The cover illustration was drawn by David Rothman, J.D. '62, a Judge of the Los Angeles Superior Court. Judge Rothman found fame (or notoriety) during his years at the Law School by drawing witty cartoons of faculty members. These appeared at intervals on the notice board, at first anonymously but later signed, as it became clear that the faculty were looking for the artist to have more cartoons drawn, not to throw him out of law school. Professor Max Rheinstein, in his class on Family Law, was wont to use a Rothman cartoon as an example of a valuable object to be willed to a second spouse.

Judge Rothman will be visiting the Law School for Reunion Weekend this year and is evidently prepared for a good time.
The Law School Record
The University of Chicago Law School
Volume 33, Spring 1987

Editor
Jill M. Fosse

Assistant Dean for Alumni Relations and Development
Holly C. Davis

ARTICLES
Geoffrey Stone; Ninth Dean of the Law School ................. 3

The Casper Deanship .................................................. 6
Mary Ann Glendon

The Future of the Adversary System ................................. 8
Stephen J. Schulhofer

Women in Law School ................................................ 14
Elizabeth Gorman Nehls

Alumni Profile: James Hormel and Public Service ............. 20

Visiting Committee 1986-87 ........................................ 23

DEPARTMENTS
Memoranda ................................................................. 26

Publications of the Faculty ........................................... 33

Alumni Notes ............................................................. 35

Photo Credits

Illustrations
David Rosenzweig, pages 5 and 18.

Erratum
Theodore J. Herst was incorrectly listed in the Honor Roll in the Fall 1986 issue. His correct class year is 1949, not 1945. We regret the error.

The Law School Record is published twice a year, in spring and fall, for graduates, students, and friends of the University of Chicago Law School, 1111 East 60th Street, Chicago, Illinois 60637. Copyright ©1987 by the University of Chicago Law School.
Changes of address should be sent to the Office of Alumni Relations and Development at the Law School. Telephone (312) 702-9628. Copies of The Law School Record are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209, to whom inquiries should be addressed. Current issues are also available on subscription from William S. Hein & Co.

The Law School Record is published twice a year, in spring and fall, for graduates, students, and friends of the University of Chicago Law School, 1111 East 60th Street, Chicago, Illinois 60637. Copyright ©1987 by the University of Chicago Law School.
Changes of address should be sent to the Office of Alumni Relations and Development at the Law School. Telephone (312) 702-9628.
Copies of The Law School Record are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209, to whom inquiries should be addressed. Current issues are also available on subscription from William S. Hein & Co.
On January 8, 1987, Geoffrey R. Stone, the Harry Kalven, Jr. Professor of Law, accepted President Hanna Gray's invitation to become the ninth Dean of the University of Chicago Law School, effective July 1. Several days later, Stone sat in his office on the fourth floor of the Law School to discuss his appointment. Occupying one entire wall is a set of United States Reports. The other walls and bookshelves contain some of the artifacts of his life and career: personally inscribed photographs of Skelly Wright and William Brennan, for whom Stone clerked; a Christmas card sent to his wife, Nancy, in 1969 by the “Chicago Seven”; a collection of photographs of some of his favorite Justices (Holmes, Brandeis, Black, Douglas, Jackson, Warren, and the two Harlans); a collection of photographs of the parties in some of the Supreme Court’s landmark constitutional decisions (Linda Brown, Eugene Debs, Benjamin Gitlow, Clarence Gideon, the Scottsboro Boys, and Lochner’s Bakery); a Chicago Blackhawks' calendar; and a rather large poster given him several years ago by Philip B. Kurland setting forth the text of the First Amendment to the United States Constitution.

Stone reflected on how he had arrived at this time and place. “The career choices facing students graduating college in 1968 were neither easy nor obvious. I received my undergraduate degree in economics from the Wharton School of the University of Pennsylvania. I was less interested in business, however, than in archeology and political theory. I was inclined upon graduation to pursue graduate work in archeology, but finally settled on law school on the theory that the law might provide a useful vehicle for social change.”

Stone’s uncertainty about his vocation soon disappeared. “Once I arrived at the University of Chicago Law School, I developed an absolute passion for the law.” Stone’s “passion” proved productive. He was editor-in-chief of the Law Review, graduated cum laude, and was elected to membership in the Order of the Coif. Stone’s recollections of his student days reflect the general fervor of the period. “Those were exciting and difficult times. Exciting for the students; difficult for the institution.”

After graduation in 1971, Stone clerked first for The Honorable J. Skelly Wright of the United States Court of Appeals for the District of Columbia Circuit and then for The Honorable William J. Brennan, Jr., of the Supreme Court of the United States.

After completing his clerkships, Stone again faced a dilemma. He took the New York bar examination while debating what to do next. He had three options in mind: working on Capitol Hill, practicing law with a public interest law firm, or teaching. After visiting several other law schools, Stone was contacted by former Professor Owen M. Fiss about joining the University of Chicago faculty. Stone was surprised. He was confident that his outspokenness on controversial issues as a student had alienated at least some of his former professors. Nonetheless, his curiosity aroused, Stone accepted the invitation to return to campus for an interview. Not one to make things easy for himself, Stone challenged the faculty by choosing as the thesis for his appointments “presentation” the proposition that heroin addicts have a constitutional right to possess heroin.

To Stone’s astonishment, the visit went exceedingly well. Indeed, as he compared the University of Chicago faculty to the faculty of other institutions, he concluded that the Chicago faculty was “more open-minded, more interested in ideas, and more willing to test even highly provocative arguments in a rigorous and objective manner.” Several weeks after Stone’s visit, Dean Phil C. Neal called him to offer a position on the faculty.
Stone accepted the appointment and returned to the Law School where he quickly established himself as a popular and innovative teacher. One of his most interesting innovations was his seminar on constitutional decision making.

"My students were too quick to criticize judges, whose opinions are an easy target in the classroom. To give students a better perspective on the judicial process, I devised this seminar. Students form five-member courts, each of which decides a total of sixteen hypothetical cases (with majority, concurring, and dissenting opinions) posing issues about a particular constitutional provision. The students must work with the text of the Constitution, the legislative history, their own notions of constitutional interpretation and their own precedents. They may not rely on any actual decisions of the Supreme Court." The constitutional decision-making seminar is one of the most popular at the Law School. It is now offered not only at Chicago, but at several other schools—often by former students who have gone on to become law teachers and who teach the seminar to their own students.

Over the years, Stone has become increasingly involved in administrative responsibilities both at the Law School and the University. He has chaired virtually every major committee at the Law School and he has served on numerous University committees, including the Committee of the Council of the University Senate, a seven-member body that oversees the governance of the University. Stone notes that such administrative work is essential if a small faculty is to control its own destiny. "Moreover, the work brings its own rewards. In particular, I have drawn immense satisfaction from my work on the Faculty Appointments Committee, both as its chair and as a member, and from my work on the Admissions Committee. Under Dean Casper's leadership, we have attracted the most dynamic and productive young faculty in the nation. They are outstanding teachers, promising scholars, and splendid colleagues." It is a sign of how long Stone has been at the Law School that two of his former students—Mary Becker and Daniel Fischel—are now tenured members of the faculty.

Stone’s principal scholarly interest has been in constitutional law and in particular the First Amendment. His most influential teacher was perhaps Harry Kalven, with whom he worked closely after he joined the faculty.

"Harry was one of the people I looked to most for friendship, advice and guidance as a young teacher and scholar. My first writing was in the First Amendment area, inspired by Kalven. Many of the ideas I’ve developed over the years grew out of those early conversations. I was therefore genuinely touched and honored when Dean Casper made me the first holder of the Harry Kalven chair in 1984."

Stone believes that Kalven would have enjoyed the casebook he recently wrote with Louis Seidman, Cass Sunstein, and Mark Tushnet. Constitutional Law, which was published in 1986, offers a contemporary view of constitutional issues. Stone and his co-authors felt that none of the most widely used constitutional law casebooks reflected this viewpoint.

“We believed that by reorganizing the cases and emphasizing different aspects of the material we could make a significant pedagogical and intellectual contribution to the way in which students, professors, lawyers, and judges understand constitutional issues. We sought to achieve two goals. First, we attempted to redefine some fundamental constitutional questions in a way that would more clearly illuminate the underlying problems. Second, we sought to integrate into our book the wealth of academic commentary in the area of
conventional law. Most casebooks consist of cases and lengthy notes filled with endless rhetorical questions. We used the notes to inject ideas from political theory, economics, history, critical theory, philosophy, and ethics, as well as from legal scholarship. To understand constitutional law, it is essential to consider perspectives other than those presented by the justices of the Supreme Court.

Stone’s current scholarly interests center principally on the freedom of speech. He has written a series of articles that attempt to bridge the gap between general First Amendment theory and the articulation of less abstract doctrines that can be used by courts to resolve concrete disputes in a principled and coherent manner.

“We might agree, for example, that the freedom of speech is necessary for the effective functioning of a self-governing society. But we cannot usefully ask on a case-by-case basis whether each and every law that restricts free speech is justified in terms of such an open-ended value. Such an ad hoc approach would be vulnerable to the inevitable pressures to censor and suppress. What we need is a set of specific doctrines that enables us to decide concrete disputes predictably while preserving both the underlying constitutional values and the government’s often competing but legitimate interests in maintaining a stable and ordered society. In recent years, the Supreme Court has increasingly relied on a distinction between laws that are content-based (e.g., no Nazi may march in Skokie) and laws that are content-neutral (e.g., no person may erect a billboard) to serve this function. I have looked closely at this doctrine in an effort to discern when the distinction makes sense and when it does not, when it should be preserved and when it should be abandoned.”

Stone has not let his academic, teaching, and administrative responsibilities within the Law School and the University keep him from active involvement in “real world” First Amendment issues. He has participated in extensive public interest litigation in the Supreme Court and other federal courts defending the constitutional rights of a broad range of groups and individuals. He has frequently testified before congressional committees on such issues as school prayer, FBI undercover operations, and obscenity regulation. And he has been active in the legal community as a member of the Board of Directors of the Illinois Division of the American Civil Liberties Union, the Board of Governors of the Chicago Council of Lawyers, and the Steering Committee of the Commission on Law and Social Action of the American Jewish Congress.

Stone’s decision to accept the deanship was not an easy one. “I love what I do. I have never enjoyed teaching and writing and interacting with students more than in the past few years. I would not have considered the deanship of any other law school. But, although it’s hard for me to believe it, I’ve been here for seventeen of the last nineteen years. I’ve developed a profound respect for the institution and a deep affection for my colleagues, my students, and the alumni. The Law School has become a part of me. I suppose it’s my turn to take some responsibility for its future. I am daunted by the prospect of following in the footsteps of Edward Levi, Phil Neal, Norval Morris, and Gerhard Casper. But this is a great time in the life of the Law School. The chance to be at the helm is not something I can turn down.”
The Casper Deanship

Mary Ann Glendon

It is uncommon in the contemporary law school world for a dean's tenure to extend much beyond five years. Still more unusual is it for a law school dean to serve a long term during which the respect and admiration in which he is held not only subsists, but increases. Rarest of all is a dean who, in addition to performing his day-to-day administrative duties, can implement a coherent vision of legal education. This, some would say, was possible only in the past when institutions of higher learning were less bureaucratic, and students and faculty members were more docile than they are today. But the University of Chicago and its law school have never been

like other academic institutions, and Gerhard Casper has not been like other deans. Thus, as he concludes a nine-year term, resisting entreaties from all quarters to remain, it is appropriate to reflect on what the Casper deanship has meant in the life of the University of Chicago Law School.

University legal education, in its aspiration to combine training for a profession with the advancement of learning in an important branch of the human sciences, sets itself a task that, under the best of conditions, is hard to realize. In recent years, as law schools have entered a period of questioning and re-examination of their traditional methods and aims, the difficulties have intensified. Whether this will turn out to be a beneficial process of growth and renewal in American law schools, or a prolonged crisis of paralyzing doubts about their very reason for being, is uncertain.

It might seem that the task of a dean in times like these is at least easier than it was in, say, the 60s when educational institutions were subject to
direct assault. But, as Gerhard has been heard to say, "May you live in interesting times" was an ancient Chinese curse. And, in fact, in the years of the Casper deanship, the problems have been more complex, the course of wisdom less clear, the costs of mistakes higher, and their effects longer lasting, than previously. American law schools have been beset by a series of temptations to neglect one or the other of their basic aims. At the same time, they have had to calculate how to achieve a healthy diversity, without compromising the quality of their student bodies, faculties, and programs. Often, decisions that seemed easiest, most agreeable, and in themselves relatively unimportant, have cumulatively propelled law schools in directions they did not anticipate toward destinations unknown.

Gerhard Casper was precisely the right person to guide the University of Chicago Law School through these trying years. A colleague who has worked closely with him has said that Gerhard's greatest administrative strength has perhaps been his ability to say "no," but to say it in such a way
that no one feels that his case has not been fully heard or that he has been unfairly treated. When faced with hard decisions, Gerhard seems to have been guided by a vision of a law school within a university dedicated to the life of the mind. A certain idea of excellence, entirely consistent with what the University of Chicago has always stood for, seems to have enabled its law school to remain, for the most part, aloof from passing educational fads and intellectual fashions. On several occasions, Gerhard has carried the Chicago ideals outside the walls of the university, especially when the autonomy of law schools was threatened. Within the A.B.A. and the Association of American Law Schools, his has been one of a few courageous voices raised against homogenizing and stultifying regulation. To be sure, the law school did change and develop under Gerhard’s leadership, but in its own way, not in accord with the reigning opinions of the day.

We have all reaped the benefits. Students know that employers of all sorts have confidence that the Law School is still producing excellent lawyers; there is little room for dry rot in its lean and rigorous curriculum. The faculty has been encouraged to do what it does best—teaching and research—taking less pride in being the most productive law faculty in the United States than in its achievements on many frontiers of knowledge.

Gerhard would be the first to say that his successes as a dean have been due in no small part to the fact that he has enjoyed the wholehearted support of a constantly debating, yet cohesive, faculty. But the support of such a collection of individuals is not lightly given. Thus an appreciation of the Casper deanship involves consideration of those personal qualities that enabled Gerhard to earn and retain the extraordinary confidence of the law school community.

Those persons who have worked with and for him always mention first among those qualities his honesty and fairness. Colleagues describe him as a good listener, one who is considerate of the feelings of others, yet who does not traffic in insincerity or false praise. A superb administrator, he is nevertheless, first and foremost, dedicated to scholarly values. Professors appreciate the attention and understanding he has given to their work. In conducting the internal and external affairs of the law school, he has shown himself to be a man of principle with a prudent awareness of the world as it is.

Less important than all these qualities, perhaps, but adding a special luster to the deanship, are the grace and elegance that have characterized Gerhard’s every public appearance. What student, faculty member, or graduate has not felt, while listening to this urbane, intellectual, and handsome man, a deep sense of pride that he represented us and the school to the world at large? Nor is this simply a matter of style, for beneath the surface wit and polish of the talks he delivers so effortlessly there burns the hard blue flame of a restless and critical intelligence. On countless occasions, Gerhard has been—to our delight—the very personification of the Law School. Even his faintly accented English is pleasing, evoking memories of the great emigré scholars of the past, and reminding us of the way in which a real university may be in, but not of, a particular nation state.

