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Editor
Jill M. Fosse

Assistant Dean for Alumni Relations
Holly C. Davis

Cover
Painting by Susy F. Kealy

Design
Alison Brainard

Illustrations
David Rosenzweig, pages 5 and 8.

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At our 1987 Entering Students Dinner, Professor Paul Bator observed to the first-year class that "garbage is garbage, but the history of garbage—ah, that's scholarship!" In the past year, two law schools—Northwestern and Chicago-Kent—have produced rather extravagant studies of the scholarly productivity of the faculties of the nation's leading law schools. Leaving no stone unturned, these studies examined several years of publications and generated more than twenty complex statistical measures, including pages per faculty member in the top twenty law reviews, pages per faculty member in the top ten law reviews, articles per faculty member in the top twenty law reviews, articles per faculty member in the top ten law reviews, percentage of faculty in the top ten percent of scholarly productivity of all faculty members in the top twenty law schools, percentage of faculty above the median scholarly productivity of all faculty members of the top twenty law schools, and on and on and on.

Here's the interesting part. On virtually every measure of consequence, the University of Chicago Law School ranked first. Let me give you just three of many possible examples. From the Northwestern study, pages per faculty member in the top ten law reviews: Michigan—50; Columbia—63; Harvard—73; Yale—86; Chicago—171. Also from the Northwestern study, percentage of faculty in the top 10 percent of scholarly productivity of all faculty members in the top twenty law schools: Stanford—12 percent; Harvard—12 percent; Pennsylvania—13 percent; Yale—15 percent; Chicago—30 percent. Finally, from the Chicago-Kent study, the average ranking of each law school on the eight statistical criteria used in the study: Pennsylvania—27.0; Michigan—13.0; Columbia—7.6; Stanford—7.5; Harvard—5.2; Yale—2.6; Chicago—1.7. (The Northwestern study is unpublished; the Chicago-Kent study is published at 65 Chicago-Kent Law Review 195 (1989).)

 Needless to say, I don't really want to make too much of all this, for as you well know, studies of this sort are at best superficial, and at worst ridiculous. The truth is that one truly extraordinary article is worth more than a dozen good ones, and quantity (even if one considers only articles published in the most selective law journals) is hardly a reliable proxy for quality. Nonetheless, these studies do reflect an important truth—no matter how you measure it, the University of Chicago Law School has long been, and continues to be, the nation's premier institution of legal scholarship.

Why is this so? What is it about the University of Chicago Law School that preserves and nurtures this extraordinary tradition? In my view, our Law School's tradition of scholarly preeminence is due first and foremost to a shared conviction,
Such a consensus about the value of scholarly research is essential if the scholarly enterprise is to succeed, for original, cutting-edge scholarship is difficult, even painful work. The terror of the would-be scholar is the empty desk. What should I write about? What do I have to say? One can fill the desk in desperation with class notes, committee reports, judicial opinions, and colleagues’ articles, but the desk remains empty. Scholarly research requires self-discipline, imagination, confidence and persistence. The ideal is never to evade or to simplify: always to probe, to question, and to follow the analysis wherever it leads.

The scholarly enterprise is most likely to thrive in a collegial environment, for the very best scholarship usually reflects both the author’s own ideas and the shared comments and criticisms of others. The University of Chicago Law School is unique in this regard. Whether at the faculty roundtable, which meets for lunch four days each week; our six scholarly workshops, in Criminal Justice, Law and Government, Law and Economics, Legal Theory, Legal History, and Work-in-Progress; our informal discussions in the halls and offices of the D’Angelo Law Library; or our constant dialogue with students, both in and out of class; we learn from one another. Our whole is, and always has been, greater than the sum of its parts. The result is a true university law school.

Now, I know some of you, no doubt the most cynical, are thinking, “Big deal. Who cares who’s the best at something that just doesn’t matter?” Well, scholarly research does matter. In its purest form, legal scholarship, like other forms of scholarly research, enables us to understand who we are, how we got here and where we’re headed. It illuminates and defines our legal, political, intellectual, and social cultures. Moreover, and rather more instrumentally, legal scholarship strengthens legal teaching. It brings an immediacy, a freshness, and an excitement to the classroom. Finally, and perhaps most important, legal scholarship plays an essential role in the evolution of the law. Lawyers, judges, and government officials rarely have the time systematically to re-think complex legal issues. Professors, on the other hand, have the luxury—perhaps more accurately the duty—to devote months and even years to the often daunting task of intensive research, analysis, discussion, and re-evaluation of our legal concepts and institutions. This effort can and, indeed, does have an important and salutary impact on the course of the law.

