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In Search of the Ideal Intake System

New telephone screening process helps meet rising demands for legal aid

Chicago's legal aid agencies have experienced a significant increase in demand for services. To cope with the rising needs, the Legal Aid Bureau of Illinois Chicago (LAB) initiated a new telephone screening system to improve the efficiency and effectiveness of its intake process.

Over the past few years, the number of requests for legal services has grown, and LAB has responded by expanding its staff and facilities. The new screening process was designed to streamline the intake process and ensure that potential clients are directed to the appropriate resources.

The process involves a call center where incoming requests are screened by trained staff. Potential clients are assessed for eligibility and the nature of their legal problem is determined. This helps in directing them to the most appropriate legal aid provider, whether it's LAB itself or another agency.

Advocacy Efforts End Barrier to Energy Assistance

With the help of law students, more low income consumers can now receive fuel assistance payments

A recent advocacy effort has been instrumental in streamlining the process of obtaining fuel assistance payments for low-income consumers. Through collaborative efforts with legal aid organizations and community groups, law students have played a crucial role in making the process more accessible.

The initiative has resulted in a significant reduction of the waiting time for eligible consumers to receive their assistance payments. This not only provides relief to those in need but also enhances the effectiveness of the legal aid system in serving its constituency.

Legal Aid Notes

Spring 1987

Law students and clinical staff at the University of Chicago Law School's Legal Assistance and Advocacy Program (SPRING) have been involved in advocacy efforts aimed at eliminating barriers to energy assistance.

Students, working in partnership with community organizations, have conducted outreach and education campaigns to increase awareness among low-income households about their rights to receive energy assistance. These efforts have helped to increase the number of applications for assistance and have improved the chances of successful outcomes.

Notice to all first year students

Summer jobs with the Mandel Clinic

The Mandel Legal Aid Clinic at the University of Chicago Law School offers summer positions to first year students. These positions are designed to provide practical experience in legal advocacy and to enhance the skills of students interested in pursuing careers in public interest law.

The Mandel Clinic is known for its commitment to providing legal services to underserved communities. Through its summer program, students have the opportunity to work on real cases, gain first-hand experience, and contribute to the public interest legal field.

Compensation for the positions has not been set, but students in the program last summer received a $4,000.00 stipend for the thirteen week program.
Dean's Page

The Mandel Legal Aid Clinic

In an address before the Legal Club of Chicago in 1951, then-Dean Edward H. Levi offered a vision: “Suppose a clinic were attached to a university law school which handled actual cases under the supervision of a trained staff and under the general guidance of the faculty of the school. It would be possible then to take a number of students and to have them assist in the preparation of cases... This kind of clinic could [undertake] legal aid [and] civil liberties cases... If the work of the clinic were of high quality, there seems little doubt that it would fill a public need while at the same time it would provide an opportunity for research and training.”

Building upon this vision, in 1959 the University of Chicago Law School established the Edwin F. Mandel Legal Aid Clinic to further “educational, research, and experimental work in the field of Legal Aid” and to create “a model Legal Aid-Law School Clinic program.” In the almost thirty years since its founding, the Mandel Legal Aid Clinic has provided quality legal service to the poor and has served as a national leader in the field of clinical legal education.

The Clinic today provides direct legal advice and representation to about 1,000 indigent clients each year and serves thousands of other poor people through class actions and other forms of group representation. Recent litigation projects of the Clinic have involved racial and gender discrimination in employment, the rights of the disabled (especially handicapped children), and the rights of the indigent in such diverse contexts as welfare, housing, and utilities.

Over the years, the Clinic has shifted its emphasis away from routine, single client representation toward more complex forms of “impact” and public interest litigation for the poor. The Clinic has won several landmark decisions in the United States Supreme Court, the United States Court of Appeals for the Seventh Circuit, and the Illinois Supreme Court. The Clinic’s emphasis on improving the law through legal advocacy is especially appropriate for a law school at one of the nation’s leading research universities.

The clinical teachers include Professor Gary H. Palm, who serves as Director of the Clinic, five full-time attorneys who serve as Lecturers in Law or Clinical Fellows, and a professional social worker.

Approximately thirty percent of the students at the Law School work in the Clinic sometime during their second or third year. The Clinic’s educational program, which extends across the second and third years of a student’s legal education, represents the culmination of long-standing efforts to integrate practical legal experience with formal legal education. Students who participate in the Clinic act not as mere observers, but as full-fledged student attorneys with responsibility for their own cases, from the initial interview through final disposition, under the constant supervision of a full-time clinical teacher.

Over the course of the two-year educational experience, the Clinic staff plans an individualized program for each student. In the fall and winter quarters of the second year of law school, students concentrate on research, legal writing, drafting, interviewing, counseling, negotiation, informal advocacy, preparation of briefs, and the responsibilities of a trial assistant. In the spring quarter of the second year, students participating in the Clinic may enroll in the Litigation Methods course. This course, which extends over four quarters, is taught by members of the Clinic staff and carries six hours of academic credit.

Illinois Supreme Court Rule 711 authorizes third-year students participating in the Mandel Legal Aid Clinic to appear in state courts on behalf of clients. Thus, the third-year program provides each student with the opportunity to represent clients individually and to learn trial skills and strategies. The Litigation Methods course, which operates in close coordination with ongoing litigation, serves as a continuous planning session as each student prepares for actual court appearances in a range of different matters.

The Mandel Legal Aid Clinic, which receives approximately 18 percent of its funding from United Charities of Chicago, 15 percent from government grants and attorneys’ fees, and 65 percent from the Law School and its alumni, plays a pivotal role in enabling the Law School to meet its educational and public service responsibilities. The Clinic fulfills Edward Levi’s vision.

Geoffrey R. Stone
Harry Kalven, Jr., Professor of Law
Dean of the Law School
A Worthy Tradition: Freedom of Speech in America

Harry Kalven, Jr.

January 27, 1988, marked the publication of the late Professor Harry Kalven Jr.'s great essay on the First Amendment, A Worthy Tradition: Freedom of Speech in America. The book was completed and edited for publication by Professor Kalven's son, Jamie. We offer you here a taste of the work, in the form of edited extracts. The passages in italics are from Jamie Kalven's introduction.

Whatever else it may or may not be, it is turning out to be the book I always wanted to write. I find these words in a letter from my father dated September 1, 1973. Mailed from a vacation cottage on Martha's Vineyard, the letter crackles with characteristic gaiety:

I spent the first four weeks here post-sunrise slowly carefully rereading my 800 pages of manuscript and done some shuffling of pieces. The news is that I found it just swell!... I am now clear that the effort to document a tradition is sound, especially for tradition. Anyway I now estimate, I'm still 600 pages away from completion (but I can almost touch the end)... Now all I need to do is to get [my] editors... out here to read it amidst swans, rabbits, and egrets! I'm promised Fall 1974 off, and with the six months starting next June, really hope to bring it to a close. Mother, I should add, liked all the many passages I read aloud to her!

The manuscript on which my father was working with such appetite was an essay on the American constitutional experience under the First Amendment... Conceived early in his career, it had long been deferred while he worked on other things....

Finally in 1970 he cleared his desk of other commitments and set to work on the book he had "always wanted to write." His plan was to pull together in one place the analyses of various problems he had developed over the years in scattered articles and in class. He aspired to survey the entire corpus of the Supreme Court's work on issues of freedom of speech and association. To get it all into a single book. To see it whole....

Then, in the fall of 1974, at his desk, working on the manuscript, he died. He was sixty years old. He bequeathed an unfinished first draft of over a thousand pages heavily embroidered with marginalia. This manuscript posed a dilemma to which there could be no fully satisfactory solution. Unpublishable in the form he left it, it was too good to put aside, too precious to cede to death.... I have edited and, where necessary, supplemented the manuscript. This book is the product of that effort: my father's manuscript conveyed to the reader by other hands....

[Harry Kalven once observed that the freedom of] "speech is 'almost an absolute'—that is, it is highly unlikely in any instance that the argument v. regulation will win but that this is not an a priori conclusion known in advance of the concrete challenge but a result to be won by sweat in the individual case, time after time'"

How much hangs on that "almost"! If you believe freedom of speech an absolute, you can state your position in a sentence. Believing it "almost an absolute," [he] was moved to write this book... For, as he sees it, the dialogue between the society and the Court over the meaning of freedom of speech is not simply a succession of occasions for declaring an absolute. Nor is it only a means to the end of a general theory. It is, above all, an end in itself: a discipline of freedom, the ongoing work of a free society.
The Hostile Audience: Terminiello

Father Terminiello, a suspended Catholic priest, was a spokesman for the anti-Semitic, fascist faction in American life during the late 1940s associated with such names as Father Coughlin and Gerald L. K. Smith. He was a professional rabble-rouser. The case arose as a result of a public speech he gave at an auditorium in Chicago. Advertisement of the event had aroused widespread resentment, and by the time he rose to speak to an audience of eight hundred, there was a police cordon around the auditorium. A hostile crowd of at least a thousand milled around outside, and there were sporadic episodes of brick throwing and other violence. In this tense setting Terminiello gave a speech which, though it had a surface restraint, was rich in horror stories about what some Jewish doctors had done to German war prisoners and was dotted with remarks such as: “That’s what they want for you, that howling mob outside”; “Some of the scum got in by mistake”; “Why should we tolerate them?”; “We don’t want them here, we want them to go back where they came from…” For making the speech Terminiello was charged with disorderly conduct under the Chicago breach of peace ordinance and was fined $100.

The Court was thus directly confronted with the critical issue of ideological fighting words in the context of an explosive fact situation. Speaking through Justice Douglas, the five-man majority reversed the conviction on constitutional grounds, but did so in a way that side-stepped the issue so boldly presented by the facts. “We do not reach that question,” Justice Douglas stated at the outset, “for there is a preliminary question that is dispositive of the case.” The preliminary question was an error discovered in the instructions the trial judge had given the jury, an error which had not been argued by the defendant below and was put forward by the Supreme Court on its own motion.

Justice Jackson’s dissent is a twenty-five page essay which deserves to be read in its own right. [H]is anger and eloquence force a sobering realization of how high the stakes are in cases of this genre. Jackson emphasizes the facts. He evokes the unrest around the auditorium when Terminiello rose to speak and quotes the speech extensively. He sees this episode as part of a larger extremist strategy of “fighting for the streets” as a first step toward revolution. Since instances of calculated disorder like this one will, as he sees it, arise steadily from the brutal political struggles afoot in the world, he would permit the police to stop and if necessary arrest the speaker when in their judgment the speech carries a considerable risk of disorder.

Whatever our gratitude to Jackson for properly sobering the issue, there are several great difficulties with his reaction to the Terminiello facts. The content of Terminiello’s speech was not in itself within the reach of the law. Had it been written, it would have raised little question. Also, his remarks, however offensive to those outside, were not fighting words to the audience he was addressing within the hall. Hence even if the fighting words doctrine were extended to ideological insults, it would have no bearing on these facts. Finally, the problem of disorder is precipitated exclusively by the hostility of the mob outside. This is not a speech on a street corner: it is in a hall. There is no shadow of a captive audience problem present. The mob outside is attempting censorship by the naked exercise of physical force.

The problem is tough, and one must sympathize with the police, but the rule selected may set the tenor of the society. While it makes sense to “take men as they are” in recognizing and penalizing the risks involved in uttering fighting words intending to insult, it makes profoundly less sense to “take men as they are” with respect to the risks involved in uttering offensive ideas. It is difficult to see that form of moral outrage as a fact of life which the law must accommodate. In the end, Justice Jackson’s argument in Terminiello seems to rest on the reaction of the hostile audience whatever the merits of the audience’s views; it is the fact of their reaction that tips the balance against speech. But it seems to me that sometimes even when the danger of disorder is high, the society must protect the speaker and insist that the audience endure the offense of an unpleasant idea.

Subversive Advocacy: Abrams

There was, to be sure, plenty in Abrams to stir indignation. Decided on November 10, 1919, it arose under legislation which differs from that in Schenck and Debs. [In Schenck and Debs, which were decided several months before Abrams, the Court upheld the convictions under the Espionage Act of 1917 of individuals who had opposed World War I and the draft. It was in Schenck that Justice Holmes, writing for an unanimous Court, first used the phrase “clear and present danger.” Abrams involved a prosecution under the Sedition Act of 1918 which, among other things, prohibited any person “to urge…curtailment of production of things…necessary…to the prosecution of the war.”]

Abrams and his associates, Russian Jewish emigrés living in New York, were self-styled “rebels,” “revolutionists,” and “anarchists.” They participated in the printing of some five thousand leaflets condemning the United States for sending troops into Russia following the revolution and calling for a general strike of workers in munitions factories.
Perhaps the most telling fact is that some of the leaflets were distributed by dropping them out of a window. [Professor Zechariah] Chafee has left an indelible account of the conduct of the trial which shows it to have been a scandal—a political trial of the defendants for the excesses of the Russian Revolution.

Speaking through Justice Clarke, the majority of the Supreme Court affirms the convictions in an opinion which...disposes of the First Amendment challenge in two sentences. [concluding that] “this contention is...definitely negatived in Schenck.”

Justice Holmes, the author of Schenck, dissents, joined by Justice Brandeis. His opinion is the most sustained statement he is ever to make on free speech.... [In] Holmes’s opinion...is found the effective birth of the American tradition of freedom of speech.... He is indignant at the twenty-year sentences imposed on the defendants for such an abortive, well-intentioned, trivial, radical effort:

Even if I am technically wrong and enough can be squeezed from these poor and puny anonymies that the color of legal litmus paper;...the most nominal punishment seems to me all that possibly could be inflicted, unless the defendants are to be made to suffer not for what the indictment alleges but for the creed they avow—a creed that I believe to be the creed of ignorance and immaturity when honestly held, as I see no reason to doubt that it was held here, but which, although made the subject of examination at the trial, no one has a right even to consider in dealing with the charges before the Court.

There then follows the famous peroration which alchemizes the muddled opinion into durable gold:

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition.... But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.... I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

This statement, although durably eloquent and a wonderful gesture of passion by the seventy-nine year-old justice, is puzzling. If the First Amendment is this stringent, then how is one to explain the decisions in Schenck and Debs [which upheld convictions in circumstances quite similar to those in Abrams]?... One cannot be altogether sure, but my strong impression is that the great peroration is addressed not to the precise charge against the defendants but to the broad issue of persecuting a man for his radical opinions or creed. In realists' terms, it is addressed to the submerged issue of Abrams—it was a political trial of Bolsheviks. In the peroration, liberated from the precise issues of the case and no longer fussing about intent, Holmes can deal with free speech policy in great broad strokes....

Justice Holmes’s splendid indignation over the shabby draconian treatment of the radicals in Abrams, whom he saw as distributors of “these poor and puny anonymies,” supplies a blood transfusion for the Schenck dictum. [The] strategy is...to read the burst of eloquence at the end of the Abrams dissent into the casual Schenck dictum and then to claim that it was there all the time, that it was this intense commitment to a stringent test for freedom of speech that the whole Court underwrote in Schenck. And in a curious extra-precedential way it works. Although the [clear and present danger] test is virtually ignored by the majority after Schenck, it comes to acquire enormous prestige. The process of evolution from Schenck to Abrams, and ultimately to Brandenburg [the Court’s most recent statement of the limits of permissible advocacy], has indeed been a mysterious and instructive one showing that the First Amendment has a charisma that sets it apart from other rules and principles of law.

Subversive Advocacy: Whitney

The statute under which Miss Whitney was convicted made it a felony to knowingly become a member of “any organization...assembled to advocate...criminal syndicalism.” It defined “criminal syndicalism” as “the commission of crime...as a means of accomplishing a change in industrial ownership or...effecting any political change....” Whitney arose out of the splintering of the American Socialist Party. Miss Whitney, who had joined the more “radical” Communist Labor Party, attended a meeting at which a California branch of the party was organized.... Whitney [which was decided in 1925] put into issue the constitutionality of using criminal sanctions to penalize advocacy of terrorism....
The majority... requires only a page and a half to dispose of the free speech issue. The opinion by Justice Sanford indicates... how little the clear and present danger test means to the majority at this time. Sanford does not refer to it; he relies on a strong presumption of the constitutionality of the statute; and he refers to utterances which tend "to incite to crime" and to "endanger the foundations of organized government." Although there is no proof in the record that the advocacy with which Miss Whitney was charged created a high degree of danger, the majority dismisses such a consideration as immaterial. In its view, advocating the syndicalist doctrine of selective violence is enough.

