The Law School Record is published twice a year, spring and fall, for graduates, students, and friends of the University of Chicago Law School, 1111 East 60th Street, Chicago, Illinois 60637. Copyright ©1982 by The University of Chicago Law School. Changes of address should be sent to the Office of Alumni Relations and Development at the Law School. Telephone (312) 753-2408. Copies of The Law School Record are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209, to whom inquiries should be addressed. Current issues are also available on subscription from William S. Hein & Co.

Editor
Marilyn Locker

Assistant Dean for Alumni Relations and Development
Holly C. Davis

Cover Photo
The Harold J. Green Lounge, by Michael P. Weinstein. Last spring, new furniture, more conducive to conversation, replaced the original furniture in the Lounge. Refurbishing of the Lounge was made possible by a contribution from Harold J. Green (J.D., 1928) and by donations to the annual Fund for the Law School.

Photo Credits
Susan C. Green and Dennis R. Wheaton, pages 1, 18 (top), 20, 23 (top). Wide World Photos, pages 3, 6. Susan C. Green, pages 15, 16, 18 (bottom), 19.

The Air Controllers and Strikes against the Government ........... 2
Bernard D. Meltzer

The Flügeladjutant Revisited ........................................ 6

William Crosskey’s Politics and the Constitution, Volume 3 .... 9
Stanley N. Katz

Lawrence Rosen: Taking the Road Less Traveled By .............. 12

Memoranda ......................................................... 14

Alumni Notes .................................................... 19
The Air Controllers and Strikes against the Government

Bernard D. Meltzer

On August 3, the Professional Air Traffic Controllers Organization (PATCO) launched the first completely nationwide strike in history against the federal government. That strike, and the administration's stern response, have stirred larger issues: the role and limits of law and civil disobedience; the balance between compassion for individual offenders and the need for measures supporting the structure of law. Those issues seem also to be interwoven with basic and troubling questions as to the right policies for strikes in the public sector.

In the private sector, strikes, despite their costs, are generally accepted as necessary for a private bargaining system. The right to strike in the private sector is also a symbol of civil liberty—a symbol recently strengthened, for many, by the experience of Solidarity in Poland.

The prevailing policy against strikes by governmental employees thus generates doubts about the fairness, as well as the feasibility, of the prohibition. Why, some may ask, should strikes by air controllers, who work for the government, be criminal, while equally disruptive strikes by airplane pilots, who work for privately owned companies, be protected by law?

The answer lies in the sharply different framework for determining compensation in the private and public sectors. In the private sector, the bundle of employee benefits is shaped by two important economic elements: first, the employer's countervailing power—for example, to lock out employees and to suspend operations, or to go out of business; and second, market forces reflecting the link among costs, prices, output, and employment. High wages, secured by the exercise of union power, may result in higher prices, which may lead to changes in methods of production, and replacement of high-cost suppliers with lower-cost foreign and domestic competitors. The effectiveness of such restraints has, of course, been questioned for some parts of the private sector in which collective bargaining (along with other factors, including managerial performance) appears to have contributed to the decline of formerly strong industries, such as steel and autos. But, in general, these market restraints serve to make the private sector quite different from the public sector.

In the public sector, such direct economic restraints are virtually inoperative. Many important services—for example, education and police protection—are free of price to the consumer. Furthermore, costs of services are typically buried in complex budgets, which taxpayers can rarely master. Consequently, in the public sector, budgetary and taxing decisions by legislatures, rather than market forces, are the dominant fac-
tors in employee compensation.

In making such determinations, legislatures respond to their constituents, including public employee unions. Frequently such unions, because they can “reward their friends and punish their enemies” at the ballot box, have substantial political leverage. Incidentally, such leverage in a democracy also serves to distinguish the situation of American unions from that of Solidarity.

It is true that recently the leverage of public sector unions has been reduced by constitutional restraints on the taxing power, such as Proposition 13 in California and Proposition 2½ in Massachusetts. Furthermore, taxpayers’ revolts, actual or threatened, are now encouraging budgetary restraint even when it is not constitutionally mandated. Nevertheless, citizens, through constitutional amendments or the political process, cannot achieve the same kind of pinpointed adjustments that are open to consumers under the price system. Constitutional or political limits on taxation may place a ceiling on public spending, but they do not enable the citizen to have tax expenditures directly reflect his judgment regarding the benefits of particular goods, or service publicly supplied, such as education, police protection, or welfare.

Reflecting and supplementing these differences between the public and private sectors is the traditional concern that strikes by public employees, because their services are usually essential, would inflict substantial harm on the community and would give those employees undue power.

Arguments for a blanket ban against public employee strikes have not, however, been universally persuasive, and a few states in our country, and many jurisdictions in Canada, allow some public employees to strike. Proponents of more limited strike bans suggest that the services of many public employees are not essential and that these employees should be permitted to strike.

But distinguishing between essential and nonessential employees would be difficult, indeed. For example, how should we here in Chicago classify strikes by schoolteachers or sanitation workers after a day, a week, a month? Furthermore, if only a small number of employees were considered nonessential and allowed to strike, the law might, as George Taylor said, be considered a hoax. Finally, if strikes by nonessential employees were lawful, a ban on strikes by essential employees would be more difficult to enforce. If groundskeepers or teachers, deemed nonessential, appear to be getting more because of strikes, police and fire fighters are also likely to be attracted to strikes—a more powerful weapon in their hands.

Whatever may be the right policy for public-employee strikes, the immediately dominating point is that the air controllers violated both the antistrike oath (which virtually all government employees take) and the federal law making it a crime to strike against the federal government. That point shaped the government’s pre-strike warnings of no amnesty, its tough response to the strike, and the widespread public support that emerged from the government’s action.

PATCO’s strike seems to have been not only a deliberate crime, but also a grave blunder, based on a miscalculation of the union’s power, the government’s resolution, and its contingency plan. Past practices of
both state and federal governments appear to have contributed to that miscalculation. The federal government had temporized with local “job actions” by air controllers, among other employees. State governments had tolerated even more extensive defiance of state antistrike laws and injunctions. Perhaps, PATCO had concluded from such toothless enforcement that the federal prohibition had been subject to de facto repeal and that the antistrike oath could be dismissed as an empty ritual.

That conclusion may have been tied to PATCO’s apparent conviction that its strike would bring air traffic to a virtual standstill, would plunge some airlines into bankruptcy, and would force the government to give in. Perhaps, PATCO also believed that the FAA’s unfairness and intransigence were so intolerable as to justify desperate measures.

Such charges of unfairness are, of course, common in labor-management disputes, particularly those involving illegal activity. There are special grounds for skepticism in this case. After all, PATCO President Robert Poli had found, or at least implied, that the FAA’s pre-strike proposal was worthy of submission for a vote by the membership. In addition, the Federal Labor Relations Authority has rejected, as unproven, the only charge of the FAA’s refusal to bargain in good faith, filed by PATCO after the strike.

Finally, PATCO has not explained why it did not go again to Congress—the ultimate arbiter of the controllers’ employment conditions—or why it did not make more use of the grievance procedure to protest alleged maladministration of the previous contract, or why it did not bring into play the statutory impasse procedures before confronting the government with a three-day ultimatum.

In this connection, it is significant that Mr. Poli, appearing before a congressional committee on September 30, 1980, voiced many complaints about the controllers’ working conditions but reaffirmed his previous declarations that there would not be a strike “next year.” He also said that he would recommend legislation, that PATCO’s strike fund would not be used until a strike was legal, and that any striking local would be placed in trusteeship.

Secretary of Transportation Drew Lewis has acknowledged that the controllers have legitimate grievances, but legitimate job grievances are staples of the human condition and not a justification for anarchy. (An administrative law judge has endorsed the merit of the government’s petition.) The Department of Justice brought into play a whole arsenal of legal weapons—actions for injunctions, for contempt of court leading to fines and jail sentences, for attachment of union funds, and grand jury indictments. The government also discharged most of the strikers, and President Reagan declared them ineligible for future federal employment. (This declaration was within his discretion, but he apparently has authority to lift or narrow it.) The discharges, as well as the presidential ultimatum of only two days, have been criticized as unduly severe and hasty.

These measures naturally left in their wake personal tragedies for thousands of controllers. Furthermore, there were spillover effects on nonstriking employees, whose jobs have been curtailed or suspended because of reduced air operations. Finally, the country has suffered, and will continue to suffer, substantial costs and economic losses while new controllers are trained.