Finally, the Casper deanship has been the living refutation of the notions that the University of Chicago Law School is a monolithic bastion of conservatism; that the glass menagerie is an ice palace ruled by economists. A humane, clear-eyed, European social democrat, Gerhard has presided over a community in which politics fuels dialogue, not divisions. And his own distinguished accomplishments in political theory and empirical social science are part of the long multidisciplinary tradition of the Law School. It is pleasant to look forward to the resumption of his work in the fields of constitutional and comparative law, and political science. Like the virtuous citizen-statesmen of the period in American history he loves best, Gerhard now returns to a more private life with the sure knowledge that he has not only preserved but added to the greatness of the institution he served.
The Future of the Adversary System

Stephen J. Schulhofer

The American legal system is plagued by too many trials, too much adversarial behavior and indeed, too much law. These themes, repeated over and over in popular journals and reinforced by the pronouncements of former Chief Justice Warren Burger, Harvard University President Derek Bok, and a succession of Attorneys General and A.B.A. presidents, have now attained the status of received wisdom. But the premises underlying these claims are controversial, uncertain, and in some respects demonstrably untrue. I want to comment briefly on these broad claims and then consider more specifically their application to the criminal justice system, where concern about excessively adversarial behavior is most strikingly out of touch with reality. In criminal justice we already have a system dominated by cooperative, non-adversarial relationships, and in nearly all cases dispositions mutually satisfactory to the parties are achieved by negotiation or by a form of mediation under the informal auspices of a judge. What we need in criminal justice is not more cooperation but a return to formal, vigorously adversarial procedures.

Hyperlexis?

The colorful claim that we are suffering from "hyperlexis"—too much law—assumes a yardstick that could indicate the "quantity" of law we ought to have. It is probably true that there are vastly more statutes and administrative regulations applicable to business behavior currently than there were at any time in our past. It is also true that technological processes, industrial machinery, and everyday products have vastly greater potential for causing individual or social injury than ever before. And there has been a vast increase in knowledge about the causes of injuries, about the noxious effects of unrestrained air and water pollution, and about technologies for preventing these harms. We are an ever larger, more complex and more interdependent society. We need more law. Of course, regulation is costly, and sometimes its goals can be achieved more efficiently by free market processes (enhanced and protected by laws). Sometimes we have the wrong laws. At the same time, there still remain areas in which we do not have enough law.

A Litigation Explosion?

Because we have so much more law, and so much more knowledge about the causes of individual injuries, one would expect to see a vast increase in the amount of litigation. The surprising fact is that the alleged litigation "explosion" is to a great extent a myth. Impressions about the burgeoning volume of litigation have been fueled by federal court statistics, which do show a substantial increase in case filings and in appeals over the past several decades, and by sensational press coverage of a handful of unusually complex cases. But the federal courts, though prominent in the eyes of elite lawyers and bar association presidents, actually handle only a minute share of our overall volume of litigation.

Viewed in historical perspective, federal court civil case filings have risen dramatically since World War II, but on a per capita basis they are not significantly higher now than at some points in the past, the 1930s, for example. For the state courts, which

Stephan J. Schulhofer is the Frank and Bernice J. Greenberg Professor of Law and Director of the Center for Studies in Criminal Justice, at the University of Chicago. This is an edited version of an article that first appeared in the March, 1986 issue of Justice Quarterly. It is reprinted by permission of the Academy of Criminal Justice Sciences.


handle the bulk of our litigation, information is less complete; but the available data show rather modest increases in the recent past, with overall levels of civil case filings per capita comparable to, or even lower than, those prevailing in the nineteenth and early twentieth centuries. The great majority of civil cases that are filed do not in any event receive formal processing in an adversarial trial. Most cases are voluntarily withdrawn after the parties reach a negotiated settlement, and many of the remainder are submitted to the court for entry of a decree without substantial contest, as in most divorce cases for example.

Although it always has been true that very few civil cases eventuate in contested trials, the available evidence indicates that during the period of the so-called litigation explosion, trials have actually been decreasing. In the federal courts, the percentage of civil cases that go to trial has fallen from 15 percent in 1940 to only 6 percent in 1980. In some cities, such as Chicago and San Francisco, civil filings have increased, but the number of civil jury trials held is actually lower now than it was in the 1960s. Court studies show that judges spend more and more of their time on routine case administration and on conferences designed to encourage settlement. There is probably more conciliation, mediation, and negotiation than ever before. The sensational "big" cases notwithstanding, there is no evidence of a tide of increasingly adversarial litigation.

Available evidence indicates that during the period of the so-called litigation explosion, trials have actually been decreasing.

and San Francisco, civil filings have increased, but the number of civil jury trials held is actually lower now than it was in the 1960s. Court studies show that judges spend more and more of their time on routine case administration and on conferences designed to encourage settlement. There is probably more conciliation, mediation, and negotiation than ever before. The sensational "big" cases notwithstanding, there is no evidence of a tide of increasingly adversarial litigation. Even

Derek Bok, who chided the law schools and the legal profession for not devoting sufficient attention to the "gentler arts of reconciliation and accommodation," has also conceded that "[c]ontrary to popular belief, it is not clear that we are a madly litigious society. . . . [O]ur volume of litigated cases is not demonstrably larger in relation to our total population than that of other western nations." 4

Is Criminal Justice Overly Adversarial?

In the criminal justice system, the patterns of informality, negotiation, and compromise are even more pronounced. In virtually every American jurisdiction, large numbers of cases are dismissed or diverted without formal adjudication, and of the remaining cases, the vast majority—up to 90 percent in most jurisdictions—are resolved by guilty plea. Among the less serious cases, guilty plea rates are even higher. In New York City, more than 99 percent of the misdemeanor cases end in guilty pleas. Study after study has documented the prevalence of flexible norms and informal relationships that govern the disposition of the daily courtroom workload. Although there are elements of adversarial opposition in the interactions of prosecutors and defense attorneys, the dominant fact is that these "opponents," working together day to day, with a perceived need to preserve the stability and predictability of their relationships, develop common standards of evaluation, come to believe that they know what a case is "worth," and seek rapid means to find the common ground that will permit them to move on to the next case on their lengthy lists.

Judges often facilitate this process. Surveys reveal that roughly one out of three criminal trial judges regularly attends plea bargaining sessions and most of these judges participate in the negotiations. In the majority of criminal cases, however, prosecution and defense are quite able to reach a mutually satisfactory settlement without any facilitation or encouragement from formal institutions or outside parties. Indeed, in some (though not all) jurisdictions, court culture may generate such settlements in enormous numbers, even when legal rules attempt to discourage or forbid them. Since negotiation and mediation already dominate the disposition process, recent proposals to establish a required program of mediation in criminal cases would simply add an additional stage to the case processing system and, perhaps, an additional bureaucracy, without in any way altering the substance of American criminal justice.

Neighborhood Justice?

Many of the current proposals to avoid formal criminal adjudication draw their inspiration from programs for decentralization and informalization that have been in vogue since the mid 1960s. "Neighborhood justice centers" for the resolution of criminal complaints by informal mediation have sprung up across the United States, and more than one hundred of them are now in operation. What we have learned about the operation of these centers does not afford much basis for an optimistic assessment of their potential. Although complainants often describe themselves as satisfied with their experience, satisfaction levels are not dramatically different for complainants who take their cases to court. In any event, it is far from clear whether any of the small gains in satisfaction levels would be permanent (once mediation programs became established and more routinized) or would be worth the effort and expense entailed in running such programs.

An even more fundamental problem is that the limited successes of neighborhood justice centers have been achieved in only a very small, unrepresentative subset of the overall criminal caseload. Most of these programs deal only with minor misdemeanor charges, typically complaints that would not in any event lead to adversarial court trials. Efforts to extend mediation to a wider spectrum of cases have been notably unsuccessful. A major reason is simply the refusal of respondents to cooperate. A San Fran-

---

3 Data in this and the next paragraph are drawn from the extensive discussion in Marc Galanter, Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) about Our Allegedly Contentious and Litigious Society, 31 U. C. L. A. L. Rev. 4 (1983).

cisco program that does not depend on court referrals processes only about one hundred cases per year. The Brooklyn, New York, program, one of the few that attempt to deal with felony cases (though less serious ones), had the opposite problem: respondents, facing court charges, almost always appeared, but complainants failed to appear in 28 percent of the cases, and overall only 56 percent of the cases referred were eventually mediated.

There is no evidence, moreover, that neighborhood mediation, when it occurs, has been more successful than adjudication in reaching the underlying causes of conflict. In practice, mediators have tended to deal only with the superficial aspects of disputes, and the research suggests that mediation is no more effective than prosecution in preventing recidivism. Indeed, interpersonal disputes, those ostensibly best suited to mediation, turn out to be the most problematic. "[I]n most of the cases which are resolved the dispute is not tremendously complex or deeply rooted . . . . When the dispute involves individuals with strong ongoing bonds or for whom there are rather serious underlying problems, the likelihood of achieving a lasting resolution diminishes."

The ideal of community involvement, neighborhood justice, is of course an appealing one, but in practice the neighborhood justice centers are not any more closely linked to the community than are the criminal courts. Mediators themselves tend to be lawyers or other professionals, and "dispute resolution" is becoming an occupational specialty. If anything, lay members of the community are squeezed out of participation to the extent that mediation replaces jury trials.

5 In a control group of felony cases comparable to those handled by the neighborhood center, 70 percent of the cases were dismissed or adjourned in contemplation of dismissal and the charges in nearly all the remaining cases were reduced to misdemeanors. Only 1 percent of the cases were referred to a grand jury for actual prosecution at the felony level.


The upshot is that even for relatively minor criminal matters, neighborhood mediation can handle only a portion of the cases now processed in courts, and it is by no means clear that it can do so more cheaply, more quickly, or more effectively than such existing court processes as pretrial diversion, discretionary or negotiated dismissals, plea bargaining and indeed even formal adjudication.

The Limits of Mediation

Whatever the role accorded to mediation, some form of involuntary, coercive decision-making process will remain essential. Should we invite the victim of a brutal assault or rape to sit down with her attacker and seek to resolve their "disagreement"? Should we invite the homeowner to work out his differences with a midnight burglar? Mediation is utterly inappropriate in such cases, and we would only insult and alienate the victims of these crimes if we were to suggest it.

Critics of the adversary system appear to assume that involuntary adjudication can be relegated to a subsidiary role, as a back-up procedure for exceptional cases. In fact, a coercive decision-making mechanism is necessarily of central importance to any system for the resolution of criminal charges. In the great majority of cases, even the minor ones, those who are accused will simply refuse to participate or will refuse to accept any plausible "solution" to the controversy, unless the prospect of an imposed solution is lurking in the background. This remains true even when the dis-

pute is among close acquaintances. Most homicides and serious assaults involve victims who are relatives or close associates of the offender; despite the interpersonal nature of the "dispute," mediation is normally out of the question. Indeed, whenever the accused faces significant restrictions on his or her freedom (probation or incarceration), we can hardly expect truly voluntary participation, and in any event, we would not want to permit negotiated or mediated solutions in which those accused could buy (or threaten) their way out of the sanctions that public protection demands. Again for such cases, involuntary, coercively imposed decisions are unavoidable.

Coercive decision-making is no less important where we observe that large numbers of dispositions occur through plea bargains to which both parties consent. These dispositions are consensual in name only, for the terms of the decision that would be imposed without consent directly condition the terms which the accused is "willing" to accept. Much as one might like to promote shared interests and values, a spirit of cooperation and the like, the person charged with serious criminal conduct ought to face unpleasant consequences if he has committed the acts alleged. His interests will not be, and should not be, harmonious with those of the complainant or those of the public officials responsible for determining his future. Hence any criminal justice system must be built upon some mechanism for imposing unpleasant consequences on unwilling recipients.

**Arbitration instead of Adjudication?**

To deal with the need for some coercive decision-making mechanism, one scholar recently proposed replacing adjudication by arbitration.\(^6\) The suggestion reflected the kinds of misunderstandings about the adversary system that permeate much of contemporary discourse. Contrary to this writer's claim, there is no reliable evidence that substantial numbers of attorneys resort to "fabrication" of the facts. Such conduct is clearly and explicitly forbidden by the rules of professional responsibility, and I believe that violations of this prohibition are quite rare. To the extent that such illegalities occur, we have no reason to think that they would be less common in arbitration than they are in court trials.

**The person charged with serious criminal conduct ought to face unpleasant consequences if he has committed the acts alleged.**

There are two important respects in which allegations about attorneys who "suppress" harmful facts do have some validity. The defendant cannot be required to reveal one type of evidence (incriminating evidence that is "testimonial") and the defense attorney may not reveal disclosures made to him by his client. These principles flow directly from the Fifth Amendment privilege against compulsory self-incrimination and from the lawyer's obligation to hold inviolate the confidences of a client. Both principles can occasionally lead to troubling results, but the consequences of abandoning them entirely would be far worse. Few critics of the adversary system seriously propose that we do so.

This is not to suggest that the adversary process should remain entirely above criticism. Certain particulars of American trial procedure can generate unproductive excesses of adversarial zeal. Examples include our elaborate procedures for jury selection, certain highly artificial rules of evidence, and the principles that produce expensive, uninformative swearing contests between rival expert witnesses. Critics might usefully advance the debate by focusing research on these problematic areas and by promoting discussion about whether specific procedural rules should be modified. If rules relating to hearsay evidence or expert witnesses are unsuitable, one would presumably want to modify them not only for "arbitration" proceedings but also for traditional trial adjudications.

Conversely, the attorney-client privilege, the privilege against self-incrimination, and perhaps many of the other procedural safeguards which we now associate with trials will and should remain a part of any decision-making process for criminal cases, whether it be called arbitration, adjudication, or something else.

**Cooperation or Conflict?**

Apart from cosmetic and terminological differences, an arbitration system is likely to be every bit as adversarial (or non-adversarial) as the pre-existing trial process, unless there is fundamental change in the nature of the interests at stake or in the spirit with which the parties approach the dispute. In fact, some scholars, in accord with the tenor of proposals by former Chief Justice Burger, President Bok and others, do suggest a basic change in spirit, in which the decision-making system would be based on cooperation rather than conflict.

Unfortunately, to proclaim a change in philosophy, as these authorities have done, is an insufficient and ultimately counterproductive approach to the problem. In the criminal justice system, at least, conflict does not result from an abstract philosophical choice or even from emphasis on acquisitiveness, competition, and free-market economics in the wider culture. Conflict in criminal cases results from the plain fact that the interests of the public and of the guilty offender are irreconcilably opposed. And those interests will necessarily remain opposed, so long as society continues to perceive the need to incarcerate criminal offenders. Every effort to ignore or paper over this reality—including the juvenile court movement, the involuntary commitment programs for the retarded and the mentally ill, and the rehabilitative model for "treating" criminal offenders—has foundered on the unavoidable fact that involuntary confinement is almost never benevolent from the viewpoint of the inmate. To proclaim a system based on cooperation, pares patriae, and the long-term interests of the defendant is simply to mask conflict and to invite the abuses that excessive discretion and unchecked power have produced over and over in allegedly "benign" programs.

---

Since conflicting interests are inherent in any criminal justice process that serves society's needs for deterrence and social protection, the truly troubling features of American criminal justice are not its adversarial aspects (which are largely superficial or mythological) but rather its heavy emphasis on plea bargaining and related forms of cooperation between prosecution and defense. Where, as in nearly all American jurisdictions, prosecutors are expected to dispose of large numbers of cases each day, by offering concessions sufficiently attractive to induce cooperation by the defense, the public interest in accurate determinations of guilt and in adequate punishment of those who are guilty is necessarily at risk. A system that designated a "mediator" to elicit cooperative attitudes would suffer precisely the same vice.

