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The Pirates of Pennzoil
A Comic Opera Made Possible by a Grant from the Texaco Corporation

Richard A. Epstein

"Y
ou can trust your car to the man who wears the star" was Texaco's slogan for many years. Now the question of trust has come back to haunt the giant oil company, to the tune of ten and a half billion dollars—the size of a judgment that, while not approaching the federal deficit, is nearly enough to wipe out Texaco's net worth.

Even in an era jaded by sky-high legal judgments, Texaco's ill-fated encounter with Pennzoil Corporation in a Texas courtroom has caught the fancy of the public at large and has raised the fears of the financial community. The day the judgment came out, Texaco's stock lost more than $714 million in value. All told, those shareholder losses have now exceeded $2.8 billion since December 10, 1984, when Judge Solomon Casseb decided not to disturb the jury verdict of $7.53 billion in actual damages and $3 billion in punitive damages. (Pennzoil's stock, for its part, surged $7.375 to $57.25 per share on the day of the judgment, a gain to shareholders of $300 million.)

The consequences continue to mount. Texaco's lenders have become nervous, and the firm's previously im-

Pregnant credit rating has been slashed for both long- and short-term borrowing. Suppliers, customers, and joint venturers are wondering whether Texaco will be forced into bankruptcy, and where its business dealings stand in the meantime. Texaco has obtained temporary relief from its Texaco bond requirement in (of all places) the federal district court at White Plains, New York, on grounds that legal experts find mysterious. Secret and inconclusive settlement talks drag on, while public comments by the parties are alternatively cryptic, confusing, or corrosive. The size of the stakes and the uncertainty of the legal issues have left both sides with ample, indeed too much, room for maneuvering.

As is common knowledge by now, Pennzoil's suit against Texaco arose out of the battle between the two firms over the takeover of the Getty Corporation. Getty Corporation had two dominant stockholders. The Sarah Getty Trust, controlled by Gordon P. Getty, its sole trustee, owned 40.2 percent of the total 79.1 million shares of Getty stock outstanding. The J. Paul Getty Museum controlled another 10.8 percent of the company. The remaining 49 percent was in widely separate hands, ostensibly represented by the Getty management.

When it became clear that Gordon Getty and management did not see eye to eye on a wide variety of business issues, the stage was set for a possible takeover. Enter J. Hugh Liedtke, chief executive officer of Pennzoil. Liedtke saw in the demoralization of Getty Oil an opportunity for Pennzoil to become a major player in the oil industry by gaining control of Getty Oil's extensive reserves.

The two companies reached a deal, the gist of which was that Pennzoil and the Getty Trust were to establish a new corporate vehicle to purchase the Getty shares from the museum and the public at large for a price set at $110 per share, plus $5 in deferred compensation. Pennzoil would wind up with about a 43 percent stake, and the Trust with a 57 percent stake. In essence Pennzoil and the Getty Trust engineered a squeeze play meant to displace present management while providing a handsome profit for the museum and the public shareholders.

Champagne glasses tinkled in celebration, press releases were duly issued, and on January 4, 1984, the deal was reported in the newspapers. Much detailed drafting of complex corporate documents remained to be done. But that was never to come to pass. Within hours of the original announcement Texaco stepped in with an offer to purchase all shares of Getty at $125 per share (later raised to $128), for a total price of just over $10 billion. That offer was accepted with great alacrity by Gordon Getty and the museum on January 5, but only after Texaco agreed to indemnify the Getty interests for any liability they might have had to Pennzoil.

Five days later, on January 10, 1984, Pennzoil sued to block the merg-

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er in Delaware court. Its claim was that Texaco’s actions had interfered with its own previous contract. The Delaware court refused to enjoin Texaco from the merger (which, as we shall see, should be a matter of great sorrow to Texaco). Pennzoil then shifted the battle to its home turf in Houston, Texas, suing Texaco for the common law tort of inducement of breach of contract. The rest is history.

Most merger battles take place in the corporate law—the land of two-tier offers, leveraged buyouts, greenmail and poison pills. But Pennzoil v. Texaco marks the revenge of the common law.

At one level the ensuing Pennzoil/Texaco litigation seems like just another skirmish in the corporate takeover wars. But the playing field here is rather different. Most merger battles take place in the corporate law—the land of two-tier offers, leveraged buyouts, greenmail, and poison pills. But Pennzoil v. Texaco marks the revenge of the common law. Contracts and torts no longer form an inert backdrop to creative corporate maneuvers. With this case they move to center stage.

The core of the dispute is a body of nineteenth-century law that passes under the technical name of intentional (or malicious) inducement of breach of contract. This branch of law envisions a game in which a minimum of three must play. As the law is generally formulated, a defendant will have engaged in wrongful conduct when the following conditions are met. First, there must be a contract between two other parties (as between Getty shareholders and Pennzoil). Second, there must be efforts by the defendant (Texaco) to induce one party under the contract (the Getty shareholders) to break the contract. Third, the inducer must have notice of the existence of the contract between the other two parties. Fourth, the jilted party must suffer damages that follow from the commission of the wrong.

The origins and the rationale of this tort are found in the seminal case of *Lumley v. Gye*, decided by the English courts in 1854. Benjamin Lumley was an opera impresario who held a long-term contract with Johanna Wagner, a singer of evident operatic skills. Frederick Gye, the operator of a rival establishment, prevailed on her to desert her original employment. The contract between Lumley and Wagner was unquestionably binding, and it contained an express provision whereby the diva agreed that she would not sing for another company. Wagner was successfully enjoined from singing for Gye, but she refused to return to her original employment with Lumley. Lumley then brought a second suit against Gye asking for damages because of the deliberate interference with his contract with Wagner.

Lumley’s novel suit occasioned a good deal of difficulty in the English courts, for inducement of breach of contract differs in a number of ways from the ordinary torts to person or property. Most torts are actionable on principles either of ordinary negligence or of strict liability—the latter of which means that the defendant can be liable whether or not he acted with negligence or with an intent to harm the plaintiff. The British court was evidently reluctant to say that any defendant can be held liable (even on a theory of negligence) for inducing the breach of a contract of which he had never heard. Yet ignorance of the harm caused is not normally a reason to withhold liability in a tort case. The defendant who chops down the plaintiff’s trees, reasonably and honestly thinking them his own, normally must pay the owner for the loss. The majority of judges did not give a convincing theoretical explanation why this tort should be different from cutting trees. A powerful dissent by Judge Coleridge made just this point and argued that Lumley’s sole remedy should be a damage action against Wagner.

Recently modern writers have echoed Coleridge’s concern on economic grounds. The new fashionable theories of “efficient breach” say that inducing a breach of contract is a good thing, so long as it moves the labor or property of the contract breaker to a higher-valued use. The proper response, therefore, the argument continues, is for the breaker to pay “expectation damages,” that is, damages that leave the party jilted in the same position that he would have been in if the contract had been fully performed. Those damages being paid, the contract breaker and the inducer can then split the efficiency gain between them. Any rule that allows the innocent party to block the second contract (as happened with Lumley’s injunction against Wagner) is said to thwart the reallocation of resources to their best social use.

The case against the tort of inducement of breach of contract thus rests on two propositions: the want of parity to ordinary torts to property, and the theory of efficient breach. Yet neither point carries the day. As to the first, the law contains many areas where liability turns not on negligence or simple wrongful conduct, but on notice. Take the eternal legal triangle that arises when a faithless middleman who holds an innocent owner’s property proceeds to sell it to a third party. One common way the law resolves this triangle is to protect the purchaser against suit by

There is, in fact, no real reason to worry that the use of tort liability to enforce contracts will impede useful social exchanges. If someone wants “out” of a contract, he can negotiate his release.

the original owner in cases where the purchaser had no notice that the middleman had misbehaved. If he purchased the goods in bad faith, however, then he and the middleman jointly caused the plaintiff a loss, and a suit against either or both has been regarded as perfectly appropriate. Along with compensating the original owner for damages, such suits prevent bad-faith purchasers from enjoying ill-gotten gains, while additionally reduc-
ing the incentive of all parties to engage in illicit transactions.

There is, in fact, no real reason to worry that the use of tort liability to enforce contracts will impede useful social exchanges. If someone wants “out” of a contract, he can negotiate his release. In fact, a framework for such negotiations can be made part of the original deal. Such contracts are not farfetched: it had been reported, for example, that Lou Holtz’s coaching contract with the University of Minnesota allowed him to terminate without breach in the event of an offer from Notre Dame, which did come. In short, good contract drafting and sensible renegotiation form a far more “efficient” system than the deliberate breach of contract. No innocent party should be limited to an uncertain contract action solely against the original contracting party, who may be insolvent or beyond the jurisdiction of the court, when there is another party available that knowingly induced and profited from the breach.

This quick sketch of the law of inducement of breach of contract suggests that there is nothing in principle wrong with the basic legal theory on which Pennzoil relied. Nonetheless, there is many a slip between a sound legal theory and its proper application. The normal lay response to the $10.5 billion verdict has been to call it “ridiculous” or “absurd.” A New York Times editorial called the case a “sad farce.” In both cases the size of the damage award attracted far more attention than the fact of liability itself. There is good sense in this popular perception.

To understand what is going on it is necessary to comment on four separate issues: first, was there a deliberate inducement of breach of contract? Second, what remedy is appropriate, damages or injunction? Third, if damages, how should they be calculated? Fourth, should punitive damages be awarded, and in what amount?

Liability. Pennzoil’s case for liability rests on its ability to show that the Getty interests breached a valid contract with it. The critical question therefore becomes the traditional one of deciding whether the contract is valid. Normally this sort of decision is straightforward legal business. But the elusive line between preliminary negotiations and a completed and binding contract has generated extensive litigation. The problem has proved to be intractable enough in real estate transactions, for example, that there is widespread support for the requirement, everywhere embodied in the Statute of Frauds, that contracts for the sale of land or buildings (aside from short-term leases) are binding only if evidenced in writing and signed “by the party to be charged.” In an area where deals often take surprising twists, where critical conditions can be added or subtracted from an agreement at a moment’s notice, this requirement of written contracts provides a nice “bright line” test that obviates many (though by no means all) acrimonious disputes over contract formation that otherwise might arise.

Strange as it might seem, there is no parallel writing requirement for the sale of common stock. The enforcement of oral contracts is strictly necessary for the ordinary telephone brokerage business, but matters are quite different when the sale of corporate assets amounts to the sale of a billion-dollar business, many of whose assets are in real estate—as oil and gas assets are generally classified. The want of the legal writing requirement for merger cases gave rise to the murkiness of contract formation that led to Texaco’s undoing.

Texaco argued that Pennzoil and the Getty interests showed no clear intention to create legal relations. It might be that the custom in the mergers and acquisition business is such that, as Yogi Berra says, “It ain’t over ‘till it’s over”—in which case signing on the dotted line would be the only step that matters. But there is always the lurking exception. Could that custom (if it is a custom) be displaced by a joint
handshake, smile, and toast? Or are these lesser formalities only evidence of substantial progress on the long road to contractual union?

Texaco might have fared better if it had downplayed the question of intention and argued instead that even if the parties had a clear intention to create a legally enforceable agreement, they had in fact not done so. Normally contracts are enforceable only when their terms are sufficiently definite. Here the basic transaction was a complex reverse triangular merger necessarily containing countless terms that were nowhere captured by a champagne toast or a handshake. If squads of lawyers still had hours of paperwork in front of them, many hidden issues were sure to surface. If some of these proved insurmountable, then the deal would be off, without either side's being in breach. There are many cases on the books where courts have been exceedingly strict—often too strict—in requiring that a contract be definite before declaring it valid. Texaco surely had a shot on these grounds—and on an issue that is normally decided by judge rather than jury. It is hard for an outsider to the case to be confident about either the question of intention or the question of definiteness. But it would surely not be remarkable for the jury to have erred on this point.

The harder question is whether there would still be a case against Texaco for inducement of breach if Pennzoil's preliminary agreement were unenforceable against the key Getty shareholders. Here the basic case law is divided, with some courts holding that the third party will not be liable unless a second party is too, and a majority holding the contrary. There is a good deal to be said for the position that the tort vanishes if the contract is not enforceable. If a buyer can walk away from an unwritten real estate sale because he entertains general prospects of a better deal, why worry if one such concrete prospect makes a flesh-and-blood appearance and induces him to back out? When agreements are fully binding and enforceable, it generally does not make a difference whether the inducer approaches the contracting party or the contracting party approaches the outsider. If Getty were free to walk, then Texaco should be free to induce Getty to walk with it without having to face any legal sanctions. To take the other side is to assume that both parties have made implied interim promises not to deal with third parties while still negotiating with each other, a plausible but unlikely state of affairs.

Nonetheless, the dominant doctrine holds otherwise. The authoritative Restatement (Second) of Torts notes that "by reason of the statute of frauds, formal defects, lack of mutuality, infirmity, unconscionable provisions, conditions precedent to the obligation or even uncertainty of particular terms the third person [here Getty] may be able to avoid liability for any breach. The defendant actor [here Texaco] is not, however, for that reason free to interfere with performance of the contract before it is avoided." The Restatement does not, unfortunately, give any reasons for its broad conclusion. Instead it merely analogizes the situation to one in which there is a contract "at will," that is, one in which either party is entitled to terminate at any time for any reason. It notes that while the contracting party may terminate for no reason at all, a third party may not induce such a breach. If that is literally the law, then American business should tremble in its boots, for ordinary worker recruitment in position for inducement of any asserted breach.

What the law should be, however, is perhaps less relevant than what the law is. Texaco is in deep trouble on liability if the unwise Restatement rule governs. On the other hand, it is far from out of the woods even if a binding contract is a prerequisite to breach.

Choice of Remedy. The issues become much less evenly balanced when we move to the remedial aspects of the case. Initially, the plaintiff in such a case is faced with the question of whether it wants to enjoin the breach (as did Lumley with Wagner) or to seek damages. In principle Pennzoil should have been granted a preliminary order requiring Texaco to keep the Getty operations separate from its own until the suit was resolved. If Pennzoil won the underlying suit, it could have gotten its Getty shares back directly, along with additional monetary damages (perhaps in the millions) to "clean up" any residual losses. The great advantage of such injunctive relief is that it reduces the need to make accurate assessments of monetary losses later on. So long as Pennzoil can get the shares, it will necessarily ride up and down with the value of the oil in place, just as it would have done if Texaco had never intervened.

What Damages? Pennzoil received a stroke of good fortune when its original request for an injunction was denied, because it was then free to claim damages. But how should they be calculated? Texaco was reticent about introducing evidence on this point, for fear that quibbles about damages would have been taken as tantamount to an admission of guilt. (In a sense it need not have worried, because the jury took the indemnity agreement between Texaco and the Getty interests as powerful evidence on that point.) So it staked its case on the question of liability where its position, though not without merit, was surely at its weakest.

Left a relatively clear field, Pennzoil grabbed for the brass ring and got it. It insisted that it had acquired its Getty interest largely for the sake of obtaining Getty's proven oil reserves. Now that Texaco's conduct had denied it those reserves, Pennzoil asked for actual damages equal to the cost of de-

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In principle Pennzoil should have been granted a preliminary order requiring Texaco to keep the Getty operations separate from its own until the suit was resolved.

which one firm seeks to lure away the at-will employees of a rival becomes presumptively illegal. Do executive headhunters engage in illegal behavior when they ply satisfied employees with tempting offers? It is imperative that the lines of liability be clear throughout this area, and the simplest and most logical rule is: if there was no contract enforceable between the original parties, then there should be no ac-
veloping comparable reserves by exploration, less the cost of its Getty acquisition. The cost of such development was estimated at $10 billion, while the purchase price of its Getty shares was $2.5 billion, leaving a bottom line of $7.5 billion.

Breathtaking, but wrong. Arguably, the right figure for damages is zero. One critical fact is that the price of oil dropped after the original Pennzoil/Getty deal was struck. If the deal had gone through, therefore, Pennzoil would have come out of it a loser, for there would have been no way it could have unloaded the Getty reserves before the market broke. No one doubts that Pennzoil was no longer bound by the deal once Getty repudiated it. Why does Pennzoil need damages in addition to that welcome escape? It is therefore perfectly respectable to argue that Pennzoil should not receive any damages to augment its good fortune. If Pennzoil would have sustained a loss by acquiring the Getty shares, then why should it turn a profit when Texaco’s wrong worked to its advantage?

The general rule of expectation damages is, however, more favorable to Pennzoil. On the critical question of timing, it measures the plaintiff’s loss not by the subsequent movement in the marketplace, but solely by the anticipated profit on the day of the deal. Yet even on this conventional view the right question to ask is, how much more would Pennzoil have had to pay to buy comparable reserves from another oil company? To take an analogy, suppose company A refuses to make you a custom chair for $100, as it had promised. If you can get company B to make that chair for $125, then your damages are $25, even if it would cost you (clumsily you) $500 to make the chair yourself. Drilling for oil is the wrong measure because Pennzoil could have searched for oil reserves by searching for another seller.

Looked at the right way, then, the correct damages are a lot less than the $7.5 billion claimed. If the oil reserves were worth as much to Pennzoil as it claimed, then why did the Getty interests give them away for a song? Look at some rough calculations. If Texaco paid $10 billion for the entire business, then (assuming that all shares are worth the same regardless of who controls them) it would have paid about $4.3 billion for Pennzoil’s 43 percent interest. Pennzoil had bid about $3.8 billion to acquire that same interest. The damages look to be at most on the order of $500 million, so long as we ignore the subsequent decline in value of the Getty assets. It might be possible to eke out a slightly larger number, on the theory that Texaco got a bargain at the higher price it bid. If Texaco had overpaid, on the other hand, then a lower number would be in order. All in all it is constructive, though not conclusive, that in an industry of informed and active bidders, Pennzoil did not raise its original offer, while no third party was prepared to intervene at a higher price.

To accept Pennzoil’s story, therefore, is to assume that first it and then Texaco had ripped off the Getty interests by an enormous sum. It is, however, very odd to assume massive ignorance and incompetence on one side of a competitive bidding situation involving such sophisticated players. The stock markets did not discern any enormous increase in the value of Texaco’s assets when the merger went through. Neither should we.

A half billion dollars is a big number, and one that admits a lot of refinement, up or down. But Texaco could survive such a judgment. As matters now stand the jury verdict does not just give Pennzoil the equivalent of the 43 percent stake in Getty it planned to buy; it gives it a 100 percent stake in Getty and most of Texaco to boot. Does anyone really think that Pennzoil would rather have its original deal than this damage award? With awards like these, all contracting parties should pray continuously for breach by their opposite numbers.

Does anyone really think that Pennzoil would rather have its original deal than this damage award? With awards like these, all contracting parties should pray continuously for breach by their opposite numbers.

Punitive Damages. Punitive damages amounted to $3 billion. Why? Normally, punitive damages are awarded to punish and deter deliberate and outrageous forms of conduct. The exact formulation of the rule has been the subject of intense, if inconclusive, judicial debate. It is clear that simple negligence and even gross negligence is not enough to trigger such awards. Yet even if the damage question is decided on its merits, nothing says that Pennzoil’s audacity will not win out on appeal as it did with Judge Casseb at trial.
First, malice in ordinary language connotes the ideas of personal spite and ill will. Here it connotes at most the knowledge of another contract, clearly a lesser wrong.

Second, the basic uneasiness on the issue of liability should count heavily against any award of punitive damages. If Texaco thought in good faith that it was acting within its rights—that there was no binding or no enforceable contract between Pennzoil and Getty—then wherein lies the terrible intent that would justify punitive damages?

Third, punitive damages seem here to be an unattractive way of reinforcing the underlying tort law. There is little chance that Texaco could escape detection, since its wrongful behavior consists of a public offer. Nor is there much reason to think that personal ill will and spite against Pennzoil motivated its takeover: on the contrary, it wanted the reserves to recoup from some serious drilling failures.