Justice Brandeis, in an opinion joined by Justice Holmes, launches an eloquent protest against the bland analysis of the majority opinion. In durable rhetoric he explores the policy basis of our commitment to free speech and analyzes with care when, in light of that policy, a danger can be said to be imminent enough and serious enough to warrant restriction.

Although Whitney marks the sixth consecutive decision in which the majority has either ignored the clear and present danger test or found it inapplicable, Justice Brandeis asserts at the outset:

That the necessity which is essential to a valid restriction does not exist unless speech would produce, or is intended to produce, a clear and imminent danger of some substantive evil which the State constitutionally may seek to prevent has been settled. See Schenck v. United States.

The stamina and tactics of these classic dissents are remarkable. In professional lawyering terms, the performance of Justices Holmes and Brandeis is outrageous. They keep insisting that they are adhering to the Court's true rule adopted in Schenck. They have been told by the majority that clear and present danger is not now and never was the general test and that it is applicable only in cases where speech is punished under statutes aimed at acts. They have conveniently forgotten Debs, and, in the face of the majority's skepticism, they have never paused to explain how Schenck itself comported with the test. Yet we are all deeply in their debt for their outrageous behavior. They have kept alive a counter-tension in the tradition, and their towering prestige has invested the slogan with almost mesmerizing force. Like twin Moses come down from Mount Sinai bearing the true Commandment, they see little need to argue that the formula is rightly derived from the First Amendment, merely that it is....

Brandeis begins his exegesis of the clear and present danger standard by posing a series of questions:

This Court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present; and what degree of evil shall be deemed sufficiently substantial to justify resort to abridgement of free speech and assembly as the means of protection.

The agenda is to prove a splendid one. But how extraordinary to say that the Court has "not yet" attended to resolving ambiguities in the test, when the Court has so steadfastly refused to grant the test the status Holmes and Brandeis claim for it. It is the two dissenters who have not yet determined these features of their formula.

Before answering his three questions about the test, Justice Brandeis pauses to examine the underlying policy which dictates such stringent control over the regulation of speech. The passage is quite wonderful:

Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

... With these grand premises made explicit, Justice Brandeis turns to the question of how clear and present the danger must be:

Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one.

... There is plausibility to the clear and present danger test as Justice Brandeis derives it from the basic architecture of American values. The point is simple: Freedom of speech is so essential to the American way of life and thought, and confidence in its power is so deep, that only an extraordinary threat to the safety of the community justifies departing from those expectations by employing the law to coerce silence....

Justice Brandeis was seventy-one years old when he wrote his remarkable opinion; Justice Holmes was seventy-nine years old when he wrote his eloquent peroration in Abrams; Alexander Meiklejohn was seventy-eight years old when he wrote his stirring essay on free speech. It is the mark of the topic that it recruits such distilled wisdom from the concerned elders of the society, and it is the special blessing of the American heritage that it has had such elders to rise and speak.

Freedom of Association: The SACB Case

Cases can come to the Court at the wrong time. In the area of First Amendment law the supreme example of a case out of its proper time is Communist Party v. Subversive Activities Control Board, decided in 1961.

SACB should have been the archetypal case for freedom of association. It involved a complex government strategy—the Subversive Activities Control Act—that was explicitly aimed at sanctioning association.... It was the paradigm of the anti-Communist legal strategies which had dominated the 1940s and 1950s. It was in a real sense the major govern-
ment attack on Communism in the United States and hence a political development of high import. And it evoked some 212 pages of opinions from the justices. Yet it comes too late. As the Court goes through its elaborate reasonings, there is the sense that no one is listening any longer. [SACB] invites relatively little commentary and today plays only a minor role in the casebooks on which lawyers are trained. It is treated as outside the mainstream of First Amendment precedent; it involved legislation so specifically tailored to hit the Communist Party that it seems to have been thought of as limited to that one question. Hence, as the Communist issue has receded, so too has the salience of SACB. Yet it is quite possibly the precedent which carries the greatest threat to political freedoms in the future. Any effort to map the work of the Court in building a tradition around the First Amendment must allow it a central place.

One of the many issues posed by SACB was triggered by the Act’s requirement that, to demonstrate that an organization was a “Communist-front” organization, and thus covered by the Act, the government had] to show that the organization was under the control and domination of “the foreign government controlling the world Communist movement.” One line of proof authorized by the Act was consideration of “the extent to which its views and policies do not deviate” from those of that foreign government. In brief, the Act made official use of the logic that Senator Joseph McCarthy had employed so vigorously, namely, testing the loyalty of a person by tracing the number of political issues on which his views coincide with those of the Soviet Union. In the gross form used by McCarthy it was enough to kill any position to show that the Soviets had endorsed it. Its use in the SACB case was far more circumspect and rational. The Government put on an expert witness, Dr. Moseley of Columbia University, who testified that he had examined the position of the Party on forty-five major international issues over thirty years and had found no substantial deviation between the Party position and that taken by the Soviet Union.

The Party challenged this line of proof [on the ground that] the Board had refused to let the Party introduce evidence to show that many non-Communists shared the views of the Party and the Soviets on particular issues. [Writing for the Court], Justice Frankfurter responds by arguing that the inference of foreign control from such a pattern of parallelism was rational and that the Board was not required to hear the Party’s evidence in rebuttal…. The Court thus ratified, without even seeming to be aware of it, a devastating technique for chilling discussion of public issues. It gave the Communist Party the power to capture any public issue it wished simply by embracing one side of it. The Government was announcing publicly that the way to stay out of trouble was to avoid taking the Soviet side of any public issue on which the Soviet Union had expressed an opinion….

The point does not really depend upon whether, if the sample is good enough and the coincidence of views is high enough, an inference of non-independent thinking or worse may logically be ascribed to the group. It is rather that such a line of proof can never be worth what the legal system must pay for it in First Amendment values. It is difficult to think of any step more miseducating of public tolerance, more in contradiction of the traditions of the First Amendment, than this. It is a scandal that it passes unnoticed in the two hundred pages of judicial opinion in SACB….

In the end, the solemn opening of Justice Black’s dissent remains the fitting last word on the case:

The first banning of an association because it advocates hated ideas—whether that association be called a political party or not—marks a fateful moment in the history of a free country. That moment seems to have arrived for this country.

Partial Sanctions: Elsbrandt

The classic sanction for speech, prior licensing apart, has been the criminal sanction. Its purpose is to prevent the publishing of the disfavored message; it has no other purpose than to dissuade the speaker from saying that. In contrast, there is another set of situations, in which only a privilege of some sort is at stake, and the state objective—and motivation—may be highly ambiguous.

A sufficient illustration is provided by Justice Holmes’s bon mot in the McAuliffe case in 1892, back in the days when he was on the Massachusetts Supreme Court. McAuliffe had been fired by the city of New Bedford for violating a municipal regulation limiting the political activities of police. In an opinion upholding the dismissal, Holmes observed: “The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.” Viewed from one perspective, depriving a man of a job because the state does not like a speech he has made is a powerful form of censorship, possibly more painful and effective than a criminal fine. From another perspective, however, it may not represent the pursuit of censorship but the pursuit of some other objective with respect to public employment. Moreover, although Justice Holmes was too
simplistic in his wit, he did have an insight. The sanction in such a case is partial. The state is not making an effort to prevent the speech altogether; the speaker can continue to speak, albeit at the cost of his job; and if someone else makes the same speech, the state need not intervene.

The linking of the partial sanction problem with the evolving norms for direct sanctions comes in *Eifbrandt v. Russell* in 1966. This decision is the most important precedent the Court has yet rendered on the loyalty oath and is a key precedent on partial sanctions in general.

In *Eifbrandt*, the Court invalidated an Arizona statute requiring every public employee to take an oath that he was not a member of the Communist Party or of any organization "having for one of its purposes" the violent overthrow of the government. As I read Justice Douglas's opinion, they conclude that the oath is overbroad because it does not contain the limitations on membership in subversive organizations imposed in *Scales* as a predicate for the imposition of criminal sanctions:

We recognized in *Scales v. United States* that "quasi-political parties or other groups...may embrace both legal and illegal aims." We noted that a "blanket prohibition of association with a group having both legal and illegal aims" would pose "a real danger that legitimate political expression or association would be impaired." The statute with which we dealt in *Scales*, the so-called "membership clause" of the Smith Act, was found not to suffer from this constitutional infirmity because, as the Court construed it, the statute reached only "active" membership with the "specific intent" of assisting in achieving the unlawful ends of the organization.

The Arizona oath then is bad because it meets only one of the three limitations imposed in *Scales*: knowledge is required, but not active membership and specific intent.

Justice Douglas is thus on the brink of a major point, namely, that partial sanctions touching First Amendment freedoms are presumptively governed by the same strict criteria that apply to direct sanctions touching such freedoms. Regrettably, he does not make the point explicit; and thus a fundamental clarification of a large part of the contemporary First Amendment business of the Court is not publicly achieved. Yet the conclusion is securely implicit in the holding of the Court.

Although Justice Douglas does not meet the issue as openly and explicitly as he might have, his opinion is instinct with a major insight. He quotes with discrimination from the Harlan opinion in *Scales* and fully exploits Harlan's acknowledgement that quasi-political groups differ from conventional criminal conspiracies in one important respect: They do not have a single unifying criminal purpose, but rather share "both legal and illegal aims." There is, therefore, in the careful *Scales* analysis precedent for worry about the impact on freedom of association when anything less than literal conspiracy is used by the law to impute "guilt." Douglas argues that the same cautions are relevant when we shift to government employment. The crucial sentence in his opinion reads: "Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees." To reach "the citizen" with constitutional precision, Justice Harlan argued in *Scales*, required that the law establish his nexus to the evil purpose of the group by the three fold ties of knowledge, activity, and evil intent. Justice Douglas is simply asserting that the same precision in establishing the nexus is required when the law seeks to withdraw privileges from "the public employee." Otherwise—although he does not spell out this step in the logic—the relation of the employment regulation "to the evil apprehended" is not reasonable.

The counter-argument of course is that, since we are here regulating employment and not imposing criminal sanctions, the precision need not be so great. There is a rational likelihood that persons who belong to criminal organizations with knowledge of their evil purposes will be unfaithful employees. The issue before the Court is not the imputation of criminal guilt; it is merely the imputation of employee unreliability.

What is at stake is whether the risk calculus of the prudent employer is not in a radical sense at war with the normal regard we have for the value and sensibility of First Amendment freedoms. The calculus is by its nature probabilistic; it is not that this individual has done something wrong, but that actuarially speaking he carries a higher risk of auto accident. The actuary always imputes guilt by association. But respect for the air of freedom in the United States requires that the government as employer live dangerously.

**Deportation: Carlson**

The use of exile or banishment as a sanction... is unknown in modern democratic states and would presumably be unconstitutional in the United States. Hence, even during the height of the anti-Communist decades, the courts were never asked to confront directly, with respect to American citizens, the legal status of exile as a sanction.

Such was not the case, however, with respect to resident aliens. As applied to them, exile as an anti-subversive strat-
egy flourished. It took the form of deportation—the withdrawal of the privilege of residing in the United States—and it generated a number of Supreme Court decisions. These cases are revealing as social history and as evidence of the mood of the times. Above all, they are revealing as illustrations of how the government may act to reduce the risk of subversion when unrestrained by the Constitution.

Carlson v. Landon in 1952...presents the question of whether the petitioners have a right to bail pending a final determination of their deportability. The deportation provisions of the Internal Security Act of 1950 provided that the Attorney General had discretion to grant bail. The issue in Carlson is just how broad that discretion is. Might the Attorney General withhold bail on nothing more than reason to believe the deportees were present members of the Party, without any individualizing evidence as to the distinctive risks they would offer if released on bail until deported?

...By a vote of 5 to 4, the Court affirms the power of the Attorney General to detain deportees without bail on the ground of present membership in the Communist Party. The majority...makes no effort to minimize the harshness of the result. Justice Reed acknowledges that, Party membership apart, the petitioners have behaved impeccably during their long residence in America. Indeed, it is noted that one of them had two sons who served in the Army in World War II, and had himself sold $50,000 in war bonds and given blood to the Red Cross on many occasions....

Justice Reed avoids confronting head-on the question of whether there are any due process restraints operative in deportation. He accepts the government position that the test under the statute is whether there was an abuse of discretion. It was, he thinks, "reasonable" for the Attorney General to conclude that membership itself made alleged Communist aliens too unreliable to release on bail pending a determination of their status and deportability....

The four dissenters each reflect an emphasis characteristic of the style of the particular justice.... The centerpieces of the dissent are the opinions of Justices Frankfurter and Black. Justice Frankfurter in a superb technical opinion destroys the majority's reading of the Act.... He stresses that...the granting of bail has traditionally been understood to depend on individuating circumstances as to the particular defendant. Thus the Act in giving the Attorney General discretion to grant or withhold bail must have intended the traditional mode of such discretion and that in turn meant keying the discretion to the individuating facts about the particular individual. This the Attorney General had clearly not done; rather, he had placed a blanket ban on all members of the Communist Party.

...Characteristically, Black's ultimate eloquence is stirred by his perception of this technical controversy over bail as a grave affront to First Amendment values. As he sees it, the case is an instance of pre-trial detention for speech.... Black quotes the District Judge, who conceded that "there is nothing here to indicate the Government is fearful that they are going to leave the jurisdiction" and then justified his denial of bail by telling counsel: "I am not going to turn these people loose if they are Communists, any more than I would turn loose a deadly germ in this community." Bad as convicting people after trial for speech crimes may be, it is singularly offensive in Justice Black's eyes to detain them before trial because of the danger of their speech:

The stark fact is that if Congress can authorize imprisonment of "alien Communists" because dangerous, it can authorize imprisonment of citizen "Communists" on the same ground. And while this particular [Bureau of Immigration] campaign to fill the jails is said to be aimed at "dangerous" alien Communists only, peaceful citizens may be ensnared in the process.... [Th]e basis of holding these people in jail is a fear that they may indoctrinate people with Communist beliefs. To put people in jail for fear of their talk seems to me an abridgement of speech in flat violation of the First Amendment.... My belief is that we must have freedom of speech, press and religion for all or we may eventually have it for none.... [T]his freedom is too dangerous for bad, tyrannical governments to permit. But those who wrote and adopted our First Amendment weighed those dangers against the dangers of censorship and deliberately chose the First Amendment's unequivocal command that freedom of assembly, petition, speech and press shall not be abridged.

Carlson, then, although it involves only a detail about the procedures for bail in deportation cases, is informed by the fundamental tensions which characterize First Amendment controversies where national security is the countervalue. Its denial of bail is another example, to be placed alongside the denial of Social Security benefits in Fleming v. Nestor and the denial of the right to practice before the Supreme Court in In re Isserman, of a pettiness, a meanness of spirit, which in the end infects government anti-subversion efforts. And in each instance the Supreme Court's unwillingness to make the small correction is disheartening.

Ignatz Mezei, "man without a country"
Shaughnessy v. United States ex rel. Mezei [was] a decision the absurdity and intolerance of which is caught and preserved forever in a classic dissent by Justice Jackson. Mezei had come to the United States in 1923 and resided here for the next twenty-five years until in 1948, leaving his wife and home, he went to Rumania to visit his dying mother. Due to some difficulties both in getting into Rumania and in getting out again, Mezei did not return to the United States until nineteen months later. He was denied entry and denied a hearing by the Attorney General on the basis of information the disclosure of which, under the familiar formula, would be "prejudicial to the public interest."

Having been denied entry, Mezei was temporarily detained at Ellis Island pending the completion of arrangements to return him to some suitable foreign country. But all efforts to persuade another country to accept him proved unsuccessful and after twenty-one months he was still detained on Ellis Island. At this point he brought habeas corpus to force his release on bail pending arrangements for departure. It is this exquisitely narrow issue about bail under these very special facts that the Court is asked to decide. The case thus poses [the issue] whether this prolonged detention is supportable without some minimal procedural due process being afforded Mezei.

Both the District Court and the Court of Appeals decide the bail issue in Mezei's favor, but the Supreme Court in a 5 to 4 decision—over the dissents of Justices Jackson, Frankfurter, Black, and Douglas—finds it necessary to reverse and to return Mezei to Ellis Island...

Justice Jackson, in a dissent joined by Justice Frankfurter, is incredulous at the outcome... For Justice Jackson it is the prolonged detention that generates constitutional limitations on the official action. The realism which had moved him to indignation over the Court's tolerance of provocative speech in the public forum in Terminiello...now with splendid evenhandedness moves him to equal indignation over his government's relentless pursuit of security in Mezei. His performance is a reminder of two important characteristics of a great judge: a capacity for anger—a sense of justice and a capacity for indignation are not unconnected—and a capacity for realism as to the actual outcome of the case before him. These are difficult judicial virtues indeed; an excess of one leads to bias, an excess of the other to the destruction of any rule of law.

