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Editor
Jill M. Fosse

Assistant Dean for Alumni Relations
Holly C. Davis

Cover
Mark Frueh

Illustrations
Andy Austin, page 16
Philip Galiga, page 20

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ARTICLES

Dean's Page .................................................. 3
Talk to the First Year Class ........................................ 5
   Paul M. Bator
Voluntary Euthanasia ............................................. 8
   Richard A. Epstein
The Exclusionary Rule in the
Chicago Criminal Courts ................................... 14
   Myron Orfield
The Faculty ................................................... 19
Paul M. Bator, 1929–89 ........................................ 27

DEPARTMENTS

Memoranda .................................................. 28
Alumni Notes ............................................... 41

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VOLUME 35/SPRING 1989 1
This year marks the fiftieth anniversary of the formal study of law and economics at the University of Chicago Law School. The application of economic analysis to the study of legal institutions was a natural outgrowth of legal realism, which recognized in the 1920s that traditional legal thought was unduly formalistic and doctrinaire and thus held that the evaluation of legal doctrines and institutions should be open to analysis and input from such other disciplines as psychology, sociology, political science, anthropology and, especially, economics.

In 1939, the University of Chicago Law School became the first institution of legal education to appoint an economist, Henry Simons, as a full-time member of the faculty. The significance of this appointment was quickly apparent as law schools in the late 1930s and early 1940s began to offer a host of new courses, such as labor law and securities regulation, which grew out of the efforts of the national government to regulate the market. While traditional law teachers and scholars approached such courses by attempting to master the intricacies of these new areas of regulation, Henry Simons and his colleagues at the University of Chicago Law School began asking a different set of questions: What happens if government supports the price of milk? If it establishes a minimum wage? If it limits competition? What interested Simons and his colleagues at the Law School was not only what the law is, but what it should be, how it operates in practice and, perhaps most important, why.

The economic analysis of legal institutions attempts to understand and predict human choice in a world of scarce resources. It is premised on the assumption that individuals are rational maximizers of their satisfactions and that they will respond to incentives in such a way as to maximize those satisfactions. It tests legal rules and institutions against the implications of that assumption.

In the fifty years since the University of Chicago first appointed Henry Simons to its faculty, the Law School’s Program in Law and Economics has been graced by the likes of Nobel Laureates Milton Friedman and George Stigler; Judges Frank Easterbrook, Richard Posner, and Antonin Scalia; economists Dennis Carlton, Ronald Coase, Aaron Director, and William Landes; legal scholars Douglas Baird, Kenneth Dam, Richard Epstein, Daniel Fischel, and Edmund Kitch; and a host of other teachers and scholars whose work, building upon the central insights of economic analysis, has illuminated our understanding of such diverse areas of the law as anti-
trust, bankruptcy, torts, contracts, property, intellectual property, constitutional law, insurance, procedure, corporate takeovers, insider trading, international trade, banking, and commercial law.

Under the direction of Professor Daniel R. Fischel, the Law School's Program in Law and Economics continues to flourish. With generous funding from such institutions as the John M. Olin Foundation, the Sarah Scaife Foundation, the Lynde and Harry Bradley Foundation, and the Ameritech Foundation, the Program today has six central components. First, the Program provides essential research support for members of the faculty. In the 1987-88 academic year, members of the law faculty who received such support published more than a dozen scholarly works in the field of law and economics, including The Economic Structure of Tort Law, by William Landes and Richard Posner, Douglas Baird's "Loss Distribution, Forum Shopping, and Bankruptcy," in The University of Chicago Law Review, Geoffrey Miller's "The True Story of Carolene Products," in The Supreme Court Review, and Alan Sykes's "The Boundaries of Vicarious Liability," in the Harvard Law Review.

Second, the Program runs the Law and Economics Workshop, a seminar that meets approximately twelve times each year and at which distinguished scholars present papers to an always lively audience of students and faculty from the Law School, the Economics Department, and the Graduate School of Business. Recent paper presenters have included Professor Roberta Romano of the Yale Law School on "The Future of Hostile Takeovers," Professor Louis Kaplow of the Harvard Law School on "Legal Representation at Trial," and Professor Saul Levmore of the University of Virginia Law School on "Parliamentary Law, Majority Decisionmaking and the Voting Paradox."

Third, the Program supports several Law and Economics Fellowships each year. These Fellowships enable scholars from other universities to spend all or part of an academic year at the Law School to pursue their research and to interact with students and faculty alike. Fourth, the Program offers Law and Economics Fellowships each year to nine students, who participate in the Law and Economics Workshop and pursue independent research under the supervision of members of the faculty.

Fifth, the Law and Economics Program publishes two scholarly journals. The Journal of Law & Economics, which is edited by William Landes, Dennis Carlton, and Frank Easterbrook, focuses on the effects of laws, legal institutions and economic regulation on economic behavior. The Journal of Legal Studies, which is edited by Richard Epstein and Geoffrey Miller, emphasizes the application of social science theory and research techniques to the analysis of legal doctrine in such diverse areas as torts, contracts, family law, civil and criminal procedure, criminal law, and legal history. Finally, the Program sponsors the Henry Simons Lecture, which has been delivered by such distinguished scholars as Milton Friedman, George Stigler, James Tobin and Gary Becker, and will be delivered next by Sherwin Rosen, the Edwin A. and Betty L. Bergman Professor and Chairman of the Department of Economics, in the 1989-90 academic year.

For half-a-century, the University of Chicago Law School has been at the center of the study of law and economics. It has been a productive, exciting, influential and often highly controversial fifty years. But if imitation is the sincerest form of flattery, Henry Simons, Aaron Director, Ronald Coase and their successors have ample reason to be proud, for no serious scholar, teacher, lawyer, legislator or judge can today approach such basic subjects as torts, contracts, antitrust or corporations without an understanding of the economic analysis of law or without acknowledging a very real debt to the extraordinary intellectual contributions of the University of Chicago Law School's Program in Law and Economics.

Geoffrey R. Stone
Harry Kalven, Jr., Professor of Law
Dean of the Law School
Talk to the First Year Class

Paul M. Bator

In recent years, the Law School has instituted a tradition of asking a member of the faculty to address the first year class on the role of law and lawyers in contemporary society at the annual First Year Dinner. Paul M. Bator, John P. Wilson Professor of Law, delivered this address to the Class of 1990 in October, 1987. Professor Bator died on February 24, 1989. In the last week of his life, he sent the speech to Dean Geoffrey Stone with the question whether it might be appropriate for publication in the Law School Record.

It is the way of the world that when you enter upon a new endeavor, you are inundated by speeches: welcoming speeches, information speeches, advice-giving speeches, warning speeches, encouraging speeches. It is our tradition that, at this opening dinner which celebrates your joining the University of Chicago Law School family, you are to be subjected to yet another speech, and it has fallen to me to be tonight’s messenger.

I will abandon the advice-giving line right now, making only one recommendation, inscrutable but heartfelt. The eccentric French poet Gerard de Nerval made a habit of walking along the Champs Elysées leading a lobster on a leash. He was asked: why a lobster? He replied: “Because the lobster does not bark, and knows the secrets of the deep.” And so my advice to you, friends, is: do not bark, and know the secrets of the deep, and all will be well.

Let me turn to a different subject. Surely some of the questions that underlie your mood today must relate not just to Law School, but to larger questions about the kind of life you are committing yourselves to. Will you find, in the law, the kind of intellectual and moral and aesthetic excellences that are the essential constituents of a satisfying or even noble life?

It is a happy coincidence that the issue of the University of Chicago Law Review that hit the stands a few days ago has a piece by Professor Anthony Kronman, who used to teach here but now teaches at Yale, called Living in the Law.1 I happened on this piece this afternoon, and would like to recommend it to you; it is subtle and interesting and, I think, fundamentally truthful; and it is devoted to just this question. It is a rather elaborate, even fancy, piece, and I will not try to summarize it for you. But it evoked some thoughts of my own, which I would like to convey to you. Essentially these thoughts are optimistic and cheerful, and therefore appropriate to a festive occasion. But they are quite sincere too. I am absolutely certain that, notwithstanding what you read in the papers, the law offers remarkable opportunities for lives that are full of intellectual, moral and aesthetic excellences, and that you can find them (if only you have the wit to remember Yogi Berra’s words, that you can observe a lot by just watching).

Remember, first, two complementary things. One, the House of the Law Has Many Mansions; but, two, that is not enough. It is sometimes thought that the virtue of pluralism itself constitutes the excellence of legal studies and the law—that there are many paths and many views that are legitimate and worthy—and that it is this fact that gives moral and intellectual sustenance to a life in the law. I myself do not believe it. It is essential to remember that in law it is the case that diversity of views can be seen as a good rather than a weakness; and attempts to excommunicate as heretical divergent views should be denounced. But allowing a thousand flowers to bloom is not a sufficient basis for the actual inner experience of finding and living a life in the law that is morally and intellectually enriching. The house of the law does have many mansions; but it remains to be seen whether life in them is what we want.

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Nevertheless, the fact that there are many different forms of life in the law is an important constituent of the situation, because it does mean that differences in tastes, gifts, and preferences can be satisfied. It is significant and reassuring that we are talking about excellences, not just a single form of excellence, in the law.

Let me say a word about the law’s material rewards. Some of you—maybe many of you—will aspire to the management of large financial affairs and will enjoy correspondingly large material rewards. It is customary among law professors to try to make you feel guilty and embarrassed about this. My advice is: do not feel unduly guilty and embarrassed. There are lawyers for whom the thrills of providing leadership in financial and business matters of high moment—the sense of action and mastery over events—is an essential and even sufficient element for happiness and fulfillment. If in fact that is your temperament, do not allow the Pecksniffs of the world to make you feel too guilty about it.

Some of you, on the other hand, will find fulfillment in the law by committing yourselves to good public causes. I do think all lawyers have an important obligation to devote some of their lives to good public causes (although I also think that what those causes are is sometimes defined in too narrow and partisan a way). And some of you will find that it is this commitment that becomes the center, the mainspring, of whatever satisfaction you find in the law.

But I venture to predict that for most of you, the problem of finding moral and intellectual and aesthetic excellences in the life of law cannot be wholly solved, either by devoting yourself to those great financial affairs that produce rich rewards, or by committing yourself to worthy public causes. You will need to find something inside the actual activity of doing law, of being a lawyer, that provides some inner form of ethical and intellectual and aesthetic satisfaction.

Are these available?

I believe the answer is yes, and that it is one of the important tasks of law school to unlock some of these gates; the law professor who actually believes that he is teaching nothing but technical tricks is cheating his students. I believe that at the University of Chicago Law School there exists special devotion to the task of illuminating these forms of what might be called the inner excellences of the law.

Here are some hints, some probes as it were, on what to keep your ears open for as you go along in your studies.

First: You will notice, very soon, that the First Year classroom is, in a sense, instruction about moral constraints on the right to speak. To speak is to exercise power. It follows, therefore, that you are not entitled to say anything you please. It is our moral duty to ask ourselves, before we speak: have I thought it through? Is it truthful? Is it fair? The First Year class, at its best, with its unrelenting insistence that you explain and justify, is moral instruction designed to make you learn the habit of thinking about consequences even before you speak. To learn and feel the morality of responsibility and care in speech and argumentation is one of the inner excellences of the law.

Second: The law has an intimate relationship with the written language too. Learn, as quickly as you can, that one of the huge aesthetic (and in a deep sense moral) delights of doing law is to engage in an intense romance with the English language. You will constantly be writing—and it is possible to write in the law with precision and elegance and power and wit. Keynes, of course, said that the lawyer turns poetry into prose and prose into jargon. (Unlike the economist?) And it is all too true that many lawyers believe that effective legal expression must be pompous, impersonal, official, euphemistic, and bureaucratic. Don’t believe it. In the law, as everywhere, the effective piece is the one that doesn’t just do the job, but the one that sings. You may remember Eliot’s lines, from the last of the Four Quartets: “Every phrase and sentence that is right, where every word is at home, taking its place to support the others, the word neither diffuse nor ostentatious, an easy commerce of the old and the new, the common word exact without vulgarity, the formal word precise but not pedan-
tic, the complete consort dancing together". That doesn’t sound like legal writing. I know, but it can be, it should be. The chance to become a master of virtuoso prose is a pleasure available to lawyers; seize it if you can; like all forms of virtuosity, it provides deep satisfactions.

Third: Remember that the lawyer, throughout his or her life, must be a scholar too. That this has its delights will be recalled to you by the words of the old Jewish scholar: "Garbage is garbage: but the history of garbage—that's scholarship."

What are the inner excellences of scholarship that the lawyer participates in? Surely this revolves around the proposition that scholarship stands in a special relationship to truth (or the search for truth)—that it must be animated by reverence for the truth. A sense of responsibility for the truth of your assertions, and for the integrity of the materials which supposedly justify them, are a crucial element in the life of scholarship, and a crucial element in the life of the lawyer as well. Like the scholar, the lawyer must be a truthteller.

Fourth: Is the lawyer’s obligation to tell the truth in tension with the obligation to be a vigorous representative of the client? This is a well known conundrum; it is one about which Kronman has particularly interesting and intelligent things to say. He points out that effective advocacy must involve a sympathetic understanding by the advocate of what is likely to be credible and acceptable to the judge; there is a sense in which the lawyer must make himself, vicariously, a judge in order to assess the power and plausibility of his arguments. My own experience as an advocate confirms Kronman’s intuition. The worst possible advocate is the one who has a tin ear for what will seem musical to the judge, who has no instinct for what will "go." To be effective, then, the lawyer must train himself to think and feel like a judge, and thus to enter into the inner world of judging.

Is this a merely manipulative strategy? Maybe that is the way it starts; but it soon becomes internalized. A sympathetic transference into a judicial perspective becomes second nature to the sensitive lawyer, and becomes a part of his moral universe. It is one of the inner excellences of a life in the law.

Fifth: Cultivation of the judicial perspective, of judiciousness, is of course also essential for the performance of the lawyer’s job as adviser and counselor. The sympathy and detachment essential for giving good advice also become second nature to the fine lawyer, a part of his universe of excellences.

Sixth: Finally, in thinking about whether in the law you will find the pursuit of happiness, remember the most important thing: that doing law is absolutely fascinating, that it is a field full of inherent intellectual fascination. The grand task of the law—the enterprise of governance by rules through processes and institutions that are predictable, fair, efficient, and just—is a hugely challenging, subtle, complex and various endeavor. Kundera once said that every great novel says one thing to the reader: things are not as simple as you think. Maybe that is the key to the law's delights as well.

The inner excellences of doing law, I have said, include moral scruple in expression, virtuoso writing, scholarly truthfulness, cultivation of a judicial perspective, and sympathy and detachment in counseling—all of this in the service of a hugely interesting enterprise. And remember, too, that to find happiness in that enterprise, you must enter upon it with enthusiasm and intensity, with that fierce concentration of attention that in fact constitutes love. In your pursuit of the law, think of yourself a little bit like a suitor. Be ardent.

