, Professor MacKinnon is a remarkably effective teacher. If the measure of an inspiring teacher is her ability to demonstrate to her students that ideas, among them legal ideas, can and do have a real impact on the lives that people lead, and to demonstrate, by her example, the importance of developing one's own, independent way of thinking - no matter how high the stakes may be or seem, Professor MacKinnon is a truly inspiring teacher.

"For years now, people have invoked Harvard Law School Professor Thomas Reed Powell's famous definition of a legal mind: a mind that can think about something that is related to something else without thinking about the thing to which it is related. University of Michigan Law School Professor Catharine MacKinnon goes one step farther, instructing her students not to forget that a legal mind, so trained and so defined, has its limitations. And, perhaps more significantly, Professor MacKinnon educates her students to appreciate that that thing a legal mind may not - indeed, might prefer not to - think about, can sometimes turn out to be the most important thing of all."

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I WAS A VISITING TEACHER at the University of Michigan Law School in 1984 on leave from the University of Houston Law School. Some four months into my visit I was engaged in conversation by a most influential and estimable member of the faculty. He indicated that he thought my talk on tenth-century Icelandic blood feuds was, well, he supposed, interesting, even entertaining, but, how should he put it: "Can you tell me, what in the world is the point of studying that?" he blurted. "And why, in any event, should we have someone doing that in a law school?" (I suspected he felt I had meant purposely to mock him not only by placing my feuds in the tenth century, a century from which no one, not even a Jeopardy player can name an event, but also by placing them in Iceland, which is to countries as the tenth century is to centuries).

I could not deny that I wanted a job offer bad and knew that convincing those people, such as my
interlocutor, who might wonder what my hobbyhorses might have to do with the UCC or the latest Supreme Court pronouncement on the Fourth Amendment, was going to be no easy task. There were, to their minds, departments just right for me, paying minimum wage, in which people did get to read things that were actually fun to read and edifying too.

So I hemmed and hawed and was slavishly mealy mouthed: “One could say that a law school might find it interesting to look at materials that show law operating at degree zero,” I said, struggling hard to hit on the right thing, “law with no state where you have to enforce your own judgments; moreover, bargaining problems get more interesting and people get smarter about them when they are negotiating for their lives — whether Egil, for instance, is going to bury an axe in your head — rather than over legislative redistricting or proxy control.”

But I could see his eyes glaze over, so I gambled on a strategy, risky, because generally considered uncivil, downright rude in fact: I told the truth. “I do it because I love the sagas,” I said, “but surely you must have some idea why what I do belongs in a law school. You were on the committee that invited me here.” He did not seem offended in the least but immediately offered some five or six elegant arguments for the centrality of saga blood feuds to the law school enterprise. They, unfortunately, have slipped my mind or I would set them forth right here.

Of late my interests, by free association and devious paths, have shifted to the emotions, especially those passions that accompany our moral and social failures. Roughly, our own failures cause us shame, embarrassment, humiliation, and remorse; while the failures of others elicit our disgust, contempt, and on occasion our pity, which is a kind of contempt anyway. But I must admit that as central as tenth-century Norse blood feuds are to the legal enterprise, disgust is perhaps somewhat of a frolic and detour or the frosting on the cake, depending on whether you are seeing this from your point of view or mine. Yet even here there are some connections.

I am presently struggling to write a book on courage and cowardice, just as I am struggling to find a graceful way to end this sketch, neither an easy chore. So I’ll just show the white feather and conclude thus.
DEMOCRACY HAS ALWAYS BEEN THE IDEA and the practice that has most intrigued me. That is only more so now, in what might be thought of as the Age of Democracy, when the foundations of democracy are being thrown open as at few previous moments. With the dramatic upsurge of new democracies in diverse contexts — South Africa to the former Soviet Union — basic questions in democratic theory and practice are being confronted anew: How should political representation be understood? What is at stake in the choice between different democratic structures countries might adopt? How much can institutions shape a country’s formal politics and political culture?

At the same time, assumptions about democratic structures long taken for granted in the United States now face pressure along several fronts. Issues centered on democracy today dominate the Supreme Court’s docket. Some challenges stem from the way the Voting Rights Act, first enacted in 1965, has been reshaping the political process in the enduring struggle to reconcile majority rule with respect for the interests of political minoritics. Others arise from the role of money in politics, or the renaissance of direct democracy in states like California and Colorado.