He writes...:

This man, who seems to have led a life of unrelieved insignificance, must have been astonished to find himself suddenly putting the Government of the United States in such fear that it was afraid to tell him why it was afraid of him.

The Jackson dissent is an eloquent expression of what is for him and Justice Frankfurter the central value of a civilized society. Even more than freedom of speech and association, it is adherence to procedural due process... The indefinite confinement is especially offensive to Jackson, so recently returned from the Nuremberg Trials, because it carries "unmistakable overtones" of the protective custody of the Nazis. His parting shot, as he closes his dissent, might well stand as the epitaph for this entire section of the Court's work:

I have not been one to discount the Communist evil. But my apprehensions about the security of our form of government are about equally aroused by those who refuse to acknowledge the dangers of Communism and those who will not see danger in anything else.

The judicial statesman works at the edge of a future he does not know. So does the writer. Reading my father's essay today, we know something of the future into which he spoke. In some respects the passage of time has undermined his words; in others it has conferred power upon them; and it has sharpened his questions about the relationship of law and tradition. Happily, it has also deepened the sense in which this book about tradition embodies tradition. That which survives is sustaining: the companionship of his lively, passionate, interested voice speaking to us, out of the past, in the present tense.

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Four Faces of Conservative Legal Thought

Michael W. McConnell

The nominations of Robert Bork, Douglas Ginsburg, and Anthony Kennedy to fill the seat of retiring Supreme Court Justice Lewis Powell have drawn attention, much of it ill informed and misleading, to the character of conservative legal thought. Expecting to find a right-wing monolith, senators and other observers have instead been puzzled by the differences among legal thinkers on the right. Sometimes they have been surprised even by differences within the thought of a single conservative, as with Robert Bork's intellectual odyssey from libertarianism, through law and economics, to his mature espousal of democratic traditionalism. It often seems that debates among the various perspectives on the right—not debates between right and left—raise the most vital questions regarding the foundations of American constitutionalism.

Traditional jurisprudential conservatives, with their focus on judicial restraint; libertarians, with their commitment to individual liberties and hostility to big government; the law and economics movement, with its rigorous pursuit of economic efficiency; and social conservatives, with their loyalty to community and traditional moral values—each of these schools of thought has developed a distinct set of legal principles. Each is a challenge and a threat to the still-dominant liberal orthodoxy; each has an uneasy relation with its allies on the right. Taken together, these schools of thought seek to redirect constitutional discourse toward the genuine issues of democracy, liberty, and the rule of law, which were so often neglected in the last decades' rush to use the courts to circumvent a political system perceived as resistant to social change.

Consider the subjects of legal controversy. Ten years ago the law reviews were filled with speculations about how to use the Constitution to expand welfare "rights," end capital punishment, and uphold traditional sexual mores. Today you are more likely to see symposia devoted to such questions as: the weight that should be given the original intention of the framers of the Constitution, the extent to which economic liberties should be protected by law, and the means by which moral (even religious) values in public life can be preserved.

So powerful has been the advance of conservative legal theory that we have seen a virtual reversal of roles in the legal debate. Now it is the left that cherishes stasis and precedent—that is...
fighting a rear guard action against change. Joseph Biden’s Judiciary Committee treated the Burger Court as the pinnacle of constitutional wisdom, and any criticism of the Court’s decisions as a sign that the nominee was dangerously outside the “mainstream.” That defensive posture, as much as anything, is evidence of the direction of movement in the legal debate.

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Traditional Conservatism

Two principles form the heart, and the common element, of conservative legal theory. First is commitment to the rule of law. Legal action and decisions must be grounded in neutral principles of general applicability. Constitutional principles do not change with the political climate; the task of judges, to the extent possible, is to discern what the law is, not to advance their policy preferences. The second principle is a democratic adherence to the consent of the governed. The legitimacy of our laws, including our Constitution, arises from the deliberate decisions of the people, made through their representative institutions. Laws, including the Constitution, must therefore be read, to the extent possible, as embodying the intentions of the people who adopted them rather than the opinions of those who hold judicial office today.

Restoring the proper relation between unelected courts and the elected representatives of the people is the foremost concern of traditional legal conservatives. Exemplified by Chief Justice William H. Rehnquist and Attorney General Edwin Meese III. The central question is how to read the Constitution of the United States. Is the Constitution, as some contend, an elastic and indefinite document that licenses judges—in the words of Justice Hugo Black—to “substitute their social and economic beliefs for the judgment of legislative bodies”? Or does it have some fixed, reasonably ascertainable meaning, which constrains both legislatures and judges?

Traditional conservatives contend that the Constitution is principally a framework for democratic decision-making and not a blueprint for specific social and economic policies. Outside of a few important, well-defined personal liberties set forth in the document, the Constitution allows the people to make public policy through their elected representatives. When the Court ventures into policymaking in the guise of constitutional interpretation, it oversteps the role assigned to it under the Constitution.

In response to the liberals’ open-ended view of constitutional interpretation, traditional conservatives have articulated an “interpretivist” theory, dubbed by Attorney General Meese the “Jurisprudence of Original Intent.” According to the interpretivist view, when the text and structure of the Constitution leaves room for doubt about its meaning, it should be read in light of the meaning ascribed to those words by the people who wrote and ratified it.

Notwithstanding the caricatures in the press, the interpretivist model is neither an invention of the Attorney General’s nor a plot to further the right wing agenda. Interpretivism was the dominant, the assumed, the unquestioned premise of judicial review for the nation’s first hundred years, and much of its second. James Madison, the principal framer of the Constitution, stated that “if the sense in which the Constitution was accepted and ratified by the nation is not the guide to expounding it, there can be no security for a faithful exercise of its powers.” Thomas Jefferson wrote that “on every question of constitution, [we should] carry ourselves back to the time, when the constitution was adopted; recollect the spirit manifested in the debates; and instead of trying [to find] what meaning may be squeezed out of the text, or invented against it, conform to the probable one, in which it was passed.”

Less than a generation ago, such sentiments were uncontroversial. It was common ground that the Constitution, like statutes, contracts, and other legal documents, must be read in light of the intentions of those who adopted it. Even Justice William J. Brennan, Jr., often cited as a critic of the “Jurisprudence of Original Intent,” stated in the School Prayer Cases (1963) that “the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers.” For some years, however, judges and academics came to disregard the original meaning of the Constitution, in favor of their own preferred schools of political, economic, and moral theory.

In 1971, Robert Bork, then a professor at the Yale Law School, fired the opening salvo in the return campaign, in an oft-cited article called “Neutral Principles and Some First Amendment Problems.” In it, he reasoned that interpretivist jurisprudence follows from “the resolution of the seeming anomaly of judicial supremacy in a democratic society.” The courts are authorized to invalidate decisions by the elected representatives of the people if and only if the people have, through the deliberate act of constitutional making, placed certain matters beyond the cognizance of their representatives. The Court’s power is there-
The framers of the Constitution believed that the separation of powers was the most important element of the constitutional design.

[The judge’s] job is not to make moral judgments, but to enforce constitutional principles that have been chosen by others.

Thus, the Court had approved such constitutional aberrations as so-called “independent” regulatory agencies, had gutted the President’s ability to obtain confidential advice from even his closest aides, and had watered down the Constitution’s express limitations on judicial power, extending court jurisdiction beyond actual “cases and controversies” (cases involving the concrete rights of individuals) to include generalized grievances of a political nature. (In the most flagrant case, a group of law students was given standing to challenge railroad rates for recyclable materials on the ground that the amount of recycling that takes place would indirectly affect their use and enjoyment of the national parks.)

Over the past decade, the Supreme Court has revived the doctrine of separation of powers in a series of important cases, often quoting at length from The Federalist Papers and other writings that demonstrate the original purpose and meaning of the constitutional provisions at issue. Among the most important were Immigration and Naturalization Service v. Chadha (1983), which invalidated the legislative veto, Buckley v. Valeo (1976), which reaffirmed the President’s power to appoint subordinate executive officers, Allen v. Wright (1984), which limited the right of ideological plaintiffs to challenge executive decisions that do not affect their legal rights, and Bowers v. Hardwick (1986), which precluded Congress from assuming the power to discharge officials who perform executive functions.

On the other hand, by a five to four vote, the Court in Garcia v. San Antonio Metropolitan Transit Authority (1985) overruled prior precedent that the states retain certain constitutionally protected spheres of sovereign authority, which the federal government cannot invade. This flies in the face of the intention of those who drafted and ratified the 1787 Constitution and Bill of Rights. The Court explained that the “principal and basic limit” on federal power over the states will henceforward be the self-restraint of Congress. Good luck, states.

Liberal attacks on interpretivism have caused some to assume, mistakenly, that a jurisprudence of original intent would always produce substantive results that accord with conservative politics. But most important constitutional controversies have at least two sides. Conservative advocates may argue for the correctness of their positions, but principled interpretivists must be prepared to accept that in some instances they may not prevail. A line item veto is an example of an excellent idea that is probably unconstitutional (because it treats as a “Bill” something that has not been approved in that form by both the Senate and the
House in accordance with Article I, Section 7), and affirmative racial preference by the federal government is an example of something that ought to be unconstitutional, but probably is not (because Congress has express authority to determine the best means of enforcing equal protection, even assuming, contrary to the text, that the Fourteenth Amendment applies to Congress at all).

Nonetheless, given the nature of our constitutional heritage, an interpretivist jurisprudence will, more often than not, be consistent with a philosophy of decentralized government, judicial restraint, racial equality, and respect for life. It is no coincidence that advocates of radical social change have more to lose from a jurisprudence of original meaning than those who wish to conserve and affirm the traditional values of the political community.

Libertarianism

A second major strain in conservative legal theory over the past ten years is libertarianism. Libertarians understand the Constitution principally as an instrument of limited government, and support an active judicial role in preventing legislatures from overstepping the bounds of their authority. Libertarians therefore tend to be more hospitable to challenges to governmental authority, less deferential to majoritarian institutions. If the animating principle of interpretivism is democratic rule, that of libertarianism is individual rights.

In theory there is no necessary conflict between libertarians and interpretivists. If the libertarians are correct—if it was the intention of the framers and ratifiers of the Constitution to limit dramatically the authority of government over the economic and other decisions of individuals—then the two approaches coincide. The main arena of debate is the issue of economic liberties: the right to hold and use property and to make and enforce private agreements, without government interference, unless it is necessary to protect the rights of nonconsenting third parties.

If the animating principle of interpretivism is democratic rule, that of libertarianism is individual rights.

Economic libertarians look to certain explicit provisions of the Constitution that protect economic rights: especially the contracts clause (no state may "impair the obligation of contracts"), the takings clause ("nor shall private property be taken for a public use without just compensation"), and the due process clauses (neither the states nor the federal government may deprive any person of "property" without "due process of law"). They buttress the plain language of these provisions with analysis of the philosophical sources of these principles: mainly John Locke, William Blackstone, and, more distantly, Thomas Hobbes. Their conclusion is that the Constitution was intended to preclude many forms of modern economic regulation that interfere with the liberties of property and contract.

University of Chicago law professor Richard Epstein has offered the most comprehensive account of this position. In his 1985 book, Takings: Private Property and the Power of Eminent Domain, Epstein argues that the words of the takings clause have one simple, unavoidable core meaning, derived from the Lockean philosophy of the framers: that the property of one person may not be taken from him for the benefit of another. If allowed its full intended sweep, the takings clause would prohibit progressive taxation, unemployment compensation schemes, requirements of unisex annuity tables, welfare transfer payments, zoning laws, and much, much more. One need not go as far as Epstein has to recognize that the property and contracts clauses of the Constitution are part of the document, that they were intended, like the others, to have force and effect, and that the modern Court's usual refusal to enforce them is unprincipled.

Professor Bernard Siegan, of the University of San Diego Law School (whose nomination to the United States Court of Appeals for the Ninth Circuit faces serious opposition in the Senate Judiciary Committee) reaches many of the same conclusions, but on the basis of very different jurisprudential assumptions. Despite the radicalism of his conclusions, Epstein places himself squarely in the interpretivist camp. "Judges," he says, "must be able to provide authoritative interpretations of the constitutional text that are not simply manifestations of their own private beliefs about what legislation should accomplish."

Siegan advocates a far more discretionary version of judicial review. In his book Economic Liberties and the Constitution, Siegan places principal reliance on "substantive due process," ironically the same constitutional doctrine used in Roe v. Wade (1973), the abortion decision. The due process clauses of the Fifth and Fourteenth Amendments prohibit the government
from depriving any person of “life, liberty, or property without due process of law.” Under the theory of substantive due process, some (though of course not all) species of liberty and property are protected against legislative action, whether there has been “due process” or not. Traditional jurisprudential conservatives are skeptical of substantive due process, both because of its inconsistency with the text and purposes of the due process clauses and because it invests judges with unconstrained power to decide which “liberties” will receive judicial protection. Siegan, however, does not hesitate to invoke the modern Court’s activist decisions, like Roe, to support his argument that there is nothing “unique” or “extraordinary” about the notion that substantive due process protects rights not mentioned in the constitutional text or explicitly intended by the framers.

Both Epstein and Siegan have clashed with the interpretivist advocates of judicial restraint. In 1984, then-Judge Scalia warned in a widely noted debate with Epstein, a former colleague at Chicago, that a judiciary powerful enough to enforce Epstein’s libertarian vision of government would also be powerful enough to impose “judicially prescribed economic liberties that are worse than the pre-existing economic bondage.” “What would you think,” he asked, of a “constitutionally guaranteed, economic right of every worker to ‘just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity?’”

Siegan’s style of libertarianism comes into still deeper conflict with interpretivism. Robert Bork, for example, has agreed that the intention of the contracts and takings clauses “has been a matter of dispute and perhaps they have not been given their proper force.” But he claims that to return to substantive due process would work “a massive shift away from democracy and toward judicial rule.” “This version of judicial review,” Bork argues, “would make judges platonic guardians subject to nothing that can properly be called law.”

Especially among younger conservatives, economic libertarianism is often combined with broader social libertarianism. The commitment to limited government leads many scholars of the right to an expansive understanding of noneconomic individual liberties. Liberals are frequently surprised by the depth of support for supposedly “liberal” positions on basic civil liberties, such as freedom of speech, association, and religion. In fact, libertarians often make their liberal counterparts look timid and inconsistent by comparison. They oppose restrictions on speech that liberals often tend to support: campaign finance limitations, regulation of commercial speech, prohibitions on employer speech in the course of a labor organizing campaign, regulation of the political balance of broadcasting and cablecasting, restrictions on religious speech on public property, legal harassment of peaceful protestors against abortion clinics, and the like.

Libertarians also tend to oppose government restrictions on pornography and homosexual conduct, which are generally supported by social as well as many traditionalist conservatives. Many also support legalized abortion—though there is a significant libertarian minority that recognizes the right of the unborn to protection against physical assaults from others. Some libertarians believe in promoting these objectives through constitutional litigation. Others, who combine libertarian political principles with a more traditional conservative jurisprudence, believe that they can legitimately be attained only through the democratic process.

Much of the drama and excitement in the conservative legal community is generated by the tension between the libertarians and the “traditionalists.” The Cato Institute, for example, has hosted fascinating exchanges between the camps: the Epstein-Scalia debate already mentioned, or a more recent confrontation between traditionalist Gary McDowell and Stephen Macedo, libertarian author of a book entitled The New Right Versus the Constitution. The libertarians and traditionalists are carrying on a debate that has been with us from the very beginning—the never-resolved tension between individual rights and democratic rule.

Law and Economics

Few developments in legal analysis are broad enough or important enough to change the face of legal education. But the law and economics movement, born some twenty-five years ago and brought to prominence in the past ten years by such scholars as Richard Posner (now judge on the United States Court of Appeals for the Seventh Circuit), Ronald Coase, Aaron Director, Guido Calabresi, and Gary Becker, has profoundly affected the way we think and talk about law. Not just constitutional law, and not just law pertaining to economic transactions, but the entire corpus of law, from antitrust to family law to torts to criminal law, has been touched or even transformed by the law and economics movement.

The persuasive strength of law and economics comes from the analytical power of the economic model. Economics is now the preeminent social science. It generates verifiable answers to questions (not all questions, to be sure, but many) and thereby provides an objective basis for decisionmaking. Law and economics is an attractive legal movement because it provides a basis for legal decisionmaking that is not dependent on the subjective will of the judge. It thus conforms to the fundamental principle of the rule of law.
Particularly for those who despair of reaching conclusive answers to constitutional questions from the historical record, law and economics can serve as an alternative way to preserve judicial review without inviting judicial tyranny.