There have been suggestions that even now compassion and compromise could avoid further losses for the controllers and the country, presumably by a broad grant of amnesty to strikers. But it is by now hard to devise a formula that would accomplish those appealing purposes without serious damage to President Reagan’s credibility both here and abroad and to the antistrike law.

There is also a quixotic aspect to suggestions, such as that made by the New York Times, that the president, having shown his strength, should now show his compassion. If, however, the government’s position had been weak, there presumably would have been suggestions for “flexibility” in order to save the country from ruin. If both those views are accepted, the government, whether strong or weak, is in a no-win situation in trying not to undercut the antistrike policy through reemployment of strikers.

Reemployment of the strikers would also raise a cluster of thorny,
job-related difficulties. How much friction would there be between ex-strikers, strikebreakers, and replacements, and what would be the likely effects on the safety of the system? What of relative seniority rights? Plainly difficult issues of fair treatment for strike replacements and controller-trainees might be posed by the reinstatement of large numbers of ex-strikers. Nevertheless, the foregoing difficulties presumably would be manageable if there were a formula that would protect the general interest in the president's credibility and the structure of law.

There have also been suggestions that once again we should look to the courts to get the controllers as well as the country off the hook. One suggestion is that the courts should invalidate the antistrike statute as repugnant to the Constitution. This claim of unconstitutionality is, however, an empty one. Under the Supreme Court's precedents, even private sector employees do not have a constitutionally protected right to strike. They do have a right as individuals to quit their jobs, but that right is not to be confused with concerted walkouts to get better terms. The public sector precedents also indicate that the federal antistrike law is constitutional; they do not suggest the anomalous result of giving governmental employees a constitutional right to strike that has not been recognized in the private sector.

Such constitutional protection would, moreover, run against the grain of our culture. The proscription against strikes by public employees has been retained by most states, although with indifferent enforcement. Furthermore, in 1955, when Congress reenacted the federal strike ban, all of the union leaders who testified endorsed it. Similarly, the Civil Service Reform Act of 1978 reaffirmed that strikes against the federal government would be unfair labor practices even though the antistrike policy had been questioned in congressional hearings. And earlier, President Franklin D. Roosevelt endorsed an antistrike policy with these still timely words: "I want to emphasize my conviction that militant tactics have no place in the function of any organization of government employees. . . . A strike of public employees manifests nothing less than intent on their part to prevent or obstruct the operations of government until their demands are satisfied. Such action, looking to the paralysis of government by those who have sworn to support it, is unthinkable and intolerable."

The claim of unconstitutionality of the antistrike law has no basis in precedent, in history, or in the prevailing values of our society.

The administration now seems to be trying to dig beneath the legalities and to investigate and to correct deficiencies in the controllers' working conditions (broadly conceived). It is good news that, for those purposes, the FAA recently established a highly qualified task force. It is too bad, however, that the panel does not seem to have a member specially identified with "labor" and knowledgeable about labor-management relations. Such a participant might improve communication between the administration and labor unions, both public and private. More specifically, he might well underscore these points: First, an antistrike policy is likely to impose very high social costs unless the employees involved generally understand that policy and consider it justified. Second, the existence of orderly channels for voicing employee concerns, as well as employee perceptions regarding the openness of those channels, will help achieve widespread employee acceptance of and compliance with a strike ban. Third, such compliance is, however, likely to be obstructed if members of the political establishment engage in blanket indictments of federal employees as lazy, overpaid, crooked red-tape artists—a general characterization that is, in my experience, wholly unjustified. Fourth, enforcing the federal antistrike law should not be viewed as an effort to undermine unions, in the public or private sector. On the contrary, such enforcement is wholly compatible with the law that protects unions while also seeking to safeguard the community—for instance, by providing for injunctions against private-sector strikes that create national emergencies.

That point about the community is sometimes lost because of a tendency in some quarters to convert lawless action into a "basic right" or a "civil liberty" if enough people engage in it. Naturally, the more lawbreakers there are, the harder it is for authority to protect society. But no elaborate argument is needed to show that villains do not become heroes just because there are lots of them.

The large number of controllers involved and the difficulties of replacing them bear on the costs and the feasibility of enforcing an antistrike policy in the public sector. In the aftermath of this strike, the short-term costs of such enforcement are pain­fully clear while its benefits are indirect, subtle, and long-term.

Nevertheless, public support for President Reagan's decisive action appears presently to have strengthened the federal antistrike policy. But the situation is fluid, and if the costs increase significantly, cries of overkill and union busting will probably grow louder. Such charges, however, miss the mark insofar as they rely on the costs involved to justify reinstatement of the strikers.

Surely, the controllers should not be given absolution because they have inflicted the kind of damage that the antistrike law was designed to avoid. Furthermore, the defense of the antistrike policy, like the defense of the democratic system, will inescapably involve substantial costs.

To paraphrase Winston Churchill on democracy, that policy is far from perfect; it may be the worst form of policy, except for all those other forms that have been tried from time to time.
The Flügeladjutant Revisited

In a recent case (Pevsner v. Comr. 49 LW 2299), the manager of a boutique that sells exclusively clothes and accessories designed by Yves St. Laurent, and who was required to wear YSL clothes at work, claimed a business expense deduction for the cost of the clothing. She maintained that although her employer did not prohibit her from wearing the clothes outside of work, she never did so because they were inconsistent with her simple, everyday life style and because she wanted the clothes to last longer.

Section 566.1 of the Internal Revenue Code establishes that the cost of clothing is deductible as a business expense only if the clothing (1) is of a type specifically required as a condition of employment, (2) is not adaptable to general use as ordinary clothing, and (3) is not so worn. The Tax Court, reasoning that the clothing was not suitable to the private life style of the taxpayer, upheld her claim. On an appeal by the Commissioner of Internal Revenue, however, the U.S. Court of Appeals for the Fifth Circuit, applying an objective test, reversed the Tax Court's decision and disallowed the deduction.

This case prompted a Law School alumnus to initiate the following exchange of letters, which we offer our readers as examples of the legal mind at work.

Robert N. Kharasch ('51) to Professor Walter J. Blum, November 21, 1980, re: taxation of flugeladjutants (perhaps spelled flugeladjutants)

Dear Professor Blum:

An education at the University of Chicago is held out as preparing one for life in general. A legal education at the Law School is similarly tendered as preparing one for life as a lawyer. Still, a student is not entitled to assume positive guidance in every detail of his future career.

Notwithstanding this limitation, 49 LW 2299 (enclosed) reports a Fifth Circuit decision in Pevsner v. United States, where the facts are precisely those you laid out in your course in taxation some 30 years ago. If memory serves, your problem was whether an imperial aide who hated opera could be taxed on the value of admission to performances he attended and suffered through.

So, in Pevsner, the hapless boutique manager was forced to buy $20,000 a year of Yves St. Laurent clothing, all inappropriate to her "simple life style." (I think I know this woman.) Held: no deduction.

I submit that one (or all) of the following must be true: (a) The boutique manager is a transvestite flugeladjutant (or flugeladjutant?). (b) The boutique manager is a student of Professor W. Blum. (c) The boutique manager is Professor W. Blum. (d) The entire lawsuit was cooked up to serve as a footnote to Professor Yves St. Blum's forthcoming text: "The Uneasy Case for Progressive Designer Jeans."

This leaves only:

The adjutant(fugel) was glum.
His tax was a very large sum.
He cried "Damn and Hell."
"I hate YSL.
"I'll sue, and I'll quote Wally Blum!"

Yours respectfully,
Bob

Charles Ephraim ('51) to Professor Blum, November 25, 1980, re: Kharasch on Blum

Dear Wally:

I respectfully dissent from the opinions expressed in Bob Kharasch's letter to you of November 21. Not all of
us of the class of '51 have lost our memories or legal acumen. The case of Pevsner v. Commissioner, 49 LW 2299, is inconsistent neither with your teachings nor with those of Henry Simon (from whom, if recollection serves me correctly, the flugeladjutant example came). In the flugeladjutant case the issue was whether to attribute taxable income to the opera hater. In Pevsner, the lady was seeking allowance of a business deduction from otherwise taxable income. The cases would only be comparable if the YSL clothing had been supplied free by the boutique and only for use while working. Obviously, both the boutique (which could have reduced her annual compensation by as much as $20,000) and the lady were not advised by one of your good students. However, even that approach may not be successful if the lady continues with her incredible tale that one of the reasons for not wearing the clothes outside her work was because "she wanted the clothes to last longer." As any "smart" woman knows, YSL clothes go out of fashion before they wear out.

