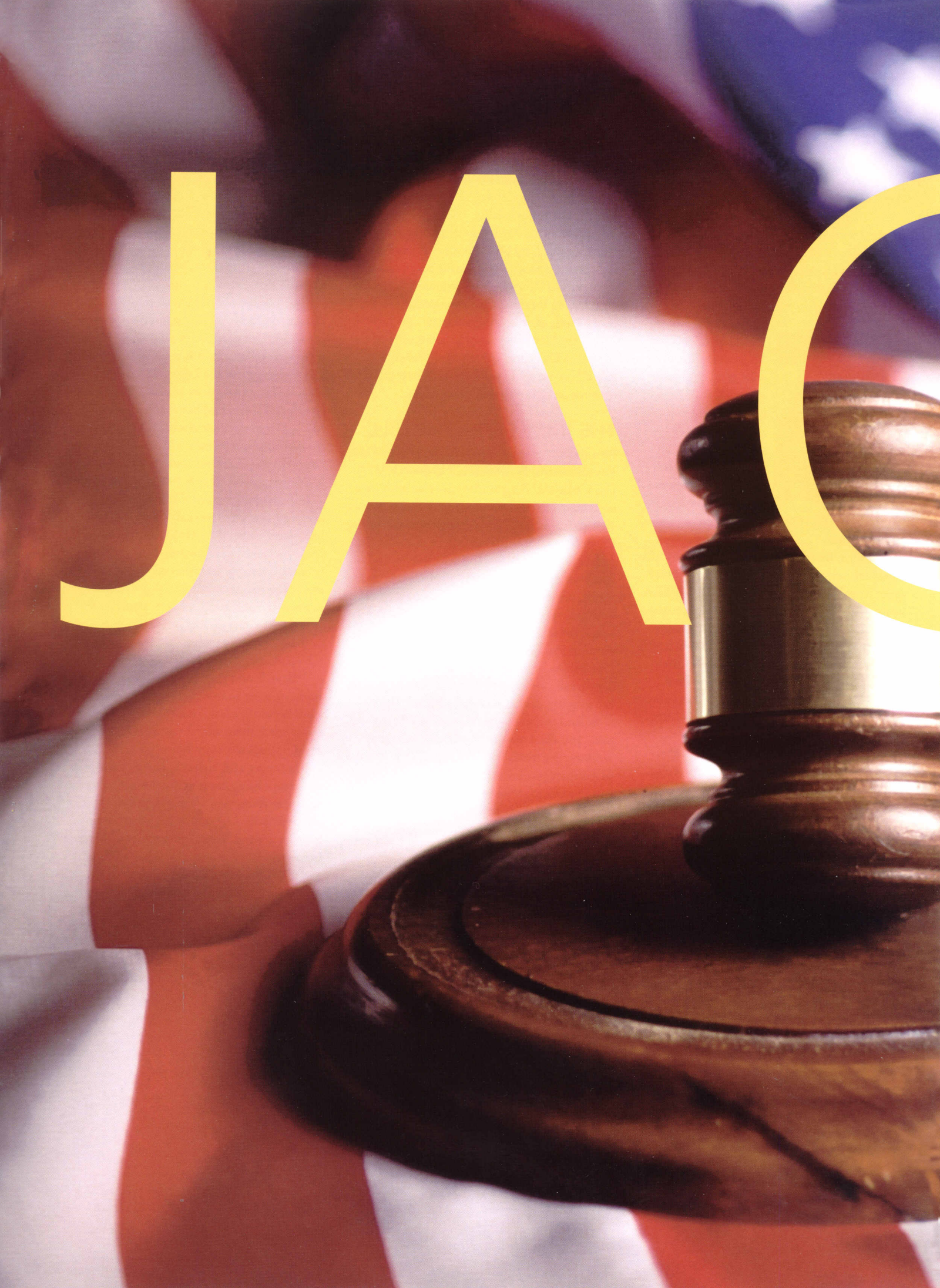
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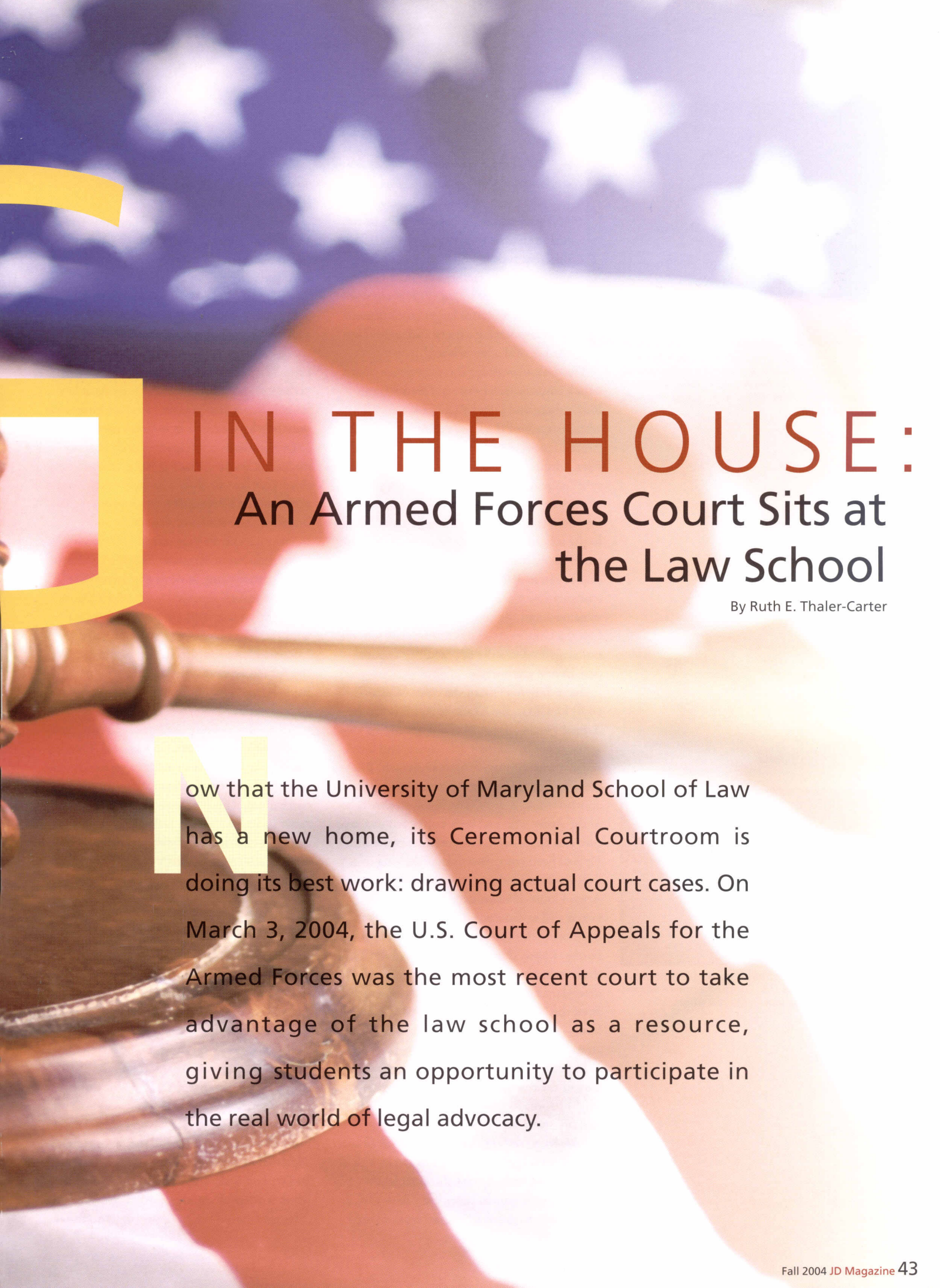