Finally, it seems odd to think that $3 billion in damages is needed to compensate for corporate pain and suffering. There is no reason whatsoever to compound the error in the contract damages by an excessive award of punitive damages. If actual damages should have been around $500 million, then the $3 billion in punitive damages is off by a factor of fifteen or twenty or more, even on the dubious assumption that these damages should be allowed at all.

With so many serious doubts attached to every aspect of the Pennzoil/Texaco litigation, how was it that Pennzoil was able to succeed before the jury? The secret of its success, I think, was that it imported to the world of corporate takeovers the trial techniques that have proved so successful in product liability litigation, where frail consumers are pitted against huge corporations. It is no accident that Pennzoil’s chief counsel was Joseph Jamail, who has won many large product liability cases. His key appeal was made on moral grounds, where he presented the issue in stark terms of black and white. The central point pounded into the jury’s head was that Texaco had acted not only improperly but immorally by placing greed and self-interest above the ordinary scruples of commercial dealing. Jamail’s theme was captured in the single most expensive sentence in tort history: “Send corporate America a message.” And since big damage awards are the only message that corporate America understands, why worry about precise financial calculations? The larger the number, the more unmistakable the message. The strategy worked.

In one sense, this case amounts to little more than a freak incident. One can guess that all future takeover and merger negotiations will be conducted under a clear legal understanding that no contract for acquisition is final until it is signed on the dotted line. The decision might be regarded as unimportant in another sense, too: the assets in question have not been extinguished, even if they have shifted from one set of shareholders to another. Yet the short-term losses from dislocation are substantial, for acquisition by litigation does not have the same consequences as acquisition by purchase.

It is sobering that the increase in the value of Pennzoil stock in the month after the verdict came down was smaller than the decline in value of Texaco stock. As of early January, 1985, for example, the Texaco stock had lost well over $2 billion in value, while the Pennzoil stock had gained only between $800 and $900 million in value. (Days later Pennzoil stock spiked by 19 points while Texaco remained unchanged, so there has been a lot of movement in the market.) Many other factors may have worked to influence the market value of the two firms, but even after these are taken into account, the loss in the combined value of the two firms is one rough measure of the social losses that arise when a large corporation is forced to litigate for survival. The legal uncertainty works to depress the value of the Texaco stock below the most accurate estimate of the gain. Uncertainty therefore magnifies losses and reduces gains.

The uncertainty will also affect the behavior of third parties. Texaco will lose business opportunities because others fear dealing with it, while Pennzoil will not gain comparable opportunities until the dust settles. If bankruptcy were costless and without harmful effects on the business opportunities of third parties, the social concern would be negligible. But as frictions dominate social life, the possible extinction of a major corporation, like the sinking of an ocean liner, can easily bring others down in its wake. What is disturbing here is that no one can point to any substantial social gains from this suit that might make the substantial losses worth bearing. We should all hope for a quick resolution—any resolution—that reduces the struggle to more manageable terms. A quick appellate decision that eliminates punitive damages, and reduces actual damages to around $500 million, is not a bad place to start.
The Courts and the Market for Corporate Control

Douglas M. Kraus

The last two decades have witnessed a dramatic change in the market for corporate control. Business combinations that twenty years ago would have taken perhaps a year to accomplish, and which could not have occurred at all without the blessing of the acquired company’s management, today occur in a matter of weeks, with or without the consent of the “target’s” management. Corporations and even some wealthy individuals have shown themselves increasingly willing to commit huge sums in attempts to gain control of large enterprises previously thought to be immune from acquisition by virtue of their very size. Our financial markets have even developed a new form of currency—high-yield debt obligations or “junk bonds”—to facilitate these transactions. “Merger mania” is sweeping the countryside, or so it has been said.

What has happened, in a nutshell, is that corporate control, once a very illiquid commodity, has become increasingly more liquid. And the more liquid an asset becomes, the more activity there will be in the market for that asset.

In itself, the increased activity in the market for corporate control is not a surprising development. Control has long been recognized as a valuable asset, entitled to a premium, and the pitched battles that have been waged to gain or retain it are by no means a recent phenomenon. For the most part, though, the early fights for corporate control took the form of proxy contests. These tended to be very expensive for the insurgents and involved difficult and uncertain choices for shareholders, who were asked to prognosticate about the relative abilities of the contending slates of managers to generate a return from the company’s assets. Proxy contests were therefore not a particularly efficient means of acquiring control, and they occurred with comparatively limited frequency.

As with any other valuable asset, however, it was just a matter of time before normal market forces led to the development of a more efficient method—in this case the non-negotiated or “hostile” tender offer—to extract the ore of corporate control from the motherlode. A tender offer presents shareholders with a simple choice: to sell or not to sell, for the consideration and upon the conditions established by the bidder. Tender offers are fast and, while they do involve costs, they offer the prospect of equity ownership at a price the offerer considers attractive. In the late 1960s, tender offers proliferated, gradually supplanting the proxy contest as the preferred takeover device and bringing with them a sharp increase in liquidity in the market for corporate control.

What is unique about the increased liquidity in the market for corporate control is the role the courts have played in bringing it about. The “ liquefaction” of other kinds of assets has occurred with little, if any, involvement from the courts. In recent years, for example, a thriving market has developed in collateralized debt obligations, as a result of which relatively illiquid but income-producing assets such as home mortgages, car loans, and equipment leases have been packaged into something that can be

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widely held and can change hands in the public market at a moment's notice. Other types of formerly illiquid assets, ranging from timberlands to oil producing properties, have been "securitized" and thereby liquefied as well. All this has occurred without (at least so far as I am aware) a single court decision of any particular note.

In contrast, courts have been called upon repeatedly to mediate disputes in the market for corporate control. The reason, it is often said, is that transactions in this market involve intermediaries—target management—whose interests, unlike those of traditional market intermediaries such as underwriters and brokers, occasionally lead them not to bring buyers and sellers together, but to try to keep them apart. Target management has frequently sought, in effect, to keep corporate control off the open market by asking courts to enjoin hostile tender offers.

The courts have demonstrated a strong predilection... "to allow the forces of the free market to determine the outcome" of contests for corporate control.

More recently, incumbent managers have tried to restrict trading in this valuable asset by adopting structural defenses such as the "poison pill," which requires would-be acquirers to negotiate to obtain management's approval of a proposed transaction or to risk potentially fatal economic injury if they do not.

The courts have demonstrated a strong predilection, as the Second Circuit recently put it, "to allow the forces of the free market to determine the outcome [of corporate control contests] to the greatest extent possible within the bounds of the law." While the courts clearly prefer to stay out of these fights, when they do get involved they have sought to assure that the contest is conducted, in the language of another recent case, "on an even and illuminated playing field."

As shown below, this pattern is recognizable even in the earliest decisions interpreting the federal Williams Act and has continued to be manifest in recent cases involving "poison pills," "lock-ups" and other weapons of takeover warfare. It seems likely to continue.

The Williams Act

The Williams Act was passed by Congress in 1968 in response to the increasing use of the tender offer as a device to acquire corporate control. Although originally introduced by Senator Harrison Williams of New Jersey for the purpose of restraining the predations of "white collar pirates" on our "proud old companies," the Act as ultimately passed had a distinctly free-market orientation.

In very general terms, the Act requires various disclosures to be made in connection with a tender offer, and provides an array of procedural protections designed to give shareholders sufficient time to evaluate these disclosures and to assure that all tendering shareholders are treated fairly. There are also provisions requiring the disclosure of purchases that result in the ownership of more than 5 percent of the outstanding equity securities of a corporation—a sort of distant early warning system to alert shareholders and the market in general to a potential shift in control.

The intent of the Act, as is clearly evident from its legislative history, was to allow shareholders to make informed investment decisions in the face of a takeover bid, without favoring either incumbent management or the bidder. Indeed, the legislative history explicitly acknowledges the important role that tender offers play in replacing inefficient management, thus suggesting a desire by Congress to ensure that liquidity in the market for corporate control was not impeded by the new legislation.

Despite Congress's intention, it soon became apparent that target managers would attempt to use the Williams Act to block tender offers and remove control of "their" companies from the market. The first appellate test of this strategy came less than a year after the Act's passage, when the Second Circuit reviewed, and denied, a request by the Electronic Specialty Corporation for injunctive relief blocking a pending tender offer by International Controls Corporation on the ground that the bidder had failed to disclose material information in violation of the Act. Judge Friendly, writing for the court, cautioned district judges to "be vigilant against resort to the courts on trumped-up or trivial grounds as a means for delaying and thereby defeating legitimate tender offers." Where judicial relief was necessary, he suggested that it could best be granted at the preliminary injunction stage and proposed a number of equitable remedies—most notably corrective disclosure—aimed at providing shareholders with the benefit of the information and procedural protections mandated under the Williams Act without depriving them of the opportunity to consider a premium offer for their shares. Quoting the Executor in the Mikado, Judge Friendly observed that the "object all sublime" was to "let the punishment fit the crime," thus implying that blanket injunctions that threw the tender offer baby out with the bath water would not be favored.

Nevertheless, over the next few years, target companies occasionally succeeded in using the Williams Act to block bids for control by unwanted suitors. For example, General Host Corporation obtained a preliminary injunction halting a tender offer for its shares by Triumph American, Inc., which had failed to disclose that the success of its offer would make General Host subject to certain foreign

regulations. Following issuance of the injunction, Triumph American abandoned its bid. And Bath Industries convinced the Seventh Circuit to sterilize shares acquired by a group of individuals in violation of the Williams Act, thereby effectively defeating their efforts to gain control.

**Courts increasingly came to realize that the point of the Williams Act was to improve market conditions, not to eliminate the market.**

But as time went on, courts increasingly came to realize that the point of the Williams Act was to improve market conditions, not to eliminate the market. Attempts to foreclose tender offers by appeals to the Williams Act grew to be seen as a perversion of Congressional intent, and judges began to fashion relief that avoided this result. Thus, in 1973, the Second Circuit directed that a preliminary injunction be issued blocking an offer by Wellington Associates for Sonesta International Hotels, but provided that the bid could proceed following supplemental disclosures by Wellington and an opportunity for shareholders who had previously tendered to rescind their tenders on consideration of the new information. That same year, the Second Circuit approved a district court's determination to modify a preliminary injunction and allow a bid by Schiavone & Sons for Corenco Corporation to proceed, following curative disclosure by Schiavone relating to its financial condition.

By the late 1970s, courts had become adept at enforcing the Williams Act without dampening the market for corporate control. In a fascinating imbroglio in 1978, a group of Middle Eastern investors led by Bert Lance acquired nearly 20 percent of the stock of Financial General Bancshares, a Washington, D.C. bank holding company, without making the filings required under the Williams Act. The group had acquired its stake largely through a series of privately negotiated transactions at premiums over the prevailing market prices. A smaller number of shares had also been acquired in the market. The SEC obtained a consent injunction against the Lance group which prohibited any future violations of the securities laws, but at the same time expressly permitted its members to proceed with their bid for control, provided that they did so by means of a tender offer for 100 percent of Financial General’s shares at a price not less than the highest price paid in the private transactions. The intent of this arrangement was to afford small shareholders the same opportunity to receive a premium for their shares as the large holders who had negotiated directly with the Lance group.

Financial General objected to the SEC consent injunction on the ground that it failed to provide any meaningful sanction for a clear transgression of the Williams Act. However, the district court refused to disturb the deal worked out with the SEC, though it did require the Lance group to offer recission to shareholders whose stock had been acquired in the lower priced transactions in the open market. The court stated that the prevention of further purchases by the Lance group, as the target company had requested, would deprive the shareholders of the opportunity to consider an offer that they might well find attractive and give “undue weight to the interests of incumbent management relative to the interests of FG’s shareholders and the investing public.”

Other decisions in the takeover area, even those not directly involving the Williams Act, confirm the general judicial proclivity for a free and liquid market for corporate control. In Missouri Portland Cement Co. v. Cargill, Inc., the Second Circuit reversed a district court order enjoining Cargill’s target offer for Missouri Portland on antitrust grounds. Once again, Judge Friendly was sharply critical of the tendency of target companies to assert legal violations solely as a means to block unsolicited tender offers, a practice he described as “[drawing] Excalibur from a scabbard where it would doubtless have remained sheathed in the face of a friendly offer.” According to Judge Friendly, the antitrust laws, and by implication other federal regulations, were not “meant to endow management of a target company with the power to block trade in its securities” unless there was a real showing of a violation that would threaten serious harm to the public. In 1982, in Edgar v. MITE Corp., the Supreme Court found an Illinois takeover statute that severely burdened the market for corporate control to be invalid under the Commerce Clause, confirming the conclusion reached in numerous earlier cases in the lower federal courts involving similar state statutes. Recent attempts to state legislatures to draft around the result in Edgar have met a similar fate. And just last year, the District of Columbia Court of Appeals, in a case involving Storer Communications, approved an interpretation by the FCC of the Federal Communications Act that allowed a proxy contest for a licensed broadcaster to proceed with only minimal regulatory intervention, thereby reconciling the governmental interest in controlling access to the airwaves with the Storer shareholders’ interest in corporate democracy and, ultimately, a freer market for corporate control.


2*Bath Industries, Inc. v. Blot, 427 F.2d 97 (7th Cir. 1970).*

3*Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247 (2d Cir. 1973).*

4*Corenco Corp. v. Schiavone & Sons, Inc., 488 F.2d 207 (2d Cir. 1973).*


7*Edgar v. MITE Corp.,* 457 U.S. 624 (1982).


9*Storer Communications, Inc. v. FCC,* 763 F.2d 436 (D.C. Cir. 1985).
Courts have also resisted efforts to expand the reach of the Williams Act. In 1985, the Ninth Circuit rejected the SEC’s claim that a series of open market purchases of its own shares by Carter Hawley Hale in response to a premium bid by The Limited constituted a tender offer regulated by the Williams Act. A few months later, the Second Circuit reached a similar conclusion in the battle for control of SCM Corporation.

In the latter case, Hanson Trust, in response to a variety of defensive measures by SCM, withdrew its original tender offer and thereafter, in the space of just a few hours, purchased about 25 percent of SCM’s shares in a series of five privately negotiated transactions with large institutional holders and one open market transaction. SCM, with amicus support from the SEC, challenged these purchases as being a de facto tender offer which could only be accomplished in accordance with the procedures mandated by the Williams Act. Focusing on the class of persons who need the protection of the Act, the Second Circuit rejected this claim. The court reasoned that sophisticated sellers engaging in freely negotiated transactions are fully able to fend for themselves and need neither the time nor the information provided under the Williams Act. Indeed, such transactions are an example of the free market at its best—a buyer and seller engaging in an informed exchange, each for his own benefit. It was, the court implied, the type of activity to be encouraged, not controlled.

These cases illustrate the growing realization by the courts that a liquid market for corporate control can be beneficial to the public at large and to target shareholders. The public benefits by having assets moved to more productive uses, and shareholders gain by receiving greater value in return for their assets.

Poison Pills

As a result of decisions such as those discussed above, target companies have realized that litigation is of limited use in stopping a hostile tender offer. Accordingly, they now look to other defensive tactics in order to deal with non-negotiated bids for corporate control. One of the most prevalent of these is the “poison pill,” a structural device that imposes a fatal economic penalty upon an acquirer who proceeds without management’s approval.

Pills, or shareholder rights plans as they are more formally known, come in a variety of forms. In general, however, they involve the issuance of rights, customarily by a company’s board of directors without shareholder approval, that “flip in,” in the current parlance, to allow shareholders to purchase shares of the target at a steep discount upon the occurrence of certain triggering events such as the acquisition of a specified percentage of the issuer’s shares; in the case of a merger with or into an acquirer, the rights “flip over” to permit the holder to purchase shares of the acquirer at a discount. While the flip-in and flip-over can result in severe dilution to acquirers, most pills can be “deactivated” by management through a redemption of the rights either before or after the triggering event or within a specified period thereafter. The effect is thus to encourage bidders to negotiate with management rather than proceeding with an acquisition unilaterally.

In Moran v. Household International, Inc.,11 the Delaware Supreme Court upheld the validity of a flip-over pill installed by Household, which was not then known to be the object of any acquirer’s affections. The court noted, however, that should an offer emerge, the board’s decision whether or not to deactivate the pill must be made with the interest of the shareholders in mind, and would be subject to review in accordance with the standards traditionally applied in evaluating the conduct of corporate fiduciaries. The court also took pains to point out that the terms of the flip-over pill adopted by Household did not totally preclude a proxy contest or tender offer for control of the company.

A pill can be used by management to bargain for a higher price or better terms from a prospective acquirer, or to neutralize that acquirer while other bidders are sought. These ends obviously can be beneficial to shareholders, although there is as yet no indication that the pill will produce higher values for shareholders than the market produced by itself before the pill was invented. In 1977, for example, when rights plans were unheard of, United Technologies made a tender offer for Babcock & Wilcox at $48 per share, and then was outbid for the prize by J. Ray McDermott & Co. in a spirited auction in which the price rose to $62.50 in just three weeks. And there were many similar cases.

On the other hand, if a pill is installed in response to, and in order to block, a specific offer, or if it is never deactivated, it can eliminate the market for the target’s assets. Courts have not looked favorably on this result.

The Seventh Circuit recently affirmed a district court order in validating a severely dilutive “flip-in” pill installed hastily by CTS Corporation in direct response to a partial tender offer by Dynamics Corporation of America.12 Judge Posner suggested that the CTS pill, which could be triggered by an acquisition of just 15 per-

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11SEC v. Carter Hawley Hale Stores, Inc., 760 F.2d 945 (9th Cir. 1985).
12Hanson Trust PLC v. SCM Corp., 774 F.2d 47 (2d Cir. 1985).
15Dynamics Corp. of America v. CTS Corp., supra note 13.
cent of the company’s shares, seemed “more a reflex device of a management
determination to hold on to power
at all costs than a considered measure
for maximizing shareholder wealth.”
After the Seventh Circuit’s ruling,
CTS announced that it was seeking
other bidders and adopted a revised
plan, the financial impact of which
was far less extreme than the original
plan. The district court approved the
new plan, finding that it would help to
“insure an orderly auction of the company.” At the time of writing the matter
is sub judice before the Seventh
Circuit.

A New York district court recently
struck down a pill with severely di-
lusive flip-in and flip-over provisions
that had been adopted by NL Indus-
tories just a few months before the an-
nouncement of a bid for the company
by Harold Simmons, a Dallas in-
vester. The court held that the flip-in
provision resulted in an impermissible
discrimination between shareholders
of the same class, in violation of the
corporation law of New Jersey. NL’s
state of incorporation, because the
plan provided that a bidder whose
purchases triggered activation of the
pill could not exercise any rights
attached to its own shares. The same
conclusion had been reached last year
with respect to flip-in pills adopted by
Asarco and AMF, also New Jersey
corporations, although the law in other
jurisdictions may compel a different
result.

Significantly, in the NL case, the
court was faced with a situation where
the pill had been activated and the
rights, though not yet distributed to
shareholders, were unredeemable.
The court was especially concerned with
the fact that the triggering of the pill
was irreversible and had the effect of
preventing all future tender offers. The
court observed that if the “board of di-
rectors instead of adopting a rights
plan had adopted a rule that no tender
offers would be permitted it would
clearly be beyond their power.”

The poison pill is only just begin-
ing to be tested in the courts. How-
ever, these early decisions suggest that
courts will view with great skepticism
pills that are adopted hastily to block a
specific offer or which have the effect
of closing off the market for corporate
control altogether.