Accordingly,

Clothes the lady wears in the store
Have nothing to do with Herr Blum.
If her lawyer had not been so dumb
She'd be richer than ever before.

Personal regards,
Chuck

The Honorable Abner J. Mikva ('51) to Professor Blum, November 25, 1980, re: taxation of flugeladjutants and the attack on circuit judges

Dear Professor Blum:
I am in receipt of a copy of a letter from a former student of yours concerning the well-known case of Pevsner v. Commissioner (hereinafter called the Commissioner case). Your former student attacks the clear objectivity of the case because he is a well-known speed reader who missed the crucial sentence in the case. The court makes clear that it denied the deduction because there was "no concrete . . . in . . . the . . . clothing purchased as a condition of employment." Certainly someone growing up in Chicago should have understood the important distinction that the court was drawing between casual clothing and clothing really necessary to do a job. With that distinction in mind, the case is easily reconciled with that of the flugeladjutant who did not like Italian operas.

To sum up my view on the Commissioner case, I would say:

The senior partner was wrong to lament
That the judges were slightly dement.
Where they drew the line,
A deduction was fine
If Laurent made shoes of cement.

Sincerely,
Ab Mikva

P.S. Wouldn't you think lawyers would have something better to do than go around reading advance sheets?

Professor Blum to Judge Mikva and Messrs. Kharasch and Ephraim, December 3, 1980, re: the Flugeladjutant revisited

Dear Former Students:
My resources have been much enriched by your efforts to bring the Flugeladjutant analysis to bear on the Pevsner situation. I first became interested in Flugeladjutants when drinking National Premium beer in 1939 with Henry Simons in Hanley's Tavern on 55th Street near Harper (where later, by the way, I first met my spouse); and that interest was greatly enhanced in the late 1940s when Harry Kalven (who was then experiencing some difficulties regarding his veteran's benefits) learned that the reigning adjutant at the Fifth Army Headquarters (then located at 51st Street and Hyde Park Boulevard) was named Flugel (so help me!). The two of us often wondered aloud whether he was indeed addressed as "Adjutant Flugel."

In my early encounters with the famous Kleinwachtler Flugeladjutant conundrum, I assumed the key to the problem was buried in the fact that attending the opera was not a necessity of life. You might think that the Pevsner puzzle is different not only because she bought the clothes, whereas the Flugeladjutant was taken to the opera by his "employer," but also because clothes are a necessity rather than a discretionary consumption item. Perhaps you would be right in making this latter observation about our society, although I submit that, today, in some quarters clothes are not regarded as necessary at all.

Anyhow, in understanding the Flugeladjutant dilemma, the point seems to cut the other way. Recent sociological research seems to confirm that in old Vienna, when the Flugeladjutant was at the height of his career, being seen at the opera was ranked as a necessity—second to no other. Indeed, many a knowing native went without his Kaffee mit Schlag or his dobisch Torte in order to afford being present at a performance of Der Rosenkavalier.

All this is to suggest that, in the old days, Herr Flugeladjutant and Ms. Pevsner would have been considered by the tax pundits to be in equivalent circumstances. Thus if the Flugeladjutant had been put upon to buy his own ticket to the opera, he would have been denied a tax deduction no matter how much he detested Strauss schmaltz!

In a word:

Though for Flugeladjutants in the glorious years
The opera was the place to be seen,
In modern Dallas the relevant question is—
Does the end always justify the jen?

Sincerely,
Walter Blum

Dean Gerhard Casper to Messrs. Blum, Ephraim, and Kharasch and Judge Mikva, December 4, 1980, in re: their learned discussion of a subtle tax problem

Gentlemen:
Copies of your correspondence concerning the Pevsner puzzle (as distinguished from the Pevsner sculpture which
is located in Loch Levi in front of the Law School Library) have just come to my attention. Your exchanges reminded me of the famous definition of metaphysics—hunting for a nonexistent black cat in a dark room and catching it.

I am writing you in my official capacity as Dean because, frankly, I am shocked by the fact that distinguished graduates of the Law School, as well as a named professor at the Law School, do not know how to spell. There is no such thing as a “Fugeladjutant” (Kharasch and Mikva), “Flugeladjutant” (Kharasch’s alternative spelling), “flugeladjutant” (Ephraim), or “Flugeladjutant” (Blum). As so often, Professor Blum comes closest to the truth, but he too misses. The correct spelling is Flügeladjutant. If your typewriters do not have an umlaut, the two dots could easily have been filled in by hand. It is also an accepted convention to use the quote sign (Flügeladjutant), or replace the umlaut by an e following the u (Flügeladjutant).

For the first time I am glad that President Gray appointed a native German speaker as Dean of The Law School because otherwise your errors would have gone uncorrected.

Sincerely,
Gerhard Casper

Ex Parte Blum

The Bailiff:
Oyez! Sound this High Court’s bugle! The Court will now proceed to fugle (i.e., to motion, signal, wave). Sit down! Be still! Shut up! Behave!

The Court:
Listen up! We’ll give you learned quotes, A seamless web with sharp footnotes, A fine display of courtly capers. (We’ve even read the parties’ papers.)

Dean Casper claims a German source And auf Deutsch, two dots, of course. While appellees, a plainer sort, Would plead in English in this Court.

The Dean:
Is das nicht ein fugleadjutant? Nein! das ist ein Flügeladjutant.
Ein flugeladjutant?
Nein! Flugeladjutant!

For the ’51 Appellees
(Ephraim on the brief):
Be pleased the Court, in English prose, What Webster says, that’s how it goes. Great Webster says you spell it fugle Or maybe flugel (but see fugle).

So gaze not on the Flügelfrau. Plain fugle’s happiness etow. Stick to the plain old Anglo-Saxon. That’s what the IRS must tax on.

The Court:
This court its views will now deliver (You well may say, that ain’t chopped liver). We hold that in judicial eye To fugle is a verb (v.i.).

From fugle verb comes fugler noun. To fugle, you wave up and down, If fugleadj. or fugleman (Let others fugle if they can).

So, Good Dean Casper, here’s a wrench Before this bar (not flügelbench). Our brother Mikva’s always right, We buy from Kharasch Webster’s cite.

Our bosoms swell with U.S. pride, And the writ to umlaut is: denied.

Respectfully submitted,
Robert N. Kharasch

P.S. If there is any reply to this I will opine on fugu (see note 1).

Fugu,
RNK

fu’gler (fo’gler), n. Something serving as a model or sign.

fu’gu (fo’go’), n. [Jap.] A species of the fish Tetraodon, certain parts of which contain a poison. Japan.

"Flii’gel horn (flii’gel-horn), n. [G.] Music a A keyed bugle. b A brass wind instrument with cupped mouthpiece, similar to the saxhorn. The B-flat Flügelhorn often replaces some of the B-flat cornets in large bands.

fu’gler-man (fo’gler-man), n.: pl. -MEN (-mën). Also fu’gel-man (floo’g-l-man), also flügelman (floo’g-l-man). [G. flügelmann file leader, fr. flügel wing (akin to E. fly, v.) + mann man. Cf. FLUGELMAN.] 1. Mil. A trained soldier formerly stationed in front of a military company as a guide for the others in their exercises; a file leader. Now Rare. 2. Hence, one who leads by example; a model.


If rugged independence, bordering on iconoclasm, is the hallmark of scholarship at the University of Chicago Law School, then William Winslow Crosskey fits the mold. It is hard to imagine any other way in which Professor Crosskey might be thought typical.