Phil Kurland’s scholarship on freedom of religion has profoundly altered the debate over the meaning of the religion clauses of the Constitution; Grant Gilmore, Soia Mentschikoff, and Karl Llewellyn revolutionized the law of commercial transactions; and Harry Kalven’s work on libel, the heckler’s veto, and the public forum left an indelible mark on the jurisprudence of free expression. And then there is Henry Simons’ and Walter Blum’s work on taxation; Brainard Currie on conflicts; Posner and Landes on anti-trust; Morris on criminal justice; Davis on administrative law; Fischel and Easterbrook on corporations and securities; Meltzer on labor law; Epstein on torts; and on and on and on. In innumerable ways, large and small, our laws, our society and our lives have been shaped by the work of these scholars. It is a different and, indeed, better world for their efforts, and as alumni of their Law School we take great pride in our faculty’s extraordinary contributions.
Is Antitrust the Villain of International Competitiveness?

Diane P. Wood

Many people have been wringing their hands in recent years over the supposed decline in the international competitiveness of American companies. As the problems have increased in severity, the number of culprits has also multiplied. Some point to the absence of a “level playing field” for U.S. firms in foreign markets and argue that the trade laws should be stronger; some bemoan the lack of strong protection for intellectual property rights both at home and, even more so, abroad; and some believe that the principal villain is the antitrust law of the United States, written and developed at a time when rivalry from foreign firms was vastly different from what it is today.

My theme is a simple one: it is misguided, and ultimately counterproductive, to blame antitrust for everything that is going wrong. The problem, to be sure, is a real one. Complaints about the endangered or declining competitiveness of U.S. firms in the face of global markets have become a mainstay of political rhetoric. As imports invade the United States at an ever-increasing pace, and exports fail to keep up, many people draw the conclusion that U.S. firms have lost their preeminence, that their products are second-rate, and that the innovativeness needed to regain market position is lacking. Naturally, these troubling conclusions have led to intensive searches for the cure. One of President Bush’s first acts was to establish a Council on Competitiveness, chaired by Vice President Dan Quayle, which is charged with investigating this problem and finding feasible solutions.

In a speech delivered on June 20, 1989, to the National Foreign Trade Council and the National Association of Manufacturers Coalition for Employment through Export, Vice President Quayle blamed the antitrust laws for a significant part of America’s competitiveness problems. He called specifically for reevaluating the private treble damage action, merger law reform, and more lenient rules for intellectual property licenses. It is important to note, however, that he did not lay the entire problem at the feet of the antitrust laws. International competitiveness, he noted, is also affected by the government’s fiscal policies, the way the United States handles research and development of biotechnology, and the country’s educational system.

The Vice President’s remarks reflect what I would like to call the myths about antitrust and its responsibility, or lack thereof, for the international competitiveness of American firms. These ideas are myths, in the true sense of the word. This does not mean that they contain not a grain of truth; certainly, every myth is based in some sense on ultimate truth.

Just as surely, however, most myths are elaborated, somewhat fanciful versions of that truth. I would like to examine more carefully the extent to which we have a competitiveness problem, the myth and the reality of the effect antitrust laws have on that problem, and some of the policy responses that will help us to be vigorous and successful competitors at the global level. This examination shows that today’s competitiveness problems have little, if anything, to do with the U.S. antitrust laws. The
future shape of antitrust may affect tomorrow's competitiveness, but it is not at all obvious—indeed, it is probably wrong to think so—that the absence of antitrust laws would give rise to strong, efficient, and successful companies.

It does not take the perceptiveness of a newly awakened Rip Van Winkle to see the magnitude of the change over the last several decades in the importance of international trade for the U.S. economy. In 1972, the import penetration ratio for manufactured products (ratio of imports to total shipments plus imports) was 6.1 percent. That figure rose to 7 percent in 1977, 8.5 percent in 1982, and 12.9 percent in 1987. In some industries, the change was even more pronounced. Nonrubber footwear saw a shift from 17.1 percent in 1972 to 62.4 percent in 1987; engineering and scientific instruments changed from 12.5 percent in 1972 to 30.6 percent in 1987; and toys and sporting goods changed from 13 percent in 1972 to 41.8 percent in 1987. Exports, as the trade deficit grimly indicates, have not kept pace. We have watched the deficit grow from $2.3 billion in 1971 to $128.1 billion in 1988. The message seems inescapable: the United States, or more particularly U.S. firms, have not been winning the competitive battle with their European, or other foreign rivals.

The explanation for this experience might be found in one or more of four reasons:

Reason 1: “It's our own fault.” U.S. firms no longer produce competitive products, for several possible reasons, including insufficient innovativeness, lack of attention to quality control, failure to take a long-term business perspective, and lack of understanding of foreign markets.

Reason 2: “It's the U.S. Government's fault.” U.S. firms operate at a built-in cost disadvantage vis-à-vis their foreign rivals because of a variety of governmental impediments, including strict environmental laws, worker safety requirements, the expensive U.S. legal system (particularly the products liability regime), and, of course, the antitrust laws.

Reason 3: “Foreign firms are to blame because they don't play by fair rules.” Foreign firms enjoy an unfair cost advantage because their govern-

ments confer generous subsidies on their products, making it impossible for even a more efficient U.S. rival to survive in the market. Alternatively, foreign firms engage in other competitive practices that are branded “unfair,” including dumping, use of exclusionary technical standards, advantageous relationships for government procurement, and insufficient respect for the intellectual property of others.