IN THE HOUSE:

An Armed Forces Court Sits at the Law School

By Ruth E. Thaler-Carter

Now that the University of Maryland School of Law has a new home, its Ceremonial Courtroom is doing its best work: drawing actual court cases. On March 3, 2004, the U.S. Court of Appeals for the Armed Forces was the most recent court to take advantage of the law school as a resource, giving students an opportunity to participate in the real world of legal advocacy.

U.S. Army Jag Corps, stationed at Aberdeen Proving Ground in Maryland, were the law school's guests during the U.S. Court of Appeals for the Armed Forces hearing on March 3, 2004. Here, they pose with Judge Frederic Smalkin (seated at right).

Dean Karen Rothenberg (center) is presented with a gift from the judges from the U.S. Court of Appeals for the Armed Forces during their visit to the law school.

"We have a tradition of exposing our students to a variety of judicial processes," says Dean Karen Rothenberg. "This visit gave us another opportunity to show our students a unique experience with a different type of court, and in turn, to share both our facility and the richness of our academic program. This event was consistent with our larger commitment to incorporating variety and reality into the life of the law school."

The groundwork for this experience began with a conversation between Dean Karen Rothenberg and James Richardson, Sr. ('73), administrator of the Court of Appeals for the Armed Forces. As she updated Richardson and Rear Admiral Michael Lohr ('77), Judge Advocate General of the U.S. Navy, on the progress of the new building, Rothenberg mentioned her interest in bringing new legal experiences to the school. The timing was fortuitous: The court has its own Project Outreach, a program that began in 1987 to educate law schools and students about the workings of military justice in general and the court in particular. Project Outreach not only brings cases to law schools, but gives students the opportunity to participate in oral arguments.

