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Eye on the World

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EYE ON THE WORLD

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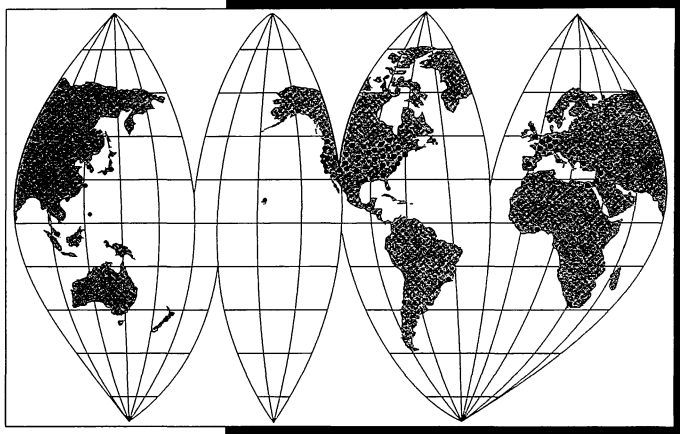


Law School graduates are deeply involved in the globalization of legal careers. In the essays beginning on page 6, graduates respond to this question: If you could leap ahead 10 years, how do you think what you are doing now will change?

THOSE WHO WORK IN LAW SCHOOLS sometimes like to think that their schools will be remembered through the scholarly tomes and law review articles produced by their faculty, that is, through luminous contributions to legal thought. In their more humble moments, though, perhaps after a detour through dusty library stacks filled with long unopened books or after nervously laughing through an "irrelevant" law review article written only a few years ago, many a law teacher or administrator will admit to themselves that their or their schools' reputations are based on the testimony of practitioners, in particular the word of alumni. At Michigan, we have been fortunate enough to produce graduates that have spread "the word" to all corners of the earth.

The story of how a law school established in 1859 in what was then the "frontier" town of Detroit in the "remote Midwest" at a time when nary a lawyer believed there was ever a need to consider anything but the most local of laws, of how such an institution came to become a recognized Mecca for students from all over the world, has been told before and needs no repeating here. But we do occasionally need to remind ourselves of the international prominence of our alumni and their value to this institution.

The bare facts can be briefly summarized. From its earliest days, foreign-born students were part of the University of Michigan Law School's student body.

The first University commencement took place in 1845; of the 11 graduates, one became the first Methodist missionary in China two years later, and that same year, the first foreign students enrolled at the University: one from Wales and one from Mexico.

The Law School opened its doors in 1859, and during the 1860s had 26 students from Canada and two from England; in the 1870s we had 29 from Canada, three from Japan, one from Mexico, and two from South Africa. By the end of the academic year 1899-1900, 80 students from outside of the United States had received degrees from the Law School: seven were awarded the LL.M. and 73 the LL.B. Of the 73, 37 came from Canada and the next largest number, 28, came from Japan.

The first LL.M. degrees were granted in the 1889-1890 academic year. There were six recipients in all, two of whom were from Japan. Although in the nineteenth century most foreign students pursued the LL.B. degree, over the course of the twentieth century, graduate legal studies became the preferred vehicle for foreign students to pursue comparative law studies.

The alumni of the Law School, both the graduates of our JD program and of our graduate degree programs, have distinguished themselves in academia, government work, and private practice in more than 75 countries. Early Michigan alumni who achieved international prominence included George A. Malcolm, '06,

A LOOK AT MICHIGAN'S HISTORY ALSO SUGGESTS THAT MANY CURRICULAR INNOVATIONS WERE ORIGINALLY CONCEIVED TO APPEAL TO THE SMALL, BUT IMPRESSIVE, GROUP OF FOREIGN STUDENTS IN OUR MIDST.

LL.D. '56, who served on the Supreme Court of the Philippines from 1917 to 1936 and was the founding Dean of the College of Law of the University of the Philippines, and Charles H. Mahoney, '11, who was the first African-American to represent the United States in the United Nations.

John C. H. Wu came to pursue his law degree at Michigan in 1920. He was a graduate of Suzhou Comparative Law School in China, where, incidentally, William Wirt Blume of the University of Michigan Law School faculty served as Dean during the 1920s. Following his Michigan studies, Wu returned to China where he was the principal author of the National Constitution, served on the Permanent Court of Arbitration at the Hague and as Ambassador from China to the Vatican from 1947 to 1949. Perhaps most interestingly, he began a correspondence in 1921 with U.S. Supreme Court Justice Oliver Wendell Holmes, then 80 years old, which lasted until Holmes' death 14 years later.

Julius Wolfson, one of five Filipinos to receive LL.B. degrees between 1901 and 1920, became a major benefactor of the Law School, donating an important endowment which to this day provides significant support to faculty research efforts.

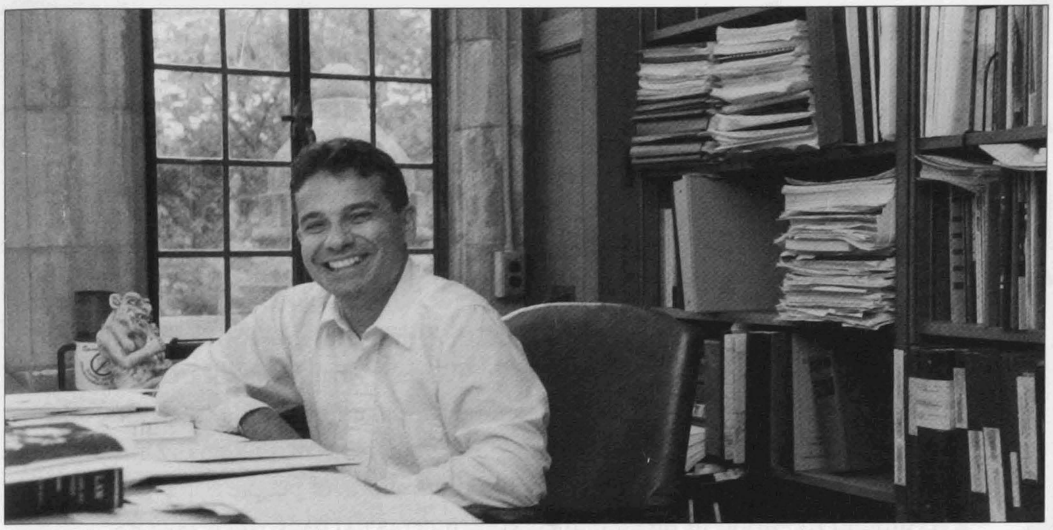
The tradition of international influence continues to the present. Seven of our former students, research scholars, and faculty currently sit on the highest courts of their countries or on international courts. They include Justice Aharon Barak of the Supreme Court of Israel; Justice Vojtech Cepl of the Constitutional Court of the Czech Republic; Dr. Pieter van Dijk of the Council of State of the Netherlands and the European Court of Human Rights; Dr. Richard Lauwaars of the Council of State of the Netherlands; Justice Florenz Regalado of the Supreme Court of the Philippiness; the Right Honorable Ivor L. M. Richardson, President of the Court of Appeal of New Zealand; and Justice Itsuo Sonobe of the Supreme Court of Japan.