To be sure, by muting or abandoning the adversary system, as cities have done in neighborhood justice centers or in their plea bargaining practices, an appearance of harmony and efficiency can be created. Attorneys, judges, mediators, and other professionals or quasi-professionals cooperate to manage and expedite the flow of cases, and the process seems to function smoothly. But beneath the surface, the organizational needs of the case disposition system and the personal goals of the participants limit the pursuit of public interests and at the same time impair the efforts by defense counsel to protect the rights of the accused.

In a properly functioning adversary system the situation is essentially the reverse. On the surface neither harmony nor efficiency is very much in evidence. "The essence of the adversary system is challenge, ... a constant, searching and creative questioning of official decisions and assertions of authority at all stages." The constant probing and questioning seem disruptive and inefficient. Indeed, intensive probing and questioning by the defense often seem utterly unnecessary. As I have written else-

where: "adversary behavior deliberately seeks to sow doubt—doubt about the facts, doubt about the law, doubt about the propriety and legitimacy of punishment, doubt about the probity and fairness of constituted authority at every level. These doubts must, in the nature of things, prove unfounded a good deal of the time."^10

Conflict in criminal cases results from the plain fact that the interests of the public and of the guilty offender are irreconcilably opposed.

Under these circumstances, the behavior encouraged by the adversary system is bound to seem, on the surface, unjustified and even incomprehensible. It is too easy to forget that if prosecutorial abuses and oversights are indeed infrequent, one of the major reasons for this state of affairs is the vigorous opposition that is constantly a prospect in a well functioning adversary system. As an Attorney General's Commission wrote more than twenty years ago: "[A] system of justice that provides inadequate opportunities to challenge official decisions is not only productive of injuries to individuals, but is itself a threat to the state's security and the larger interests of the community. ... [T]he loss in vitality of the adversary system ... significandy endangers the basic interests of a free community."^11

Sadly, we have already experienced in American criminal justice a major blow to the vitality of the adversary system. Plea bargaining, long sanctioned by low-visibility practices in most urban courts, has now received the approval and encouragement of the United States Supreme Court. By deploying the threats and inducements that plea bargaining makes available, we have already produced a criminal justice system in which the great majority of convicted defendants willingly accept their punishment, or even welcome it as a "good deal." Criticism of highly adversarial attorneys and proposals to encourage even more mediation and reconciliation will only aggravate this situation. We may pride ourselves on the atmosphere of harmony and cooperation that is so prevalent in criminal justice, but conflict between the vital interests of the individual and the community can only be hidden, not eliminated. It is time to eliminate plea bargaining, to condemn all the misleadingly attractive forms of "cooperation" between prosecution and defense, and to restore a genuine adversary system in which guilt is accurately determined, and appropriate punishment is reliably fixed, in visible, public, vigorously contested criminal trials.


^11U.S. Attorney General's Commission, supra note 9, at 11.
Dear Dick:

It was a pleasure to return to the Law School earlier this month, and I enjoyed our interesting discussion concerning the experience of women students. You indicated, at that time, that a written discussion of the issues raised in our conversation would be helpful, and I am happy to respond to that request.

We agreed that we have both made the observation that women students at the Law School, as a group, have not achieved the academic and professional success that might be expected, given their numbers. I would add that I have observed women students of great intelligence and ability fall short of the success that might have been expected of them as individuals. This phenomenon is by no means unique to the University of Chicago Law School; rather, it appears to be widespread through the legal profession, and indeed in other professions and occupations as well. Yet institutional barriers to women’s advancement have been almost entirely dismantled. Pathways to success that were once closed to women now stand open to them. Why, then, do many women seem to have difficulty moving forward? And if the source of the problem can be identified, is there anything that a law school can do to help?

One explanation, and perhaps the one that comes most readily to mind, is that women continue to experience discrimination against them, only in more subtle forms, from male faculty, administrators, and practicing lawyers. This explanation certainly seems to tell at least part of the story. Subtle forms of prejudice continue to affect the perceptions and judgments of many men in positions of authority, including those with the best of conscious intentions, with the result that they treat men and women subordinates differently. For example, male law school professors often feel uncomfortable about becoming friendly with women students, and they are frequently more willing to enter into an avuncular teacher-student relationship with a student who is also male. As a result women have fewer opportunities to obtain advice and guidance from their professors. Without the establishment of personal friendly relations with their female students, male professors are also less likely to be willing or able to write strong letters of recommendation for them; the professors simply do not know their women students well enough.
Men professors may also have difficulty in appreciating the quality of some of their women students' work because it presents ideas and perspectives that are unfamiliar to them. As Suzanna Sherry has pointed out, women's different upbringing and experiences "may provide insights and approaches that are less natural to, and therefore less available to, male lawyers and judges." Male professors who encounter such insights and approaches in papers and examinations may find them obscure or odd. Work that reflects a feminine perspective may thus tend to receive lower grades than work that reflects a traditional masculine perspective.

However, although such subtle discrimination has a real effect on women, it is not the primary obstacle to women's success. The principal impediment to women's achievement lies more in the attitudes, values, and priorities that women are brought up to hold and that they bring with them to law school. Many of these ideas and beliefs are inconsistent with the notions of ambition and of striving for achievement and success. As a result, the female law student is faced with a sharp conflict between one set of values and beliefs instilled in her during childhood and adolescence, and a new set of values, emphasizing academic and professional success, encountered in law school.

Among the values and beliefs that are widely held among women and that directly conflict with ambition and commitment to professional achievements, three distinct ideas emerge as the most powerful.

1. The Ethic of Selflessness. Women are typically raised to accept an ethic of selflessness, of positive duties and responsibilities to others, and of giving first priority to the sustenance of interpersonal relations. In this ethical framework, any conduct that is seen as "selfish" must be condemned. When choosing a course of action, a woman's first consideration should be, not her own desires or goals, but the benefit of others. Only after she has assured herself that her conduct will satisfy her ethical obligation to help others may she concern herself with her own welfare. Indeed, the moral ideal is one of complete self-denial, in which the woman's energies are focused entirely on giving to others. Men, by contrast, are typically raised to accept an ethic of self-assertion, limited only by a negative duty of noninterference in the activities of others. The man believes that it is morally acceptable for him to choose his course of conduct by placing his own interests first, then restricting himself only insofar as he unreasonably interferes with other people's pursuit of their own interests. These fundamental differences in the moral development of men and women have been traced by Harvard professor Carol Gilligan in an influential study. Gilligan's research confirms "the continuing power for women of the judgment of selfishness and the morality of self-abnegation that it implies."

The ethic of selflessness that women are trained to accept stands in sharp contrast to a system of values in which respect is paid to professional success. As Gilligan points out, "The notion that virtue for women lies in self-sacrifice has complicated the course of women's development by putting the moral issue of goodness against adult questions of responsibility and choice." The pursuit of academic and professional success is an activity centered on the self, rather than on giving to others; it is therefore selfish, and can be undertaken only after obligations to others have been satisfied. Moreover, the pursuit of success becomes actively wrong in situations involving competition with others, where one person's gain necessarily means another's loss. Under this ethical conception, the woman may not pursue a goal if her success would entail the defeat or deprivation of another. For the woman law student, the ethic of selflessness creates a difficult dilemma. On the one hand, the law school environment communicates to her in innumerable subtle ways that if she does not achieve academic and professional success, she will be worthy of less esteem than the students who do. On the other hand, her previous training tells her that if she attempts to achieve success, she will be selfish and therefore bad.

2. The Linkage between Femininity and Passivity. Women have traditionally been raised to identify femininity with passivity and inaction. As children, they have this lesson instilled in them from two sources: observation of the interaction of adult men and women around them and, more directly, from the protective and restrictive attitudes taken toward them by their own parents. Girls are rewarded for passive, nonchallenging, "nice" behavior. As Colette Dowling says, "Physical timidity or hypercautiousness, being quietly 'well behaved,' and depending
on others for help and support are thought to be natural—if not outright charming—in girls. Boys, however, are actively discouraged from the dependent forms of relating, which are considered 'sissyish' in male children. Gradually . . . the son will be pushed toward and rewarded for independent behavior. . . . 6

While girls are rewarded for passive behavior, their efforts at an independent, active approach to life are frequently discouraged by parental overprotection. In adolescence and adulthood, the link between passivity and femininity is reinforced in social interaction with boys and men, in which the traditional female role is completely passive and reactive.7 As a result of this training, women learn that proper feminine roles include those of observer, cheerleader, and follower, rather than those of decision maker or leader.8

Why do women care whether their behavior is "feminine"? One can readily see why women would avoid conduct that they feel is morally wrong. It is less clear why they should be troubled by conduct that is merely "unfeminine." There seem to be two reasons why women tend to avoid unfeminine conduct and feel anxiety and discomfort when they engage in it. At one level, there is the pragmatic realization that most men continue to prefer traditional feminine conduct in their female companions. The woman who engages in unfeminine conduct therefore risks a lifetime of loneliness. Indeed, that understates the matter, because a circular effect is at work here. The woman who has learned to be passive and helpless believes herself to be incapable of dealing with the world on her own; she therefore believes she needs to attract a man not only for companionship but for protection. To attract that man, she must make every effort to stay helpless and dependent, thereby reinforcing the condition that was her original problem. On another level, women avoid unfeminine behavior because their sense of self is closely tied to their perception of gender. Thus, conduct that is unfeminine is experienced by women as inconsistent with their own sense of identity.

A woman who believes that her conduct should be passive and reactive, in order to be feminine, will find that her standards of conduct conflict with a commitment to professional achievement. The pursuit of academic and professional success demands that the individual take responsibility for planning her own future, actively assert her own preferences in identifying goals, and exert control over herself and her environment in moving toward those goals. However, taking responsibility, asserting preferences, and exerting control are experienced by the woman student as masculine activities that she should not engage in and that feel odd, uncomfortable, and inappropriate if she does engage in them.9 As a result, for many women, professional ambition and achievement produce a sense of anxiety that has been labeled by psychologist Matina Horner as fear of success.10
3. *The Expectation of Failure.* Many women approach challenges with the expectation that they will fail, or perform merely adequately, rather than perform well. Women often harbor a deep-rooted belief that their intelligence, judgment, and other mental and physical abilities are inadequate to meet the challenges they encounter or to effect change in their environment. When they encounter a difficult task or problem, women frequently believe that they are incapable of controlling the situation to reach the desired resolution, and that they must depend on the help of others. One source of women's expectation of failure can be sought in the lessons they learn as children from their parents and other adults. Parents tend to feel and express more anxiety, more apprehension of hurt, over a girl's activities than over a boy's. By observing this adult apprehension, the girl learns to be apprehensive herself and to lack confidence in her own ability to deal with challenging situations. Parents are also more likely to restrict a girl's activities. The son is allowed to climb a tree or to drive the car, while the daughter is not. As a result, girls are often prevented from encountering fear-inducing situations, and they fail to gain experience in mastering such situations. Another source of women's sense of powerlessness in confronting challenges lies in their recognition of their physical weakness in relation to men. This point is driven home to any woman who walks down a city street. The stares and comments of the men she passes serve to remind her that, if any one of them chose to make a physical attack on her, she would lose the struggle. The woman who must walk down the street conscious of her own powerlessness will have difficulty experiencing herself as strong and capable once she enters the law school building.

Women's expectations of failure and lack of confidence in their own abilities are serious obstacles to professional achievement. Because women believe that significant forms of success are beyond their power to attain, they lower their aspirations. They decide not to pursue attractive opportunities. Moreover, when competition and risk cannot be avoided, women frequently experience anxiety and discomfort in a degree that impairs the quality of their performance. Poor or mediocre performance then simply reinforces the woman's perception of herself as incapable of meeting challenges.

Faced with the conflict between the attitudes and beliefs with which they were raised and the values they find prevalent at law school, women law students react in one of three ways. A few women virtually abandon the struggle, resorting to the traditional conception of women's roles that they find more familiar and comfortable. These women de-emphasize their studies and emphasize other activities. For some, this takes the form of increased attention to dress and appearance and to social or romantic relationships. Others focus on "doing good" through charitable or political activities. This group of women opt for low career aspirations in terms of what is generally conceived of as success.

Probably the largest group of women remain throughout their law school years in a state of conflict and ambivalence. They value professional achievement and success and desire it for themselves, but they find it difficult to shake off attitudes and beliefs that have been deeply instilled in them. As a result, they often sabotage their own advancement by making self-defeating choices. Examples of the selflessness ethic at work include: the student who, the night before an important examination, spends hours on the telephone comforting a distressed friend; the student who repeatedly misses classes or fails to prepare for them, spending the time in an effort to salvage a failing relationship; the woman who turns down law review membership in order to spend more time with her husband; the law review editor who neglects her course work in order to assist the staff members or do the work they have failed to do; and the woman who deliberately chooses a less prestigious job or clerking in order to avoid what she sees as a selfish, uncaring approach to life. The links between passivity and passivity lead many women students to avoid situations in which they must take action. These women avoid talking in class; they fail to make an effort to get to know professors who could advise and assist them; they avoid making plans for the future and delay important career decisions until the last minute; they fail to seize opportunities that come their way. When action is unavoidable, these women find it difficult to take control of the situation. As a result, they may make tentative, disorganized, and unpersuasive arguments on examinations and papers, or they may be hesitant
when required to exercise authority over others in student organizations. The expectation of failure interrelates with and reinforces these behavior patterns. Thus a woman who expects to fail to meet a given challenge can often justify her avoidance of the challenge on the ground that she is behaving properly in terms of either morality or femininity. It is also important to note that all of these internal conflicts are also detrimental to this group of women students, simply because they consume a great deal of mental energy that could better be put into intellectual effort.

Finally, there are a few women law students who resolve their internal conflicts by rejecting self-defeating attitudes and values and committing themselves to self-assertion and self-development. But even their successful resolution of these conflicts comes only at the cost of time and energy that could otherwise have been devoted to furthering academic and professional goals.\textsuperscript{12}

Because success in law school has an important determinative effect on the shape of a lawyer's later career, measures to counteract the handicapping effects of women's traditional ideas and beliefs, and their resulting internal conflicts, should ideally be taken during the law school years, rather than later. It may be possible for law schools to take an active role in that process. A step in the right direction would be accomplished with the simple recognition on the part of faculty and administrators that women take part in the competitive experience of law school with special handicaps not applicable to men. Beyond that, consideration might be given to the possibility of establishing some kind of program designed to assist women in making academic and career decisions. Such a program could take various forms. One approach would be to offer presentations, panel discussions, or workshops to students who are interested. Another approach would be to establish an effective system of career counseling, either through an expanded conception of the Placement Office, or perhaps through a network of women lawyers, so that guidance would be available when the students themselves feel they need it. Either sort of program could be specifically aimed at women, or it could be made available to men as well. Further study of the considerations involved would be required before any recommendations could be made.

The Law School's purpose is to prepare all of its students for legal careers, but the preparation it now offers is designed with the assumption that students will base their actions and decisions on values and beliefs that are traditionally masculine. The Law School's current educational approach has failed to take into account the fact that women students have been taught a different set of values and beliefs. The resulting disparity in the performance of men and women is troubling and demonstrates the need for further discussions of the issues raised here.

With best regards,

\[\text{\textit{Elizabeth Gorman Nehls}}\]
Cynthia Fuchs Epstein noticed similar attitudes among women law students: "Women seemed uncomfortable about what they perceived as pressures, subtle and direct, that were leading them to become less 'caring.'" Supra note 1, at 73.


7The man initiates the contact and selects the activity, the woman merely responds; the man drives the car, the woman is the passenger; the man opens doors, holds coats, and pushes in chairs for the woman while the woman does not reciprocate; the man pays for the activities, the woman does not; the man is the sexual aggressor, while the woman reacts to his advances.