Lock-ups and No-Shops

Lock-ups and no-shop provisions are
devices which, like the pill, can also
severely impede the market for cor-
porate control. A lock-up usually takes
the form of an option granted to a
friendly acquirer, or “white knight,” to
buy stock or a valuable asset of the
target in the event that another bidder
emerges. No-shop provisions usually
appear in merger agreements and pro-
vide that the target will deal only with
the white knight. Depending on the
circumstances in which they are
granted, lock-ups and no-shops can be
used as inducements to attract addi-
tional bidders into the market for
 corporate control, or to restrict the
bidding and limit the market to a single
acquirer. In three cases within the past
year, courts have taken a dim view of
the latter result.

In two cases which, paradoxically,
rely on each other (due to the fast-
moving nature of tender-offer litiga-
tion, a bench opinion from one court
may be relied on by another court,
whose opinion is then used to reinforce
the written opinion of the first court
when it is later issued) the Delaware
Supreme Court and the Second Circuit
voided lock-up options granted by
Revlon and SCM respectively. Both
cases involved bidding contests be-
tween hostile tender offerers and white
knight bidders favored by manage-
ment. In each case, after several
rounds of bidding, management re-
warded the white knight bidder with an
option to purchase valuable assets of
the target in the event that the dis-
favored bidder prevailed. These op-
tions effectively ended the bidding,
because neither hostile bidder was pre-
ted to take over a target that would
immediately be stripped of its most
highly prized assets. Yet in each case,
the option was granted in return for an
offer that represented only a marginal
improvement over the hostile offerer’s
previous bid, and in each case the hos-
tile offerer had indicated that it might
go higher.

Both courts found that management
had breached its fiduciary duty to
shareholders. And both concluded that
while a target’s management is not
obligated to put the corporation on the
auction block, once it determined to do
so it must seek to maximize values for
shareholders and may not take steps
that limit or freeze the market.

The same result was reached in the
recent battle for control of Fruehauf
Corporation. There, management re-
plied an unfriendly offer by Asher Edelman
by approving a leveraged
bid sponsored by Merrill
Lynch in which senior Fruehauf execu-
tives were participants. The Fruehauf
board agreed to a no-shop provision in
the merger agreement with the LBO
bidder and also agreed to pay Merrill
Lynch’s financing and advisory fees—
some $30 million. Moreover, the
board refused to give Edelman equal
access to Fruehauf’s financial records
to assist him in considering whether to
increase his bid. A federal district
court in Detroit enjoined consumma-
tion of the Merrill Lynch offer and
re-opened the bidding, holding that bid-
ding contests must be played out “on
an even and illuminated playing field.”
The Sixth Circuit affirmed.

Conclusion

These recent decisions regarding de-
defensive tactics are in line with those
involving the Williams Act, and in-
deed, with the purpose of the Williams
Act. They reflect a recognition that the
market for corporate control works
best when it is well-informed and liq-
uid, and suggest that interference with
either the free flow of information or
the market’s liquidity will not be toler-
ated. If this trend in court decisions
continues, the market for corporate
control will continue to grow, result-
ing in enhanced value for shareholders
and increased efficiency in the transfer
and use of corporate assets.
The Case Against Federal Intervention in the Market for Corporate Control

Douglas H. Ginsburg and John F. Robinson

With one notable exception, the United States has traditionally relied on the owners of the business—the shareholders—to decide whether a proposed business combination should take place. The exception is for mergers that are likely to have serious anticompetitive effects, that is, where there is a strong public interest in the outcome because the companies would be able to charge monopolistic prices. Federal law charges two agencies, the Department of Justice and the Federal Trade Commission, with the duty to investigate and prevent combinations that seriously threaten competitive harm. Apart from that narrow exception, which is outside the scope of this article, Congress has consistently sought to be scrupulously neutral, neither encouraging nor discouraging mergers that are not anticompetitive.

Some argue that it is now time for the government to abandon its neutral stance and enter the fray. These critics and the popular press breathlessly report that we are embarked on an era of skyrocketing "merger mania" that will harm the economy if left unchecked. Recent statistics on mergers help put our present situation in perspective. The number of transactions (measured broadly to include divestitures and "going private" transactions) was about 3,000 in 1985, approximately 20–25 percent more than the relatively constant number of transactions each year between 1975 and 1984. The largest number of transactions occurred, however, in 1968: 6,107, or twice the 1985 level. Moreover, during each of the seven years from 1967 to 1973, the level of transactions equaled or exceeded the 1985 level.

The number of transactions is only part of the story, of course. An important change has occurred in the dollar volume of such transactions and, in particular, the number of very large companies that now are being acquired or are going private. The first $1 billion transaction was in 1970; by 1978, only four more deals of that size were concluded. In contrast, 18 such deals (three of them over $5 billion) were completed in 1984 and 24 in 1985. Even after adjusting for inflation, the 1985 dollar volume now exceeds the prior peak in 1968 by about 40 percent.

While these statistics may or may not suggest a merger mania, they certainly help explain why the subject is receiving so much attention. It is no longer a simple matter of big companies acquiring small ones. Some of the country's largest and most familiar companies are being acquired, restructured, or taken private. Large numbers of shareholders and employees are being affected. And the professional managers of the Fortune 500 companies have discovered that the massive size of the companies they manage is no longer a prohibitive barrier to shareholder challenges to their control through a "hostile takeover"—an acquisition that is opposed by the management of the target company.

Although most of the public debate has focused on hostile takeovers of large companies, only five of the twenty-four $1 billion transactions in 1985 arose from hostile takeover attempts. It should not, however, be surprising that hostile takeovers spark the most intense interest; conflict is more dramatic news than concord. Also, managers of large corporations are speaking out against the possibility of challenges to their control now that they find themselves vulnerable to being on the wrong side of a takeover challenge. Indeed, a coalition of corporate executives recently formed "Stakeholders in America" to oppose hostile takeovers. And some managers have resorted to extreme and even destructive tactics in their attempts to fend off such challenges.

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Benefits, Costs, and Public Policy

Not even managers who oppose hostile takeovers dispute that mergers in general can and often do benefit the economy. They can directly increase the country's wealth and productivity. Mergers can result in joint operating efficiencies that enable the same products or services to be delivered at a lower cost. They can make it possible to realize economies of scale or scope, as well as financial economies. They can provide both the acquiring and target companies with resources—capital, management, or technology—that lead to new or better products than either company could have developed independently.

Mergers and takeover attempts, even unsuccessful ones, can also identify undervalued assets, causing them to be more appropriately valued or to be redeploled in a more valuable use—an extremely important function for the economy's productivity. Acknowledging such a role for takeovers does not imply that the managers of companies that are takeover targets are either lazy or stupid. The available evidence indicates they are not. It merely requires one to believe that they are not perfect and that it is possible for someone else to make a company's assets still more valuable to shareholders, even if the company has been a strong performer in its industry. Disagreement over this point is at the root of the debate over whether hostile takeovers are good for the economy or not.

Hostile takeovers perform another very important function for the economy, one that is different from the friendly merger. They provide an antidote to the "agency problem" that is associated with widely held public corporations. The agency problem stems from the sometimes significant divergence of interests between the owners—that is, the shareholders—and the managers who, as the owners' agents, run the corporation. Because the shareholders find it difficult and costly to act in concert, and the managers are able to use the resources of the corporation to defend their position, it can be prohibitively expensive and time consuming for shareholders to replace their management by use of the proxy machinery.

The hostile takeover attempt can be the only effective way for the shareholders to overcome the agency problem and receive full value for their ownership of the corporation. It is also often the most efficient way in which a competing management team can "go over the heads" of incumbent managers and make its case directly to the shareholders. More important, while an actual takeover provides such a remedy, even the threat of a hostile takeover attempt can be an effective incentive for incumbent managers to review their operations continually and to make sure they are getting the most value out of the assets they are charged with managing.

Notwithstanding the good for the economy that can come from mergers—hostile and friendly—a merger can also destroy wealth by moving assets to less efficient hands. We saw examples of such errors during the conglomerate building era of the late 1960s and early 1970s. We are witnessing the fallout from that period.
in the divestiture programs that many companies have now begun in order to focus their energies and resources on the businesses they know best. Indeed, about one-third of today’s corporate acquisitions involve a seller divesting a firm acquired at an earlier time. But these examples simply illustrate the fact that sometimes business people err, which is neither surprising nor avoidable.

**It is not possible to say, however, that all, or even most, transactions of a particular type are harmful.**

Because many mergers and acquisitions may not deliver the efficiency-enhancing gains that were originally expected by the parties involved—indeed some have resulted in significant losses—some have suggested that the federal government should step in to discourage takeovers that appear to be nonproductive. Most such critics would have the government intervene only in cases where they see harm—for example, hostile takeovers and the use of high yield securities are two favorite targets. It is not possible to say, however, that all, or even most, transactions of a particular type are harmful, especially since the mere possibility of a hostile takeover has a salutary competitive effect of unknowable significance.

The key question, then, is whether the government or some governmentally appointed agent of the public interest can distinguish, in advance, between individual transactions that will be good and those that will be bad for the economy. Can the government determine whether a merger will work out in the efficient and profitable way that the parties are betting it will? We think it is clear that the government is incapable of making that judgment.

It is important to keep the nature of these transactions in mind. They are capital investment decisions, similar to other business decisions, such as new product development or new plant construction, except that the stakes are often larger. Sometimes the decision turns out very right, sometimes very wrong, and sometimes in between.

Government decision-makers, who do not have their own money at stake, are sure to be less accurate than the parties themselves in evaluating the business prospects of a merger. Government agents are also necessarily less familiar than the parties with the business and the particular companies. Nor does the government have any better access to aggregate data or confidential information that would alter the parties’ evaluation of the transaction if only they were aware of it.

If there is no decision rule that can be devised in advance and no public authority that can be set up to evaluate individual mergers correctly, the next question is whether mergers or hostile takeovers are, on average, good or bad for the economy. Unless it is clear that they are bad for the economy, we should not discourage them. Three types of empirical data shed some light on this question. No one of them is flawless, but some of the studies are far more rigorous and persuasive than others.

The primary data on the effects of these transactions come from “event studies,” conducted by financial economists who track the behavior of stock prices before and after tender offers. The second type consists of accounting studies, which focus on the profitability of firms engaged in merger transactions. The third type of information is the anecdotal experience of critics of hostile takeovers, principally corporate managers.

**Evaluating the Data**

The best information comes from the stock market’s reaction to events during takeovers. The data are timely, forward-looking, comprehensive, and avoid problems associated with accounting conventions. The studies of stock prices reveal the consensus of all the participants in the market as to the expected value of the takeover proposal to shareholders of both the acquiring and acquired companies.

This evidence is unambiguous. In successful tender offer acquisitions, shareholders of the target company typically gain a premium of at least 30 percent over the pre-offer market price. That these shareholders always gain is to be expected, of course—otherwise they would have no reason to accept the tender offer. More significant, therefore, is that companies that make tender offers experience increases in their share values of about 3 percent. Because these companies are usually larger than the companies they acquire, however, the actual gain on their investment in the takeover is closer to 9 percent (above their average return before the takeover). Clearly the judgment of the market is that, on average, takeovers are likely to increase the value of both companies.2

These event studies have been criticized by those who believe that the stock market is an unreliable indicator of value. Both sides of the debate


2It is worth noting that, in making this judgment, the market takes into account the transaction costs to both sides—lawyers, investment bankers, management distraction, etc. All of the costs are borne by the parties, and there are few negative externalities, so the market’s private judgment is based on the same considerations as a more global social welfare judgment and is a good proxy for the “public interest” as it is affected by the takeover. The two factors that the market may not consider are: (1) the interests of adversely affected employees, including, most often, incumbent managers in hostile deals; and (2) tax consequences that the Treasury will absorb. While it has often been argued that the tax system favors acquisitions, that proposition has recently come under attack on both theoretical and empirical grounds (see Ronald J. Gilson, Myron S. Scholes, and Mark A. Wolfson, “Taxation and the Dynamics of Corporate Control: The Uncertain Case for Tax-motivated Acquisitions” [working paper no. 24, Law and Economics Program, Stanford University, January 1986]) for the theoretical argument and Alan J. Auerbach and David Reishus, “Taxes and the Merger Decision,” National Bureau of Economic Research, Inc., [working paper no. 1855, March 1986], for the empirical side.
generally agree that hostile takeover attempts occur because the target company's stock price is "undervalued." But they disagree sharply over why it is possible for an acquiring company to offer a significant premium and yet make a profit on the investment.

Until recently, this debate had reached what seemed to be an ideological impasse. Those who believe that the stock market is a reasonably unbiased (albeit imperfect) indicator of a company's prospects at any given time argue that a company is undervalued because either the existing management is not making the best use of the firm's assets or the bidder brings new value-creating ideas or resources to bear on those assets.

Takeover critics, on the other hand, argue that the stock market systematically undervalues takeover targets because the market is increasingly dominated by institutional investors whose own performance is measured on a quarterly basis and who therefore base their analyses of corporate performance largely on short-term earnings. These critics argue that, notwithstanding the wealth increases resulting from takeover transactions, the market's effects should not be used to determine the government's policy towards takeover and merger activity.

This "myopic market hypothesis" appears to be false based upon even a cursory observation of stock price behavior. First, if it were true, any new venture, especially one with no earnings history, would be unable to raise capital in the public equity markets. They do, of course, and the allegedly short-sighted institutional investors are among the principal purchasers of such offerings. Second, if the market were myopic, different companies in the same industry would not sell at different multiples of their current (or predicted near term) earnings. Unless the market is totally irrational, investors must believe that the long-term prospects of such companies differ significantly.

More important, however, three empirical studies that test the short-term hypothesis have recently been completed. First, the Office of the Chief Economist at the Securities and Exchange Commission (SEC) compared the amount of institutional ownership of, and research and development expenditures by, companies representing a cross-section of American industry with companies that were targets of tender offers between 1980 and 1983. The SEC staff discovered, contrary to the short-term hypothesis, that: (1) institutional investors not only do not shun corporations making above average research and development investments, they actually seem to prefer them; (2) takeover targets invested substantially less than the industry average in research and development during the years preceding the tender offer; (3) the percentage of institutional ownership of target companies was three-fifths of the percentage of institutional ownership of nontarget companies; and (4) the capital markets positively value companies that announce they are embarking on a research and development project. The staff concluded that its empirical findings appear to refute the short-term hypothesis.

Two other studies have been completed more recently by John Pound for the Investor Responsibility Research Center (IRRC). One study (using 1981-84 data) tested the hypothesis that the increasing presence of institutional investors causes systematic undervaluation of takeover targets.4 It examined levels of institutional ownership, size of takeover premiums, and the success of management resistance. The findings are generally consistent with the SEC staff study in refuting the alleged adverse effects of institutional investors: (1) institutional ownership is lower for takeover targets than nontargets; (2) the level of the premium paid in takeovers is unrelated to the extent of institutional ownership; and (3) the level of institutional ownership appears to have no bearing on the ability of management to resist unwanted takeovers successfully.

The second Pound/IRRC study was designed to test the causes of the undervaluation in target companies' stock. Although this study uses accounting data (for the years 1978-84), and is thus subject to the usual criticisms of such data, it reaches much the same conclusion as the SEC staff study: there is no evidence to support the hypothesis that takeover targets have "hidden" resources that are masked by short-term earnings reports, nor is there evidence that takeover targets invest more heavily in long-term activities and are, therefore, systematically undervalued by a stock market focused on the short run. In fact, this study, like the SEC study, finds evidence that takeover targets invest less in long-term activities than nontarget firms.

Some takeover critics have argued that companies maintaining conservative debt levels are especially vulnerable to hostile takeovers and that such takeovers should be curtailed because they often lead to "over-leveraged" companies. The second Pound/IRRC study also tested whether takeover targets are systematically undervalued because they have less debt on their balance sheets and are thus being penalized by the market for their


more cautious management. Pound discovered, however, that there is no significant difference in leverage among the control group of corporations, those involved in friendly mergers, and those taken over in hostile transactions. Indeed, targets of hostile takeover attempts were slightly more leveraged than nontargets. Remarkably, however, those companies that had successfully resisted takeovers had substantially greater leverage—before the takeover attempt—than all three of the other groups.

These three recent studies refute the hypothesis that there is a systematic flaw in the stock market valuation of takeover targets. The myopic market hypothesis is not supported in fact any more than it is in economic theory. It offers no valid reason to conclude that the wealth created by takeovers is somehow contrary to our national interest.

The only other significant empirical research that attempts to determine whether mergers or takeovers are, in the aggregate, good or bad relies on analyses of accounting data. The work of Professor F. M. Scherer of Swarthmore College and David Ravenscraft of the Federal Trade Commission Bureau of Economics is among the most recent and interesting of these efforts. Using line-of-business accounting profitability data between 1974 and 1977, they have compared lines of business that experienced substantial merger activity between 1950 and 1977 with lines that did not experience such activity. They conclude that, although profitability may be slightly higher (for mergers between "equals" and those using "pooling of interests" accounting) or slightly lower (for mergers using "pooling of interests" accounting) in lines of business that have sustained substantial merger activity, when the premium paid to effect the merger is counted, the net effect is negative.

Accounting studies, however, particularly those that attempt to measure profitability, suffer from serious methodological problems that limit their relevance for policy purposes. For example, they do not take into account the real market values of acquired assets—only the accounting valuations, which may significantly misstate their value. Moreover, unlike the studies based on stock price data, accounting studies have not yielded consistent significant results. As a result, the interpretation and value of these studies is highly uncertain.

The third category of evidence on the question whether mergers and takeovers are good or bad is the experiential and anecdotal information offered by some corporate managers and some of their investment bankers and lawyers. Notwithstanding their obvious self-interest, these people should at least be heard—they are on the industrial frontlines making the economy work, and they may know intuitively what investors, or even economists, have not yet discovered. In general, the managers object to being forced (in their view) to "waste" valuable management time and resources worrying about and defending against the possibility that someone may be able to take control of "their" business because an irrational, capricious, or short-sighted stock market has undervalued it. Institutional investors have been the prime villains, to hear these managers, although the recent empirical research by the SEC staff and Investor Responsibility Research Center should put an end to that particular bit of finger-pointing.

The ultimate object is to squeeze the most output from all available resources. Erecting barriers to takeovers on the premise that creating new assets is always "better" would be a grave error. No public interest is served when someone creates new assets at a greater cost than would be required to use existing assets. Indeed, even if the capital market's undervaluation of existing assets were irrational (and the evidence indicates it is not), economic productivity is greatest when assets flow into the hands of those who value them most. This is the best assurance that they will be put to their most productive use.

Curbs on Defensive Tactics

The only area associated with corporate takeovers that is cause for some concern is the occasional use by target company managers of defensive tactics that are not in their own shareholders' interest. The agency problem between shareholders and managers of widely held public corporations enables some managers to preserve their control, and thus their employment, at the expense of their principals. State corporation laws, which govern the relationship between shareholders and their hired managers, continue to evolve, however, in order to deal with such problems as they arise. Moreover, shareholders can protect themselves through corporate charter amendments and the contractual arrangements they enter into with their managers. Indeed, state corporation laws have accommodated rapid innovation in the last several years in order to adapt to newly possible hostile takeovers.

While we may not agree with all of these state law developments—or every decision of the courts or of shareholders votes under them—we should be extremely reluctant to displace them with federal laws. We should
prefer to solve these problems at a level closer to the problem and to the facts, preferably at the shareholder level. A federal statutory rule would be both overbroad (prohibiting activities it should allow) and underinclusive (missing some abuses, as they will continue to evolve). Unless there is convincing evidence of a serious problem of national dimension, the diversity of state law is preferable to a single federal law because it provides a laboratory for a variety of approaches and minimizes the cost of error. We have seen no such evidence of a serious problem, however.

There is also evidence that the courts are devising a more probing approach than in the past, when their unquestioning deference to managements under the "business judgment rule" appeared to give managers completely free rein to defeat unwanted tender offers. It would be entirely premature to conclude at this point that there has been a breakdown that warrants federal intervention into corporation law.