Edgardo Angara, LL.M. '64, and Mirian Defensor Santiago, LL.M. '75, SJD '76, are two of the Philippines' 24 senators. Renato Cayetano, LL.M. '66, SJD '72, is the Chief Legal Counsel to the President of the Philippines. Emilio Cardenas, M.C.L. '66, recently stepped down as Argentinean Ambassador to the United Nations and President of the Security Council. Joachen Frowein, M.C.L. '58, was a member of the European Commission of Human Rights from 1973 to 1993, serving as its Vice-President for the last 11 years, and he currently directs the Max-Planck Institute in Heidelberg. John Toulmin, LL.M. '65, Q.C., recently served as President of the Council of the Bars and Law Societies of Europe. Two of our alumni are currently shaping the world of the World Trade Organization: William Davey, '74, as Director of the Legal Affairs Division, and Debra Steger, LL.M. '83, as Director of the Appellate Body Secretariat. Tim Dickinson, '79, an alumnus who practices in Washington, D.C., New York City, and Ann Arbor, has this year become the Chair of the International Law Section of the American Bar Association. These Michigan alumni are examples of the many others who are numerous on law faculties in countries around the world and who hold leadership positions in the public and private legal sectors, both within their own countries and on the international level.

As all this suggests, our alumni continue to shape their national bars, mold the foreign policies of their governments, contribute to the drafting and interpretation of domestic and international laws, and assist in solving legal problems for a panoply of international organizations — from European Union institutions to the World Health Organization, from numerous human rights bodies to environmental groups. Clearly Michigan alumni, including many on the faculties of the world's law schools, have held and continue to hold leadership positions at both the national and international levels. Their contribution to the law is clear.

What is perhaps less clear but no less noteworthy has been the foreign alumni contribution to Michigan. While our foreign alumni, like all alumni, have generously contributed financially in response to Michigan's appeals, the contribution we are addressing is different in kind and perhaps of greater import.

From 1859 to the present, thanks in large part to our foreign-born and foreign-trained students, classes at Michigan have been enriched by a variety of perspectives at odds with the parochial isolationism that has often characterized U.S. legal culture. Throughout Michigan's history, the presence of foreign lawyers in our midst has forced many a professor and many a U.S.-born JD student to wrestle with a different angle on, for example, criminal or corporate law. Foreign students, foreign trained research assistants, and access to foreign alumni helped make it possible for Michigan Law Professor Hessel Yntema to create, virtually from scratch, a new field, "comparative law," at a time when the rest of the U.S. legal academy was scarcely familiar with the foreign legal systems or foreign laws and barely aware of the value of looking outside the United States. His leadership of the *American Journal of Comparative Law*, located at Michigan for many years and subsequently edited by other Michigan professors, B.J. George and Alfred Conard, was greatly aided by Michigan's international student body. The same resources helped make it possible, a few years later, for Professor William Bishop to become a world renowned authority in "public" international law and for Professor Eric Stein to fashion, as Yntema had before, another enduring legal specialty: European Community law. In recent years, Professors Whitmore Gray, Joseph Weiler, and John Jackson (to name only some of our international and comparative



José E. Alvarez

law faculty), have, we are sure, learned a great deal about Asian legal systems, community law, and trade, respectively, from their foreign students.

Throughout Michigan's history, it seems clear that many of its acknowledged scholarly contributions, whether in international, comparative or other fields of law, have been in some way fashioned or inspired by the foreign students our faculty have encountered along the way. Further, our former students abroad have helped to give the School, and its teachers and scholarship, a worldwide reputation both because of alumni's evangelistic praise and because of our graduates' considerable achievements after their departure from Ann Arbor.

A look at Michigan's history also suggests that many curricular innovations — including many comparative courses and seminars developed over the years — were originally conceived to appeal to the small, but impressive, group of foreign students in our midst. Stein's and Weiler's courses and seminars on the European Union and specialized areas of community law and others' comparative courses on everything from federalism to criminal law have always had an understandable appeal to foreign students. Foreign students' presence in the School helped convince many of us to continue supporting such courses and to develop relationships with a number of foreign institutions and visitors. Michigan's study abroad opportunities in the universities in Paris, Leiden, London, Leuven, and Frieberg; its enviable international and comparative library collection; its successful international colloquia; and the many "comparative" interests of many of our faculty who teach domestic legal subjects, while all of significant value to our U.S. JD students, are all, in direct and indirect ways, partly a function of the presence and continuing support of foreign alumni.

U.S. law professors and administrators frequently address the need for "diversity." Frequently we assume that this means the need for a student body that is representative of the United States. At Michigan, sometimes by lucky accident and sometimes by design, we have been lucky enough to act through our history with the sense that a truly first-rate law school needs to draw upon talent throughout the world.

Virginia A. Gordan

THE TRADITION OF INTERNATIONAL INFLUENCE CONTINUES TO THE PRESENT. SEVEN OF OUR FORMER STUDENTS, RESEARCH SCHOLARS, AND FACULTY CURRENTLY SIT ON THE HIGHEST COURTS OF THEIR COUNTRIES OR ON INTERNATIONAL COURTS.

BY

KARIMA BENNOUNE, '94

Legal Advisor, Amnesty International

IT IS A VERY DANGEROUS BUSINESS TRYING TO PREDICT THE FUTURE and one can be easily faulted later on in hindsight. But looking to the future in human rights law is not a question of accepting that fate will decide what will be. Rather, what it will mean to be a human rights lawyer in the year 2007 depends on the efforts of human rights lawyers, other lawyers and individuals of goodwill, non-governmental human rights organizations like Amnesty International, and most of all on the efforts of people at the grassroots level around the world to pressure their governments to change their policies, internationally and domestically.

If such efforts are successful, the future work of human rights lawyers will be exciting. They will work at helping to monitor and bolster the efforts of a sophisticated United Nations system for the prevention of human rights violations. A just, fair and effective international criminal court will have been created to bring to justice in accordance with international standards the perpetrators of the worst crimes in the world. A United Nations Convention on "disappearances" will be adopted so that not only will the prohibition on making people "disappear" (leaving their fate unknown to their families and friends) be clearly codified, but states will have to take comprehensive measures to prevent "disappearances" and compensate their victims. The Optional Protocol to the Convention against Torture will have been adopted, creating a global system of inspection visits to places of detention with the purpose of preventing torture. (I would like to see them visiting jails in Michigan which I once visited when working on police misconduct cases.) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women will have been adopted, creating a complaints procedure for victims of violations and an investigation procedure allowing the Committee which supervises the treaty to carry out inquiries at its own initiative into systematic discrimination against women that violates the Convention. Women's human rights will have been fully integrated into human rights work at the level of the UN and elsewhere.

Economic, social and cultural rights will be recognized as full legal partners with civil and political rights. Perhaps a Protocol to the Covenant on Economic, Social and Cultural Rights will in fact be in place allowing the Committee which monitors the Convention to further develop a jurisprudence and allowing individuals and groups to claim these key rights.

A human rights methodology which includes violations committed by private actors — with the consent or acquiescence of the state — as well as by corporations will be more fully developed so that impunity for such violations — something that is growing in importance in a world where we begin to see things like private prisons — will not be the order of the day. This will also be important in the fight against violations of women's human rights by bridging the gulf maintained in some interpretations of human rights law between the private and public spheres.

