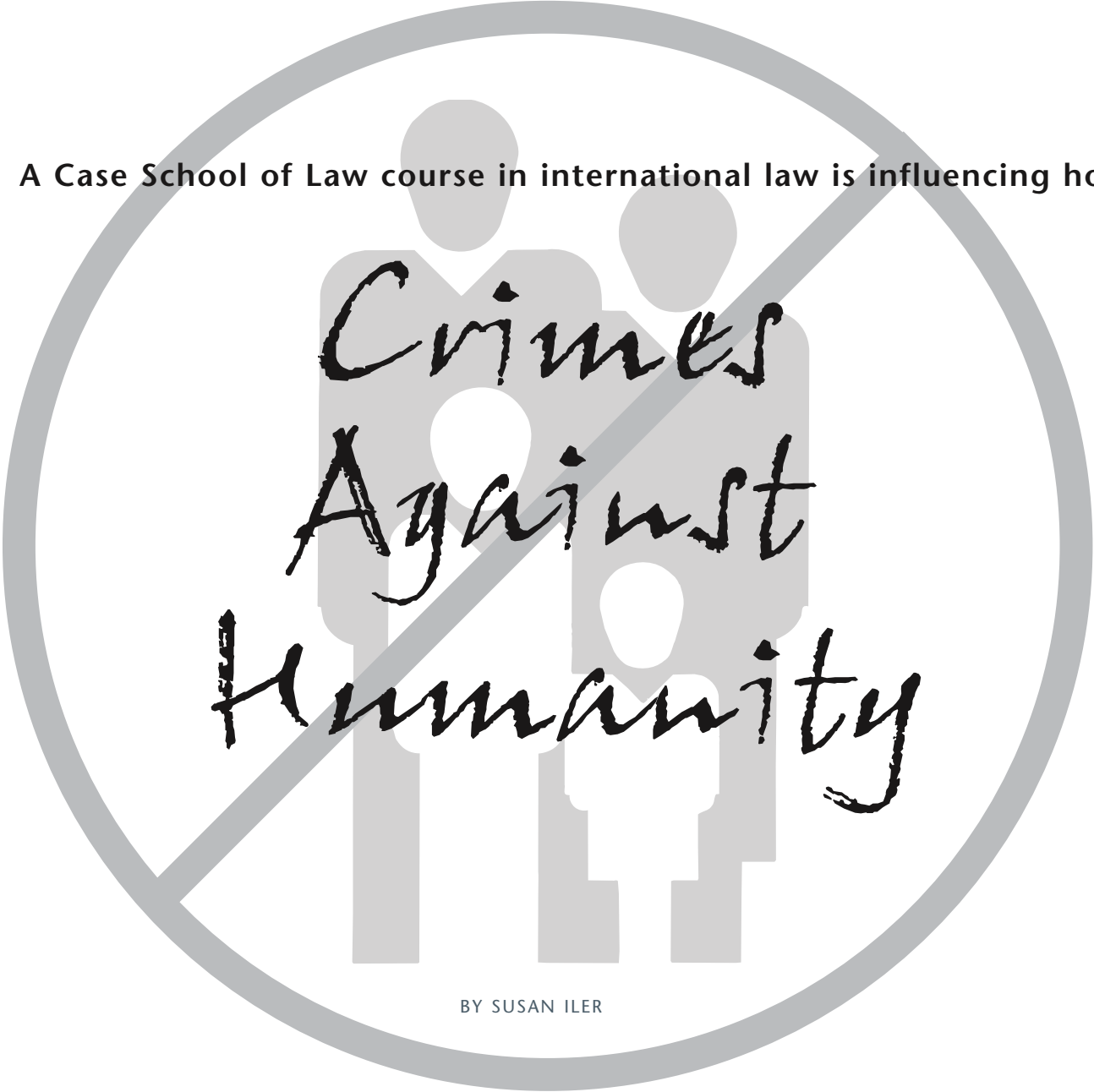


A Case School of Law course in international law is influencing how



*Crimes  
Against  
Humanity*

BY SUSAN ILER

## war crimes are prosecuted—and changing the lives of the students taking it.

It begins with a letter from Sierra Leone, Yugoslavia, Rwanda, or Baghdad. At first glance, the correspondence appears to be a simple list labeled “Research Issues.” But these issues are anything but simple. They represent the first step on a journey that will profoundly affect a group of Case Western Reserve University School of Law students and potentially influence war crimes prosecution throughout the world.