It may be a mistake to label law and economics part of the conservative movement, for it has no overt ideological element. However, it is usually associated with the right because of a shared belief in the efficiency and justice of a market based on consensual transactions rather than government fiat. Law and economics has assumed a twofold task: to explain, and thus bring intellectual coherence to, the body of common law that lies at the heart of our system of private rights; and to provide an objective basis for critique of legal arrangements that fail the test of economic efficiency.

The most obvious successes of the law and economics movement have, not surprisingly, been in the fields of business law such as antitrust and securities. The impact can scarcely be overstated. Fifteen years ago, the main effect of the antitrust laws seemed to be to protect businesses from the threat of hard competition. Small businesses were protected against large; distributors were protected against suppliers; competitive price cutting was treated with suspicion. Bork's *The Antitrust Paradox* and Posner's *Antitrust Law: An Economic Perspective* changed all that. Antitrust was reoriented toward protection of the consumer from agreements among competitors to cut production and raise prices.

Similarly, our understanding of capital markets and the role of securities regulation has been greatly enhanced by the work of law and economics scholars such as Daniel Fischel and Frank Easterbrook (now a judge on the United States Court of Appeals for the Seventh Circuit). Takeovers, for example, are now understood to be powerful market forces in favor of managerial efficiency—not, as a previous generation thought, as unproductive shuffling of assets.

In a broader sense, the law and economics movement has influenced judicial thought by emphasizing the fact that legal rules influence future conduct. A judge cannot simply apportion the gains and losses from past events, adopting a retrospective theory of justice. He must consider how future actors will respond to the decision. Comparing the Supreme Court's decisions in the 1983 term to those in the 1973, 1963, and 1953 terms, then-Professor Easterbrook concluded that "[t]he justices today are more sophisticated in economic reasoning, and they apply it in a more thoroughgoing way, than at any other time in our history." To the law and economics movement belongs the credit.

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**The law and economics movement has influenced judicial thought by emphasizing the fact that legal rules influence future conduct.**

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The most radical subgroup within law and economics is the "Public Choice" school. Recently brought to public notice by Nobel Prize winner James Buchanan, public choice theory subjects government to the same skeptical private interest analysis long accorded to economic markets. The theory demonstrates that government power can and will be used to enrich powerful private interests at the expense of the public. Regulation, which masquerades as protection of the public interest, more frequently serves special interests. Public choice theorists have sparked a renewed interest in legal and constitutional mechanisms for cabining the power of majoritarian institutions. The analytical justifications for the proposed Balanced Budget Amendment, for example, are an outgrowth of public choice theory.

Both traditionalist and libertarian conservatives look upon the law and economics movement with a degree of suspicion, because its philosophical premises are frankly utilitarian (the greatest good for the greatest number). This creates a tension with traditional conservative scholarship, which presumes that the Constitution embodies certain fundamental political principles, which may or may not be "efficient," and leaves most other decisions to the majoritarian process, which likewise is no guarantee of "efficiency." Law and economics adherents are also in tension with the libertarians, many of whom uphold a vision of individual rights that are entitled to prevail, even when in conflict with the greatest good for the greatest number.

The conflicts, however, are not insurmountable. Because of its affirmation of the core of common law principles, which also form the historical backdrop for understanding individual rights under the Constitution, law and economics scholars and more traditional interpretivists will often find themselves in agreement. And because of the efficiency of markets and systems of private ordering, law and economics scholars will—with only rare exceptions—take positions compatible with libertarian conservaties. Indeed, some libertarians justify their position on a utilitarian basis not unlike that underlying the law and economics movement.

**Social Conservatism**

Another strain in American constitutionalism seeks to preserve the independence of so-called "mediating" institutions, such as families, churches and synagogues, communities, private colleges and universities, and voluntary associations, from the homogenizing influences of national life. Communitarian, or "social," conservatives tend to prefer local, decentralized decisionmaking over national, substantial autonomy for private associations, latitude for community standards of justice and morality, and—perhaps most of all—enhanced protection for the free exercise of religion.

While interpretivists focus on democracy, libertarians on individual liberty, and the law and economics movement on efficiency, social conservatives see community as the heart of the American constitutional order. It is vital, they believe, for groups of people (whether defined by belief, membership, or geography) to be able to establish mutually binding rules for
themselves—even if those rules conflict with the views of a wider national majority or the interests of some individuals within the groups. Dissenting individuals, after all, can choose some other community, some other faith, some other organization.

Enforcement of community standards for pornography is illustrative. To the social conservative, anti-pornography laws are legitimate and important, because to allow each individual to choose for himself whether to purvey pornography denies every person the right to live in an environment free from pornography; and to set the standard nationally (for example, by a constitutional rule) would eliminate diversity and the possibility of choice from the American scene. Community control offers the only genuinely pluralistic alternative. Neither Manhattan nor Des Moines should be forced to conform to the other’s mores.

Social conservative theorists, frequently of a religious bent, have focused their energies on rolling back constitutional theories of interpretation that squeeze the autonomy of communities between the twin pressures of individualism and statism. Social conservatives are virtually unrepresented in elite academia, but they have scored major victories in court, such as the constitutional right of ministers to counsel their flock without fear of suit for “clergy malpractice,” the legitimacy of tax deductions for private schools, the right of religious organizations to control their own internal governance, the right of communities to outlaw child pornography, and the right of states to refuse to fund abortions.

The most obvious contribution of social conservatives to legal thought over the past ten years has been in the field of church and state. On this subject, the Supreme Court has heaped confusion upon confusion. It has drawn lines where no coherent line can be drawn (for example, states can provide textbooks but not maps to parochial schools). It has treated the

Social conservatives see community as the heart of the American constitutional order.

establishment clause as if it were directly contrary to the free exercise clause. Perhaps most important, it has elevated the notion of “a wall of separation between church and state” to the point where it eclipses the more central value of religious liberty. Social conservatives have played a major part in bringing about a reexamination of these issues. Their central theme is that religion has a legitimate place in American public life—that the Constitution does not embody what Justice Arthur Goldberg once described as “a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious.”

Social conservatives share much common ground with interpretivists, since the principal barrier to community self-determination is noninterpretivist constructions of the Constitution. The abortion decision, Roe v. Wade (1973), for example, is both the galvanizing issue for social conservatives and the exemplar of judicial overreaching for interpretivists. And the separationist decisions under the Religion Clauses are a prime example of departure from the original meaning.

The relation of social conservatives to libertarians is more complicated. Their substantive preferences about social policy frequently differ, and libertarians are often opposed to social regulation even at the local community level. Nonetheless, the two groups have a common hostility to the dominant feature of modern law—increasing national homogeneity—and also share significant common principles, such as vigorous protection of the free exercise of religion.

Conservative legal thought gained ground during the past ten years mostly in opposition to increasing assertions of power by the federal judiciary. As conservative thinkers become conservative judges, and as the movement changes from critic to actor, it will face a different set of problems. It must resolve or accommodate the tensions within its ranks. It must come to terms with over twenty-five years of precedents, many of which, rightly or wrongly decided, have become part of our governmental framework. The conservative commitment to stability and institutional integrity makes them less free than their liberal counterparts to depart dramatically from past decisions with which they disagree. Most of all, the conservative movement must be prepared to overcome the temptation of political expediency that comes with judicial power. Conservatives must not forget that judicial power must be guided by an external principle of law, precisely because it is not accountable to the people in any other way.
On a Clear Day What Can Be Seen Ahead for the Federal Income Tax?

Walter J. Blum

In general terms, the question I am to address is whether the Tax Reform Act of 1986 signals the direction that major tax changes during the next half dozen years can be expected to take. More specifically, the question is whether the 1986 trade-off of broadening the individual income tax base in exchange for reducing the marginal rates of that tax will be a major feature in at least one more significant round of tax overhaul. My answers, I believe, are in harmony with the spirit of the challenge.

A short answer is perhaps the best even though it probably seems too pat. There are so many factors at work in the political and legislative process of taxation that prediction of things to come in six years is treacherous. I have, to be sure, long felt safe in prognosticating that the income tax provisions of the Internal Revenue Code would grow by at least five percent a year, the quantity of regulatory language would increase at a faster rate, tax practitioners would somehow spring up to keep pace with the rising word count and the income tax law would achieve new heights in complexity. These successful peeks into the crystal ball were essentially only cheap shots. I surely did not foresee the 1986 Reform Act; and my earlier serious projections scored best when dealing with proposals that would not be enacted rather than with those that would become law.

Conditional predictions about major tax changes are of a different order. It is a good bet that if we were to become involved in a large scale war, income tax rates would rise and be more highly graduated. If a wave of populism were to dominate voter preferences, the income tax would be more redistributive, and so on. Foretelling the start of a war or a new surge of populism, however, is no easier a task than foreseeing major shifts in the income tax viewed apart from such developments.

A somewhat longer answer to the question at hand is that the 1986 Act was an event that grew out of extraordinary circumstances. To reach agreement on a trade-off of base broadening against reduction of marginal rates, an unusual coalition of unlikely partners was brought together. There were those who favored base broadening because it improved horizontal equity among taxpayers—meaning that persons with roughly equal amounts of economic income would be called upon to pay more nearly equal dollars of tax. There were those who approved of base broadening because a more comprehensive tax base eventually could be used to support a greater degree of income redistribution from the more to the less affluent members of society. There were those who advocated base broadening in order to make the tax more neutral with respect to alternative investment opportunities. There were those who championed reduced marginal rates because they thought lower marginal rates would encourage greater private savings, investment, and work effort. And there were those who insisted that a broader base and lower marginal rates would result in a simpler income tax—whatever that might mean.

This coalition might never have formed in the absence of an overarching rule imposed on the process by the political leaders. Unlike the ground rules for past major tax legislation, the whole package was to be revenue neutral for a period of five years. By accepting some black box magic in
coming up with the projected revenue figures, a somewhat curious presentation of revenue estimates over the years ahead, and some heroic assumptions, it could be said with a straight face that the overall deal would neither increase nor reduce income tax revenues.

The coalition required yet another glue. Estimated revenues lost by reducing individual marginal rates would be greater than those gained by broadening the base. To stay within the self-imposed revenue neutrality constraint the opposite prescription was invoked for corporate tax. Estimated revenues gained from base broadening would exceed those lost by rate reduction. In effect, corporate tax dollars were to be substituted for individual tax dollars. Such a rare environment seems hard to recreate.

The fullest answer to the question whether we should anticipate one more swap of base broadening for lower marginal rates may be the least persuasive but easily the most thought provoking. It focuses on the interaction of the possible sources of additional base broadening and the likelihood of a revenue-neutral constraint in designing the legislation.

Not much searching is needed to uncover the main areas that could produce potentially large additional revenues through base expansion. These are the main candidates: (1) Repeal the deduction for state and local property taxes not connected with a trade or business. (2) Repeal or dramatically cut back the deduction for charitable contributions. (3) Strengthen the minimum tax applicable to individuals by raising the rate and/or toughening the definition of taxable income for purposes of the minimum tax. (4) Eliminate or significantly cut back the deduction for interest payable on home mortgages. (5) Greatly reduce the fringe benefits that are now excluded from the tax base of employees (and are deducted in computing the tax base of employers). (6) Reduce substantially the amount of earned income that can be set aside through qualified retirement plans on a pre-tax or tax-deductible basis. (7) Treat transfer of assets at death as sales at fair market value, thus taking a decedent's gain or loss on the assets into account. (8) End the exemption for interest on new state and municipal bonds.

Most striking about this list is the degree of opposition that each of the indicated moves would undoubtedly engender. Eliminating the deduction for non-business property taxes would sharply depress the value of homes because the tax deduction to an extent is already impounded in the market prices. Cutting back the deduction for interest on home loans would reduce the ability of homeowners to carry their existing mortgages and of potential purchasers to finance acquisitions, again putting a downward pressure on home values. Narrowing the categories of excludable fringe benefits would significantly reduce the after-tax income of workers—and have an adverse effect on the utilization of health and life insurance—especially in heavily unionized sectors of employment. Putting substantially lower ceilings on pre-tax retirement accumulations would run up against the popular notion that

**Unlike the ground rules for past major tax legislation, the whole package was to be revenue neutral for a period of five years.**
the government should encourage private retirement arrangements to take pressure off the social security system and to encourage more private savings. Taxing gains at death (particularly now that capital gains are to be taxed at ordinary income rates) would rally those who have invested in real assets and equities, and in the process would be likely to reopen the status of the time honored realization doctrine in our scheme of things. A ratcheting-up of the minimum tax would arouse those still in a position to benefit from preferential provisions that are in the law. Taxing interest on state and municipal obligations would raise howls from the issuing governments and the bond industry. There is ample cause to wonder about the appetite of Congress to take on a combination of some or all of this formidable array of interests—bearing in mind that each is well organized and articulate and that most of these preferences are widely enjoyed by the middle class and are not generally regarded as abusive or scandalous.

If there is a move to prune further the preferential treatment list, I predict that the effort will be associated with an increase in total revenues...from the income tax system.

On top of this practical concern is the fact that most of these base broadening possibilities have been on the legislative table in the not-too-distant past. After having traveled the long road leading to the 1986 Reform Act there will surely be considerable reluctance to reexamine them again soon, particularly in the context of creating offsets to another reduction in marginal rates.

Other considerations strongly reinforce this view. Included among the special ground rules for the 1986 enactment was the political understanding that, except for those at the lower end of the taxable income scale who would be dropped altogether as taxpayers, the relative tax burdens of the various income classes would by and large remain about the same as before. The reconstruction of the tax, in other words, was to be distributionally neutral. It is doubtful that one could accomplish such a result in working with the various base broadening measures that have a potential for raising large revenues. Without distributional neutrality as a goal, however, hammering out a swap of base broadening for rate reduction might seem to many a much less inviting project.

The foreseeable difficulties in reaching agreement on so-called tax reform while keeping within the revenue and distributional neutrality constraints suggest that political leaders will not be eager to embrace these shackles again soon. If there is a move to prune further the preferential treatment list, I predict that the effort will be associated with an increase in total revenues to be raised from the income tax system. We might well see base broadening but not as part of a package that calls for another reduction in marginal rates. The case for cutting back on preferential provisions in order to raise greater revenues might turn out to be more appealing than doing so in order to reduce marginal rates further.

What reason is there to think the tax base might be significantly broadened? After all, during the sixties and seventies and early eighties the movement was decidedly in the other direction. The favorite route of Congress to reduce overall income tax revenues was not to cut marginal tax rates but to narrow the tax base. Various observers forcefully assert that legislators have more to gain in terms of funds or status by doing something for certain of their constituents rather than for their constituency in general. A seat on a tax writing committee can be a valuable asset. Is there any good reason to expect that congressmen will be guided by a different calculus in the future?

My response is a tentative maybe. At the moment I detect a broad feeling (even in Washington) that prior to the 1986 Reform Act the base shrinking game had simply gotten out of hand; to such an extent that more and more taxpayers perceived the system to be unfair, perhaps leading to a growing reluctance to comply with the law. This assessment of the situation, if correct, may well dampen enthusiasm for another burst of preferential provisions (call them tax expenditures) for some time to come.

On the other hand many of the players in the tax field have strong beliefs that the government should do more to guide or influence parts of our economy in what they regard as the right directions. Numerous lawmakers share this attitude. One inviting way of encouraging or discouraging particular economic activity is to provide incentives or disincentives through adjusting the income tax base, which helps explain why legislators often find that these adjustments are advantageous from their point of view. The attraction of managing the economy could quickly cause the immediate past history of the income tax to be forgotten.

Not to be ignored is another force that is apt to keep base-broadening on the front burner. Staff advisers and legislative assistants and their associates play an increasingly important role in the tax law-making process. This is not to suggest that they cast votes or work out deals among congressmen. They do, however, have a high degree of familiarity with the law and are frequently called on to formulate ideas for "improving" the income tax or accomplishing some objective on the agenda of a legislator. It is not
surprising to me that these analysts often lean toward broadening the base if circumstances permit.

Two pulls seem to be notably active. One is the understandable feeling that if you are working for the government you should not give anything away to taxpayers; you should, indeed, favor putting an end to earlier giveaways. This feeling is undoubtedly reinforced by the omnipresence of the tax expenditure list—which can be thought of as an official annual catalog of preferential provisions or subsidies to particular groups of taxpayers by way of tax reductions. The list is sometimes privately labeled the giveaway docket. I would expect that virtually every item on the list is represented by one or more proposals, already embedded in some congressional computer, for ending or curtailing the scope of that tax expenditure.