Detailed standards will be in place to stop the recruitment of child soldiers. States will be held accountable for human rights violations committed by other states — and armed groups — with weapons, technology and training that they have provided.

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The international human rights standards which are already on the books will be much closer to implementation, meaning in concrete terms that states are moving toward abolishing the death penalty, working to ensure fair trials for all, taking measures necessary to stop police brutality, torture and ill treatment of all, abolishing corporal punishment, working to end racial discrimination and taking effective measures to stop discrimination against women. Rather than swimming against a tide of mass violations as we do now, human rights lawyers will be able to work to help states refine their policies and deal with aberrant violations.

As a human rights lawyer of U.S. nationality, I would like to think that in 10 years in the United States there will be a widespread acknowledgment that what happens in this country must be in accordance with international standards, such as standards on the death penalty.

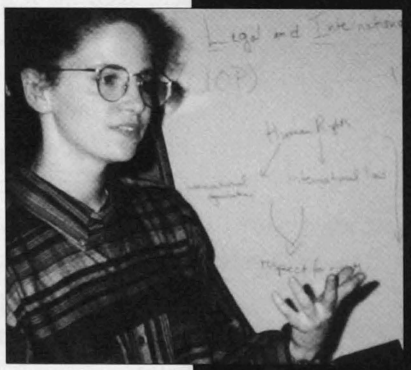
This pleasant scenario will only be possible with a lot of hard work.

Otherwise, the coming 10 years will see a continuation of the trends we have experienced since at least the end of the Cold War. Proliferating armed conflicts, which increasingly create mass flows of refugees and claim the lives and bodily integrity of increasing numbers of civilian victims, will confound our efforts. The arms trade will flourish, leading to further armed conflicts and assisting in the commission of human rights violations. Torture and executions will continue. Globalization and the dismantling of the welfare state around the world will further erode economic, social and cultural rights and cause increasing poverty, leading to other violations of civil and political rights as well. The prioritization of political concerns over human rights concerns will lead to the undermining of United Nations human rights standards and mechanisms and will frustrate efforts to create needed new standards. Women's human rights will continue to be marginalized. Some states will not pay the UN what they owe.

In considering which option we prefer, it is important to think about the kind of world we would like. This is not a theoretical question. Every day at Amnesty International the cases of victims of killings, torture including rape, "disappearances," the death penalty and other violations pass across my desk. My trips to the field are a reminder of the reality represented by those pieces of paper. I think of a woman I met while interviewing refugees from Afghanistan — a country whose war and human rights crisis have been exacerbated by outside powers, including the former Soviet Union, Pakistan, Saudi Arabia and the United States. When I remember her face as she told me that after she herself was wounded her husband had been killed in a bombing and her children had spent the night alone in the rubble of the house with their father's body, I am reminded of the compelling need for us all to work hard to make sure that it is the positive scenario which comes to pass.

It is up to us.

Karima Bennoune, '94, *is a Legal Advisor in the Legal and International Organizations Program of Amnesty International, based in London, England. She previously worked as a staff attorney with Wayne County Neighborhood Legal Services in Detroit and as a volunteer legal adviser to the Women, Justice and Law Project of Al Haq, Law in the Service of Man, the West Bank affiliate of the International Commission of Jurists. She earned her JD as part of a joint degree program in which she also received an MA in Middle Eastern and North African Studies and a Graduate Certificate in Women's Studies. While attending Law School she served as Executive Articles Editor for the* Michigan Journal of International Law. *The views expressed here are the personal views of the author alone.*



BY

FIROZ CACHALIA, LL.M. '96

Leader of the House, Gauteng Legislature, South Africa

DEVELOPMENTS IN SOUTH AFRICA HAVE, I BELIEVE, IN AN INCREASINGLY SKEPTICAL WORLD, rekindled some faith in the efficacy of human agency and the benign possibilities of political action. Through sustained political action and rational dialogue, South Africa achieved a peaceful transition to a constitutional democracy.

Constitutionalism embraces notions both of *representative government and the rule of law.* One of the more important challenges we have faced since the April 1994 elections has been the need to restructure the institutions and processes through which laws are created and enacted. I will reflect briefly on my experience of the last three years in the National Council of Provinces (NCOP), the second chamber of a bicameral National Parliament, and the Provincial Executive and Legislature of the Gauteng Government ("Gauteng" is one of the nine provinces; the word is a Sotho word meaning "City of Gold," which is how migrant workers have described Johannesburg since gold was discovered near the end of the nineteenth century).

The Provincial Executive

South Africa has a parliamentary system of government at both national ("Federal") and provincial ("State") levels. In such systems the Executive, which is both separate from and a part of the legislature, tends to exercise a high degree of control over all phases of the legislative process. Most legislation originates in the Executive and its departments. (I believe this is so in the United States as well, notwithstanding the clearer separation of Executive and Legislative powers.) The Legislature scrutinizes departmental legislation and exercises oversight over implementation, but generally does not draft.

The establishment of drafting capacity within the executive branch is therefore essential to effective governance. Legislation is, after all, one of the more important instruments of Government's decision-making. Legislative drafting has, however, somewhat surprisingly, received little attention. This description of legislative drafting in nineteenth century England (Arnold Kean, "Drafting a Bill in Britain," 5 *Harvard Journal of Legislation* 253-6) could just as easily be a description of Legislative drafting in contemporary Gauteng:

"In the 1860s ... departments ... found it necessary to employ their own counsel for bill drafting.... This system was patently unsatisfactory. Barristers employed "by the job" were entitled to high fees. There was no uniformity of language, style, arrangement, or even of principle, in the resulting statutes. There was no way to coordinate or reconcile different bills introduced by different departments..."

The department-centered, "privatized" system of bill creation often produces poorly drafted legislation. What makes matters worse is that South African judges, like British judges but unlike their U.S. counterparts, rely on the wording of the statute to ascertain legislative intention and refuse to examine the record of Parliamentary debates. Drafters must therefore draft clearly and precisely and cannot rely on judicial review to eliminate ambiguity.

Perhaps a more fundamental issue, in the design of the mechanism of bill creation that the Gauteng Government must address, is the national integration of policy making with Legislative drafting. The Gauteng Government has ambitious plans to change patterns of behavior and resources allocation established under apartheid. To develop effective legislative solutions to social problems, legislative drafters have to use a methodology which clearly identifies the problem requiring a solution, and which establishes and analyzes the relevant facts prior to considering actual solutions and specific statutory language. In the absence of a rigorous problem-solving methodology, the iron law of unintended consequences, so familiar in the field of public policy generally, runs riot in the field of Legislative drafting as well.

The Gauteng Government has recently established a central legal services directorate, and with the assistance of Ann and Robert Seidman of Boston University, is now actively addressing these issues.

The Legislature

The new constitution establishes all the basic rights which are necessary for political participation. In addition, the constitution places an obligation on the National and Provincial Legislatures to "facilitate public involvement in the Legislative and other processes of the Legislature and its committees." Clearly, our history of racial exclusion from political processes, and the tradition of popular struggle against apartheid have had a strong impact on our new constitution.

