Strengthening preeminence

With two new faculty appointments, the Law School becomes even stronger than before

This fall the Law School welcomed James E. Krier and James Boyd White to the faculty. Krier's appointment affirms Michigan's position as the tallest tree in the forest of environmental law; White's strengthens its preeminence as a center for the humanistic study of law.

One of the nation's foremost legal authorities on air pollution, Krier has written on a wide range of environmental issues. He has served on National Academy of Sciences committees and panels and has been called upon to testify before federal and state committees. He is also co-author of leading casebooks on environmental and property law, and of a legal history of the air pollution problem in California.

Krier received his B.S. and J.D. from the University of Wisconsin, then clerked for Chief Justice Roger Traynor of the California Supreme Court prior to practicing law in Washington, D.C. In 1969 he joined the law faculty of the University of California at Los Angeles. With the exception of two years as Professor of Law at Stanford University, he served at UCLA until coming to Michigan.

Author of The Legal Imagination, as well as of When Words Lose Their Meaning, White is widely known for his work on the relationship of language and culture to law and to the functions of lawyers. He holds an A.B. in Classics and English from Amherst College, as well as an A.M. in English and an LL.B. from Harvard. White practiced law in Boston and taught law at the University of Colorado before

Joining the University of Chicago law faculty in 1974. Highly regarded by both legal and literary scholars, White also held professorial appointments in the liberal arts college and in the Committee on the Ancient Mediterranean World. At Michigan, he is professor of English and adjunct professor of classical studies as well as professor of law. He was a visiting professor at the Law School in the fall of 1982.

In recent interviews, Krier and White discussed their work and the roads that led to their specializations and to Michigan.

JAMES KRIER

Knotty environmental problems that demand strategic solutions

After years in California, environmental law authority James Krier jokes that he had forgotten that not all trees were either eucalyptus or palm. The rediscovery of their rather less exotic Midwestern cousins has been a happy event for the Wisconsin native, as has been his move to the town and school that restored them to mind.

"I find the faculty here unimaginably collegial, supportive, and fun," he says of the Law School. "And my environmental law class this fall was the most rewarding teaching experience I've had in 15 years."

Krier's choice of Michigan was carefully considered; his choice of specialization he attributes to "serendipity." When just beginning his teaching career, he was lured to his future field by a promise of summer support for developing the environmental law component of a Ford Foundation grant on land use and environmental law made to UCLA. Krier accepted; the materials he developed became the book Environmental Law and Policy, now in a second edition co-authored with Professor Richard Stewart of the Harvard Law School.

"If the call had been health law, it would have been health law," he reflects wryly. "But I have no regrets. Environmental law has let me learn a little bit about a number of disciplines."

Krier's manner of entry into the field may account for the intellectual, non-partisan approach he has taken toward his subject. "You're supposed to be 'pro-environment' in environmental law," he notes. "It's the same in welfare law—but not, I guess, bankruptcy or criminal law. I started out being neutral. With advancing years my views have slowly

James Krier's move to Michigan coincided with a new research interest.
become more conservation oriented. But I’m not an activist. I take an academic approach.”

Best known for his work on air pollution, which he characterizes as a tactical problem, Krier is now embarking on a new generation of knotty environmental problems that instead demand strategic solutions. Some, particularly intractable, may require redefinition before they can be “solved,” he says. He intends to pursue research on these problems with Clayton Gillette of Boston University, who was a visiting professor at the Law School this fall.

Of particular interest to Krier are “zero-infinity” problems that couple a low risk of mishaps with catastrophic costs if they do in fact occur, usually many years after a decision is made. The use of toxic chemicals illustrates the management dilemmas this new generation of strategic problems poses.

“Their effects,” Krier points out, “may not be felt until 20 years after exposure; they may be mutagenic and affect the next generation. How do you make decisions about them? In the past, we used a trial-and-error process. We got quick feedback and interesting feedback. Now, by the time the feedback comes, it may no longer be ‘interesting’ if you want to avoid the negative consequences. The lesson may be too late.”

In many ways, governments today are ill-equipped to make such decisions, Krier says. “Our whole government structure seems to be based on short-term feedback and short-term accountability. Now we have problems we can’t deal with that way. There will always be a lot of tactical problems, but the number of strategic problems will grow and the conventional problems may become unconventional as we learn more about them.”

JAMES BOYD WHITE
How is a lawyer like a literary critic?

Just as James Krier likes the Law School’s collegiality, so James Boyd White—the second James White on the faculty and one of three legal educators by that name—expresses admiration for the Law School’s intellectual character, citing it as motivation for his move.

“The place is characterized by a kind of thoughtfulness and openness in its intellectual style,” he says, “which isn’t the norm for a law school. It’s really remarkable the extent to which this is true. And much of this same quality shows up in the students.”

This fall, students in White’s small-section criminal law class found themselves reading the Oresteia and short stories by Katherine Anne Porter, works that are hardly traditional fare. White brings a literary perspective to the law, a concern with language in the small—how words and their meanings change—and with language in the broad—how communities are held together by common terms of discourse. He comes by these concerns honestly: he originally planned a career as an English professor.

While pursuing an A.M. in English at Harvard, White found he disliked “professionalizing” this side of his life. A visit to moot court—his brother was in law school at the time—made him switch his course to law.

“I found the argument utterly gripping,” he recalls. “It was also about that time that Kennedy was elected. It made me think that the public world might be a world where someone I might admire could do something.”

White was surprised, in law school, to discover that there were many ways in which a lawyer was like a literary critic. “I expected no continuity with my past life,” he says, “but I found close textual analysis enormously helpful.”

His interest in the similarities and differences between legal criticism and literary criticism continued to prevail and, after a postdoctoral fellowship and a short stint with a Boston law firm, White went into teaching to seek answers to questions about lawyers as readers and writers.

To White, law is a way of claiming meaning for experience in language: either argumentatively, as one side gives its account of the actors and their circumstances and what justice requires, or in explanation of a decision, by a judge or administrator, for example.

In his early casebook, The Legal Imagination, White compared legal modes of thought and expression with other modes, mainly literary ones, with the idea of helping students come to a new sense of the possibilities of legal language and expression. Different aspects

The Law School’s open and thoughtful intellectual character attracted James Boyd White to the faculty.