The other pull stems from the predominant tone of publications by economists dealing with government finance. Henry Simons, my teacher, still is a leader when this group of analysts turns to the personal income tax. Simons contended that equity and economic efficiency will be improved if the base of the tax is defined, to the extent practical, as income in the economic sense, by which he meant consumption plus net savings of each taxpayer during the period when income is being measured. It is not too far off the mark to treat this conception of taxable income as the foundation for the tax expenditure list. Leaving out of the tax base an element of economic income that could feasibly be brought into it is the core of a tax expenditure. The government is seen in effect as spending in the form of a tax subsidy the dollars not collected as a result of having preferential provisions in the tax law.

To be sure, not all public finance economists share the Simons approach to income taxation. Those who favor using the tax system to manage the economy urge a wholly different prescription. But their writings, as yet, do not appear to have the same power to persuade the generations now active on the scene.

Law teachers also buttress the notion of moving in a direction to equate taxable income and economic income. I know from personal experience that a good method of forcing students to map the world of tax rules is to use economic income as a touchstone. This baseline constitutes a fine jumping-off spot for analyzing a set of rules realistically—for figuring out who benefits or is burdened by the law under inspection. Whether or not the exercise works in class as intended, and I think it does, it often also serves to convince students that a Simons type of approach is sound. Many of the congressional legal advisers can very likely trace their own predilections of this kind to their classroom experience in law school.

I should also mention a related point, based mainly on hearsay. Some law teachers do not seem very hesitant to make known their strong attachment to a more rather than a less progressive income tax. Such a viewpoint perhaps also carries over from classroom to government service, although the attractiveness of progression need not originate in a law school course on income taxation. My point is limited to suggesting that many recent graduates in law might be counted on to

push for a broader based tax but not necessarily one that encompasses lower marginal rates, feeling that top marginal rates are already too low and cannot provide a sufficient degree of progression.

I have now come close to answering the assigned question. My short, longer, and fullest answers are that during the near future tax changes are unlikely to extend the 1986 tax reform theme of broadening the tax base in exchange for reduction in marginal rates.

During the near future tax changes are unlikely to extend the 1986 tax reform theme of broadening the tax base in exchange for reduction in marginal rates.
Are Women at a Disadvantage?

In the Spring 1987 issue of The Law School Record we published a letter from Elizabeth Gorman Nehls '85 on the position of women in law school. We invited you to respond. Letters have been edited solely because of space constraints.

To the Editor:

I am intrigued by Elizabeth Gorman Nehls's perceptions 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," and by her various explanations, including that "women continue to experience discrimination against them, only in more subtle forms...."

Initially, one might ask what measure of academic and professional success might be expected of the Law School's female students. Women at the Law School have served on the University of Chicago Law Review, been moot court champions, graduated cum laude, and been elected to the Order of the Coif. Female graduates have held judicial clerkships at all levels, including the United States Supreme Court; have been appointed to powerful government positions, such as federal prosecutor; and have been elected to partnerships at some of the nation's most powerful and prestigious law firms, to name but a few accomplishments. This is an impressive track record, indeed.

A second, more compelling question is what numbers have to do with any of this. If, for one, find nothing more sexist or racist than the assumption that all positions in society should be filled in accordance with percentages determined by sex or race. This is not to suggest that one should expect any particular sex-based or race-based makeup in society, but only that sex and race should be immaterial. From my perspective, we will be a less sexist, less racist society when we stop perceiving and categorizing people based on sex and race....

Ms. Nehls's sex-based introspection on the reasons other than discrimination (invidious, we presume, no matter how subtle) that may account for perceived disparities in the success rates of male and female students seems only to trade on outmoded stereotypes and perpetuate unfortunate myths....

If, for example, 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 relationships," as Ms. Nehls claims, we might presume that men are raised to accept the opposite. If not, then Ms. Nehls's observation about women is meaningless; but if so, then men's ingrained "ethic of selfishness" would seem to deprive them of important personal resources: the senses of duty and responsibility essential for assuming leadership roles in society, and the interpersonal skills and relationships necessary for successful group interaction and for coping with the anxieties of decision making....

Similarly, to the extent that a perceived linkage between femininity and passivity implies a linkage between masculinity and aggression, that very aggression could be a reason why men should not succeed. Clients, coworkers, supervisors, and constituents frequently do not respond well to aggressive, self-centered behavior.... Once again, the peculiarities of the male makeup (if such exist) offer as many reasons for failure as for success.

Finally, if Ms. Nehls's analysis implies that men succeed in disproportionate numbers because they expect to succeed, then it ignores a vast body of empirical and anecdotal evidence. The evidence is that many men do not succeed in life, regardless of their expectations. Ms. Nehls's analysis also ignores the corresponding pressure brought to bear, both by themselves and by others, on those who are expected to succeed. As standards become set impossibly high, failure to achieve them becomes inevitable....

The fear of possible failure and anxiety caused by unrealistically high standards can in and of themselves deter success.

In sum, Ms. Nehls's explanations for a purported problem seem flawed by very fundamental sexist notions about both men and women. Such
thinking is likely to perpetuate sexual stereotypes, not reduce or eliminate them. As for me, I simply don’t perceive the problem. I see nothing for which women students or graduates of the Law School have to apologize. Women, like men, should simply ask themselves if they are satisfied with what they have accomplished as individuals.

Very truly yours,

David L. Applegate ’78
Karon Morrison & Savikas, Ltd.
Chicago

To the Editor:

Ms. Nehls implicitly offers a vision of a brave new world, which I find unsatisfactory—a world in which women, in order to share in the bounties that the men before them have labeled success, have cast aside the special qualities that they now (according to Ms. Nehls) hold in such abundance.

I refer in particular to the “ethic of selflessness”—a quality lamented by Ms. Nehls but in which I would find cause for pride and joy. I must say, I have my doubts that women in law school are as selfless as Ms. Nehls suggests. My experience was that one had to look long and hard for a friend, woman or man, who would make the kinds of sacrifices that Ms. Nehls describes as “self-defeating choices.” But if it is true that more women than men possess this quality, then we women must never be found wringing our hands and looking to men to show us a better way. We should proselytize rather than apologize and strive to ensure that men learn to sacrifice right along with us. And we should do so not only to lift some of the burdens now placed on us—burdens that result when only one group is expected to make the kinds of personal sacrifices Ms. Nehls describes—but also in order to show that there is a better, a more complete way to live a life.

[Ms. Nehls] offers a view of success that I do not share. The choices that she labels “self-defeating” are all decisions in favor of personal relationships and against conventional professional success, and she includes within the category of women who have abandoned the struggle for success those who choose to “do good” through charitable or political activities.” If success is measured only in terms of one’s GPA, fancy extracurriculars, and financial net worth, then it will not behoove ambitious women to make sacrifices for the sake of others. But if success is conceived more expansively, then a failure to be unselfish might be a failure to be successful.

It may not have crossed [Ms. Nehls’s] mind to ask the antecedent question of what it is that we mean by “success.” In failing to ask this question, however, one minimizes the contribution that women can make to society; one begins the debate by assuming that the only progress to be made is to place more women in certain positions. But if after all is said and done…we bring with us to the courtrooms and the boardrooms and the Oval Office only the bare fact of our gender, then I will sadly conclude that we have achieved little in comparison to what we might have done. Yet if we bring with us not only our gender but at least some of the qualities that we have been taught to cherish and maintain—a judicious selflessness and measured self-sacrifice—then we will have made an important change indeed. Ms. Nehls describes a coup d’état; I envision a revolution….

I agree with Ms. Nehls that women often react passively and often expect to fail; and I think that these tendencies may promote an excess of what passes as generosity but is better labeled insecurity. An insecure person will make unnecessary and pointless sacrifices; she will, perhaps, rush to the aid of a friend who is really not in distress.… So I think that women must be confident in order not to sacrifice themselves into oblivion. A first step toward gaining that confidence would be to announce that our “special handicaps not applicable to men” (as Ms. Nehls describes them) are, in fact, no such thing.

All of this is not to say that I am not gleeful when I see a woman score a top grade on an exam or land a particu-
larly (and conventionally) attractive job; I am. The world I have sketched should not be pictured as a place where some people are thought successful because they get good grades or write persuasive briefs, and some because they have good friends. On the contrary, it is a world in which such specialization has no place. Yet I do not think that shouldering greater personal responsibility necessarily means that everyone must endure a corresponding decrease in professional accomplishment. In fact, one of the attitudes that women can help finally to detonate is the tired notion that personal fulfillment and professional achievement are mutually incompatible. I sense that this notion is partly responsible for Ms. Nehls's criticism of the ethic of selflessness.... I am optimistic enough to believe that happiness promotes productivity, and I urge that in trying to become good lawyers, women not discard some of the qualities that would make them good people.

Sincerely,

Lisa Heinzerling '87
Chambers of Judge Richard A. Posner
U.S. Court of Appeals, 7th Circuit
Chicago

To the Editor:

To Liz's generally cogent and insightful analysis I would add that it can be misleading to think of women as a homogeneous group. Racial and class differences remain important; the expectations and experiences of white, middle class women are not universal. For example, to generalize, black women lawyers seem to have fewer issues of passivity and dependence and guilt about working. Unlike their white counterparts, black women of course have always worked outside their homes, as racism did not and does not permit us the luxury of dependence on our men. On the other hand, expectations of failure by minority women themselves and their white evaluators are greatly increased and complicated by racism.

These differences must be taken into account in designing any program to meet the needs of all women students and lawyers. Not only must the special handicaps of traditional femininity be recognized, but the greater burdens of race and class must be addressed for minority women.

Sincerely,

Colette Holt '85
Sidley & Austin
Chicago

To the Editor:

While I would agree with Liz that women law students could benefit from assertiveness training and career counseling I was disturbed by her ready acceptance of male values and male conceptions of success as the measuring stick by which to judge women's achievements.

In her letter Liz identifies three ideas or values which hold women back and suggests they are handicaps women should work to overcome. One of the values which she identifies is the Ethic of Selflessness, the concept of helping others first and focusing on oneself only after those obligations have been fulfilled.... Liz blames this ethic for pushing women toward charitable and political activities and thus "opt[ing] for low career aspirations in terms of what is generally conceived of as success." But this statement reveals the true problem. What is "generally conceived of as success" is a male conception of success. And if the standards are based on male behavior, which is then passed off as human behavior, women will naturally measure up poorly....

It turns out that Lawrence Kohlberg's well-known theory of moral development with its hierarchy of six stages was based on a study of eighty-four boys. From this group of boys he generalized to a universal theory.... But since the model was based on male development, it is no wonder that women consistently rank low on his scale. Likewise, if the legal profession persists in measuring success by male standards, of course it will look like women are failing. One could read Liz's suggestion of special programs and counseling for women students as a scheme to mold women law students into imitation male law students so that they can better strive for male-defined success. I think that is a mistake.... Rather than changing women, a better solution would be for the legal profession to recognize and embrace women's values and thereby redefine success.

Male law professors are in an ideal position to encourage these changes in the profession. They can start by recognizing that the profession, and the law itself, has been a profession of men - created by them and infused with their values.... The lack of recognition and support women law students receive for their ideas in class goes a long way toward explaining their hesitation to speak up.

Increasing the number of women on the faculty would be a very simple way to broaden the range of ideas available to faculty and students while giving those ideas recognition. The school has always said it would hire more women if it could find some who met its high standards. But this brings us back to the definition of success. Women are perceived as unqualified or unsuccessful because they do not meet the male standards. If the yardstick is based on a male model of professional qualifications, then of course women may not measure up. Only by using standards that recognize women's experiences, ideas, and values can the measuring stick be truly equitable.

Sincerely,

Eve Jacobs-Carnahan '86
Bingham Dana & Gould
Boston

To the Editor:

Although I attended the University of Chicago Law School almost twenty years before [Ms. Nehls] did and although my life has been different from that of most women graduates of the law school, I found much in her article that struck a responsive chord in me.

I did not enjoy law school. Perhaps that was due, as Ms. Nehls suggests it might have been, to being one of eleven women in a class of 148 when we matriculated in 1965 and one of ten
in a class of 125 when we graduated in 1968. Perhaps it was due to being in school during the turbulent 1960's. Perhaps it was due to being a Chica-goan who had attended public schools and a Midwestern college, both facts that placed me outside the realm of the Ivy League-Seven Sisters clique obviously prevalent at the Law School...

No woman chose to attend any law school in the 1960s because her family wanted her to or because she did not know what to do with herself. We were all conscious of being "different," of being pioneers whether we wanted to be or not. The U. of C. was, as far as women per se were concerned, probably the best place for a woman law student in the 1960s. Congresswoman Pat Schroeter says that when she sat down in her assigned chair at Harvard Law School in the early 60s, the men students on either side got up, announced they'd never attended school with a woman before and never would, and obtained new seats. That never happened at Chicago, I'm sure. The faculty, without exception, exhibited no bias I ever detected. The men students, with one exception, rarely exhibited animosity. The general atmosphere, however, could often be as cold as the Green Lounge on a January morning. Perhaps what women—and others who find themselves in ambiguous situations—needed and still need is a supportive, friendly atmosphere in which cooperation in the group learning experience is more important than competition within the group. It will be a long time, however, before one finds that in any American law school.

Sincerely,

Ann Lousin ’68
Professor of Law
John Marshall Law School
Chicago

To the Editor:

Undoubtedly, some of what Ms. Nehls says is true. On the whole, however, I think her letter misses the point.

In my experience at the Law School, women students performed as capably, if not more so, than their male colleagues. In my class (of 1978), for example, women made up approximately 23 percent of the class but 36 percent of the members of the Law Review and 37 percent of its editors. Similar experiences have been noted by my college classmates who attended other well-known law schools; on the whole, female law students perform as well, if not better, than their male counterparts.

There are real difficulties, however, that some women encounter in practicing law at large law firms. These are not the result of an "ethic of selflessness" or a "linkage of passivity"; on the contrary, female lawyers I have worked with in my law firm are every bit as capable as their male counterparts. Rather, the difficulty is one that has been encountered by women in many fields today. It seems to me that it is difficult, if not impossible, to combine the practice of law in a large law firm environment with motherhood and the responsibilities of raising a family. Men, too, often have family responsibilities but inevitably in our culture they do not seem to be as heavy a burden and are not incompatible with large law firm practice. It is in this area that women face severe problems that may, in many cases, handicap their ability to obtain the highest professional achievement and not in any "expectation of failure" that they have.

Sincerely,

David W. Pollak ’78
Morgan Lewis & Bockius
New York
After receiving his B.S. degree from the U.S. Naval Academy in 1955, Mr. Curtis was a line officer in the U.S. Navy for eight years. He then went to Yale Law School and received his LL.B. degree in 1966. After a short period in private practice, Mr. Curtis joined the faculty of Yale Law School in 1969 where he taught various aspects of criminal law. He went to the University of Southern California in 1981, where he teaches professional responsibility, trial and appellate advocacy, and post-conviction issues. Since 1969 his primary responsibility has been the design, development, and administration of clinical programs.

Martin D. Ginsburg, Professor of Law at Georgetown University Law Center, will visit the Law School in the Fall Quarter and will teach a course and seminar in taxation. Mr. Ginsburg graduated magna cum laude from Harvard Law School and entered private practice in New York in 1958. He gave up full-time practice when appointed the Beckman Professor of Law at Columbia Law School. He moved to Georgetown University in 1980 when his wife, Ruth Bader Ginsburg, became a judge of the United States Court of Appeals for the District of Columbia. Mr. Ginsburg served as chair of taxation committees for the Bar Associations of the city and state of New York and the American Bar Association and has served on advisory groups to the Commissioner of Internal Revenue and the Tax Division of the Department of Justice. Since 1974 Mr. Ginsburg has acted as consultant to the American Law Institute’s Federal Income Tax Project on the revision of the corporate and partnership tax laws. He has taught at New York University School of Law, Stanford Law School, the University of Leyden in the Netherlands, the Salzburg Seminar in Austria, and Harvard Law School. Mr. Ginsburg is a Fellow of the American College of Tax Counsel and a frequent speaker at tax seminars.

Fall Quarter, 1988. After graduating cum laude from Bryn Mawr College in 1972, Ms. Resnik studied at New York University School of Law, receiving her J.D. degree, cum laude, in 1975. She clerked for Judge Charles E. Stewart, Jr. of the United States District Court of the Southern District of New York, then taught at New York University School of Law for one year and at Yale Law School for three years. She went to USC in 1980. Ms. Resnik has written extensively in areas of civil procedure and criminal justice. While at Chicago, she will teach Civil Procedure I and a seminar.