Unfortunately, Crosskey's star is brightest for those who were his students at the Law School in the forties and fifties. In recent years his name has been most closely associated with the Crosskey Lectures rather than with his personal scholarship. Those outlanders, even scholars, who remember *Politics and the Constitution* tend to think of that great work as having been demolished by its critics. Few books, after all, have been attacked at such length and with such


Stanley Katz is the Class of 1921 Bicentennial Professor of the History of American Law and Liberty at Princeton University. He was formerly Professor of Legal History at the Law School and Associate Dean. During 1981-82 Mr. Katz is on leave from Princeton at the Institute for Advanced Study. He is a member of the Permanent Committee on the Oliver Wendell Holmes Devise and coeditis, with Paul Freund, the *OWHD History of the U.S. Supreme Court.*
"Politics and the Constitution is, in fact, the most devastating historical response to President Reagan's inaugural contention that the states are superior to the nation. The irony may well be that Crosskey's fame will be secured by his posthumous participation in a debate he could not have anticipated."

unanimity and passion. The sad truth is that Crosskey has been honored mainly by neglect; that is likely to change with the recent publication of the third volume of his masterwork. Crosskey left behind, at the time of his death in 1968, a substantially complete draft of what is, chronologically, the first volume of the series. The new volume, volume 3, The Political Background of the Federal Convention, covers the political history of the 1780s prior to the Constitutional Convention of 1787. An as yet unpublished volume will cover the proceedings of the Convention itself. Both posthumous volumes are therefore essential fragments of the historical argument for the Crosskey thesis that the Framers of the Constitution intended to create a unitary national government dominated by the legislative branch. Although the argument cannot be evaluated fully until Crosskey's analysis of the Convention is set before us, the structure of the supporting evidence is considerably clarified by the bold contours of the newly published volume.

Volume 3 has been completed and prepared for publication by Crosskey's former student William Jeffrey, Jr., a professor (and formerly librarian) at the University of Cincinnati Law School. Since the manuscript for the volume was left in near-final form, Jeffrey has only added an introductory chapter, summing up the argument of the first two volumes, and completed the first narrative chapter, building on fragments left by Crosskey. The rest of the manuscript has been edited so skillfully that it is doubtful that readers will notice the intervention of an editorial hand. However, while Jeffrey has restrained himself admirably in the text, he has done so unwisely in the footnotes. The annotation has been left as Crosskey would have left it in 1953, thus entirely ignoring the rich scholarship on the history of the Constitution that has appeared in the past 25 years. I suppose there may be an archaeological justification for such abstention, but it seems a disservice to readers. And, speaking of disservices, the University of Chicago Press was certainly ill advised when, in reissuing the complete three-volume set, it permitted the binder to list "Crosskey and Jeffrey" as its authors.

The argument of volume 3 is straightforward and easy to follow. Crosskey contends that the 1787 Constitution was the product of a nationalist movement that arose out of a reaction to the insufficiency of state and confederate government during the era of the Articles of Confederation. "Reaction," however, is probably the wrong term, for Crosskey understands the proponents of the Constitution to be men who had a positive and purposive program, rather than one that simply attempted to ameliorate the economic and political chaos of the Confederacy. Crosskey spends the better part of a chapter debunking the notion that Shays' Rebellion (1786) in Massachusetts frightened Washington and other nationalists into supporting the movement for a constitutional convention. He laments the "failure to understand how strong and general the nationalist sentiment was among all the New England states in 1785; and how strong, in deed, such sentiment had been among those states (with occasional temporary vagaries on the part of particular states), from the very formation of the continental union in 1774" (p. 334). The constitutional movement was strong, consistent, and continuous in the 1780s.

His account, here as elsewhere in Politics and the Constitution, is based upon an exhaustive examination of contemporary correspondence, pamphlets, and newspapers. It is also, characteristically, based upon one "secondary" work, Minot's History of the Insurrections in Massachusetts, originally published in 1788. Minot is the classic contemporary account, but current scholars have added immeasurably to our knowledge of Shays' Rebellion, the politics of late-eighteenth-century western New England, and the political economy of the Confederacy. Crosskey's rugged independence and commitment to the sources is admirable, but this passionate ignorance of relevant scholarship tends to iconoclasm.

The brunt of Crosskey's argument is that the movement for a constitutional convention was led by a "handful of men" in the Northern states: Rufus King, Nathan Dane, Henry Knox, John Jay, Alexander Hamilton, and a few others (p. 355). This group had a clear and carefully worked out plan to create a national government endowed with power to regulate the commercial life of the nation. The corollary to this argument is that the notion of the Virginian James Madison as the "Father of the Constitution" is at best a canard and at worst a falsehood deliberately created by Madison himself. Madison is the antithesis of Crosskey's masterpiece.

Crosskey is convinced that the Continental Congress was committed to a "firm national government" (p. 387) as early as February 21, 1787. The reason why historians have been misled into believing otherwise (that Congress preferred "a federal government") is that they have taken at face value Madison's memorandum of the proceedings in Congress of February 21, which gives the impression that the nationalist resolution introduced by New York on that date was unexpected and that its support was "entirely casual and haphazard" (p. 390). In fact, Crosskey contends, this document, like
Madison's notes on the Constitutional Convention, was a creation of Madison's late years, after all other participants in the constitutional process had died and when, therefore, no one could challenge the Madisonian account. Madison's object was twofold. First, although he was really a nationalist only during the period 1786-91, he wanted to appear consistently nationalist as a historical figure. Second, Madison wanted to fuzz the historical evidence for the nationalist intention of the Framers in order to ease the way for Southern sectionalism after 1820.

In suggesting this as the purpose for which his notes were finally prepared, we do not mean to imply that, in the alterations he made, Madison actually attempted to establish a seeming historicity for the Southern theories of the Constitution as the intended meaning of the document. Such an attempt would have involved entirely too great risks, and Madison did not take them. He sought, instead, merely to confuse and obfuscate his record of what had gone on; to write, once more, an indistinctly uninformative document; and whilst sowing here and there suggestions of the Southern views, to make it seem as though the intended nationalist meaning of the Constitution was never so much as thought of, even in the "secret conclave" that produced it. [P. 409]

Crosskey points out that Patrick Henry refused to join the Virginia delegation because he suspected Madison's motives, and thus the epigraph for volume 3: "I smell a Rat." So much for James Madison and Anti-Federalism.

I believe that most historians will reject the new Crosskey attack on Madison, just as they rejected the original assaults. The entire matter might have been clarified, however, had Professor Jeffrey taken the trouble to discuss the discoveries of Dr. James H. Hutson of the Library of Congress with respect to the extent of Madison's rewriting: Robert Yates's Notes on the Constitutional Convention of 1787: Citizen Genet's Edition, 35 Q. J. Lib. Cong. 173-82. Unfortunately, the vigor of the insinuations against Madison draws the reader's attention away from the very considerable evidence Crosskey has amassed for the strength of nationalist intentions among the Northern Federalists. The same might be said for Crosskey's anti-Southern bias, which obscures the extent of Southern Federalism, not all of which can be attributed to Southern reaction to the Jay-Gardoqui Treaty, as Crosskey would have it.

Crosskey unfortunately attempts to characterize opposition to the Convention and the Constitution as trivial, localized, and self-interested. "Apart from a small, but eventually vociferous, group of petty-minded local politicians, who were impressed only by the fact that they stood to lose in a personal way by the adoption of a national system, there was no real opposition to a generally empowered national government when the Constitution was drawn" (p. 431). This ignores a great deal of evidence for widespread fears of loss of local independence and apprehensions of the potential for tyrannical central government—both of which are convincingly depicted in the magnificent seven-volume edition of The Complete Anti-Federalist, edited by the late Herbert Storing of the University of Chicago's political science department, and simultaneously issued by the University of Chicago Press. Even during Crosskey's lifetime, the point had been made forcibly by University of Wisconsin historian Merrill Jensen, in his Articles of Confederation (1940) and The New Nation (1950).

For me, the truly original argument of volume 3, and one well in advance of scholarship when it was written, is Crosskey's contention that "the slavery issue, with the fears growing out of it, was all-important in the North as well as the South. Without it, and without the consequent fears of the large Northern states, the demands of the minor states would undoubtedly have been brushed aside, if indeed, in the absence of the slavery issue, they would not have been anticipated, and rendered unnecessary, by a complete consolidation" (p. 431). Because of the delay in publication of volume 3, it has fallen to a recent graduate of the Law School, Staughton Lynd, to establish the historical credibility of the significance of the slavery issue to the critical constitutional compromises: Class Conflict, Slavery and the United States Constitution (1967).