Let yourself fall in love with the law.
The legal response to euthanasia continues to be hotly debated across the disciplines: law, ethics, medicine and religion. At present the legal position can be summarized roughly as follows. There is a flat prohibition against active euthanasia; that is, killing any person, even with his consent, no matter how terrible and painful his condition. The law regards life as sacred, and it will punish for murder anyone who kills another individual or even hastens his death by any active means, be it by blows, strangulation, shock, starvation, injection or poison. The "malice" of the criminal law depends only on knowledge of the consequences, and it is not dimmed, no matter how lofty or noble the motive of the actor.

Passive euthanasia is more difficult to analyze because the law rests uneasily on the distinction between acts and mere omissions, where the latter, in the absence of a legal duty, are not ordinarily regarded as culpable. Today it is generally permissible to cease treatment, such as medication or chemotherapy, even though it is known that death will quickly ensue. It is also generally permissible to withdraw artificial support systems, such as a respirator, if that course of action is demanded by a patient. Indeed some cases go so far as to view the withdrawal of food and fluid as the mere cessation of treatment and not the killing of another person. In each instance when these steps are taken, the patient
Voluntary Euthanasia

Richard A. Epstein

A quick overview of medical ethics reveals the apparent dominance of the principle of individual autonomy. Physicians are not in the position to conscript patients into their care. Save in emergency situations, patients decide who shall treat their bodies and what that treatment should be. A strong conviction of a professional physician that an operation is necessary does not warrant his performing that operation, even if he could demonstrate before the proverbial panel of seven bishops

will usually die shortly thereafter, but may linger on, perhaps in great pain, for weeks, months or even years. (See, for example, Barber v. Superior Court, 147 Cal. App. 3d 1006, 195 Cal. Rptr. 484 (1983).)

This whole structure, which works to legalize virtually all forms of passive euthanasia, rests upon rickety intellectual foundations. Disconnecting a respirator or removing a feeding tube is as much an "act" as hooking up that same respirator or inserting a feeding tube. No one would regard disconnecting respirators or removing tubes as the cessation of treatment, to be treated as a mere omission, if that act (what other word can we use?) were performed by a stranger. At that point it would be a clear case of murder precisely because the stranger was not authorized to meddle in the affairs of the patient. That same act done by a physician is—tautologically—still an act. If disconnecting the respirator or removing the tube is lawful, it is not because it is a mere omission, but because it is an act authorized by the patient. The decisive question therefore is authorization or consent. Without these the physician has surely committed murder, even in the core cases of merely withholding or ceasing treatment.

What would happen if the legal system stopped hiding its implicit policy judgments behind the misplaced distinction between acts and omissions? One conclusion is quickly clear: the convenient middle ground of the present law would no longer be defensible. The choices would assume an all-or-nothing character. One possibility would collapse passive into active euthanasia. The law would thus require heroic measures (or at least routine feeding and respiration) to continue until death, regardless of the patient's wishes. The other solution would be to collapse active into passive euthanasia, thus to decriminalize both forms of killing. The dominant issue would then cease to be, how does a patient come to die? Instead it would become, who shall determine whether that patient should live or die, the state or that individual? While presently the answer is sometimes the person, sometimes the state, in my view the correct answer is both more categorical and less evasive: the patient, always.

I believe that the principle of individual autonomy—that each person controls his or her own life alone—applies so long as the person is sufficiently competent to control his or her own life. Accordingly, all forms of voluntary euthanasia, active and passive, should be decriminalized. The consent of the patient should protect physician and family against all criminal and civil charges. It should not matter, moreover, whether that consent was expressed the moment before death was brought about, or by some prior unrevoked instruction that remains binding even after the patient becomes comatose. In either case, patient consent determines the course of conduct in end of life decisions. Where the patient is comatose, then decisions may have to be made by family acting in accordance with the patient's wishes.

To be legitimate, the case for making (or rather keeping) euthanasia criminal must override the twin postulates of autonomy and consent. Any such effort must be based on one of two claims: first, that the state must intervene to protect society at large and its interest in human life, or second, it must intervene to protect individual patients from their own incompetence. I shall call these the externality and the competence claims respectively. Both of these exceptions to the autonomy principle are part of any complete legal system. The question is whether they intrude so strongly in end of life situations as to justify overriding the normal principle of autonomy.

Autonomy and Self-Determination

A quick overview of medical ethics reveals the apparent dominance of the principle of individual autonomy. Physicians are not in the position to conscript patients into their care. Save in emergency situations, patients decide who shall treat their bodies and what that treatment should be. A strong conviction of a professional physician that an operation is necessary does not warrant his performing that operation, even if he could demonstrate before the proverbial panel of seven bishops
that any other course of conduct is
ruinous to the patient’s welfare both in
the long and the short run. If the case
is that obvious, the proper forum in
which to lodge the plea is with the
patient. When a physician says to a
patient, “you have no choice but to
have this operation,” this language,
the risks and costs of the operation, is
still better with surgery than without.”
Most of the time this advice will be
taken precisely because the patient
wants to live instead of die. But the
choice is always his. If he should attac
great costs to living with handicap,
pain or disfigurement, then he may
decide to forgo the treatment that 99
percent of the population in his posi-
tion would beg to receive. Self-
determination and self-control lie with
the patient, not the physician.

The strength of the autonomy prin-
ciple is confirmed with the rise over
the last 30 years of the doctrine of
informed consent. Before 1960, the
autonomy principle was in practice
often honored in the breach and not
the observance. While patients in prin-
ciple could decide to accept or refuse
treatment, physicians were under no
explicit legal or moral duty to convey
to patients the pros and cons associated
with various options that were open to
them. In many cases, the dominant
practice was for physicians to recom-
mend and patients to follow the recom-
mendations, without ever asking why.
The argument was that the withhold-
ing of information was for the benefit
of patients who might be too distressed
to process it correctly.

To be sure, there were doubtless
cases where on their own initiative
patients and their families did cross-
examine their doctors before deciding
on a course of treatment, and nothing
in the law prior to 1960 obliged the
patient only to listen and never to
speak. But since that time the duty of
initiation has shifted to physicians,
who generally must disclose the rea-
sons for their recommendations as well
as making the recommendations them-
selves. There is, I think, a real
dispute over whether the norm of dis-
closure is well enforced by private
medical malpractice actions, by the use
of physician review boards, or by
standard written disclosures. It may
well be that a revised social under-
standing of what constitutes good
practice is better than any form of legal
sanction. But these questions are
strictly of a second order. The prin-
ciple of autonomy is not justified by the
physician’s duty to disclose before
treatment. The duty to disclose follows
from the principle of autonomy.

The hard question with euthanasia
is whether the same principle of auton-
omy should govern when the patient’s
choice is for death and not for life.
Why not? Clearly, any patient today
can decide to refuse treatment, even if
inaction promises a certain death, or to
accept treatment, even if it increases
both the chance of death (if it should
fail) and the quality of life (if it should
succeed). Life and death are never far
apart in medical settings. If a patient is
allowed to increase the risk of death
in taking a chance for a better life,
why can’t he choose death itself, by
whatever means he desires? The
autonomy claim demands no less. What
can limit it?

Externalities

As noted above, government efforts to
override individual choice may be jus-
tified in order to protect other persons
from harms to which they should not
be subjected. The most obvious illus-
tration of social control of vicious
externalities is the ordinary criminal
law prohibition against killing and
stealing. But what external costs justify
government intervention in the face of
the patient’s consent to euthanasia,
either active or passive? Surely the
patient does not seek to kill another
person; he only wants someone to help
him end his own life, which in his
extreme condition he is unable to do
by himself. Suicide, after all, is not
murder, and should not be punished as
such, or indeed at all. Accordingly, the
physician who makes the lethal injec-
tion is not imposing his will upon
another but is following the requests of
a patient. Consent takes us a long way
from murder, and brings us back to
suicide.

But, it may be said, these judgments
are too hasty, for there may be some
externalities in the losses to friends and
family. This objection, however, is
weak for two reasons. In the ordinary
case, where medical cure is sought, the
patient has the ultimate power of deci-
sion. Friends and family, if consulted
at all, cannot override the stubborn
patient who does not wish to follow
their advice. There is no reason why a
different rule should govern here.

The claims of family, and perhaps
even friends, may be stronger if they
are entitled to support from the person
intent upon self-destruction. Aban-
doning one’s spouse and children, in order to start a new life, is not a search for self-realization; it is the evasion of family obligations. The state may not coerce an individual to remain with his family when he longs to escape, but it may surely require financial support. Where suicide is contemplated as a means to escape such obligations, then perhaps government should intervene to stop it, although it is difficult to know how the state could keep alive someone determined to perish.

So, autonomy notwithstanding, John Donne is correct. No Man Is an Island. But the point does little to justify the prohibition against euthanasia, either active or passive. The decision to take one’s own life is typically made in extreme circumstances. Euthanasia as a term of art is confined to such cases. The person who wants to die does not seek to evade obligations of support, which he could not discharge in any event. Quite the opposite, people in extremis often want to die in order to remove the enormous emotional and financial burdens that their condition imposes upon their friends and family, even if much of the cost is absorbed by insurance or public assistance. At the end of life, some people want to die, not only to put themselves out of their own misery, but also to allow their friends and family to get on with their lives. It is a far cry from running away from financial obligations.

In response, it could be urged that this narrow focus misses the point, for the real externalities are global and social. We believe that life is sacred in all forms and respects. Any person who takes his own life voluntarily, therefore, necessarily mocks that social convention. To defend the basic principle of the sanctity of life requires us to police any violation of it when and where it arises.

This argument proves too much. Indeed, it is a recipe for totalitarianism. Euthanasia is no threat to social order, for those who want to avoid the practice can always do so. Their decisions about their own lives are not compromised because other persons follow a different practice. To hold that some public value dictates a uniform prohibition on euthanasia guts the principle of autonomy under the guise of an exception. It is dangerous business to use government power to control psychic externalities, for these always abound whenever there is any social disagreement about right and wrong. We stray a long way from the paradigmatic externalities when we treat social diastase on a par with aggression. The case for euthanasia cannot rest on the need to control externalities.

Incompetence

So we turn to incompetence, a far more serious issue. Can the case against voluntary euthanasia rest on the ground that the patient is not competent to make the necessary life and death choice? Stating the issue in this form is an effort to return to the core insights of the autonomy principle. Individuals are allowed to trade or waive certain rights by consent. It is generally assumed that when they do so, they have made themselves better off. So long as they know their own preferences, they should be allowed to follow their own lights.

But consent can be overridden by incompetence. When infants and insane persons attempt to enter into contracts, they are prevented from doing so because of their evident incompetence. They are protected from exploitation, from making contracts, or taking actions, that work systematically to their disadvantage. They have parents or guardians to act on their behalf.

These rules on limiting consent are generally easy to police. It is easy to stop a seven year old from making a contract that exchanges a thousand shares of IBM for a package of bubble gum. But mental incompetence is far trickier. It is often far from clear, for example, whether civil commitment protects needy persons from their own self-destructive tendencies, or only allows greedy relatives to railroad their frail relatives into a state mental hospital.

Unfortunately, the competence questions with euthanasia, both active and passive, are of the difficult type, complicating any social response. When the bases of state action are unclear, two forms of error arise, both costly. Type I error is the error of not limiting personal autonomy in cases where such limitation is needed to control personal incompetence. Type II error is the error of limiting personal choice where a person is in fact competent to decide for himself. So long as there is any uncertainty about an individual’s true mental state, a sound set of legal rules and institutions has to deal with both kinds of error—simultaneously. We have to be careful about driving down one type of error, only to increase the other.

This question of error control often requires us to engage in shadow calculations of what we regard as rational behavior. Thus, suppose we observe a person in the prime of life who asks a physician to end his life by administering a lethal injection. This request is likely to take us aback. Even though we lack any detailed knowledge about the person’s preference structure, we know enough about human nature to realize that individuals, especially those in the pink of health, attach a large positive value to their own future life prospects. There are not many wrongful death actions where the plaintiff cannot claim damages because the youthful and happy decedent, struck down in the bloom of life, really did not want to live.

If, therefore, we saw a healthy person seek death, we could make a pretty good judgment that there was something amiss but undetected in his mental processes. In some cases we might order a detailed psychiatric examination. At the very least we should require a “cooling off” period and a chance to talk him back into his senses.

At the end of life, some people want to die, not only to put themselves out of their own misery, but also to allow their friends and family to get on with their lives.
Euthanasia, of course, does not involve the case of a healthy person wanting to die. It involves the case of a very sick person wanting to die. In this narrow context, we cannot be so certain that the patient’s desire to die clashes with his rational interest in life. While there is a long moral tradition that says life is always worth living, that judgment seems hollow in the face of truly horrendous individual circumstances. The subjective utility of living is not always greater than zero, and where it is not the rational person could conclude that he is better off dead than alive.

But has the sick person taken leave of his senses? Only if we reason in a circle by assuming that the right answer is always to choose life. But this “right” answer inverts the relationship between competence and choice. It assumes that we can demonstrate incompetence by knowing that some choice is wrong. It does not give us any independent test of competence which, once satisfied, requires us to respect the choice that the patient has made. Looking at the content of the choice is no way to determine competence to choose. We have covertly substituted our collective judgment for the patient’s.

To make the inquiry sensible, therefore, we must again confront the question of two types of error. In the age before modern medical advances the question was easier than it is today. There was little reason to worry about people living longer than they wanted. The direction to the physician was simple: Do all that you want to do to save the fellow from death, because you can’t do anything anyhow. The patient was too far gone and the technology too primitive. So heroism lasted a day, and then death followed. Type II error might have been frequent, but its costs were low. The total prophylactic rule against voluntary euthanasia simply did not have high error costs.

With the advance of technology, however, it is possible to keep people alive for long periods of time, with permanent pain or without the benefit of any higher mental functions. But no longer are the costs of keeping people alive low. Today, heroism has its cost. We can keep people alive for weeks and months of pain, to them and to their families. Because the error costs of overriding subjective judgments become much higher, there should be a greater investment in finding out whether the patient wants to live or to die.

The task in some sense is daunting. People are often not able to think and speak clearly when they are in extreme distress. The competence of the moment may not be there. But these difficulties do not justify disregarding individual preferences across the board. We do not disregard them when the preference is for ceasing treatment, or for conduct that verges on passive euthanasia. Yet we could not honor those preferences, especially with comatose people, if we did not respect their competence in making a prior decision. There is a time when death or coma may be imminent, but competence is present. People with cancer, for example, have a long time to reflect on their condition and to make their views known. Where treatment is still possible, we ask persons in extreme conditions whether they want chemotherapy or surgery. We certainly allow wills signed by persons in extremis to control the devolution of their property. If someone leaves instructions that he should be allowed to die if a cancer progresses beyond a certain limit, or if brain functions deteriorate beyond repair, then we should respect that judgment, even after the patient is no longer able to think clearly on his own behalf.