8The most destructive aspect of this emphasis on passivity is that women also learn to accept the role of victim. Thus battered wives who remain in abusive homes are conforming to the appropriate standard of feminine conduct.

9Virginia Woolf vividly described the way in which traditional notions of femininity interfered with her commitment to her work: "I discovered that if I were going to review books, I should need to do battle with a certain phantom. And the phantom was a woman, and when I came to know her better I called her after the heroine of a famous pæd... The Angel in the House. It was she who used to come between me and my paper when I was writing reviews. It was she who bothered me and wasted my time and so tempted me that at last I killed her. . . . I will describe her as shortly as I can. She was intensely sympathetic. She was immensely charming. She was utterly unselfish. . . . She sacrificed herself daily. If there was chicken, she took the leg: if there was a draught, she sat in it—in short she was so constituted that she never had a mind or a wish of her own, but preferred to sympathize always with the minds and wishes of others. . . . And when I came to write I encountered her with the very first words. Directly I took my pen in hand to review that novel by a famous man, she slipped behind me and whispered: 'My dear, you are a young woman. You are writing about a book that has been written by a man. Be sympathetic, be tender; flatter; receive; use all the arts and wiles of our sex. Never let anybody guess that you have a mind of your own.' And she made as if to guide my pen. I now record the one act for which I take some credit to myself. . . . I turned on her and caught her by the throat; . . . Had I not killed her she would have killed me. . . . For as I found, directly I put pen to paper, you cannot review a novel without having a mind of your own, without expressing what you think to be the truth."


Footnotes

1For example, a conversation reported by sociologist Cynthia Fuchs Epstein in her book Women in Law (1981) indicates the depth of the anxiety felt by some men professors concerning women students:

An eminent male professor at a West Coast law school commented candidly to me on the impact the new attitudes had made on his relations with women students . . .

"Do you think your own experience in dealing with women in law schools, both as colleagues and students, is any different than it is with men?"

"No, [But] I'm less relaxed with women students than I am with men students."

"Why?"

"Because I'm always worried that I'm going to get into some kind of sexual accusation. . . . I'm very leery and careful dealing with women, especially with women in a situation where the power relationships are such that exploitation is really not, unfortunately, uncommon. . . . I do treat them differently than I treat men."

"How do you treat them differently?"

"Well, I think about whether the door is closed when I'm with them."

"How about intellectually?"

"Well, I'm a little more careful about brushing them because I think they brush more easily than men or I think they do—and I may be wrong about it—but my fallback position would be that even if they don't brush more easily, they can shoot more and the last thing I want is a hysterical woman on my hands." (Page 69).


3This masculine ethical conception was articulated as early as Plato's statement that "minding one's own business . . . is . . . justice." Plato, The Republic, Book IV, 4336 at 111 (A. Bloom trans. 1968).

4Carol Gilligan, In a Different Voice 132 (1982).

5Some of Gilligan's subjects specifically focused on the conflict between the selflessness ethic and professional ambition. One woman, who saw 'her compassion . . . as endangered by her pursuit of professional advancement,' stated that 'to be ambitious means to be power hungry and insensitive. . . . [P]eople are stomped on in the process. A person on the way up stomps on people. . . .' Another woman, a college student, condemned college "as a 'selfish' institution where competition overrides cooperation, so that 'working for yourself, doing for yourself, you don't help other people.'" Id. at 140.


7The man initiates the contact and selects the activity, the woman merely responds; the man drives the car, the woman is the passenger; the man opens doors, holds coats, and pushes in chairs for the woman while the woman does not reciprocate; the man pays for the activities, the woman does not; the man is the sexual aggressor, while the woman reacts to his advances.

8The most destructive aspect of this emphasis on passivity is that women also learn to accept the role of victim. Thus battered wives who remain in abusive homes are conforming to the appropriate standard of feminine conduct.

9Virginia Woolf vividly described the way in which traditional notions of femininity interfered with her commitment to her work: "I discovered that if I were going to review books, I should need to do battle with a certain phantom. And the phantom was a woman, and when I came to know her better I called her after the heroine of a famous pæd... The Angel in the House. It was she who used to come between me and my paper when I was writing reviews. It was she who bothered me and wasted my time and so tempted me that at last I killed her. . . . I will describe her as shortly as I can. She was intensely sympathetic. She was immensely charming. She was utterly unselfish. . . . She sacrificed herself daily. If there was chicken, she took the leg: if there was a draught, she sat in it—in short she was so constituted that she never had a mind or a wish of her own, but preferred to sympathize always with the minds and wishes of others. . . . And when I came to write I encountered her with the very first words. Directly I took my pen in hand to review that novel by a famous man, she slipped behind me and whispered: 'My dear, you are a young woman. You are writing about a book that has been written by a man. Be sympathetic, be tender; flatter; receive; use all the arts and wiles of our sex. Never let anybody guess that you have a mind of your own.' And she made as if to guide my pen. I now record the one act for which I take some credit to myself. . . . I turned on her and caught her by the throat; . . . Had I not killed her she would have killed me. . . . For as I found, directly I put pen to paper, you cannot review a novel without having a mind of your own, without expressing what you think to be the truth."


10Matina Horner, "The Motive to Avoid Success and Changing Aspirations of College Women," reprinted in Readings in the Psychology of Women (J. Bardwick ed. 1972). Horner conducted her research by asking men and women students to write imaginative stories based on a lead sentence given to them by the researcher. The lead sentence for the women students was: "At the end of first term finals Anne finds herself at the top of her medical school class." The completed stories were examined for indications that the students expected negative consequences to follow an outstanding academic success. Sixty-five percent of the women students tested in 1964 and 88 percent of the women students tested in 1970 revealed such negative expectations. Many of the stories centered on the theme that Anne would be unable to attract the affection of a man if she persisted in excelling. Academic success was seen as necessarily linked to an unattractive appearance and personality. "Anne is an acne-faced bookworm," one woman wrote. They also indicated that Anne should quickly retreat from her inappropriate behavior. "Unfortunately Anne no longer feels so certain that she really wants to be a doctor. Anne decides not to continue her medical work but to take courses that have a deeper personal meaning for her," wrote another student.

11Rosabeth Moss Kanter's studies of business managers reveal that both men and women tend to cope with expectations of failure in their work by "disengaging." Disengagement takes the form of a withdrawal of personal commitment to their career, depressed aspirations and a refusal to take responsibility. Rosabeth Kanter, Men and Women of the Corporation 140-47 (1977).

12Virginia Woolf made this point in discussing her struggle with the Angel in the House: "Though I flatter myself that I killed her in the end, the struggle was severe; it took much time that had better been spent in learning Greek grammar; or in roaming the world in search of adventures." Virginia Woolf, "Professions for Women" at 238.
The public sector has difficulty in competing with private law firms for the best of the new law school graduates each year. Faced with economic realities, many graduates whose personal preference would be for a public service job find themselves compelled to take employment at a private firm. In an attempt to help those who would prefer a public service career to realize their ambitions, the Law School has instituted a loan forgiveness program that will aid graduates with lower salaries to meet their financial obligations. This is part of a new public service program that has been established by James Hormel, a 1958 graduate of the Law School, and Dean of Students from 1961–67.

On a recent visit to the Law School, Mr. Hormel discussed his life, his interest in public service projects, and the new programs. The first impression of James Hormel is of the stereotype of an English country squire, with tweeds and a gray mustache, a quiet and serious man.
His background would seem to be an unlikely start for a lifetime interest in the problems of the not-so-well off, but Hormel did not fit comfortably into his background. The grandson of the founder of the giant Geo. A. Hormel & Co. meat packing and meat products company, James grew up in Austin, Minnesota where the company is based. He did not like growing up in a small community where he could not avoid being different and the focus of attention, at a time when, like all small boys, he needed to be just one of the crowd.

"It was impossible for me to get that in a community where the company was essentially the principal employer," he said.

At the age of thirteen he was sent to a boys' boarding school in North Carolina, but this experience was no more satisfying. Here the student body was so homogeneous, almost all coming from wealthy families in the Midwest and South, that James felt he did not get a very good exposure to the realities of the world. He also felt uncomfortable with the prevailing attitude at the school, an air of condescension of the patrician students to the plebeian world around them.

Hormel made a shaky start to his college career. He flunked out of Princeton after a wonderful year of doing nothing that vaguely resembled studying. A smile lit up his face at the memory. He finally settled down at Swarthmore and majored in history. On graduation, Hormel was not sure what to do next. He decided on law school with the expectation that a legal background would be useful in whatever he chose to do. One thing he was sure of and that was that he would not be returning to the family business. Although he later served on its board of directors for fifteen years, he has never played an active part in the firm. At the Law School he was especially interested in areas of the law involving notions of equity and constitutional issues, but found on graduation that law firms in the late 1950s were not actively engaged in these issues. He struggled with conventional law practice in Chicago for a few years, mostly in the fields of insurance defense, corporate practice, and the planning and execution of estates, but these did not hold particular interest for him. When the opportunity arose to return to the Law School as Dean of Students, he leapt at the chance, and never thereafter returned to the practice of law.

As Dean of Students at the Law School, Hormel succeeded Jo Desha Lucas, who wanted to devote his full attention to teaching. Whereas Lucas had held joint teaching and administrative posts, Hormel was full-time Dean of Students.

"The Law School was going through changes, particularly with respect to admissions. It was getting many more applications than before and they required a great deal more attention. It was quite a challenge at first. I was very young and had no administrative experience. It was all on-the-job training. Fortunately, Jo was here to help and Dean Edward Levi, during his last year as Dean, was a wonderful person to work with. His assistance was invaluable." Hormel settled in eagerly to his new post. "It was to me enormously exciting and rewarding to be a part of the University community. We moved back to Hyde Park (from Winnetka). I could walk to work. There were all kinds of stimulating people to be with and activities to be involved in."

The last few years of James Hormel's appointment as Dean of Students saw the beginnings of student unrest and a time of tension.

"It was increasingly difficult to be a part of the administration at a time when students were focusing on problems that led to conflict between students and the administration," he said. He feels that those on the University side were not necessarily unsympathetic with some of the students' causes. However, twenty years ago there were notions of responsibility, based on the old ideas of in loco parentis and those clouded the issues.

Hormel found it increasingly hard to represent the administration's point of view. In some instances he felt more aligned to the students than to the official line. He was also distracted at this time by personal problems and eventually decided that upheavals in his private life and his work as well were too much to cope with. He resigned from his post in 1967.

In 1968 Hormel attended a meeting of about seven hundred people who were enormously dissatisfied with the chaos and violence of the Democratic Party's convention in Chicago. They wanted to try to form an alternative vehicle for Senator Eugene McCarthy to get on the ballot. Hormel was one of a small group selected to be the nucleus. Later, when it became clear that McCarthy was not interested in their efforts, the group decided to form an
independent political party, known as the New Party. Hormel was chosen to be the national director. Besides running the central office in Washington, his role in the New Party involved him in traveling around the country “making occasional speeches and visiting places like Mississippi where I had never been before and where I had a first-hand opportunity to see the level of discrimination that was then taking place and to see malnutrition and starvation that I didn’t think existed in this country. To learn of other people’s problems in this way had a deep and lasting effect on me and I’m very grateful that I had that time in my life. It was educational, it was frustrating, it was heartrending, but it was a very substantial part of what gets me to where I am today.”

The New Party was not a success, and after its break-up, James Hormel spent some time in Hawaii, reflecting on what he was going to do next in his life. He frankly admits that he fell under Hawaii’s spell.

“I intended to do some writing but I was distracted by the way things seem to operate in Hawaii, which is ‘tomorrow.’ I mowed the lawn a lot and did a lot of gardening and spent some time . . . reflecting on where I had been, where I wanted to go and how I would deal with myself in a universe that wasn’t totally in accord with who I felt I was.”

Finally tearing himself away from Hawaii, Hormel settled in San Francisco, where he still lives, with his friend of ten years, Larry Soule. He also spends as much time as he can in Virginia with his four daughters, and in Los Angeles with his son. He soon found that for someone interested in helping the community, San Francisco was a lively and active place that offered great opportunities. He has been involved in several projects in the gay community, including a self-awareness workshop series called The Advocate Experience and a project by the Pride Foundation to set up a community service center in a largely black neighborhood. One of the happy results of the latter project was to bring about a concord between the two groups of people, whose relations were initially based on mutual suspicion. Hormel is also on the board of the National Gay Rights Advocates, a public-interest law firm that is his only law-related activity now. He still works with a variety of political and social groups and is also involved with trying to establish the San Francisco Chamber Orchestra as a major orchestra.

When the Law School approached James Hormel for a contribution to the Capital Campaign, he wanted to do something that would stimulate people to become involved in public service. The initial idea of a program to assist students who chose to spend a certain amount of time in public service to repay their loans was attractive.

“Some demonstrated commitment would be necessary, not just a few months after law school, but with that demonstrated commitment there would be the opportunity either to postpone or have forgiven some or all of their student loans.” This program has now been expanded into a broader public service program and Hormel hopes to see it continue to develop in the future.

“We considered other means of encouraging students to examine public service opportunities and the program will be designed to promote that examination in other ways. It will involve bringing people to the campus to address the issues of public service, giving students the opportunity to work in other fields during their summers and opportunities for job interviews they might not otherwise be able to get to. I hope that there will be some long-term development.”

Hormel is enjoying his renewed contact with the University community and the Law School. He says he did not realize how much he missed the campus.

“There have been a lot of changes but I feel I am still a part of the environment and I like being a part of it. The issues that are constantly being discussed and refined and reexamined—that sort of activity is very stimulating and a lot of fun.”
Visiting Committee
1986–87

The Law School welcomed the members of the Visiting Committee for their annual meeting on November 11–12. After listening to introductory remarks from Dean Casper, the committee heard a panel discussion in which members of the faculty discussed Social Science Research and the Law. Professor Stephen Schulhofer looked at current empirical research designed to draw out alternatives to the plea bargaining system. Professor Alan Sykes discussed international trade and dumping laws, while Professor Hans Zeisel spoke of the Law School’s leading role in studying the growing effect of social science in the development of the law. He outlined the school’s plans for continuing its pioneering role.

Professors Richard Epstein and Geoffrey Stone led the session on the Law School faculty appointments process. Professor Epstein compared the hiring of faculty with hiring new members of a law firm. Professor Stone discussed the hiring of women faculty, here and at other institutions. He presented a statistical picture of the number of women currently in teaching and the prospects for increasing this number in the future.

The committee members enjoyed an informal lunch with the students and afterwards met with representatives from almost all the student organizations at the Law School. Associate Dean Douglas Baird then presented a progress report on the construction of the new extension to the Law School and led the committee members on a tour of the new part of the building, where internal construction work is now underway.

The first day’s formal program concluded with the annual Wilber G. Katz Lecture, which was given this year by Professor John H. Langbein. His topic was “Serial Polygamy and the Spouse’s Forced Share,” in which he discussed the need to revise testamentary laws on the widow’s forced share to take account of changed equities arising from short-term second marriages. He compared this system with those of other countries, notably the United Kingdom, and of states in the U.S. that employ a system of community property.

The focus of the second day was a discussion of the admissions process with Richard Badger, Assistant Dean and Dean of Students. The committee members had been sent six actual (but anonymous) applications in advance to study. During the seminar the committee members discussed the potential of each applicant and voted on who they thought were the strongest and weakest candidates. In reality all six applicants had been admitted and had in fact just graduated with the Class of 1986. Using colors instead of names, Dean Badger then discussed the actual performances of the six students through law school and compared them to the committee’s opinions.