The essence of the controversy in 1787 was the debate over "how the national government which all thoughtful men desired, could be set up safely; how it could be set up so as to make it strong and vigorous, and yet, at the same time, assure that men in all parts of the nation would feel that their interests were secure" (p. 431). Most historians will disagree with Crosskey's excessive nationalism, and most of the Commerce Clause cases that provoked him have long since ceased to exercise lawyers, but his bold argument for the historic centrality of American nationalism could not be more pertinent. Politics and the Constitution is, in fact, the most devastating historical response to President Reagan's inaugural contention that the states are superior to the nation. The irony may well be that Crosskey's fame will be secured by his posthumous participation in a debate he could not have anticipated.

Volume 3 is an important buttress to Crosskey's edifice. Politics and the Constitution remains a monument to Crosskey's industry, obtuseness, originality, brilliance, and idiosyncrasy. The work deserves to be known and used more in the future than it has been in the past, and it serves to remind us of the continuing leadership of the University of Chicago Law School in the field of legal history.

Crosskey's edifice. Politics and the Constitution remains a monument to Crosskey's industry, obtuseness, originality, brilliance, and idiosyncrasy. The work deserves to be known and used more in the future than it has been in the past, and it serves to remind us of the continuing leadership of the University of Chicago Law School in the field of legal history.
Lawrence Rosen: Taking the Road Less Traveled By

When Lawrence Rosen (J.D. '74) has appeared in court, it has more often been a qadi's court in Morocco than a Western court of law. An anthropologist who specializes in Islamic law, Rosen is also a lawyer who believes that legal concepts can be illuminated by studying their cultural context. Last year, in recognition of his distinguished work in anthropology and law, he was awarded a five-year prize fellowship from the John D. and Catherine T. MacArthur Foundation. It will enable him, he says, to "trespass more freely across disciplinary boundaries."

Rosen's dual interest in anthropology and law is long-standing. As an undergraduate at Brandeis University, he decided to study anthropology, and he also became concerned with American social legal problems, such as rights of minorities. His specialization in Islamic law, however, came about partly by chance. He came to the University of Chicago as a graduate student in anthropology and planned to do fieldwork in Indonesia, but when fighting broke out there in 1965, he made arrangements to go to Morocco. He spent a summer studying Arabic and in January 1966 arrived in Sefrou. Working initially with Clifford and Hildred Geertz, he began a study of family structure that soon involved him in observing Islamic court proceedings.

After receiving his Ph.D. in 1968, he was a postdoctoral fellow first at the University of Illinois in Champaign-Urbana and then with the Committee for Comparative Study of New Nations at the University of Chicago, where he got to know Law School faculty members Max Rheinstein, Harry Kalven, and Stanley Katz. In 1970 he was invited to be-
come a member of the Institute for Advanced Study in Princeton, but the desire to develop the legal side of his research brought him back to Chicago in 1971 as a law student.

Rosen chose the Law School because its faculty were willing to treat him as a serious law student and not as a "resident social scientist." He emphasizes, however, that cross-cultural concerns like his were not new to the Law School. Karl Llewellyn and Sol Mentschikoff, for example, had done extensive work with Pueblo Indians. Between his second and third years of law school, Rosen worked for the Native American Rights Fund on the legal problems of Indians. He taught Indian law at Duke University, where he became associate professor of anthropology and law after receiving his J.D., and he has written about Indian law.

Since 1977 he has been a professor of anthropology at Princeton University, where he teaches courses in anthropology and law, American Indians and law, and American law and society. He has also been adjunct professor of law at Columbia University since 1978. At Columbia he teaches family law and an optional first-year course in law and anthropology. Such a course, he believes, allows students to combine what they have learned as undergraduates with their new knowledge of the law. It allows them to regard the law in its social and cultural setting at the outset of their legal training.

That kind of perspective, Rosen thinks, should not be confined to legal anthropology but can help clarify how fundamental legal concepts work in our own society. One of the projects he hopes to pursue during the term of his MacArthur fellowship is a study of the exercise of judicial discretion, primarily in very low-level courts. Judicial discretion has been thought of either as impossible to study or as rigidly determined by precedent, but Rosen's study of Islamic courts has led him to a different view. Islamic people feel close to the courts and use them extensively, while Westerners feel alienated from theirs. Rosen believes, however, that related principles of discretion and equity are operating in different cultural and social contexts. The justice of the qadi, the Islamic law judge, is not really capricious, though it may appear so to a casual observer, nor is Western justice wholly determined by rules. "Rather," Rosen has written, "one can show that discretionary judgments and equitable assessments are fused by principles and standards which are as incomprehensible without an understanding of how cultural precepts shape them as would the study of social relations be incomplete without an understanding of their judicial articulation."

The MacArthur prize has freed Rosen from administrative tasks (he was about to become chairman of his department at Princeton) and other academic responsibilities at a crucial moment in his own work. But, more important, the prize has fostered his inclination to cross over disciplinary lines, something his colleagues in both anthropology and law have not always approved wholeheartedly. He now feels able to follow leads and avenues of inquiry he might otherwise have abandoned as too peripheral. Many will be dead ends, but some, he feels sure, will not. The prize has no strings attached. It sets you completely free, but, Rosen says, "I'm not going to become a ballerina or invent a new kind of hula hoop—I'm going to do what I do." His plans for the next five years, in addition to teaching half-time at Princeton, include finishing a book about Moroccan society, tentatively titled "Bargaining for Reality: The Social Construction of Modern Arab Society"; writing a book about Islamic law; and developing a legal case book combining law and anthropology.

Rosen's legal work has not been entirely academic. He is a member of the North Carolina and federal bars and has worked on a number of cases in consultation with other attorneys. Although he feels he cannot reconcile clients' needs or litigation schedules with his research, he still has a strong interest in social legal problems and would like to do more volunteer legal work if he can find an appropriate vehicle.

Rosen plans a brief trip back to North Africa but intends to do his next major fieldwork in the United States, studying family courts and American Indians. Although he has nearly finished his Moroccan research, however, he maintains a strong regard for Moroccans, who accepted him warmly and gave him ready access to their society and courts. When he returned for his third visit in 1978, he felt that he was going home.

At home in at least two cultures and two legal systems, Rosen is uniquely qualified to increase the understanding of both. His career is in some ways a logical extension of the interdisciplinary tradition of the University and the Law School, but the intellectual territory he has reached is his own.

APPOINTMENTS

Faculty Appointments

Mary E. Becker has been appointed Assistant Professor of Law, effective July 1, 1982. A 1980 graduate of the Law School, she served as comment and article editor of the Law Review and was elected to the Order of the Coif. She clerked for Judge Abner J. Mikva (J.D. ’51) of the U.S. Court of Appeals for the District of Columbia and is presently clerking for Justice Lewis F. Powell, Jr., of the U.S. Supreme Court. Ms. Becker received her B.S. degree cum laude in mathematics from Loyola University in 1969. She subsequently taught elementary school and worked in data processing before entering law school. Her teaching interests include tax law.

Daniel R. Fischel, who is a member of the faculty of Northwestern University School of Law, has been appointed Visiting Professor of Law for 1982-83. Mr. Fischel received his B.A. from Cornell University in 1972; his M.A., in American history, from Brown University in 1974; and his J.D. cum laude from this Law School in 1977. He was comment editor of the Law Review and was elected to the Order of the Coif. After graduating, he clerked for Judge Thomas E. Fairchild of the U.S. Court of Appeals for the Seventh Circuit and for Justice Potter Stewart of the U.S. Supreme Court. He also practiced law for a year with the Chicago firm of Levy and Erens. Mr. Fischel’s courses will include corporate finance and regulation of financial institutions.

Richard H. Helmholz, who is Visiting Professor of Law this year, will join the faculty as Professor of Law in July 1982. He was previously Professor of Law and History at Washington University in St. Louis, where he had taught since 1970. Mr. Helmholz is a graduate of Princeton University (A.B., 1962), Harvard University (L.L.B., 1965), and the University of California at Berkeley (Ph.D. in history, 1970). As one of the country’s foremost medieval legal historians, Mr. Helmholz has written numerous articles on the history of the common law and the history of canon law in England, and is the author of Marriage Litigation in Medieval England (Cambridge University Press, 1974). His forthcoming book, Cases on Defamation, will be published by the Selden Society. He is a member of the Council of the Selden Society, a fellow of the Royal Historical Society, and a director of the American Society of Legal History. He will teach primarily property law and legal history.