Any original decision, of course, need not be irrevocable, and it may well be that some third party should be required to testify, first, that the patient expressed the desire for voluntary euthanasia, active or passive, and, second, that he understood the circumstances surrounding the choice. But to indulge in the conclusive presumption that people are always incompetent when they choose death, either passively or actively, is to mask the tyranny of state coercion in the friendlier garb of autonomy and consent. Once we allow consent to be operative, seriously ill individuals will have an incentive to make clear their wishes while they are still able to do so. The evidentiary problems can be minimized with the living will or the videotaped interview. We should not allow consent to be vitiated by a two-pronged attack:
either it comes too early to express real desires, or it comes too late to express informed choices. There is a clear window between these extremes.

The case law on this point is heavily divided. There are some decisions, most notably in New Jersey, Massachusetts, and Rhode Island, that rightly refuse to erect a competence barrier. These cases will accept testimony from family members and close friends that a comatose patient wanted treatment to cease. They have thus allowed the patient to be transferred to other institutions that will allow cessation of treatment, and where transfer is not possible, require the hospital to cease treatment itself. Nonetheless, there are other states in which the autonomy principle has been limited in practice even as it has been acknowledged in fact. Thus a recent decision of the New York Court of Appeals (Matter of O'Connor, 72 N.Y.2d 517 (1988)) is, in my view, a regressive step. In that case, the patient was an elderly lady who was a victim of a stroke. Her two daughters refused to authorize the insertion of a nasogastric tube to supply her with food, saying that their mother had frequently expressed her wish that she be allowed to die if rendered mentally incompetent. The court concluded that the evidentiary presumption had to be set against the decision not to treat, and that this presumption could not be overcome by the evidence offered in this case, given that her statements had not been made immediately before the stroke, or with clear awareness of that risk. But there was no evidence that her preferences had changed or that her daughters had misstated what their mother deeply wished. It is hard to resist the impression that the case was less about evidence of competence and more about freedom of choice. But the acid test in New York will doubtless come in other cases where the evidence is clearer and the presumption less important. In those instances, the autonomy principle should control.

Once we overcome the competence hurdle, why then stop at the legalization of passive euthanasia? By all means pull the plug. Passive euthanasia only substitutes natural lottery for the arbitrary will of another. It does not respect the right of an individual to control his or her own body. Once competence is established, patient consent should be determinative. Why leave persons to the mercy of the fates and their own physical condition when they can improve their lot by purposive action? Why require them to battle against needles, tubes, feeding and fasting, in order to pay for the privilege of slowly starving themselves to death? Why not a quick lethal injection instead? The cases which have allowed the cessation of treatment have balked at allowing voluntary euthanasia on the ground that there is a "suicide" exception to the general autonomy principle. But they offer no explanation as to why it should exist or what useful role it serves. There is no halfway house here that is worth defending. The person who is competent enough to decide to die slowly is competent enough to decide quickly and purposively.

Consent provides a far better road map to the scope of permissible conduct. In extreme conditions the subjective judgment to end life is often rational. Safeguards are no doubt necessary, but it is a mistake to erect a prophylactic rule against individual choice when medicine can do so much harm by prolonging life.

My position is uncompromising. What, though, of those physicians or hospitals who do not want to participate in what they regard as a mission of death? Their course is clear. They announce in advance that they will treat only patients who want to live. They make it clear that they will not practice euthanasia—active or passive—under any circumstances. That choice is made all the time by doctors and institutions who are opposed to abortion, even to save the life of the mother. Patients can then choose their medical care with knowledge of how they will be treated; those who fear that they will be pressured into death can gravitate toward physicians who give them the guarantee they desire. But the moral convictions of physicians should govern only their own lives and practices. These physicians should have no power over individuals who are feeble, but competent, and who wish to control their own lives by ending them.
The Exclusionary Rule in the Chicago Criminal Courts

Myron Orfield

The fourth amendment protects "the people" from "unreasonable searches and seizures." In Mapp v. Ohio, the Supreme Court imposed the "exclusionary rule" on the states to safeguard this right. The rule forbids the use of evidence in court that is derived from an "unreasonable" search. For many, there is something intuitively troubling about this concept. Cardozo's often quoted line has it that "the criminal is to go free because the constable has blundered." Adding to this uneasiness, perceptions of the rule have been exaggerated by television "cop shows" and movies like "Dirty Harry." There violent, often psychopathic, criminals are set free when good cops have tripped over hyper-technical rules established by "liberal" judges isolated from the "reality" of police work. Occasional newspaper stories concerning criminals released because of the exclusionary rule, or because of any other "technicality," stir the pot of discontent.

Contrary to the impression created by the popular media, the exclusionary rule affects only a small percentage of crimes and an even smaller percentage of serious crimes. In Chicago in 1983-84, a jurisdiction with a comparatively high rate of suppression, evidence was lost to the exclusionary rule in only 0.9 percent of armed robbery cases, 0.5 percent of residential burglary cases, and 0.5 percent of cases involving violent crimes. Moreover, in many of these cases, convictions were obtained with other evidence. (A sample of 2759 cases revealed no convictions lost to suppression in crimes involving physical injury to a victim.) Ninety-eight percent of cases in which evidence was suppressed involved offenses which, if the defendant were convicted, would result in a sentence between probation and six months. The vast majority were minor drug possession cases.

Nevertheless, in the generation following Mapp, rising crime rates, public outcry against the perceived injustice of the rule, and increasingly conservative judicial appointments, produced a series of Supreme Court decisions limiting the rule's application. By 1984, "good faith" had become watchwords in fourth amendment jurisprudence. Throughout this process, the Court increasingly centered its concern on whether the exclusionary rule deters unlawful police activity. In the last decade, the Court has voiced growing skepticism concerning the capacity of

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the rule to change police behavior and has indicated that unless firm empirical evidence of a deterrent effect is forthcoming, it will continue to limit the rule.

In 1986, as a second year law student, with the help and encouragement of Professors Albert Alschuler and Hans Zeisel at the Law School, I drafted a lengthy, standardized "social science" questionnaire centering on the issue of deterrence and administered it to twenty-six of approximately one hundred narcotics officers in the Chicago police department. (Narcotics is the area of police work in which the exclusionary rule affects the greatest percentage of cases.)

The results indicated that the exclusionary rule has significant deterrent effects both in educating police officers in the law of the fourth amendment and punishing them when they violate constitutional standards. Further, my research identified an "institutional response" to the exclusionary rule through which the criminal justice system as a whole (police, prosecutors, and courts) responded to the loss of evidence by designing programs and procedures to ensure compliance with the fourth amendment. Finally, the study identified and began to explore the incidence and effect of police perjury on the operation and effectiveness of the rule.

Many of the officers interviewed believed the exclusionary rule did little harm and made them more professional. Strikingly, all of the officers wished to preserve the exclusionary rule, albeit modified to include a good faith exception.

The study I completed as a student at the Law School presented the impressions of police officers. To test my findings—particularly those concerning police perjury at suppression hearings—and to learn more about the operation of the exclusionary rule in practice, I recently began a second and more detailed study with the support of the Law School's Center for Studies in Criminal Justice. As the basis of this research, I randomly selected fourteen of the forty-one felony trial courts in the Criminal Division of the Circuit Court of Cook County and interviewed the judge, an assistant public defender, and an assistant state's attorney assigned to each courtroom.4

This second study confirms the findings of the first, with one significant exception. The second study suggests that police perjury is a more significant problem than I initially reported and indicates that it significantly affects the operation of the rule in practice. This article briefly summarizes my findings on the issues of deterrence and perjury. These issues, and others, will be examined in greater detail in the paper that is still in progress.

**Deterrence**

Judges, public defenders, and state's attorneys, like the police officers I interviewed, uniformly believe that the exclusionary rule deters unlawful police behavior. Like the police, these groups believe that the rule is more likely to deter in "big cases," in which the officer hopes to obtain convictions, than in "small cases."

In a big case, officers are more likely to invest the time and care necessary to comply with the fourth amendment. In a small case, a less serious crime has been committed and less effort is invested. Further, if evidence is lost and the suspect goes free, the officer is often satisfied in the knowledge that the offender has been deprived of the seized contraband.

Internal police incentives reinforce this difference between "big" and "small" cases. A detective or specialized officer who investigates mostly big cases is rated both formally and informally on the number of convictions obtained. The officer has powerful incentives to comply with the fourth amendment. Patrol officers ("districts" or "beat cops") focus more frequently on small cases and operate under a system of incentives that places heavier emphasis on arrest. The mission of tactical (tac) teams—described by one state's attorney as "flying affronts to the fourth amendment"—often includes "sweeps" of dangerous neighborhoods or housing projects. In a sweep, I have been told, tac teams are often directed to search individuals indiscriminately in order to seize guns and drugs and to make their presence felt.

When asked: "Does the exclusionary rule deter unlawful police behavior?" all of the judges in the sample, all of the public defenders, and thirteen of the fourteen state's attorneys responded "yes." Moreover, the respondents confirmed the findings of the prior study that police care about winning cases and that they experience adverse personal reactions when evidence is suppressed.

When asked to describe the officer's reaction when evidence is suppressed in a big case, 74 percent of the judges, public defenders, and state's attorneys who responded described the officer as "angry"; 69 percent described the officer as "frustrated"; 64 percent of those responding described the officer as "disappointed"; and 33 percent described the officer as "humiliated." In small cases, respondents also attributed adverse personal responses to the police officers, though somewhat less frequently.

The second series of interviews also confirms that suppression causes the police to change their behavior. Seventy-eight percent of the judges*, public defenders, and state's attorneys who responded believe that suppression in a big case causes the officer to change his search and seizure behavior in "future big cases involving similar factual circumstances." Moreover, 74 percent of the judges*, public defenders, and state's attorneys who responded believe that suppression in a big case causes the officer to change his

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4All the public defenders, thirteen of the fourteen judges, and eleven of the fourteen state's attorneys chosen at random agreed to participate. In place of the state's attorneys who would not participate, I substituted others assigned to the same courtroom. I could not substitute for the judge. The percentages listed are based upon those who responded to a given question. For some of the questions—particularly those concerning police perjury—the response rate was low (between 50 and 75 percent) among judges and state's attorneys.

Where this is the case, it will be indicated by an asterisk (*) placed next to the group with the low rate of response.

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search and seizure behavior in "future big cases which do not necessarily involve similar factual circumstances." Finally, 57 percent of those who responded to the question believe suppression in a big case makes the police more careful generally.

Illustrating this principle, one state’s attorney noted:

When evidence is suppressed, the police learn about the law of search and seizure, by going to court and seeing what is new... Cops are like anybody else. Cops want to do their job right. Most police officers want to stay within the bounds of what is proper. Most police officers are really conscientious. They listen to the judge. Most of them learn something when evidence is suppressed. The majority of police officers learn from what they do wrong and then follow the rules... When evidence is suppressed a great majority of the officers change their behavior and they don't just change their behavior, but they become more concerned with doing everything properly—of really covering all the bases.

Another prosecutor explained:

The vast majority of your police officers, because of the implementation of the exclusionary rule, know that there has to be probable cause and without it, they know that the case will go nowhere.

In small cases, deterrence is less powerful. In this light, one state’s attorney noted, "If they've got a big case on their mind, they may be apt to be more careful than in a small case." "Still," he maintained, "they learn from Terry stops. They learn that they just can't go and stop anybody in the street for any old reason."

Perjury

I interviewed an elderly judge one afternoon. In the middle of the interview, he told me a story.

I was a young man right out of law school and I was trying my first case to a federal court for the Northern District of Illinois, Edwin Robson presiding. My client was a young black man accused of stealing a box of mink furs at O'Hare airport and trying to peddle those furs in the Loop. My client told me that he was walking into a building carrying a heavy box and the police, I guess FBI, just grabbed him, took him into a room, and started beating on the box to get it open. It took them fifteen minutes to beat it open. They found furs on the inside, and then they arrested him.

Before the case was called, I wanted to talk to the officer. I asked him what happened. The officer said, "What did your client say?"
told him what my client said and he said, "That's right. What your client said is what happened. But you tell him that we will get him right the next time."

Of course, I was excited by all of this and I told the officer, "Yes sir, I will sir, absolutely." I thought I had my client off. So then I come into court and the first thing I do is call the officer. The judge looked at me like I was crazy. The officer as my first witness? "Now officer," I said, "will you tell the court what happened?" The officer then said, "We saw the suspect come into the building, whereupon the box he was carrying bust open and mink tails fell out all over the floor." The officer there—right on the stand—burst out laughing. Even the judge, who was a somber old man, broke out laughing. The game was played. I pled my man guilty and crawled out of there.

The judge was now laughing himself, with a deep throaty laugh, leaning back in his chair, and wiping his eyes repeating to himself, "The mink tails fell out of the box. That sonofabitch beat on that box for fifteen minutes—for fifteen minutes." As the judge quieted himself and continued to wipe his eyes, he said, "The point of this story, young man, is that the police lie. Yes they do."

The concept of police lying under oath is difficult for many of us to accept. Yet it unquestionably occurs in Chicago. While the judge's story may be colorful, the message is common.

While virtually all the participants in the study believe that the exclusionary rule deters unlawful police behavior, all but one (a state's attorney) of those responding believe that the police lie in court to evade the requirements of the fourth amendment.

"Academic" discussion of police perjury assumes one of two worlds. Either the police perjure themselves so frequently that the exclusionary rule is substantially frustrated, or police lying is so infrequent that it does not substantially impede the rule. This study suggests that a more accurate picture lies somewhere in between.

All of the judges and public defenders, and 46 percent of the state's attorneys believe that at least sometimes the threat of suppression causes an officer to change his testimony in court rather than his behavior. When those who believed that testimony changes were asked whether an officer is more likely to change his testimony or behavior in a big case, 50 percent of the judges*, 21 percent of the public defenders, and 86 percent of the state's attorneys reported, that officers were equally likely or more likely to change their behavior; whereas 50 percent of the judges, 79 percent of the public defenders, and 14 percent of the state's attorneys who responded stated that the police are more likely to change their testimony. In a small case, the respondents believe the police are even more likely to change their testimony rather than their behavior.

There are many stages in the process of police perjury. The process generally begins with police offense reports (also called arrest or case reports). Here the police sometimes fabricate evidence to create "probable cause" upon which they base later testimony. More frequently police leave these reports vague so that they can expand upon them in court without contradiction. As one state's attorney told me:

In Felony Review, they learn [about] writing reports the right way and they can't be impeached. The report is vague. The report is written that way for a reason. A good police report is written in such a way that the officer can expand anyway and anything. And it's true, we do tell them how to do that.

Second, the police repeatedly use boiler-plate language when drafting affidavits for search warrants. Preliminary investigation indicates that a large percentage of warrant affidavits based on tips from an unidentified "reliable informant" in narcotics cases are based on a virtually identical probable cause scenario.

As one state's attorney told me:

If you take a thousand search warrants issued by OCD [Organized Crime Division of the Chicago Police Department], nine hundred and fifty say the same thing. In terms of the scenario in them, they are the same scenario.... They say the confidential informant says, "Yes, I bought drugs in someone's home." The police believe that they better have that in the warrant. But people are not selling drugs out of their houses. People sell them elsewhere. These lies are caused by the policeman's belief that the judge won't issue the warrant unless they say the person is selling drugs out of the house....