After an executive session with Dean Casper to discuss the faculty, students, curriculum, and the Capital Campaign, the annual meeting concluded with lunch with the faculty at which Professor Paul Bator spoke informally about the Law School.
Assistant Dean Holly Davis ('76) talks to Gail L. Peek ('84) and C. Curtis Everett ('57) before a session. Behind them are Stephen Wermiel, The Honorable John J. Gibbons, Ottmar Kuhn and Douglas Kraus ('73).

Visiting Committee Members

Chair Ingrid L. Beall '56
Baker & McKenzie
Chicago, Illinois

Terms Expiring in 1986-87

Eleanor B. Alter
Rosenman Colin Freund Lewis & Cohen
New York, New York

John D. Ashcroft '67
Governor of Missouri
Jefferson City, Missouri

Danny J. Boggs '68
Judge
United States Court of Appeals
Sixth Circuit
Cincinnati, Ohio

Stephen Breyer
Judge
United States Court of Appeals
First Circuit
Boston, Massachusetts

Harry T. Edwards
Judge
United States Court of Appeals
District of Columbia Circuit
Washington, D.C.

Deborah Chase Franczek '72
Senior Attorney
R.R. Donnelley & Sons Company
Chicago, Illinois

Herbert B. Fried '32
Chicago Bar Association
Chicago, Illinois

Justin M. Johnson '62
Judge
Superior Court of Pennsylvania
Pittsburgh, Pennsylvania

Ottmar Kuhn
Stuttgart, Germany

Peter F. Langrock '60
Langrock Sperry Parker & Wool
Middlebury, Vermont

Gerald F. Munitz '60
Nachman Munitz & Sweig, Ltd.
Chicago, Illinois

Michael Nussbaum '61
Nussbaum Owen & Webster
Washington, D.C.

Carolyn D. Randall
Judge
United States Court of Appeals
Fifth Circuit
Houston, Texas

Alfred B. Teton '36
Glencoe, Illinois
Stephen Wermiel  
*Wall Street Journal*  
Washington, D.C.

James Zacharias ’35  
Precision Plating Company  
Chicago, Illinois

**Terms Expiring in 1987–88**

Donald E. Egan ’61  
Katten Muchin Zavis Pearl & Galler  
Chicago, Illinois

Lee A. Freeman Sr.  
Freeman Freeman & Salzman, P.C.  
Chicago, Illinois

Jack Fuller  
*Chicago Tribune*  
Chicago, Illinois

Douglas H. Ginsburg ’73  
Judge  
United States Court of Appeals  
District of Columbia Circuit  
Washington, D.C.

Burton E. Glazov ’63  
JMB Realty  
Chicago, Illinois

Ruth Goldman ’47  
Miller Shakman Nathan & Hamilton  
Chicago, Illinois

David C. Hilliard ’62  
Pattishall McAuliffe & Hofstetter  
Chicago, Illinois

L. Bates Lea  
General Counsel  
Amoco Corporation  
Chicago, Illinois

Robert H. Mohlman ’41  
Indianapolis, Indiana

Claire E. Pensyl ’78  
Adams Fox Adelstein & Rosen  
Chicago, Illinois

Laurence N. Strenger ’68  
BKS Company  
New York, New York

Harry Tatelman  
MCA Inc.  
Universal City, California

Junjiro Tsubota ’67  
Tokyo Kokusai Law Offices  
Tokyo, Japan

Ann C. Williams  
Judge  
United States District Court  
Northern District of Illinois  
Chicago, Illinois

Morton H. Zalutsky ’60  
Zalutsky Klarquist & Johnson, P.C.  
Portland, Oregon

Barry L. Zubrow ’80  
Vice President  
Investment Banking Division  
Goldman Sachs & Company  
New York, New York

**Terms Expiring in 1988–89**

King V. Cheek Jr. ’64  
Vice President and Dean of Graduate Studies  
New York Institute of Technology  
Old Westbury, New York

Charles L. Edwards ’65  
Rudnick & Wolfe  
Chicago, Illinois

C. Curtis Everett ’57  
Bell Boyd & Lloyd  
Chicago, Illinois

Gail F. Fels ’65  
Fels & Fels  
Coral Gables, Florida

Charles Fried  
Solicitor General  
Department of Justice  
Washington, D.C.

John J. Gibbons  
Judge  
United States Court of Appeals  
Third Circuit  
Newark, New Jersey

Joseph H. Golant ’65  
Romney Golant Martin & Ashen  
Los Angeles, California

James Granby ’63  
San Diego, California

Richard Heise ’61  
Financial Place Corp.  
Chicago, Illinois

Oliver L. Holmes Jr. ’73  
Pettit & Martin  
San Francisco, California

Anne Kimball ’76  
Wildman Harrold Allen & Dixon  
Chicago, Illinois

Douglas Kraus ’73  
Skadden Arps Slate Meagher & Flom  
New York, New York

Barbara W. Mather ’68  
Pepper Hamilton & Scheetz  
Philadelphia, Pennsylvania

Ralph Neas ’71  
Executive Director  
Leadership Conference on Civil Rights  
Washington, D.C.

Gail L. Peek ’84  
Kirkland & Ellis  
Chicago, Illinois

Laurence Silberman  
Judge  
United States Court of Appeals  
District of Columbia Circuit  
Washington, D.C.

Saul I. Stern ’40  
Rockville, Maryland

Deanell Tacha  
Judge  
United States Court of Appeals  
Tenth Circuit  
Denver, Colorado

Ralph Winter  
Judge  
United States Court of Appeals  
Second Circuit  
New York, New York

VOLUME 33/SPRING 1987  25
Mary Becker, Assistant Professor of Law, and Geoffrey P. Miller, Assistant Professor of Law, have been granted tenure on the recommendation of the Law School faculty. They have both been promoted to Professor of Law.

Professor Becker graduated from Loyola University, Chicago, in 1969. Before going to law school, she taught first grade for two years and spent a number of years in data processing. In 1980 she graduated from the University of Chicago Law School, where she was a comment editor on the Law Review. She was elected to the Order of the Coif. Ms. Becker served as law clerk to Judge Abner Mikva (J.D. ’51) of the United States Court of Appeals for the District of Columbia Circuit and Justice Lewis F. Powell Jr. of the United States Supreme Court. She is especially interested in family law, employment discrimination, and contract law.

Professor Miller graduated from Princeton University in 1973 and received his J.D. from Columbia University in 1978, where he was editor-in-chief of the Columbia Law Review. He served as law clerk to Judge Carl McGowan of the United States Court of Appeals for the District of Columbia Circuit and Justice Byron R. White of the United States Supreme Court. He then spent two years as an attorney-adviser in the Office of Legal Counsel of the Department of Justice, where he was involved in separation of powers issues. He worked for one year as an associate attorney in the Washington law firm of Ennis, Friedman, Bersoff & Ewing, where his practice concentrated on civil litigation. Mr. Miller’s primary interests are in the areas of separation of powers, financial institutions, and the economics of litigation.

Mary Becker

Geoffrey P. Miller

Daniel N. Shaviro has been appointed Assistant Professor of Law, effective July 1, 1987. Since 1984, Mr. Shaviro has been working for the Joint Committee on Taxation of the United States Congress with special responsibility for minimum tax provisions in the Tax Reform Act of 1986. After graduating from Yale Law School in 1981 and before going to the Hill, Mr. Shaviro was associated with the Washington law firm of Caplin & Drysdale. He obtained his B.A. in history summa cum laude from Princeton University in 1978.

Eleanor Alter has been appointed Ulysses S. and Marguerite S. Schwartz Visiting Fellow for the Spring Quarter, 1988. Ms. Alter is a partner in the New York law firm of Rosenman, Colin, Freund, Lewis & Cohen, specializing in matrimonial law. A graduate of the University of Michigan and Columbia Law School, Ms. Alter serves as Chairman of the Client’s Security Fund of the State of New York and has taught at New York University Law School. Ms. Alter will offer a course in family law.

Law School News

Capital Campaign Ends

The Law School’s Capital Campaign came to an end in December. With the end of the Campaign, the Law School bid farewell to Frank J. Molek, Assistant Dean and Director of the Campaign, who had been at the Law School since July, 1981. Before he left, Molek spoke about the Campaign and his role in it. Was he hired just for the duration of the Campaign?

“No. One of the side effects of the Campaign was to set up an infrastructure for attracting and managing major gifts and deferred giving. Although the system for the annual Fund for the Law School was in place and running smoothly, there was no such machinery for major gifts prior to this time. It was planned that I would continue to manage this side after the Campaign was over. The job also carried other responsibilities. I also managed all non-Campaign restricted funds and also regenerated a donor relations program, so that major donors can follow our progress and see how their gifts are used.”

Why then, after having just bought a house in Hyde Park, had he decided to leave?

“It wasn’t my original intention, but I received an offer, that, after careful consideration, I realized I couldn’t turn down. I have to do what will be best for myself and my family.” So, after leaving the University on January 7, Molek started a new life on January 12 as Vice President of University Relations at St. Mary’s University in San Antonio, Texas.

Did he see the Capital Campaign as a success?
Had he enjoyed the Campaign and his life in Chicago?

"Immensely. Especially the people I have worked with. I had to adjust to the legal community, not being a lawyer myself, but that did not turn out to be a handicap. I found the people at the Law School and the Campaign volunteers to be warm and kind and a pleasure to work with. I have particularly enjoyed working closely with Dean Casper, who has been committed to the success of the Campaign throughout.

I have also greatly enjoyed Chicago. I come from the West Coast and have lived on the East Coast and, like many others, had not thought much about anything in between. But Chicago won me over. I like Hyde Park and the University, the excitement of downtown, and Wrigley Field (with apologies to my Sox supporter friends)."

In announcing Frank Molek’s resignation, Dean Casper said:

"The Law School and I will remain indebted to Frank Molek for the manner in which he embraced our cause and worked for it selflessly. While I deeply regret seeing him and his family leave Chicago, our gratitude and our very best wishes accompany him in his future professional career."

Chancellor Kohl Visits the Law School

Chancellor Helmut Kohl of the Federal Republic of Germany held a ninety-minute question and answer session at the Law School on October 23. An audience of about 100 students and faculty from the Law School and the Committee on International Relations heard Chancellor Kohl discuss several subjects, including Soviet-American relations, the possibility of a reunited German nation, the economic and military position of the Western European community, trade agreements between the Community and Central American countries, and his government’s current position on abortion and women’s rights. Chancellor Kohl visited the Law School after his state visit to Washington for talks with President Reagan. At the close of the session Dean Gerhard Casper announced that the German government had agreed to finance a visiting professorship at the University for the next five years. The professorship, to be held for one quarter per year by a German scholar, will honor Max Rheinstein, who fled from Nazi Germany and was the Max Pam Professor of Comparative Law at the Law School from 1937 until his death in 1977.
A Change of Pace for Douglas Baird

Douglas G. Baird, Professor of Law, has resigned from his post as Associate Dean of the Law School. He will relinquish his duties at the end of the academic year. During his term of office as Associate Dean he saw his main role as trying to make life easier for the Dean by shouldering some of the administrative burden a dean carries.

He is quick to point out that, unlike the office of Dean, the Associate Deanship is not a full-time job. He divides the job as being one-quarter dean and three-quarters academic. During his tenure as Associate Dean he has published a book and several articles, as well as continuing with a considerable, if somewhat reduced, teaching schedule.

Baird's biggest task as Associate Dean has been overseeing the construction of the new extension to the Law Library and other Law School remodeling work, such as the renewal of the glass curtain wall around the Library and the creation of new administrative offices under the existing administrative wing. These projects have involved Baird in regular meetings with the architects and the contractors, being the Law School's contact with University officials, and standing as the front-line authority for what could or could not be done.

"It's a job that needs someone at professorial level to make decisions, but I don't initiate a project," said Baird. "That comes from the Dean, then I take over the practical planning and execution."

The logistics of carrying out massive construction work while at the same time trying not to interrupt the work of the Law School have been extremely complicated. Baird has been able to hand over the practical execution of removals to his able assistant, Nada Devetak, with whom he freely admits, he would have gone crazy. Ms. Devetak has supervised the evacuation of offices, the creation of temporary work spaces, and has kept excellent track of where everything and everybody was throughout the project. The Law School owes both Baird and Devetak a debt of gratitude for their efficiency and speed of organization.

Although the construction has tended to overshadow everything else, Baird has been involved in other areas too. He did all the preliminary work on the curriculum and prepared proposals to set before the Dean. He worked on special events in the Law School, such as organizing the ABA accreditation visit, helping to plan the Visiting Committee's meetings, and working out the logistical details of the recent visit by Chancellor Kohl of the Federal Republic of Germany. This visit involved tight security arrangements and an unusually large amount of advance planning.

Baird credits the success of his job to his good working relationship with Dean Casper.

"He has made it very easy for me to function. When he has delegated a task to me, he has given me full authority and always respects and abides by my decisions. For this to be successful you have to have a fairly good idea of how another person is thinking and in what direction he or she wants to go. Dean Casper and I have been able to work well together in this respect and I am grateful for his confidence in me."

Dean Casper, asked about his side of the story, said:

"The Law School could not have been better served than by Mr. Baird. He saved us from many minor and some major mistakes by being his critical self—and his self is very critical. Most of the time in his three-and-a-half years as Associate Dean we met in my office at about 7:45 a.m. every day to discuss what was labeled 'the situation.' Mr. Baird's usual words for introducing an item were 'Your Friend'—followed by the name of a faculty member, student, architect or anybody else whom he considered responsible for a problem. Having thus managed to get my attention, he frequently went on to point out that the matter we were discussing would never have arisen if I, Casper, were the Dean and he, Baird, were the Associate Dean. The implication of this obscure way of speaking was, of course, that he was willing to share the blame. He must also share the credit. Doug's contribution to the School's welfare has been substantial indeed. This is especially true with respect to the building project. Faculty, students, staff, and I have much to be grateful for. I, in particular, could not have survived the Capital Campaign and the construction without Doug's willingness to sacrifice some of his important scholarly pursuits. My friends may all be troublemakers, but his friends can do one thing only—admiré him."

Douglas Baird is taking a leave of absence next year at Stanford Law School, where he received his J.D. in 1979.

"It was always my intention to be Associate Dean until the new building was complete and then return to teaching and research. I am looking forward to being a full-time academic again."
Maroon Rivals Blue

"A Uniform System of Citation," published by the Harvard Law Review Association and commonly known as the Blue Book, now has a serious competitor. Tired of struggling with the intricacies of the Blue Book's system, a team of Law School students from Law Review and Legal Forum has been working out a new and much simplified system, based more on common sense than arbitrary rules. The new book, informally known as the Maroon Book, has taken just about two years to draft.

The most obvious difference between the two books is length. While the Blue Book has 200 pages of rules, only thirteen pages in the Maroon Book are actual rules. The remaining thirty-six pages are appendices composed of suggested abbreviations and a "Which source to cite" guide for all federal and state courts. The full text of the book appears in the fall 1986 issue of the Law Review, copies of which can be obtained from the Law Review office, at the Law School. Negotiations are currently underway with the University of Chicago Press to have the Maroon Book published in the near future.

Whereas the Blue Book tries to cover every citation imaginable, and has consequently become weighted with detail, the Maroon Book leaves numerous gaps, and thus requires a certain amount of discretion; "the common sense approach," as its drafters claim. This necessarily allows for some variation in citation form, but the drafters do not see this as a problem.

Tom Berg (Class of 1987), executive editor of the Law Review, noted that no one follows the Blue Book to the letter and added that the U.S. Supreme Court and others have developed independent citation systems.