According to clerk of the court William (Bill) DeCicco, the Court of Appeals for the Armed Forces has heard about a hundred cases at law schools, military academies, and bar associations through Project Outreach. The one-day March case heard in the law school's courtroom, *U.S. v. Mason*, involved a member of the Army who had been convicted in a rape case and appealed his conviction several times. He had been court-martialed, resulting in a trial-level conviction; won an appeal to the Army Court of Criminal Appeals; was re-convicted and re-sentenced; and appealed that decision to the Court of Appeals for the Armed Forces, where, during the law school session, the conviction was upheld yet again. (The defendant has been dishonorably discharged from the Army, has one last appeal available to him—to the U.S. Supreme Court—but that is an extremely rare step.)

In keeping with Project Outreach goals, the core of the case had to do with issues students might handle in a civilian case: DNA evidence and supposed suppression of evidence.

"We try to select a case of interest to all concerned, with applicability to civilian as well as military law, such as constitutional issues, entrapment, criminal cases, etc.," says DeCicco. "It's not a case of fine nuance or only of military interest, such as someone who goes AWOL, but in areas that law students have studied."

The court sits at law schools because "this helps students understand that the military justice system *does* have an independent court system, presided over by civilians," says DeCicco. "People who don't understand tend to disparage military justice, but it is a good system and a fair system." Judges of the court, says DeCicco, "are most amenable" to student participation. "This also enhances the appeal for the audience," he notes. Holding sessions at law schools also helps "generate student interest in pursuing legal careers in military justice."

Law students participate in such sessions under the Student Practice Rule, which allows third-year law students who have taken certain classes to file briefs under supervision of a law professor. The students' names become a permanent part of the case record and are included in publication in Westlaw. The Maryland students participating in these experiences are chosen through the Myerowitz Moot Court competition (see story on page 7); last year's winners, Marc DeSimone as Best Oralist and Michael Haslup for Best Brief, participated in the Armed Forces Court case. Haslup wrote the brief and DeSimone argued it in court as amicus curiae.

According to Professor Susan Hankin, faculty advisor to the Moot Court Board, "One reason we like doing court visits in general is that we put a lot of emphasis on advocacy in our curriculum. This is an opportunity to see the court in action, but the judges also did a short question-and-answer session on effective advocacy." Each court generally makes only one visit to the law school in a given academic year. Academic components of the experience include credit for independent written work.

Student perspectives

Student Marc DeSimone found the Court of Appeals for the Armed Forces experience to be "one of my most memorable at law school." "I have always felt that mere reading and study are insufficient; your skills can be acquired and sharpened by going out and doing the task. Appellate advocacy usually is taught through moot courts, where the problem is a small set of static facts and the legal issues already have been identified. In our case, the set of facts consisted of a record of more than 2,000 pages, and we had wide discretion to choose the legal issues worthy of argument. My involvement in this case allowed me an opportunity to foster

my skills in the context of a real and ongoing case."

DeSimone also values having experienced "the art of actually getting in front of a bench of judges, and arguing your case—something that improves solely by actually getting up there and doing it. The experience makes me a better-prepared lawyer as I enter into practice." The experience was "especially beneficial" because it differed from that of general law school moot court, DeSimone adds. "I received a written explanation from the court on exactly why and how we answered the legal question correctly," he says. "The satisfaction I derived from this greatly outweighed any plaque or certificate."

Rothenberg was particularly proud of DeSimone's presentation of his brief. "He was able to keep up with counsel on both sides, and was very impressive in his delivery," she says. "This level of preparedness is what we expect of a Myerowitz Moot Court Competition winner."

For Haslup, "participating in formulating an *amicus* argument on behalf of the school and drafting our appellate brief was a valuable opportunity to apply the skills I have attempted to master over the last three years in a more practical setting." He and DeSimone "learned more about an area of the legal system which few in the world of civilian law know much about," he adds.

DeSimone and Haslup cite the advice, guidance, practice and mentoring they received from their professors as invaluable in preparing them for this important experience.

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The court was equally impressed with both the Ceremonial Courtroom setting and the level of skill displayed by Maryland students. "Chief Judge Susan Crawford was extremely generous in praise of our school and students," notes Rothenberg. The chief judge said the case provided "a well-orchestrated success for our court, [the] students, and all present." Adds DeCicco: "We very much enjoyed the visit and the hospitality." JD

Former Baltimore resident Ruth E. Thaler-Carter now writes from Rochester, New York.

James Richardson, Sr. ('73) (above left) and Rear Admiral Michael Lohr ('77) (far right) started the groundwork for bringing the case to the law school under the auspices of the Court's Project Outreach. They're joined by (from second left) Capt. Abraham Carpio ('97), Capt. Eric Feustel ('97), Judge Frederic Smalkin ('71), U.S. District Judge for the District of Maryland, and Joseph M. Clark ('03). At right, best oralist Marc DeSimone (center) is joined by his family after presentation of his brief.