**Conclusion**

From the available evidence, we conclude that the market for corporate control works well. There is no market failure that should cause the government to intervene. Both economic theory and the great weight of the available evidence clearly point to a net benefit to the economy from takeover activity. While there certainly are mergers and takeovers that individually may reduce wealth rather than create it, the government is less capable of distinguishing between these two types of cases than are the private parties, who have better information and a substantial financial incentive to be right in making these judgments.
Antonin Scalia: Shades of Things to Come

Editor's Note: The following remarks were delivered by Dean Gerhard Casper at the investiture of former Law School professor Antonin Scalia as a Judge of the United States Court of Appeals for the District of Columbia Circuit, on September 30, 1982. While in important respects these remarks have been overtaken by history, they are nevertheless reprinted here in their entirety for those among our readers who would like to learn what the Dean had to say about Justice Scalia before he was elevated to his present, even more august position of Associate Justice of the Supreme Court.

What do Judges Scalia, Mikva,' and Bork' have in common? When I became Dean in 1979, I of course looked for things which needed improvement. One deficiency that immediately caught my eye was the Law School's underrepresentation on this Court with its very special place in the American legal system. I thought it was important for us to acquire at least a minority interest. Do not ask me how the appointments of our graduates Mikva and Bork and our faculty member Scalia were accomplished. My political influence is nonexistent; my resort to prayer must have fallen on equally deaf ears. Nor could I afford expensive lawyers for a proxy fight. But there they are. I am now utterly baffled by my next challenge—indeed, I think I have to admit defeat already. Just as with my faculty, each of these three judges is committed to his own opinions. I am afraid there is no way I can get them to vote their shares in unison.

Especially the lawyers in the audience will want to learn more about Judge Scalia, though he is, of course, known in town through his prior service with the government as General Counsel of the Office of Telecommunications Policy, as chairman of the Administrative Conference of the United States, and as head of the Office of Legal Counsel at the Department of Justice. To what influences was he exposed in Chicago? The task of conveying something about his Chicago experiences is a delicate one under the circumstances. You will forgive me, therefore, for speaking somewhat obscurely and indirectly.

Before Judge Scalia's appointment to this Court, the highest position ever achieved by a member of our faculty—obviously, not counting the office of Attorney General—had been that of Pope—but only in fiction. Walter Murphy's bestselling novel, The Vicar of Christ, describes the unlikely career of a lawyer who made it up from war hero to law professor, down to dean of a law school, up to Chief Justice of the United States, down to Trappist monk and, finally, up to Pope. As those of us who are faced with mid-life crises wonder about professional opportunities and role models, this novel provides all of us with food for thought—and hope.

You may have guessed by now that the crucial episode on the way to Rome that did more for preparing the future Pope than any of his other activities was not Washington but his service as a law professor at the University of Chicago. The hero's name is Walsh. I quote:

Well, I confess to having had a certain preformed opinion about Walsh, but when I met him I was not unfavorably impressed, not unfavorably at all. I had not then realized that he had been an associate professor of law at the University of Chicago. Still, it was not lacking in congruence. Like the institution itself, he was bright, quick, and intellectually just a bit raw for more cultivated eastern tastes. He always wanted

'While his new position certainly makes him a supreme pontiff of the secular, American kind, I express no opinion on the question whether Justice Scalia has now become "papabile"—a potential pope. The pool of candidates is large. While the press has made much of the fact that Justice Scalia is a Roman Catholic, as a former student of the Canon Law, I should like to point out that there is no legal requirement that popes, at the time of their election, be priests, or, for that matter, Catholics. (Dean's footnote.)
to leap and tear the throat out of a problem. He took no aesthetic pleasure in measuring a problem and living with it for a time before deciding whether it was even desirable to try to slay it. In short, he was more quick than wise. He never appreciated the comfort that a worthy enemy could provide. That and a certain lack of judicial humility were his most obvious flaws as a jurist.

Well, this characterization is not unhelpful, provided you take each of its elements and stand it on its head to account for the author's obvious East Coast bias. Once you have done that, you get an especially accurate sense of Nino Scalia: intellectually refined, he takes great aesthetic pleasure in measuring a problem. Both wise and quick, he has always appreciated the comfort that a worthy enemy can provide. As for judicial humility—well, it will come, as it reputedly always does, with the judicial robes.

There is another recent novel which addresses the same issue. Its authenticity is indisputably greater since it was written by our faculty colleague Saul Bellow. In The Dean's December the question is raised why its protagonist, Cord, became a professor in Chicago. "Why a college, and why here?" his sisters inquired. He couldn't really answer, but he did say, "For me it's more like the front lines. Here is where the action is." Cord's sister was not satisfied with the answer and thus repeated her question. "What advantage do you see here?" I quote Cord's answer: "There's the big advantage of backwardness. By the time the latest ideas reach Chicago, they're worn thin and easy to see through. You don't have to bother with them and it saves lots of trouble."

This suggests that Nino was attracted to Chicago because being a professor there is efficient. This particular efficiency consideration aside, I hasten to add that the burden of integrating law and economics will rest more on the shoulders of a former Yale Law School Professor here and on those of a new Judge on the Court of Appeals for the Seventh Circuit than on this newest addition to your court.

Nino has been a magnificent friend and colleague—thoughtful, straightforward and honest, and exceptionally probing in his discussion of legal matters. You should know that he possesses a highly developed sense of the absurd, especially when it comes to discovering unintended consequences of regulatory reform—a field of which he is a master. We shall miss his critical perceptivity now that he has been "elevated" from the chair to the bench. In compensation, those of us who are left behind below may sit back and wonder about how Judge Scalia will adjust from one role to the other. For instance... .

In his capacity as a dispassionate academic critic of the courts, Professor Scalia, in 1978, wrote a much-cited Supreme Court Review article on Vermont Yankee in which he criticized both this Court of Appeals and the Supreme Court. We all remember Vermont Yankee, of course, as the case in which Justice Rehnquist, speaking for a unanimous Court, expressed a dislike for "Monday morning quarterbacking" in football. At the time and in his article, Professor Scalia suggested that it would be interesting to see "what further steps the Supreme Court may take to bring the D.C. Circuit into line." Quite interesting, I should say, and perhaps a little more so now that our former colleague has become a member of the court which is responsible for the vast majority of significant administrative law de-

2Saul Bellow, The Dean's December, p. 133-34.
3The Dean's reference must be to Judge Bork.

In Judge Scalia's interest, I hope it will continue to be so responsible for a long time, current efforts in the Congress to the contrary notwithstanding.

Permit me to say a word about what used to be Nino's and still is my favorite pastime—criticism of the courts. I am increasingly unhappy about the state of the art. There was a time, not too long ago, when it was considered respectable and valuable for lawyers to sit down and do a painstakingly detailed analysis of a single decision—examine the validity of its reasoning, ponder its implications. Nino's Vermont Yankee article is an elegant example. Without having studied the subject empirically, I have a sense that the genre is increasingly disfavored—disfavored even by authors of law review comments. Its place seems to be taken by more speculative essays which seem less interested in understanding than in the approval or disapproval of outcomes. In this world view, the courts are filled with heroes and villains rather than with professionals to whose professional performance we apply professional standards above everything else. In recent years various tendencies have combined to strengthen further the notion that law is essentially an empty vessel into which we pour, and therefore may pour, almost anything. The indisputable ambiguity of law seems to make the laborious task of immersing ourselves in judicial opinions and their institutional background a futile, and therefore dispensable, undertaking.

The responsibility for this development lies mostly with certain trends in legal education—some of them not unpraiseworthy in their intent. Other developments may also have contributed. As the impression spreads that judicial opinions are not infrequently put together in the manner of congressional committee reports accompanying legislative bills, incentives to treat them as anything more than political scorecards decrease. Some, indeed, read like scorecards, especially those that divide opinions into discrete parts which individual judges join or leave alone as their individual views seem to dictate.

My colleague Frank Easterbrook,¹ in a recent Harvard Law Review article,¹¹ viewed this development as inevitable and chided critics of excessive division as being naive or misleading about the world of judicial decision-making. I am not so sure about this. I think the public has a fair claim that the law of the land be articulated not only in a well reasoned and clear manner but also with an eye to integration of differences. For better or worse, it is a function of law, especially in the United States, to define both descriptively and prescriptively what we are all about. This is not to say, of course, that dissent, even dissent within majorities, should be avoided at all costs.

Be that as it may, academic critics of the courts and the law should be fair and clear about the point where their own preferences come into play. Neither law nor its history can be infinitely manipulated to suit our own views. "Subjectivity does not mean that anything goes."

From its inception in 1960, the Supreme Court Review has carried on its front page a quotation from Judge Learned Hand which I may be permitted to quote: "While it is proper that people should find fault when their judges fail, it is only reasonable that they should recognize the difficulties. . . . Let them be severely brought to book, when they go wrong, but by those who will take the trouble to understand them."

I promise Judge Scalia that we shall attempt to criticize and praise his opinions in an uninhibited, robust, wide-open, dispassionate and understanding way. We can only hope that he will receive equally candid treatment from other academics and from his new colleagues on the various benches that make up the federal judicial system.

We wish him well and Godspeed in his new ventures—so important to our present and our future.

¹The statement "my colleague" is still technically correct because the judge is a Senior Lecturer at the Law School. At Frank Easterbrook's investiture as a Judge for the United States Court of Appeals for the Seventh Circuit, in April of 1985, Dean Casper said the following: "I am most grateful for this opportunity to dispel a nasty rumor. As you may recall, Judge Posner of this court served as the first Lee and Brena Freeman Professor of Law at the University of Chicago at the time the President of the United States chose him to fill a vacant seat on this bench. Last year I recommended to the President of the University the appointment of Frank Easterbrook to fill the chair vacated by Judge Posner. This caused immediate speculation on the Midway that I was trying to have Professor Easterbrook appointed to this court, or, to put it less delicately, that I was trying to get rid of him. A moment's reflection will show how unjust this speculation was.

Following Judge Posner's appointment, nobody could have reasonably believed that the Freeman professorship, while not a necessary condition, was a sufficient one for appointment to the federal bench. Now, of course, there exists a strong statistical correlation since, as of today, all incumbents of that chair have been made federal judges. I have been told that journalists and colleagues at the Law School are paying close attention to my next move—the former with curiosity, the latter with a mix of expectation and apprehension. They are wasting their time. Contrary to what some people believe in light of the recent elevation to the federal appellate bench of Professors Posner, Scalia, and now, Easterbrook, there is no reason to call for the impeachment of President Reagan. At least as far as I know, it is not true that the President has unconstitutionally delegated part of his power of appointment to the law faculty of the University of Chicago."

The Fund for the Law School 1985-86
A Message from the 1985-86 Fund for the Law School Chairman

The 1985-86 goal of the Fund for the Law School was $888,000. I am pleased to report that 2,319 donors contributed $907,651, which is an increase of 8 percent over last year's campaign.

Whether this success is a result of the increasing financial maturity of our alumni or an increasing awareness of the importance the Law School has been to our lives, or both, we can all be proud of the results. Special recognition is due to the members of the Leadership committee: George J. Cotsirilos, Donald E. Egan, Robert M. Green, David C. Hilliard, Duane W. Krohnke, Joseph D. Mathewson, Kenneth C. Prince, Judith L. Rose, Michael S. Sigal and Thelma Brook Simon.

In order to maintain the continued success of thirty-two campaigns, it will be necessary to make an even greater effort this coming year. We are all aware of likely legislative changes in the tax law that would increase the after-tax cost of contributions. As a result, the 1986-87 campaign must broaden the base of those giving and work even more diligently to increase contributions from those most able to give. I am certain that all of us, as trustees of the Law School tradition, will work harder to achieve the goals set for the future.

Howard R. Koven '47

A Message from the 1986-87 Fund for the Law School Chairman

In keeping with tradition, it is my pleasant task to comment prospectively on the upcoming Fund for the Law School. In many respects, the financial challenges of legal education that the current Fund seeks to meet are the same as those with which it has coped since its inception. Faculty members of high calibre must be attracted and then maintained, an increasingly difficult task when associate compensation escalates dramatically, as Dean Casper aptly observes. Moreover, even in these days of modest inflation, the costs of library maintenance and expansion and myriad ancillary services continue to increase. Finally, the current philosophy regarding governmental support of education has tended to shift even more responsibility to private sector funding.

There are, however, two respects in which the upcoming Fund differs from those of recent years. First, the Capital Campaign is concluding. The Law School wisely elected to continue the Fund for the Law School at the same time the Capital Campaign was taking place. Nevertheless, it would be unrealistic to assume that solicitation of contributions to the Capital Campaign did not have some depressant effect on Fund results, to say nothing of its utilization of the human resources of many of our talented alumni. Second, a successful drive this year will carry the Fund for the first time in its history over the psychological hurdle of $1 million.

I look forward to working with you in achieving and surpassing our goals this year. It is my hope that in doing so we will expand, not merely the degree of financial support, but also the numerical base from which that support comes, to further enhance the prospects for future Funds.

Donald E. Egan '61
A Message from the Dean

We have come to accept the fact that the Law School, every year anew, must turn to its graduates and friends and ask for their help. We do not have the powers of the tax collector. Instead we rely on the efforts of volunteers and the generosity of our supporters. We must count on an appreciation of moral, rather than legal obligation.

With great pleasure I acknowledge the indebtedness of the Law School to its alumni and friends. Under the stewardship of Howard R. Koven, '47, as National Chairman and a Leadership Committee consisting of George J. Cotsirilos, Donald E. Egan, Robert M. Green, David C. Hilliard, Duane W. Krohnke, Joseph D. Mathewson, Kenneth C. Prince, Judith L. Rose, Michael S. Sigal, and Thelma Brook Simon, the Annual Fund has exceeded its goal by $22,000 to raise a total of almost $946,000 for the Law School (including contributions to the Mandel Legal Aid Clinic). It is not too much to say that the continuation of the School as a great institution is dependent on the success of these annual drives. We are most grateful.

I welcome Donald Egan, '61, as the National Chairman of the 1986-87 Fund for the Law School. Its goal of One Million Dollars is the most ambitious yet. It compares with $162,000 raised by the 1966-67 Annual Fund twenty years ago. While the dollar is now worth less than one third of its 1967 value and the number of living alumni has increased from 4,000 to almost 6,000, the record of these two decades is a record of strong and impressive growth. Unfortunately, the challenges to legal education continue to grow as well. Not the least among them is the stunning fact that the salaries of some first-year associates now exceed those of the most senior and most able law professors in the country—a state of affairs that was certainly not the case twenty years ago. I am convinced that you stand ready to help us in our fight to preserve Chicago’s quality.

Gerhard Casper

The pictures interspersed through the pages of the Honor Roll are a selection from the Law School Record’s collection of photographs of students at the Law School. They sketch something of the changes in styles and habits over the past thirty-five years. The editor takes absolutely no responsibility for any feelings of nostalgia, embarrassment or disbelief that may arise in those who recognize themselves.
The Law School gratefully acknowledges the time so generously contributed by the Leadership Committee of the Fund for the Law School and by volunteers listed on the following pages.
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### Law School Associates ($1,000-$2,499)

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### Dean's Associates ($500-$999)

Anonymous (1)  
William H. Abbott '28  
Howard Adler Jr. '51  
Alexander B. Aikman '66  
Barry S. Alberts '71  
Richard Alexander '69  
Jean Allard '53  
Stuart A. Applebaum '60  
Simon H. '73 and Virginia L. Aronson '75  
Fred C. Ash '40  
Gary H. Baker '73  
Bonnie A. Barber '75

#Courtenay Barber Jr.  
Peter M. Barnett '75 and Anne E. Dewey '75  
Steve M. Barnett '66  
John H. Barrow '67  
Karl M. Becker '68  
Stuart B. Belanoff '57  
L. Howard Bennett '50  
George V. Bobrinskoy Jr. '59  
David C. Bogan '72  
David C. Bogert '33  
Joseph D. Bolton '74 and Alison W. Miller '76  
Steven S. Bowen '72 and Ellen C. Newcomer '73

Estate of James R. Sharp '34  
Gerald J. Sherman '62  
James H. Shimberg '49  
Timothy Shouvlrin '76  
Allen M. Singer '48  
Stephen M. Slavin '64  
Teft W. Smith '71  
Darryl O. Solberg '73  
#Harry B. '57 and Branca J. Sondheim  
Harold E. Spencer '37  
Lawrence D. Spunin '63  
Charles D. Stein '48  
David M. Stigler '68  
#Supreme Life Insurance Co. Joseph C. Swidler '30  
#Harry P. Tatelman  
Alfred B. Teton '37  
Theodore J. Theophilos '79  
Thomas M. Thomas '35  
Kenneth S. Tollett '55  
Junjiro Tsubota '67  
#Frances S. Turner  
Lowell C. Wadmond '24  
Maurice Walk '21  
Robert L. Weiss '48  
Bernard Weissbourd '48  
Matthew E. Welsh '37  
Jack L. Wentz '63  
Donald M. Wessling '61  
Alan F. Wherritt '20  
The Whistler Foundation  
Edwin P. Wiley '52  
Arnold R. and Ann Wolff  
Morton H. Zalutsky '60  
#Hans Zeisel  
John E. Zimmerman '49  
Joseph T. Zoline '35  
William A. Zolla '65  
Barry L. Zubrow '80

---

# = Restricted gift  
* = Restricted and unrestricted gifts  
‡ = Deceased
Anonymous (9)
Charles and Geraldine Aaron
Mark N. Aaronson '69 and
Marjorie E. Gelb '70
Joseph J. Abbell '34
Amy L. Abrams '82
Howard B. Abrams '66
Norman Abrams '55
Frederick B. Abramson '59
Fred M. Ackerson '80
John F. Adams '77
Kenneth L. Adams '70
Marion B. Adler '82
Thomas F. Alhearme '84
Thomas W. Albrecht '79
Thomas R. Alexander '48
Harry T. Allan '56
David W. Allen '75
Don A. Allen '78
Franklin G. Allen III '74 and
Janice M. Stewart '75
Mary D. Allen '72
Alexander C. Allison '63
Grace Allison '79
John J. Almond Jr. '78
Jeffrey Alperin '84
Sam Alschuler '35
Joseph H. Andersen '81
Barbara J. Anderson '84
C. David Anderson '67
Mark J. Anderson '80
Charles R. Andrews '58
Paul G. Annes '23
David B. Apatoff '77 and Nell
Minow '77
David L. Applegate '78
Leonard P. Aries '32
James W. Armstrong '84
Frederick J. Artwick '70
Theodore M. Asner '49
Gordon C. Atkinson '81
Frederick E. Attaway '73
Boris Auerbach '54
Charles Averbook
Martin P. Averbuch '77
Rosemary B. Avery '71
Stephen L. Babcock '66
Michael F. Baccash '73
George E. Badenoch '66
Richard I. Badger '68 and Inge
Fryklund '79
Arthur J. Baer '51
Joseph W. Baer '40
Frederick J. Bailey III '76
James L. Baillie '67
Roger A. Baird '38
Charles B. Baker '38
David R. Baker '82
Donald Baker '54
Samuel M. Baker '72
Thomas A. Baker '74
Dennis R. Baldwin '65
Sharon Baldwin '75
James M. Ball '74

= Restricted gift
* = Restricted and
unrestricted gifts
\* = Deceased

Century Associates ($100-$499)