The Gauteng Legislature has introduced three interesting innovations in order to foster public participation. First, we introduced a "Notice and Comment" procedure, modeled on the Administrative Procedure Act, for all Bills that are introduced in the Legislature. Our House Rules require the sponsoring department to prepare and publish a memorandum setting out the purposes of the bill, a social and where relevant an environmental impact statement, and a statement of public comments solicited and discounted in the process of Legislative drafting. The memorandum has to be prepared in ordinary, non-technical language in order to ensure that the public have access to information which is a prerequisite to effective participation. Unfortunately, however, the departments do not yet have the resources or the skills to prepare the memorandum in a way which facilitates public participation and rational decision making. Second, we have established a Public Participation Office, with the necessary resources and staff to facilitate public participation by disadvantaged communities. We have found that it is not sufficient to create formal opportunities to participate. Legislative processes are notoriously vulnerable to "capture" by powerful interest groups. The appalling legacy of apartheid has further impaired the capacity of disadvantaged communities to participate in the highly formal and ritualized processes of modern legislatures. The office disseminates information, runs workshops with target groups and assists in the preparation of submissions to committee hearings. Third, we have established a petitions mechanism which creates an opportunity for members of the public, as individuals and collectively, to petition the Legislature directly. In general, however, our approach on this matter has been to strengthen the decision-making processes of representative bodies, rather than seek to augment representative Government with direct forms of democracy in order to remedy the supposed deficiencies of representative government.

The National Council of Provinces

Those familiar with the South African constitution-making process will be aware that one of the most intractable issues that we had to deal with was how to reconcile the powers of the national government and provincial autonomy. This, of course, is a question which resonates in the history of U.S. constitutionalism. The framers of the South African constitution dealt with this familiar tension by creating a system of "Cooperative Government" aimed at promoting both "national unity" and respect for "the constitutional status, institutions, powers and functions of government in the other spheres." Within the form of Cooperative Government, the NCOP, which is the second House of the bicameral National Parliament, occupies a central place. It is a *co-legislator* designed to promote legislative cooperation between the national and provincial governments. The uniqueness of this body lies in its composition. The Council is composed of a single delegation of 10 delegates from each province. The delegation is led by the premier of the province and four of the delegates are special delegates who are sitting members of the legislature. Matters of shared national and provincial legislative competence ("so-called Section 76 matters") are voted on by the province *en bloc*. These two mechanisms, *viz* special delegates and the block vote, create a strong system of

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Firoz Cachalia, LL.M. '96, *below right, the Leader of the House in the Gauteng Legislature, ran for office while studying at the Law School. A native of South Africa, he returned to play a critical role in South Africa's establishment of its constitutional democracy. Last March he came back to the Law School to participate in a two-day symposium on "Constitution-Making in South Africa." At that conference, Cachalia shared a panel with Nicholas Haysom, below left, legal advisor to South African President Nelson Mandela.*

provincial representation in the national legislative process, stronger than existed in the United States prior to the introduction of the Seventeenth Amendment.

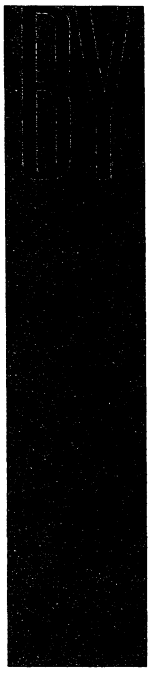
It remains to be seen if the judges of the South African Constitutional Court are persuaded by Jesse Choper's argument and the argument of the majority in *Garcia vs. Antonio Transit Authority* that power issues are non-justifiable and that Provincial autonomy is properly protected by process guarantees "inherent in the structure of the federal system (the structure of cooperative government) rather than by judicially created limitations on federal [national] power."

The legislative process contemplated by the structure of Cooperative Government creates a complex legislative process because it requires consideraton of a significant amount of legislation emanating from National Departments by nine Provincial legislatures as well as the National bicameral Parliament. In practice we are encountering enormous difficulties in ensuring that the legislative process functions effectively. These must be resolved soon if the vision of the framers of our constitution of a strongly representative, participatory and cooperative legislative process is to be realized.

Conclusion

As Leader of the House in the Gauteng Legislature, I have participated in both the Provincial Executive and Legislature, as well as in the National Council of Provinces (NCOP). I consider myself fortunate to have had the opportunity to play a role in establishing the democratic institutions contemplated by the text of our constitution. I believe that my period of study in the University of Michigan Law School helped me contribute more effectively than I might otherwise have.

South Africa is still undergoing a transition in which the elements of constitution-making and institution-building on the one hand and ordinary democratic politics and government on the other are mixed. I hope that over the next 10 years we shall have succeeded in consolidating our democratic system of government with elected politicians, the basic institutions and fundamental values established. We will then be able to concentrate on governing within an established constitutional framework of values and limits on the exercise of power.



GIORGIO BERNINI, LL.M. '54, S.J.D. '59

The train from New York arrived at the Ann Arbor station at 6:30 a.m. There I was, a young Italian graduate student who had crossed the ocean by boat, ready to meet a new life adventure. Standing on the platform, I felt like a cultural emigrant.

A taxi took me to the Lawyers Club, where I was to live. At that early hour, the door of the Club was still closed so I sat on the bench facing the entrance, waiting for it to open. It was a splendid September morning, the color of the trees was bright and the squirrels were running and climbing with their usual zest.

My thoughts ran in the few minutes I had before entering my new home. What was I doing in the United States? What were the prospects facing a student who was about to cross the great canyon parting the civil law world from the common law world? At the time, comparative law was still a sophisticated toy in the hands of a few professors who taught elite seminars for a restricted number of apprentice scholars. The structure of international legal training only slightly exceeded the substance of crystal-gazing.

Yet, in the early fifties, the incoming wave of international relations was beginning to mount. The Marshall Plan was being vigorously implemented and only a few alert observers had started to realize that the importance of this program went far beyond the scope of dispensing aid. The ITO was timidly trying to see the light, and the Havana Charter forged the principles which were to become the guideposts of the future international trade community. Although the ideas were ahead of their time and the ambitious program was aborted, the seeds of international free trade were not sowed in vain.

On our side of the ocean, a few illuminated founding fathers led a trend toward political and economic integration which would later favor the birth of the European Economic Community. The approach to European integration was becoming more pragmatic. A sector-by-sector approach drew its inspiration from the ITO and was prevailing over classic nineteenth century European federalism. The new philosophy concentrated on the adage which was to become the password for the future: free enterprise in a free market. To accomplish the integration, national borders were to disappear progressively in order to reach an ideal which coupled the

strengthening of international trade with the preservation of peace. It took nearly half a century to move from free trade to a single market.

The climax of globalization came with the successful Uruguay Round and the birth of the WTO, whose reach spans economic, social and political issues. The impact of this Copernican revolution upon the world order is paramount and reveals past achievements to be merely timid steps.

The young Italian graduate sitting on the stone bench before the Lawyers Club could not even dream of the monumental changes which were about to impact legal education and practice. On that day, he was not gifted with premonition. He was merely participating in a simple act of faith — that a changing world was capable of overcoming the limits of domestic selfishness which had caused murderous wars, and which took away the life, mortified the intelligence and constrained the education of too many young innocents.

Today, after a long and varied career ranging from academia to the legal profession and public office, I am again faced with a forecast: will the evolution of legal education and practice keep pace with the internationalization of the economy? Satisfactory past experiences allow optimism, but never certainty of future success.