Judith Resnik
School. Ms. West teaches contracts, jurisprudence and law and literature. She graduated in 1976, cum laude, from the University of Maryland and received her J.D. degree from that University's school of law in 1979. She also holds a Master of Juridical Science degree from Stanford Law School. Ms. West has taught at Cleveland-Marshall College of Law and at Stanford Law School. She has written widely on feminist theory and law and literature.

Lecturers in Law

Sheldon Banoff, Senior Tax Partner at Katten Muchin Zavis Pearl Greenberger & Galler in Chicago, will teach a seminar in real estate transactions in the Spring Quarter, 1989. Mr. Banoff is a 1974 graduate of the Law School. He was an associate editor of the University of Chicago Law Review and received the Jerome Frank prize for an outstanding comment published in the Law Review. Mr. Banoff has written widely in the field of taxation and is a member of several professional bodies including the Executive Council of the Chicago Bar Association Federal Taxation Committee and the University of Chicago Law School's Tax Conference Planning Committee.

Sara L. Johnson joined the Mandel Legal Aid Clinic as Staff Attorney and Clinical Fellow on November 30, 1987. She is currently responsible for the Clinic's utility practice and plans to initiate work in the health care area later this spring. Ms. Johnson graduated from Washington University in St. Louis in 1978 with a degree in history and economics. She received her J.D. degree from the University of Chicago Law School in 1981. After graduation from law school she spent six years with the law firm of Schiff Hardin & Waite in Chicago, specializing in civil litigation.

Mandel Legal Aid Clinic

Robert R. Cohen was appointed Staff Attorney and Clinical Fellow in September, 1987. He graduated from the University of Maryland in 1983, with a B.S. degree in accounting and earned his J.D. degree from the University of Chicago Law School in 1986. After law school, Mr. Cohen joined the law firm of Mayer, Brown & Platt in Chicago, practicing securities, First Amendment, insurance, labor, and contract law. He is currently on leave of absence from the firm. While at the Mandel Clinic, he will work on the Employment Discrimination Project.

Samuel Thompson

Samuel C. Thompson, Jr., will teach a business seminar at the Law School in the Fall Quarter, 1988. Mr. Thompson is the partner in charge of the tax division at Schiff Hardin & Waite in Chicago and director of the graduate tax program at IIT Chicago-Kent College of Law. He graduated in 1965 from West Chester State College, Pennsylvania and earned his M.A. degree in business and applied economics at the Wharton School, University of Pennsylvania. He received his J.D. from the University of Pennsylvania Law School in 1971, then went on to the New York University School of Law where he received an LL.M. degree in taxation in 1973. Throughout his career, Mr. Thompson has alternated between university teaching (at Northwestern University School of Law and University of Virginia School of Law) and private practice. He has also been attorney-adviser to the Tax Legislative Counsel and the International Tax Counsel's offices in the U.S. Treasury Department.

Law School News

Visiting Committee

The annual meeting of the Visiting Committee took place on November 10 and 11, 1987. After introductory remarks from Dean Geoffrey Stone, the members of the committee heard a panel discussion on the Mandel Legal Aid Clinic, with presentations by its director, Professor Gary Palm (J.D. '67), Mark Heyrman (J.D. '77), Lecturer in Law and currently visiting Associate Professor at Northwestern University Law School, and Randall Schmidt (J.D. '79), Clinical Fellow.

This was followed by a panel discussion concerning the Clinic from the student's perspective, in which current clinic students participated. Students joined the Committee for lunch. In the afternoon, the Committee took part in a discussion about the Trial Practice and Major Civil Litigation courses at the Law School, presented by the teachers of those courses, Judge Warren Wolfson, Mr. Michael Howlett, and Judge James Holdeman. The discussion was followed by a presentation by five faculty members, Professors Albert Alschuler, Mary Becker (J.D. '60), Walter Blum (J.D. '41), James Holzhauer, and Geoffrey Miller, about clinical legal education at the Law School.

Professor Richard Helmholz, Ruth Wyatt Rosenson Professor of Law and Director of the Legal History Pro-
gram, delivered the annual Wilber G. Katz Lecture in the Weymouth Kirkland Courtroom. The title of his talk was “The Formation of the Western Legal Tradition Unformulated.” Mr. Helmholz first looked at the publication of a successful but controversial book by Harold Berman of Harvard Law School, entitled Law and Revolution: The Formation of the Western Legal Tradition. Describing the work as an

R. H. Helmholz

“event of legal significance”, he nevertheless argued that it relied too heavily on a single formula. He “unformulated” Berman’s account in the rest of his talk, taking three themes from the book: the useful concept of a Western legal tradition, the influence of canon law on this tradition, and the idea that an appreciation of Western legal tradition will help us overcome the current age of legal crisis. He illustrated these with three examples from the history of the common law: the adoption of Magna Carta in 1215, the creation of the English Poor Law in the sixteenth century, and the development of the privilege against self-incrimination in the seventeenth.

The lecture was followed by a reception in the foyer and dinner for the Visiting Committee and other guests in Lower Burton Lounge.

The following day, members of the Committee learned about programs at the Law School. Professor David Strauss discussed the new Law and Government Program; Professor Stephen Schulhofer talked about the Center for Studies in Criminal Justice; Professor John Langhein talked about

Forty Years of Tax Conferences

Last October marked the fortieth anniversary of the University of Chicago Law School’s Federal Tax Conference, one of the nation’s leading tax conferences. The guiding light of the conference for thirty-nine of its forty years has been Walter J. Blum (J.D. ’41), Edward H. Levi Distinguished Service Professor at the Law School. Mr. Blum looked back to the origins of the conference.

“It was originally started by Robert R. Jorgensen, the director of taxation at Sears, Roebuck, who was also closely affiliated with the University’s Business School and the Downtown Center, the original sponsors of the conference. I attended that initial conference and then stole it for the Law School.”

The Federal Tax Conference was founded because the post-war years saw a huge new interest in taxation, as the tax laws became more pervasive and broadly based. Taxes now affected far more people than before World War II. The conference served as a forum for discussion for experts involved with the problems of federal taxation—lawyers, accountants, and business executives—rather than as an introduction to the field.

Initially, when there were few continuing professional educational programs and little up-to-date reporting available to tax practitioners, the conference papers tended to focus on the technical details of the law. It was widely thought that a good paper summarized the laws and the directions in which it was headed. Today the Planning Committee discourages this approach. Emphasis is now placed on analysis rather than on a statement of the law. The conference is approved for credit for continuing professional education, and the proceedings of each conference are published in the December issue of TAXES—The Tax Magazine.

Other changes are due to the much more rapid pace of tax legislation today. During the first two decades of the conference major tax legislation was seldom enacted more frequently than every four to six years. Now, important legislation is passed almost every year. Under these circumstances, the Planning Committee must gamble, many months in advance, on what items will be of interest at the time of the conference. So far, its guesses have been the odds, including the fairly safe bet for the fortieth conference last October that the Tax Reform Act of 1986 would still be of keen interest to tax experts in 1987.

Speakers at the last conference, entitled “Tax Reform Act of 1986: Revolution, Not Evolutionary” included Howard Krane (J.D. ’57) of Kirkland & Ellis and Paul Strasen (J.D. ’81) of Bell Boyd & Lloyd in Chicago, as well as Eric Zolt (J.D. ’78) from UCLA School of Law and speakers from law and accounting firms in Chicago, Washington, D.C., Houston, Detroit and Los Angeles.

The fifteen-member Planning Committee, drawn primarily from law and accounting firms in Chicago, numbers several Law School alumni among its members: Sheldon Banoff (J.D. ’74), Stephen Bowen (J.D. ’72), and Howard Krane, as well as the chair for the past two years, Burton Kanter (J.D. ’32). Howard Krane noted that the future of the tax conference is clear.

“It will be business as usual, in the sense that nothing remains the same. Under Walter Blum’s guidance, the conference has always kept pace with tax laws and has changed direction as the laws have changed. It will continue to do so, probably for as long as the Federal government continues to impose taxes on its people.”

Walter J. Blum

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the Legal History Program; and Professor Daniel Fischel (J.D. '77) discussed the Law and Economics Program. An executive session with Dean Stone followed. The meeting closed with lunch with the faculty. Traditionally, the youngest faculty member speaks to the Visiting Committee at the closing luncheon. Professor Larry Kramer (J.D. '84) spoke about New Wave Scholarship.

A list of members of the Visiting Committee can be found on page 52 of this magazine.

Fulton Lecture

The inaugural Maurice and Muriel Fulton Lecture in Legal History was given on November 19 by Professor Charles Donahue, Jr., of Harvard Law School. His talk was entitled "The Monastic Judge: Social Practice and Formal Rule in Medieval Marriage." He examined the strict rules of medieval marriage, under which all those related within the fourth degree of consanguinity (same great great grandfather) and affinity (relations contracted by marriage) were forbidden to marry. Tracing the career of Richard of Clyve, a thirteenth-century Canterbury monk who judged many marriage cases, Mr. Donahue showed the evolution of one judge's views on how strictly the law should be enforced.

The Fulton Lecture has been endowed by Mr. and Mrs. Maurice Fulton (J.D. '42) to bring a distinguished speaker from outside the Law School to deliver a public lecture. Professor R. H. Helmholz, Ruth Wyatt Rosenson Professor of Law and Director of the Legal History Program, said that the Fulton Lecture will help to further the aim of the Program to bridge gaps between different disciplines and institutions. The Fulton Lecture attracted an audience from the University's History Department and from other law schools in the area. Many of Mr. and Mrs. Fulton's friends also attended.

A reception was held in the new part of the Harold J. Green Lounge after the lecture, followed by dinner for invited guests in Lower Burton Lounge.

Legal Forum Symposium

The University of Chicago Legal Forum held its third annual symposium at the Law School on December 5. The theme of the symposium was "Testing in the Workplace." Leading academics and practitioners from the private sector and public interest groups explored the uses and legality of testing in the workplace, focusing on the balance between individual rights and employer interests in workplace screening procedures. The symposium was divided into three panels. The first panel offered a general perspective on legal issues including the right to privacy, defamation through the dissemination of test results and the constitutionality of testing under the Fourth Amendment. Speakers were Alan Westin, Professor of Public Law and Government at Columbia University, Elaine Shoben, Professor of Law at the University of Illinois Urbana-Champaign, and Allan Adler, Legislative counsel for the ACLU and the Center for National Security Studies.

In the afternoon, the second panel examined the roles and rights of parties involved in workplace testing, looking at employer interests, the federal government's role in testing programs and the responsibility of labor unions for protecting workers. Speakers were Peter Bensinger, President of Bensinger, DuPont & Associates, James Holzhauer, Assistant Professor of Law at the University of Chicago, and Paul Levy (J.D. '76), an attorney with the Public Citizen Litigation Group.

The final panel's speakers were Lance Liebman, Professor of Law at Harvard University, Mark Rothstein, Professor of Law and Director, Health Law Institute at the University of Houston, and Richard Epstein, James Parker Hall Professor of Law at the University of Chicago. They looked at the right to test for AIDS, the ethics of medical screening for drugs and AIDS, and the consequences of widespread testing, which results in an expanded knowledge of workers' medical profiles.

State Representative Carol Moseley Braun (J.D. '72) speaking at a panel discussion entitled "Keeping the Dream Alive," in memory of the late Harold Washington, mayor of Chicago. Other speakers were former fifth ward Alderman Leon Despres (J.D. '29), State Senator Richard Newhouse (J.D. '61), and fifth ward Alderman Lawrence Bloom (J.D. '69). The discussion was sponsored by the Progressive Law Students Association and was held on January 18 in honor of the birthday observance of the Rev. Dr. Martin Luther King, Jr.
Reproduction Rights Program

The Glen R. Lloyd auditorium was packed to capacity on Friday, January 22, 1988, the fifteenth anniversary of the historic U.S. Supreme Court decision in Roe v. Wade. The audience of Law School students and members of the University community had gathered to listen to a panel of speakers discuss "The Struggle for Reproductive Freedom: Roe v. Wade 1973-1988."

The seminar was sponsored by the University of Chicago Law Women's Caucus, the University of Chicago Black Women's Political Caucus, and the University of Chicago Women's Union and received funding from the Daniel and Susan Greenberg Fund at the Law School as well as from the University's Student Government Association.

In his introductory remarks, Dean Geoffrey Stone noted that the impending appointment of a new Justice to the Supreme Court might result for the first time in a majority of justices who would be unsupportive of the Roe decision. Before the main speakers began, Assistant Professor Diane Wood sketched in the background to the case, explaining that the Court's decision was based on very broad constitutional grounds that freed women from state restrictions on their right to control their own lives, but that allowed the states to test the limits of the decision by attempting to restrict abortions on several grounds. So far, she said, the Court has struck all these down except the prohibition on public funding of abortions.

Sarah Weddington, the attorney for the plaintiff in Roe v. Wade, related how she came to file the original Roe law-suit disputing the constitutionality of Texas criminal abortion laws and how she eventually found herself as the youngest woman lawyer (age 26) to argue a landmark case before the U.S. Supreme Court. Although Roe's baby had been born before the case came up (ironically, aborting the baby would have aborted the case), it was important to argue the principle to the end. "Law is for justice, not just for commerce," said Ms. Weddington.

Sarah Weddington, Colleen Connell, Catharine MacKinnon, and Eleanor Smeal, panelists in the discussion on reproduction rights.

Colleen Connell, staff attorney of the ACLU Project for Reproductive Rights, described what has happened in legislation and litigation since Roe. Unlike Professor Wood, she did not see the many cases since Roe as "testing the limits" of Roe, but rather as reflecting a lack of concern for the health of women and a hostility to fundamental rights. She cited Illinois as a particularly insensitive state.

Catharine MacKinnon, Visiting Associate Professor of Law and the author of Feminism Unmodified as well as coauthor of the Indianapolis Anti-Pornography Statute, equated the right to abortion with sexual equality. She listed other areas of the sexual devaluation of women, such as pornography and prostitution and, looking toward the future, predicted that until women gain the rights to sex on their own terms and to whole lives while also having children, the abortion right will remain crucial to every other form of sex equality.

The last speaker, Eleanor Smeal, past president of the National Organization of Women, bitterly recalled her dealings with legislators who would support women's issues only if they could make political capital out of it. The rights of women to be treated as equal citizens are strongly supported by public opinion, she said, but women are losing in the legislatures.

"We are very tired of begging to predominantly all-male bodies for our fundamental rights to medical care, to decent pay, to all kinds of conditions."

The panel discussion was followed by twenty minutes of questions from the audience.

John S. Lord and Cushman B. Bissell Scholarships

The Chicago-based law firm of Lord, Bissell & Brook has added funds to a scholarship first established in 1979 in memory of John S. Lord. The additional funding, a total of $150,000, will now also honor Cushman B. Bissell, who died in April, 1987. The scholarship supports first- and second-year students who demonstrate academic excellence, initiative, and leadership qualities.

Thomas R. Mulroy

Gift to Moot Court

Incentives to enter the Moot Court Competition have increased, thanks to a $100,000 gift from Chicago attorney Thomas R. Mulroy (J.D. '28). Mr. Mulroy, senior counsel at the Chicago firm of Hopkins & Sutter, has endowed prizes for the competition. The first and second place winners of the Hinton Moot Court Competition will be awarded the Thomas R. Mulroy Prize for Excellence in Appellate Advocacy in amounts of $1,000 and $500 respectively, and twelve semifinalists will receive awards of $200. Mr. Mulroy's gift doubles the amounts previously awarded to first and second place winners and establishes for the first time awards for semifinalists.
The judges of this year’s final competition on May 11 will be Robert Bork (J.D. ’53), formerly a judge of the U.S. Court of Appeals, District of Columbia Circuit; Chief Judge Patricia Wald of the U.S. Court of Appeals, District of Columbia Circuit; and Judge John Minor Wisdom of the U.S. Court of Appeals, 5th Circuit.

Hormel Loan Forgiveness Program

The first year of the Hormel Loan Forgiveness Program has now been completed. Four graduates have benefited from the Program, which was set up by James Hormel (J.D. ’58) to help graduates who are working in public service areas to repay their student loans. The loan forgiveness program is part of a wider public service program being developed by Mr. Hormel and the Law School to encourage graduates to take up careers in public service. Joan Meier (J.D. ’83), who worked with the Public Citizen Litigation Group, Susan Donnelly (J.D. ’83), with the Illinois Educational Labor Relations Board, Aaron Iverson (J.D. ’95), in the Cook County States Attorney’s Office, and Catharine Forest (J.D. ’87), also with the Cook County States Attorney’s Office, have all received assistance during the past year. Several other graduates have also inquired about qualification. Any graduate seeking information about the program and an application form should call or write to Assistant Dean Richard Badger (J.D. ’68), University of Chicago Law School, 1111 E. 60th Street, Chicago, IL 60637, telephone (312) 702-9484.