The police are partially lazy. It is partially nonsense. Defendants selling drugs out of their houses is nonsense. What really happens is that the informant buys a large amount of drugs from the defendant in a tavern. The police don't realize that you could get a search warrant based on these facts. If it is a large amount of drugs involved, where else is the defendant going to keep them except in his house. They need to be reasonable.

When asked how often police use the same fact improperly for different search warrants, a judge responded:

In every narcotics search warrant. They are "fill in the blanks" search warrant affidavits. It is beyond my comprehension how everyone is ratting on suppliers and no one is killed in retribution.... I have a jaundiced eye toward search warrants—toward the absolute similarity of all the warrants.

When I asked a prosecutor whether the officers use the same warrant because the law is too complicated or demanding, he explained:

Laziness. The reason they use the same warrant is that it is easier to Xerox and fill in the blanks than to type out what actually happened. I think they always really do have probable cause, but they don't want to type it out. I believe that they do have a confidential informant, but I disbelieve that he bought drugs in the defendant's house. There is always probable cause. I have never gotten the impression that the police are lying about the existence of probable cause. I accept that they have, that they do know of, an ongoing type of thing in terms of the defendant selling drugs. In all cases there is probable cause. The police are lying for no reason.

The third phase of police perjury occurs when the police lie under oath at suppression hearings. Of the nine judges, thirteen public defenders and eleven state's attorneys willing to respond to this inquiry, the judges estimated that judges disbelieve police officers 18 percent of the time in rela-
tion to fourth amendment issues; public defenders estimated 21 percent of the time; and state's attorneys estimated 19 percent of the time. While this suggests a potentially shocking level of police perjury, the majority of judges and public defenders, and almost half of the state's attorneys stated that the police lie in court more frequently than they are disbelieved.

Moreover, the respondents—including prosecutors—believe that prosecutors frequently tolerate and, less often, encourage police perjury at all steps in the process. Forty-three percent of the judges*, 73 percent of the public defenders, and 33 percent of the prosecutors* who responded stated that at least half the time prosecutors "know or have reason to know" that a warrant. I won't ever live to see this.

One of the "benefits" of the exclusionary rule is visible to people who work for the sovereign. All those who claim that the exclusionary rule is wonderful, they don't think of this. When Earl Warren and the Court came down with Mapp, they didn't realize that they were substituting one swearing contest for another. They didn't realize that some prosecutors and police officers just weren't going to let some people go....

Another prosecutor summed up his experience with police perjury in the following way:

I just don't want to know if the police officer is telling the truth. If it is a wild-ass story, I will say, "that's incredible." I will not supplant my judgment about whether the officer is telling the truth for the judge's. That is the judge's job. If it is an extreme case, I will sit down and ask him what the story is. I will not put my judgment in place of the judge's.

The vast majority of officers are telling the truth. They don't care enough to lie about the case. Their emotion is "OK, a year old case is gone." They will be hurt by it, but they will not perjure themselves to nail street drugs. They are pretty calmed down about it. Most of the time they are telling the truth.

I will not cross-examine my own witness, except in relation to what the defense attorney asks. I make a presumption that he is telling the truth.

When asked whether they equate police fabrication at suppression hearings with the felony crime of perjury, 20 percent of the judges, 43 percent of the public defenders, and 21 percent of the state's attorneys said "no." Further, many of those who answered "yes" did so very hesitantly. These responses may indicate that the police perjury is such an ingrained part of the system that at least some participants in the criminal justice system do not recognize how serious a violation of the law it is.

A striking example of this attitude came from a judge (who happened to teach trial practice at a local law school). When I asked whether he equated police fabrication with perjury, he answered,

"Of course it is not perjury. Who would ever think it was perjury? Do you know what perjury is?"

"Sure," I responded, "perjury is any time that you lie in court under oath."

"You're nuts," he declared. "Perjury is when you contradict a prior sworn statement while you are under oath."

"No judge, you're wrong," I replied.

"Let me show you," he said, pulling off the shelf a copy of the Illinois Criminal Code. He turned to the section that defined the substantive crime of perjury and began to read out loud in a confident manner. His voice slowed considerably as he began to realize his error and suddenly he stopped reading. "Shit," he quietly exclaimed, then a second later, looking up and shaking his head. "Then there is sure a hell of a lot of perjury going on in this courtroom."

A more common response came from a state's attorney who after some thought decided that he did equate police fabrication with perjury:

[Laughter] In my own mind, perjury is where the officer lied about guilt or innocence. They don't lie about that. As far as the problem with the exclusionary rule, I do [equate police fabrications at suppression hearings with perjury]. There is no excuse, but there is an explanation. There is a big difference. In most cases where the exclusionary rule is applied the defendant is guilty.

When asked whether the criminal justice system effectively controls police perjury at suppression hearings, 100 percent of the public defenders, 60 percent of the judges and 42 percent of the state's attorneys responding said "no."

The exclusionary rule has a substantial effect on police officers. This effect can be envisioned as a point somewhere on a continuum, with one end indicating a change in police behavior and the other a change in police testimony. The results of this research provide further evidence concerning the interaction of deterrence and perjury. Even this brief summary, however, points to the irony of the Supreme Court's move toward a broad "good faith" exception to the exclusionary rule, while police in cities such as Chicago consistently attempt to evade the rule by perjury.

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All but one [of the respondents] believe that the police lie in court to evade the requirements of the fourth amendment.

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Police witnesses fabricate evidence at suppression hearings. Further, all of the judges* and public defenders, and 89 percent of the state's attorneys* responding stated that prosecutors "knew or had reason to know" that the police lie in suppression hearings at least some of the time.

One prosecutor remarked:

Prosecutors encourage [perjury] sometimes. I've known of it. They tell the police to toughen up certain aspects. No question about it. [Pause] How do you think I know this?

Q: So you have encouraged police perjury?
A: It is never on the issue of guilt or innocence. This happens on Miranda issues. Never on the issue of guilt or innocence. Those who advocate the exclusionary rule don't understand something. The reason that no one has done something about the rule, is there is a line society draws like John Wayne Gacy. He won't go home and eat dinner because the police don't get
The Faculty, 1988–89

24. Assistant Dean Holly Davis. 25. Placement Director Paul Woo. 26. Assistant Dean and Dean of Students Richard Badger. 27. Assistant Dean Roberta Evans. 28. Foreign Law Librarian Adolf Sprudzs. 29. Law Librarian Judith Wright. 30. Lecturer Andrew Rosenfield. 31. Visiting Professor Knut Nörr. 32. Assistant Professor Daniel Shaviro. 33. Assistant Professor Alan Sykes. 34. Visiting Professor Donald Horowitz. 35. Senior Clinical Lecturer Randall Schmidt. 36. Clinical Lecturer Robert Cohen. 37-42. Bigelow Teaching Fellows: Stephen Griffin; David Gross; Michael Osborne; Thomas Frederick; Barbara Welke; Meera Werth.
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Daniel N. Shaviro

Geoffrey R. Stone
David A. Strauss
Assistant Professor of Law.

Cass B. Sunstein

Alan O. Sykes
Assistant Professor of Law.

Diane P. Wood

Hans Zeisel
Professor Emeritus of Law and Sociology. Dr. Jur. 1927, Dr. Pol. Sc. 1928, University of Vienna. Private practice in Europe and, after 1938, the United States. Author of a statistics text, Say It with Figures (1947), now translated into six foreign languages. Joined the University of Chicago faculty in 1953. With the late Harry Kalven, Jr. (J.D. '38) he reestablished empirical research as an integral part of legal studies. Their two major joint works were The American Jury and Delay in the Court (with Bernard Buchholz). Principal academic interests: empirical research as part of legal studies, juries, law enforcement. Recent article: A Jury Hoax: The Super Power of the Opening Statement.
Paul M. Bator
1929–89

Paul M. Bator, John P. Wilson Professor of Law, died February 24, 1989, following a long illness. He was fifty-nine years old. Professor Bator joined the faculty in 1986, after leaving Harvard Law School where he had been a professor for twenty-five years. He had taught previously at the University of Chicago Law School in 1978–79 as a visiting professor. From 1983 to 1984, Professor Bator served as Deputy Solicitor General and Counselor to the Solicitor General of the United States in the Department of Justice. During this time, Mr. Bator argued several important cases in the United States Supreme Court. These included Hishon v. King & Spalding, holding that the Civil Rights Statutes protect woman associates at law firms; Grove City College v. Bell, construing the provisions of Title IX of the Civil Rights Act; Watt v. Community for Creative Nonviolence, establishing that the First Amendment does not guarantee political advocates the right to camp in the Memorial Parks of Washington, D.C.; and Regan v. Wald, upholding the validity of currency restrictions imposed on travelers to Cuba.

At the end of 1984, Mr. Bator was nominated to be a judge of the U.S. Court of Appeals in Washington, D.C., but withdrew from consideration for reasons of health.

Professor Bator, a leading constitutional and federal jurisdiction scholar, published numerous scholarly articles and, while at the Law School, was co-author of the third (1988) edition of Hart & Wechsler, The Federal Courts and the Federal System, a leading text on federal jurisdiction. At the Law School, Professor Bator taught federal jurisdiction, civil procedure, administrative procedure, and the Supreme Court seminar. He served on numerous faculty committees and was adviser to the Law School’s Moot Court program.

Paul Bator wrote in the last months of his life, in a letter read at his memorial service, of his “blissful happiness at being allowed to join the Chicago faculty.” Of his colleagues and students he went on to say, “I fell into [a] tremendous institution in the Law School (what a wonderful institution it is!).”

A dedicated teacher and scholar, Mr. Bator also served as counsel to the firm of Mayer Brown and Platt and maintained an active appellate practice. His most recent Supreme Court appearance was on October 4, 1988, in which he represented the United States Sentencing Commission in a case challenging the constitutional validity of the Commission and of the sentencing system it created. On January 18, 1989, the Supreme Court upheld the Commission’s position.

Paul M. Bator was born in 1929 in Budapest. His parents emigrated to the United States in 1939. Educated at Groton School, he received his A.B. summa cum laude from Princeton in 1951. At Harvard Law School, he was President of the Law Review and graduated summa cum laude in 1956. He served as law clerk to Justice John M. Harlan. Following a brief period of private practice in New York City, he started his teaching career at Harvard in 1959. Paul Bator is survived by his wife, the former Alice G. Hoag, three children, Thomas (J.D. ’86), Michael, and Julia, and a granddaughter, born December 19, 1988. Professor Bator was a Fellow of the American Academy of Arts and Sciences, and a member of the American Law Institute.

Dean Stone said of Paul Bator, “He was one of the most committed teachers I have ever known. He brought rare qualities of elegance and grace to the classroom. It was our great privilege to have had Paul as a colleague and as a member of our Law School community. It was our great misfortune to have had him for so short a time.”
Memoranda

APPOINTMENTS

Faculty

Douglas G. Baird has been appointed the Harry A. Bigelow Professor of Law, effective October 1, 1988. The professorship was established in 1967 in honor of the late Harry A. Bigelow, who served as Dean of the Law School from 1929 to 1939 and as a distinguished member of the Law School faculty from 1904 until his death in 1950. Past holders of the chair have been Grant Gilmore, Harry Kalven, Jr. (J.D. '38), and Phil C. Neal. Professor Baird received his law degree in 1979 from Stanford Law School, where he served as managing editor of the Stanford Law Review and was elected to the Order of the Coif. Before joining the University of Chicago Law School faculty he clerked for Judge Shirley M. Hufstedler and Judge Dorothy W. Nelson, both of the U.S. Court of Appeals for the Ninth Circuit. Mr. Baird's scholarly interests focus on commercial law, corporate reorganizations and intellectual property.

Michael W. McConnell has been promoted to the rank of full professor with tenure, effective July 1, 1989. Mr. McConnell graduated from the Law School in 1979. At the Law School he was a comment editor on the Law Review and was elected to the Order of the Coif. His research interests focus on constitutional law, especially the freedom of religion.

Geoffrey P. Miller relinquishes the position of Associate Dean on July 1, 1989 and will return to full-time teaching. At the same time, he has accepted appointment as co-editor, with Professor Richard Epstein, of The Journal of Legal Studies.

David A. Strauss has been granted tenure and promoted to Professor of Law, effective July 1, 1989. Mr. Strauss is a graduate of Harvard College and Harvard Law School and also holds a B. Phil. degree in Politics from the University of Oxford. His interests lie in the fields of constitutional law, federal jurisdiction, civil and criminal procedure, administrative law, and legal theory. Mr. Strauss has accepted appointment as co-editor of The Supreme Court Review.

Cass Sunstein has been appointed the Karl N. Llewellyn Professor of Jurisprudence, effective October 1, 1988. Former students, colleagues, family and other friends of the late Karl Llewellyn, who was a distinguished member of the faculty from 1951 until his death in 1962, established this professorship in his honor in 1973. The chair has previously been held by Edward H. Levi (J.D. '35) and Franklin E. Zimring (J.D. '67). Professor Sunstein is a professor in the Department of Political Science as well as the Law School. His chief research and teaching interests include administrative law, welfare law, jurisprudence, and constitutional law and he has published widely in these areas.

Eleanor Alter returns to the Law School in the Spring Quarter, 1990, as Visiting Professor of Law, to teach the family law course and a seminar on legal ethics. Ms. Alter, who is a partner in the New York law firm of Rosenman, Colin, Freund, Lewis & Cohen and one of the nation's leading matrimonial lawyers, taught family law at the Law School during the Spring Quarter, 1988.

Douglas H. Ginsburg has accepted an appointment as the Charles J. Merriam Visiting Scholar and Senior Lecturer in Law for the Spring Quarter, 1990. Judge Ginsburg, who received
his J.D. from the University of Chicago Law School in 1973, was appointed United States Circuit Judge for the District of Columbia Circuit in 1986. His legal career began with service as law clerk to Judge Carl McGowan of the United States Court of Appeals for the D.C. Circuit and then to Justice Thurgood Marshall of the United States Supreme Court. For eight years, Judge Ginsburg was a member of the faculty at Harvard Law School. Before his appointment to the bench, he served in several government positions, including Assistant Attorney General in the U.S. Department of Justice, Antitrust Division. While at the Law School, Judge Ginsburg will teach a seminar on great books of the law.

Hideki Kanda has been appointed Visiting Professor of Law for the Fall Quarter, 1989. Mr. Kanda graduated from the University of Tokyo and is currently associate professor of law at the University of Tokyo’s Faculty of Law. He has written widely in the area of corporate law. While at the Law School, Mr. Kanda will teach a course on comparative Japanese and U.S. business law.

Jonathan R. Macey has accepted an appointment as Visiting Professor of Law for the Fall Quarter of the 1989-90 academic year. Mr. Macey is professor of law at Cornell University and has published widely in the fields of business associations, securities regulation, banking regulation, corporate finance and constitutional law. He will teach a course in corporation law and a seminar in banking regulation.