For the past two years, law professor Michael P. Scharf has used this correspondence as the basis for his War Crimes Research Lab. The lab is actually a semester-long class where students examine and write extensive research papers, or memoranda, for international war crimes tribunals. Each semester Prof. Scharf, who also is director of Case’s Frederick K. Cox International Law Center, receives letters from prosecutors worldwide requesting help in researching legal issues that are integral to their work. These prosecutors are building cases against some of the most notorious war criminals in the world, but must do so with limited resources, small staffs, and little access to research sources.

This inadequate work environment is frustrating to prosecutors, yet it presents an extraordinary opportunity for Case law students to work in the arena of international law.

“Students spend all semester writing lengthy memoranda that address very precise questions pending before the tribunals,” says Prof. Scharf. “Prosecutors usually get these memoranda in time to fold them into their legal arguments.”

These memoranda are written exclusively for the prosecutor, which distinguishes them from amicus briefs that are given to a court in a domestic proceeding. “It’s unlike any other paper in any other class because you actually have a client. And it’s not just any client; it’s the United Nations, or Iraq, or Rwanda,” says Christopher Rassi (CWR ’00; GRS ’00; political science, MGT and LAW ’03), a former student in the lab and deputy director of the Cox Center’s International War Crimes Research Office.

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– Michael Scharf

International war crimes prosecution has a relatively short modern history, and for that reason the practice is still evolving. But the necessity is clear. “People have to accept things that you can’t even wrap your head around. When you talk about a million deaths, it seems unreal,” says Prof. Scharf. He explains that tribunals and international courts provide a forum for exhaustive, meticulous vetting where the documentation of crimes and the testimony of victims becomes an irrefutable historical record.

“Very few people question the Holocaust, in large part because you have thirty-two volumes of testimony,” he says. “The documents that were produced by Nuremberg are in every law school in the world, including our own.”



Keen observers: Michael Scharf and Christopher Rassi listen to a student’s presentation.

This enormous documentation requires resources that are scarce in countries struggling to rebuild after decades of civil war. “Prosecutors spend a lot of time collecting evidence and preparing for trials. Superb defense lawyers will pepper the tribunal with innovative, creative defense motions,” Prof. Scharf says. Responding to these issues will transform nearly twenty lab students each semester into seasoned specialists in international law research.

## Research Origins

As one of the nation’s leading experts in the field of international criminal law, Prof. Scharf’s career has taken him from the U.S. Department of State to the United Nations General Assembly,

and onto a multinational team that created the first international criminal tribunal since Nuremberg.

That assignment involved drafting the statute and rules of procedure for the International Criminal Tribunal for the former Yugoslavia, the court that is currently prosecuting Slobodan

Milosevic, former Yugoslavian leader charged with genocide and crimes against humanity. Recently, Prof. Scharf and an international group of experts trained newly appointed judges of the Iraqi Special Tribunal.

However, it was at a conference in Italy that his concept for the War Crimes Research Lab was born. As attendees were shuttled from their hotel to the conference site, Prof. Scharf found himself regularly sitting next to Richard Gladstone, the chief prosecutor of the Yugoslavia Tribunal. Each day’s bus ride brought new opportunities to talk about the tribunal’s overwhelming workload. Prof. Scharf suggested that his students might be able to supplement Mr. Gladstone’s understaffed office. At the time, Prof. Scharf was a law professor at New England School of Law in Boston, and director of the New England Center for International Law and Policy.

“I suggested that our law students could write legal memoranda on the issues that are very difficult for prosecutors to research, and, in addition, give them copies of every source cited, which is probably worth even more than the memoranda.”

When he became director of the Cox Center in 2002, Prof. Scharf saw an opportunity to expand the program. “The resources here at Case are so much more expansive and the quality of the students is so much better that we quickly proliferated. Now we assist the Rwanda Tribunal and the



Special Court for Sierra Leone,” he says. Recent conversations with the U.S. Department of Justice and the International Criminal Court (ICC) have led to agreements to work on issues for the Iraqi Tribunal and the ICC. The Case School of Law is currently the only law school in the world that works with all the tribunals now in existence.

this distinction, the court might also declare arranged marriage a war crime, and that is something the prosecutor did not want.

Ms. Mattler found it difficult to define the cultural norm of arranged marriage in legal terms. After exhausting traditional legal research methods, she consulted Prof. Scharf. “Prof. Scharf didn’t point me to law journals

or texts. Instead, he pointed me to the associate dean of our law school, Hiram Chodosh. He is an expert in the law of India, which is a country where arranged marriage is a common custom,” Ms. Mattler says. Once completed, her memorandum cited sections from more than thirty-five resources including Catholic Canon Law, Islamic Law, and the Hindu Marriage Act of 1955.