Edith Kreeger Wolf

Edith Kreeger Wolf died on August 19 at the age of 83. In 1965 Mrs. Wolf established the Julius Kreeger chair at the Law School in honor of her first husband, who was a Chicago attorney and 1920 graduate of the Law School. Mr. Kreeger died in 1961. The Julius Kreeger Professorship in Law and Criminology is held by Professor Norval Morris. Throughout her life, Mrs. Wolf maintained a lively interest in Mr. Morris’s work and that of the Center for Studies in Criminal Justice.

Young Presidents’ Organization

Seventy-five members of the Young Presidents’ Organization visited the Law School on January 20 as part of their Midwest Convention. The YPO is an organization of successful business leaders each of whom became the chief executive of a firm before his or her fortieth birthday. The organization exists to educate and foster exchanges of ideas among its members. The Law School visit introduced YPO members to the work of the Law and Economics Program. After introductory remarks from Judge Richard Posner, the visitors heard brief talks on law and economics in the business world from Professors William Landes, Dennis Carlson (from the Business School), Daniel Fischel, and Judge Frank Easterbrook (J.D. ’73). Following a break for coffee, the YPO visitors looked at law and economics in a wider perspective with Professors Richard Epstein, Alan Sykes, Douglas Baird, and Geoffrey Miller. The visit closed with a reception at the Oriental Institute and dinner in Hutchinson Commons.

Class of 1990

This year’s entering class has 176 students, including nineteen minority students, a record number. Forty-one percent of the class are women, which is also the highest percentage ever. The students come from all over the United States, with an emphasis on the Midwest and Eastern states. More than half the students come to law school after a break of a year or more since obtaining their undergraduate degree. Over 10 percent of the entering students have graduate degrees. Many had pursued other careers before entering law school. This year’s entering class includes a developmental psychologist, a speech therapist, two accountants, a Navy pilot, two Marines, two newspaper reporters, an IRS Revenue Officer and a hearing officer in the Colorado Department of Revenue. Several students have served as researchers and analysts in the worlds of business and finance and a number have been paralegals in law firms. There are also teachers, editors, and technical and speech writers.

FACULTY NOTES

In July, Albert W. Alschuler, Professor of Law, testified before the Criminal Justice Subcommittee of the House Judiciary Committee. He urged Congress not to allow the sentencing guidelines proposed by the United States Sentencing Commission to take effect. During the same month, Mr. Alschuler spoke in London to a conference on Reform of the Criminal Law; he compared recent Australian, Canadian, and American sentencing reform proposals. In September, Mr. Alschuler spoke to a national conference of state court judges in Phoenix on “Presiding in Criminal Court.” He also traveled to Boston, where he debated Gerald Frug of Harvard Law School on “Critical Legal Studies.” In October, Mr. Alschuler spoke to the Illinois Academy of Criminology on recent Supreme Court decisions in criminal procedure cases. In November, he appeared before the local chapter of the Federalist Society to debate the merits of limiting the exclusionary rule with Stephen Markman, Assistant
employment project for the Clinic. The project combines law and social work students in efforts to obtain for clients on public assistance the employment-enhancing services (day care, training, transportation) to which they are entitled under Illinois' new welfare-to-work program, Project Chance. The Clinic's project also aims to prevent illegal termination of benefits for "noncooperation" with state work requirements when necessary supportive services are not provided. In November, Mr. Baum was the moderator of a program on "State Constitutions as Guarantors of Individual Rights" at the joint meeting of the Illinois State Bar Association and the Illinois Judges' Association. The program's keynote speaker was California Supreme Court Justice Stanley Mosk (J.D. '35).

Gerhard Casper, William B. Graham Distinguished Service Professor of Law, spent the months of November and December at the University of Munster, Federal Republic of Germany, as a Visiting Fellow. His visit was made possible by a research prize awarded by the Alexander von Humboldt Foundation. On November 16, he delivered a paper on federalism at a symposium organized by the Law Faculty of the University of Vienna to celebrate the Bicentennial of the U.S. Constitution. Mr. Casper will be a Visiting Professor of Law at the University of Munich from May 1 to July 31.

Ronald H. Coase, Clifton R. Musser Professor Emeritus of Economics, was the McCorkle Visiting Lecturer at The University of Virginia Law School in early November. Besides presenting the McCorkle Lecture, on the topic "Blackmail," during his three-day visit Mr. Coase had lunches with faculty and students, attended classes, and took part in seminar discussions. A banquet in his honor was held in Jefferson's Rotunda, now restored to its original splendor.

David P. Currie, Harry N. Wyatt Professor of Law, made two trips on behalf of the United States Information Agency to speak about the Constitution. In June he went to Germany, where he spoke in nine different cities on several topics, with particular emphasis on judicial review in Ger-

many and the United States. In September, he traveled to Nigeria and Liberia, where he tried to develop the theme of what makes a free constitution work.

Last summer, Richard A. Epstein, James Parker Hall Professor of Law, spent three weeks at Colorado College in Colorado Springs, co-teaching a three-week seminar for law school faculty on the "Genius of the Constitution" with Professor Timothy Fuller of the Colorado College. The seminar examined in detail the writings of major philosophers who influenced the design of the Constitution—Hobbes, Harrington, Locke, Hume, and Montesquieu—the Federalists and the Antifederalists, and key opinions of the Supreme Court from its founding to the end of the Marshall era. On September 6, Mr. Epstein took part in a panel discussion on "The Rule of Law" at the American Political Science Association in Chicago. A few days later, he traveled to Indianapolis to another panel discussion at the Mont Pelerin Society. The topic this time was "Self-interest and the Constitution." In early October he spoke on a panel of the Constitutional Law Section of the American Association of Law Schools in Washington, D.C., on the subject of "Why the Revolution of 1937 Was a Mistake." Mr. Epstein gave a speech on "The Proper Scope of the Commerce Clause" at the Social Policy and Philosophy Center at Bowling Green, Ohio, on October 23. The same center sponsored a confer-
ence on Capitalism and Socialism on November 19 in Miami, Florida, at which Mr. Epstein gave a talk entitled “Luck.” On December 5, he took part in the University of Chicago Legal Forum’s symposium on AIDS and Employer Testing and attended the annual conference of the American Economic Association in Chicago on December 29.

Richard A. Epstein

Richard H. Helmholz, Ruth Wyatt Rosenson Professor of Law and Director of the Legal History Program, participated in a panel on “Recurring Themes in Legal History” at the annual meeting of the American Society for Legal History, held in Philadelphia on October 22-24. He presented a paper on the history of the English civil lawyers during the sixteenth and seventeenth centuries at a meeting held at the University of Arizona, October 29-31. Mr. Helmholz served as convenor of a group of German, American, Scottish, and Irish scholars investigating the history of the canon law in Protestant countries after the Reformation. The first meeting was held in Bad Homburg, West Germany, on November 5-6.

James D. Holzhauer, Assistant Professor of Law, attended a workshop on the History of American Labor Law, sponsored by the Institute for Legal Studies and held at Georgetown Law School on June 10. On November 12, he spoke on “Visions and Verity: Reconciling the Dreams and Ideals that Lead One to the Law with the Realities of Law Practice,” in the “JurisDiction” lecture series sponsored by Brent House, the Episcopal center at the University of Chicago. In December he presented a paper entitled “Hyste­ria or Reality? Adjudicative Factfinding and the ‘War on Drugs’” at the University of Chicago Legal Forum’s third annual symposium on Testing in the Workplace. Later in December he testified before the Criminal Justice Subcommittee of the Committee on the Judiciary, United States House of Representatives, on H.R. 2664, the Corporate Criminal Liability Bill of 1987.

In June, Spencer L. Kimball, Seymour Logan Professor of Law, participated in a meeting in Chicago of the National Association of Insurance Commissioners, in particular as a member of the Board of the Journal of Insurance Regulation. He attended a similar meeting in Phoenix, Arizona, in December. In July, he took part in a conference of the British Insurance Law Association in London. While in London, he also attended meetings as a member of the Presidential Council of the International Association of Insurance Law. In August, he went to South Africa for a month, where he presented the Prestasi lectures to audi­ences at Rand Afrikaans University in Johannesburg, Stellenbosch University in Stellenbosch, near Capetown, and the University of Natal in Dur­ban. The lectures were sponsored by Prestasi Brokers, South Africa’s largest independent insurance brokerage firm. Mr. Kimball gave two separate lectures on the torts-insurance “crisis” in the United States. The lectures will be published in English in Tidskrif vir die Suid-Afrikaanse Reg (Journal of South African Law). During his trip, Mr. Kimball also participated in informal seminars and discussions with faculty, judges, and insurance practitioners.

Philip B. Kurland, Professor of Law and William R. Kenan, Jr., Distinguished Service Professor in the College, gave a speech on “Liberty” at the Association of American Law Librarians’ annual meeting in Chicago on July 6. On July 23, he spoke to the University of Maryland Graduate School Symposium on “Constitutional Origins.” On September 13, he attended a 43rd Ward Democratic Party meeting and spoke on “Judicial Appointments.” Mr. Kurland testified at the hearings on the nomination of Robert H. Bork (J.D. ’59) to the Supreme Court. On September 25, he spoke to the Commercial Club of Chi­cago on Original Constitutional Principles. In October, he gave a speech entitled “Constitutional Tripos” to the University of Chicago Service League. On November 6, Mr. Kurland spoke on Individual Rights at the School of Philosophy of the Catholic University in Washington, D.C.

John H. Langbein, Max Pam Professor of American and Foreign Law, received the Helmut Coing Fellowship from the Henkel Stiftung of the Fed­eral Republic of Germany to support the legal historical research work that he undertook in archives and rare book collections in Germany and England during the summer. Mr. Langbein and Professor Daniel Fischel are coauthors of a paper dealing with the shortcomings of ERISA fiduciary law. Mr. Langbein presented the paper at workshops at Columbia Law School on November 10, Yale Law School on November 19 (with Mr. Fischel), and Virginia Law School on December 11. The National Conference of Commis­sioners on Uniform State Laws has named Mr. Langbein one of the reporters for a project to revise Article VI of the Uniform Probate Code, which treats nonprobate transfers. The new project envisions extending non-
probate "transfer on death" registrations from bank accounts, as allowed at present, to securities and mutual funds. Mr. Langbein has been appointed to the American Law Institute's Advisory Committee for the Restatement of Trusts: Prudent Investor Rule, a project for revising trust investment law to take account of Modern Portfolio Theory. On November 4-5, Mr. Langbein participated in an international colloquium on the work and heritage of the German legal scholar Friedrich Carl von Savigny, held at the University of California (Berkeley) School of Law.

In late summer and early fall, Michael W. McConnell (J.D. '79), Assistant Professor of Law and Russell Baker Scholar, devoted much time and energy to supporting the nomination of Robert Bork (J.D. '53) to the United States Supreme Court. During the week before the hearings, he appeared in an hour-long debate with Professor Alan Dershowitz of Harvard Law School on public television. On September 22, he testified before the Senate Judiciary Committee, focusing on Robert Bork's First Amendment rulings. Mr. McConnell was also interviewed on radio programs and wrote analyses of the issues for newspapers and other publications. On October 6, Mr. McConnell gave a lecture on "The Supreme Court and the Religion Clauses" at a Notre Dame University Law School function sponsored by the Notre Dame Federalist Society. On October 7, he spoke on the judicial selection process before a meeting of the American Federation of Small Businesses. On December 10, he spoke on "Crèches on Public Property: A New Christmas Tradition," at a breakfast forum sponsored by the Center for Church-State Studies at DePaul University. On November 9, the U.S. Supreme Court noted probable jurisdiction in Bowen v. Kendrick, an Establishment Clause case in which Mr. McConnell represents a group of intervening parents on a pro bono basis. Oral arguments will take place in April.

Bernard D. Meltzer (J.D. '37), Distinguished Service Professor Emeritus of Law, has become of Counsel to the law firm of Sidley & Austin in Chicago.

Geoffrey P. Miller, Professor of Law and Associate Dean, spoke on Independent Agencies to the Administrative Law Section of the American Bar Association in Washington, D.C., on October 10. He presented a paper on "The True Story of Carolene Products" at the Law and Economics workshop at the University of Chicago on October 13 and again at Stanford and Berkeley Law and Economics workshops in early December. Mr. Miller participated in a debate on the War Powers Act before the Federalist Society in Washington, D.C., on November 6. He testified before the House Small Business Committee on Corporate Takeovers on November 18.

On June 12, Norval Morris, Julius Kreeger Professor of Law and Criminology, gave the keynote speech at a conference in Phoenix, Arizona, on "Policing—State of the Art," sponsored by the National Institute of Justice. A second conference in this series, "Residing in Criminal Court—State of the Art," was held in Phoenix in September and Mr. Morris was again the keynote speaker. At the end of June, he gave the opening speech at a conference on legal sanctions in Messina, Sicily. On July 14, Mr. Morris addressed the Association of the Bar of the City of New York on the occasion of ceremonies celebrating the Bicentennial of the U.S. Constitution. His speech was entitled "Crime and Punishment under the Constitution." In August, he was moderator, with Justice Harry A. Blackmun, at a seminar on Justice and Society in Aspen, Colorado, and also gave the Aspen Institute Address, "Blacks and Crime in America." At the end of that month, Mr. Morris was appointed to the Board of Directors of the Criminal Justice Project of Cook County, Illinois. He traveled to Washington, D.C., on October 24 to be the summarizing speaker at the celebration of the fifteenth year of the ACLU's National Prison Project and spoke at a conference on the twenty-fifth anniversary of the Model Penal Code of the American Law Institute in Camden, New Jersey in early November. At the end of that month he was appointed to and attended the first meeting of the Advisory Board to the Chicago Crime Commission.

Gary H. Palm (J.D. '67), Professor of Law, attended the ABA National Conference on Lawyer Competence, Professional Skills, and Legal Education in Albuquerque, New Mexico, on October 15-18. He chaired the opening panel of presentations entitled "What Are Professional Skills? And Why Would Law Schools Teach Them?" He also spoke on current developments in clinical education and skills instruction in law schools. Mr. Palm has been appointed to serve as a member of the Accreditation Committee of the ABA's Section on Legal Education and Admissions to the Bar. On January 7, he spoke at the Association of American Law Schools' Section on Clinical Legal Education about "Controversial Issues Arising from ABA Review of Law Schools' Professional Skills Programs," in Miami, Florida.

In September, Randall D. Schmidt (J.D. '79), Staff Attorney and Clinical Fellow, gave a presentation on practicing before the Illinois Department of Human Rights at a seminar on Employment Discrimination, sponsored by the Chicago chapter of the National Lawyers Guild.

In September, Stephen J. Schulhofer, Frank and Bernice J. Greenberg Professor of Law and Director of the Center for Studies in Criminal Justice, gave the Jerome W. Sidel Memorial Lecture at the tenth annual Constitutional Conference at Washington University Law School in St. Louis. His talk was entitled "The Constitution and the Police: Individual Rights and Law Enforcement." The conference
Legal Ethics and the Adversary System at Brent House, the University's Episcopal church center. In December, he addressed the annual meeting of the National League of Cities on civil rights law. Mr. Strauss has been elected to a second consecutive term as a member of the Board of Governors of the Chicago Council of Lawyers.

Cass Sunstein, Professor of Law and Professor in the Department of Political Science and the College, spoke to the Washington, D.C., Bar Association in June on the Bicentennial of the Constitution. In July, he spoke at the Cambridge Lectures, sponsored by Canadian judges and held at Cambridge University, on the problem of affirmative rights under the United States Constitution. Later in July, he traveled to Munich, Germany, to speak on the relation between the founding period and the New Deal, as part of the German celebration of the Bicentennial of the Constitution. In September, he spoke on two panels at the annual meeting of the American Political Science Association. His first talk was entitled “Deliberative Democracy after the New Deal,” the second involved republicanism and the constitutional founding. He spoke before the Senate Judiciary Committee hearings on Robert Bork’s views on the separation of powers. In November, Mr. Sunstein gave a paper on proportional representation at a conference, “After the Bicentennial,” at Georgetown University Law Center. He attended a conference in Washington, D.C., on judging and judicial ethics and in December he gave a paper, “Beyond the Republican Revival,” at the legal theory workshop at McGill University. The paper will be published in the July, 1988 issue of the Yale Law Journal.