Reason 4: “Foreign governments are to blame because they protect their home markets.” Finally, closely related to reason 3, U.S. firms may be disadvantaged because foreign markets are deliberately closed to them. Sometimes this is done overtly, by means of quotas or high tariffs, but more commonly it is done subtly, through the myriad nontariff barriers that exist throughout the world. No one would care about a great volume of imports if, at the same time, a great volume of exports were flowing out.

The policy response to the problem of international competitiveness depends entirely on the extent to which each one of these reasons (or others not mentioned here) accounts for the present situation. Nothing could be more self-defeating than to seize on one possibility, whether it is antitrust law, foreign subsidies, or foreign market access, and to attribute most or all of the blame to that factor. I do not accuse the Administration of doing this. I do say, however, that both Congress and the Administration are under tremendous pressure to enact this kind of quick fix and that it is vitally important to continue resisting it.

It is not clear that antitrust law
continuing demand for reassurance, the Department of Justice issued revised Antitrust Enforcement Guidelines for International Operations in 1988. The late Secretary of Commerce, Malcolm Baldrige, occasionally called for the repeal of Section 7 of the Clayton Act, and one continues to see similar anti-antitrust rhetoric in the academic and popular press from time to time. The prevalence of these statements makes it worthwhile to review what the critics are saying about antitrust in more detail. These are the myths of antitrust and international competitiveness to which I referred above. I will first state the current myths and then analyze them in detail.

Today's competitiveness problems have little, if anything, to do with the U.S. antitrust laws.

Myth 1. Only U.S. firms must conform their behavior to strict antitrust laws. This point is a broadside attack on the antitrust laws. Its proponents assert that foreign firms are unconstrained, or much less constrained, in their business decision making, because their countries do not have meaningful antitrust enforcement. Cooperative arrangements between firms are therefore arranged more easily; mergers and other consolidations may take place in an unregulated atmosphere; and distributional restraints are entirely market driven.

Myth 2. Private treble damage actions, unique to the United States, are diminishing industrial productivity. This accusation links the availability of private enforcement of the antitrust laws to impaired productivity. It focuses in particular on the availability of triple the money damages suffered, although one might also include the private party's ability to obtain a court injunction, and in some circuits, even to obtain divestiture after an unlawful merger. In the final analysis, the argument has to do with optimal enforcement levels. Treble damages, it is argued, lead to overenforcement of the laws. Overenforcement in turn means that U.S. firms (and not their foreign rivals) are spending dollars and time on litigation instead of on more productive activities.

Myth 3. Antitrust scrutiny of mergers and acquisitions is preventing efficient transactions from taking place. According to this myth, the market for corporate control is still distorted significantly by the fear that an otherwise desirable transaction will be thwarted because of antitrust problems. This can happen in one of two ways: either firms will reject a proposed transaction during the planning phase, following advice that the antitrust laws would prohibit it, or firms will go forward with their deal and find themselves sued either by a government agency (usually, though not always, the Department of Justice or the Federal Trade Commission) or by a private party. Excessive caution, for the first type of case, or a misapprehension of competitive consequences, in the second type of case, lead to the harm identified here.

Myth 4. Antitrust prevents desirable licensing arrangements for intellectual property. Intellectual property owners invest substantial resources in the development of intangible property rights. Often, the most efficient way to exploit those rights is to confer a limited privilege on others to use them, through a licensing arrangement. To the extent that antitrust law stands as an obstacle to restrictions on licensee use of the property, including price restrictions on resulting products, territorial restrictions, restrictions on grant-backs, or others, it reduces the initial incentive of the licensor to invest in innovative activities.

Myth 5. The U.S. antitrust laws are too insular, condemning concentration in U.S. markets without recognizing the true global nature of markets. Competitive consequences for antitrust purposes must almost always be judged in terms of particular relevant markets, unless the anticompetitive impact can be observed directly. The tendency still exists, however, to think only of competition from within the United States, overlooking the diversity and strength of competition from abroad. This error leads to the condemnation of arrangements that are inherently unable to have an adverse effect on competition, and that might have been efficient.

Most, if not all, of these myths had a solid grounding in reality twenty or thirty years ago; today's reality is quite different. To the extent that these myths do not describe antitrust rules and enforcement practices, "reform" of the antitrust laws is not likely to improve our international competitive position. Only after we set the record straight can we consider what changes, if any, would be desirable.

1. Other antitrust laws. Immediately after World War II, it was true that most other countries did not have laws like the U.S. antitrust law. When such laws existed on the books, as was the case in (for example) Canada, occupation Japan, and occupation West Germany, enforcement patterns were utterly different. U.S. firms were at the same kind of disadvantage that later emerged under the Foreign Corrupt Practices Act: their actions had to conform to standards from which others were exempt.