In addition to opening up a career path that she had previously deemed closed, Ms. Mattler found her work in the lab rewarding. Many of the women who were victims of forced marriage in Sierra Leone have remained with their captors rather than face life branded as a victim of rape, which carries strong social repercussions. If the courts eventually classify forced marriage as a crime against humanity, Ms. Mattler hopes blame can then be shifted to the perpetrator. This might remove the stigma from these women and give them the courage to leave.

### Amicus curiae

“Working with international tribunals seemed like a dream job and it didn’t seem practical,” says Suzanne Mattler, now in her second year of law school.

As a student in the War Crimes Research Lab, Ms. Mattler researched the viability of declaring forced marriage a crime against humanity for the Special Court of Sierra Leone, established in 2002 to prosecute crimes committed during that country’s civil war. Her issue had an unusual stipulation: She needed to create a clear distinction between the custom of arranged marriage and the crime of forced marriage. Without



State their case: Pallavi Chintapalli (top left) and Shaylor Steele (above) field questions as they present their researched issues to the class. Ms. Chintapalli is next to the table holding final drafts of memoranda collected from each student.

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“That is what is really thrilling about this class,” she says. “In domestic law, your work is very pragmatic. You’re affecting one client at a time. In international criminal law, you can help a lot of people by making sweeping changes. You can make a big splash.”

The ripple effect of these memoranda has now extended past the individual tribunals for which they were originally intended. In spring 2004, Prof. Scharf created the Cox International Law Center’s War Crimes Research Portal, a website at [www.law.case.edu/war-crimes-research-portal](http://www.law.case.edu/war-crimes-research-portal), which provides unprecedented access to resources and tools for researching international crime.

At the heart of that website are more than 120 memoranda produced by law students at Case and the New England School of Law. Portal resources

also include a research guide to international law and tribunals, instant analysis articles written each month by members of the American Branch of the International Association of Penal Law, and more than 1,000 links to websites related to international humanitarian law.

Some tribunals prefer to have memoranda kept within the prosecutor’s office and ask to have these documents excluded from the website for at least a year. A memorandum by Christopher McLaughlin (LAW ’04) fell into that category. He produced a memo for the Court of Sierra Leone that explored the status of United Nations peacekeepers and their rights to protection under international law. Mr. McLaughlin saw his role as one of researcher and predictor of any counterattack the prosecutor might

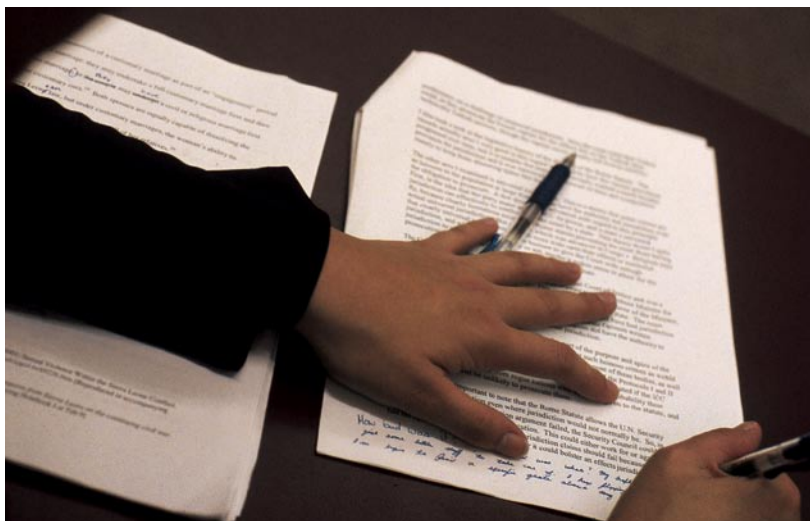
face when arguing the issue before the court.

Mr. McLaughlin considers the War Crimes Research Lab one of the most fulfilling courses he took in law school. “In most law school courses, you’re learning the law and theory, but you’re not actually writing a memo to somebody who’s out there prosecuting war criminals.”

Armed with this experience, many students have gone on to work in the global community. “One of the beautiful things about the lab is that, after the students do a project, they are known to the tribunal and the tribunals are very excited to have them come and work as interns,” says Prof. Scharf.

Christopher Rassi is one of those students whose work in the lab led to extraordinary postgraduate placements. While a law student, he submitted a memorandum to the International Criminal Tribunal for Rwanda in 2002. His issue raised the legitimacy of surrendering to the U.N. an accused war criminal who emigrated to the United States seven years before his indictment. Mr. Rassi completed his memorandum in fall 2002. The court ruled on the issue the following spring.

Ultimately, Mr. Rassi’s work led to two internships at international courts. He was a law clerk at the Appeals Chamber of the International Criminal Tribunal for the former



Yugoslavia and Rwanda at the Hague, and then took a similar position in the Constitutional Court of South Africa in Johannesburg.