Frederick Schauer will serve as Visiting Professor for the Winter Quarter, 1990. Mr. Schauer, who is professor of law and political science at the University of Michigan Law School, is an expert on constitutional law and the First Amendment. He has been chair of the AALS Section on Constitutional Law and served as a commissioner on the Attorney General’s Commission on Pornography. At the Law School, Mr. Schauer will teach Constitutional Law II and a seminar in the field of jurisprudence.

Lawrence W. Waggoner, the Lewis M. Simes Professor of Law at the University of Michigan Law School, has accepted an appointment as Visiting Professor of Law during the Winter and Spring Quarters in 1990. Professor Waggoner serves on the National Conference of Commissioners on Uniform State Laws and as Director of Research of the Joint Editorial Board for the Uniform Probate Code. He is the author of numerous articles and books, including Family Property Transactions: Future Interests (1980); Federal Taxation of Gifts, Trusts and Estates (1982); and Cases on Trusts and Succession (1983). Mr. Waggoner will teach in the areas of trusts and estates, federal estate and gift taxation, and future interests.

**Mandel Legal Aid Clinic**

James Bailinson was appointed Clinical Lecturer in Law in September, 1988. Mr. Bailinson graduated with honors from the University of Chicago Law School in 1987 and was elected to the Order of the Coif. He was the winner of the 1986 Hinton Moot Court Competition. During his third year of law school, which he spent as a visiting student at the Harvard Law School, Mr. Bailinson held an externship with the Massachusetts Committee for Public Counsel Services. In 1988, he served as clerk to Judge Milton I. Shadur (J.D.’49) of the United States District Court for the Northern District of Illinois.

Tim Huizenga has been appointed Clinical Lecturer in Law. He received his J.D. from the University of Chicago Law School in 1979. Following graduation, he served for two years as a law clerk to Justice Glenn K. Seidenfeld of the Illinois Appellate Court. In 1981, he accepted a position as a Staff Attorney with the Legal Assistance Foundation of Chicago and since 1985 has served as Supervisory Attorney of the Mid-South Office of LAF. Mr. Huizenga specializes in public housing litigation.
Legal Forum Symposium

The University of Chicago Legal Forum presented its fourth annual symposium, "Feminism in the Law," on October 14-15, 1988. The Honorable Ruth Bader Ginsburg, U.S. Court of Appeals for the District of Columbia Circuit, gave the keynote address on Friday afternoon. As the co-founder of the ACLU Women's Rights Project, Judge Ginsburg was closely involved with many of the most important equality cases litigated during the 1970s. Her talk concentrated on a historical account of equal rights litigation. She pointed out that before the sex equality litigation of the 1970s, "women were sealed into subordinate roles" by law. She added, "We had laws in place that were rampanently sexist in the '70s. Those laws are gone." There had formerly been the assumption that women could not fend for themselves, a remnant of the nineteenth-century common law regime in which women were chattel of their husbands. Judge Ginsburg cautioned that women today should avoid "the dangerous tendency to regard one's own feminism as the only feminism." She saw the feminist movement as a "house with many gables, with rooms enough to accommodate all who have the imagination to work for a common cause."

The symposium brought together leading academics in three panels to discuss feminist perspectives on the law. The first panel, "What is Feminism?" examined the nature of feminist legal thought. Moderator Judith Resnik, Visiting Professor at the Law School, echoed Judge Ginsburg's assertion that feminism is not monolithic. This observation characterized all the panelists, who favored contrasting methods and theories, though there was much common ground for agreement.

Ms. Resnik outlined the issues that obscure the discussion of feminist jurisprudence: the trivialization of women's concerns; the perception that women who seek to promote women's issues are not objective; the complications arising from discussing a topic that makes many men and women nervous; and the inability of many women and men to control anger against patriarchy. The first panelist, Professor Christine Littleton of UCLA, called for the realignment of laws to account for women's experience. She used the example of battered women, asking why society characterizes the phenomenon as "battered women" rather than "violent men."

The second panelist, Professor Wendy Williams of Georgetown, argued that feminism requires not only the elimination of sex-specific laws, but the establishment of formal equality in the law as well. She explained that the differences between men and women create the need for equal treatment, rather than special treatment. Judge Richard Posner, of the U.S. Court of Appeals for the Seventh Circuit, concluded the discussion by presenting a libertarian perspective on feminism. He noted that women and men often have common interests. Although the libertarian view rejects laws discriminating against women in sex-specific terms, it also rejects laws benefiting women in sex-specific terms, such as laws mandating maternity benefits.

Martha Minow

Jane Mansbridge, professor of political science at Northwestern University, moderated the second panel, entitled "Economic Rights: The Role of Race, Gender and Class." Professor Mary Becker (J.D. '80), the first panelist, explored the effect that technical equality under the law has had on the economic and political status of women. She concluded that women in traditional female roles have suffered economically. Although noting that the political process could remedy some of these problems, Ms. Becker concluded that, despite women's majority status, their political influence is curtailed by many social factors.

Frances Olsen, visiting professor at the University of Michigan Law School, raised two concerns: the role of law in women's resistance to social injustice and the need to develop a more substantial theoretical basis for feminist jurisprudence which accounts for race, gender, and class. The final panelist, Kimberle Crenshaw, acting professor of law at UCLA, focused on the problems presented by combined issues of race and gender. She accused the feminist and black liberation movements and the courts of marginalizing black women.

The final panel of the symposium examined the theoretical basis for the feminist movement. The moderator was Professor Cass Sunstein. Martha Minow, professor of law at Harvard University, offered three criticisms of
feminism in order to "advance the kind of dialogue that feminist work invites": Is feminism unresponsive to central issues of law and jurisprudence? Is feminism no different from other trends in legal theory? Is feminism internally inconsistent or incoherent?

Robin West

Robin West, visiting professor of law at the Law School during the Winter and Spring Quarters, 1989, was the final panelist. Her presentation explored how modern critical social theory influences the way scholars think of legal theory. She cautioned against using other academic theories as an intellectual basis for the feminist movement. In particular, she commented that Michel Foucault's notion of power as a positive force clashed with women's experience of patriarchy, a negative and violent force producing silence and suppression.

Symposium papers and student comments will be published in the 1989 volume of The University of Chicago Legal Forum. For further information about the symposium or the publication, contact The University of Chicago Legal Forum, 1111 East 60th Street, Chicago, Illinois 60637 (312/702-9832).

The Fulton Lecture

"Emancipation ratified by total military victory [opened] the American future; or, better, emancipation reopened possibilities of alternative futures," said Professor Harold Hyman of Rice University, who delivered the second Fulton Lecture on January 12. In his talk, entitled "States' Wrongs, Individuals' Rights, and the Nation's Duty: Our First Civil Rights Act," Professor Hyman explained that Reconstruction began early in the Civil War and that emancipation raised questions about the rights of women and other groups in society, not just blacks. The years before the war had seen an erosion of the concepts of the Declaration of Independence and the Constitution, as the northern states made concession after concession to the South, starting with the constitutional protection of one state-defined private property, slaves. Secession by the South in the winter of 1860-61 was the final piece of blackmail that precipitated the Civil War.

The war swept away all the compromises and restrengthened ties to the era of 1787. Professor Hyman argued that the Founding Fathers' vision of a federal nation of states with unfettered economic liberty meshed well with post-war middle class values of social order and improvement. "[It was] the duty of nation and state to supply and widen individuals' avenues of access to the acquisition of property (defined as money or land) through free labor [and] the protection of property, all through education and law."

Lincoln's vision was to confer real equality on the emancipated slaves through education and enfranchisement. Although the 13th Amendment was ratified not long after Lincoln's death, his successor, Andrew Johnson, described by Professor Hyman as a "bigot," obstructed its implementation until, by 1869, the "Lincolnian vision of a state-centered federal union in which state residents enjoyed legal equality in state civil and criminal processes as the minimum definition of national citizenship was seriously blurred." The tragedy was that many white Americans did not care. The war was won, middle class aspirations had been preserved, and few cared about enforcing the 13th Amendment. Though the nation would never return to race-defined slavery, "it required a century for the nation to rise from Dred Scott to Brown v. Board of Education."

Professor Harold Hyman is the Hobby Professor of History at Rice University. The Maurice and Muriel Fulton Lecture in Legal History, endowed by Maurice and Muriel Fulton (J.D.'42), brings distinguished scholars in legal history to the Law School to give public lectures. A reception was held after the lecture in the Harold J. Green Lounge.
Tax Conference

Following well-established tradition, the forty-first University of Chicago Law School's Annual Federal Tax Conference took place on the last Wednesday, Thursday, and Friday of October. The conference is widely recognized as a forum at which leading experts in all branches of federal taxation discuss problems and developments in contemporary federal tax law. Speakers included Dana Trier, Tax Legislative Counsel to the U.S. Treasury Department, Sheldon Banoff (J.D.'74), Katten Muchin & Zavis, who discussed how tax advisers should deal with legal precedents, and Stephen Bowen (J.D.'72), Latham & Watkins, who looked at deferred intercompany transactions. Joseph Isenberg, from the University of Chicago Law School, examined the deferral of U.S. taxation in foreign entities. All the papers from the conference were published in the December, 1989, issue of TAXES-The Tax Magazine.

Placement News: Law School Suspends Firm's Interview Privileges

On December 9, 1988, a third-year student at the Law School had an interview with one of the partners in the litigation department of the Chicago office of Baker & McKenzie. The partner opened the interview by asking the student, a black woman, how she had got into the Law School. He then shared his belief that the Law School tended to admit "foreigners" to the exclusion of "qualified" Americans. He went on to ask her how she would react if she were called a "Black bitch" or a "nigger" by adversaries or her own colleagues. When the student was asked about outside activities and said she played golf, the partner asked why Blacks did not have their own country clubs the way Jews did. After observing that he would not want to belong to an all-Jewish country club, he concluded that Blacks did not have their own country clubs because there were not too many golf courses in the ghetto.

On January 17, the student brought this incident to the attention of the director of professional recruitment at Baker & McKenzie, the Law Students' Association, and Dean Stone. On January 19, Robert Cox, the chair of the Executive Committee of Baker & McKenzie, wrote an apology to the student. He described the behavior of his partner as "totally unacceptable" and promised that the firm would take steps "to ensure that racially insensitive behavior is never repeated." Mr. Cox informed the Law School that the partner had been placed on leave from the firm and offered the assurance that he would never again participate in the interviewing process. The partner in question also wrote a letter of apology to the student in which he recognized that his comments were "insensitive and inappropriate."

On January 31, representatives of the Law School's Placement Committee, the Law Students' Association, and the Black Law Students' Association met with Mr. Cox and several other members of the firm. At this meeting, the representatives of Baker & McKenzie stated that the firm was committed to using this incident as the occasion for extensive self-examination. They also stated their intention to survey those who had interviewed in the past in an effort to determine whether other such incidents had taken place and, on a broader front, they stated their intention to renew their efforts to bring more black and minority lawyers into the firm.

On February 2, Dean Stone accepted the recommendation of the Placement Committee that "Baker & McKenzie not be invited to interview at the Law School for the 1989–90 academic year." Dean Stone explained: "We do not take this step lightly. Baker & McKenzie is one of the nation's, and indeed the world's, great law firms. It has long been a warm friend and generous supporter of legal education in general, and of this Law School in particular. Moreover, we are not unmindful of the apparent anomalies in this decision, for it will at least marginally inconvenience our own students who want to pursue employment at Baker & McKenzie, and it has the effect of disadvantaging an entire law firm because of the behavior of only one of its members. We are also not unmindful of Baker & McKenzie's own response to this incident. To the contrary, we commend the firm for its cooperativeness, its forthrightness and its seriousness of purpose. It has handled this matter with a high degree of sensitivity, professionalism and institutional integrity."

"Nonetheless, just as Baker & McKenzie has assured us that it will take strong steps to condemn this behavior and to prevent its repetition, so too must we take strong steps to protect our students against insulting and degrading conduct in the interview process and to send a clear message to all interviewers and all employers that such behavior must not and will not be tolerated. We hope that, in making this decision, we have accomplished these ends."

The partner in question has since retired from Baker & McKenzie.

Judge Milton Shadur

Trial Held at Law School

Judge Milton I. Shadur (J.D. '49), of the U.S. District Court for the Northern District of Illinois, revived an old Law School tradition when he presided over Rice v. AFTEC, Inc., a breach of contract case, in the Hinton Moot Court Room at the Law School. First-year classes were cancelled on the first day of the trial to enable students to observe court procedures. At the end of each day of the trial, Judge Shadur met with students to discuss the proceedings. The parties settled the case on the morning of the third day.
"I stand by 'One L' as the personal account of an acute neurotic. I did all the crazy things the book depicts." Though the audience murmured in disbelief (or envy), Scott Turow stuck to his claim in his talk, "My Life in Letters," in which he traced his literary career up to becoming the best-selling author of "One L" and "Presumed Innocent." Turow, now a partner at the Chicago law firm of Sonnenschein Carlin Nath & Rosenthal, was speaking to students on October 11.

"An unjust law is a law in name only." Quoting St. Augustine, Mortimer Adler addressed the first-year students on November 30 on the subject of "Unconstitutionality and Injustice." He sought to show the students how the study of law is irrevocably bound up with the concept of justice. Laws that are enforced by consent of the governed rather than through fear of the consequences have a chance of being just but even then there can be occasions where what is constitutional and legal is still unjust.

Mr. Adler, who taught the philosophy of law at the Law School from 1930-52, is a frequent speaker to the students.

"When university officials, judges or other business and civic leaders participate in clubs that do not permit women to join, these individuals and institutions indicate that they do not consider women to be full members of their organizations." Visiting Professor Judith Resnik described to students on October 20 how, in the early 1980s, she became involved in efforts to end the discrimination by all male clubs against women and minorities. In 1987, Ms. Resnik argued in the United States Supreme Court the case for the Rotary Club of Duarte, expelled by Rotary International for admitting women. The Supreme Court agreed with the Duarte Rotary that it had a right, under state law, to admit women and that no federal constitutional provision prevented enforcement of state law.

Pro Bono Representation of Death Row Inmates

"The Johnson case raised the question whether a prior conviction that was later invalidated on constitutional grounds could be considered as an aggravating circumstance in imposing the death sentence. It was the first capital punishment case to raise a full faith and credit issue, and it was the first capital punishment case in which a State Attorney General filed an amicus brief on the side of the defendant." Laurence T. Sorkin, of the New York law firm of Cahill Gordon & Reindel, spoke at the Law School on November 17 on Pro Bono Representation of Death Row Inmates—Johns...
Matching Funds for CLF

The Law School has made a challenge grant to the Chicago Law Foundation to support public service work. The Chicago Law Foundation is a student group, founded in 1979, that provides grants to students who accept public service jobs during the summer vacation. Such public service positions often carry no salary. Contributions from students and faculty provide the Foundation's only source of funding. Now the Law School has agreed to add one dollar for every two dollars raised, up to a maximum of $10,000 per year. The matching gift will allow the CLF to increase the amount of its grants, which in turn will increase the number of students who can afford to participate, while still ensuring that the program remains primarily student supported.