Richard A. Posner, who has been appointed a judge of the U.S. Court of Appeals for the Seventh Circuit, has been appointed Senior Lecturer at the Law School. Judge Posner joined the faculty of the Law School in 1969 and became the Lee and Brenna Freeman Professor of Law in 1978. Since coming to Chicago from Stanford, he has been the author or co-author of 10 books and numerous articles and reviews. He is an authority on antitrust and other economic aspects of law and has been a major contributor to the recently established field of economic analysis of law.

After graduating from Harvard Law School (LL.B. magna cum laude, 1962), he clerked for U.S. Supreme Court Justice William J. Brennan, Jr. From 1963 to 1968 he served the U.S. government in various capacities, including assistant to the FTC commissioner, assistant to the solicitor general, and general counsel to the President’s Task Force on Communications Policy. He resigned his professorship at the Law School in December 1981 in order to assume his judicial responsibilities. As senior lecturer, he is teaching a seminar in conflicts of law this spring.

Ralph T. Russell, Jr., and Michael D. Sher, both members of the Chicago law firm of Friedman and Koven, have been teaching the trial practice seminar in the winter and spring quarters this year. Mr. Russell, a member of Phi Beta Kappa, is a graduate of Ripon College (A.B. summa cum laude, 1970) and the University of Chicago (J.D., 1974). Mr. Sher, who graduated from the University of Michigan (B.A. with distinction, 1971) and the University of Wisconsin (J.D. cum laude, 1974), served as staff attorney for the Federal Defender Program of the Northern District of Illinois before joining Friedman and Koven.
Clinic Appointment

Jean Powers Kamp, who graduated from the Law School in 1970, became a Clinical Fellow of the Law School and attorney in the Mandel Legal Aid Clinic in November 1981. Ms. Kamp received her A.B. with honors from Swarthmore College in 1967 and is a member of Phi Beta Kappa. After receiving her J.D., she clerked for the late Judge Richard B. Austin of the U.S. District Court for the Northern District of Illinois. From 1971 through 1975 she was a staff attorney with the Federal Defender Program in Chicago, and in 1976 she was a staff attorney with the Franklin County Public Defender in Columbus, Ohio, representing juveniles in delinquency proceedings. For the next three years she served as a staff attorney with the ACLU of Ohio's Project on the Rights of the Institutionalized, where she brought several class actions. Most recently she worked with the Law Reform Unit of the Legal Aid Society of Columbus, where, among other civil rights cases, she briefed and argued Rhodes v. Chapman before the U.S. Supreme Court. Her work at the Clinic focuses on employment discrimination and representation of persons confined in government institutions.

New Editors for Two Journals


Professor Richard Epstein has been appointed editor of the Journal of Legal Studies. Founded in 1972 by its first editor, Richard Posner, the Journal of Legal Studies is not a conventional law review but an interdisciplinary journal of theoretical and empirical research on law and legal institutions. Its contributors include economists, social scientists, and philosophers, as well as legal scholars. Mr. Epstein's extensive reexamination of tort law has appeared in a series of articles in the Journal.

Staff Appointment

Paul Woo has been appointed as Director of Placement, succeeding Herbert Fried (J.D. '32) (see Fried Retires, below). Mr. Woo graduated from Purdue University in 1973, received his M.A. in modern European history from the University of Chicago in 1975, and is presently working on his thesis for the M.T.S. degree from the Lutheran School of Theology. He held various administrative and supervisory positions at Regenstein Library and the Lutheran School of Theology Conference Center before joining the Law School staff as Placement Assistant in 1980. He became Assistant Director of Placement in July 1981.

FACULTY NOTES


American Lawyer recently named two Law School faculty members and an alumnus as among the five "hottest" young law professors in the country. Those chosen include Professor R. Lea Brilmayer, Professor Frank Easterbrook (J.D. '74), and George Priest (J.D. '73), a professor at the Yale Law School.

Three articles by Walter Blum (J.D. '41), Wilson-Dickinson Professor of Law, have appeared in recent issues of Taxer magazine. They include "Revisiting the Uneasy Case for Progressive Taxation" (January 1982, p. 16); "Taxation for Prosperity? Some AILJ Views on ERTA '81" (with Willard H. Pedrick; February 1982); and "Self-Cancelling Installment Notes—the New SCIN Game?" (March 1982).

Last fall Professor Dennis Carlton presented talks on price rigidity and the organization of markets to seminars at the University of Rochester and the University of Pennsylvania. He also participated as a discussant in the NBER Conference on Industrial Organization, held at Northwestern University, and in a conference on energy at the Brookings Institution. His recent papers include "Planning and Market Structure," in The Economics of Information, edited by McCall (University of Chicago Press, 1982); "The Disruptive Effect of Inflation on the Organization of Markets," in Inflation, edited by R. Hall (University of Chicago Press, 1982); and "A Reexamination of Delivered Pricing Systems," Working Paper No. 9 of the University of Chicago Law and Economics Program (October 1981).
Dean Gerhard Casper, William B. Graham Professor of Law, delivered the commencement address and received the honorary degree of Doctor of Laws at the commencement exercises of the John Marshall Law School in January. Dean Casper spoke on “Law and Advocacy.”

Last November, Ronald Coase, the Clifton R. Musser Professor Emeritus of Economics, gave the third G. Warren Nutter Memorial Lecture at the American Enterprise Institute, in Washington, D.C., under the sponsorship of the Thomas Jefferson Center Foundation. Mr. Coase spoke on the subject “How Should Economists Choose?”

Kenneth Dam (J.D. ’57), the Harold J. and Marion F. Green Professor of Law and Provost of the University, has published a book entitled The Rules of the Game: Reform and Evolution in the International Monetary System (University of Chicago Press, 1982). He has also been appointed a member of the Research and Advisory Committee of the Committee for Economic Development.

The Law and Economics Center of Emory University awarded the 1981 Prize for Distinguished Scholarship in Law and Economics to Professor Frank Easterbrook (J.D. ’73) and Daniel Fischel (J.D. ’77) for their paper “The Proper Role of a Target’s Management in Responding to a Tender Offer.” In addition, Mr. Easterbrook has recently published two other papers, “Maximum Price Fixing,” in the University of Chicago Law Review (Winter 1981), and “Breaking Up Is Hard to Do,” in the November-December issue of Regulation. This winter he gave testimony to the Senate Judiciary Committee on legislation to allow contribution under the antitrust laws. He presented papers on various subjects to workshops of the law faculties at several universities, and at the AALS meeting he addressed the sections of antitrust law (on the new administration’s antitrust policy) and business associations (on tender offers). He also gave a round-table discussion to the commissioners of the SEC on tender-offer policy.

Professor Richard Epstein recently gave a lecture on products liability law to the Federal Trade Commission.

Visiting Professor R. H. Helmholz spoke at Cornell Law School in December on “Custom and the Establishment of Testamentary Freedom in Medieval England,” and in February he spoke at the University of Iowa School of Law on “The Canonical Origins of the Grand Jury.” He has also published “Advances and Altered Perspectives in English Legal History” in the January 1982 issue of the Harvard Law Review.

Spencer Kimball, Seymour Logan Professor of Law, will resign as executive director of the American Bar Foundation, effective July 1, in order to return to full-time teaching at the Law School.

John Langbein, Max Pam Professor of Law, and Professor Antonin Scalia participated in an American Enterprise Institute conference in Washington D.C., where proposals for restricting the jurisdiction of the U.S. Supreme Court over selected classes of cases were discussed. Mr. Langbein addressed the National Association of State Investment Officers on “Social Investing of State and Local Pension Funds,” and presented a paper entitled “Albion’s Fatal Flaws,” a critique of recent Marxist work on the history of criminal procedure, to the 1981 meeting of the American Society for Legal History. He also participated with a group of investment, legal, accounting, and actuarial experts in a conference, sponsored by the Employee Benefit Research Institute and held for Reagan administration pension policy planners, on potential reforms in pension termination insurance (Title IV of ERISA and related matters).

Distinguished Service Professor Bernard Meltzer (J.D. ’37) has published the 1982 Supplement to Labor Law: Cases, Materials, and Problems, with Stanley D. Henderson.

Norval Morris, Julius Kreeger Professor of Law, was the Second Annual Ralph E. Kharas Visiting Scholar at the Syracuse University College of Law. During his three-day visit in September, Mr. Morris gave a lecture on “Sentencing the Mentally Ill Criminal.” The Ralph E. Kharas Visiting Scholars Program is named in honor of the late dean of the Col—
lege of Law, who received his J.D. from the University of Chicago in 1927.