The first-year legal research and writing program has begun to use the Maroon Book exclusively. Some students and faculty have voiced doubts about making first-year students the "guinea pigs" for the new system. "We are using the most vulnerable people to explain to senior partners why a new system is better," said one law school instructor. Others believe that first years are in a good position to introduce changes in citation form at their summer law firms, and hope that these changes will be welcomed.

Eric Altholz (Class of 1987), Editor-in-Chief of Legal Forum, said that although they hope that law firms will adopt the new system, its primary market will be academics and students rather than practicing attorneys. He expects that the major resistance to the book will come from alumni from Harvard, Yale, Pennsylvania, and Columbia law reviews, the consortium responsible for writing the Blue Book.

Meanwhile the various law journals published at the University of Chicago have adopted the new system, and Judge Richard Posner has written an article in support of it, published in the fall 1986 issue of the Law Review. "It's another case of The University of Chicago's individuality and refusal to follow the crowd," said Eric Altholz. "We have never been afraid of innovation and progress."

Tax Conference

The Law School's 39th Annual Federal Tax Conference—as usual held during the last Wednesday, Thursday, and Friday of October—was a beneficiary of good judgment or just good luck. The planning committee, chaired by Burton W. Kanter (J.D. '52), structured the event almost a half year earlier on the gamble that major tax reform legislation would be enacted in time for analysis at the meeting. The committee announced that the major theme of the conference would be "Assessing the New Tax World," and it focused on selecting topics that would probably be features of sweeping tax reform. The combination of sagacity and good fortune resulted in three days of most timely and thought-provoking talks and panel discussions.

Four of the main speakers at the conference were graduates of the Law School. Sheldon I. Banoff (J.D. '74) spoke on "Tax Aspects of Real Estate Financing and Debt Restructuring: The Best and Worst of Times." Stephen S. Bowen (J.D. '72) analyzed "Defenses against Takeovers—Selected Tax Problems." Richard M. Lipton (J.D. '77) talked about "Fun and Games with Our New PALS" (the acronym for Passive Activity Losses). Renato Reghe (J.D. '54) examined "Unexpected Applications and Consequences of the Original Issue Discount Rules." Both Banoff and Bowen (along with Professor Walter Blum [J.D. '41]) are active on the fourteen-member planning committee.

Most of the papers presented at the conference, as is the case every year, appeared in the December issue of Taxes—The Tax Magazine. This year's cover, complete with Spanish galleon and a lookout peering at a rugged shoreline through a hand-held telescope, aptly conveys the sense in which the meeting was devoted to "Assessing the New Tax World."

Faculty Book Awards


The CSCJ Expands its Activities

The Center for Studies in Criminal Justice, under its new permanent director, Stephen J. Schulhofer, Frank and Bernice J. Greenberg Professor of Law, is expanding its activities. The Center has inaugurated an occasional series of lectures that will look at issues of interest to students and faculty in the area of criminal justice. The first talk in the series was given on November 24, by The Honorable Bernard Weisberg (J.D. '52), U.S. Magistrate for the Northern District of Illinois. Magistrate Weisberg spoke on two topics: police interrogation and the Escobedo case and search warrants after Leon and Gates.

Law School Musical

You have heard of off-Broadway shows. Well, each year the Law School can claim an off-Midway show, the annual Law School Musical. Approximately fifty students, two faculty members, and one member of the administration contributed to this year's fourth annual, completely original musical production, entitled Katz. The show was presented on February 20 and 21 on the International House stage.
Katz is the mysterious patriarch of a large New York law firm. “Seldom seen and never photographed,” he is a virtual recluse in his palatial penthouse office. Meanwhile, down on the lower floors, we follow the story of Bunford, a naive but enthusiastic young associate, as he launches into the infernal world of Amalgamated antitrust case—today’s Jarndyce v. Jarndyce. Many a career has begun—and ended—on this case. The judge completely lost her marbles a few years back, when one of the parties suggested that the previous fourteen years’ worth of market calculations were invalid. Bunford promptly misplaces some important documents, which embroils him in a scandal that carries us through the rest of the plot. Can Katz save the day?

Among its highlights the show boasted a typical ride on the New York subway, a modern romance (between two yuppies) to spice things up, a partner’s slide show of his trip to Yellow­stone Park, and a journey back to the Law School Admissions office to see how everyone landed in the mess in the first place.

The students wrote original music, lyrics and book, then organized the cast, technical crew and band, as well as playing all the parts. Special recognition goes to Maureen Kane (3rd year), director; Steve Kurtz (3rd year), head writer; Dave McCarthy (3rd year) and Julie Bradlow (2d year), assistant writers; Craig Williams (3rd year) and Jana Cohen (3rd year), choreographers; Rose Burke (3rd year), Tom Berg (3rd year), Tom Cooke (3rd year), Marc Ostrow (1st year), Gary Selinger (1st year), John Magnus (1st year), and Brig Gulya (1st year), composers and arrangers; and Steve Spears (3rd year), producer.

FACULTY NOTES

In October, Albert Alscher, Professor of Law, testified before the United States Sentencing Commission on its proposed sentencing guidelines. He also spoke in Atlanta at the annual meeting of the American Society of Criminology on the influence of race on plea bargaining and sentencing. In December, Mr. Alscher addressed a conference in New Orleans sponsored by the Center for Judicial Studies on “Original Intent and the Fourth Amendment.” He was a guest on the WMBD (Peoria) broadcast on “National Night out against Crime.”

Paul M. Bator, John P. Wilson Professor of Law, presented a paper in September at the University of South Carolina Law School’s two-day symposium on “The Federal Courts: The Next 100 Years.” On October 22–23 he gave the Harris Lectures at the Indiana University School of Law.

The two lectures, which are being published in the Indiana University Law Review, discuss “The Constitution as Architecture: Legislative and Administrative Courts under Article III.” Mr. Bator gave the keynote address at the Federalist Society’s bicen­tennial symposium on “Federal­ism and Constitutional Checks and Balances,” on November 15 at the American Bar Center in Chicago. In December he was the moderator at a centennial symposium at the University of Pennsylvania’s University Museum on “Looting and the Law: The Battle to Preserve Our Cultural Heritage.”

David P. Currie, Harry N. Wyatt Professor of Law, spent April through June as visiting professor at the Johann Wolfgang von Goethe University in Frankfurt, Federal Republic of Germany. One product of this visit is a book on the United States Constitution, in German, to be published in Germany. An English-language version, designed to introduce educated citizens to the Constitution as interpreted by the Supreme Court, will appear in the United States on the occasion of the Constitution’s bicen­tennial celebration.

In September, Richard A. Epstein, James Parker Hall Professor of Law, attended a conference on Evolution and Ethics, under the sponsorship of Guelph College and the Liberty Fund, held near Toronto, Canada. He also participated in three panels at the conference of the American Association of Law Schools, January 3–6, 1987. The first panel was on the question of tort reform; the second looked at contracts of employment; and the third, the plenary meeting of the AALS, ex­amined constitutionalism in general.

Mary Ann Glendon, Visiting Pro­fessor of Law, gave the 1986 Julius Rosenthal Foundation Lecture Series, at Northwestern University. Her theme for the three-lecture series, which took place October 27–29, was “Story and Language in American Law: Comparative Perspectives on Abortion, Divorce, and Dependency.” In December, Ms. Glendon was the Moran Lecturer at Trinity College, Dublin, where she spoke on abortion and divorce.
R. H. Helmholz, Ruth Wyatt Rosenson Professor of Law, on leave of absence for 1986-87, has been elected for a three-year term to the board of directors of the American Society for Legal History. In November, Mr. Helmholz made presentations in Cambridge, England and Cologne, Germany, based on his recently published book, Select Cases in Defamation, and other work.

Mark J. Heyrman, Clinical Fellow and Lecturer in Law, spoke to the professional staff of the Elgin Mental Health Center on December 2. His topic was the implications for treatment professionals of recent developments in the laws governing the confinement of insanity acquittedees and those found unfit to stand trial on criminal charges.

James D. Holzhauer, Assistant Professor of Law, has been elected to the board of directors of the American Civil Liberties Union of Illinois. He has also been elected to the board of directors of the National Safe Workplace Institute.

On October 2, John H. Langbein, Max Pam Professor of American and Foreign Law, presented a paper on "Comparative Civil Procedure and the Style of Complex Contracts" at a conference on Complex Long-term Contracts. The conference took place at Heidelberg University in connection with the celebration of the six hundredth anniversary of the founding of Heidelberg. The German-language text of the paper will appear in a volume of conference proceedings; the English-language version is being published in 1987 in the American Journal of Comparative Law. Mr. Langbein represented the Law School at the 1986 meeting of the American Association for the Comparative Study of Law, held October 16-18 at Brigham Young University and the University of Utah. On November 11, he gave the annual Wilber G. Katz lecture at the Law School, on the topic of "Serial Polygamy and the Spouse's Forced Share," on the need to revise forced share laws to take account of the altered equities arising from short-duration second marriages. A revised version of the lecture will be published in the American Bar Association's Real Property, Probate, and Trust Journal. Mr. Langbein spoke at the Baruch Colloquium for Philosophy, Politics, and the Social Sciences, City University of New York, on December 8. His topic was "Torture and Plea Bargaining: A Decade's Further Evidence."

Bernard D. Meltzer, Distinguished Service Professor Emeritus of Law, spoke at the American Bar Association's National Institution on Litigating Wrongful Discharge and Invasion of Privacy Claims, in St. Louis on November 20. His topic was "Wrongful Discharge Actions and Federalism."

On November 18, Geoffrey P. Miller, Professor of Law, presented a paper on "Some Agency Problems in Settlement" at a Harvard Law School seminar in law and economics.

Gary H. Palm, Professor of Law, was a member of the accreditation team visiting Howard University School of Law in Washington, D.C., on January 21-24. This was a joint accreditation for the Association of American Law Schools and the American Bar Association. He was one of the four members of the Planning Committee for the Association of American Law Schools' Workshop on Clinical Legal Education, entitled "Teaching across Skills," held in San Antonio, Texas, on March 12-14. The workshop considered four common themes (idea generation, planning, judgment, and values) as they relate to investigation, counseling, negotiation, and litigation. More than 125 clinical teachers were expected to attend the workshop. During 1987 Mr. Palm is also serving on the Skills Training Committee of the Section on Legal Education and Admissions to the Bar of the American Bar Association. Special concerns of the committee this year are to upgrade externships and report on innovative in-house clinical programs.
Chicago. He presented a paper on the organization of the Philadelphia court system in October, at the annual meeting of the American Society of Criminology in Atlanta. In December, Mr. Schulhofer spoke on "Recent Developments in Federal Criminal Procedure" at a workshop for judges of the Eighth and Tenth Circuits, in Scottsdale, Arizona. He presented a paper and participated in a debate on the legitimacy and future of the Miranda decision, at the January annual meeting of the Association of American Law Schools in Los Angeles.

**Geoffrey R. Stone**, Harry Kalven Jr. Professor of Law, addressed the American Academy of Arts and Sciences on November 1, on the topic "The Responsibilities of a Free Press."

**Cass Sunstein**, Professor of Law, on leave of absence for 1986–87, was the Samuel Rubin Visiting Professor of Law at Columbia Law School during the fall quarter. In the winter and spring quarters he is Visiting Professor of Law at Harvard Law School. Last July he spoke before the Senate Governmental Affairs Committee on the role of the comptroller general and on deficit reduction in the wake of the Supreme Court's decision invalidating part of the Gramm-Rudman statute. In October, Mr. Sunstein delivered the Samuel Rubin lecture at Columbia University, entitled "Lochner's Legacy." The text will appear in the Columbia Law Review this spring. Also in October, Mr. Sunstein spoke at the legal theory workshop at New York University Law School. He participated in a panel discussion on new developments in administrative law at the annual meeting of the administrative law section of the American Bar Association. In November, Mr. Sunstein spoke at the bicentennial conference sponsored by the Federalist Society. His topic was "The Demise of the New Deal Agency." Also in November, he spoke at the legal theory workshop at the University of Pennsylvania Law School.

**Diane Wood**

During the summer and fall of 1986, **Diane P. Wood**, Assistant Professor of Law, served as a special consultant to the Antitrust Division of the U.S. Department of Justice, with the responsibility of preparing a revised Antitrust Guide for International Operations. In that capacity she gave speeches before a number of organizations, including several committees of the American Bar Association's Antitrust Section, the World Trade Institute, and the Chicago Bar Association. She attended the Thirteenth Annual Fordham Corporate Law Institute on United States and Common Market Antitrust Policies, held in New York on October 16–17, and commented on the International Guide revision project.

---

**Alumni Directory Verification Underway**

You may have already received a telephone call from the Harris Publishing Company, publishers of the Law School Alumni Directory. The purpose of the telephone call is to verify the current information held in alumni records at the Law School and the information that alumni have supplied on the directory questionnaires.

At the same time, the telephone call provides an opportunity to purchase copies of the directory. The calls are made by representatives of the publishing company. They cannot answer inquiries about the Law School. Please address these questions to Assistant Dean Holly Davis who may be reached at (312) 702-9628.

The directory is scheduled for release in October, 1987. If you are interested in ordering a copy and have not heard from the publisher by April 24, 1987, you may contact the publisher directly at the following address:

**Customer Service Department**
Bernard C. Harris Publishing Company, Inc.
3 Barker Avenue
White Plains, New York 10601
Described below are some recent publications from members of the Law School faculty.

**Albert W. Alschuler**


Despite claims that America is experiencing a litigation explosion, the civil trial is an endangered, rapidly disappearing institution. Bludgeoned by discovery wars, long trial queues, high attorneys' fees, satellite hearings, judicial pressures to settle, the strategic infliction of wasteful litigation costs, and the world's most cumbersome trial procedures, impartial adjudication—a basic social service—has become substantially less accessible. Denouncing the search for nonadjudicative shortcuts, Mr. Alschuler argues that aspects of American court-annexed arbitration and of British and Continental civil procedures mark a promising path toward reform. He proposes a more active judicial participation in what are now regarded as pretrial activities—evidence-gathering and discovery—and the conversion of these “pretrial” activities into something more, an impartial adjudication that the parties often might regard as sufficient to resolve their dispute. Once all the evidence had been gathered, a judge who had supervised its gathering would resolve each case on its merits. Either party could treat this resolution as advisory and seek a formal, adversarial trial before a different judge or a jury. A litigant would be required to bear the costs of this second proceeding, however, if its outcome proved no more favorable to him than the outcome of the initial, less formalized procedure.

**Philip B. Kurland**


*The Founders' Constitution,* co-edited by Ralph Lerner, Professor of Social Sciences in the College and the Committee on Social Thought, is a five-volume, 3,500 page anthology of original documents from the seventeenth, eighteenth, and nineteenth centuries, relevant to the drafting, implementation, and subsequent interpretation of the Constitution of 1787 and its first twelve amendments. It has been published in connection with the bicentennial of the Constitution. With these five volumes, Professors Kurland and Lerner want to reopen the debate over the vast number of problems of establishing and maintaining free popular government that engaged the authors of the Constitution.