In the past few years, the Foundation has supported students who worked for the NAACP Legal Defense Fund, the Cook County Public Defender's Office, Southern Arizona Legal Aid, the Northwest Women's Law Center (in Seattle), the Association for Civil Rights (in Israel), the National Lawyers Committee for Civil Rights under Law, and Business and Professional People for the Public Interest.

In announcing the matching grant, Dean Geoffrey Stone said "We are supporting the program for two reasons. First, it's vitally important to support the efforts of students who choose to forgo the incomes they can earn in private law practice, in order to perform public service. Second, it's wonderful that the students themselves support the program. We hope our matching fund will be an added incentive for them."

Mr. Douglas was associated with the Chicago law firm of Gardner, Carton & Douglas for more than fifty years. He served as Assistant Secretary of the Treasury under Presidents Hoover and Roosevelt and as Secretary of the Air Force under President Eisenhower.

Owen Fairweather Scholarship Fund

Led by the firm of Seyfarth, Shaw, Fairweather & Geraldson, friends, partners and colleagues of the late Owen Fairweather (J.D. '38) have contributed $100,000 to create an endowed fund which will support moral obligation scholarships for outstanding students who demonstrate financial need.

The Chicago law firm was founded in 1945 by Owen Fairweather, Lee C. Shaw (J.D. '30), and Henry Seyfarth (J.D. '30). According to Joel Kaplan (J.D. '69), a partner at the firm who led the fundraising, "The Law School played an important role in Owen's life and he remained active in the Law School during his whole professional career. This fund is his firm's way of returning the favor."

Mr. Fairweather, a nationally recognized expert on labor law, was the author of six books and many articles on labor law. He died in 1987.

The Irving H. Goldberg Family Fund

Mrs. Jane Goldberg and the Goldberg family have created an endowed fund in memory of Irving Goldberg (J.D. '27). Mr. Goldberg was a founding partner of the firm of Goldberg & Weigle, which merged with the firm of Jenner & Block in 1974. He remained a partner of the combined firm until his death in 1987.

The income from the Goldberg Fund will be used at the discretion of the Dean of the Law School to promote diversity within the student body. According to Mrs. Goldberg, "It is the family's desire that the Law School have the ability to attract, enroll, and graduate students from a broad range of social, economic, ethnic, and educational backgrounds."

Mandel Clinic Gets Grant

For the second year in a row, the Mandel Legal Aid Clinic has received a $25,000 grant from the Lawyers Trust Fund of Illinois to help people obtain services under Project Chance, a state program designed to get people off the welfare rolls and into jobs. The grant will enable the clinic's lawyers and social workers to continue helping people who are at risk of losing public assistance, but Professor Gary Palm (J.D. '67), Director of the Clinic, is looking forward to a more aggressive approach as well.

"We built a foundation last year of knowledge and of outreach with important community and service groups and with government officials," said Palm. "We now have a better understanding of the issues and of how to deliver services to Project Chance recipients. Part of our objective now is to become more aggressive in assisting clients to receive entitlements—tuition fees, transportation fees, or daycare help."
Placement and Career Programs

The Placement Office organized a series of lunchtime panel discussions during the Autumn Quarter to give students an insight into different types of jobs. Paul Woo, Director of Placement, began the series with a workshop on writing a good resume and cover letter. Ellen Babbitt, a partner with Butler Rubin Newcomer Saltarelli & Boyd, Alan Solow, a partner in the firm of Goldberg Kohn Bell Black Rosenbloom & Moritz, and Jon Vegosen, a partner with Levin & Funkhouser, spoke on aspects of practice in small firms. Public interest careers were discussed by Randall Schmidt (J.D. '79) of the Mandel Legal Aid Clinic, Carleen Schreder (J.D. '82), Stein & Schreder and president of Chicago Legal Aid to Incarcerated Mothers, and Steven Saltzman (J.D. '74) who is in private practice. Other topics included partnership and law firm culture in larger firms, women in the law, careers in international and comparative law, the U.S. Attorney's Office and careers in corporate legal departments. The series closed with a workshop on interviewing skills and tips for a successful job search.

Town Hall Meeting

Dean Geoffrey Stone held a "town hall" meeting with students on October 21. As with last year's meeting, Dean Stone first responded to written questions submitted by the Law Students' Association and then answered questions from the floor.

"The idea is to give me an opportunity to find out what's on the students' minds and also to give the students greater insight into the workings of the Law School," said Stone. "I hope in this way students can gain a better appreciation of our successes and frustrations."

Questions raised by the students related to faculty hiring policies, the diversity of the student body, student/faculty relations, access to job information, second or third year externships, the Law and Government Program, fundraising, and the nature of the dean's job.

New Cover for Law Review

The editors of the University of Chicago Law Review have decided to change the color of the publication's cover from light blue to maroon, beginning with the 1989 volume. The change coincided with the commercial publication of the University of Chicago Manual of Legal Citation, commonly known as the Maroon Book. "This seemed a good time to change," said James Barry (Class of 1989), Editor-in-chief. "Maroon has always been the University's color. It's appropriate for the Manual and the Law Review to have the same color cover."

Judge Abner Mikva (J.D. '51), who was Editor-in-chief of the Law Review in 1951, expressed some reservations. "It'll take a while for some of us to get used to the change," he said. "I must now learn to distinguish it from other law reviews with dark red or maroon covers on my shelves. But I doubt the change will affect the quality of the Law Review or its standing with publications from other law schools. There are much more important things about the Law Review than this modest change. I promise not to judge it by its cover!"

Jeffrey Grausam (J.D. '68), Editor-in-chief of the Law Review in another year of change, 1968, was elated. "Anything is a change from that disgusting blue color that I inherited and passed on! It will probably be confusing to alumni and it'll take three to five years to work out the kinks, but it's a great idea. Maroon is a handsome color and will look more stately on bookshelves. I would be especially interested if there was any possibility of providing dyes to turn the old issues maroon to match!"

Further bouquets or brickbats regarding the new cover can be directed to James Barry and the Law Review editorial board.

Former Chairman Receives Honorary Degree

B. Kenneth West

B. Kenneth West, former Chairman of the University of Chicago's Board of Trustees, received the honorary Doctor of Laws degree at the University's 411th Convocation on December 9. His honorary degree commended him for selfless and devoted leadership and for sustaining and furthering the values of academic freedom and academic excellence. Mr. West, who served as chairman from 1983 to the spring of 1988, is chairman of the board and chief executive officer of Harris Trust and Savings Bank. He continues to serve as a Trustee of the University and will lead the Centennial Capital Campaign.
Visiting Committee

The Visiting Committee's annual meeting at the Law School took place November 15-16, 1988. This year's theme was "Law Teaching and Law Practice: The Role of the Law School in Professional Education." After a continental breakfast and introductory remarks from Dean Geoffrey R. Stone (J.D. '71), the Committee listened to a panel discussion on the curriculum and whether it should lean more toward theory or practice. The panelists were Burton W. Kanter (J.D. '52), Professor John H. Langbein, Associate Dean Geoffrey P. Miller, and Judge Richard A. Posner. Marshall Patner (J.D. '56) and Claire E. Pensyl (J.D. '78) then reported on the findings of a subcommittee on clinical legal education set up at last year's Visiting Committee meeting. The Committee then met with representatives of more than a dozen student organizations over lunch in the Harold J. Green Lounge. In the afternoon, Dean of Students Richard I. Badger (J.D. '68), Professor Douglas G. Baird, Mr. Paul Woo, Director of Placement, and Professor Diane P. Wood discussed the Law School's role as an "employment agency" and the kinds of careers Law School graduates pursue—law firms, public service, and judicial clerkships. The Visiting Committee then participated in a discussion on legal writing with Mr. Leo Herzel (J.D. '52), Professor Larry B. Kramer (J.D. '84), Professor Michael W. McConnell (J.D. '79), and Professor Joseph Williams (Dept. of English).

Cass Sunstein delivered the annual Wilber G. Katz Lecture in the Weymouth Kirkland Courtroom. His topic was "Interpreting Statutes in the Welfare State." Using two United States Supreme Court cases as paradigms, Mr. Sunstein argued that courts use interpretive canons to construe ambiguous statutes, that such canons are in a state of disarray, and that a set of norms consistent with the regulatory state can and should be developed. Mr. Sunstein criticized textualism, "the plain meaning approach," and interpretations based on the supposed purposiveness of statutes. Mr. Sunstein concluded that there is a need for background interpretive principles and argued for the development of principles congenial to the modern welfare state.

Professor Sunstein's lecture was followed by a reception and dinner for the Visiting Committee in Lower Burton-Judson Lounge.

The next day, members of the Committee were invited to take part in regular class sessions and chose among Elements of the Law (Professors Strauss or Sunstein), Antitrust Law (Professor Wood), and Individual Income Taxation (Professor Blum). After an executive session with Dean Stone, luncheon in Lower Burton-Judson, with remarks by Professor Daniel Shavio, closed the 1988 visit.

Visiting Committee Members

Chair
Howard G. Krane '57
Kirkland & Ellis
Chicago, Illinois

Terms Expiring 1988-89
Dr. King V. Cheek '64
New York Institute of Technology
Old Westbury, New York

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

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

Gail P. Fels '65
Assistant Dade County Attorney
Miami, Florida

The Hon. Charles Fried
Department of Justice
Washington, D.C.

The Hon. John Gibbons
United States Court of Appeals
Third Circuit
Philadelphia, Pennsylvania

Visiting Committee members C. Curtis Everett (J.D. '57), Barbara Fried (J.D. '57), and Ronald J. Aronberg (J.D. '57) enjoy a mini class reunion before the first session of the annual meeting
Joseph H. Golant '65
Ashen Golant Martin & Seldon
Los Angeles, California

James J. Granby '63
Granby Enterprises, Inc.
San Diego, California

Richard A. Heise '61
Heise & Company
Chicago, Illinois

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

Anne G. Kimball '76
Wildman Harrold Allen & Dixon
Chicago, Illinois

Douglas M. Kraus '73
Skadden Arps Slate Meagher & Flom
New York, New York

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

Ralph G. Neas '71
Leadership Conference on Civil Rights
Washington, D.C.

Gail L. Peck '84
Premark International, Inc.
Deerfield, Illinois

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

Saul I. Stern '40
Rockville, Maryland

The Hon. Deanell Tacha
United States Court of Appeals
Tenth Circuit
Denver, Colorado

The Hon. Ralph Winter
United States Court of Appeals
Second Circuit
New York, New York

Debra A. Cafaro '82
Barack Ferrazzano Kirschbaum & Perlman
Chicago, Illinois

John B. Davidson
Louis G. Davidson & Associates
Chicago, Illinois

Richard Fielding '73
Herbert C. Fielding Foundation Inc.
New York, New York

Aviva Futorian '70
Legal Assistance Foundation of Chicago
Chicago, Illinois

James C. Hornel '58
Equidex Inc.
San Francisco, California

Lawrence T. Hoyle Jr. '65
Hoyle Morris & Kerr
Philadelphia, Pennsylvania

Nicholas deB. Katzenbach
Riker Danzig Scherer Hyland & Perretti
Morristown, New Jersey

Lillian B. Kraemer '64
Simpson Thacher & Bartlett
New York, New York

Jewel S. Lafontant '46
Vedder Price Kaufman & Kammholz
Chicago, Illinois

Allison W. Miller '76
Stearns Weaver Miller Weissler Alhadef & Sitterson, PA
Miami, Florida

Norman H. Nachman '32
Winston & Strawn
Chicago, Illinois

The Hon. Dorothy W. Nelson
United States Court of Appeals
Ninth Circuit
Los Angeles, California

Ellen C. Newcomer '73
Butler Rubin Newcomer
Saltarello & Boyd
Chicago, Illinois

Marshall Patter '56
Law Offices of Marshall Patter, P.C.
Chicago, Illinois

Robert Cooper Ramo '67
Poole Tinnin & Martin
Albuquerque, New Mexico

The Hon. Mary M. Schroeder '65
United States Court of Appeals
Ninth Circuit
Phoenix, Arizona

David S. Tatel
Hogan & Hartson
Washington, D.C.

Stuart S. Taylor, Jr.
The New York Times
Washington, D.C.

Terms Expiring 1990–91

The Hon. Shirley Abrahamson
Wisconsin Supreme Court
Madison, Wisconsin

Charlotte Adelman '62
Law Offices of Charlotte Adelman
Chicago, Illinois

Ronald J. Aronberg '57
Greenberg Keele Lunn & Aronberg
Chicago, Illinois

The Hon. Edward R. Becker
United States Court of Appeals
Third Circuit
Philadelphia, Pennsylvania

The Hon. Carol Moseley Braun '72
Cook County Recorder of Deeds
Chicago, Illinois

Rita Braver
CBS News
Washington, D.C.

Joseph N. DuCanto '55
Schiller DuCanto & Fleck
Chicago, Illinois

Barbara Fried '57
Barbara Fried Attorney at Law
Springfield, Virginia

VOLUME 35/SPRING 1989
In September, **Albert Alschuler**, Wilson-Dickinson Professor of Law, spoke at the dedication of the new academic building of the John Jay College of Criminal Justice in New York City. He also attended a conference at the University of California at Berkeley on Community, Law, and Moral Reasoning. In November, Mr. Alschuler served as a juror in the Circuit Court of Cook County. In December, he spoke to the Annual Convention of the Illinois Judges Association on "The Erosion of Judicial Discretion."

**Douglas G. Baird**, Harry A. Bigelow Professor of Law, was a faculty member at the three-week seminar on American Law and Institutions held in Salzburg, Austria in July, 1988. Judith Resnik, Visiting Professor of Law during the Autumn Quarter, and Judge **Abner Mikva** (J.D. '51) were also members of the faculty, while **Thomas Scorza** (J.D. '82) served as reporter for the session. Mr. Baird was a member of the faculty at the ALI-ABA Conference on Bankruptcy, held in Williamsburg in October.

**Mary Becker**, Professor of Law, spoke on Politics, Differences, and Economic Rights as a member of the first panel at the 1988 Legal Forum Symposium on Feminism and the Law, held at the Law School on October 14–15, 1988. Later in the month, she also spoke at the Gender and Society Workshop at the University of Chicago and at a faculty workshop at Wake Forest University School of Law. As part of the School of Social Service Administration's colloquium series, she delivered a lecture in November on Economic Rights and Political Participation of Women. The same month she gave a presentation on Defining and Restricting Pornography at a colloquium on The First Amendment and Freedom of Artistic Expression at the David and Alfred Smart Gallery in Chicago.

**Richard A. Epstein**, James Parker Hall Distinguished Professor of Law, delivered the Ben A. Rogge Memorial Lecture at Wabash College on September 22, 1988, on the subject of "Discretion in Market and Politics." He also presented his paper, "Justice across the Generations," at a conference on Intergenerational Justice sponsored by the Liberty Fund and organized by the Department of Government at the University of Texas, Austin, on October 20–22, 1988. On November 29, he delivered the John M. Olin distinguished series lecture at the Wharton School of the University of Pennsylvania on "Takings: Conceptual Dodges and Conceptual Issues."

