David Mendel,
Third-Year Law Student

"Professor Hills brings incredible energy to every aspect of his job. In class, he creates a highly charged intellectual atmosphere. I appreciate the fact that he asks questions for which he does not have set answers. Although this approach makes for humbling exams, his students know that he is genuinely interested in their ideas. In addition, as judicial clerkship advisor for the class of '97, Professor Hills really has made a great effort to encourage students to apply for clerkships and to help them strategize about the application process."

Roderick M. Hills, Jr., J.D.,
B.A. Yale

My three greatest areas of scholarly interest are in local government law, land-use controls, and constitutional law (the last with a strong emphasis on constitutional federalism and intergovernmental relations). It is not immediately obvious to many people that these three topics have a lot in common, but I tend to think of them really as a single topic. All three involve the question of territorially based self-government: how can a community give one subgroup of persons within the community special powers over a piece of territory while simultaneously preserving the community's control over the same piece of territory? How should such powers be divided up between community and subgroup?

My current research revolves around this central question about the arterial allocation of powers. One currently unsettled issue of constitutional law is the degree to which the national government can order state and local governments to implement..."
national law. The issue is practically and theoretically important, for it defines the terms under which intergovernmental relations — so-called "cooperative federalism" — takes place between different levels of government. In dozens of regulatory schemes ranging from the Clean Air Act to the Occupational Safety and Health Act, the national government uses states to implement national law. To what extent can the national government unconditionally demand such services from the states? In 1992, the U.S. Supreme Court held by a bare majority that the national government could not impose such unconditional mandates on the states. But the meaning and scope of this prohibition is up for grabs: for instance, the Court already has granted certiorari to decide whether the Congress can force local law enforcement officers to implement the Brady Act, a statute regulating the ownership of firearms.

I think that some light can be shed upon this problem by examining it in light of the literature from transaction costs economics and constitutional theory on how to allocate property rights in private entitlements like land use. In land use law, the government can sometimes demand private action unconditionally and sometimes can demand such action only upon payment of "just compensation": in an eminent domain proceeding. A rich and detailed economic and constitutional literature discusses the practical advantages and disadvantages of each method of transferring control over land use, considering the risk of "holdouts," the costs of bargaining, the courts' ability to calculate "just compensation," etc.

I am interested in exploring the degree to which these sorts of issues are reproduced in, and might help to resolve, disputes about whether the national government can "commandeer" the regulatory processes of the states. Does Congress need to commandeer the state's regulatory processes as a practical matter? What are the risks that useful schemes of "cooperative federalism" will be derailed by state "holdouts"? Should the national government be barred from "commandeering" the states' regulatory processes unconditionally, or should Congress, at least in some cases, be able to require state implementation of national law, just as long as Congress pays compensation for such use? If Congress can have some sort of "eminent domain" power to impose funded mandates upon the states, then how should one go about measuring "just compensation"? These sorts of issues are endemic to land use, but I suspect that they are also at the core of this constitutional struggle over Congress' power to use the states.

I am also conducting research on the states laws that govern the incorporation of municipalities. One goal of such laws is to create voting communities with common interests and to protect persons from being improperly included within a municipality so that such persons are not forced into municipalities where they will be consistently outvoted by a majority with differing views or interests. But what about wrongful exclusion? Should there be limits on the degree to which new municipalities can be formed to exclude low-income persons from the new municipal boundaries and, thus, its voting population, tax base, and range of public benefits? In exploring this question of wrongful exclusion, I am examining other areas of law (e.g., the formation of collective bargaining units in labor law), the theory of voting rights, and constitutional doctrines governing the formation of electoral districts.

Finally, in addition to these questions of federalism and local government, I am also working on an essay examining the meaning of the [U. S. Supreme] Court's recent decision in Evans v. Romer. In Romer, the court held unconstitutional a Colorado state constitutional provision, "Amendment 2," barring the state from creating or enforcing claims of discrimination based on gay or lesbian orientation or conduct. I had helped to draft the plaintiff-respondents' brief urging the Court to overturn Amendment 2. But I remain uncertain about the implications of the favorable decision that we received. In particular, I am interested in exploring the Court's apparent contention that Amendment 2's breadth — its elimination of all laws protecting gay and lesbian persons from public or private discrimination — suggests an improper purpose of "animosity." This relationship between breadth and improper legislative purpose might shed some light on some important legal questions — for instance, the proper construction of state law in the context of a facial challenge or the specific meaning of terms like "animosity" or "private bias" in equal protection jurisprudence.

Thomas E. Kauper,
J.D., A.B. University of Michigan,
Henry M. Butzel Professor of Law

"Rick Hills is a young person whose contributions to the Law School have already greatly exceeded his years. His keen intelligence, enthusiasm, energy and spontaneity in the classroom, his dedicated and highly successful efforts in assisting students in their quest for clerkships, and his engagement with the faculty at large have won him the respect and admiration of everyone in the Law School community. We are proud of him and of our own collective wisdom in bringing this warm and caring young man to the faculty."