Yet somewhat mysteriously, law schools historically have not taught courses in the legal structures that
create democracy. In my view, there is too little appreciation of the extent to which the democracy we experience is a product of particular choices of institutional structures and legal rules. Our ability to imagine other possibilities is also stunted by the taken-for-grantedness of our current legal structures. One way I've tried to encourage more systematic and creative thought about democracy is through a recent casebook, the first of its kind, entitled The Law of Democracy: Legal Structure of the Political Process (1998).

In my academic scholarship, I've tried to disregard the purported line between theoretical and empirical work and instead explore democracy through approaches that unite the two. As an alternative to the traditional American system of selecting officials from territorial districts, I've endorsed alternatives, like cumulative voting, after examining how these systems actually work in the few places in the United States where they now exist. In writing about regulation of risks in the environmental, health, and safety fields, I've examined the reasons experts and lay people evaluate risks so differently. From developing an understanding of those differences, I've proposed policymaking structures that would better deal with these conflicts. In the highly charged area of race and politics, I've tried to demand that polarized debates contend with knowledge about the way electoral institutions operate in practice. I've written on the cultural consequences of public policies, and on what public-law thought might learn from scholarship in private-law fields.

In all these efforts, I've remained intrigued with what an ongoing cultural, legal, and political achievement democracy is, and I've tried to convey to students how contingent and constantly changing understandings of democracy are and ought to be. In other disciplines, a world-weary cynicism all too often passes for intellectual sophistication. One of the wonderful qualities of those drawn to law, be they students or academics, is the high level of passionate engagement with important moral and political issues.

RODERICK M. HILLS
Assistant Professor of Law
B.A. Yale University, J.D. Yale Law School

"Rick Pildes epitomizes the best aspect of law faculties — the ability to bring different academic disciplines to bear on practical legal problems. He has co-written articles with philosophers (Elizabeth Anderson) and political scientists (Harold Nenb), and he has written an astute analysis of Bernard Grofman's technical statistical work on voting rights litigation. This capacity to appreciate and use both the humanities and quantitative social science is a welcome antidote to the babel that afflicts the research university, where different disciplines are often mutually unintelligible, even when they are analyzing the same problem of human society.

"All of Rick's different academic interests are unified by his commitment to understanding real-world legal problems. It is an occupational hazard of interdisciplinary legal research that its practitioners too often become uninterested — and even disdainful of — the practical world of legal controversy. But Rick has entirely avoided this danger; he embraces the world of legislation and litigation with zeal. Rick has served as a court-appointed expert in Detroit-area vote dilution litigation, and he has journeyed to an Alabama county to study how proportional representation has been used as a remedy in a voting rights case. His research on the boundaries of electoral districts has been prominently cited and discussed by the U.S. Supreme Court, and his casebook on the law of democracy (co-written with Pamela Karlan and Samuel Issacharoff) goes beyond appellate opinions to include congressional testimony and agency findings. To my mind, Rick's commitment to academic theory and the nitty-gritty of litigation shows that, even in an increasingly specialized world of academic research, it is still possible to be a public intellectual engaged with both action and ideas."

Heather Gerken, '94
Jenner & Block,
Washington, D.C.
A.B. Princeton University

"Professor Pildes' voting-rights course and legal theory workshop were among the most exciting classes I attended in law school. These classes encompassed the very best aspects of legal education at the University of Michigan, where scholars, who have devoted their careers to studying the law, teach students who plan to practice it.

"Professor Pildes easily bridges the gap between practice and academia, as he is able to identify both what is scintillating about black letter law, and what useful lessons can be drawn from abstract legal theory. It is Professor Pildes' ability to be critical of, and respectful for, the law that inspires his
IF I HAD TO CHARACTERIZE MY ACADEMIC LIFE in one word, it would be "schizophrenic": my work has an American and a European side and the two never quite match. I am the only permanent member of this faculty who is at home in the common law as well as in the civil law tradition, and I continue to teach and write in both legal cultures. In the 1998-99 academic year, for example, I will teach Jurisdiction as well as International Litigation at Michigan, the basic Private Law course as well as European Legal History at the University of Trier in Germany, a short course on American product liability law at the Sorbonne in Paris, and give a few lectures in Italy and Austria.

This may sound like a glamorous jet-set life, but the reality is much more sober. Not only does it involve a burdensome amount of traveling and an endless juggling of tight schedules. It also requires constant gear shifting since the topics, teaching styles, and customs of writing and publishing are quite different here and there. So why do I do it? There are essentially two reasons.