The documents encompass the Constitution's English and colonial origins, from English laws and debates to the Constitutional Convention and subsequent state ratifying conventions. They include letters and pamphlets written by the creators and interpretations by the courts and legislatures through 1835. The first volume is concerned with major underlying themes, including the right of revolution, bicameralism, representation, and equality. Each theme is introduced by an essay, followed by a series of relevant documents. The other volumes deal with the specific provisions of the Constitution article by article, clause by clause, section by section, with bibliographies supplying additional sources. By placing historical, legal, and philosophical documents side by side, the editors hope to overcome the “compartmentalization of study.” They have arranged the work so that the reader can enter it at his or her point of interest and then be led to related subjects as desired. It is essentially a reference work, for legal scholars, political scientists, lawyers, and judges, and will give a much more substantial basis for arguments about the original meaning and intent of the 1787 Constitution and the first twelve Amendments. Kurland hopes that *The Founders' Constitution* will force its readers to recognize that the history of the framing was a lot more complicated than they would like it to seem.
John H. Langbein

Over the past decade, legislation in two of the Australian federal states (South Australia and Queensland) has put into effect a reform in the law of wills for which Mr. Langbein has long campaigned in American law. In this article he reports on the experience under those statutes (as well as under comparable measures in Manitoba and Israel).

Traditional probate law treats the least error in complying with the formal requirements of the Wills Act as invalidating the will. The reform statutes under study in this article allow the proponents of a defectively executed instrument to prove that the defect was harmless, hence that the instrument reflects the testamentary wishes of the decedent. In South Australia, the first common law jurisdiction to experiment with the harmless error rule, a considerable body of precedent has developed, which allows an observer to study and evaluate the reform in action. Because much of this case law is unreported, Mr. Langbein (aided by a grant from the American College of Probate Counsel) went to Adelaide, seat of the jurisdiction, to work with the original sources and to interview the professionals who administer the new law. This article reports on that work. It describes and analyzes the South Australian case law, contrasts the results from the other jurisdictions that have experimented with a harmless error rule, discusses the appropriate standard of proof to apply in such cases, and draws the conclusion that the reform has worked all but flawlessly. Mr. Langbein urges that comparable legislation be enacted in American jurisdictions.

Stephen J. Schulhofer

Scholarly discussion of the constitutional right to the effective assistance of counsel usually ignores the time pressures and conflicting resource demands under which criminal defense attorneys actually function. Mr. Schulhofer considers the questions of investigation and preparation against the background of the heavy caseload conditions prevailing in large urban jurisdictions. He shows that courts give decisive weight to the problem of "finite resources." They require only a "reasonable" investigation, even in capital cases, and apply a presumption that any failure to investigate must have been the result of a tactical choice. The presumption is particularly difficult to overcome in guilty plea cases because prosecutors can withdraw attractive plea offers made at the earliest stages of a case; a defense attorney's refusal to investigate therefore almost always appears to have a legitimate tactical motivation. Mr. Schulhofer argues that courts should no longer accept as given the extreme time pressures under which most defense attorneys function. He also suggests that the problems of effective assistance will remain inherently insoluble so long as the criminal justice system attempts to realize economies by permitting guilty plea compromises before the facts have been ascertained.

Cass R. Sunstein

In exploring the justifications for and limits of legal regulation, this essay attempts to evaluate the view that a legal system should respect private preferences outside the context of "harm to others." Mr. Sunstein argues that whether the goal is autonomy or welfare, there are a number of cases in which legal interference with private preferences is justified. For example, legal rules may reflect "collective preferences," or efforts by the public itself to foreclose the satisfaction of private preferences. A law requiring entertainment broadcasting on television, calling for welfare payments, or requiring seatbelts might be justified on this ground. Moreover, preferences are sometimes a product of legal rules; in such circumstances the legal rules cannot be justified without circularity by reference to the preferences. Mr. Sunstein argues that laws interfering with private preferences that call for traditional gender roles, or laws requiring democracy in the workplace, might be justified on this ground.

The essay also argues that legal interference is sometimes justified to combat addictions, myopic behavior, and bad habits, and that health and safety regulation is required in the light of the difficulties people have in dealing with low-probability events. Mr. Sunstein concludes that the category of "legal paternalism" is far more complicated than is often thought and that a showing of harm to others need not always be made in order to support legal intervention into private preference structures.

Diane P. Wood

This article, which arose from a symposium sponsored by the Indiana Law Journal, explores the special problems that arise in the context of class actions for personal jurisdiction theory. It suggests that the rights of unnamed members of classes depend on the cohesiveness of the class, the type of class action before the court, and the degree to which the named representative necessarily speaks for the absentees. Using this analysis, it criticizes the Supreme Court's approach in the decision in Phillips Petroleum Company v. Shutts, which relied on the failure of absentees to opt out of a class to demonstrate their consent to be included in the lawsuit, and it offers a framework for deciding when the general minimum contacts test (or affirmative consent) must be satisfied for each class member, and when it is sufficient to look to the class representative.
Alumni Notes

EVENTS

Law School Honors Benjamin Landis

A banquet in honor of Judge Benjamin Landis (J.D. '30) was held on August 21 in Los Angeles. Judge Landis was one of the founders of the Los Angeles chapter of the Law School Alumni Association. Until his death (see tribute, page 47) he maintained an active role in alumni activities. Mitchell Shapiro (J.D. '64) presided at the dinner and presented the Landis family with an etching of the University. Dean Gerhard Casper spoke about Judge Landis's contributions to the Law School and Los Angeles graduates. Judge Landis was unfortunately too ill to attend the dinner in person.

Events across the Country

Dean Gerhard Casper spoke to graduates on the state of the Law School at a luncheon held on August 22 in San Diego. One-third of the Law School graduates from the San Diego area attended the event.

Roland Brandel (J.D. '66), president of the San Francisco chapter, was the host at the annual luncheon for summer associates and new graduates on August 25. The event is designed to provide an opportunity for the students and new alumni to meet their fellow graduates in the area. The featured speaker was Professor Phillip Johnson (J.D. '65) of the University of California School of Law at Berkeley. The subject of his talk was "Standards for Judicial Appointment or Retention."

Assistant Dean and Dean of Students Richard Badger (J.D. '68) was the speaker at a luncheon held by the Houston chapter on September 19. Mont Hoyt (J.D. '68), president of the Houston chapter, was host. Dean Badger's entertaining talk was entitled "Cheating and Bribing: The Things Some People Will Do to Get into the Law School." The entering students from the Houston area were also invited to attend the event and get a taste of the Law School before classes started one week later.

Graduates from Salt Lake City gathered for a luncheon on Thursday October 16, to listen to John Langbein, Max Pam Professor of American and Foreign Law at the Law School. Professor Langbein spoke informally on recent developments at the Law School and answered questions from the audience.

On October 27 Dean Gerhard Casper spoke to a gathering of alumni at a luncheon in Boston, hosted by Richard Harter (J.D. '61). His talk took the form of a question and answer session on the state of the Law School.

Peter Darrow (J.D. '67) and the New York chapter hosted a luncheon on Thursday, November 20, at the offices of Cleary Gottlieb Steen & Hamilton, featuring Norval Morris, Julius Kreeger Professor of Law. Professor Morris, who was introduced by Douglas Kraus (J.D. '73), president of the New York chapter, gave an informal talk on "A Miscellany of Crime." The event was well attended and included a large number of recent graduates of the Law School.

Chicago Events

The fall Loop Luncheon series began on Tuesday, October 7, with a talk by Walter Netsch, newly appointed president of the Chicago Park District. His talk was entitled "The New Park District and the New Park Commission."

Joel Weisman, Channel 9 news analyst, host of Chicago Week in Review and a partner of the law firm of Siegan & Weisman, spoke at the second luncheon on Thursday, October 30, on "Voters, Villains and Victors: Views on the 1986 Election." A lively question and answer session followed the talk.

William D. Andrews, Eli Godston Professor from Harvard Law School, currently Visiting Professor at the Law School, closed this series of Loop Luncheons on Wednesday, November 19. His talk, which drew a large and interested audience, was entitled "Waiting for the Counter-Reformation: Thoughts on the Tax Reform Act of 1986."

The first Loop Luncheon of the winter quarter took place on January 12. Professor Daniel Fischel (J.D. '77), director of the Law and Economics Program, and Steven Bashwiner (J.D. '66), a partner with the firm of Katten, Muchin, Zavis, Pearl, Greenberger & Galler. made a joint presentation entitled "Ivan, Ivan, I've Been Thinking ... about Insider Trading." A spirited question and answer session followed.

The Loop Luncheons are sponsored by the Chicago Chapter of the Law School Alumni Association and take place in the Board of Trustees Room at One First National Plaza. The chair of the Loop Luncheon Committee is Alan R. Orschel (J.D. '64). Any graduate who is interested in more information about the luncheons or who would like to participate on the organizing committee should contact Assistant Dean Holly Davis (312/702-9628).

The Mandel Legal Aid Clinic luncheon took place this year on Friday, October 31. Alumni gathered in the Board of Trustees room to hear Gary Palm, Director of the Clinic, and the clinical fellows talk about their current projects and recent successes. The talks were received with great interest and many of the audience lingered after the meeting to ask further questions.

NOTICE BOARD

If you decide to change careers and take up teaching, please let the Alumni Office know (312/702-9628). We can then add you to our mailing list for special events of interest to faculty.

The Law Library attempts to maintain a comprehensive collection of alumni publications. If you write for publication, please send a copy of works you publish to the Law Library, University of Chicago Law School, 1111 E. 60th Street, Chicago, IL 60637, to the attention of Judith Wright, the Law Librarian.
Class Notes Section – REDACTED

for issues of privacy
CLASS NOTES

'31 Edmund Belsheim has been appointed the first holder of the Business Law and Ethical Practices Endowed Chair at Northwestern School of Law in Portland, Oregon.

'37 Max Davidson was inducted into the Jewish Sports Hall of Fame on November 9. This honor is sponsored by the Sports Lodge B'nai Brith. Mr. Davidson was tennis champion of the University of Chicago in 1933 and 1934 and was tennis coach at the University 1935-37.

'42 George Cotirilos was a member of the faculty leading the third annual intensive skills course in trial advocacy at the John Marshall Law School in Chicago, in October and November last year.

'46 On December 3, George Overton was a member of the faculty at a seminar on Not-for-profit Corporations, organized by the Illinois Institute for Continuing Legal Education.

'48 Harold P. Green, associate dean and professor of law at George Washington University National Law Center, has been appointed the American Bar Association's co-chairman of the National Conference of Lawyers and Scientists.

'50 Jordan Hillman has resigned his part-time position on the Chicago Transit Authority board to return to full-time teaching as professor of law at Northwestern University.

'51 Class Correspondent: Charles Russ, 1820 West 91st Place, Kansas City, MO 64114.

To all of you who are willing to work on planning our class reunion, please contact me as soon as possible.

Karl Nygren has been elected a vice president of the American Judicature Society, a national organization for improvement of the courts. He previously served as the Society's treasurer.

Ab Mikva was a panelist at a November 15 symposium of the Federalist Society, held at Northwestern University Law School. The symposium's topic was Federalism and Constitutional Checks and Balances. Ab's speech was on the Fourteenth Amendment and the incorporation of the Bill of Rights.

'52 Leo Herzel was a member of the faculty of the seminar on Successful Entry into the Chicago Legal Community, organized by the Illinois Institute for Continuing Legal Education and held on September 10 and 13. Mr. Herzel gave a lecture in the section "Words of Wisdom from Senior Partners."

'53 Jean Allard, a partner with Sonnenschein, Carlin, Nath & Rosenthal, has been named to serve a three-year term on the New York Stock Exchange Legal Advisory Committee.


From Harlan Blake comes the following comment. His most interesting activity last year was to be invited by the University of Sao Paulo, Brazil, to join other constitutional lawyers in a conference. The theme was a new national constitution that Brazil is writing, after a period of military control. You can reach Harlan at 125 Riverside Drive, New York, NY 10024, or call him at (212) 787-0285.

Somewhat stale news, but noteworthy, is Renato Beche's talk on "Unexpected Applications and Consequences of the Original Issue Discount Rules" at the Law School's thirty-ninth Federal Tax Conference. I am going to have to find out how I missed the fact that Renato's firm turns out to be General Counsel for a company whose division work I do in Chicago. Perhaps it has happened to others of you, but I cannot think of another time I have met a member of our class in that close a professional connection. You can reach Renato at Morgan, Lewis and Bockius, 101 Park Avenue, New York, NY 10178, or at (212) 390-6300.

Work comes from the SEC that Al Rosenblat, assistant general counsel to that agency, has received the Commission's Distinguished Service Award. The citation reads "In recognition of more than twenty years' service" and refers to his activities in litigation, advisory and legislative matters, particularly those relating to investment management issues. Al's address is 1607 Northcrest Drive, Silver Spring, Maryland 20904, and you can reach him either at the Commission, (202) 272-2428, or at home, (301) 384-5248.

Gil Cornfield specializes in labor law, as a partner in Cornfield & Feldman, at 343 South Dearborn, Chicago, IL 60604, (312) 922-2800.

Those of you following Lew Morgan's travels know that last April he was appointed a full circuit judge, but he has now retired from the bench.

The Class of '33 Raises $50,000

The Class of 1933, under the leadership of George Hecker, has achieved its goal of raising $50,000 for the Law School in honor of the fiftieth anniversary of the class's graduation. The fund drive, begun spontaneously by Mr. Hecker on the evening of the class reunion dinner in May 1983, achieved its goal in 1986. Mr. Hecker sought 100 percent participation in the gift and has only narrowly missed that goal. Of the class achievement Mr. Hecker says:

"The Class of 1933 has many outstanding members who have contributed to their community through their work as lawyers and through their charitable work. Members of the class have served in Congress, on the bench, in the armed forces, and a large percentage are still in active practice in their chosen vocation."

Dean Casper said of the class gift: "It is with very great pleasure that I accept on behalf of the Law School the class of 1933's Anniversary Gift. The Law School is indebted to George Hecker and the members of the class for their generous anniversary gift and their ongoing support."
Shimon Agranat at Eighty

Many people can look back over their lives and see years of useful service to the community, but only a few can know that they played a direct role in shaping the future of their country. Shimon Agranat (J.D. 1929), the former president of the Supreme Court of Israel, who celebrated his eightieth birthday last September, had the chance to play such a part.

The son of a Russian immigrant to the United States, Agranat grew up in the Midwest and received his law degree from the Law School in 1929. At that time his whole family moved to Palestine, and young Shimon went into practice as apprentice to an attorney with one of the largest and most varied practices in Palestine. He was excited by the variety of law that confronted him. Most of the system of justice was based on Turkish law, but there was an admixture of British and French law and the system was riddled with gaps where there were no laws at all to handle a rapidly changing society.

Agranat soon established himself as a “lawyer’s lawyer.” He was ap-pointed a magistrate in Haifa in 1940. In 1948, with the establishment of the state of Israel, he was appointed president of the Haifa District court. At the end of that year Agranat was invited to join the newly formed Supreme Court. At first, the courts relied on English common law to fill in the gaps, but over time independent principles were developed and a great number of new legislative codes were adopted by the Knesset that the courts had to interpret. During his twenty-eight years on the Supreme Court, eleven of them as president, Agranat had a unique opportunity to share in the creation of Israeli law and shape it in its formative years. His opinions laid the foundations for the rule of law, introduced civil rights and liberties into a system that had none, and developed an enlightened body of criminal law. He also established his own style of judicial decision making: scholarly, historically conscious, humane, and sensitive to social realities.

Agranat headed the commission of inquiry into the Yom Kippur War, to establish how Israel had been caught by surprise on two fronts. Overnight the war had shaken the country to its foundations. The highly respected commission’s final report helped the nation regain its self-respect.

Today, Shimon Agranat still writes occasional articles. He is a visiting professor at Bar-Ilan University and teaches there once a week.

the conclusion of the first day’s anti-trust symposium.

Michael F. Jones, who formed his own firm with another lawyer in Salt Lake City in December 1984, announces that his firm, now Tibbals, Howell, Jones & Moxley, is five lawyers strong and moved to new offices in Salt Lake City in November.