Free trade and economic integration are only the first steps if globalization is to exceed the bounds of the business community. Legal harmonization should go hand in hand with the collapse of trade barriers and economic achievements should always be coupled with the awareness that the next century shall have to witness the molding of a new political order.

Legal practice must evolve accordingly and universities will bear the responsibility for a new type of legal education which is meant to be international, but not universal in scope. It should not be aimed at erasing the differences, but rather at enhancing the importance of diverse cultural influences. This will confer an added cultural value upon the intellectual endeavors of students and scholars who choose to take part in a network of educational sources at the world level. This is the lifeblood from which citizens of the new century will draw their cultural knowledge.

Also, this legal practice will remove the limits of preconceived and parochial ways of life and thinking. This is essential for international organizations which must maintain the uniqueness of domestic structures, while helping them give the right of way to a network of bodies that are integrated at the regional and global level. It is also important for national governments, whose concerns are now less domestic in the context of a rapidly evolving and demanding international community.

The University of Michigan Law School was an early laboratory for the first lap in the change of legal practice. This experience will help further the insight which contributes to the strengthening of the international roots which have been so deeply planted.

EYE ON THE WORLD

Giorgio Bernini, LL.M. '54, S.J.D. '59,

is the senior partner in Studio Bernini e Associati and a full Professor, Chair of Arbitration and International Commercial Law and Director of the Department of Law and Economics at the University of Bologna, from which he graduated in 1950. He also has attended the Universities of Paris and Cambridge and has taught at the University of Michigan Law School as a Visiting Professor. He is Honorary President of the International Council for Commercial Arbitration (ICCA) and President of the Association for the Teaching and Study of Arbitration, which is sponsored by the University of Bologna. Professor Bernini is the author of many treatises, monographs and articles on subjects like arbitration, antitrust, international trade law, mergers and acquisitions, international contracts, privatizations and project financing. He regularly advises on arbitration, antitrust and corporate issues and litigation and has been involved in cases in Italy and before other domestic jurisdictions, as well as before the European Court of Justice. He has served as counsel to the Italian Government, European Union and GATT, was the Italian delegate to the United Nations Commission on International Trade Law and President of ICCA. He has been a member of the Italian Parliament and served as Minister of Foreign Trade. He is now a member of the Board of Directors of the Italian Institute for Foreign Trade (ICE).

BY

ALEJANDRO FERRER, LL.M. '92

Vice Minister of Foreign Affairs, Republic of Panama

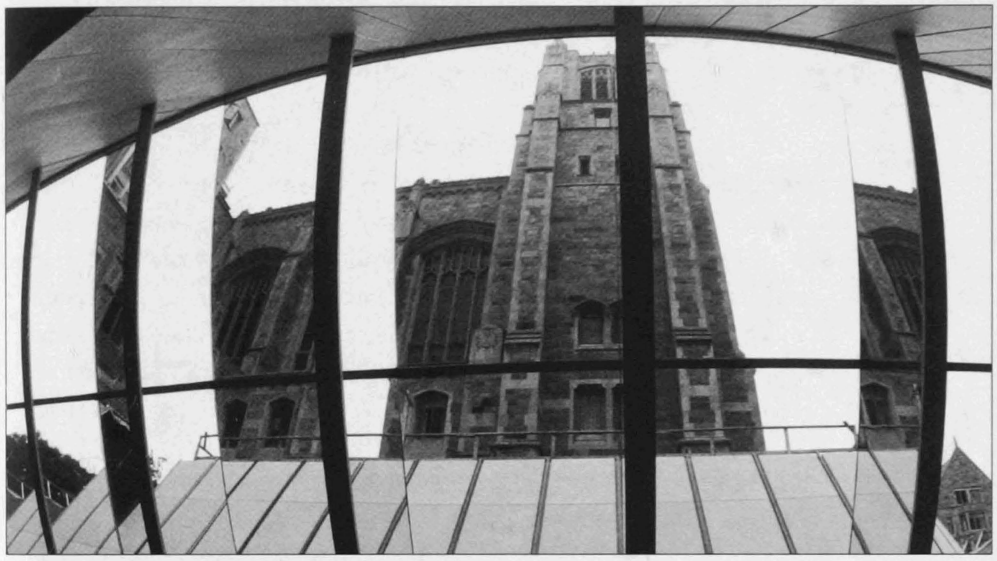
PANAMA TODAY IS AT A CROSSROAD centered on the transition of the Panama Canal into Panamanian dominion. Ten years from now, in 2007, we will have passed the phase of proving our capacity as a nation to administer the Canal and entered a phase of harvesting the fruits of a smooth transition. By the year 2007 Panama's foreign policy will no longer focus on recuperating our territorial jurisdiction but rather on managing all our resources and taking advantage of all the opportunities and challenges that we will face.

By noon on Dec. 31, 1999, Panama will acquire full sovereignty over its territory; the last phase of reversion of the Panama Canal will be completed by then. Today, close to 92 percent of the workforce of the Panama Canal is Panamanian. The real challenge for the country will not be achieving the remaining 8 percent, but rather internalizing our new status as the owner and operator of the Canal, a Canal that is Panamanian because we own it, but international because of its service.

My current post as Vice Minister of Foreign Affairs will be significantly altered in the next 10 years. Today, I have the honor of helping to lay down the foundations of Panama's full participation in regional and global politics and economic affairs. Our efforts today will significantly shape the future outcome. Just this year we have joined the World Trade Organization and we are concurrently negotiating several regional free trade agreements. In 10 years, rather than negotiating terms of agreements, we will be settling trade disputes and fine-tuning our commercial ties with our new partners and Canal users like the United States, Chile, Japan, the European Union, Mexico and Brazil, to name a few. Our foreign relations will be more balanced and diversified than ever before.

Ties with the United States and Latin American nations will also be strenghthened by their participation in the Multilateral Counter-Narcotic Center (MCA) that we are proposing to establish here in Panama. No country on its own is able to fight this scourge with all the resources it needs, on all the fronts, and win by itself. We need more international coordination and cooperation to face this dire threat not only to young democracies, but also to the future generations around the planet. This is an area that is so close to the demoralization of contemporary societies that it is evident that any meaningful advance against drug trafficking will have to come from the joint efforts of governments, civil societies and citizens alike all over the world. At the same time, the possible success against this threat may strengthen the prospects of communal life in the near future.

EYE ON THE WORLD



During the next 10 years Latin America is going to realize its potential as the next economic and political "miracle." The region will have achieved the proper mix of market reforms and democratic governance with a critical and open exchange of ideas and a balancing of market excesses with social responsibility.

We need to invest in human capital, not only to update our current academic infrastructure but also to develop a new one that will prepare new generations for the challenges of tomorrow. We cannot pretend to succeed in free trade with open borders if our minds are closed to the brave new world of technology and multicultural realities. If we fail in updating our human capital project, we will have failed our future generations miserably.

Another area that may represent an obvious challenge to Panama and Latin America is the environment. Global challenges such as climate change, the loss of biological diversity, pollution, the conversion of an oil-based economy into a more nature-friendly one, and the radical transformation of our landscapes into megacities constitute a series of tasks for which a new generation of institutions and political organizations may be required.