Today, however, the situation is quite different. The competition rules of the European Economic Community, set forth in Articles 85 and 86 of the Treaty of Rome and implemented by the European Commission, are comprehensive and strong. It is not uncommon, in fact, for practices now to be condemned in the United States that the Commission would condemn. Recently, in the Wood Pulp case,1 the European Court of Justice took important steps in the direction of asserting the same kind of extraterritorial enforcement jurisdiction as the U.S. does: that is, jurisdiction to regulate arrangements outside the country that are carried out in part within the country or that otherwise directly and substantially affect the country. From a substantive standpoint, European firms face a regula-

1A. Ahlstrom Osakeytio v. EC Commission, Case No. 89/85 (Ct. of Just. of Eur. Communities, Sept. 27, 1988).
tory regime very similar to that faced by U.S. firms.

National laws have also been strengthened all over the world. The competition laws of the Federal Republic of Germany have been regarded as among the world's toughest for years. Canada, France, and the United Kingdom, to name three other countries, have strengthened their competition laws in recent years. The Organisation for Economic Cooperation and Development (OECD) includes restrictive business practices in its Guidelines for Multinational Enterprises, calling on enterprises to “refrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power,” and to refrain from participating in “international or domestic cartels or restrictive agreements.” In fact, the only important exception to this pattern is Japan, and even there, the Japanese Fair Trade Commission has indicated that it is making efforts to achieve effective regulation of restrictive practices. In sum, an international consensus is building about the basic content of competition law, such that it is no longer persuasive to argue that U.S. firms are uniquely burdened (and benefited) by these laws.

2. Private enforcement. In this area, it remains true that U.S. law is different from most of the rest of the world. One can detect a nascent private action in Europe, but it bears little if any resemblance to the famous treble damage suits that have been brought in the United States, challenging cartels in industries such as electrical equipment, plumbing fixtures, and folding cartons. Treble damages can be useful, to the extent that they provide an incentive to detect anticompetitive behavior that would otherwise secretly inflict harm on the economy. Often, however, one suspects that the suit would be brought somewhere even if damages were limited to actual losses, although marginal actions would be discouraged because of the reduced amount in controversy. Suits about distributional restraints, for example, would appear in state court as contract actions if it were not for the antitrust option in federal court. This area is therefore one that requires closer analysis. In a nutshell, one should first look at which private actions are still available in the federal courts. The picture shows that very little overenforcement is left in the system, and much of what remains is in the process of being squeezed out, quite possibly to the point of excess. This has happened in part as a result of the elaboration of the concepts of antitrust injury and antitrust standing of the last twelve years. Suits by indirect purchasers and suits by competitors have become more difficult to bring, depending on the violation charged. For vertical arrangements, developments in the substantive law have closed off the antitrust option for a vast number of terminated distributors. We are coming to the point where the treble damage private suit remains available to precisely the people who ought to have it: customers or suppliers who suffer from overcharges, and competitors whose exclusion from a market leads to anticompetitive results. To challenge private enforcement in these circumstances is to challenge the antitrust laws themselves. Frontal assault, however, would be a grave mistake in my opinion.

3. Merger reform. One can hardly take seriously charges that the merger laws were overenforced during the Reagan Administration years. This point must be understood as expressing a concern that the loosely worded Section 7 of the Clayton Act has sometimes been read sensibly, and sometimes not. Few people believe that merger decisions such as Brown Shoe, Von’s Grocery, and Pabst represent desirable policy.2 Fear of a return to the “bad old days” might be inflicting a drag on merger activity (although I am highly skeptical even about that chance). In 1986, part of the Reagan Administration’s antitrust reform legislative package was a bill that would have rewritten Section 7 to reflect more closely the merger policy expressed in the Justice Department’s 1984 Merger Guidelines. Given the extraordinarily healthy, if not frenetic, pace of the M&A business, it is hard to make the case that even this kind of change is a good idea.

4. Intellectual property licensing. Here again, there was a time in the past when the criticisms noted above were well taken: the infamous era of the Nine No-No’s. Today we are living in a different world. Reformers of this field should therefore exercise some caution. Innovativeness is critically important to our future competitive ability, but the case has yet to be made that bigger is better for this purpose. With particular reference to the proposed Joint Production Act, which would either extend the protections of the National Cooperative Research Act to production joint ventures or create a special antitrust

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lematic relationship between markets for innovation and markets for commercialization. The "safe harbor" may give insufficient weight to the risk of undue market power in downstream markets, where consumers are most directly affected. In short, while the political bandwagon may make some change in the antitrust treatment of cooperative production ventures inevitable, any such "reform" should be careful to preserve competitive markets both for technology and for its resulting products.

5. Foreign competition in general. If U.S. courts and antitrust enforcers are actually ignoring foreign participants in U.S. markets when they conduct their antitrust analyses, this would be a scathing indictment of their performance. I doubt strongly, however, that this is true. It would be unbelievable, for example, to evaluate competition in the automobile market without taking into account Toyota, Nissan, Honda, and Hyundai, or Mercedes, BMW, and Volvo, and no one would try to. Evaluating potential competition from foreigners is sometimes hard, especially if capacity that could be diverted to the U.S. market is an important factor, but even here approximations are possible.