We regret that in the Fall 1981 issue of the Law School Record Mr. Morris's name was omitted from the list of Law School faculty members who are fellows of the American Academy of Arts and Sciences. The complete list is as follows: Walter Blum, Gerhard Casper, Kenneth Dam, Philip Kurland, Edward Levi, Leonard Meltzer, Norval Morris, and Phil Neal.

George Stigler, Charles R. Walgreen Distinguished Service Professor Emeritus, recently gave the Ely Lecture to the American Economics Association. His talk was entitled "The Economists and the Problem of Monopoly, or Monopoly and the Problem of Economists."

In January, Professor Geoffrey Stone (J.D. '71) addressed the National Conference of Bar Presidents on "The First Amendment Implications of Mandatory Bar Membership."

An article by Professor Emeritus Hans Zeisel, "Race Bias in the Administration of the Death Sentence: The Florida Experience," appeared in the December 1981 issue of the Harvard Law Review. Last summer Mr. Zeisel addressed the World Association for Public Opinion Research (WAPOR), in Amsterdam, on "The Controlled Experiment in Social Research." He also spoke on "Research on Voir Dire" to the annual meeting of the Bar of Tennessee, and on jury selection to the litigation section of the American Bar Association.

LAW SCHOOL NEWS

Fried Retires

Herbert Fried (J.D. '32) retired as Director of Placement on January 1, after serving in that position for more than five years. During that time he significantly expanded the Law School's placement service. His innovations include computerizing the interview schedules and instituting a newsletter for alumni concerning job opportunities (see below).

After graduating from the Law School, Mr. Fried practiced law with his father until 1952, when he became treasurer of the Charles Levy Circulating Company, the largest wholesale distributor of paperback books and magazines in the country. He later became vice-president, executive vice-president and general manager, and then president of the company, a position he held until he retired in 1976. At that time he was appointed Director of Placement at the Law School.

Active in many community and welfare organizations, Mr. Fried has also been a loyal alumnus and energetic supporter of the Law School in many capacities. Announcing Mr. Fried's retirement, Dean Casper said: "His dedication to the Law School and his effective reorganization of our placement operation have won him the admiration and affection of the entire Law School community. We see his departure from this position with deep regret."

Placement Continues to Prosper

Placement Director Paul Woo reports that the Law School's placement service is still highly successful in spite of the country's current economic difficulties. Placement of graduating students has averaged about 94% over the past five years and is expected to reach the same level for those graduating in June. Most graduates will enter law firms, although in each of the past two years about 20% of the graduating class have had judicial clerkships.

The Placement Office constantly receives notices of positions for experienced attorneys in virtually all sectors of legal employment, and publishes a bimonthly newsletter for alumni of the Law School. The door is always open to alumni who wish to discuss possible changes in their careers.

Tax Conference

The Thirty-fourth Annual Federal Tax Conference of the University of Chicago Law School was held October 28-30, 1981, for lawyers, accountants, and others involved with tax matters. The conference focused on tax issues of current interest, such as the Economic Recovery Act of 1981, and included both formal presentations and panel discussions. Three Law School alumni were among the speakers: Stephen Bowen (J.D. '72); Eugene Wachtel (J.D. '62), who was a Lecturer in Law during the winter quarter; and Alvin Warren (J.D. '69). Their papers and those of the other speakers were published in the December 1981 issue of Taxes magazine.

Preparation for next year's conference is already under way. The chairman of the 1982 Planning Committee is Howard Krane (J.D. '57), who is a Lecturer in Law this spring; and Walter Blum (J.D. '41), Wilson-Dickinson Professor of Law, is serving on the Planning Committee for the thirty-fourth year.

1981 Schwartz Fellow

Roberta Karmel, formerly a commissioner in the Securities and Exchange Commission and now a partner in the New York firm of Rogers and Wells, spent a day at the Law School last October as the 1981 Schwartz visiting fellow. She met with students, spoke to Professor Edmund Kitch's securities class, and spoke on "Thoughts on Accountability" at the dinner for entering students.

The Schwartz visiting fellowship is supported by the Ulysses S. Schwartz and Marguerite S. Schwartz Memorial Fund, established in 1974 to bring outstanding legal figures to the Law School as visiting members of the faculty. Judge Ulysses Schwartz was a prominent Chicago lawyer and jurist and a member of the Visiting Committee to the Law School for many years.
Fund Honors Two Alumni

The Arnold M. Chutkow Memorial Fund, established in 1958 by Samuel Chutkow (J.D. '20) in memory of his son Arnold (J.D. '51), has been renamed the Arnold and Samuel Chutkow Memorial Fund. The change was made at the request of Mrs. Yvette Chutkow, in memory of her husband Samuel, who died in 1981. The fund is used to help support the Law School's moot court program and the Law Review. The Law School is most grateful to the family and friends of Arnold and Samuel Chutkow for their generosity and support.

Mandel Legal Aid Clinic Restructures Program

In spite of cuts in federal funding, the Edwin F. Mandel Legal Aid Clinic, under the direction of Associate Professor Gary Palm (J.D. '67), is continuing to develop a program that uses primarily actual cases for its teaching material, rather than simulations. Beginning this spring, each attorney has been assigned a group of students for the next four quarters and will plan a course of instruction for them. The attorneys will hold weekly meetings of their groups to teach advocacy skills through their actual case loads. Mr. Palm says: “We hope that we can demonstrate that the diverse and sometimes haphazard set of experiences afforded each student in his own cases can be organized and used in a consistent and comprehensive way without resorting to simulations. If we are successful, we will have made an important contribution to the general advancement of clinical education.”

Clinic Loses Beem

Marc Beem (J.D. '75), who had been a Clinical Fellow and staff attorney for five years, as well as Lecturer in Law, left in September to join the Chicago law firm of Krupp and Miller. Mr. Beem contributed to the Mandel Legal Aid Clinic's growing emphasis on teaching as well as service. He and his students also did important work for many individuals, especially those not represented by other legal services programs: prisoners, sexually dangerous persons, and the mentally ill.

Bowler Leaves Library

Richard Bowler (J.D. '67), Collection Development Librarian of the Law School Library in 1980-81, left last fall to become head of public services at the University of New Mexico School of Law Library in Albuquerque. Mr. Bowler worked at the Law School Library from 1968 through 1974 and served as Law Librarian from 1975 through 1979. He is an expert in Anglo-American legal bibliography, and his extensive knowledge of the Law School's collection will be missed.

Former Bigelow Fellow Chairs Law Commission

A former Bigelow Teaching Fellow, the Honourable Mr. Justice Ralph Gibson, has been appointed chairman of the Law Commission for England and Wales. He taught at the Law School as a Bigelow Fellow in 1948-49.

STUDENT NOTES

Witte Wins Essay Contest

Second-year Law School student Philip Witte won first prize in an essay contest sponsored by the Chicago Tribune. Mr. Witte's winning essay, "The Holy Men of Phuket," was among nearly 4,000 entries in the Travel section's "The Vacation I'll Never Forget" contest, and appeared in the Tribune, December 20, 1981. It describes his hair-raising experience at a cult ceremony on Phuket, an island off the southwestern coast of Thailand.
alumni NOTES

London Reception for Dean Casper

John Thomas (J.D. '70) and Ann Buchanan Thomas (J.D. '71) hosted a reception for Dean Gerhard Casper in London on September 23, 1981. It was held in the Smoking Room of the Middle Temple and was attended by British and American graduates of the Law School who live in London, as well as British former Bigelow Teaching Fellows. Also among the guests were Lord Elwyn-Jones, former Lord Chancellor, and Visiting Professor Brian Simpson.

Alumni Events around the Country

Dean Gerhard Casper met with Law School alumni at receptions in several cities last November and December. At luncheons in Washington, D.C., San Francisco, Los Angeles, and New York, Dean Casper spoke on the state of the Law School and visited informally with alumni. Holly Davis (J.D. '76), Assistant Dean for Alumni Relations and Development, also attended the Washington, D.C., luncheon. The meetings were chaired by the following regional Alumni Association chairmen: Michael Nussbaum (J.D. '61), Washington, D.C.; Roland Brandel (J.D. '66), northern California; Michael Meyer (J.D. '67), southern California; and Rupert Simpson (J.D. '76), New York.