First, perhaps the most important contribution I can make at Michigan is to maintain existing ties and to build new bridges across the Atlantic — through teaching, contacts between scholars, conferences and workshops, etc. This is important not only because of the rapidly intensifying transatlantic intercourse but also because American and European lawyers can learn a lot from each other. In order to help them do that, I need to stay involved in both worlds.
Second, I am deeply interested in the relationship between the common law tradition and the civil law culture. I am trying to understand where and why they overlap, differ, converge, and diverge. This requires a thorough knowledge of their historical background, their major characteristics, and current developments. Sometimes I despair because it all seems way too much to grasp, but often I am thrilled at what I find and think I begin to understand.

In the last two years, I have spent a lot of time and energy trying to overhaul the study of comparative law in the United States. The discipline, founded by the immigrant European scholars in the 1940s and 1950s, has aged and is in dire need of reform. Comparative law is perhaps more important than ever, but it has to develop new methods and agendas to meet modern needs. My efforts have been threefold. With regard to teaching, I have developed an agenda to integrate comparative and foreign law aspects into the curriculum as a whole (see 11 Tulane European & Civil Law Forum 49 [1996]). All students need to understand that there is a world out there beyond the United States — a world that will affect their work whether they like it or not. On the side of scholarship, I organized two conferences together with an Italian colleague, one in Ann Arbor, the other in San Francisco, on “New Methods and Directions in Comparative Law.” The papers will be published this fall in a symposium issue of the American Journal of Comparative Law and hopefully will stimulate further discussion. Finally, as a member of a Long Range Planning Committee, I have helped to develop a reform strategy for the American Society of Comparative Law. The measures enacted at the society’s annual meeting in Bristol, England, are important steps in the direction of greater diversity and more attractiveness for younger scholars as well as practitioners.

Thus it is, and will remain, an academic life marked by schizophrenia. Yet, I take comfort in the fact that this schizophrenia is as inevitable as it is rewarding.

JOSÉ E. ALVAREZ
Professor of Law

“At a time when neo-isolationism seems on the rise, Mathias is a valuable reminder to our students that other answers to legal problems than those suggested by the common law are possible and worth considering. His civil law expertise is an invaluable counterpoint that all of our students ought to be exposed to at some point during their three years here.

“Mathias has ambitious plans to incorporate comparative law insights into our first-year curriculum instead of relegating the study of foreign law to one comparative law elective selected by only a handful of upper level students. For our sake, and for the sake of our students — who increasingly will need such insights to engage in transnational practice and to be thoughtful lawyers — I hope he succeeds. His courses on jurisdiction and conflict of laws and international civil litigation are among the most popular in the school.

“Mathias is also a constant reminder of the excellence of our graduate program. His success suggests how valuable Michigan’s LL.M. program has been — not merely for those who have received degrees but for the institution itself. Although trained in German legal institutions, especially at the University of Freiburg, Mathias is also a graduate of our own LL.M. program. Luckily for us, this is one foreign lawyer who we brought to Ann Arbor for good: a German import who helps this institution maintain its competitive edge in European and international law.”

Ana Maria Merico-Stephens, ’95
Assistant Professor of Law, University of Arizona College of Law, B.A. University of Cincinnati

“From my first day in Jurisdiction and Choice of Law to the final discussion of my paper in International Litigation, Professor Reimann’s depth of knowledge, enthusiastic teaching style, and encouragement for informative intellectual exchanges never ceased to amaze me. It takes someone genuinely special to make in rem jurisdiction fascinating, conflicts amusing, and the multiple Hague Conventions alluring.

“Professor Reimann is more than an outstanding teacher and scholar, however. He is an inspiring human being who cares about his students. He ably melds the often abstract instruction of law with a compassionate approach, which reaches his students in a meaningful way. He is one of the reasons I am teaching law school today. I thank him.”
I WANT TO KNOW TWO THINGS. First, how do moral ideas shape life and law? Second, how does law shape life and life law?

The first of these questions explains the subject of the book I have just completed — *The Practice of Autonomy: Patients, Doctors, and Medical Decisions*. It examines the role patients ought to have in making medical decisions and suggests that the conventional legal and medical position is moving toward what I call "mandatory autonomy": the idea that patients have a moral duty to be autonomous and thus to make their own medical decisions. The second of my questions explains my book's method. I want to know what principle would work best in the lives of patients, so I have tried to find out what the lives of patients are actually like. Therefore I not only consulted all the empirical literature I could find, but I interviewed and observed doctors, patients, patients' families, nurses, and social workers, and I read many memoirs patients have published.
These investigations convince me that a substantial number of patients do not want to make medical decisions. Have these patients failed in their moral duty? I don't think so. Decisions of all kinds are repellently hard; but medical decisions are even more daunting than most. Being sick robs you of the energy and will to make medical decisions and concentrates your attention on life's most troubling question — have I led a good life? — and its most constant question — how can I make it through the day? And sometimes sick people even want to be dissuaded from choices they would make left to their own devices. For all these kinds of reasons patients often make bad decisions and often would rather delegate their decisions to someone likely to do better.