The difficult issue for market analysis is the reliability of foreign competition, given the prevalence of trade law restrictions. This becomes important any time the ongoing and future strength of a foreign firm is relevant, which is to say, almost always. Foreign competition for this purpose will fall into one of four categories: (1) totally unregulated, either because of the nature of the product or service, or because of the country of origin; (2) subject to tariffs; (3) subject to quotas or other quantitative restrictions imposed by the United States; or (4) subject to quantitative restrictions or other trade management devices "voluntarily" imposed by the source country.

Competition from foreign producers whose products fall in the first two categories is basically reliable, in the sense that it can respond to market trends just as freely as competition from U.S. firms. The same cannot be said for the latter two categories.

Given the choice between the vigor of competitive markets and the complacency of monopoly, my vote is squarely with competition and strong antitrust enforcement.

Firm quotas, whether imposed by the United States or the foreign government, do not allow the foreign firm to respond if prices rise or supplies fall short in the American market. Quantitative restrictions themselves vary importantly: some are for a fixed duration, some are indefinite, some are absolute, some depend on quantities imported. As the Department of Justice's 1984 Merger Guidelines and 1988 International Guidelines recognize, it would be a mistake totally to disregard competition from these restricted foreign sources, but some kind of discount factor must be devised to avoid overrating their significance.

In my view, the weight accorded to restricted foreign competition should vary depending on three general considerations:

1. How many foreign sources exist, both in terms of firms and in terms of countries of origin? If there are many firms, spread through many countries, the likelihood is strong that some form of foreign competition will be able to exert its influence effectively in the U.S. market. If only a few firms exist, and they are in countries participating in trade management measures, the competitive influence they exert will be correspondingly weaker.

2. How difficult would re-development of U.S. sources be if all foreign trade disappeared, either for political or military reasons, assuming that taken alone the U.S. market is highly concentrated? If, taking into account the type of product, the elasticity of demand for the product, capital requirements for new entry, technical requirements, and distributional needs, it appears that re-development would occur relatively quickly (i.e. within eighteen months), then the foreign competition is not critical to preservation of the U.S. market. If the opposite is true, a higher priority should be placed on maintaining competitive conditions internally.

3. How quickly is technology changing this field? If the market is a rapidly developing one, then the fact that existing foreign firms operate under trade restrictions is relatively unimportant. New entry by other firms or expansion of existing firms may occur despite efforts at managing the trade. If, on the other hand, the market is relatively well established and unlikely to experience technological improvements, the standard skepticism about restricted foreign competition is well taken.

The critical question is whether, for noneconomic reasons, the U.S. market should be assessed in isolation for antitrust purposes, or whether the full extent of international competition can make itself felt, making global market analysis appropriate. Factors such as those suggested above will help provide the answer to that question.

Two points remain that deserve at least a brief mention. The first arises
out of an ambiguity in the criticisms of antitrust. Those who fear the malevolent influence of antitrust law on U.S. international competitiveness may be talking about two utterly different things: the idea that monopoly is not really bad, or the idea that markets are often global and that antitrust should treat them as such. The second deals with the content of antitrust law itself.

Taking the first point first: Some of the arguments about competitiveness and innovation seem to imply that monopoly size and monopoly profits are not the evil we once thought they were, whether enjoyed by a single firm or by a group of firms coordinating their actions. Ma Bell, one might argue, innovated constantly before the break-up; IBM's R&D was second to none. As I noted above, the empirical evidence is far from conclusive on the actual relationship between size and innovation, and much of it seems to point in the opposite direction. Personally, given the choice between the vigor of competitive markets and the complacency of monopoly, my vote is squarely with competition and strong antitrust enforcement. Correct understanding of global markets is an entirely different kind of criticism. There is no doubt that this should be part of every antitrust lawyer's vocabulary, from the day he or she is first introduced to market analysis through the case now sitting on the desk. To urge accurate market definition, however, is just to make an "apple pie" statement that the latest learning should be disseminated. It does not mean that antitrust needs a fundamental overhaul.

On the second point, much of my discussion of the myth and reality of antitrust underscored the changes that have taken place in antitrust analysis. It is worth emphasizing again that we should not change today's antitrust law just because some decisions were issued in the 1960s that we now believe to be wrong. Indeed, if antitrust needs anything today, it is a little reinvigoration, as the Millstein Task Force on the Antitrust Division, on which I served, recently concluded. We surely will not solve our international competitiveness problems by changing laws that are "not broke" at the moment.

