demonstrating that the defendant was the victim of "ineffective" trial counsel. But this is a herculean task. An appellate lawyer must not only show that trial counsel was deficient but that his unprofessional performance "prejudiced" the defendant — that but for trial counsel's subpar performance, the outcome would have been different.

It is tempting to conclude — and many a busy court reviewing a death sentence has yielded to this temptation — that even if trial counsel had gathered a massive amount of material pertaining to the defendant, and even if he had presented the mitigating factors discovered as a result, the defendant would still have received the death penalty. This state of affairs led Justice Thurgood Marshall last year to voice concern that lower courts may be getting the impression that the right to counsel guarantees no more than that a person who happens to be a lawyer is present at trial alongside the accused.

Justice Hugo L. Black, who wrote the opinion for the Court in Gideon, observed in another case involving the rights of indigent defendants that "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has." This is a nice saying. And the Gideon Court thought it had gone a long way toward achieving "equal justice" in the administration of justice. But death row lawyers — almost all of whom can tell horror stories about capital cases bungled by trial counsel — have another saying: "People with money don't get the death penalty."


Comings and goings

Interviews with Friedman and Katz; farewell to Irish

Five new faculty members have been added to the Law School over the past year: Richard Friedman, a specialist in the areas of evidence and constitutional law; Avery Katz, an economist who holds joint appointments in the Department of Economics and the Law School; Merritt B. Fox, a specialist in securities; Michael Bradley, the Everett E. Berg Professor in the U-M School of Business Administration, who will regularly teach courses in the area of corporate finance in the Law School; and Bruno Simma, a specialist in international and human rights law. Profiles of Professors Friedman and Katz follow. Professors Fox, Bradley and Simma will be interviewed in the winter issue.

Richard Friedman

Working in disparate fields

"People ask me which is my favorite course. It's like asking a parent who his favorite child is — you love them in different ways," says Richard Friedman, who joined the faculty this fall.

A visiting professor at the Law School last year, Friedman arrived via the Benjamin N. Cardozo School of Law at Yeshiva University where he had been on the faculty for five years. Previously, he was an associate of Paul, Weiss, Rifkind, Wharton, and Garrison in New York. At the U-M, Friedman taught evidence and a seminar on the Supreme Court in the 1930s, and is teaching civil procedure this fall.

"I enjoy working in disparate fields," says Friedman, who taught courses ranging from constitutional law to commodities law at Cardozo. But he acknowledges special joy in teaching evidence, for that course "sweeps across the whole substance of law." Adds Friedman with a smile, "Teaching evidence is like game-playing in a way. Once you accept a few premises, much of evidentiary law becomes a logical game, seeing whether certain things should be admissible or not. At the same time," he emphasizes, "in certain respects, evidence law is very much in need of revision."

Friedman will be making a major contribution to the field through his role as general editor of the classic multi-volume treatise, Wigmore on Evidence. Not only was the last edition of the treatise, prepared by Wigmore himself, published in 1940, but some of the partial subsequent revisions are nearly 30 years old, Friedman notes.

"The treatise should again be, as in prior times it always was, the first source that anyone — judge, practitioner, academic, or non-lawyer — naturally consults when seeking a reflective discussion of an evidentiary question," he states in his prospectus to the revision.

While working on the treatise, Friedman is also preparing a short coursebook on evidence. On the back burner for now is a project of a very different nature — a biography of Charles Evans Hughes. As a Marshall scholar at Christ Church, Oxford, Friedman wrote a Ph.D. thesis on Hughes as chief justice. Because he will not be able to complete the full biography for some time, Friedman may first publish a book on Hughes's judicial career.

"He had a fantastic career," Friedman says of Hughes. "He was a very prominent lawyer, governor,
secretary of state, twice Supreme Court justice." Friedman stresses that there is a real need for a new biography on Hughes, describing the standard work as "charmingly told but one-sided in Hughes's favor."

"My view of him is much more complex," Friedman says. "He was sometimes self-righteous and kind of haughty."

Friedman's outside interests range from baseball to politics. He's a former member of the Nassau Democratic County Committee (the lowest position, he notes, for which it is possible to run in a primary). He has written articles for the general, as well as the academic, market. A Washington Post Op Ed piece titled "Sorry, Judge, Maybe in 20 Years or So," looked at historical precedents to the confirmation controversy over Supreme Court nominee Judge Douglas Ginsburg.

A graduate of Harvard College and Harvard Law School, Friedman was a member of Law Review and served as one of Harvard's voluntary defenders. Having lived most of his life on the East Coast, he's been pleasantly surprised at how readily he's adjusted to life in Ann Arbor.