It was at the Hague where Mr. Rassi saw his student memorandum come full circle. Just before beginning his clerkship at the Appeals Chamber, he received a call from the court's legal

officer. "They contacted me to make sure I was up to speed on the memo I wrote in law school. The original ruling from 2003 had just been appealed, and the judge I planned to work with would be hearing the appeal," he explains. Remarkably, Mr. Rassi's student memorandum became his first assignment

as a law clerk in an international tribunal appeals court. (As of this printing, the Appeals Chamber had not made a judgment on the appeal.)

Since returning to the states, Mr. Rassi has joined the Cleveland law office of Thompson Hine LLP as an associate. He also continues as a co-instructor with Prof. Scharf in the War Crimes Research Lab, where he is able to witness, from a new perspective, the enormous growth each student experiences.

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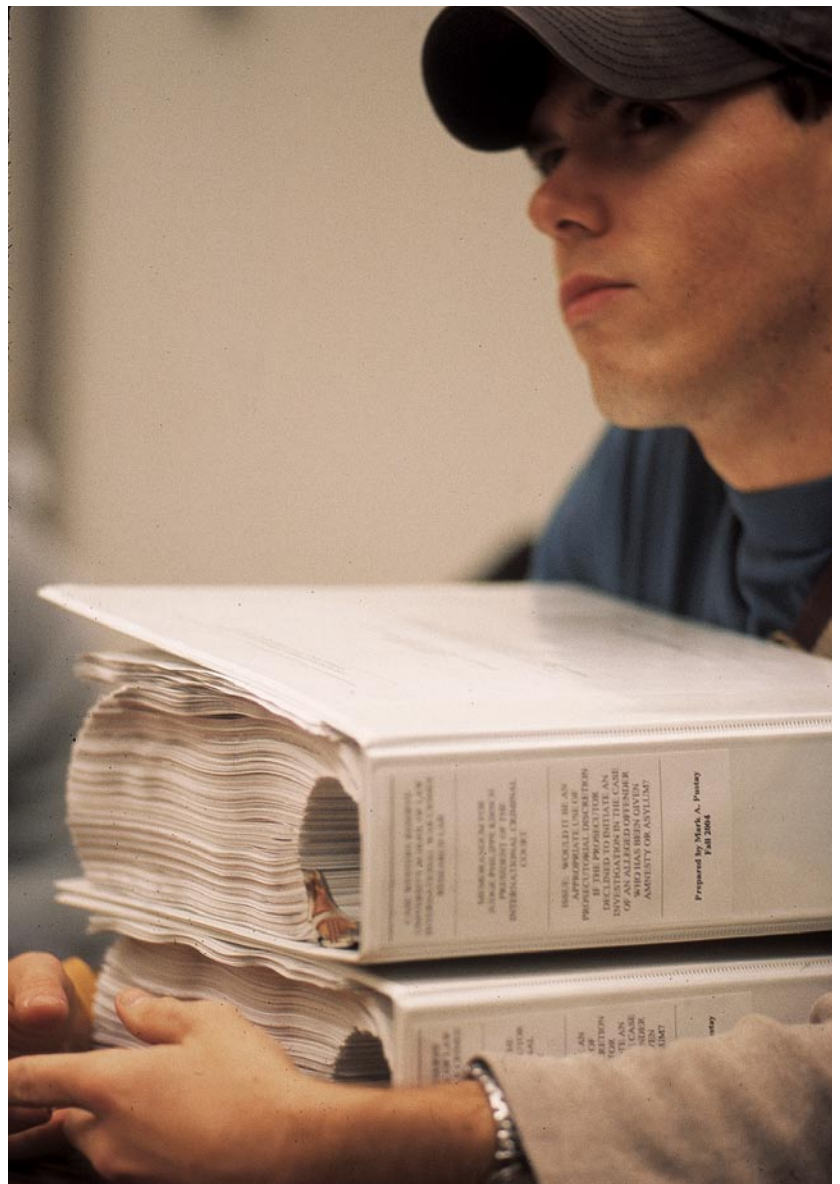
Prof. Scharf agrees that students find this class to be one of the most

important they'll take in law school. "Students feel like they are really a part of history and they are." ☒

*Susan Iler is a communications writer in the Office of University Marketing and Communications.*

*Read Christopher Rassi's essay, "My South African Safari," in this issue of Case Magazine online, [www.case.edu/pubs/casemagazine](http://www.case.edu/pubs/casemagazine).*

PHOTOGRAPHY BY JANET CENTURY



Semester's bounty: Mark Pustay with his two completed memoranda and his research