As a young policy maker, I have been blessed with the opportunity of helping my country in articulating a new foreign policy for the future. I am optimistic that this future may be charged with positive changes and with great advances in human understanding. We are creating, by our mere presence in many new fora, a new language of peace and prosperity, the legacy of which will be the ability to discuss new problems under a new guiding light.

Alejandro Ferrer, Jr., LL.M. '92,
Vice Minister of Foreign Affairs of the Republic of Panama since 1996, also has served Panama as Joint Permanent Representative on Special Mission to the General Agreement on Tariffs and Trade (GATT), as Ambassador and Permanent Representative to the World Trade Organization (WTO), Deputy Ambassador and Permanent Representative to the United Nations, International Trade Counsellor for the Panamanian Embassy at Washington, D.C., and Legal Counsellor for the Commission of Accession of Panama to GATT. Formerly with the law firm Alfaro, Ferrer, Ramirez & Aleman, he is a member of the Panama Bar Association and a candidate for the S.J.D. degree at the University of Michigan Law School. He speaks and writes Spanish, English, Portuguese and French.

BY

JOHN V. LONSBERG, '79

THE LAST 20 YEARS HAVE WITNESSED EXTREMELY SIGNIFICANT GROWTH in the international practice of most large U.S. law firms on the basis of whatever measurement tool may be applied. For instance, a comparison of the number of non-U.S. offices maintained by today's AmLaw 100 firms or any similar group respectively in 1980 and today would provide an interesting measure of this development.

Obviously, this expansion is primarily attributable to the globalization of the economy and lawyers' and law firms' desires or needs to follow and service their clients in this global environment.Whether these needs are real or imagined, they have driven many firms to international locations that, for years, they served, if at all, through correspondent firm relationships.

Predicting where the private international market and related legal practice are going is a fundamental concern for many firms. One important reason for this is that mistakes made in this arena tend to be extremely costly, both in terms of capital and personnel resources. The increased competition for legal business now provided in the non-U.S. markets by the accounting firms, or professional service firms as they seem to prefer to be styled, will further complicate this analysis. Whether these professional service firms can move into the higher value legal services area remains to be seen. Their activities and successes in developed European markets, however, suggest that they will be a major competitive factor.

While anticipating where the market for international services will be after another decade is risky at best, any lawyer working in a successful international practice after the passage of another decade should anticipate an environment that will include the following characteristics:

1. While many clients profess that they hire individual lawyers and not firms, in practice these same clients are in the process of simplifying their outside counsel relationships, often by significant reductions in the number of firms that they engage. This trend will favor those firms offering the broadest substantive expertise and geographical diversity. Clubs or other forms of association among firms will not provide the depth of relationship that will be demanded by sophisticated clients seeking to reduce the number of counsel that they employ. Identifying which markets will require a local presence a number of years down the road will be one of the most challenging, but most vital, tasks.

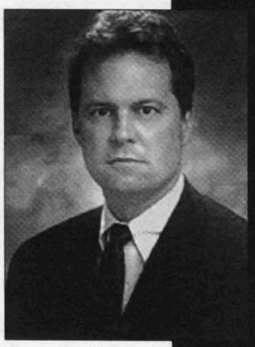
2. The competitive market for legal services dictates that firms render services as efficiently as possible. This requires the development of highly-focused expertise. The demand for efficiency will tend to drive more lawyers into narrower specialties with the result that firms, by definition, will have to continue to increase in size to meet the ever increasing substantive and geographical demands of their clients. The fact that these specialities will extend over numerous national jurisdictions and multiple types of legal systems will cause even more growth. At the same time, there will remain a need for the international generalist who can coordinate the delivery of services by these specialists across national borders.

3. Firms participating in the international market must become increasingly diverse in terms of the nationality, training, language capabilities and cultural affiliation of their lawyers. These sophisticated clients will not be satisfied by the delivery of services exclusively by American lawyers who cannot provide the cultural affinity and local market knowledge that can be provided best by local practitioners, but will demand that the services of such local practitioners be available to the clients through the major international law firms.

4. The firms that are most focused on the international marketplace will tend to lose their national identity as a corollary of their increased diversity. The boundaries between the U.S. and British legal markets are rapidly breaking down, as now evidenced by the increased Anglicization of U.S. firms' offices in the United Kingdom and the high level of hiring of U.S. lawyers by the large English firms. This blurring of national identities will continue and expand beyond these two markets where it is most obvious today. This development necessarily will create significant ethical, practice management, liability, conflicts and administration issues. For instance, how will firms reconcile widely differing compensation and partnership patterns among numerous markets? Similarly, will individual firms operate on a true global basis or will they operate more as an aggregation of member firms which exist and operate, to one degree or another, as individual profit centers? Issues such as these will have a fundamental impact on how and by whom services are rendered for clients.

While it is not likely that these factors will lead to the development of a "Big Six" or other equivalent to the accounting firms, it seems likely that the financial and management demands of the international marketplace will result in the evolution of a relatively small group of international legal firms that will have the requisite resources to compete and to function on a global basis.

EYE ON THE WORLD



John V. Lonsberg, '79, *is Leader of the International Transactions and Dispute Resolution Group and a partner of Bryan Cave LLP in St. Louis. He is responsible for the firm's offices in London, Frankfurt, Hong Kong, Shanghai, Riyadh, Kuwait, Dubai and Abu Dhabi and for coordinating the work of the lawyers who practice in the Group. He was resident in Saudi Arabia from 1980-88 and established the firm's offices in Saudi Arabia and Dubai and Abu Dhabi in the United Arab Emirates. He concentrates on international commercial transactions, with an emphasis on joint ventures, distribution arrangements, mergers and acquisitions, and the regulation of business operations. He acted as the outside counsel for McDonnell Douglas Corporation in its negotiations with the Republic of China in connection with a proposed joint venture relating to the operation of its Douglas Aircraft Company division. Recently, he has been responsible for managing a consortium of eight international and Kuwaiti professional firms that has advised and prepared $60 billion of claims for the Kuwaiti government against Iraq relating to the invasion and occupation of Kuwait. He also maintains a domestic practice focusing on mergers and acquisitions and served as Chairman of the Committee on Middle Eastern Law of the American Bar Association's Section on International Law and Practice from 1988-91. He also is a member of the Law School's Committee of Visitors.*

BY

MARIA LOURDES A. SERENO, LL.M. '93

Director, Institute of International Legal Studies, University of the Philippines Law Center

I HAVE BEEN ASKED A VERY INTERESTING QUESTION by the editors of *Law Quadrangle Notes*, and I sincerely wish that the hopes and concerns I will express reflect not only the musing of an ivory-tower pedagogue, but in a larger measure, the unarticulated questions of several generations of lawyers. By reflecting on the future, I had wanted very much to see, as concretely as possible, with my mind's eye, and mixed with a large dose of heart's desire, what might happen 10 years down the road.

