Ellsworth, who is teaching a course on juries this semester, is currently focusing her legal research on what she calls “a microanalysis of jury deliberations.” It’s basic research, she says, aimed at “finding out in what ways jurors are doing their job well and in what ways they’re doing it poorly, and how their performances might be improved.” Among her early findings are that jurors are very good at getting the facts, but often poor at understanding legal definitions and the judge’s instructions.

Last semester, Ellsworth taught Psychology of Litigation with Law School Professor Richard Lempert. She describes it as a practical course on the uses of psychology research findings for attorneys. “It seems clear that scientific and social scientific evidence is increasingly becoming a part of the law, and not just in the appellate courts,” she explains. “We’re going to see all sorts of experts coming in to testify in civil and criminal cases, too. I believe that lawyers are going to do better if they have some familiarity with how scientific experts think.”

Looking ahead, Ellsworth is considering shifting her legal research back to where it began, in family law, a field where she believes the social sciences need to play an important role. “When you’re talking about divorce and what’s best for the children,” she notes, “it’s very hard to leave psychology out of it.”

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**Samuel Gross**

Taking the winding road back to academia

Sam Gross did not come to the U-M Law School by any direct route. Since graduating from the University of California at Berkeley Law School in 1973, Gross has worked with the San Francisco firm of Kennedy & Rhine, with the United Farm Workers Union in California, with the Wounded Knee Legal Defense Committee in Nebraska and South Dakota, and with the NAACP Legal Defense and Educational Fund in New York City.

He has also conducted a solo practice for a half-dozen years, and for three years was director of the Death Penalty Jury Project, a part of the National Jury Project. During his energetic career he has tried felony cases and argued appeals in circuit courts, appellate courts, two state supreme courts, and the year before last, the U.S. Supreme Court. And while teaching at Yale and Stanford over the past seven years, he has also developed an innovative clinical instructional method.

Gross’s journey back to academics began in 1978, when he organized the Death Penalty Jury Project. That project challenged the constitutionality of death qualification in jury selection, the process by which courts exclude anyone who is strongly opposed to the death penalty from juries that try capital cases.

Gross steered the issue from the Alameda County (California) Superior Court (which ruled against him) through an increasingly successful series of appeals, all the way to the U.S. Supreme Court. There, he briefed and argued Lockhart v. McCree. “It was the final act in the death-qualification drama,” he says. He gives a wry smile. “We lost.”

Taking on this project, Gross says, “has shaped what has happened to me since then in almost every aspect.” He elaborates, first “it destroyed my own practice” — it took up all his time, and he simply became unavailable. Second, he met Phoebe Ellsworth, a Yale social psychologist, who became first his expert witness and later his wife. Third, it rekindled his interest in the social sciences and convinced him of their usefulness in law. And fourth, it brought him into contact with one of the legal profession’s superstars, Anthony Amsterdam (then at Stanford Law School, now at NYU). Gross calls Amsterdam “both the leading intellectual and organizational force behind anti-death-penalty litigation in the U.S. in the past 20 years, and a major innovator in clinical legal education.”

In the first year of their col-
laboration, Amsterdam and Gross prepared for the upcoming litigation on death qualification with a group of law students who used the issue as a basis for courtroom simulations. The possibilities of this type of teaching convinced Gross to rethink an earlier decision to avoid legal education.

This semester Gross is teaching both a lecture course and a clinical seminar on evidence. In the seminar he is using a method of simulation he developed at Stanford that deals with the problem of trying to reproduce in a clinical setting the emotions of the courtroom and the consequences for the participants. Gross develops simulated cases based on past experiences of his students. In this way, the students work with testimony fueled by real memories and personal interest. Gross interviews his students to discover an event they participated in or witnessed which, with a few circumstantial changes, could have been the subject of testimony in a trial. Students then perform all of the courtroom roles, including those of judge and witness, in trying these cases culled from their own experience.

Currently, Gross is finishing a book on racial discrimination in the uses of the death penalty. The book will focus in part on last year's Supreme Court decision in *McClesky v. Kemp*. That decision rejected a challenge based on studies by Gross and others which show that murderers of whites are more likely to receive the death penalty than murderers of Blacks. Next, Gross plans to pursue a long-term research project on the use in litigation of expert witnesses.

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**Richard Pildes**

*A former chemist concerned with social issues*

“This is an exciting time to begin a career in legal scholarship," says Richard Pildes, an undergraduate physical chemistry major who turned to law and then clerked at the Supreme Court. “The study of the nature and function of law has been deepened in recent years through exposure to the insights and techniques of a number of other disciplines.”

Pildes's wide ranging theoretical interests give him special reason to be pleased to be launching his teaching career at the University of Michigan Law School.

“This school has a willingness to move beyond the internal analysis of legal doctrine to examination of broader questions concerning law as a cultural practice and the nature of the legal method more generally,” he says, noting that he was particularly impressed that 20 percent of the faculty have joint appointments in other departments.

This winter, Pildes is teaching public law to first year students, a course that has been offered at the Law School only the past two years. He notes that many law schools have begun adding courses in public law to update their curriculum.

"Much of the 20th-century development of law involves the displacement of common law with statutory law, a trend that accelerated even more rapidly in the 1960s and 70s. Today, the law that people deal with in practice — as well as the law affecting individuals in their daily lives — more often originates with legislatures or administrative agencies rather than with courts."

He describes the course “as an attempt to expose students to the materials and facts of legislative processes, to develop understanding of the implications of a realistic view of this process for other institutions, such as courts, and to raise questions about the nature and role of public law generally. The course will range from statutory interpretation, examined from the perspective of modern understandings about the practice of interpretation generally, to considerations of structural reform in democratic institutions.”

Pildes describes himself as interested in “public policy and the role of law in the development of ideas and political culture.” He explains, “I hope to teach courses like constitutional law, perhaps federal courts, maybe administrative law.” Potential research topics include: “legislative processes and law's simultaneous capacity for both legitimating existing institutional arrangements and for criticizing and transforming those arrangements.”