The two questions I opened with also animate the book I am now starting. For some years I have argued that American family law has been transformed by its diminishing willingness to talk about its work in moral language. For example, the law used to be obliged to discuss whether each person seeking a divorce was morally entitled to one. In the age of no-fault divorce, however, that discussion is unnecessary. And, for example, in Roe v. Wade the Court reached its decision without evaluating the moral status of abortion.

Family law wants to eschew moral language, but family life is one moral problem after another. Can family law resolve family disputes intelligently and justly without considering their moral aspects? And why should it want to do so? I find part of the answer to this last question in experiences I have had in the classroom. When I have led discussions of divorce both here and in other law schools I have been struck by the number of students who think divorce raises no moral issues. Practical problems, yes. Psychological issues, yes. But not moral issues. My book will thus try to understand family law's avoidance of moral language in terms of broader changes in the way late-twentieth-century Americans think about their lives and duties.

My opening questions have also led me to establish a new course — Law as a Profession. It will be about the moral life of lawyers. It will therefore ask what makes a lawyer's life morally justifiable or unjustifiable. But it will also consider what it is that leads people to behave ethically. We hope, of course, that law school is one such influence. But to help find out whether this is true, the course will require a paper — due on graduation — which recounts and reflects on law school experiences which might shape students' ethical views. And this, I see, brings me back again to the questions with which I began.

YALE KAMISAR
Clarence Darrow Distinguished University Professor of Law
A.B. New York University, LL.B. Columbia Law School

"Although until fairly recently his main interests were in family law, constitutional law and the legal process, Carl Schneider has quickly become one of the nation's leading law professors in the increasingly important field of bioethics. (Of course, his earlier work in these other fields gave him an excellent background when he turned to bioethics.)

"Earlier this year Carl picked up another title: Professor of Internal Medicine at the University of Michigan Medical School. This is only fitting and proper. Carl's work is of great interest to the medical profession and for years he has taught medical students, often co-teaching with physicians. So, to a large extent, a joint appointment only formalizes Carl's joint role.

"Carl has great analytical powers. For example, I consider his article, "Cruzan and the Constitutionalization of American Life," Journal of Medicine & Philosophy (1992), the most thoughtful and most trenchant commentary ever written on the Cruzan case, the much-analyzed first U.S. Supreme Court case on what is loosely called the 'right to die.'

"Carl is a splendid writer. He writes with power, clarity and style. For example, I think his 'Bioethics in the Language of Law,' a piece that appeared several years ago in the Hastings Center Report (a publication for which Carl writes a regular column), is a wonderful piece of writing. To refer to but one passage from this article, Carl warns that although the language of the law 'may have penetrated into the bosom of society' it must still 'compete with the many other languages that people speak more comfortably, more fluently, and with much more conviction.' The danger for bioethicists, continues Carl, 'is believing too deeply that law can pierce the babel, can speak with precision, can be heard.'

"As is well demonstrated by his new book The Practice of Autonomy: Patients, Doctors, and Medical Decisions (Oxford University Press, 1998), Carl is not only an analyst and thinker, but an empiricist. In examining the role patients should have in making medical decisions and in determining what the lives and decision-making of patients are actually like, Carl interviewed and observed doctors, nurses and social workers as well as patients and their families. He also read the memoirs of hundreds of patients. (An excerpt from the book begins on page 98.)

"For a number of years now, Carl has been interested in the moral life of health professionals. But he is also interested in the moral health of lawyers. This has led him to establish a new course (Law as a Profession), which will consider such questions as what makes a lawyer's life morally justifiable and what leads people to act ethically."

Michael Katz, '98
B.A. State University of New York at Binghampton

"While at the University of Michigan Law School I took three courses taught by Professor Schneider: Property, Law and Medicine, and Bioethics. Whether teaching about fox hunting, the quasi­marital woes of Lee Marvin, or the latest hot topics in bioethics, Professor Schneider never failed to simultaneously educate, enlighten, and entertain. That he could spark a heated debate over negative easements is alone a testament to his teaching style, one that allows for a surprisingly uninhibited, important exchange of ideas among the students in his courses. After a summer spent watching uninspiring videotaped bar review lectures, I appreciate even more what Professor Schneider brings to this law school and to my own and fellow students' experiences here."

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