For that is what my vocation really is: articulation. I have been given the very difficult role of constantly reflecting on the nature of the law, on the nature of Philippines society, and on the interaction with and the power of legal concepts to affect, if they do, the behavior of the different actors in my society. I am expected to discharge this role, amidst all the hurrying and scurrying in the twenty-first century. And I am expected to announce, at the right moments, when the insights I have accumulated form a sufficiently significant mass or have been transformed into a qualitatively important semi-synthesis, revelations or discoveries which will help people to conclude what is right and what is wrong, what should be done and what is to be avoided. And I am to unveil these revelations or discoveries, in a manner both intellectually and morally compelling, for my role as a law professor to be recognized. And, most important, I am to teach with all generosity, this power to articulate to generations of students who will one day use this power for a client's cause, or for more general, communal or societal interests. And here is where the difficulty lies.

Unlike many Western countries whose bodies of jurisprudence reflect the collective wisdom of countless men and women who have seen life through generally recognizable philosophical lenses, and validated by the experiences of community and nation-building, my country does not have that intellectual anchor. For the nearly hundred years of statute law and case law-making in my country, we have had to see possible enlightenment through alien experiences. *Since the countries from which we borrowed this particular legal doctrine have found this to be good and true, since it was meant to address a particular social objective, then we Filipinos probably are not too off-track to adapt such principles in our legal system.* This is not a strange process in itself, and for lack of any other available process of law-making and statutory interpretation, it probably is the best available. However, the process of adaptation assumes that you can integrate a foreign legal concept into your system sans the benefit of addressing questions of "fit" to local culture without too much harm to your development as a nation, and that there is sufficient chance for a process of "adjustment" to take place, precisely to answer the question of fitness.

I am deeply concerned with ensuring that the adaptation process in our legal system succeeds in delivering its promises, because our people are progressively blaming the "law" for some of our most serious problems. The formal legal concepts, as they have been transmitted through our law schools, and as popularly conceived, do not convey the essential socio-moral or even socioeconomic prerequisites for their efficacy. Take democracy and human rights, for example. Too much democracy, we have been told by a senior leader of an Asian NIC, has been

responsible for the slow economic development in the Philippines. Too much emphasis on human rights, many in Manila are now crying out, has been responsible for the brazen disregard of community rights by drug lords. As a law professor, I am expected by those whose education I am responsible for to state that the law serves good and noble purposes, and I am to explain why.

It used to be that the beauty, the logical symmetry of the law, could be sufficiently explained by carefully crafted cases written by very wise men and women in the Supreme Court. Not anymore. The realities of an exploding population, eager to cash in on the much-heralded Asia-Pacific century, with overwhelming needs that must be met, has shifted the battleground from the classroom dissection of a case to a reflection on what is wrong with our streets. It has therefore made my job of making relevant, timely and useful social commentaries more urgent, and thus more difficult. The unique position of a law professor in my university is that in moments of important legal dilemmas, which happens very often in my country, we are asked to speak. And what we speak can be carried far, very far.

We who teach the law will find ourselves increasingly compelled to suggest solutions to increasingly complicated questions, in *byte* sizes and at *megahertz* speed. The latter adjectives are of course exaggerations, but they painfully describe a future that is not willing to wait. Pulled in different philosophical directions, seduced by the sorcery of materialism, and hardly able to contain the explosive bomb of significant discontent, our society will stop to listen to us only long enough to grab the prescriptions, then possibly rush off to the nearest pharmacy, if minded to. The internalization, the tedious social debate that goes into the making of a society, into the creation of a consensus, may not be there.

But I have hopes for the future. My hope is that there will be enough people, across the globe, who share these concerns in common, and who, generous in heart and spirit, will try to impress upon their various communities the importance of taking time to reflect on, articulate and resolve their various sorrows, expectations and concerns, not through predigested solutions (even those offered by law professors), but through community dialogue. Conducted in the spirit of people who realize that each one has a deep stake involved in the outcome of the dialogue, the dialogue will hopefully lead to societal consensus, and lead to a new appreciation of what the proper role of law was intended to be — the expression of a community whose members see common stakes, in a common future, and who would thus gladly abide by common rules. In such a refreshing spirit, teaching law cannot be but exhilarating.

EYE ON THE WORLD

Maria Lourdes A. Sereno, LL.M. '93, *is Director of the Institute of International Legal Studies at the University of the Philippines Law Center. Her academic interests focus on international trade law, law and economics and family relations, obligations and contracts as negotiable instruments. She is currently writing her S.J.D. dissertation (Michigan) on the Uruguay Round Agreements on the Philippines, under the supervision of Hessel N. Yntema Professor of Law John H. Jackson. Sereno is Legal Counsel to the WTO-AFTA Advisory Commission to Philippines President Fidel Ramos and a legal consultant to the Philippines' Department of Agriculture.*

BY

JOHN K. TOULMIN, CMG QC, LL.M. '65

IN ORDER TO LOOK FOR CLUES ON THE GLOBALIZATION OF LEGAL PRACTICE in 2007 it is useful to look back to 1987 and reflect on the changes that have taken place in the last 10 years. The World Trade Organization (WTO) has been set up. Regional free trade areas have been set up or developed in North America (NAFTA), South America (Mercosul), Asia (Asean Free Trade Area) and Europe (development of free movement within the Member States and the accession of new States). International standards are being developed in Human Rights and the environment. In the United States, in particular, forms of Alternative Dispute Resolution are being developed as an adjunct to or in substitution for court procedures. The legal profession has developed into a worldwide legal profession. Within Europe there have been important reforms in France (merging of avocats and conseils juridique), Germany (development of national law firms) and England and Wales (development of multinational partnerships and international strategic alliances). Perhaps most importantly European law, which was the preserve of the specialist lawyer, is now a subject which the ordinary practitioner must understand.

It is clear, therefore, that we are moving from the era of national regulation to the era of regional or international regulation. The WTO has been such a success in the last three years that it is clear that it will develop its dual role as the body which sets the rules for international trade and provides the mechanism for settling disputes between nations. It will be particularly involved in removing existing trade barriers and in resolving disputes in the services sector. Non Governmental Organizations, at present excluded, will play an important role in the WTO in the future. The development of regional blocs will continue and there will be a tension between the desire of countries within the bloc to maintain restrictions on outsiders and the desire of those outside to break down internal barriers. Often the same country will be facing in both directions. President Clinton's ambition to achieve an American Free Trade Area (both North and South) by 2005 is likely to be achieved, although not necessarily in the form which he expects. The European Union, as already envisaged, will be enlarged to include many countries from the former Soviet bloc. Unless clear limits are set by the member states, the EC Commission will play an ever larger role in the European Union and the role of the nation states will be substantially diminished.

There is now a clear understanding that human rights and the environment are matters for international regulation. In 10 years time we can expect that more stringent international standards will have been developed and growing numbers of lawyers will be bringing claims before courts and tribunals to recover civil recompense for victims as well as criminal penalties against those who do not conform to international standards.

In Common Law countries, in particular, there is already a concern that the courts are too inflexible, expensive, and slow to provide an appropriate resolution of civil disputes and that alternative methods of dispute resolution must be pursued.

Mediation, both private and court-referred, will become the required first step in resolving civil disputes. More disputes will involve parties from different jurisdictions and will be decided by arbitrators with a range of expertise in the areas of law and practice of the countries involved in the dispute rather than by courts. Small claims will normally be heard without lawyers in independent practice. Parties will either be unable to recover their fees from the losing party or will be excluded from the process altogether.