Anonymous (9)
Charles and Geraldine Aaron
Mark N. Aaronson '69 and
Marjorie E. Gelb '70
Joseph J. Abbell '34
Amy L. Abrams '82
Howard B. Abrams '66
Norman Abrams '55
Frederick B. Abramson '59
Fred M. Ackerson '80
John F. Adams '77
Kenneth L. Adams '70
Marion B. Adler '82
Thomas F. Alhearme '84
Thomas W. Albrecht '79
Thomas R. Alexander '48
Harry T. Allan '56
David W. Allen '75
Don A. Allen '78
Franklin G. Allen III '74 and
Janice M. Stewart '75
Mary D. Allen '72
Alexander C. Allison '63
#Sophie G. Pomaranc
#William A. Potter
Vincent F. Prada '81
Greg W. Renz '75
William P. Richmond '59
Richard M. Rieser Jr. '68
#Rose D. Rosenthal
Lawrence C. Roskin '68
Edward I. Rothschild
Paul T. Ruttm '72
*Stephen A. Schiller '61
Frank L. Schneider '62
Ellis I. Shaffer '54
Allen H. Shapiro '68
Michael S. Sigal '67
Payton Smith '57
*Frederick J. '79 and Priscilla C.
Sperling '79
Zev Steiger '64
Joseph Stein '42
Irvig Stenn '27
Henry L. Stern '50
Saul L. Stern '40
Leslie A. Stulberg '78
William R. Sullivan Jr. '71
Michael J. Sweaney '76
Kenneth R. '69 and Margaret
Tulle
Kenneth M. Taylor Jr. '79
Marvin T. Tepperman '49
Robert A. Thorsen '37
John J. '73 and Ricki R. Tigert
'76
Leland E. Tomlinson '76
Ronald L. Tonidandel '58
*Charles S. Treat '80
Paul E. Treusch '35
John B. Truskowski '70
Allen M. Turner '61
Roger D. '76 and Sally D.
Turner '76
Thomas Unterman '69
James Van Santen '48
Francis E. Vergata '70
Philip L. Verveer '69
Paul W. Voegeli '71
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Harold A. Ward III '55
Curtis R. Wick
John P. Wilkins '69
Hubert L. Will '37
Voyce C. Wilson '66
Erich P. '74 and Susan A. Wise
'74
Maynard I. Wishner '47
Carl E. Witschky '77
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Michael W. Zavis '61

Restricted and
gifts

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Nathan Wolfberg

1935
Sam Alschuler
Arthur J. Bernstein
Knox Booth
Max L. Chill
William B. Elson Jr.
Ray Forrester
George L. Herboldsheimer
John C. Howard
Paul R. Kitch
Philip C. Lederer
<table>
<thead>
<tr>
<th>Year</th>
<th>Names</th>
</tr>
</thead>
<tbody>
<tr>
<td>1936</td>
<td>Herman J. De Koven, Herbert Israelstam, Carroll Johnson, John M. Knowlton, Robert E. Levin, Lawrence E. Levy, Solaman G. Lippman, Herman Odell, Herbert Portes, Raymond L. Rusnak, Erwin Shafer, Blanche B. Simmons, Marvin L. Simon, Jerome S. Wald</td>
</tr>
<tr>
<td>1943</td>
<td>Stanley L. Cummings, I. Frank Harlow, Norman E. Jorgensen</td>
</tr>
<tr>
<td>1944</td>
<td>George T. Bogert, William P. Steinbrecher, Henry T. Synek</td>
</tr>
<tr>
<td>1945</td>
<td>Ralph B. Ettlinger, Raymond G. Feldman, Theodore J. Herst, Dale M. Stucky</td>
</tr>
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<td>1946</td>
<td>Nancy G. Feldman, Jewel S. Lafontant, Louis W. Levit, George W. Overton Jr., Barrington D. Parker</td>
</tr>
</tbody>
</table>

# = Restricted gift
* = Restricted and unrestricted gifts
† = Deceased

VOLUME 32/FALL 1986 43
1949
Theodore M. Asner
Arthur E. Berlin
Robert T. Bonham
McKnight Brunn
David W. Burnet
Kuo-Ho Chang
Ralph J. Coletta
Sheldon O. Collen
Jack Corinblit
Robert W. Crowe
Richard G. Dinning
Urchie B. Ellis
Daniel Fogel
Ray H. Garrison
Mildred J. Giese
Samuel D. Golden

1950
L. Howard Bennett
William H. Bissell
William R. Brandt
Donald J. Dreyfus
S. Richard Fine
Arnold M. Flamm
Raymond N. Goetz
Edwin H. Goldberger
Byron T. Hawkins
J. William Hayton
Jordan J. Hillman
Miles Jaffe
Raymond A. Jensen
Bernard S. Kaplan
Maxwell P. Keith
Charles D. Kelso
Milton A. Levenfeld
John C. McLean
Frederick A. Morgan Jr.
Richard K. Pelz
Richard H. Prins
James M. Ratcliffe
Jerome W. Sandweiss
F. Max Schuette
#John D. Schwartz
Henry L. Stern
Sherwin J. Stone
C. Richard Walker

1951
Howard Adler Jr.
Arthur J. Baer
Harold H. Bowman
Robert Bronstein
F. Ronald Buoscio
Michael Conant
Edward R. De Grazia
Fred J. Dopheide
John J. Enright
Charles Ephraim
Alvin Fross
Gerald B. Greenwald
Maynard J. Jaffe
#Robert N. Kharasch
Dirk W. Kitzmiller
Peter Krehel
Laurence R. Lee
Manning K. Leiter
Charles A. Lippitz
Marshall E. Lobin
Marshall L. Lowenstein
*Abner J. Mikva
Joseph Minsky
Edward H. Nakamura
Karl F. Nygren

1952
Anonymous (1)
Joseph S. Balsamo
Robert S. Blatt
Allan M. Caditz
Arland F. Christ-Janer
Ward P. Fisher
*James T. Gibson Jr.
Ralph M. Goren
Julian R. Hansen
*C. Julius Head
Elizabeth B. Head
Leo Herzel
Maurice H. Jacobs
Lowell H. Jacobson
Jack Joseph
David V. Kahn
Burton W. Kanter
Charles E. Lindell
Edgar E. Lungren Jr.
Nancy P. Martin
Paul E. Moses
William O. Newman
Calvin Ninomiya
Alexander H. Pope
John A. Reid
Walter Roth
A. Bruce Schimberg
Richard F. Scott
Lowell A. Siff
Robert S. Solomon
Marshall Soren
Melvin Spaeth
Roger A. Weiler
Edwin P. Wiley
Thomas W. Yoder

1953
Jean Allard
Jost J. Baum
William E. Bertholf Jr.
William A. Black
Robert H. Bork
John W. Bowden
Ralph E. Brown
James R. Bryant Jr.
Harry N. Fisher
1961
Roland Adickes
Robert C. Bills
George P. Blake
Philip L. Bransky
Loren Q. Brynestad
James C. Conner
Donald C. Dowling
William S. Easton
Donald E. Elgan
Richard R. Elledge
Roberta G. Evans
James R. Faulstich
Gabriel E. Gedvila
Mary Ann Glendon
Haldon K. Grant
Richard M. Harter
Paul H. Hauge
James E. Hautzinger
Richard A. Heise
Thomas N. Jersild
M. Leslie Kite
Richard Langerman
Donald A. Mackay
Donald Martin
John A. Mitchell
Laurance P. Nathan
Michael Nussbaum
Richard N. Ogle
S. Richard Pincus
Jerry Pruzan
*Stephen A. Schiller
Larry P. Scriggins
Calvin Selfridge
Gordon M. Shaw
William J. Smith
Arthur M. Solomon
Lois A. Solomon
Herbert J. Stern
Allen M. Turner
Charles A. Werner
Donald M. Wessling
David M. Wittenberg
Michael W. Zavis

1962
Anonymous (1)
Charlotte Adelman
Barry M. Barash
Allan E. Bibin
Martin F. Bloom
Richard W. Bogosian
Bruce D. Campbell
*David S. Chernoff
Wendell W. Clancy
Robert E. Don
*James A. Donohue
David P. Earle III
William B. Fisch
Michael J. Freed
David B. Goshien
Edward B. Greensfelder Jr.

Charles H. Gustafson
‡Richard Harris
William M. Hegan
#David C. Hilliard
John C. Hudson
Martin Jacobson
Robert A. Jensen
Arnold J. Karzov
Michael J. Kindred
Richard P. Komyatte
Anne E. Kutak
William C. Lee
Richard L. Marcus
Sheldon M. Meizlish
Morrie Much
John E. Nelson
Frank F. Ober
Robert W. Ogren
Louis E. Rosen
David M. Rothman
Harold S. Russell
Dale L. Schlafer
Frank L. Schneider
Fred K. Schomer
Louis L. Selby
Gerald J. Sherman
Howard J. Silverstone
Sheldon M. Sisson
Robert A. Smith
Ronald E. Stackler
Henry H. Stern Jr.
Stephen E. Tallent
Charles F. Vihon
Eugene H. Wachtel
William B. Weidenaar
Bernard Wiener
Robert A. Woodford
Joel Yohalem

1963
Alexander C. Allison
Gary L. Bengston
John D. Bolger Jr.
George F. Bruder
Charles P. Carlson
Ronald S. Cope
*David L. Crabb
Gary E. Davis
Terry D. Diamond
Robert U. Dini
Donald E. Elising
Anthony C. Gilbert
Sheldon M. Gisser
Marvin Gittler
*Burton E. Glazov
James J. Granby
George C. Hook
Noel Kaplan
David S. Kreisman
Robert M. Leone

1964
Terence J. Anderson
*Melinda A. Bass
Lawrence G. Becker
Edward M. Burgh
Josef D. Cooper
L. Jorn Dakin
John D. Daniels
Joseph N. Darweesh
Samayla D. Deutsch
Robert J. Donnellan
Frank C. Dunbar III
John S. Eskilson
John R. Falby Jr.
*Richard I. Fine
Linn C. Goldsmith
William S. Hanley
Harold L. Henderson
David I. Herbst
J. David Hertzer
Albert F. Hoteld Jr.
*George B. Javara
Malcolm S. Kamin
Sidney Kaplan
Robert G. Kerke
Richard G. Kinney
*Lillian E. Kraemer
David E. Mason
*Laurel J. McKee
Taylor McMillan
James J. McNamara
Allen J. Nelson
Kenneth B. Newman
Alan R. Orschel
Robert B. Parker
Gerald M. Penner
David L. Porter
Stuart G. Rosen

1965
Anonymous (1)
Dennis R. Baldwin
Marvin A. Bauer
Gordon A. Becker II
Andy L. Bond
Michael E. Braude
Yung F. Chiang
Frank Cicero Jr.
John T. Conlee
James M. Cowley
Seymour H. Dussman
Charles L. Edwards
Tim J. Emmitt
William J. Essig
Bruce S. Feldacker
Gail P. Fels
Frank E. Forsey
Roger R. Foss
*Joseph H. Golant
Robert J. Goldberg
Robert W. Gray
Daniel B. Greenberg
Janice C. Griffith
William A. Halama
Joel L. Handelman
Carl A. Hatch
Lawrence T. Hoyle Jr.
David W. James Jr.
Phillip E. Johnson
*Peter P. Karasz
Daniel P. Kearney
A. Larkin Kirman
Michael B. Lavinsky
*David M. Liebenthal
Thomas A. McSweeney
David B. Midgeley
Peter J. Mone
Thomas D. Morgan
Stuart C. Nathan
Mitchell J. NewDelman
Grady J. Norris
Kenneth P. Norwood
Grady J. Norris
Jeffrey S. Ross
Barbara W. Mather  
T. Michael Mather  
Philip R. McKnight  
Lee M. Mitchell  
John E. Morrow  
Roger L. Price  
#Gary L. Prior  
James G. Reynolds  
Richard M. Rieser Jr.  
Lawrence C. Roskin  
Jan J. Sagett  
Allen H. Shapiro  
Deming E. Sherman  
Donald L. Shulman  
Galen R. South  
David M. Stigler  
#Thomas P. Stillman  
Laurence N. Strenge  
Robert E. Van Metre  
C. Nicholas Vogel  
Heathcote W. Wales  
*William R. Wallin  
James T. Williams  
Michele O. Williams  

1969  
Judith S. Boggs  
#Mark N. Aaronson  
Richard Alexander  
#Frederick W. Axley  
Lee F. Benton  
Joel M. Bernstein  
Thomas A. Blade  
Harvey E. Blitz  
Uzzell S. Branson III  
George Leonard Dawson  
John M. Delehanty  
#Quin A. Denvir  
Robert N. Dokson  
Alan R. Dominick  
Charles L. Dostal Jr.  
J. Eric Engstrom  
Don W. Fowler  
Harold S. Goldsmith  
Phillip Gordon  
Frederick L. Hartmann Jr.  
*Susan A. Henderson  
Robert G. Hershenhorn  
#Harold C. Hirshman  
Case Hoogendoorn  
Allan Horwich  
Lawrence H. Hunt Jr.  
Randall M. Jacobs  
Dennis L. Jarvela  
John A. Johnson  
Robert T. Johnson Jr.  
Harold R. Juhnke  
Joel H. Kaplan  
Daniel M. Katz  
#Thomas D. Kitto  
*Stephen E. Kitchen  

1970  
Kenneth L. Adams  
Frederic J. Artwick  
James A. Beal  
Gerardo M. Bioniello  
Peter W. Bruce  
C. John Buress  
Jack P. Caolo  
Walter S. Carr  
#Jo Ann L. Chandler  
James W. Daniels  
Jonathan Dean  
Alan J. Farber  
Richard S. Frase  
John M. Friedman Jr.  
Marjorie E. Gleb  
*Jeffrey S. Goddess  
Jeffrey S. Goldman  
Joseph H. Groberg  
James H. Hedden  
Margaret Heiden  
Walter Hellerstein  
George A. Hisert Jr.  
Edwin E. Huddleston III  
#Charles C. Ivie  
Paul F. Jock II  
Terry A. Mellroy  
#Stanley H. Meadows  
James W. Paul  
Lee T. Polk  
Lawrence E. Rubin  
Robert P. Schmidt  
Paul M. Shupack  
Mark B. Simons  
Richard A. Skinner  
Robert J. Stucker  
John B. Truskowski  
Francis E. Vergata  
Kim A. Zeitlin  
Bernard Zimmerman  

1971  
Barry S. Albright  
#Alan A. Alop  
Rosemary B. Avery  
Daniel I. Booker  
Donald L. Burnett Jr.  
Samuel D. Clapper  
Lawrence J. Corneck  
Michael M. Eaton  
Justine Fischer  
James C. Franzek  
Michael R. Friedberg  
David W. Gast  
*Bruce L. Goldsmith  
*Robert W. Green  
Steven A. Grossman  
Steven P. Handler  
Schuyler K. Henderson  
John W. Hough  
#Marc R. Isaacson  
Jeffrey Jahns  
Alan N. Kaplan  
Steven Z. Kaplan  
Robert A. Kelman  
Thomas L. Kimer  
Jonathan C. Kinney  
Nicholas W. Le Grand  
Carl B. Lee  
Diane R. Lifl  
Adam M. Lutynski  
Neal D. Madden  
Philip R. McLoughlin  
Robert L. Misner  
Leonard P. Nalencz  
#Ralph G. Neas Jr.  
Theodore H. Nebel  
William G. Nosek  
Andra N. Oakes  
Andrew C. Peterson  
#Mark R. Pettit Jr.  
James M. Prickett  
Michael D. Ridberg  
Donna P. Saunders  
Mark L. Silbersack  
Tefft W. Smith  
Margaret M. Stapleton  
Gabriel N. Steinberg  
Mason W. Stephenson  
#Lynn R. Sternson  
Paul M. Stokes  
Geoffrey R. Stone  
William R. Sullivan Jr.  
Mary M. Thorkelson  
Robert J. Van Curen  
Paul W. Vogeli  
Hugh S. Wilson  
Bruce H. Wyatt  

1972  
Mary D. Allen  
Samuel M. Baker  

1973  
Anonymous (1)  
Larry A. Abbott  
Simon H. Aronson  
Frederick E. Attaway  
Michael F. Baccash  
*Gary H. Baker  

Wendy C. Binder  
David C. Bogan  
#Fern C. Bomchill  
Steven S. Bowen  
Timothy D. Bradbury  
*Ally Briggs  
Joseph J. Bronsky  
#Robert L. Brubaker  
John J. Buckley Jr.  
*George J. Casson Jr.  
Michael E. Chubrisk  
Robert D. Claessens  
Harlan M. Dellsy  
John A. Erich  
Howard G. Ervin III  
Deborah C. Franczec  
David J. Gerber  
Don E. Glickman  
*Virginia M. Harding  
*Alan J. Howard  
Betty C. Jacobs  
John G. Jacobs  
#Donald W. Jenkins  
Robert E. Kehoe Jr.  
Jerald A. Kessler  
Cary L. Klafter  
Richard A. Kruk  
James P. Lansing  
James T. Leak  
#Joan D. Levin  
J. Kenneth Mangum  
John W. Mauck  
*Michael L. McClellage  
William P. McLauchlan  
Neal S. Millard  
*Donna M. Murasty  
Lawrence G. Newman  
Robert E. Nord  
Vincent F. O’Rourke Jr.  
Barbara F. Petersen  
Thomas Pillari  
Robert I. Richter  
David M. Rieth  
James B. Rosenbloom  
Paul T. Ruttom  
Michael T. Sawyier  
*Robert P. Schuwerk  
Ray W. Sherman Jr.  
#Stephen L. Spitz  
#Stephen F. Stroh  
Jeffrey D. Warren  
Robert R. Watson  

48 THE LAW SCHOOL RECORD
1974
Franklin G. Allen III
Thomas A. Baker
James M. Ball
Sheldon I. Banoff
*James E. Bartels
*Philip H. Bartels
Clinton R. Batterton
Frederick W. Bessette
Keith H. Beyler
Joseph D. Bolton
Kathleen W. Bratton
Richard J. Bronstein
*Stephen R. Buchenroth
John E. Burns
Robert P. Burns
James J. Clarke II
John M. Clear
Michael G. Cleveland
Rudolph F. Dallmeyer
Nathan H. Dardick
*Beth B. Davis
Geoffrey G. Dellenbaugh
Darrell L. DeMoss
*John P. Duncan
Patrick J. Ellingsworth
H. Anderson Ellsworth
Norden S. Gilbert
Louis B. Goldman
Howard H. Greengard
Edward T. Hand
Mary R. Hardin
Steven E. Hartz
*Michael R. Hassan
Stephen L. Haynes
James E. Honkisz
Glen S. Howard
John A. Hubbuch
*John K. Hughes
Ted R. Jadwin
Russell D. Jones
Arthur G. Kidman
*John M. Kimpel
Herbert W. Krueger Jr.
Roy F. Lawrence
Thomas M. Levine
Peter A. Levy
Robert W. Linn
Alan H. Maclin

1975
Anonymous (2)
David W. Allen
Gregory K. Arcanson
Virginia L. Arsonon
Sharon Baldwin
*Bonnie A. Barber
Peter M. Barnett
*Patrick B. Bauer
*Marc O. Beem Jr.
William W. Bennett Jr.
Geraldine S. Brown
Thomas A. Cole
Eugene J. Comey
William H. Crispin
Anne E. Dewey
Jay M. Feinman
Terence E. Flynn
*Alan S. Gilbert
Wayne S. Gilmartin
Walter C. Greenough
Stanley B. Grimm
David A. Grossberg
Ann R. Heitland
Susan K. Jackson
Judy Jacobs
*John J. Jacobsen Jr.
Harold L. Kaplan

1976
Anonymous
David W. Allen
Gregory K. Arcanson
Virginia L. Arsonon
Sharon Baldwin
*Bonnie A. Barber
Peter M. Barnett
*Patrick B. Bauer
*Marc O. Beem Jr.
William W. Bennett Jr.
Geraldine S. Brown
Thomas A. Cole
Eugene J. Comey
William H. Crispin
Anne E. Dewey
Jay M. Feinman
Terence E. Flynn
*Alan S. Gilbert
Wayne S. Gilmartin
Walter C. Greenough
Stanley B. Grimm
David A. Grossberg
Ann R. Heitland
Susan K. Jackson
Judy Jacobs
*John J. Jacobsen Jr.
Harold L. Kaplan