Only if one were a firm subscriber to the pendulum theory of antitrust doctrine, which incidentally I am not, would it perhaps make sense to codify some of the developments of the last ten or fifteen years. In fact, we are seeing isolated efforts at codification (or rejection of court decisions), all of which are healthy exercises, in my opinion. Legislative proposals give all of us a chance to air our views on what antitrust ought to be for the future, in light of all the complexities we are able to perceive. We should take care, however, that we do not abandon the flexibility that the antitrust laws have enjoyed for nearly a century. It is that flexibility that allows us to continue to protect competition, to the benefit of American consumers, even as the arena of competition has moved from the local, to the national, to the international.
Trading on Inside Information

Frank H. Easterbrook and Daniel R. Fischel

Inside trading is unfair. Equal access to information is essential to confidence in the markets. So inside trading is unlawful. Such is the received wisdom. Received wisdom is not always right. "Everybody knew", once, that light propagates through an æther and that the sun revolves around the earth. Trading on inside information is a complex phenomenon, well worth study rather than ukase. People could choose different aspects to examine. Our focus is the relation between insider trading and fiduciary duties. Whether investors would want managers to trade on particular information depends on the effect trading has on shareholders’ wealth. This in turn depends on whether a firm’s managers or its investors value more highly the property right in information. We discuss this and the related issue whether firms can allocate the property right in valuable information by contract. We then look at the state and federal rules regulating insider trading. We have written separately about this topic and have reached conclusions that differ in emphasis about its likely effects. We offer here not resolution but assessment. Before addressing substantive issues, however, we define "inside trading."
The Meaning of Inside Information

One definition is trading by parties who are better informed than their opposite numbers. No market could exist with such a broad definition of prohibited trading. If each trader has the same information as every other, there is little incentive to trade. More important, there is no incentive to acquire information in the first place if the opportunity to profit by virtue of superior information is eliminated. And if there is no incentive to acquire information, markets lose their function of providing price signals to diverse participants in the economy.

An alternative definition is trading by those with unequal access to information. Managers are said to have “unequal access” and so are forbidden to trade when the news is “material.” The difficulty with this definition is timing. Unequal when—before the information comes into being, or after? An analyst has valuable information. Does everyone have “equal access” because anyone could have hired the analyst or become one himself? The same can be said in the case of corporate managers. Corporate managers have access to information, which is valuable in the market. If one who is an “outsider” today could have become a manager by devoting the same time and skill as today’s “insider” did, is access to information equal or unequal? There is no principled answer to such questions.

Better, then, to identify property rights in information. Trading by managers (or others) in possession of valuable information is appropriate if the insiders own that information. They may get the right by dint of hard work (as stock analysts do when evaluating obscure clues about a firm’s performance), or generate it themselves (as tender offer bidders create the news about their own future acts), or buy it from the firm (as managers may do expressly or implicitly). Or traders may steal news from others who create or own the information. Such an approach replaces the unanswerable “what is inside information?” question with tractable matters of contract. We may ask whether certain persons do (or should) own the right to use information. Still, difficult problems abound. Perhaps the most difficult is whether managers should be deemed to own valuable information obtained during their tenure.

Before we turn to this, a warning. Much of the lore about inside trading treats it as a unitary phenomenon, typified by the corporate manager who learns that the firm has struck a mother lode and then buys stock before the news escapes, depriving unsuspecting public investors of their profit without having done anything to make gains more common. Those who decry inside trading as “unfair” concentrate on such episodes. Rhetoric being what it is, the name—frightened with this nasty connotation—is applied to quite different activities that the speaker wishes to condemn. None of the Supreme Court’s “inside trading” cases deals with the manager who trades ahead of public release of corporate news. Vincent Chiarella, a printer, decoded the name of a tender offer target and bought its stock before the bid could be announced. Ray Dirks, a stock analyst, nosed out a fraud at a widely held firm and alerted his clients to sell. R. Foster Winans, a writer for the Wall Street Journal, told friends to buy the stocks to be touted in forthcoming columns. These are vastly different problems. Chiarella broke his promise to his employer’s customer, effectively stealing information—but it was information the client had every right to use for his own benefit without telling investors. Dirks nosed out a scam, and the right to reveal the news to his own clients compensated him for his efforts, which leads to more digging by other analysts. Winans broke his contract and in so doing dragged down the reputation of the Journal for honest reporting. All of these cases may be resolved without reference to the inside trading paradigm, although all equally may be resolved by using the property rights approach we discuss.

Other cases tagged “inside trading” present still other kinds of problems. “Warehousers” who line up stock in advance of a tender offer on the bidder’s tip have consensual access to the information they use; the legal status of their conduct depends on whether their stock counts as part of a group for purposes of the pre-bid limits in the Williams Act; this is independent of any conventional approach to inside trading. Investment bankers who use information obtained from clients to sabotage their clients’ plans—by leaking the news to rivals, by taking the opposite side in trades, and so on—not only break their contracts but also are knaves whose deeds reduce the efficiency of markets. Again their acts may be condemned without asking complex questions about inside trading. We put such matters to one side for now and concentrate on the paradigm.


Why Firms Might Allocate to Managers Property Rights in Information

Trading by insiders (for this purpose, managers and their tippees) may provide firms with a valuable mechanism for communicating information to market participants. Allowing insiders to trade may also create incentives to maximize the value of the firm to the benefit of insiders and outside shareholders alike.

TRADING AND THE TRANSMISSION OF INFORMATION
The better stock prices reflect information, the more useful they are as a guide to capital investment. From the perspective of any one firm, however, efficient capital markets are a public good. Why, then, does a firm disclose information about itself?