Multinational partnerships, now in their infancy, will be developed. Firms from large emerging countries like Brazil and China will play a more important international role. We can expect lawyers to move freely from one country to another. By the year 2000, it is hoped that the EC Directive facilitating free movement of lawyers within the European Union, drafted with the assistance of the European Bar Council (CCBE), will have been adopted and be in force and that European lawyers will have the right to practice law in other member states using the professional qualification of their home state. By 2007 it is almost certain that this issue will have been taken up in the WTO Working Party on Professional Services and its recommendations will have resulted in the worldwide removal of similar restrictons on freedom of movement for lawyers. The United States will press in these discussions for easier access to full membership of the legal professions in other countries. Within the next 10 years there will be a worldwide code of principles of professional conduct for lawyers engaged in cross border practice agreed to by the signatories to the WTO. There are some differences between the principles in the U.S. Code, the CCBE Code adopted by all member states of the European Union, and the Japanese Code of Conduct, but with goodwill they are capable of resolution.

Finally, my one certain prediction is that in 2007 the University of Michigan Law School will be in the forefront of legal scholarship and that the Law Quad will remain a powerful magnet to its lucky alumni.

John K. Toulmin, LL.M. '65,

is Queen's Counsel practicing from 3 Verulam Buildings, Gray's Inn, London, WC1R5NT. A Companion of the Order of St. Michael & St. George (CMG), he received the Great Decoration for Merit from Austria in 1995 and in 1994 was named an honorary member of the Law Society of England and Wales. He was called to the English Bar in 1965, the Bar of Northern Ireland in 1989 and the Irish Bar in 1991. As a member of the Council of the Bars and Law Societies of Europe and CCBE President in 1993, he negotiated the GATT Round on behalf of the European legal profession. He is chairman of the Board of Trustees of Europaische Rechtsakademie Trier. His practice includes commercial/international trade law, American and European law, international mediation and arbitration, banking and administrative (regulatory) law.

KATHERINE E. WARD, '77

General Counsel, Rolls-Royce Power Ventures, Limited

After 20 years of private practice, 10 of them spent in Michigan and then 10 in London, England, I have just this year made the move to an in-house position as so many practitioners contemplate doing at one time or another in their careers. I am General Counsel of Rolls-Royce Power Ventures Limited, which is the independent power project subsidiary of Rolls-Royce plc. I am also Vice President-Commercial of our U.S. subsidiary based in Morristown, New Jersey, so I spend a fair amount of time in the United States, as well as traveling to various countries, primarily in Asia, the Middle East and Latin America, where we are involved in the development of power projects.

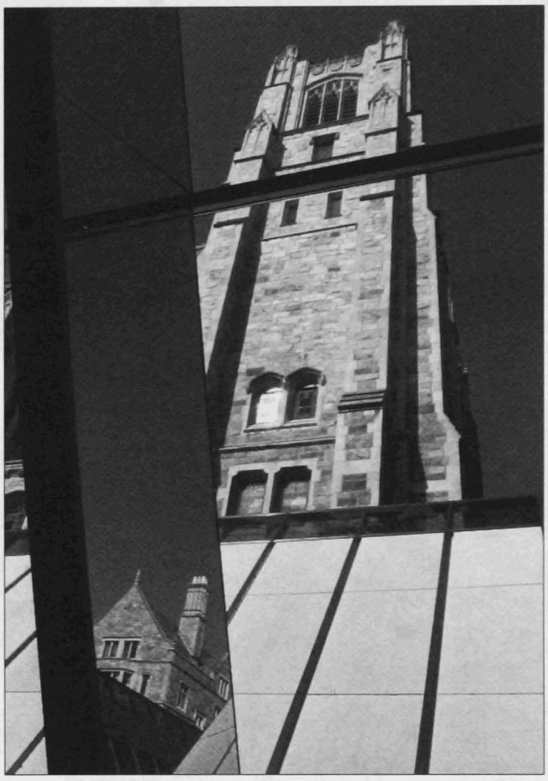
Ten years of change is a bit daunting to contemplate; indeed, 10 years ago from the date on which I write this, I was practicing law in Ann Arbor and looking forward to an upcoming visit to London that was meant to last no more than nine months. That trip turned into a permanent move, but I could never have predicted that at the time.

It is true, however, that part of the reason for my taking this position at Rolls-Royce is that, to the extent that these things are capable of prediction, I felt that the development of independent power projects is a field that will do nothing but grow in the coming 10 years. There are so many areas of the world that still have so much economic development ahead of them, and a stable and affordable supply of power is one of the most fundamental requirements of all of these economies.

No doubt the specific techniques of both constructing and financing these projects will change, as indeed has already been the case in the first 15 years or so of the development of the concept and techniques of project finance. There will doubtless be changes in the mix of sources of finance, as between governmental, quasi- and multi-governmental organizations, financial institutions, the capital markets and private companies such as our own. There will similarly be advances in turbine technology and doubtless other technologies that will make the production and delivery of power simpler, cheaper and more environmentally sound. Certainly there will continue to be revolutions in communications technologies that will make the lives of everyone who functions on a global basis simpler.

The globalization of the practice of law, which is a necessary concomitant to the global nature of business today, will also undoubtedly continue apace. The legal scene in London has changed dramatically in the past five years, and the pace of that change is still accelerating. The large U.S. firms which have traditionally had London offices have nearly all become multinational partnerships of American attorneys and English solicitors. Similarly, the large English law firms have started hiring American lawyers in significant numbers, in both cases so as to be able to provide the "one-stop shopping" service that they perceive to be of value to their international clients. The legal community in London is anticipating the first true merger of a major U.S. firm with a major UK firm, which although fraught with difficulties, is very likely to happen within the foreseeable future.

EYE ON THE WORLD



Katherine E. Ward, '77, *earned her B.A. from the University of California, Santa Barbara, taught at the Law School as an Adjunct Professor from 1984-86 and is a member of the Law School's Committee of Visitors. In London, she has taught at Notre Dame London Law Centre and Pepperdine University School of Law, London. She was an associate and then partner of Foster, Meade, Magill & Rumsey in Ann Arbor, and then was with Pepper, Hamilton & Scheetz in its London office. She was admitted to the Roll of Solicitors for England and Wales in 1995. From 1995-97 she was a partner in the London-based U.S. firm McFadden, Pilkington & Ward. In April 1997 she became General Counsel of Rolls-Royce Power Ventures, where she is involved in the development and financing of independent power projects throughout the world.*

Wearing my still relatively new hat of a client, as well as my more familiar one of a lawyer, it is clear that these developments make a great deal of sense. In developing our power projects all over the world, I deal with local counsel in each country in which we are doing business, and it is unquestionably much easier to accomplish what we require in those jurisdictions where the local bar rules have allowed U.S. and UK firms to set up, inclusive of local lawyers, so that all of our needs can be met by one firm, rather than having to hire both local and international counsel. This trend is almost certain to continue, offering many opportunities to top quality local lawyers as well as many opportunities to Western lawyers to live and work in many different parts of the world. This enormous scope for the further internationalization of the practice of law can only be good news for both U.S. and UK lawyers, as it is their firms which are in the vanguard of the movement toward global coverage. Those individuals, law firms and companies who grasp these opportunities most effectively will surely thrive and prosper well into the next millennium.