‘74 Mark Aronchick has been elected Treasurer of the Philadelphia Bar Association for a one-year term. Currently a shareholder in the firm of Hangleby, Connolly, Epstein, Chico, Foxman & Ewing, he is a former City Solicitor.

‘75 Russell Winner writes from Anchorage, Alaska, where he has been living for the past eight years. He has his own firm, Winner and Associates, which handles civil litigation in the areas of corporate, real estate, public lands, and personal injury law. Mr. Winner is married and has two children, a girl of six and a boy of three. He says the fishing and cross-country skiing are great.

Kirk Liddell and his wife Pam Trow (‘77) are expecting their fourth child this spring.

Ed Roche also traveled a long distance to the reunion. Yours truly’s third book, How to Watch Baseball (Facts on File) is published this March.

Please send me reports of your comings and goings.

***********************************************************************

Steven Wallach has left his position as Deputy Attorney General in charge of civil litigation for the state of New Jersey to become a partner at Szaferman, Lakind, Blumstein, Watter & Blader in Lawrenceville, New Jersey.

Thomas Fitzpatrick, a partner in the Seattle law firm of Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax, has been reappointed co-chairman of the National Conference of Lawyers and Representatives of the Media. Mr. Fitzpatrick represents the American Bar Association in this capacity.
Fried Appointed to Alumni Executive Council

Herbert B. Fried (J.D. '32) has accepted an appointment to serve a two-year term on the newly-formed Alumni Executive Council of the University of Chicago Alumni Association. A recent evaluation of the governing structure of the Association resulted in a proposal to restructure the Association's National Cabinet to create a governing body that would more accurately reflect the way the alumni groups relate to one another.

The Cabinet has been renamed the Alumni Relations Board, to reflect its service to such activities as clubs, reunions, and career contacts. The Alumni Fund Board and Alumni Schools Committee will continue to support fundraising and student recruitment efforts under their present structure. The Alumni Executive Council will oversee the activities of the three Alumni boards and The University of Chicago Magazine Advisory Committee.

Mr. Fried was selected on the Council as an ideal representative of the Law School, because of his extensive knowledge of the school from inside and out. Mr. Fried served as Director of Placement from 1976 to 1981 and is currently President of the Law School Alumni Association.

'77 Class Correspondent: Nell Minow, 2311 Valley Drive, Alexandria, Virginia 22302.

Blessings on all you dear people who responded to my letter with all kinds of news and improved the quality of my mail a thousandfold. That does not let those of you who have not responded off the hook, however. I give you fair warning: anyone who does not write directly will force me to resort to hearsay, and, if necessary, fabrication.

Most of you wrote to say that you are partners in law firms. Martin Greene was the first to respond, with a delightful letter describing his work at Jones, Ware & Grenard, where he does a lot of litigation, primarily employment, but also contract, commercial, medical malpractice, real estate, and civil rights. He was elected to the Skokie School Board and served in the transition teams of both Ronald Reagan and Harold Washington. Joe Escher is a partner at Howard, Rice, Nemirovsky, Candy, Robertson and Falk, in San Francisco, working on civil litigation matters that range from the Howard Hughes estate to patent infringement of a video game. He is engaged to someone he describes only as "a Harvard Law School graduate."

Bob Johannes is a partner at Michael, Best and Friedich, and is still touting Milwaukee. He does mergers and acquisitions, corporate tax, and venture capital financing, and has co-written a book, Buying and Selling a Closely Held Business.

Emily Nicklin is at Kirkland and Ellis, in Chicago, doing trial work ranging from accountants' malpractice to defamation to product liability. She has two children, Max and Luke. Lee Gudel Rosenthal is a partner at Baker and Botts in Houston, doing commercial and products liability. She is married to a partner at Vinson and Elkins, and is mother of Rebecca (born August 31, 1986), who is "a joy." Michael Yanowitch is a partner at Sidley and Austin's New York office, working on international corporate and commercial transactions. He and his wife Marilyn are expecting a baby in May. Carl Witschy is at Latham and Watkins in Chicago.

Barbra Goering is at Chapman and Cutler in Chicago, doing trusts and estates, but currently on maternity leave for the birth of her second daughter. Michael Mandell is a partner at Gould and Ratner, specializing in real estate. He has been married for twelve years and has three children. Peter Cremer is a partner at Wyman, Bautzer in Newport Beach, California, working in tax and estate planning. His daughter is twenty-one and he and his new wife have two boys. Robert Fryd is a litigating partner at Warshaw, Burstein, Cohen, Schlesinger and Kuh, in New York. He is married with one son.

Bob Edwards is a partner at Troutman, Sanders, Lockerman and Ashmore in Atlanta, and wrote a very happy letter describing his fiancée. Howard Stein is practicing commodities and securities litigation at Katten, Muchin in Chicago. He and his wife Susan have two children. Pat Slovak specializes in management labor relations at Burns, Summit, Rovins and Feldesman in New York. Jim Bird is a partner with Shea and Gardner in Washington. His practice includes environmental law, antitrust, and commercial litigation, and he has two children, Chelsea and Taylor. He says that each year he goes back to the U. of C. for recruiting and is dismayed to find that the faculty is getting younger than he is!

Joel Martin is a partner in a nine-lawyer firm in Portland, Maine, and spends half his time litigating and half in corporate and commercial matters. Douglas Otto has his own firm, with offices in Los Angeles and Orange County. He specializes in trial work and criminal work, and has prepared a brief for the California Supreme Court on behalf of a capital defendant. He also teaches Advanced Criminal Theory and Jurisprudence at Southwestern University School of Law. He has custody of his daughters, "two smart, beautiful girls, ages eight and nine."

Stephan Mayer specializes in labor and employment law at Grotta, Glassman and Hoffman, in Roseland, New Jersey. He has three children, Lisa, Michael, and Daniel. David Richman is a partner at Wood, Lucksinger and Epstein, in Encino, California, specializing in unfair competition, copyright, trademark, trade libel, and antitrust litigation. Suzanne Sawada is a partner at Schiff, Hardin and Waite, in Chicago, practicing corporate securities and real estate law. Her two-year-old son, Stephen Taro Joy, "has really made our lives full and wonderful." Peter Ward is in practice.
Council of Lawyers Chooses Sperling

The Chicago Council of Lawyers has elected Frederick Sperling (J.D. '79) as its new president. Sperling previously served as the Council’s secretary and as Chair of its Election Law Committee. He was twice elected to the Council’s Board of Governors.

Sperling was an associate editor of the Law Review while at the Law School. After receiving his law degree, he served for a year as law clerk to The Honorable James Hunter of the United States Court of Appeals for the Third Circuit. Since his clerkship, Sperling has specialized in civil litigation at Schiff, Hardin & Waite, where he is a partner. He has long been fascinated with election law and was closely involved with the Council’s evaluation of judges for the recent judicial retention elections. The Council and Sperling would eventually like to see merit selection of judges, a controversial issue in Illinois. Sperling feels the business of judicial retention is a serious question, particularly in light of Operation Greylord and the corruption it exposed. “Public trust in our judicial system—and in attorneys—can only be restored if the organized bar candidly tells the public who is qualified to be a judge and who is not and why,” said Sperling.

During his year as president, Sperling wants to see the Council expand. Study of government law offices is being considered, while current projects are looking at the Cook County public defender’s office and focusing on administrative law judges.

“Our outspoken and continued insistence on judicial integrity remains our hallmark,” he said, “but we believe our prominence in this area is not enough. We believe it’s time to take a hard look at where we’ve been effective and where not. It’s time to reach out in new directions.”

second son Joshua Elliot, who was born on June 17, 1986.

In the only social news not involving a wedding for this issue, Sean Gorman reports that he is still enjoying the Dartmouth counsel’s office, notwithstanding the widely reported disagreements among members of the Dartmouth community on matters of public concern. Sean “spent a week canoeling in eastern Quebec with Phil Weber and Bob Weigel” and reports that it was a “good trip—i.e. no significant casualties.” He also says that Phil and Bob are both enjoying New York, and that Phil lost the first U.S. Supreme Court case to be argued by a member of our class. See Kuhlmann v. Wilson, 54 U.S. L. W. 4821 (June 26, 1986).

Ruth Booher is working part time as Assistant General Counsel of Agri Data Resources, Inc., of Milwaukee, Wisconsin and enjoying “life as a part-time attorney and full-time mother [of Amelia Ruth, 5, and Aaron Dwight, 2] and wife.” Suzanne Ehrenberg has left practice to become Visiting Assistant Professor at IIT-Chicago-Kent, where she teaches Corporations. Steve Peretz is now practicing in Miami and Boca Raton with Kluger & Peretz. He has also patented a new invention called the Glassgripper. This is a device to grip stemware safely in a dishwasher, to prevent breakage. It will hold four glasses at a time. Eduardo Vidal has joined the banking and institutional lending group at Skadden Arps in New York. Chris Wright has moved to 14655 N.E. 166th, Woodinville, WA 98072, but gives no other news. Gail Wurtzler is Editor-in-chief of Natural Resources and Environment, the magazine of the Natural Resources section of the ABA, and works at Davis, Graham & Stubbs in Denver.

In closing, your Class Correspondent solicits comments on whether full addresses should be included in these reports, or whether your handy Martindale-Hubbell is enabling you to find classmates mentioned in the Record. Keep those cards and letters coming.

WILD CHANG has become counsel to the law firm of Warner & Stackpole in Boston. He will concentrate his legal practice in corporate finance, securities, real estate financing and syndications, equipment leasing, and transnational transactions, in the firm’s eighteen-lawyer business law department.

Edward Gilbert and his wife, Linda, are the proud parents of a baby girl, Elizabeth Bronwen born on December 23, 1986. Ed is an associate with Shearman & Sterling in Hong Kong. His home address is 78 Kennedy Road, Flat 1002, Hong Kong.

’82 Helen Toor has become an Assistant U.S. Attorney for the Southern District of New York, leaving behind Carla Porter (’83), Jon Siegel (’83), and Eric Lerner to hold the fort at Rosenman, Colin, Freund, Lewis & Cohen.
DEATHS

The Law School Record notes with sorrow the deaths of:

Earl B. Dickerson, 1891–1986

Civil rights leader Earl B. Dickerson (J.D. '20) died on September 1, 1986. Among his many career accomplishments, he was past director of the Urban League and NAACP, and was the first black director of a commercial bank in Chicago. He was the first general counsel and later chairman of the board of what is now the largest black-owned insurance company in the country. At the memorial service held at Rockefeller Chapel on October 22, Dean Gerhard Casper offered the following remarks in memory of Mr. Dickerson.

Earl B. Dickerson

"In a newspaper interview in 1979, Earl Dickerson talked about the fact that, in college, he had been a ‘premed’ student: ‘One day, after debating with one of my classmates, my teacher asked me, “Dickerson, what department are you in?” I answered medicine, and he said “you ought to be a lawyer.” ’ The University of Chicago and the legal profession will be forever indebted to this teacher.

"In a letter to me, dated December 12, 1985, Earl wrote: ‘As I became more aware of the options open to me and of my peculiar talents, I discovered that the best way for me to fight for equal opportunity, justice, and freedom for all people was through the profession of the law. It was my good fortune to be able to enroll in and be graduated from the University of Chicago Law School, and to be taught by such splendid students and teachers of the law as Dean James Parker Hall, Floyd Mechem, Harry Bigelow, Ernst Freund, Judge Hinton, and Professor Woodward. . . .’

"Earl then continued: ‘Dean Hall recommended nine members of the 1920 graduating class to three of the foremost law firms in Chicago. I was one of the nine. When I went to those three firms, my reception was the same: acknowledgement of the receipt of the letter of recommendation, courteous interview, and then rejection.’

"Earl recounted these successes and failures (failures on the part of the law firms) in a letter which he established the Earl B. Dickerson Scholarship Fund at the Law School which he referred to elsewhere as ‘one of my first loves’ and with which he maintained contact throughout his life. Especially in recent years (when he had more time), there was hardly a Law School function where he was not in attendance—secretly hoping, I think, that I would be in a position to acknowledge him as the oldest alumnus present. Increasingly that was, of course, the case.

"I emphasize all of this because it reveals not only that Earl realized fully the importance of education, but also that his fight against the status quo appreciated the importance of both, change and continuity. In an eloquent speech only two months ago, Earl said: ‘From my youth, my sense of the present has embraced both the past and the future . . . Liberal education . . . is the most practical kind of education—the only kind fitting a world of accelerating change and increasing complexity.’

"A danger facing our country is that of becoming a ‘disconnected’ people. Earl’s legacy includes a forceful and spirited warning against this danger. His sense of the present did indeed embrace both the past and the future.’

The Honorable Benjamin Landis, 1907–86

A tribute from Raymond Wallenstein (J.D. 1930), on August 31, 1986, the University of Chicago Law School Alumni Association, Los Angeles Chapter, lost one of its founding members and most dedicated supporters. His death came just a few days following a dinner given by the Alumni Association to honor him. Unfortunately, because of illness, Ben was unable to attend the dinner.

For thirty-five years, Ben devoted himself to the Law School and the development of an active alumni association in Southern California. Not only a founder, he also maintained the association virtually single-handedly, until the Law School recently took over some of the administrative tasks. He helped organize and direct every fund-raising drive for the Law School in the Los Angeles area, from the inception of the Fund for the Law School campaign. Ben’s zeal, persistence, and imaginative techniques in obtaining donors, as well as alumni to conduct direct and telephone solicitations, are legendary.

Benjamin Landis
Typically, a call from his bailiff to a prospective alumnus solicitor or donor would go something like this: “This is Judge Landis’s bailiff. The Judge wanted you to know that he has come across a matter of considerable importance to you which he would like to discuss with you and suggests that you be in his chambers before the opening of Court tomorrow morning, without fail.”

Ben’s methods of assuring attendance at alumni meetings were no less sure-fire. Never reticent, or one to engage in subtleties, his “invitations” to attend the Alumni Association meetings more closely resembled judicial orders and were quasi-compulsory.

I knew Ben for over fifty years. We met for the first time when I, with some fellow students from the Law School, were attending a trial of a widely-publicized “use of the mails to defraud” case in the old Federal Courthouse in Chicago. Ben, who was then an Assistant United States Attorney, was the prosecutor, and with his characteristic energetic advocacy, he obtained the conviction of the defendant who was known as the “million dollar fence.”

After a few years of private practice in Chicago with the firm of Landis & Landis, Ben came to California, where he was admitted to the California Bar in 1939. In January 1942, shortly after the United States entered World War II, Ben enlisted in the United States Army, at the age of thirty-five, as a private. He attended Air Force OCS, and, after receiving his commission, served until 1945 when he was honorably retired with the rank of Captain.

Ben was appointed Judge of the Superior Court of the State of California, for the County of Los Angeles, by Governor Goodwin Knight in 1957. He served in this office for twenty years, retiring in 1978 after being elected for four successive terms without opposition.

Throughout his judicial career, Ben was an active member of the National Conference of State Trial Judges, serving for several years as chair of its Public Relations Committee, and as the California member of its Committee on the Sociopathic Offender and the Courts.

Ben possessed a keen sense of humor, was unswerving in his loyalties and outspoken in his convictions. His capacity to care and give service was respected by all. I believe his affection for, and pride in the Law School and the Alumni Association were but a notch below his love for Gloria, his devoted wife of forty years, his daughter, Lynn, and his son, James. Ben left a void in the ranks of the Law School alumni. He will be missed, but not forgotten.

Raymond Wallenstein is a practicing attorney with offices in Los Angeles.