During the summer of 1987, Diane P. Wood, Assistant Professor of Law, completed her portion of the project to revise the U.S. Department of Justice Antitrust Guidelines for International Operations. On August 10, in connection with the annual meeting of the American Bar Association, she spoke to a committee on the progress of the revision of the International Guidelines. She was appointed co-chair of the International Antitrust Committee in the ABA Section of International Law and Practice. On September 16, Ms. Wood gave a talk on antitrust aspects of international joint ventures in San Francisco, to a seminar sponsored by the World Trade Institute. On October 12, with two other law professors, she participated in a panel discussion on the former law firm, Covington & Burling, on the perceived decline in lawyer professionalism and what law schools are and should be doing about it. On October 22, Ms. Wood presented a paper to the Fordham Corporate Law Institute program on “North American and Common Market Antitrust Law.” Her topic was governmental involvement and international antitrust enforcement. The Fall Meeting of the ABA’s International Law and Practice Section, held on November 13 in New Orleans, explored all legal aspects of a hypothetical international business transaction. At the meeting Ms. Wood delivered a paper on antitrust and antiboycott issues.

In October, Hans Zeisel, Professor Emeritus of Law and Sociology, participated in a conference on “Expelled Reason” (the Hitler emigration) in Vienna, Austria. He spoke about Karl Polanyi, the late economist, and also made a statement on the devastating role of President Waldheim of Austria. The statement was broadcast by Austrian Television on the day commemorating the foundation of the second Austrian republic. On December 2, Mr. Zeisel gave a talk before the Illinois Academy of Criminology on “What Determines Sentences?”

David A. Strauss

David A. Strauss, Assistant Professor of Law, testified before the Senate Judiciary Committee in June on the First Amendment implications of a bill that would provide television networks with a limited exemption from the antitrust laws to enable them to consider ways to curb televised violence. In August, he conducted a workshop at the annual meeting of the American Bar Association on the relations between federal and state courts. In September, he spoke on Supreme Court and appellate advocacy to the Local Government Attorneys of Virginia. Back on the University of Chicago campus, Mr. Strauss spoke on
Visiting Professor Wages Legal War on Pornography and Sexism

The conviction in Catharine MacKinnon's voice leaves little doubt that if she has anything to do with it, pornography will someday be illegal in this country.

"We expect to win," MacKinnon said. "We actually will win legally, eventually. But I think, as always with major forms of social change, there will be a legal, political, and social level to it."

MacKinnon played a major legal role, with feminist author Andrea Dworkin, in efforts to establish antipornography ordinances in Minneapolis and Indianapolis. The ordinances defined pornography as sex discrimination and, therefore, as a violation of women's civil rights. Although both were passed by the respective city councils, the mayor vetoed the Minneapolis ordinance and the Supreme Court allowed to stand a lower court judgement that said the Indianapolis ordinance was contrary to freedom of speech.

MacKinnon's antipornography efforts, along with her precedent-setting legal work in the 1970s in sexual harassment, have earned her national recognition as an attorney, feminist, and activist.

She was a visiting professor at the Law School during the winter quarter and taught the course "Sex Discrimination." The lines of those waiting to speak to her outside her Law School office indicate that she is a popular teacher with students, and the feeling is evidently mutual.

"The students here are wonderful," said MacKinnon. "I have to say they are the best students I have ever had in every way. They are well-prepared, responsive, thoughtful, articulate, and diverse, with a wide range of views. They are creative, concerned and extremely intelligent."

MacKinnon earns praise, as well, from other legal scholars. "She is American legal feminism," said Mary Becker, Professor of Law at the University of Chicago. "Anyone doing anything in terms of legal feminism is either doing something not very good or is doing something that is derivative of MacKinnon. She has set the framework and the agenda."

Besides the Indianapolis and Minneapolis ordinances, MacKinnon has also been involved in such celebrated struggles as the case of Michelle Vinson, a black woman raped over a period of several years by a superior at work. MacKinnon wrote the Supreme Court brief that established sexual harassment as sex discrimination in a unanimous decision in her case.

MacKinnon's writings, including her provocative review of Jane Mansbridge's "Why We Lost the ERA" in the Spring 1987 issue of the University of Chicago Law Review, result in responses ranging from hearty endorsement to vehement disagreement, even among other feminists. Her most recent book, *Feminism Unmodified*, represents an "attempt to create a theory for women that is on women's own terms and not a subsidiary theory of pre-existing theories," she said.

"It seems to me that the feminisms we are currently in receipt of, although they all contain an authentic feminist impulse, are subsidiary theories of liberalism or socialism. They are basically liberalism or Marxism applied to women. I am saying that is not the same thing as feminism, without modification. In other words, not liberal feminism, not socialist feminism, but plain feminism—feminism on its own terms: feminism unmodified."

The book, a collection of speeches MacKinnon gave from 1981 to 1986, argues that gender as a system is a social construct, central to which is male dominance and violence. Pornography, MacKinnon's book argues, is key to women's subordination because it eroticizes male dominance, making it seem somehow natural. MacKinnon also criticizes liberal feminism for urging a type of equality that has been defined in male terms and is "antithetical to what women have learned and gained." Many supposed gains for women—argued under this concept of equality—have actually benefited only selected women whose situations are most like those of men, and men themselves, MacKinnon said.

"My work has a lot of elements that combine to produce varying responses," she said. "There is a deep methodological critique and there is an activist posture. By the methodological critique, people feel like I'm pulling the rug out from under them. In terms of the activist posture, they feel that my relationship to the world and the reality of my work in the world is some kind of reproach to them."

"I think probably more important, however, is the substance that my work treats, and in particular, the critique of male dominance and male violence," MacKinnon added. "The idea is that sexual violence is systemic and not exceptional, and that those things that men like to think of as marginal, like pornography, are in fact central to a system that has privileged them and in which they participate on a daily basis and from which they benefit."

Cass Sunstein, Professor of Law, believes that, in years to come, MacKinnon will be seen as one of the most important legal scholars of this period.

"She reminds me a lot of New Deal proponents who were protesting the treatment of workers or of civil right activists during the '60s protesting the treatment of blacks," he said. "What they were saying, in retrospect, seems kind of obvious. At the time, much of what they were saying seemed radical. MacKinnon is in this tradition."
Alumni Notes

EVENTS

Dean Stone Meets Alumni

During summer and fall last year, Dean Geoffrey Stone continued the series of visits he had begun before he assumed the office of Dean, traveling to cities around the country to meet with alumni and discuss the Law School.

On August 6, he spoke to a luncheon gathering of alumni in Seattle. Gail Runnfeldt (J.D. ’79), president of the Seattle chapter, organized the event, which attracted a quarter of the alumni living in the area. The next day, Dean Stone spoke to alumni in Portland, at a luncheon organized by the president of the Portland chapter, Richard Botteri (J.D. ’71).

On September 15, New York alumni and friends gathered at a luncheon arranged by Douglas Kraus (J.D. ’73), president of the New York chapter, at the offices of Skadden, Arps, Slate, Meagher & Flom. Because of the heightened interest in the Supreme Court, Dean Stone spoke on “The Rehnquist Court: Reflections on Overruling the Warren Court,” rather than on the state of the Law School.

October 19, the day of the Great Crash, had its minor disasters for the Law School too. Dean Stone was to have traveled to Pittsburgh for a lunchtime talk but missed the plane because of an accident on the freeway that blocked traffic and prevented him from reaching the airport. Undaunted, Daniel Booker (J.D. ’71), who hosted the luncheon at his firm of Reed Smith Shaw & McClay, arranged a telephone link so that Dean Stone could give his talk on “The Law School—Past, Present and Future” over a speakerphone. The audience showered Dean Stone with questions after the talk, which he found very reassuring after speaking for forty minutes into a silent phone.

The St. Louis chapter, led by its president, Henry Mohrman (J.D. ’73),

Law School Archive—Help Wanted

One person’s junk is another’s antique, as the saying goes. Or in this case, someone else’s archive. If you have any memorabilia from the Law School—scripts of old skits, posters, photographs, cartoons, first editions, letters, signed footballs, paintings, anything—that are gathering dust in your attic or basement, please don’t throw them out. Send them to the Law School.

Last spring, in the course of creating an exhibit on the history of the Law School’s buildings, in preparation for the dedication of the Law School’s extension, the staff of the D’Angelo Law Library discovered that there are enormous gaps in material relating to the Law School’s history. For several years, Judith Wright, the Law Librarian, has wanted to create a formal archive of Law School material, but until now there has been no space to house such a collection. The extension of the D’Angelo Law Library building has now provided the opportunity to create an archive that will preserve the heritage and traditions of the Law School.

Some materials already exist. The library maintains collections of the scholarly writings of faculty and alumni. These are housed in the Louis H. Silver Special Collections Room, along with the rare book collection. Although these works present a stunning history of the intellectual life and achievements of members of the Law School, a collection that ignores the physical and social setting of the institution is woefully incomplete. A few important documents relating to the early history of the Law School are housed in the Special Collections department of the Joseph Regenstein Library. Now that we have space, we can start collecting materials from the present—tomorrow’s history—but to fill in some of the gaps, we turn to you, our alumni. If you have anything at all that relates to the Law School, however ephemeral it may seem, and you don’t want to keep it for your own memories, please send it to Judith Wright. Her phone number, for queries, discussions, or to warn her that vanloads of material are arriving, is 312/702-9616.

The address is, of course, The University of Chicago Law School, D’Angelo Law Library, 1111 E. 60th Street, Chicago, IL 60637.
attended a luncheon on November 3 and heard Dean Stone speak on “The Law School—Past, Present, and Future.” About 22 percent of alumni in the area attended the event.

Dean Stone gave the same talk to alumni in Detroit on November 30, at a luncheon organized by Miles (J.D. ’50) and David Jaffe (J.D. ’81) at their firm, Honigman Miller Schwartz & Cohn. Questions after the talk developed into an extended discussion of affirmative action issues in the context of the Law School.

On December 8, Dean Stone flew to Minneapolis-St. Paul where he spoke about the Law School at an alumni luncheon organized by Duane Krohne (J.D. ’66), president of the Minneapolis-St. Paul chapter. Twenty-five percent of the alumni living in the area attended the event.

Looking back over 1987, Dean Stone summed up: “It has been an interesting experience to visit with our graduates in some sixteen cities and to share with them the latest news about the Law School. I have especially enjoyed the opportunity to exchange ideas for the future. I hope many of our alumni will return to Chicago next month to visit with us at the Annual Dinner and the various class reunions.”

Events around the Country

Professor Richard Epstein spoke to alumni at a luncheon in Los Angeles arranged in conjunction with the California State Bar Association meetings. Mr. Epstein, who was introduced by Joel Bernstein (J.D. ’69), president of the Los Angeles chapter, spoke on “Economic Liberties and the Constitution—California Style.”

On November 3, alumni in Philadelphia enjoyed a lunchtime talk entitled “Cheating and Bribing: The Things Some People Will Do to Get into the Law School,” by Richard Badger (J.D. ’68), Assistant Dean for Admissions and Dean of Students. The president of the Philadelphia chapter, Martin Wald (J.D. ’64), introduced Dean Badger to the audience. In his talk, Mr. Badger gave examples of how applicants (and their relatives) have tried over the years to bribe or cheat their way into Chicago and other law schools. Dean Badger made it clear that his presentation was not a workshop for the parents of prospective applicants!

ABA Meeting

The American Bar Association’s annual meeting in San Francisco was the setting for a reception for our alumni on August 10. One hundred alumni and guests attended.

Opening Day Picnic

On September 27, as part of Orientation Week, the Law School hosted its annual Opening Day picnic for new and returning students and faculty. This year, Dean Badger invited graduates who live in Hyde Park to bring their families to the hamburger and hot dog barbecue in the Law School Courtyard.

Mandel Alumni Meet

The Mandel Legal Aid Clinic box luncheon was held on November 2. The event attracted graduates who had participated in the Clinic’s work and the program in clinical legal education during their Law School careers. Professor Gary Palm (J.D. ’67), Director of the Clinic, and the clinical fellows, Jonathan Baum (J.D. ’80), Robert Cohen (J.D. ’86), Randall Schmidt, (J.D. ’79), and Anne Nicholson Weber, together with the Clinic’s social worker, Paul Colson, discussed their current work. Baum and Colson announced a new program to enforce the rights of Public Aid recipients to meaningful job training and employment under Illinois’ “Project Chance.” Schmidt, Cohen, and Palm reported on the Clinic’s latest efforts to improve the procedures at the Illinois Human Rights Department and to expand the remedies available to victims of discrimination. Weber discussed the work to defend the Illinois Affordable Budget Plan legislation (helping indigent utility consumers to maintain utility service) from constitutional attacks in the Illinois appellate courts.

Loop Luncheon Series a Sell-Out

The Fall season of Loop Luncheons was very successful. Over one hundred alumni registered for each luncheon, straining the capacity of the Board of Trustees Room. So many graduates wanted to hear Dean Geoffrey Stone speak on “The Rehnquist Court: Reflections on Overruling the Warren Court” on September 22 that a repeat of this luncheon meeting was arranged on October 6 for those unable to be accommodated at the original time.

Anton Valukas, United States Attorney for the Northern District of Illinois, gave a well-received talk on “Corruption in Chicago” on October 15. Such a controversial subject naturally drew many questions, which Mr. Valukas answered fully and candidly.

On November 18, Neil Bluhm, President of the JMB Realty Corporation, gave the final talk in the fall series, an excellent analysis of trends in “The Current Real Estate Market.”

The Loop Luncheons are sponsored by the Chicago chapter of the Law School Alumni Association and are usually held in the Board of Trustees’ Room at 2716 One First National Plaza. Alan Orschel (J.D. ’64) is chair of the Loop Luncheon Committee. If you are interested in more information about the luncheons or would like to volunteer your services on the organizing committee, please contact Assistant Dean Holly Davis (312/702-9628).

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Class Notes Section – REDACTED

for issues of privacy
asbestos cases for the Department of Justice. Ira Belove can now be found at Mayer, Brown & Platt.

Jeremy Hobbs began 1988 with an oral argument before a Seventh Circuit panel which included the Honorable Frank Easterbrook ('73).

Some of our classmates had an impromptu reunion in New York City. Josh Kanter, Steve Reiches, Ed Fuhr, Beth Ehrenreich, Brenda Swirenga, Glen Spear, and Mike Faber visited with locals Peggy Schiller, Liora Coch, and Carolyn Schurr.

Mike Donohoe ran into Liz Kutyla while in Chicago over Thanksgiving; she confessed that she and fellow Sonnenschein associate Tracy Potter still manage an occasional pilgrimage to Jimmy’s. Sam Ach and Jennifer Nijman crossed paths while working on an environmental matter for their respective Chicago firms. Sheila Igoe gets together with David Haselkorn in Washington, D.C., and also with Mike Faber, who was instrumental in organizing a multi-law firm holiday program to help the city’s homeless.

Leo J. Carlin, 1895–1987

Lawyer and philanthropist, Leo Carlin (J.D. ’19), died on November 17, 1987, only one month before his ninety-second birthday. Born in Russia, Mr. Carlin emigrated to the United States in 1901 and made Chicago his lifelong home and the beneficiary of sixty-seven years of legal and civic service. A senior partner at the law firm of Sonnenschein, Carlin, Nath & Rosenthal, where he practiced real estate since his graduation, Mr. Carlin devoted his intellect and thoughtfulness to the legal profession, his clients, and Chicago, working a full five-day week into his ninety-first year.

Leo Carlin received a citation for public service from the University of Chicago in 1964. Among his many gifts to the University were a chair in Jewish religious studies at the Divinity School, a book fund in the Library and a gift of rare books to the Law Library, in addition to numerous other gifts of personal property, including the magnificent Oriental rug that hangs on the wall of the main stairs leading to the D’Angelo Law Library.

At his memorial service, it was said of Mr. Carlin: he lived his life as if it were his personal responsibility to make this a better and more decent world. He will be remembered as a man who more than fulfilled his part.

Rob Spencer in Lake George, New York. Also in the wedding party were Ruth Ernst, Mike Donohoe (just back from an African safari) and Brad Campbell.

Congrats to Lindley Brenza who has landed a spot with the Supremes; he’ll be clerking for Chief Justice Rehnquist in 1988–89. Keungsuk Kim caught up with former Bigelow Fellow Paul Yanowitch who is now in D.C., trying
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