Last June, San Francisco-area alumni heard Professor Antonin Scalia speak on deregulation in the context of the Reagan administration's policies.

At a meeting of Law School alumni in Minneapolis in January, Byron Starns (J.D. '69) spoke on "Perspectives on Public Litigation." The meeting was chaired by Duane Krohnke (J.D. '66), president of the Minnesota chapter of the Alumni Association.

A reception for Law School graduates in teaching and Philadelphia-area alumni was held in Philadelphia on January 8, in conjunction with the annual AALS meeting. Alumni were able to visit with past and present Law School faculty members, including Dean Gerhard Casper, former Professor Allison Dunham, Visiting Professor Richard Helmholz, Professor Edmund Kitch, and former Professor Sofia Mentschikoff. Assistant Dean Holly Davis was also present.

Chicago Events

Law School graduates living in the Chicago area have been able to attend a number of events during the past several months.

The series of Loop Luncheons, sponsored by the Alumni Association, featured the following speakers: Assistant Professor Joseph Isenbergh (September 16), who examined some of the more interesting aspects of the Economic Recovery Act of 1981; John Powers Crowley (October 14), former judge of the U.S. Court of Appeals for the Seventh Circuit, who spoke about his years on the bench; Wulf Döser (M.C.L. '62), a partner in the international law firm of Baker and McKenzie, who discussed international practice in the eighties; and University of Chicago Professor Leszek Kolakowski (February 2), who spoke on "Poland in Crisis: Workers versus the Workers' State." The Loop Luncheon Committee is chaired by James Zacharias (J.D. '35).

In December, 40 Chicago-area alumni got together at the Christmas Spirits Show and Dinner presented by the Chicago Bar Association. The Alumni Association hopes this event will become an annual tradition for Chicago alumni.

In February, alumnae and women students of the Law School attended a luncheon and discussion sponsored jointly by the University of Chicago Law School and the Law Women's Caucus. The discussion focused on results of a survey of women graduates of the Law School and possible establishment of a forum for discussing issues of interest to women graduates.

Fall Reunions

On November 6-8, 1981, the classes of 1951 and 1966 held their thirtieth and fifteenth reunions, respectively. Both classes began their celebrations with cocktail parties on Friday evening. On Saturday a walking tour of the campus was followed by a lunch at the Law School hosted by Dean Gerhard Casper. After lunch Judge Abner Mikva ('51), Professor Antonin Scalia, and Assistant Professor Cass Sunstein participated in a panel discussion on administrative law.

The class of '51 held their reunion dinner and program Saturday evening in the Law School's Green Lounge. Among their guests were Professor and Mrs. Walter Blum ('41), Professor and Mrs. Edward Levi ('35), and Professor and Mrs. Bernard Meltzer ('37). A brunch with Dean Casper at Robie House on Sunday morning brought their thirtieth reunion to a close.

A dinner for the class of '66 was held in the Venetian Room of the Drake Hotel, and was attended by Dean Casper, Professor Phil Neal, and Assistant Dean Holly Davis.

The committee responsible for the success of the class of 1951 reunion was chaired by Charles Russ and included Richard Buckelman, Ronald Buoscio, Allen Dropkin, Charles Lipitz, Marshall Lobin, Abner Mikva, Alfred Palfi, Dan Roin, Paul Rosenblum, and Jack Siegel.

Robert Berger was the chairman of the class of 1966 reunion committee. He was aided by committee members Steve Barnett, Charles Bingaman, Roland Brandel, Micalyn Shafier Harris, Elbert Kram, Peter Messitte, Bruce Schoumacher, Bruce Taylor, and Thomas Wechter.

Alverna Rohland, Judge Peter Krekel, Doris Godwin, Wendell Godwin, Mae Rhodes, and Harker Rhodes at the Class of 1951 Reunion Dinner.
1982 Reunions and Annual Dinner

The classes of 1932, 1942, 1952, 1962, and 1972 are planning reunions to be held May 7 and 8 at the Law School. The reunion weekend festivities will begin with the National Alumni Association Dinner on Thursday, May 6. Byron White, associate justice of the U.S. Supreme Court, will be the guest of honor, and the featured speaker will be George J. Stigler, Charles R. Walgreen Distinguished Service Professor Emeritus. The participants in the Hinton Moot Court Competition will be special guests of the Alumni Association.

On Saturday, May 8, the Law School will sponsor a day on the campus, including a walking tour and a luncheon hosted by Dean Gerhard Casper, followed by a panel discussion.

The classes of 1932 and 1942 plan to hold their reunion dinners on Friday evening. The classes of 1952, 1962, and 1972 will hold their dinners on Saturday.

'18 Homer Hoyt, a pioneer in the field of modern land economics, was awarded an honorary Doctor of Laws degree from Marymount College, Arlington, Virginia. In awarding him the degree, Marymount President Sister M. Majella Berg cited "his scholarship in the field of theoretical and applied land economics, his practical achievements, and his dedication to and support of higher education in the United States." The degree ceremony was preceded by a colloquium, "Pioneering in Land Investment and Urban Development Information Systems," in honor of Dr. Hoyt.

'25 Gerald E. Welsh died in August; he had been living in Denver, Colorado.

'Morton J. Barnard taught a course last year on Illinois estate administration for the Illinois Institute on Continuing Legal Education. Mr. Barnard practices in Chicago with his brother, George H. Barnard ('31).

Samuel M. Mitchell and his wife, Caroline, are retired and living in Tampa, Florida. They spend summers in Aspen, Colorado, and spent last winter in New Zealand. In 1980 they celebrated their fiftieth wedding anniversary.

'32 Paul M. Cadra, who served as an administrative law judge with the Department of Health, Education, and Welfare for nearly 20 years before his retirement, died in January. He had lived in Huntington Beach, California, for the past 15 years. Before his appointment as administrative law judge, Mr. Cadra served as an attorney with the Department of Labor and with the Tennessee Valley Authority.

'The reunion will feature a "Pioneering and His Mentors," his economics, his theoretical and practical footprints, will receive a degree from the Law School of the Hebrew University in Jerusalem this year.

'39 John N. Hazard (JS.D.), Nash Professor Emeritus of Law at Columbia University in New York City, has been named Arthur L. Goodhart Professor of Legal Science at the University of Cambridge for 1981-82. He is teaching Soviet legal institutions.

David Skeer practices law in Marco Island, Florida, after having practiced in Kansas City, Missouri, for 40 years.

'Morris B. Abram received an honorary Doctor of Humanities degree from King's College in Wilkes-Barre, Pennsylvania, at commencement exercises last May. He also delivered the commencement address.

'Saul I. Stern was awarded the Community Service Human Rights Award by the American Jewish Congress at a dinner given in his honor in Washington, D.C., last November. One of the featured speakers of the evening was Michael Barnes, U.S. representative from Maryland, and the son of John P. Barnes ('34).

'Sol Appelbaum writes that his daughter, Brenda, following her father's footsteps, will receive a degree from the Law School of the Hebrew University in Jerusalem this year.

'Morris I. Leibman was awarded the Presidential Medal of Freedom by President Reagan at a White House ceremony on October 9, 1981. The citation read: "Attorney, teacher, scholar and philanthropist, Morris Leibman is living proof that a full career in the private sector can flourish hand in hand with civic and humanitarian duties. As a generous patron of the arts and charities, as a legal scholar as well as practitioner, as a founding member of the Georgetown University Center for Strategic and International Studies and as chairman of the American Bar Association's Standing Committee on Law and National Security, Morris Leibman has served selflessly to make America a just, healthy society within and a strong, secure nation without."

'48 Almira Abbot Stevenson recently retired as an administrative law judge for the National Labor Relations Board, in which capacity she had served since 1972. Judge Stevenson had been in federal service for almost a third of a century. Before her appointment as an administrative law judge, she was an attorney for the NLRB. She also served with the U.S. Marine Corps during World War II, and then in the Marine Reserves with the Judge Advocate General's Office. She and her husband, Henry, have a son, Henry III, and a daughter, Abbot.

'Sol M. Edidin, of the Illinois and District of Columbia Bars, died in Washington, D.C., on August 10. Mr. Edidin was an associate editor of volumes 15 and 16
Class Notes Section – REDACTED

for issues of privacy