**Richard H. Helmholz**, Ruth Wyatt Rosenson Professor of Law, participated in a conference of international scholars on the history of the law of succession. The conference was held in Chinchon, Spain, in September. In December, Mr. Helmholz delivered an address on Justice in Angevin England at the annual meeting of the American Historical Association in Cincinnati. He also published a paper on the history of criminal law under the canon law in the Proceedings of the Seventh International Congress of Medieval Canon Law (1988).

**Mark J. Heyman**, Senior Clinical Lecturer in Law, who has been a Visiting Associate Professor at Northwestern University since August, 1987, has served as executive director of the Commission to Revise the Mental Health Code of Illinois. He returned to the Law School in January, following completion of the work of the Commission. Last July, he gave a presentation with Professor **Norval Morris** on "Informed Consent and the Right to Refuse Psychiatric Treatment" at the Center for Medical Ethics of the Pritzker School of Medicine. In August, he gave a speech to the Chicago and Vicinity Medical Records Association on the confidentiality of mental health records. In September, he delivered a speech on the use of restraint in mental health and developmental disabilities facilities to the American Association on Mental Deficiency.

From December 13 to December 17, **Spencer L. Kimball**, Seymour Logan Professor Emeritus of Law, gave a series of lectures at the Graduate School of Insurance, National Chengchi University, Taipei, Taiwan. He also gave a public address to the insurance community in Taipei and took part in a panel discussion with representatives of American insurance companies that do business in Taipei. Mr. Kimball took the opportunity of visiting Thailand, Malaysia, and Singapore before going on to Taiwan.

On September 30, **Larry B. Kramer**, Assistant Professor of Law, participated in a conference in Chicago on the use of expert witnesses in school desegregation litigation, sponsored by the Spencer Foundation.

**John H. Langbein**, Max Pam Professor of American and Foreign Law, who is serving as co-reporter for the Uniform Transfer-on-Death Securities Registration Act, presented the first draft of the measure to the August 1988 meeting of the National Conference of Commissioners on Uniform State Laws. At the 1988 annual meeting of the American Bar Association in Toronto in August, Mr. Langbein addressed a session dealing with the problems of and potential for lawyers serving as trustees. In October, he went to Philadelphia to attend the first meeting of the advisers to the American Law Institute's pending Restatement of Trusts Third: Prudent Investor Rule. In November, Mr. Langbein participated in drafting sessions in Dallas and Chicago for the forthcoming revisions of Articles II and VI of the Uniform Probate Code. He is a member of both revision panels.

On July 27, 1988, in conjunction with representatives of the Chicago ACLU and Anti-Defamation League, **Michael W. McConnell**, Assistant Professor of Law, presented a talk on the Religion Clauses of the First Amendment to the Chicago Lawyers Division of the Federalist Society. The following day, he presented a draft paper on the application of the takings clause to public utility rate cases at a work-in-progress meeting with the Law School faculty. In October, Mr. McConnell appeared on C-SPAN cable television to discuss the 1988 term of the United States Supreme Court. On October
Faculty Work-in-Progress Lunches

Every second Thursday during the academic year, the Placement Lounge is the scene for a faculty meeting—with a difference. For the past two years, the faculty have gathered on an informal basis, over a buffet lunch, to discuss a current research project of one of their colleagues. The work-in-progress lunches are supervised by Professors John Langbein and David Strauss. Langbein sees the meetings as filling an important gap in the process of faculty research.

“In the traditional workshop format, a speaker presents prepublication work for comments and criticisms. The work is in an advanced stage, a final or almost final draft. Our work-in-progress lunches take work that is in a much more primitive state, to get the benefit of discussion and criticism from colleagues in the formative stage of a project.”

Occasionally, the meetings are designed to educate and to present new developments. Professor Albert Alschuler explained the new federal sentencing guidelines at one meeting, for example, and Professor Diane Wood has discussed the recent federal statute that mandates arbitration as a preliminary to civil lawsuits. More often, faculty members present a first draft of a future paper, or sometimes simply speak about their tentative ideas for future research. Langbein sees the meetings as a forum at which faculty members can have the right to be wrong without embarrassment, in an atmosphere of good fellowship. For the audience, the lunches provide an effective way of keeping abreast of activity at the cutting edge of research in often unfamiliar areas of the law. The series has proved extremely popular with the faculty. “This is a very interactive law school,” said Langbein. “The success of the work-in-progress meetings bespeaks the high level of research activity of the faculty and its closeness. We owe each other as scholars. These lunches enable us to help one another and to strengthen the quality of our scholarship.”

Geoffrey P. Miller, Professor of Law and Associate Dean, spent two weeks in Japan in June, 1988, researching into Japanese finance and markets. In September, he spoke on “The Separation of Powers Today” to a group of Law School alumni in Milwaukee. In October, he spoke to the Administrative Conference of the United States on “Rents, Risk Monitoring and the Market for Corporate Control” and in the same month he gave a talk on “Dialectics of Property” at Cornell Law School.

Gary H. Palm, Professor of Law, has been appointed to the ABA Accreditation Committee of the Section on Legal Education and Admissions to the Bar for 1988-89. In November, he served as a consultant to the University of Michigan Law School on the promotion and appointment of clinical teachers. He has been reappointed to the Skills Training Committee of the ABA Section on Legal Education and Admissions to the Bar.

At the annual meeting of the American Society of Criminology, held in Chicago in November, Stephen J. Schulhofer, Frank and Bernice J. Greenberg Professor of Law and Director of the Center for Studies in Criminal Justice, chaired a panel discussion on the question whether crime victims should have constitutionally protected rights. In addition, Mr. Schulhofer is participating in a study on behalf of the U.S. Sentencing Commission to evaluate the implementation of the federal sentencing guidelines in selected federal courts.
around the country. During the fall quarter, he interviewed prosecutors, probation officers and federal district judges in several cities around the country in connection with this study.

On November 16, Daniel N. Shaviro, Assistant Professor of Law, addressed the Visiting Committee at the closing luncheon of the Committee's annual visit to the Law School.

In July, Geoffrey R. Stone, Harry Kalven, Jr., Professor of Law and Dean, presented his views on the constitutionality of proposed anti-pornography legislation to the Committee on the Judiciary of the United States House of Representatives. On October 16, he delivered an address at the University of Chicago Divinity School on “Constitutional Interpretation: Why 'Original Intent' Is Wrong.” In November, he moderated a colloquium on the “First Amendment and Freedom of Artistic Expression” to mark the opening of an exhibition on Political Satire in the Age of Daumier at the David and Alfred Smart Gallery at the University of Chicago.

David A. Strauss, Assistant Professor of Law, spoke on the issues of professional responsibility that arise in representing government agencies at the annual meeting of the Conference of Western Attorneys General, held in July in Sedona, Arizona. In August, he spoke on the First Amendment and government regulation of obscenity and pornography before the Minnesota State Bar in Minneapolis. In October, he spoke about recent Supreme Court decisions on federal jurisdiction to a workshop of Sixth Circuit judges in Cincinnati. In December he was a member of a panel that discussed consent decrees and judicial activism at a conference at the IIT Chicago-Kent College of Law. Mr. Strauss is a member of the Board of Governors of the Chicago Council of Lawyers.

Cass Sunstein, Karl N. Llewellyn Professor of Jurisprudence, traveled to Beijing in July where he taught a course on American administrative law to a group of government officials and lawyers as part of a summer program on American law. He also delivered lectures in Beijing on American constitutionalism and on the law of sex discrimination. In September, he delivered two papers at the annual meeting of the American Political Science Association. The first, “Routine and Revolution,” dealt with the separation of powers; the second, “Political Self-Interest in American Public Law,” will be published in a forthcoming book, Beyond Self-Interest. Also in September, Mr. Sunstein spoke at Georgetown University Law Center on the revival of classical republicanism in American public law, and at Harvard Law School on statutory interpretation. In October, he was a moderator for one of the panels at the Law School's Legal Forum symposium on Feminism and the Law. Later that month, he spoke at Tulane Law School on the construction of regulatory statutes. In November, he delivered the annual Wilber Katz lecture, entitled “Interpreting Statutes in the Welfare State,” at the Law School and also spoke at the University of Virginia Law School. At the University of Michigan Law School in December he spoke on republican thought and the Constitution, and on statutory interpretation. Mr. Sunstein has been appointed a member of the ABA Commission on the future of the Federal Trade Commission.

In September, Alan O. Sykes, Assistant Professor of Law, gave a paper entitled “Countervailing Duty Law: An Economic Critique” at the Stanford University Law and Economics Workshop.

During the summer, Diane P. Wood, Professor of Law, was co-chair of an ABA Task Force that wrote extensive comments on the draft of the Department of Justice's Antitrust Guidelines for International Operations. The ABA House of Delegates adopted resolutions drawn from the task force report during the annual meeting in Toronto. On October 7-8, Ms. Wood attended a conference at the University of California at Berkeley on “Antitrust, Innovation and Competitiveness: A Centennial Celebration of the Sherman Act,” where she commented on papers dealing with cooperative R&D ventures, general agreements between competitors, and the suitability of courts for the resolution of antitrust disputes. She was the Law School's representative at the third annual Journées Juridiques Franco-Americaines, held in conjunction with the American Association for the Comparative Study of Law on November 11 and 12. The colloquium dealt with French and American developments in modern corporate governance, international arbitration of disputes, and civil procedure reform. On November 30, Ms. Wood gave a speech on “The Future of International Antitrust Issues” for the Illinois State Bar Association's annual Antitrust Symposium. In December, she gave a talk on the International Antitrust Guidelines to the Greater Cleveland International Lawyers' Group.
EVENTS

New York Alumni Dinner at the Quilted Giraffe

Many Law School alumni who live and work in the New York area cannot attend the annual Reunion Dinner held in Chicago each May so last year, New York alumni decided to hold their own dinner. Barry Wine (J.D. '67) hosted the dinner at his fashionable restaurant, The Quilted Giraffe, on October 24. Douglas Kraus (J.D. '73), president of the New York chapter, presided over the evening. Alumni took the opportunity to honor Professors Walter J. Blum (J.D. '41) and Spencer Kimball on the occasion of their retirement. Mr. Blum and Mr. Kimball each gave a short, impromptu speech after being presented to the audience by Douglas Kraus and Herbert Stern (J.D. '61). Dean Geoffrey Stone (J.D. '71) made brief remarks about the Law School before introducing the evening's main speaker, Professor Cass Sunstein, who addressed the topic of statutory interpretation. All those who packed into Barry Wine's restaurant agreed that the evening was a success and it is hoped that this first New York Alumni Dinner will become a regular event.

Around the Country

Associate Dean Geoffrey P. Miller was the featured speaker at a luncheon arranged by the Milwaukee chapter on September 13. He spoke on the “Separation of Powers Today.” Edwin P. Wiley (J.D. '52), president of the chapter, introduced Professor Miller at the luncheon.

Richard I. Badger (J.D. '68), Assistant Dean and Dean of Students, descended upon Wall Street on September 15 to recount “Cheating and Bribery: The Things Some People Will Do to Get into the Law School” at a luncheon arranged by Peter H. Darrow (J.D. '67) at his firm Cleary Gottlieb Steen & Hamilton. As with the California luncheons, the invitation was extended to include recent graduates and law students working in the area.

The Washington, D.C., chapter held a luncheon on election day, November 8. Professor David Strauss spoke to graduates on “The Supreme Court after Today.” Abe Kraish (J.D. '49) was the host for the event, which was held at his firm, Arnold & Porter.

Summer Luncheons

Several California chapters of the national alumni association have established a tradition of holding luncheons during the summer to welcome recent graduates of the Law School who have taken positions in the area and also to meet students from Chicago who are working as summer associates in California.

The San Francisco chapter held its luncheon on August 18 and invited David C. Long (J.D. '66) to speak on “A State Bar Saga.” Mr. Long is Director of Research at the State Bar of California. Roland E. Brandle (J.D. '66), president of the San Francisco chapter, organized the event.

Joel M. Bernstein (J.D. '69), president of the Los Angeles chapter, arranged a similar luncheon for graduates and law students in the Los Angeles area. Michael E. Meyer (J.D. '67) was kind enough to provide a room at his firm, Lillick, McHose & Charles, in which to hold the luncheon. Dennis M. Barden, Assistant Dean and Director of Development, gave a short report on current events and future plans at the Law School.

Loop Luncheons

The popular Loop Luncheon series provides opportunities for Law School alumni in the Chicago area to get together about ten times a year over lunch and listen to an invited speaker talk on a subject of topical interest. Alumni learnt all about the latest happenings at the Law School at the first of the Fall series of Loop Luncheons on September 19, when Dean Geoffrey R. Stone (J.D. '71), spoke on “The Law School—Past, Present and Future.”

Jacky Grimshaw, former director of the Mayor's Office of Intergovernmental Affairs, was the speaker on October 13. Her talk, “Over the Rainbow: Issues in Election '88,” was well received by the audience, many of whom lingered at the end to ask further questions.

The third luncheon in the series came right before the general election, on November 2, and Joseph D. Mathewson’s talk, “Big League City—Bush League Politics,” was a timely
Class Notes Section – REDACTED

for issues of privacy
CLASS NOTES

'32 Sidney Hess, Jr., a partner at D’Ancona & Pfuma, was named to the City of Chicago’s 1988 Senior Citizens Hall of Fame for his “abiding commitment to Chicago education, medical and philanthropic institutions” (Mayor Sawyer).

'41 Robert Simon was elected to the Assembly of the Illinois State Bar Association in May, 1987. At the November meeting of the Assembly he presented a resolution to amend the Code of Professional Responsibility to allow the spouse of a deceased sole practitioner to sell the good will of the practice. In June, 1988, he introduced a companion resolution to allow a sole practitioner who is retiring, disabled, or moving out of state to sell the good will of his practice. Mr. Simon is a member of the Board of Managers of the North Suburban Bar Association and is chair of its Lawyer Referral Committee. He recently updated his chapter in a book on Mechanics’ Liens, originally published by IICLE in 1981.

'46 Louis Levet is chair of the Long Range Planning Committee of the Chicago Bar Association.

'49 In September, Milton Shadur was a member of the faculty of a seminar on RICO: Its Uses and Abuses—Update 1988 sponsored by the Illinois Institute for Continuing Legal Education.

'50 James Ratcliffe has been elected a vice president of R.R. Donnelley & Sons Company. He has been with the company since 1968 as director of public affairs and was promoted to director of corporate relations last December.

'51 Karl Nygren was reelected Chairman of the Board of the American Judicature Society at the Society’s 75th anniversary meeting.

'52 Elizabeth Head has been named general counsel of Columbia University, effective March 1, 1989. She will be responsible for managing the University’s legal affairs, with a staff of six lawyers plus outside counsel retained by the University.