# Restricted gift
* Restricted and unrestricted gifts
‡ Deceased
Dean E. Criddle
George B. Curtis
Holly C. Davis
Joseph H. Delehant
Dolores H. Dohm
Robert L. Ebe
*Daniel A. Edelman
*Steven J. Fiffer
Thomas M. Fitzpatrick
Daniel P. Gallagher Jr.
Irving Geslewitz
Robert C. Glustrom
Bruce M. Graham
H. Steven Graham
David Greenbaum
Mark E. Grummer
John B. Hancock
James M. Harris
Peter D. Heinz
Roger M. Huff
*Joel M. Hurwitz
Martin D. Jacobson
Anne G. Kimball
Christopher M. Klein
George L. Kovac
Howard P. Lakind
Bruce C. Levine
*Donald J. Liebentritt
Mitchell J. Lindauer
Richard M. Lirtzman
Frederick V. Lochbihler
Joseph D. Mathewson
Marcia A. McAllister
Brian J. McCollam
Larry H. McMillin
*Jack S. Meyer
Alison W. Miller
Richard C. Nehls
Michele L. Odorizzi
Thomas J. Pritzker
Phillip E. Recht
Edward J. Roche Jr.
James J. Romanek
Mark R. Rosenbaum
John W. Rotunno
Jeffrey B. Schamis
Timothy Shouvlin
*Rayman L. Solomon
Steven G. Stein
Andrew R. Stern
Robert E. Stigger
Winnifred F. Sullivan
Michael J. Sweeney
Valli B. Tandler
Ricki R. Tigert
Leland E. Tomlinson
Roger D. Turner
Sally D. Turner
Jeffrey D. Uffner
*John A. Washburn
Andrew J. Wistrich
#Alice A. Woodyard
#David C. Worrell
#Mark C. Zaander
Robert P. Edwards Jr.
Henry J. Escher III
Deborah D. Fraser
Robert Fryd
Robert D. Gecht
Barbara L. Goering
Reed Groethe
Laura G. Hassan
*Mark E. Herlihy
#Mark J. Heyrman
John T. Hickey Jr.
#Domenique G. Kirchner
Andrew Kull
Dana H. Kull
J. Stephen Lawrence Jr.
*Deborah Leff
Richard M. Lipton
#Martin M. Lucente Jr.
Mark C. Mamolet
Michael S. Mandell
*Robert M. Mark
William P. Marshall
*David R. Melton
Nell Minow
Deborah H. Morris
Paul M. Murphy
Emily Nicklin
Stephen F. O'Byrne
James D. Parsons
Alan M. Posner
*Lucy F. Reed
Lawrence I. Richman
Robert G. Robison
George S. Rosic
*Suzanne R. Sawada
Ronald Schreiber

1977
*Richard M. Schwartz
#Michael J. Sehr
Barbara L. Smithers
William J. Van Susteren
*Peter L. Wellington
Douglas H. Williams
Gary J. Winston
Carl E. Witschky
#Thomas A. Witt
Timothy D. Wolfe
Michael H. Yanowitch
Charles J. Yast
#Richard F. Zehnlle

1978
Don A. Allen
John J. Almond Jr.
David L. Applegate
Louis M. Bell
H. Nicholas Berberian
Donald S. Bernstein
David R. Brown
Randall E. Cape
David C. Christensen
James P. Clark
Garry W. Cohen
John M. Coleman
Wayne D. Collins Jr.
Loren E. Desonville
Augustus I. Du Pont
Maurice S. Emmer
Jerry A. Esrig
James H. Fox
Sherry W. Gilbert
#Mitchell D. Goldsmith
#David F. Graham
#Christopher K. Hall
<table>
<thead>
<tr>
<th>Year</th>
<th>Names</th>
</tr>
</thead>
</table>

# = Restricted gift
* = Restricted and unrestricted gifts
‡ = Deceased
The Law School gratefully acknowledges gifts received from the following friends in 1985-86:

Anonymous (1)
Charles and Geraldine Aaron
Eleanor B. Alter
#Ameritech
#Charles Averbook
#Matilda L. Baer
Douglas G. Baird
#Courtenay Barber Jr.

#Gerald S. Barton
#Edward and Barbara P. Bayuk
Marshall Bennett
#Douglas C. Benton
#Beatrice B. Berg
Irwin and Marjorie Biederman
#Estate of Robert Binninger
*Mark R. Bires
#Kenneth W. and Gail P. Bley
Lawrence and Abby Block

#Nathan and Emily S. Blum Foundation
#Alyce Bolander
*Roger Bosch
#Lynde and Harry Bradley Foundation
#Robert E. Bramson
#Henry J. and Marge Brownstein
Dorra R. Burnett
W. G. and M. Burns Foundation
#Roy Campanella
#Maurine Campbell

Joseph C. and Gloria A. Carpio
*Gerhard Casper
Hammond E. Chaffetz
#Frank Chayes
#Chicago Area Foundation for Legal Services
#Chicago Bar Foundation
#Chicago Burr Oak Cemetery Ass'n Inc.
#Gerald J. Christian
William J. Church
#Allen Clement
#Law Firm Gifts

The Law School gratefully acknowledges gifts received from the following law firms in 1985-86:

* Adams Fox Adelstein & Rosen
* Baker & McKenzie
  Matkov Griffin Parsons
  Salzman & Madoff
  Pattishall McAuliffe & Hofstetter
  Pope Ballard Shepard & Fowle
* Sonnenschein Carlin Nath & Rosenthal

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In recent years a growing number of law firms have established matching gift programs. The terms of the matching gift programs vary from one law firm to another, but usually a law firm will match the gift of an associate, and increasingly also of a partner, to a law school. Frequently, law firms establish minimum and maximum amounts that they will match.

Matching gifts have become increasingly important to the Fund for the Law School. Alumni who are in a position to designate matching gifts to the Law School are urged to secure the proper forms to send to the Fund when making their gifts.

Matching gifts are counted as gifts from alumni when the gift categories of alumni are determined for the Honor Roll.

The Law School gratefully acknowledges matching gifts from the following law firms in 1985-86:

* Adams Fox Adelstein & Rosen
* Bell Boyd & Lloyd
  Cahill Gordon & Reindel
  Cleary Gottlieb Steen & Hamilton
* Covington & Burling
  Cravath Swaine & Moore
  Davis Polk & Wardwell
* Faegre & Benson
  Hale & Dorr
  Kauffman Eberhart
  Cicconetti & Kennedy
  Keck Mahin & Cate
  Kirkland & Ellis
* Mayer Brown & Platt
  McDermott Will & Emery

---

#Montgomery McCracken

Walker & Rhoades
Morrison & Foerster
O’Melveny & Myers
Pillsbury Madison & Sutro
Pope Ballard Shepard & Fowle
Rosenman Colin Freund
Lewis & Cohen
* Sidley & Austin
Skadden Arps Slate
Meagher & Flom
* Sonnenschein Carlin Nath & Rosenthal
Stinson, Mag & Fizzell
Thomas and Fiske
Wilmer Cutler & Pickering
Corporation Matching Gifts

Matching gift programs have been instituted in over 900 businesses and corporations and are an integral part of corporate philanthropy. The following corporations and businesses made matching contributions designated for the Law School in 1985-86:

Abbott Laboratories Fund Alexander & Baldwin Inc.
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*American Telephone and Telegraph Foundation Amoco Foundation Inc.
ANR Pipeline Company The Arthur Young Foundation
Ball Corporation Barclays/American/ Foundation Inc.
Beatrice Companies Inc.
#Borg-Warner Foundation Brunswick Foundation Burlington Northern Foundation
CertainTeed Corporation Foundation
The CFS Continental Foundation Inc.
#Champion International Corporation Chase Manhattan Bank N.A.
Chemical Bank
*Chicago Title and Trust Company
CIGNA Foundation
*Citibank N.A.
#CNA Foundation
Coca-Cola Company Container Corporation of America
CPC International Inc.
CSX Corporation
De Kalb Agresearch Inc.
R. R. Donnelley & Sons Company
Dow Chemical USA Foundation
*Equitable Life Assurance Society of the U.S.
Exxon Education Foundation
Federal National Mortgage Association
The Field Corporation Fund
The First Boston Foundation Trust
First National Bank of Chicago Foundation
FMC Corporation
Ford Motor Company
General Dynamics Corporation
*General Electric Foundation
Goldman Sachs Fund
The Hartford Insurance Group Foundation Inc.
Household Finance Foundation
Household International
Illinois Bell Telephone Company
*International Business Machines Corporation
International Minerals & Chemical Foundation
International Telephone and Telegraph Corp.
John A. Hartford Foundation Inc.
*John D. and Catherine T. MacArthur Foundation
John Deere Foundation
Johnson & Johnson
Joseph E. Seagram and Sons Inc.
Kemper Financial Services Inc.
Kimberly-Clark Foundation Inc.
Krasberg Corporation Lawyers Co-operative Publishing Co.
Manufacturers Hanover Trust Company
*MCA Incorporated
McDonald's Corporation
MITRE Corporation
*Mobil Foundation Inc.
Monsanto Fund
Montgomery Ward Foundation
The Nabisco Foundation
National Life Insurance Company
The Northern Trust Company
The Northwestern Financial Corporation
Northwestern Mutual Life Insurance Company
Owens-Corning Fiberglas Corporation
Pacific Telesis Foundation
Peat, Marwick, Mitchell Foundation
Penn Central Corporation
Phibro-Salomon Inc.
Phoenix Mutual Life Insurance Co.
Price Waterhouse Foundation
Quaker Oats Foundation
Research Institute of America Inc.
R. J. Reynolds Industries Inc.
Scott Foresman and Company
Security Pacific Foundation
Standard Oil Co. (Ohio)
Stanhope Inc.
Student Loan Marketing Association
Tambrands Inc.
Time Incorporated
Towers Perrin Forster & Crosby Inc.
Trailmobile Incorporated
Trans World Corporation
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A conversation with Jo Desha Lucas is both a pleasure and a problem. It is a pleasure to listen to his voice, with its measured tones and southern accent, that more than thirty years of life in Chicago have failed to bury. It is enjoyable just to talk with this courteous gentleman who will converse amusingly on almost any topic. His incisive wit is so gently expressed that the casual listener will impale himself on its barbs without even having realised he has done so. Only a twitch at the corner of his mouth reveals that Lucas is enjoying the joke. The problem lies in getting him to talk about his own achievements. Professor Lucas is a modest man who sees no need to push himself to the forefront of the world’s attention.

Jo Desha Lucas, the Arnold I. Shure Professor of Urban Law, is the only southerner on the Law School’s faculty. Born and raised in Richmond, Virginia, he is a descendant of the distinguished Desha family (then pronounced “de shay”) of Kentucky. Joseph Desha was a member of Congress and a brigadier general in the war of 1812. From 1820 to 1824 he was also governor of Kentucky. Professor Lucas is not named for him, however, but for Joseph’s grandson, Jo Desha, so called because his father, the governor’s son, had been named Lucius Junius Brutus. Lucius had vowed that his own children would all have monosyllabic names! The first Jo is distinguished for having fought the last duel in Kentucky, shooting a Yankee who had insulted him in a bar. The shooting was not fatal. Not all the Deshas were so considerate of their adversaries, however. Jack Desha was convicted of murder during his father’s term of office as governor. Joseph Desha pardoned him, thereby causing a juicy scandal. Professor Lucas relates this tale with evident enjoyment.

Lucas is also proud of his ties to The University of Chicago. Through a collateral branch of his family he is distantly related to Sophonisba Breckenridge, who was the first woman graduate of the Law School, in 1904, and a pioneer in the Chicago School of
Civics and Philanthropy, which later grew into the University's School of Social Service Administration.

Jo Desha Lucas first came to the Law School in the fall of 1952, from Columbia University, where he had just received his LL.M. degree. He had graduated from the University of Virginia with the LL.B. degree in 1951. He began his career at the Law School as a Bigelow teaching fellow, but in December of 1952, Sims Carter, the Dean of Students, suffered a heart attack and was forced to resign his post. The Dean of the Law School, Edward Levi, wanted the position to go to a faculty member. Jo Lucas was appointed and became Assistant Professor of Law. He took up his duties in January, 1953. Promoted to Associate Professor of Law in 1958, he remained Dean of Students until 1961, when he went back to full-time teaching and research, as Professor of Law.

For generations of students, Jo Desha Lucas was not only the professor who taught them courses in State and Local Government and Law Revision. He was also the figure they turned to on all matters of admissions and scholarships and for formal advice. Former students of his remember him fondly for his practical and sympathetic help as Dean of Students and for his classes, peppered with anecdotes and colorful imagery. He was Chairman of the Admissions Committee and the Grades, Rules, and Requirements Committee, but neither committee met a single time during those nine years. One of his tasks was to deal with the large number of petitions for readmission from those who had failed their first year. At that time the pool of candidates applying to law schools was much smaller than today and entry requirements were more relaxed. Nevertheless, only those who could meet the high academic standards demanded by the University of Chicago Law School could continue their career beyond the first year.

To current generations of students Jo Lucas is one of the more reclusive figures in the Law School, thought of as having "something to do with Moore's Federal Practice." In fact they are correct, but his involvement is much more than just "something." He has been the major reviser of the work first brought out in the 1930s by James William Moore, while the latter was a member of the Law School faculty. One of the two standard works on federal civil procedure, the Federal Practice has grown over the years from its original four volume size to more than twenty volumes. For many years all the annual supplements to the work were written by Professor Lucas alone. Although these annual updates are now written by a team of six or seven scholars, Professor Lucas is still the chief editor and reads and edits the whole work. If pressed, Professor Lucas will admit that he has written more than half of the revisions to the original work. Lucas's work is vitally important to the practice of law. No practicing lawyer can be without a treatise on federal practice and procedure. Jo Lucas knows the worth of what he does, but this very private man refuses to seek public acclaim for his work.

Professor Lucas has had a long and abiding interest in how local governments work and the rules that control them. His courses on state and local government and taxation probe the problems of state and city government at a local level and examine the rules that affect the individual most directly and immediately. In 1982 Lucas was appointed the Arnold I. Shure Professor of Urban Law. This professorship was established in 1971 in honor of Arnold Shure, who graduated from the Law School in 1929.

As one of the leading authorities in the field of practice and procedure, Lucas is a member and former chairman of the Illinois Supreme Court Rules Committee and has also served as Reporter to the Advisory Committee on Appellate Rules for the federal courts. He is also an expert in maritime law and a third edition of his "Cases in Admiralty," a standard work in the field, is currently in preparation.

Jo Lucas's southern heritage, wonderful, dry humor and his years of close involvement with the students come together in the Making of the Perfect Mint Julep, a ritual he has occasionally performed for the students' enjoyment at the Law School Wine Mess, held the day before the Kentucky Derby. Dressed in a white linen suit, using sterling julep cups, and a sterling hammer to crush the ice, he solemnly demonstrates the best way of creating a mint julep. It begins with crushing the mint in the cups with a little sugar, and includes the choice of the correct newspaper to insulate the ice-filled cups from the table. The Louisville Courier Journal is the paper of choice if the mint has been bruised; if it has been crushed, the Richmond Times Dispatch is the preferred publication. Throughout the demonstration Lucas maintains a solemn and dignified mien. Past generations of students still recall with amusement the unexpected climax to the ritual.

Jo Desha Lucas has offered to invent a complete new history of his life and family, full of drama and swashbuckling adventure, that he feels would be "much more exciting" than the truth. This quiet, modest, reserved, witty, eccentric, scholarly man has a story all his own. Why improve on the truth?
Alumni Profile

Walter V. Schaefer: An Appreciation

Albert W. Alschuler

There never was a judge who cared more about the facts than Walter V. Schaefer. He once wrote: "The principal stimulus . . . comes from the facts of the case. The interaction between fact and law is close and continuous . . . . Each decision of a court measures the existing body of legal doctrine against the particular facts before the court. Once rendered, the decision becomes itself a part of the existing body of precedent. Its adequacy, in turn, is measured by the impact of the facts of future cases."

A series of law clerks (I among them) urged Justice Schaefer to draft his opinions more for the law reviews and for the future. We knew that the measure of a judge (and, indeed, of a law clerk) was his influence on "the law." Wiser and less vain than we, Justice Schaefer resisted our importuning. He understood that generalizations were not the measure of a judge, not even a judge on an appellate court. Indeed, Schaefer feared aggrandizing generalization and avoided overruling precedents or reaching doubtful issues of law in advance of necessity. He realized that a judge could properly govern the future only as an incident of performing his judicial duty. This duty was to uphold the law and, within its limits, to render justice to those who came before him.

Schaefer's emphasis on the particular bespoke no lack of vision and no aversion to abstract thought. To the contrary, he loved "lawyers' law." His general explorations of law appeared primarily, however, in scholarly writings that continued during and after his service on the court. These writings repeatedly addressed the most difficult procedural issues of Schaefer's time—prospective overruling, the appropriate role of precedent, collateral estoppel and double jeopardy, the successes and limitations of America's adversary system, and the allocation of judicial power within a federal system.

One historic moment of legal scholarship illustrates the depth of his vision and understanding. Justice Schaefer titled his Holmes lecture at Harvard Federalism and State Criminal Procedure. He gave this lecture in 1956—five years before Mapp, seven years before Gideon, and ten years before Miranda. The "due process revolution" had barely begun, yet critics of the Supreme Court were complaining that decisions such as Griffin v. Illinois

Editor's Note: Walter V. Schaefer, a 1928 graduate of the Law School, died on June 15, 1986, at the age of eighty-one. Following his appointment to the Illinois Supreme Court by Governor Adlai Stevenson, Schaefer served on the court for more than twenty-five years. Earlier he had been a lawyer, held a number of positions in state and municipal government, and had been a professor of law at Northwestern University. He continued to practice and teach following his mandatory retirement from the court at age seventy.

Schaefer's judicial service was marked by extraordinary distinction. That he was one of the two or three preeminent state court judges of his time was a common and entirely undisputed observation. His extensive extrajudicial service included teaching at the New York University Appellate Judges' Seminar and the Salzburg Seminar in American Studies, chairing the Criminal Trial Committee of the American Bar Association Project on Standards for Criminal Justice, working on the Council of the American Law Institute, and chairing the Law School's Visiting Committee. Among his many honors were the A.B.A. Medal (the highest award of the American Bar Association) and honorary LL.D. degrees from Northwestern University, the John Marshall Law School, and the University of Chicago. In this essay, Mr. Alschuler, a law clerk to Justice Schaefer in 1965-66, offers a personal retrospective.


Albert W. Alschuler is Professor of Law at the University of Chicago.

*70 Harv. L. Rev. 1 (1956).
and Brown v. Allen had eroded state court prerogatives.

Schaefer addressed his remarks to these critics (including many of his fellow state court judges) as well as to the students and faculty at Harvard:

*The Supreme Court’s position at the summit also gives it a different perspective from that of state courts. . . . The “insulated chambers afforded by the several States” are sometimes an advantage. But they may be too well insulated. Someone once wisely said that the basic trouble with judges is not that they are incompetent or venal beyond other men; it is just that they get used to it. And it is easy indeed to get used to a particular procedural system. What is familiar tends to become what is right.*

In his Holmes lecture, Schaefer offered a blueprint for the coming due process revolution, one that, as he envisioned it, would have included a constitutional right to counsel for indigent defendants, a broad habeas corpus remedy, and a constitutionally based exclusionary rule for the products of illegal searches and seizures (an exclusionary rule that apparently would have been qualified, however, by a “reasonable good faith” exception).

