I came to law teaching at Michigan after two clerkships (federal district court and U.S. Supreme Court) and four years in union-side labor practice in Washington, D.C. That sounds like a perfectly traditional entry route. But in reality, my pathway was less traditional: it began with an undergraduate major in religion and several years of graduate study in anthropology. The link among law, anthropology, and religion is that they all are routes of access into a people's most fundamental debates about its identity and values. I chose law because of its activist stance on matters of social justice, and became fascinated by the societal implications of the law's interventions (or its failures to intervene) in debates on class, race, and ethnicity in American society. It was obvious to me when I went to law school that civil rights and labor would be where all of my interests would meet, and I was right. Both are

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"It took the faculty a dozen years to find someone good enough to succeed Harry Edwards in labor and employment law. Deborah Malamud was worth the wait. She has everything that makes for a great teacher and scholar: a love of ideas, a genuine affection for students, a personal point of view — and the courage to take positions that none of her various constituencies will necessarily applaud."
fields through which all of us, in our daily lives, send and receive powerful messages about whose views and interests count in America. What I was less able to predict was how fascinating I would find the law outside of my specific areas of interest.

In my first article, “The Last Minuet: Disparate Treatment After Hicks” (Michigan Law Review, August 1995), I reexamined the long-established three-step procedure for proving intentional discrimination in individual cases in the aftermath of a much-criticized conservative Supreme Court decision. I concluded that the Court had reached the correct conclusion, in light of unresolved tensions in the procedure’s rationale. Those tensions are reflected in the actual practice of the district courts in summary judgment cases: the district courts recite the official procedure but the best of them struggle to break out of the procedure and approach the cases holistically when the procedure impedes a full understanding of the facts. I concluded that plaintiffs are often hurt by rigid adherence to the procedure, and that abandoning it in favor of open-ended factfinding would be the best course both for them and for the coherency of the law.

My second and third articles deal with the issue of class. Our legal system deals explicitly with race, gender, ethnicity, religion, national origin, disability — but class is not a recognized category in American law. That may soon change. Race-based affirmative action is under attack in this society and it has become popular to suggest that class-based affirmative action ought to take its place. In my second article, “Class-Based Affirmative Action: Lessons and Caveats,” in the June 1996 issue of the Texas Law Review (and excerpted beginning on page 61 in this issue of Law Quadrangle Notes), I examine what it would mean for the legal system to define “class” for purposes of a program of class-based affirmative action. On the empirically-grounded assumption that programs of class-based affirmative action would be of little help to those at the bottom of the American socioeconomic hierarchy, I review relevant literatures from the social sciences and humanities and discuss what they reveal about the complexity of defining and measuring class, particularly when lines must be drawn within the middle classes. I express (and defend) the fear that the government would likely opt for an over-simplified model that would, in particular, fail to capture the complex interactions among class, race and gender in American society.

My third article returns to the issue of class and the law, and examines a concrete historical instance of legal class line-drawing: the exemption from the overtime requirements of the Fair Labor Standards Act for “executive, administrative, and professional” employees. The article will look at the origins of the FLSA “white-collar exemptions” (as they are often wrongly called) in the National Recovery Administration, and will situate them in the context of the debates of the time on whether there is a meaningful difference between blue-collar and white-collar work, and on where the line between routine and upper-level white collar work ought to be drawn. The broader project is to examine the enterprise of governmental class definition itself: to ask whether the government was attempting simply to mirror the societal consensus on these issues, to model the “best” academic thinking of the day, or to reach an independent judgment on questions of occupational classification.

I have the good fortune to be teaching in my core areas of academic interest: I teach courses in Labor Law, Employment Discrimination, and Individual Employee Relations (a survey course of other aspects of employment law), and seminars on labor law and policy, anthropological perspectives on race, class and ethnicity, and Supreme Court decisionmaking. I love teaching Michigan students, and I consider it a privilege to be a part of our students’ professional decisionmaking, both by sharing my own enthusiasm for the field of labor and civil rights and, most important, by helping them ask the right questions about themselves and about legal practice.

Jessica Lind,
Final-Year Student J.D./M.P.P.
Program

“In addition to a keen intellect, Professor Malamud brings enthusiasm and humor to her teaching. Her enthusiasm for employment law is contagious, and her students develop a genuine excitement for this challenging area of law. Outside the classroom, no professor is more willing to counsel students in both the professional and personal realm. Her advice is insightful, honest and sensible. Professor Malamud has been a true inspiration to me as well as many other students who have been fortunate enough to sit in her classroom.”