'55 The IICLE has published a new 1988 handbook on Illinois Family Law. Joseph Ducanto has contributed a chapter, written with a colleague, on “Tax Aspects of Dissolution and Separation.”

'56 Preble Stolz has been named the Stefan A. Riesenfeld Professor at the University of California, Berkeley.


Jaro Maya is professor emeritus of law and public policy at the University of Puerto Rico. He recently lectured and conducted colloquia on U.S. environmental law and practice in English, French, German, and Czech in Canada, East Berlin, Poland, and Czecho-Slovakia, under the auspices of the U.S. Information Agency. He is the author of the article on the United States in the International Encyclopedia on Environmental Law, published in West Berlin in 1988.

Terrance Sandalow has been named the Edson R. Sunderland Professor of Law at the University of Michigan.

'59 Herma Hill Kay has been appointed the Richard W. Jennings Professor at the University of California, Berkeley. She will also become the new President of the Association of American Law Schools.

Joseph L. Sax has been named the James H. House and Hiram H. Hurd Professor of Environmental Regulation at the University of California, Berkeley.

'60 David M. Becker received the first Alumni Distinguished Teacher Award at Washington University School of Law.

Peter Langrock has been elected to the 1988-89 Board of Directors of the American Judicature Society.
Lisa Heinzerling Receives Fellowship

Lisa Heinzerling has been awarded a Skadden fellowship to work at Business and Professional People in the Public Interest (BPI) in Chicago in 1989-90.

If qualifications mean anything, Lisa Heinzerling can have any kind of law career she chooses. She graduated in 1987 with honors and was inducted into the Order of the Coif. She was Editor-in-Chief of the University of Chicago Law Review, the first woman in that position. Since graduation, she has served as a law clerk for Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit and this year for Justice William J. Brennan, Jr., of the United States Supreme Court. Clerking for Judge Posner and Justice Brennan has been very exciting.

“They are wonderful to work for. The work offers great opportunities and challenges,” she said. “It’s also very confidential, so ironically, I can’t talk about the most interesting work I’ve ever done.”

The next step for Lisa could have been in a high-paying law firm, but Lisa has set her sights on public service. “It’s why I went to law school,” she said.

Skadden fellowships are awarded for one year, renewable for a second, to lawyers working at public interest firms on programs that aim to provide services for the poor. Lisa chose BPI because of its national reputation.

“...there are only five lawyers at BPI, but it commands respect throughout the profession. That says a lot about BPI’s integrity and effectiveness.” At BPI, Lisa will be working with Alexander Polikoff (J.D. ’53), the Executive Director. She will concentrate on a plan to implement scattered site housing for the poor throughout Chicago, rather than previous models of clustering low-income housing into concentrated areas.

Lisa plans to stay in public interest work at least for the next five or six years. She is in no hurry to commit herself to a lifetime career, but an academic career is a strong possibility. “It’s something I’ve thought about a lot. It would be attractive at a later date. I would enjoy teaching, but want other activities as well, on the practical side of law. I have always had a pragmatic view of the law and want to write about the problems of real people who are confronting the realities of our society.”

Myron Orfield is a research fellow at our alma mater compiling more information on the exclusionary rule [see page 14, Ed.] and occasionally debating Professor Alschuler in Criminal Procedure. He enjoyed his clerkship in Duluth, especially when his judge sat as a District Judge in St. Paul and proceeded to find the new federal sentencing guidelines and the Montgomery Amendment unconstitutional (in separate cases). Jim Baitinson is also back in Hyde Park, working for the Mandel Clinic.

This fall, Dave McCarthy married Joan Gudeman, the social services student he met while “dining” at Burton-Judson. Attending the wedding in

VOLUME 35/SPRING 1989 53
Milwaukee were Phil Blackman, Jana Cohen, Myron Orfield, and Steve Kurtz. Dave has settled back in “cow town” and is practicing at Chicago’s Skadden, Arps office.

Thanks again to those of you who have written or called with news. Please continue! If you’ve changed jobs, cities, or names with the last year, please send me your new information. Happy 1989!

'88 Class Correspondent: Dean Schramm, 804 W. 48th Street, Apt. 303, Kansas City, Missouri 64112.

Greetings from the Show Me State. Once again I am here to serve you—as class correspondent. My mission is to solicit any information you wish to pass on to our fellow classmates now scattered far and wide. If you will, I shall be the hub of information, disseminating news about you throughout the year via the Law School Record.

DEATHS

The Law School Record notes with sorrow the deaths of:

Harold J. Green 1905–88

An apocryphal story circulates about Harold Green, who died December 1, 1988, and the law lounge that bears his name. It is a story Mr. Green liked so much he often repeated it with his own, often startling, embellishments. Harold Green understood that students need an inviting place to relax and thus he resisted any encroachments upon the refuge he created. It is said that on one of his first visits to the lounge he encountered a student poring over his law books.

“I’m Harold Green,” he announced, “and I built this room not for studying, but for playing. If you want to study, go use the library.”

Born in Chicago in 1905, Harold Green was the first member of his family to attend college, graduating from Crane Junior College in 1925 and the University of Chicago in 1927. In 1928 he earned a J.D. from the Law School and soon after became a partner with his brother in the Chicago law firm of Green and Green. At his death, he was the Chief Executive Officer of the Bank of Commerce and Industry.

Harold Green and his wife Marion are among the most generous benefactors in the history of the Law School. They funded the student lounge, which occupies almost the entire ground floor of the D’Angelo Law Library, in 1961. Mr. Green’s later gifts enabled the Law School to refurbish the lounge and, in 1986, to expand it to create the new “quiet room” on the south side of the building. Though Harold Green will perhaps be best remembered at the Law School for the Harold J. Green Lounge, the Law School’s hub, where students, faculty, and staff meet to study, socialize, and discuss his chosen profession, this did not mark the limit of his support. Harold and Marion Green also established the Harold and Marion Green Professorship in International Legal Studies in 1973 and the Harold S. Lansing Loan Fund, in memory of his former classmate. Thus the generosity of Harold and Marion Green extends to virtually every fact of the Law School—from its building, to its faculty, to its students.

And, I might add, Missouri is the perfect place for a hub. Do not fret that your mail might not reach me. Kansas City was one of the largest stops on the Pony Express and its reputation as a central mail distribution center has not waned.

So please send me the newest scoop, the dirt, anything that can be legitimately included in this upstanding publication—that means not only career moves, but engagements, weddings, children, bar and bat mitzvahs. As an added incentive, upon receipt of news from you, at your request and with the inclusion of $2.50 plus appropriate postage, I shall send you an 8oz. bottle of Arthur Bryant’s Barbecue Sauce—reputed to be Kansas City’s finest (and that means the best anywhere).

One final note which I’m sure will be disturbing to most of you. Recently, the Missouri Supreme Court repealed the law providing reciprocity for those wishing to attain membership in the Missouri Bar. Now I know many of you are devastated at this news. But I promise I shall personally lobby the powers that be to get this dastardly decision reversed so that your powerfully latent desires to be members of the Missouri Bar will once again be kindled. Remember, sauce for news. I’m looking forward to hearing from you.

Christopher Vidovic won the $500 first prize in the Nathan Burkan Memorial Competition. The competition, which produced ninety-nine prize-winning papers at sixty-six law schools around the country, is sponsored annually by the American Society of Composers, Authors and Publishers, in memory of the Society’s first General Counsel. The competition is designed to stimulate interest in the field of copyright law and has been sponsored by ASCAP since 1938.
Ruth Wyatt Rosenson, 1906–89

The Law School lost a dear friend when Ruth Wyatt Rosenson died on January 20. A statuesque woman, poised and gracious, with a sharp and inquiring mind, Mrs. Rosenson took a keen interest in all the activities of the Law School. Philip Kurland once dubbed her the Godmother of the Law School. She enjoyed her sobriquet and was one of the Law School’s most generous benefactors.

Born Ruth Fox in Chicago in 1906, she received her Ph.B. in English and Spanish in 1927 from the University of Chicago. In 1931 she received her Bachelor of Music Education with studies in voice and piano from Northwestern University. She completed her M.A. in psychology at Northwestern in 1935. The same year, the Dean of the School of Music invited her to join the faculty of Northwestern as an instructor and she taught courses in the psychology of music and the physical basis of music. She also developed a system of tests to distinguish potential musical talent and became a recognized authority on testing for such talent. She received her Ph.D. in psychology in 1941 and was appointed to a full professorship in 1952. She resigned her professorship in 1960 to take care of her parents, whose health was failing. Throughout her life, Mrs. Rosenson continued her involvement in music through her support of the Chicago Symphony Orchestra.

At the age of eighteen, Ruth Fox married Harry N. Wyatt, a 1921 graduate of the Law School. Their close and happy relationship ended with Harry Wyatt’s death in 1981. In 1982, at the age of 77, Ruth Wyatt found happiness again in her marriage to Theodore Rosenson, a California businessman. In the ensuing years, Ruth and Ted Rosenson enjoyed traveling the world.

Harry Wyatt was a loyal supporter of the Law School. Ruth shared his enthusiasm for his alma mater. In 1977, the couple created the Harry N. Wyatt Professorship, currently held by Professor David Currie. In 1983, Mrs. Rosenson created the Ruth Wyatt Rosenson Professorship, which is held by Professor Richard Helmholz.

Ruth Wyatt Rosenson

Before her death, Mrs. Rosenson created the Ruth Wyatt Rosenson Scholarships which are funded with a bequest of several million dollars from her estate. She is survived by her husband, Theodore Rosenson.

1925
Irving R. Senn
November 14, 1988

Henry L. Wells

1930
Philip Newkirk

1948
Charles M. Constantine
December 8, 1988

1953
Warren P. Eustis
October 1988

1979
Michael S. Bernstein
December 21, 1988

1981
James J. Schneider
October 27, 1988

Lost Alumni

The Law School has lost track of a number of alumni. Can you help us to find them? If you know the current address of anyone on the following list, please call the editor (312/702-9629) or write to The Law School Record, University of Chicago Law School, 1111 E. 60th Street, Chicago, Illinois 60637.

1914
Mary Bronaugh
Rudolph B. Salmon

1917
Elizabeth Perry

1918
Mary W. Uhr

1919
Marjorie E. Hine
Isabella B. Kautz

1920
Bernard B. Bailey
Howard B. Black
Lucile B. Beldert

1921
Simon H. Alston
Chester E. Cleveland, Jr.
Maurice Y. Cohen

1923
Louis Lasman
Norman A. Nelson

1924
Eugene D. Hardy
Harold A. Hodges
Louis Rosenberg
Lee Soltow

1925
Silwing P. Au
Meyer C. Edelman
Richard L. Gallagher
Peter G. Gaudes
Herbert Ritz

1926
James W. Vest
Yung-Li Yao

1927
Frederick A. Amos
William E. Fenimore
Joseph J. Karlin

1928
Peter Benda, Jr.
Jack H. Bender
Mareus Denny
Owen M. Johnson
Sander A. Kane

VOLUME 35/Spring 1989 55
1929
Donald N. Berchem
Jack J. Franklin
David Freedkin

1930
George H. Allison
Pao Heng Cheng

1931
Jules M. Zwick

1932
Gordon M. Leonard

1934
Ashley A. Foard

1935
M. Daniel Frantz
Donald D. Rogers

1936
Herbert C. Brook

1938
Henry O. Kavina
Alexander A. Sutter

1941
Edward E. Kane

1942
William W. Laiblin
Leonard S. Roberts
M. Jack Underwood

1946
John N. Crane

1948
William J. Ristau
Milton P. Webster

1950
Harvey G. Cooper
Thomas C. DeButts

1951
Thomas M. Johnson

1952
Monroe Ackerman
Lois J. Ely
Gerald J. Jellett
Richard Sloan

1954
John M. O'Neill

1955
Henry Carl Steckelberg

1956
Alfred J. Langmeyer
William R. Padgett

1957
Robert M. Dobbins
David J. Smith

1958
Frank H. Burke
Bernard Parkas

1959
William F. Halley
Richard L. Kamen
Richard A. Romain

1960
Bruce L. Bromberg
Harold S. Burman

1961
Ronald G. Carlson
Thomas G. Smith

1962
Alfred Avins
Vance H. Dillingham

1963
A. James Granito
Robert H. Miller
Daniel L. Rubin
William L. Velton

1964
Michael O. Adesanya
Thomas J. Mack
Annette Schwartzmann

1966
Nicholas J. Bosen
Klaus V. Laden
Roger L. Severns, Jr.

1967
Djurica Krdjic

1968
Stephen L. Diamond
Michael Kaufmann

1969
Terry Dennis Curtis
Paul A. Greenberg
John H. Paer
Donald Odean Teigen
David A. Webster

1970
Detlef W. Graaf
Ralph L. McMurry
James O. Reyer

1971
George Big Eagle
Jerry Dean Craig
Omer Lee Reed, Jr.

1972
Paul Warren Mallory
Lawrence Quarles

1973
Bjorn Lorenz Houston

1975
Richard Frank Gang, Jr.
Jonathan Kahn
Jonathan Owen Lash
Robert Miles Le Vine

1977
Sharon Covelman
Mark E. Nerenberg

1978
Mary Ann Bernard
Elizabeth C. Green

1979
James Michael Dean
Paula D. Pompilia

1980
Mark Elliot Butler
Kenneth Edward Wile

1981
Michael Arthur Cowles
William James Roberts
Bennett Steele

1983
Gary Lee Kaplan

1984
Donald Richard Gombos

1985
Chi-Husan Jack Liu

1987
Wendy Elise Ackerman
Gregory Geoffrey Garner
Michael James Maurer

1988
Tae-Yeon Cho

Alumni with Foreign Addresses

1927
Tsun Sin Su

1939
Norman I. Miller
Gerhard O. W. Mueller

1954
Sergio M. Desouza
Chaiprapha Noppakphon
Paul N. Wenger, Jr.

1955
Jorge E. Illueca

1956
Joseph P. Wesolowski

1957
Carl F. Salans

1959
Ahmed F. Mohammed
Thomas C. Tritschler

1960
Yi-Yun Shih
Maria Z. Waters

1961
Hasan O. Ahmed

1963
Piyush Amin
Tipton S. Blish III

1964
George P. Fletcher
Kwame T. Opoku
Daniel D. Prentice

1965
Axel J. Jurna

1966
Alberto Mazzoni
Eulalio A. Torres

1967
Philippe Dupre
Gerhard Fischer
Michel M. F. Halbecc
Kenneth Allan Hinnegan
David Libai
Wolfgang Rudolf Ohndorf
Franz J. B. Van Hoeck

1968
Hans R. Dismann
Robert F. T. Dugan
Gideon Kariv

1969
Yean H. Lee
Shimelis Metaferia

1970
Onesimo Flores

1971
David Vaver

1973
Yewandwessoss Mekbib

1975
Nicholas A. Perensovitch
Dean Truby

1977
Werner Spirig

1978
Monique Schaller

1982
Cathy Lynn Bromberg
Stefan Garber
Alain Gussin

1987
Yun-Mou Li