Schaefer’s due process revolution also would have included guarantees of dignified treatment during police interrogation; but, as he later emphasized in his Rosenthal lectures at Northwestern,1 it would not have included generalized Miranda-style safeguards. Schaefer considered the development of prophylactic “systems” for the protection of rights incompatible with the appropriate judicial role. In addition, he believed that a sensible society does seek evidence from people accused of crime (just as employers seek explanations from employees accused of wrongdoing and parents ask questions of children suspected of misconduct). One wonders whether a due process revolution grounded on Schaefer’s concepts of everyday morality might have proven even stronger than the revolution in criminal procedure that the Warren Court accomplished.

Schaefer ended his Holmes lecture with a reminder of the special responsibility of the tribunal “at the summit.”

“The quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of its criminal law. That measurement is not taken merely in retrospect by social historians of the future. It is taken from day to day by the peoples of the world, and to them the criminal procedure sanctioned by any of our states is the procedure sanctioned by the United States.”

When a generalized issue of law was clearly presented, Schaefer did not shy from it in his judicial work. His decisions abandoned outdated precedents and shaped the future in other ways. A number of them found their way into law reviews and casebooks. To emphasize a single theme of these decisions is to slight their diversity and complexity, yet one consistent theme was an insistence on legal responsibility for wrongdoing, both private and governmental. In the jurisprudence of Walter Schaefer, interstate businesses did not find sanctuary in traditional, restrictive concepts of in personam jurisdiction, and neither governmental units nor charities were able to shield their wrongs behind traditional immunities. Justice Schaefer was, moreover, no more enamored of stylish new claims of privilege than he was of hoary old ones; his insistence on legal responsibility for wrongdoing led him to resist assertions of constitutional privilege for defamatory speech.

The Schaefer rulings that attracted general professional attention may have revealed less of what was remarkable about him than an obscure case that did not alter the law at all—the case of Arthur Gardner, a large, twenty-eight-year-old black man of subnormal intelligence who lived with his mother, who attended church regularly, who enjoyed a good reputation among his neighbors, and who had never been in trouble until his arrest for rape on September 15, 1963.

The Illinois Supreme Court was not required to hear Gardner’s case. Far from presenting a legal issue of

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1 The Suspect and Society (1967).
statewide importance, this case raised only a question of the sufficiency of the evidence to support a criminal conviction. Not only had a jury convicted and a trial judge denied a motion for a new trial, but the Illinois Appellate Court had affirmed the conviction. Moreover, clear evidence established that a rape had occurred, and the victim of the crime had unequivocally identified Gardner as the person who committed it. A conscientious state supreme court justice might well have declined to review a previously reviewed conviction supported by direct, unambiguous testimony. Indeed, a conscientious justice might have given Gardner's petition for leave to appeal only cursory attention.

One of the things that captured Justice Schaefer's attention, however, was the testimony of a photographer who had viewed the scene of the crime. This photographer had expressed doubt that the defendant could have fit through the window that the victim claimed he had entered. Schaefer was concerned that an issue so easily resolvable had been raised and left hanging. Had our adversary system failed?

As it happened, the victim's apartment was not far from the University of Chicago Law School; and on a Saturday, rather than commute from my south side apartment to Justice Schaefer's chambers downtown, I worked at the law school library. At noon, I walked to Blackstone Avenue, climbed up the back stairs of a tenement, located the victim's apartment, and studied the window. On Monday, I reported to Justice Schaefer that the defendant could have fit through it. I thought that Justice Schaefer might be relieved.

Instead he was furious. He advised me in sterner tones than I had ever heard him use that my extra-record investigation had been improper. "If a trial judge took it upon himself to view the scene of a crime in the absence of counsel, we'd reverse him in a minute."

Although some of the apparent flaws in the state's case against Gardner were red herrings, the case remained troublesome. The victim's identification had been obtained under extraordinarily suggestive circumstances—circumstances that a few years later might have been held to violate the Federal Constitution. While undergoing a physical examination after the crime, the victim was asked if she could identify the rapist. When she said that she could, Arthur Gardner was brought before her. Although Gardner did not closely fit the description that the victim had given the police, she made the identification that she later repeated at trial.

Gardner had been arrested within four blocks of the victim's apartment more than an hour after the crime. He was walking toward the apartment rather than away from it. A microscopic examination of his undershorts by the Chicago Police Department revealed "no spermatozoa or measurable amount of acid phosphatase activity." Gardner told the police at the time of his arrest that he was walking home from a movie. He could not remember the titles of the two movies he said he had seen; but when he was searched before being jailed, the police discovered a theatre ticket stub. The manager of the theatre where Gardner claimed to have been testified that he could identify the stub. A person who had bought this ticket and stayed through the entire program would have left the theatre at 11:00, approximately one hour after the crime.

Gardner testified that he had begun walking home after leaving the theatre. A few minutes later, he saw a man he knew and spoke to him. This man, who had been an insurance counsel in Chicago for fifty-two years, testified as a defense witness. Although he was unsure which Sunday he had seen the defendant, he remembered the incident. He had failed to recognize the defendant until the defendant had said that he was "Arthur" who "used to be your paper boy." The witness was confident that the meeting had occurred shortly after 11:00 p.m. on a Sunday; he had just left a church service that had ended at that hour.

One could speculate about reasons for the defendant's conviction. The defense attorney might have antagonized the jury when he asked the complaining witness baseless questions about "gentlemen companions" on the evening of the crime and when he accused the prosecutors of being "worse than Russian Communists." It also might have made a difference that the defense attorney was black and the jury (if typical of Cook County juries at the time) predominantly white. More important, neither the defense attorney nor the prosecutors had assembled the facts in as orderly a fashion as they later appeared in Justice Schaefer's opinion. The jury was confronted with a jumble of times and places—so much so that, when one of the prosecutors appealed to "reason" in his closing argument, he apparently saw no incompatibility between the defendant's alibi and the victim's accusation: "Now, let's use our common sense and reason. Here's a man who is claimed to be retarded, 28 years old, and who has never gone out with a girl, sees a movie about sex. Isn't this sufficient to arouse the passion of the retarded man? A man who has never been with a woman?"

Justice Schaefer recognized no higher responsibility than ensuring that the innocent are not punished for crime.

Issues of credibility are almost always for the jury. Nevertheless, Justice Schaefer recognized no higher responsibility than ensuring that the innocent are not punished for crime. He wrote an opinion for the Illinois Supreme Court that said, "Upon these facts we do not have that 'abiding conviction' of defendant's guilt that is necessary for an affirmation of the defendant's conviction."

In preparing this reminiscence of Gardner's case, I again conducted an extra-record investigation and discovered that Gardner's mother still lives at the address where she and Gardner lived in 1963. Mrs. Gardner reported that, following his release from prison, Arthur Gardner had continued to live quietly with her and had avoided any further involvement with the law. He had suffered a heart attack and died about two months before Justice Schaefer.

"People v. Gardner, 35 Ill. 2d 564, 573, 221 N.E. 2d 232, 237 (1966)."
Schaefer provided consistent inspiration in things personal as well as things professional. During his judicial service, two Illinois Supreme Court justices resigned following disclosure of their financial dealings with a criminal defendant. Some of Justice Schaefer’s obituaries credited him with restoring integrity to the court following this incident. I wondered how readers who did not know Justice Schaefer might have viewed these statements about his integrity. Was it news that, unlike some of his fellows, a judge had not taken bribes? Anyone acquainted with Justice Schaefer, however, would have known how much more integrity meant to him than the simple avoidance of wrongdoing.

I learned of Schaefer’s integrity before I went to work as his law clerk in 1965. The Americans then fighting in Southeast Asia were mostly members of my generation who had lacked some advantages that I had enjoyed. One reason for the continued exemption of some privileged twenty-five year olds from military service was that local draft boards gave deferments to judicial law clerks. Judges throughout America wrote letters in which they declared their clerks’ services essential to the national security, and draft deferments followed.

Many judges undoubtedly believed what they wrote. Others may have regarded their letters as “legal fictions.” When I requested a letter from Justice Schaefer, however, he refused. He was not sure that his own work was essential to the national security; and even if it were, he could, with regret, get along without me.1

Schaefer’s special integrity was manifested in countless ways. He insisted on sharing the honoraria for his lectures with his secretary and with those of us who had provided trivial research assistance. He scrupulously recorded and disclosed every action of his that conceivably might have been questioned. He firmly rejected what others would have regarded as the ordinary perquisites of office.

Francis A. Allen once observed that, for Walter Schaefer, the practice of kindness was a fine art. People who encountered him even briefly knew it. Pro se litigants often appeared before Justice Schaefer on “motion day.” Some of them filed difficult to understand motions in lawsuits that alleged far-flung conspiracies. (The litigants’ allegations were not always as outlandish as they seemed; one of the litigants whom Justice Schaefer heard most frequently later uncovered the evidence of conspiracy that led to the resignation of two Illinois Supreme Court justices.) Schaefer treated these litigants no differently from the LaSalle Street lawyers who argued multi-million dollar lawsuits. As with the lawyers, Schaefer was unyielding when the litigants engaged in deliberate abuse. More commonly, he provided sympathy and patient explanations as self-important lawyers fumed about the delay.

Apart from the members of his family, no one benefited more from Schaefer’s kindnesses than his law clerks. He seemed far more interested in teaching us than in using our exertions to reduce his own. In asking a law clerk to draft an opinion, Justice Schaefer always revealed the court’s “impression vote” and his own vote. Then he admonished, “Write it as you see it, and we’ll talk.” I was slow to realize that I could rarely alter Justice Schaefer’s views, that I was not really a justice of the Illinois Supreme Court, and that I probably ought to give some help to the person who was. I believe that I became genuinely useful to Justice Schaefer just as I was about to leave the job.

The Illinois Supreme Court heard arguments in Springfield, where there was little work for a law clerk to do. Nevertheless, unlike most other members of the court, Justice Schaefer asked every law clerk to accompany him to Springfield to hear arguments during one or two weeks of a year-long clerkship. It was an unforgettable experience—riding over the prairies on the Illinois Central as the justice reminisced and talked cases, discovering how ordinary most of the arguments were and how good some of them were, taking every meal with the justices in their living quarters on the top floor of the Supreme Court Building, touring the Illinois State Museum with Justice Schaefer as a guide, and going out on the town with justices from rural and small-city areas while the justice from Cook County read a book.

It all fit together. Justice Schaefer’s spare, clear writing style matched his careful judicial restraint. His judicial restraint matched his personal humility and gentleness. His preoccupation with the facts and his passion for justice duplicated his concern for the people who entered his life. His high intellectual standards duplicated his high personal standards. The integrity of his work was one aspect of the integrity of his life. Walter Schaefer was complete.

And it was my privilege, early in my career, to be associated with one of the genuinely great figures of my profession.

1Fortunately for me, my friend Philip Johnson (J.D. ’65) had the same local draft board as I. Following his graduation from law school, Johnson had become a law clerk to Chief Justice Traynor of California, and Traynor had written the customary letter. After Johnson had secured his deferment, I advised the board that my work for Justice Schaefer did not differ significantly from the work that Johnson was doing for Chief Justice Traynor. I suggested that it would be inequitable to treat Illinois clerks less favorably than California clerks. Perhaps because my local board was located in Illinois, I received a deferment. I probably would write the same letter to my draft board again. I doubt, however, that Justice Schaefer, who abhorred special privilege, would have acted as I did.
Memoranda

APPOINTMENTS

Jeffrey C. Paulson has been appointed Staff Attorney and Clinical Fellow in the Mandel Legal Aid Clinic. Mr. Paulson graduated magna cum laude from Carleton College in 1978 and earned his J.D. from the Law School in 1981. He then joined the Illinois Attorney General’s office where he supervised the Public Utilities Division and litigated ratemaking cases and appeals against Illinois energy and telecommunications utilities. From January, 1984 through June, 1985, he served as staff counsel to the Joint Commission on Public Utility Regulation of the Illinois General Assembly where he drafted the new Public Utilities, Telecommunications and Energy Assistance Acts, enacted in 1985. During the past year he was the senior associate at a small plaintiffs’ firm in Chicago, where he specialized in civil rights, commercial and regulatory litigation. While at the Clinic, Mr. Paulson will continue to specialize in public utility law and regulation.

Brilliant has been associated with the St. Louis law firm of Bryan, Cave, McSheeters & McRoberts, in their employment and labor relations department. In his last year at the University of Pennsylvania Law School, he served as a legal writing instructor. Brilliant was a finalist in the Federal Bar Association’s 1983 moot court competition and is a member of the Order of the Coif.

Since 1983, John G. Culhane has been a litigation associate with the New York law firm of Cahill Gordon & Reindel. He graduated from the College of William and Mary in 1978 and earned his law degree from Fordham University School of Law in 1982. He served as an associate of the Fordham Law Review. After graduation he clerked for one year for The Honorable Joseph M. McLaughlin of the United States District Court for the Eastern District of New York.

Simon F. Deakin has just finished his first year of a three-year Research Fellowship in the field of labor law at Peterhouse College, Cambridge. He plans to continue the fellowship after his year in Chicago. In 1983 Mr. Deakin received a B.A. (Hons.) in law from Peterhouse and since that time has been studying for a doctorate in labor law.

David J. Herring received his B.B.A. degree in 1980 and his J.D. degree, magna cum laude, in 1985 from the University of Michigan. He is a member of the Order of the Coif. As a second-year law student he served as an instructor in the writing and advocacy program at Michigan. A certified public accountant, Mr. Herring worked from 1980–82 for Ernst & Whinney, CPAs, in Jackson, Michigan. This past year he was clerk to The Honorable William R. Beasley of the Michigan Court of Appeals.

Anne C. Reichman is an Australian and received her B.A. and LL.B. degrees from Monash University in 1978 and 1981. One of her major interests is music and she studied piano at the Liszt Academy of Music in Budapest in 1974–75. She worked as a research assistant in the Faculty of Law at Monash in 1983–84, in conjunction with teaching in the fields of torts, criminal law, and administrative law. During the past year Ms. Reichman has been in the LL.M. program at Yale Law School.

Anne Nicholson Weber gained a B.A. summa cum laude from Yale College in 1979 and her J.D. from Yale Law School in 1985, where she was director of Yale Legislative Services. During her college years and until she went to law school, Ms. Weber worked in New Haven with disturbed children at Highland Heights Residential School and also did teaching and editorial work at Amity Testing Institute. From 1980–82 she served as grants administrator at the Illinois Institute of Technology. She is also a professional singer. Since 1985 Ms. Weber has been associated with the law firm of Goulston & Storrs in Boston.

FACULTY NOTES

In June, Albert Alschuler, Professor of Law and Russell Baker Scholar, delivered the keynote address at the annual awards banquet of the Illinois Academy of Criminology. He also spoke at the annual meeting of the Law and Society Association. His article, “Mediation with a Mugger: The Shortage of Adjudicative Services and the Need for a Two-Tier Trial System in Civil Cases,” appeared in the June issue of the Harvard Law Review.

Paul M. Bator, John P. Wilson Professor of Law, gave a talk in December, 1985, on the “Dilemmas of American Constitutionalism” at a symposium on the American constitutional experience. The symposium was held in Rio de Janeiro and was sponsored by the American Bar Association and the Brazilian Institute of Lawyers. In March Professor Bator gave a talk on “The First Amendment and the Regulation of Broadcasting” at the annual symposium of the Federalist Society in Stanford, California. In April he pre-
presented a paper on the separation of powers at a faculty seminar at Seton Hall Law School and again at the Mellon Seminar on Legal Interpretation at Princeton University. Also in April he talked on constitutional litigation at the Workshop for Judges of the Fourth Circuit, in Asheville, North Carolina. In June Mr. Bator was the opening speaker at the Federal Judges’ Seminar on Constitutional Adjudication and the Judicial Process in the Federal Courts in Berkeley, California. He was in Philadelphia later in June to give a dinner talk on judicial education to the Pennsylvania Chief Justice’s Advisory Committee on Comprehensive Education.

Gerhard Casper, William B. Graham Professor of Law and Dean of the Law School, has been elected to a further term on the Council of the American Law Institute. During the past year he served as Chair of the special committee on Institute procedures. Earlier this year, Dean Casper was one of the participants in a panel on judicial selection, at the annual meeting of the American Association of Law Schools.

Richard A. Epstein, James Parker Hall Professor of Law, presented his paper, “Was New York Times v. Sullivan Wrong?” on June 13, at a conference on the cost of libel, sponsored by the Gannett Foundation and the School of Business at Columbia University. He has also been elected a member of the Midwest Council of the American Academy of Arts and Sciences.

Philip B. Kurland, Professor of Law and William R. Kenan, Jr., Distinguished Service Professor in the College, delivered a paper on the original meaning of the religion clauses of the First Amendment at a conference at Marshall-Wythe School of Law, College of William and Mary, in Williamsburg, Virginia, on April 4. He gave a talk on constitutional interpretation at the University of Cincinnati Law School on April 18 and made a luncheon speech at the annual meeting of the American Law Institute in Washington, D.C. on May 14. He delivered a paper on separation of powers at a conference at the University of Nebraska on May 23. Together with Professor Ralph Lerner he conducted a seminar for law professors on The Origins of the Constitution at the University of Chicago, June 23–July 11.

William M. Landes, Clifton R. Musser Professor of Economics, has been appointed to the Research Advisory Committee of the United States Sentencing Commission.

John H. Langbein, Max Pam Professor of American and Foreign Law, has completed work with an international group of legal historians on a study of the migration of the criminal jury from Anglo-American to Continental legal cultures in the eighteenth and nineteenth centuries. Langbein’s paper, “The English Criminal Trial Jury on the Eve of the French Revolution,” will appear with works by French, German, and Italian scholars in a volume to be published later this year under the auspices of the Henkel-Stiftung of West Germany.

Geoffrey P. Miller, Assistant Professor of Law, gave several talks around the country and in Chicago during the course of the year. He spoke on “Interest Groups and Delaware Corporate Law” at Emory University Law School in March. In April he spoke at the University of Chicago Graduate School of Business Management Conference, on “Corporate Takeovers—Recent Legal Developments.” Also in April he delivered a paper on “The Future of the Dual Banking System” at a conference on Federal and State Regulation of Financial Institutions, sponsored by the Brooklyn Law School. The Federal Reserve Bank of Chicago’s Conference on Bank Structure and Competi-

Adolf Sprudzs, Foreign Law Librarian and Lecturer in Legal Bibliography, has been elected President of the International Association of Law Libraries, for a three-year term, effective July 1, 1986. The IALL was estab-

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lished in 1959 and has institutional and personal members in more than fifty countries. It publishes the *International Journal of Legal Information* and organizes conferences and courses in international law librarianship. Mr. Sprudzs has served as Associate Editor of the *Journal* for five years, has been Secretary of the IALL from 1980–83, and a member of the IALL Board of Directors since 1974. The present officers and board members of the IALL represent Australia, Barbados, Hungary, Japan, the Federal Republic of Germany, Singapore, and the United States.

As part of the annual alumni reunion weekend celebrations, Geoffrey R. Stone, Harry A. Kalven, Jr., Professor of Law, together with Professors Bator, Strauss, and McConnell, addressed alumni of the Law School on “Teaching Constitutional Law in the ‘80s.” On June 26, Mr. Stone delivered a paper entitled “Foreign Policy and Domestic Security Investigations” at the Annual Conference of The Society for Historians of American Foreign Relations, at Georgetown University.

In April, Cass Sunstein, Professor of Law, Law School, Department of Political Science and the College, and Russell Baker Scholar, delivered the annual Duke Law Journal lecture in Durham, North Carolina, on the topic of “Pornography and the First Amendment.” The speech will be published in the Duke Law Journal. Also in April, he spoke at the legal theory workshop at Boston University Law School, on legal interference with private preferences. This paper is being published in the fall issue of the *University of Chicago Law Review*. In May, Mr. Sunstein presented two papers at the annual meeting of the Law and Society Association. The first dealt with pluralism and administrative law, the second explored legal control of interest groups in the Constitution, with particular focus on various antidiscrimination principles. In June, Mr. Sunstein was the American participant at an international conference on the future of the European Economic Community, held at the European University Institute in Florence, Italy. His essay, “Protectionism, National Markets, and the Supreme Court,” will appear in a book of the conference papers. In July, Mr. Sunstein testified before the Senate Government Operations Committee on possible congressional responses to the Supreme Court decision invalidating part of the Gramm-Rudman-Hollings balanced budget statute.