"It's a terrific town," he says, "and the cultural life is remarkable for a place so small. But even if I didn't enjoy Ann Arbor so much I'd still be very happy at the Law School. I'm delighted with everything — the students, my colleagues, the library and staff support, and the Law Quad itself."

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**Avery Katz**

*Using economic methods to study legal issues*

*by Grace Shackman*

Avery Katz, assistant professor in both the Law School and Department of Economics, is in the vanguard of scholars using economic methods to research legal issues. Observes Katz, "I combine the research habits of an economist, with the research interests of a lawyer."

According to Katz, "Economic analysis of law has risen to the level of a school of thought in the last 10 or 15 years." While law schools have often had economists on their staff (Peter Steiner, before his appointment as dean of LS&A, was the economist on the Law School faculty), having scholars trained in both fields is relatively new.

Katz graduated from the U-M with an undergraduate degree in economics (his honors thesis was on the economics of scalping football tickets) and went on to Harvard where he earned both a Ph.D. in economics and a law degree in only six years. Katz went about completing the requirements for his dual degree program in a rather unorthodox way, alternating three years of law study with two
of economics. In the fifth and sixth years he wrote his dissertation, which consisted of three essays using economic models to analyze different aspects of the litigation process.

In the first essay, Katz analyzed some of the factors that determine how much is spent on a law case. In the second, he compared the American rule requiring both parties to a lawsuit to pay their own attorney's fees with the English method of making the loser pay the expenses of both sides. He argued that although the American method is widely thought to be more expensive, in reality the English system may be costlier because it effectively makes the stakes higher and the privately perceived price of legal service lower. Katz based his argument on a premise arrived at in his first essay, that a more expensive case is more likely to be pursued. The third essay was an economic analysis of frivolous lawsuits.

Katz finished his dissertation in the spring of 1986 and joined the University of Michigan faculty that fall with a joint appointment in the Law School and economics department. Each semester he teaches one course in each department, while continuing his research.

One of his courses, law and economics, which he already taught as an undergraduate seminar at Harvard, he teaches in both departments. The course focuses on private lawsuits, contracts, private property, torts, and criminal law, all using the concepts and techniques of economics.

In the Law School Katz teaches contracts and the economics of public policy analysis. In the economics department he teaches economic regulation of business and will add next year a course on public expenditure.

Apart from his teaching, Katz is working on two research projects: one theoretical, the other empirical. The empirical project continues on the line of thought in his Ph.D. thesis, seeing if it is possible to quantify the effects of economic variables on the frequency of trials and the amount of expenditure on litigation. He is using data collected by the University of Wisconsin Law School's Civil Litigation Research Project. The researchers obtained the data, Katz explains, by choosing cases at random from five judicial dockets, and interviewing the lawyers and clients. Individual data on litigation is rare, he points out, in part because of the confidentiality of the lawyer/client relationship, making the Wisconsin study very valuable.

The theoretical research project applies economic models of bargaining to the rules of contract formation, and includes an economic analysis of the "battle of the forms." Katz hopes the analysis will reveal which of various rules best promotes economic welfare and efficiency.

Katz manages to continue working in two fields by remaining flexible. He says, "My interests are diffuse. I have twice as many colleagues and hear of twice as many problems."

Katz is married to U-M Law School graduate Sharon Feldman. While Katz was in graduate school, Feldman worked as an assistant attorney general in the Massachusetts Attorney General's Public Protection Bureau, specializing in insurance regulation. She is now a Michigan assistant attorney general working in the same field.

Katz's extracurricular interests include politics and music. He has served as a precinct delegate and enjoys playing classical guitar.

Grace Shackman is a freelance writer in Ann Arbor.

Leon E. Irish
Irish returns to private practice

Professor Leon E. Irish, who joined the Law School in 1985 following a highly successful career as a practicing attorney, has returned to private practice with the firm of Jones Day in Washington, D.C.

Irish cited family concerns as reasons for his leaving. Before coming to Michigan he had been associated with Caplin & Drysdale, Chartered, in Washington, D.C., for 17 years.

"It has been a great personal and professional pleasure to be at the Law School," said Irish. "It has been a very satisfying and enriching experience for me, and I am sad to leave."

Irish's leaving, commented Dean Lee C. Bollinger, "deprives us of a hope that we could provide our students and the world of scholarship with intelligent and imaginative treatment of such neglected yet critically important fields as the law of pensions, the sea and disarmament. Surely no one will ever arrive here again with this package of diverse interests, and so Lee returns to private practice with the satisfaction that it will take more than one person to replace him here. We wish Lee all the very best."