One reason is that disclosure can reduce wasteful expenditures on search and reduce investors’ uncertainty about the firm. A second is that disclosure of information by the firm may enable the firm’s current investors to sell their shares to outsiders at a higher price, on average. If the firm discloses no information, outsiders may assume the worst and discount the price they are willing to pay for shares by a factor that reflects their uncertainty. Finally, accurately priced securities give firms information about whether their managers are successful. Markets for managerial services and for corporate control then function more effectively. Better managers signal their quality by willingness to tie a higher proportion of their compensation to stock performance. Accurate prices then enable these managers to receive the rewards for their superior performance.

Complete disclosure, however, would not make sense. Disclosure is costly, and at some point these costs exceed the benefits of increased disclosure. Too, disclosure might destroy the information’s value. It would not be in investors’ interest to disclose, for example, that a confidential study revealed the presence of valuable ore on land the firm seeks to purchase. Information about plans for tomorrow’s products or acquisitions also is less valuable if released.

Investors would like the price of the stock to reflect the value of this information, without the information itself coming out. The combination of desires is hard to achieve, but trading by insiders may help. If managers trade, the price of stock moves closer to what it would have been had the information been disclosed. The effect may be powerful when trading joins with partial or vague disclosures (“We have good news but can’t say just what”), for outsiders who see insiders put their money where their mouths are will be more likely to credit the firm’s statements. The same effect occurs when insiders’ trades imply the truth of more concrete disclosures.

Whether trading (without disclosure) can move the price close to the one reflecting full information depends on the amount of “noise” surrounding the trade. The greater the ability of market participants to identify insider trading and deduce its cause, the more information such trading conveys. At the extreme, trading by insiders is as revealing as disclosure. But as insiders limit the size of their positions because of risk aversion and camouflage their trading to some degree, they convey less information by trading than by (credible) disclosure.

INSIDER TRADING AS A COMPENSATION DEVICE
Firms try to deal with the agency costs of management by writing contracts that compensate managers for acts that assist investors and penalize them for failure. Contracts that provide for periodic adjustments based on (imperfectly) observed effort and output are superior to contracts that fix compensation in advance of either effort or results. Adjustment by renegotiation is hard given the difficulty of monitoring the effort and measuring the output of individual managers. To reduce the costs of contracting, firms seek to minimize the number of renegotiations by choosing “incentive compatible” arrangements, which link managers’ and investors’ fates automatically.

Inside trading allows a manager to alter his compensation package in light of new knowledge, avoiding continual renegotiation. The manager “renegotiates” each time he trades. This in turn increases the manager’s incentive to acquire and develop valuable information in the first place (as well as to invest in firm-specific human capital). A manager who observes an investment for the firm—such as a potential value-increasing merger or a new technology—will be
more inclined to pursue this opportunity if rewarded on success. The alternative is to tell others of the opportunity, explain that it can be realized with extra effort, and hope to be compensated by some form of at post settlement. Insiders' trades reduce the uncertainty and cost of renegotiation and thus prod managers to produce valuable information. Moreover, because managers determine the frequency of trades, they can tailor their compensation scheme to their attitudes toward risk.

Inside trading also provides firms with valuable information concerning prospective managers. Because trading rewards managers who create valuable information and are willing to take risks, managers who most prefer such compensation schemes may be those who are the least risk averse and the most capable. Self-selection reduces the costs of screening potential managers, the monitoring costs created by risk-averse managers, and the opportunity costs from suboptimal investment decisions.

Why Firms Might Restrict Trading on Inside Information

We have offered a number of reasons why shareholders' wealth may be greater if managers who possess valuable information are allowed to trade. But it does not follow that investors always benefit if anyone in possession of valuable information may trade. Here are some reasons why firms might restrict the use of their information.

PREVENTING THEFT

Trading on information can be a form of theft. Firms regularly forbid lawyers, accountants, printers, and others to trade on news about the firm. Those who trade notwithstanding promises not to do so are stealing assets of the firm as surely as if they reach into the till for cash exceeding their salaries. Contractual bans on trading were customary long before federal law entered the picture. Persons who are responsible neither for creating the information nor for selecting the business projects that generated it (a category that includes lawyers) promise not to use it. Even employees who create information—inventors, salesmen compiling customer lists—frequently assign it to the firm by contract.

Consider Vincent Chiarella, a printer who received information about imminent takeover bids. Potential acquirors have powerful reasons to maintain secrecy until they announce their bid, and the bidders encoded the information provided to their printer. Chiarella deciphered the code and bought shares of the targets, which he resold at a profit as soon as the announcements of the bids drove up the price. Chiarella appropriated value from the bidders. The harm to them depends on the extent to which Chiarella's trading increased the cost of the acquisition or, by alerting the target, reduced the probability of success. Appropriation of information from another reduces the efficiency of capital markets, and it is harmful (and should be forbidden) for exactly the reasons theft is harmful.