In June, Hans Zeisel, Professor of Law and Sociology Emeritus, delivered the Commencement Address to the graduating students of the statistics department of the University of California at Berkeley. In July he gave the Roger Traynor Memorial Lecture to the assembly of new judges of the State of California. His talk was entitled “The Jury—The Judge’s Best Friend.”

**LAW SCHOOL NEWS**

**Levi to Head Academy**

Edward H. Levi

Edward Hirsch Levi, Glen A. Lloyd Distinguished Service Professor and President, Emeritus, and former U.S. attorney general, has been elected president of the American Academy of Arts and Sciences. He will serve a three-year term as president. Mr. Levi is the first president of the Academy to come from outside the Boston area. The Academy was founded by John Adams in 1780. It is a prestigious, honorary society with a self-perpetuating membership of around 2,500. New members are elected in recognition of sustained intellectual scholarship in their particular fields.

**Wolfgang Zeidler at the Law School**

Wolfgang Zeidler, the President of the German Constitutional Court, the German equivalent of Chief Justice of the Supreme Court, gave a well-received lecture at the Law School on April 14, entitled “Between Judicial Restraint and Activism: The Role of the Federal Constitutional Court in Germany.”

**D. Francis Bustin Prizes for 1986**

The D. Francis Bustin Prizes prizes are awarded to members of the faculty of the University of Chicago Law School and/or students at the Law School, in recognition of scholarly and scientific contributions to the improvement of the processes of government. Prizes are made possible by the D. Francis Bustin Educational Fund. This year the prizes have been awarded to two faculty members and two students: Richard A. Epstein for his book, *Taking: Private Property and the Power of Eminent Domain*, Harvard University Press.


Benjamin Z. Gould, 1913–86

Benjamin Z. Gould, J.D. 1937, died on May 14, 1986, at Northwestern Memorial Hospital in Chicago, following heart surgery. Last year he pledged $1 million for the planned Benjamin Z. Gould Administrative Wing at the Law School. He was born in Chicago, and attended Chicago public schools and the University of Chicago, where he received the A.B. degree in 1935 and was elected to Phi Beta Kappa. In the Law School he graduated cum laude and was a member of the Law Review. He practiced law in Chicago for 49 years. In 1949 he and his classmate, Gerald Ratner, J.D. 1937, were the founding partners of what is now the prominent Chicago law firm of Gould & Ratner.

Mr. Gould was counsel for and an officer and director of numerous business corporations. As a lawyer he participated on behalf of his clients in many large business and financial transactions from coast to coast, including the acquisition and later the sale of the Empire State Building in New York. He was active in many civic, charitable and religious organizations, and was awarded the degree of Doctor of Humane Letters by the Hebrew Theological College. At his death, he was the owner of the Deer Creek Golf and Tennis Club and the Professional Golf Car Corporation in Florida. He was also the major investor in the renovation and historic preservation of the former Windermere Hotel in Hyde Park, Chicago.

His law partner, Gerald Ratner, who was his close friend for over fifty years, says of him: “As a person, Ben was intensely human; as a lawyer, he was brilliant; as a businessman he had the soul of a gambler and a sixth sense about business opportunities. When he graduated from the Law School in 1937, after working as a bus boy at the Merit Cafeteria on 63rd Street, his assets consisted of a worn blue suit and an old radio (not to mention a great legal education). By the time of his death he had accumulated a substantial fortune, as well as a history of legal achievement, and he had realized the ‘American Dream’ of his college days.”

Mr. Gould’s survivors include his wife, Shirley H. Gould, of Chicago and Boca Raton, Florida; his son, Edward S. Gould, a vice-president of Citicorp Investment Bank in Los Angeles; his daughter, Barbara S. Gould of Lake Forest; and his brother, Joseph B. Gould, of Denver. Another son, Frederick G. Gould, who was a partner of Gould & Ratner, died in 1982.

Ronald H. Coase Prize

The first Ronald H. Coase Prize, for excellence in the study of law and economics, has been awarded jointly to Elizabeth Hoffman, of the University of Wyoming, Department of Economics and Matthew L. Spitzer, of the University of Southern California Law Center. The prize is awarded for Hoffman and Spitzer’s joint articles on experimental testing of the Coase theorem.

The Ronald H. Coase Prize was established in 1984 by Junjiro Tsubota, a Japanese graduate of the Law School (M.C.L. ’67) who practices law in Tokyo. Ronald H. Coase is the Clifton R. Musser Professor Emeritus of Economics. He joined the Law School faculty in 1964 and was formerly director of the Law and Economics Program and editor of The Journal of Law and Economics.

Award to Mandel Clinic and Stefan Krieger

On June 28, 1986, South Austin Community Council (SACCC) presented a Certificate of Appreciation to the Mandel Legal Aid Clinic and Stefan H. Krieger, Lecturer-in-Law and Clinical Fellow in the Clinic. The award is for “outstanding and dedicated service” to the South Austin community. For the past seven years, the Clinic has represented SACCC, a
low-income community organization on the West Side, in a number of housing and public utilities cases. Most recently, the Clinic represented SACCC and other community organizations in their successful attempt to obtain the passage of the Illinois Energy Assistance Act.

Sunstein Receives Award

The American Bar Association's administrative law section has presented its first annual award for distinguished scholarship in administrative law to Cass Sunstein, Professor of Law. The award is for Mr. Sunstein's article, "Interest Groups in American Public Law" (38 Stan. L. Rev. 29 [1985]).

Student Ombudsman

Francis Caesar, a second-year law student from Brooklyn, New York, is the University's student ombudsman for 1986-87. The ombudsman is appointed by the president of the University to hear and investigate student grievances that have not been satisfactorily resolved elsewhere. Around forty complaints per quarter find their way to the ombudsman's office. Caesar is a 1985 graduate of the College and majored in history. During his college career he was a member of the basketball team for three years and captain of the team in 1984-85. He was president of the Psi Upsilon fraternity during his senior year and was a member of the Office of Student Housing Advisory Committee. During his summer breaks, he taught English in New York City's Jesuit Achievement Program, preparing eighth-grade students for high school. Caesar expects that the experience he will gain in advocacy and conflict resolution in his one-year term as ombudsman will provide useful training for his future legal career.

Goodbye to Maurine Campbell

In July the Law School took a fond farewell of Maurine Campbell, who retired from her post as Dean's secretary. Ms. Campbell has served in this post under four deans: Edward Levi, Phil Neal, Norval Morris, and Gerhard Casper, bringing continuity and a wealth of accumulated knowledge to help each new Dean settle smoothly into his role. Asked what she intends to do with her new freedom from the nine to five routine, Ms. Campbell said she would estivate for two months and relax, and then make plans to travel to some of the places in the world she has not yet seen, starting with China.

Victor H. Kramer Fellow

Robin Lynn Allen has been appointed the Victor H. Kramer Foundation Fellow for 1986-87. Ms. Allen graduated cum laude from the University of Illinois in 1979 and received her M.S. and Ph.D. degrees in economics from Northwestern University in 1981 and 1984. Since 1983, she has served as an economist with the Antitrust Division of the Department of Justice. The Kramer Fellowship, established in 1976 by the Victor H. Kramer Foundation, is a training program for employees of the Federal Trade Commission and the Antitrust Division of the Department of Justice and is offered in alternate years with the Institution for Social and Policy Studies at Yale University.

STUDENT NOTES

Honors and Awards

The following members of the class of 1986 were inducted into the Order of the Coif: James Brock, Jr., Richard Cordray, James Downs, Sheila Finnegan, Michael Folz, Edward Goldman, Thomas Heffron, Daniel Keating, Melinda Kleehamer, Peter Letou, Deborah Malamud, Richard Porter, Mark Recktenwald, Paul Rosenzweig, Cathryn Ruggeri, Barbara St. Clair, Michael Trier, and Todd Wallace. In addition to these graduates, the following students received their degrees with honors: Elizabeth Brown, Joseph Cancila, Jr., Caroline Costantin, Debbie Cowel, Janet Crevey, Keith Crow, David Crowley, Jennifer Divine, Katherine Goodman, David Greene, Howard Henken, Robert Hugi, Lawrence Hui, Rochelle Katz, Jerome Marcus, Joyce Mcardle, Janet McNicholas, Robert Mrofka, Kevin O'Brien, Joshua Pickus, Steven Poplawski, Michael Rissman, Robin Schulberg, Sharon Seeley, Perry Shwachman, Debra Stanek, Michael Weddell, and Richard Waldenberg.
Professor Award, for distinguished scholarship in the field of civil liberties, this year went to Robin Schulberg ('86).

Moot Court

The 1985–86 Hinton Moot Court Competition was won by James Bailinson ('87) and Marlene McVisk ('87). The "runners-up," Andrea Friedlander ('87) and David Myers ('86), won the Karl Llewellyn Memorial Cup, for excellence in brief writing and oral argument. Under discussion this year was a case arising under the 1984 amendments to the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. 1963), which provide for the forfeiture of all illegally obtained proceeds from a defendant convicted under the act. Controversy has arisen over whether this forfeiture includes fees paid to the defendant's attorney. The points argued before Moot Court were 1) whether the statute provides for the forfeiture of attorneys' fees and 2), if so, is this constitutional under the Sixth Amendment? The case was argued on May 6 before a panel of three judges: The Honorable William J. Brennan, Associate Justice of the U.S. Supreme Court, The Honorable Antonin Scalia of the U.S. Court of Appeals for the District of Columbia Circuit, and The Honorable Dorothy Nelson of the U.S. Court of Appeals for the Ninth Circuit.

Clerkships

Thirty-seven 1986 graduates of the Law School have accepted judicial clerkships for 1986–87. Their names and the judges for whom they are clerking are as follows:

United States Courts of Appeals

Frederick Ansell (Judge Albert Engel, 6th Cir.)
Adam Bendell (Judge Martin Pence, HI)
Elizabeth Brown (Judge John Godbold, 11th Cir.)
David G. Cohen (Judge John Greaney, 1st Cir.)
Richard Cordray (Judge Robert Bork, D.C. Cir.)
Jennifer Divine (Judge Daniel Boggs, 6th Cir.)
James Downs (Judge James Oakes, 2d Cir.)
Sheila Finnegan (Judge Milton Shadur, N.D. IL)
Michael Folz (Judge John Noonan, Jr., 9th Cir.)
David Greene (Judge Paul Plunkett, N.D. IL)
Angela Harris (Judge Joel Flaum, 7th Cir.)
Lawrence Hui (Judge Grady Jolly, 5th Cir.)
Mark Kende (Judge Julian Cook, Jr., E.D. MI)
Robert Kimball (Judge Patrick Higginsbotham, 5th Cir.)
Peter Letsou (Judge Walter Mansfield, S.D. NY)

Moot Court Finalists: David Myers and Andrea Friedlander for the Petitioner; James Bailinson and Marlene McVisk for the Respondent.
Law School Alumni Directory

1987 – The 200th anniversary of the Constitution
1987 – The new tax code is implemented
1987 – A new Law School alumni directory is published.

With the publication of an all-University alumni directory, many of our graduates have asked about plans for a new Law School-only directory. In response to your requests we will publish a directory in December, 1987. A new feature of the directory will be information on areas of practice, to help with referrals.

So, although most of you have just provided the University with information for the all-University alumni directory, this winter you will be asked to review our current information, to note any changes, and to indicate your areas of practice for the Law School directory.

All the information in the directory will be researched and compiled by the Harris Publishing Company and will be obtained through questionnaires sent to all graduates, followed by telephone verification. Your cooperation in responding to the questionnaires will ensure the accuracy of the directory. All Law School graduates will have the opportunity to order the directory when their information is verified by phone. Distribution of the directory will be limited to University of Chicago Law School alumni.

More information in the next issue of the Record.
Reunion Weekend

The classes of 1936, 1961, and 1976 celebrated their fiftieth, twenty-fifth, and tenth anniversaries of graduation from the Law School. The weekend began with the Annual Dinner on Thursday, May 8. Saturday morning provided an opportunity to tour the University campus, visiting the Old Law School, the Regenstein library and Robie House. Dean Casper was host at the luncheon honoring the reunion classes. Many members of the faculty were also present at the luncheon, which was held in the Harold J. Green Lounge. In the afternoon, graduates attended a panel discussion on “Teaching Constitutional Law in the ’80s,” with Professors Paul Bator, Michael McConnell, Geoffrey Stone, and David Strauss.

The Class of ’36 concluded the weekend with a dinner at the Standard Club on Saturday night. Thanks go to Herbert Portes, Raymond Rusnak, and Arthur Margolis, who helped to organize the weekend for their class. In addition to a dinner at the Mid-America Club on Saturday evening, the Class of ’61 was entertained at a cocktail supper on Friday, hosted by Allen Turner at his home. George Blake, Gene Brandzel, Donald Egan, Roberta George Evans, James Faulstich, Norman Klein, Donald Mackay, Bert Metzger, Jr., Richard Ogle, Richard Pincus, Steve Schiller, and Michael Zavis all helped to make the weekend a success. Steve Fiffer, Class Correspondent for the Class of ’76, describes his class reunion on page 81.

Photographs from top to bottom:

Dean Casper addresses the Class of ’36.

George Blake, Arthur Solomon, and Richard Newhouse, of the Class of ’61, share memories at the reunion weekend.

Professor Geoffrey Stone in conversation with Richard Lirtzman and Edward Roche at the reunion of the Class of ’76.
Alumni Association Annual Dinner

Over 550 graduates and friends of the Law School joined Alumni Association President Stuart Bernstein on Thursday, May 8 at the Alumni Association’s Annual Dinner. The opportunity to renew old friendships was eagerly seized, as can be seen in the photographs appearing through the class notes section.

After dinner Dean Gerhard Casper gave a brief talk on the state of the Law School. The guest speaker was the Honorable Kenneth Dam (J.D. '57), former Deputy Secretary of State and Provost at the University of Chicago. Mr. Dam, who taught at the Law School for seventeen years, was recently appointed vice president for law and external relations at IBM. Mr. Dam spoke on “The Primacy of Politics: Reflections on Government Service.”

Events Across the Country

The New York Chapter arranged a luncheon on Thursday, May 15, at which Douglas H. Ginsburg (J.D. '73) spoke on “Antitrust Reform Legislation and Corporate Takeover Issues.” After a most entertaining talk, Mr. Ginsburg answered questions from the audience. Assistant Dean Holly Davis attended from the Law School.

Judge Robert H. Bork (J.D. '53) discussed the future of constitutional law at a luncheon in Washington, D.C., also on May 15. Almost 20 percent of our Washington alumni attended. Dean Gerhard Casper, Professor Walter Blum, Frank Easterbrook, Edward Levi, and Bernard Meltzer, and Assistant Dean Frank Molek attended from the Law School.

A small group of graduates in Connecticut met for lunch in Hartford during the Connecticut State Bar Meetings, on Thursday, May 29. Frank Ober (J.D. '62) acted as host for the occasion.

The Law School hosted a reception in New York for alumni and friends on Monday August 11, on the occasion of the American Bar Association’s annual meeting.

The California State Bar Association Meetings provided an opportunity for the California graduates to attend a luncheon, on Monday, September 15, in Monterey. Julian Levi (J.D. '31), Professor Emeritus of the University of Chicago Law School, gave a talk entitled “Hyde Park Revisited.”

Chicago Events

The spring Loop Luncheon series began this year on Friday, May 30, with a light-hearted and entertaining talk on advocacy given by the Honorable William J. Bauer, of the U.S. Court of Appeals for the Seventh Circuit.

Judson H. Miner (J.D. '67) spoke to a packed house at the second and final luncheon of the spring series, on Thursday, June 12. The topic of his talk was “Is Paddy Bauler Still Right: Chicago Ain’t Ready for Reform.”

The Loop Luncheons are sponsored by the Chicago Chapter of the Law School Alumni Association and are held in the Board of Trustees Room at One First National Plaza. Any graduates interested in participating on the organizing committee, making suggestions for speakers, or with any questions, should contact Assistant Dean Holly Davis (312/962-9628).

Vermont and New Hampshire Reunion

This summer, Peter F. Langrock ('60) was inspired with the idea of inviting all the alumni from Vermont and New Hampshire to a party on his farm in Salisbury, Vermont, to honor Sheldon Tefft, James Parker Hall Professor Emeritus of Law. The party took place on July 20 and was a great success. Alumni attending the gathering represented a spread of more than fifty years of Law School classes. The party drew 35 percent of the graduates in the area, from as far away as Portsmouth, New Hampshire. As those present represented “every political persuasion,” conversation at the party was lively, to say the least. It is hoped that another such gathering of alumni could be arranged in the not-too-distant future, perhaps including graduates from other New England states next time, too.
Class Notes Section – REDACTED

for issues of privacy
Deaths

The Law School Record notes with great sadness the deaths of:

1919
Harry A. Fischer
December 6, 1982

1920
Robert E. Mathews
November, 1983
LeRoy B. Reynolds, Sr.
May 1, 1984
Harold W. Norman
August 2, 1984
William C. Christianson
May 27, 1985

1922
Raymond E. Draper
November 2, 1983

1923
A. Durham Morris
January 3, 1985
Carl O. N. Hedeen
March 25, 1985
Harry R. Adler
June 22, 1985

1924
Grant W. Nordstedt
February 25, 1985

1926
Lynndon M. Hancock
July 13, 1984

1927
J. Franklin Bishop
April 7, 1986

1928
Fred J. McManus
December 26, 1983
Willis C. Webb
January 10, 1985
Gordon W. Bedford
July 25, 1985

1929
Charles C. Erasmus
August 5, 1984
John R. Griffiths
October 26, 1985

1930
Robert F. Bittrich
December 12, 1983
Alfred T. Capps
January 26, 1985

1931
Lucien S. Field
February 11, 1984
Jean Wunderlich
August 1983

1933
Lafayette Fisher
June 11, 1986

1935
Harry H. Fortes
April 13, 1984

1936
Paul D. Reese
June 26, 1984
Robert H. Bierma
October 18, 1984
David A. Howard
May 11, 1986

1938
William S. Pettigrew
August 28, 1983

1948
Dean F. Arnold
June 1984
Perry P. Burnett
April 25, 1986

1951
Thomas L. Palmer
May 26, 1986

1956
R. Marlin Smith
June 15, 1986

1962
Richard Harris
May 14, 1986

1973
James C. Pratt
October 20, 1984

1982
Michael Lee Grossman
April 10, 1986
The Law School's extension is taking shape
The Iowa School Extension is taking shape.

1925
Harry A. Dyer

1930
Robert E. Nunnally

1932
Leroy B. Mayo

Harold W. Jones

August 15, 1931

W. W. Mayo

May 15, 1932

1935
Paul D. Krueger

May 26, 1932

Robert H. Gorma

Dwight A. Bolte

June 1, 1935

Dwight L. Deardorff
To thank you for helping make our first million-dollar campaign succeed, we are again offering the Law School pocket diary that has become so popular with our alumni and friends. We will be glad to send this handsome diary to any new donors of $100 or more, and to those of you who gave $800 or more last year. $100 or more, and to those of you who gave $800 or more last year. We have added the diary to any new donors of $100 or more, and to those of you who gave $800 or more last year. We have added the diary to any new donors of $100 or more, and to those of you who gave $800 or more last year.

Contributors of $1,000 or more will receive a diary with their names stamped in gold.

We appreciate your support.

The University of Chicago

1986/87 Fund for the Law School