Three U-M law professors—Peter Westen, Philip Soper, and Lee Bollinger—are pursuing research under separate fellowship awards.

Prof. Westen is recipient of a 1981 Guggenheim Memorial Foundation Fellowship to explore the relationship between the law of contracts and the law of criminal punishment, specifically relating to plea bargaining. A major focus of the research, says Westen, is the apparent shift in law and morals from an emphasis on litigation to an emphasis on negotiation.

Westen comments: "The hypothesis underlying my inquiry is that while the law of contracts and the law of criminal punishment may merge in practice such as in the law governing the treatment of 'mistaken' plea bargains, the merger may be unstable, because the normative premises underlying negotiations may be fundamentally incompatible with the normative premises of punishment.

"The real problem, I believe, is that people sense that the morality of contractual negotiation is simply inconsistent with the morality of punishment. Successful negotiation is based on the assumption that the contracting parties are both free and equal—free in a sense of being able to accept or reject the offered terms of settlement; equal in the sense of having an identical voice in accepting or rejecting the agreement."

Westen continues: "Punishment, on the other hand, is premised on the assumption that the guilty defendant is neither free nor equal. Instead, the guilty defendant is an outcast, a person worthy of blame and deserving to be deprived of liberty. Put bluntly, punishment that is inflicted pursuant to a written and mutually negotiated agreement ceases to be 'punishment' as we understand it."

Prof. Philip Soper, under the auspices of the American Learned Society fellowship, is pursuing research concerning the relationship between legal and political theory; he is writing a book which probes "the obligation of theory and moral duty."

"I want to develop a systematic account of the idea of law that will help clarify the major philosophical issues that arise when one attempts to distinguish moral, coercive, and legal forms of social control," says Soper. He cites the problem in legal theory as "the increasing difficulty to explain how legal philosophy is relevant for those within the legal system such as the litigant and the prosecutor."

Soper observes that scholars usually write about either legal theory or political theory and rarely does a scholar attempt to treat political and legal theory within the same text, as Soper's work mandates. Analyzing the legal theory concern with "what is law" with the political theory concern...
Lee Bollinger

requireing legitimacy of the state obligation to obey the law. Soper states, "The view that I plan to develop straddles the gap that divides traditional positivist and natural law theories. I hope to demonstrate that the existence of a legal system is conceptually dependent on the good faith claim by officials that the system is just."

Prof. Lee Bollinger is a Rockefeller Foundation recipient for research on First Amendment freedom of speech and press issues. Bollinger's central thesis is that the inclination to approach issues through a constricted vision of a single model or paradigm must be avoided.

"The simple fact is that most First Amendment scholarship tends to be almost entirely derivative of the traditional model of analysis. With the extraordinary changes that are apparently soon to occur in our methods of communication, it seems especially important to rethink some of the critical assumptions which have been handed down to us."

Bollinger continues: "We tend to view our paradigmatic answers as permanent solutions. The better approach is to recognize that ambivalence has a positive role to play within the legal system; that it can lead to more creative solutions to our problems, and since it reflects our true feelings about many issues, ambivalence provides us with more persuasive, and therefore, more enduring resolutions of issues."

Prof. Bollinger sees a major research challenge in attempting a re-focus on the debate over whether people should be tolerant of extremely radical speech. Postulating that extreme, radical speech may be different from the speech protected by the First Amendment, Bollinger uses a theory of "ambivalence" to illustrate how certain recurring and unresolved speech and press issues could be effectively settled.—Laura R. Moseley

Journal Award Honors Two Legislators For Law Reform

Two Michigan legislators have been named the first recipients of the University of Michigan Journal of Law Reform Award for their contributions to law reform. The journal is a student scholarly publication at U-M Law School.

State Sen. Robert Vanderlaan (R-Kentwood), who helped amend Michigan's worker and

unemployment compensation acts, and state Rep. David C. Hollister (D-Lansing), who authored the Blue Cross/Blue Shield Reform Act of 1980, were chosen for the award by the editorial board of the journal.

The award was presented at a February banquet at the Lawyers Club. The journal, devoted to analyzing and reforming current legal thought, says it will present the award annually to "the person or persons who have contributed the most during that year to changes in the law."

Vanderlaan, the current Senate Republican minority leader and a 16-year Senate veteran, was a driving force behind passage of amendments to the state's worker disability compensation act this year. Reform of the worker and unemployment compensation laws has been a controversial political issue in Michigan for the past 10 years," according to the Journal of Law Reform.

"The amendments passed this year provide for several changes in the current law, including: a substantial weekly benefit increase and a significant retroactive benefit adjustment for disabled workers; higher eligibility standards for heart and mental disability; limited retiree eligibility; the exclusion of injuries resulting from social or recreational activities; and broader exemptions for family members and corporate officers or stockholders. The amendments also contain several provisions designed to streamline the appeals procedure to reduce existing backlog and minimize delay."

"The legislation is viewed by many as a major compromise between workers and employers, a compromise for which Vanderlaan is largely responsible."

Hollister, a third-term representative from the 57th district, "wrote and was the key mover behind legislation that reorganized Blue Cross/Blue Shield for the first time since the giant health care corporation was created in 1939. A complex and controversial piece of consumer legislation, the Blue Cross/Blue Shield Reform Act will directly affect 5.3 million Michigan Blue Cross/Blue Shield subscribers," says the Journal.

The legislation reduces the size of the governing board, makes consumer representatives a majority on the new board, and makes the new directors more accountable by requiring roll call votes and open meetings. The act also contains significant cost containment provisions and a mechanism for developing health planning and reimbursement, all of which have received national acclaim."