PERVERSE INCENTIVES

Inside trading may create a moral hazard. For example, the opportunity to gain from trading may induce managers to increase the volatility of stock prices so they will have more opportunities to make profitable trades. They may do this by choosing risky projects for the firm. The greater the volatility of prices, the greater the opportunity for trading profits even if the projects have lower mean returns than other options.

Prospects of trading also could induce insiders to create bad news. Advance knowledge allows profitable trading whether the news is good or bad, and bad news is easier to create. At the extreme, if bad information yields private profit, managers may be indifferent between working to make the firm prosperous and working to make it bankrupt.

ATTITUDES TOWARD RISK

Shareholders who have the ability to hold diversified portfolios are efficient risk-bearers. Managers, by contrast, hold much of their wealth in human capital, which, together with much of their financial capital, is committed to a single firm. Managers thus want to reduce risk that shows up in the volatility of their compensation. Most would prefer the certainty of a $100,000 salary to a salary of $50,000 and a 10 percent chance of a bonus of $500,000, even though the two have the same expected value. Inside trading then may be an inefficient compensation scheme. It amounts to paying managers in lottery tickets. The package costs the shareholders the actuarial value of the payoff, but risk-average managers value the ticket at less than that.

UNFAIRNESS

Public debate pays little attention to the problems with inside trading we have identified. "Fairness" is the refrain. Managers' trading is said to be "unfair" because information "intended for a corporate purpose" should not be put to private use.

To the argument that managers pay in advance, through lower salaries, for the opportunity to reap these gains, throngs respond: "No they don't; they get the salary and the profits too."

Assertions of this stripe beg the question whether information is "intended for a corporate purpose." Information does not "intend" things; people intend things, and they intend to maximize wealth. If the information is more valuable to the firm, then managers will be forbidden to trade; if the right is more valuable when held by managers, they will exercise it. Investors seek to maximize expected returns rather than the payoffs in each case. When unequal divisions contribute to higher expected returns, investors prefer inequality. They can get the norm by diversifying their holdings. So if some risk of not receiving a gain today (because insiders buy the shares) goes hand in glove with higher average returns over all firms (because the opportunity to trade is useful in inducing managers to create more gains), investors prefer the risk and the higher return. It is not "unfair" to investors to use a device that makes them wealthier!

Most of those who think trading unfair assume that investors want managers to be treated "just like me." Why would a sane investor wish

3. The catchphrase is from In re Cady, Roberts & Co., 40 S.E.C. 907 (1961), the Commission's leading decision denouncing managers' trading. The Supreme Court picked up the phrase in Dirks, 463 U.S. at 653–54.
firms, the effects of trading depend on the context and positions of the employees involved. Firms that allow top managers to trade may want to preclude the general counsel from trading in advance of a takeover bid, or engineers from trading in advance of a patent.

That no uniform rule is optimal implies that the subject is best left to negotiations between insiders (and others) and the firm. Firms and insiders have strong incentives to allocate the property right in valuable information to the highest valuing user, as with patents. If, as many say, shareholders' wealth plummets when insiders trade on nonpublic information, both insiders and shareholders will gain from prohibiting the practice. Such contracts are negotiated routinely with investment bankers, lawyers, scientists, and salesmen.

Perhaps the difficulty of enforcing such contracts makes it impossible for firms to achieve optimal allocations of the rights. Insiders' trading is notoriously hard to detect. If firms seeking to curtail insiders' trading by contract cannot enforce their choices, then the benefits are lost. Firms that gain from the restrictions cannot distinguish themselves (in investors' eyes) because other firms will disingenuously claim to be similarly restrictive. Firms might attempt to overcome this by requiring insiders to report their trades and auditing their tax returns. Yet such devices are imperfect, for insiders can provide valuable information to family members or others and avoid detection. Although firms may try to detect trades by entering into agreements with stock exchanges that have computer surveillance of trading patterns, the difficulty of tracing sources of information necessarily means that enforcement will be spotty.

If the probability of detecting improper trades is low, public enforcement may be best. When detection is highly unlikely, the optimal fine can exceed the net wealth of the offender. Thus public enforcement, which can lead to imprisonment and other penalties firms cannot adopt for themselves, may be efficient.

Two caveats. First, public enforcement creates costs of its own (including the possibility of overdeterrence) that must be compared with the costs of imperfect private enforcement.

Second, even if public enforcement is superior, this does not justify prohibition of trading itself unless enforcement is so weak that firms desiring to enforce no-trading rules cannot do so in a market of mixed trading and abstinence. Whether there should be public enforcement is distinct from whether there should be a ban in the first place. Public enforcement of antitheft laws does not imply that consensual transfers of property ought to be forbidden; just so with inside trading rules.

Legal Rules Restricting Inside Trading

We turn to the rules governing inside trading. Although conclusions must be tentative because theoretical arguments on the economic effects of inside trading are inconclusive, economic analysis provides insights.

Common Law

At common law, managers and other insiders may trade the stock of public corporations on the basis of their inside information unless obliged by contract not to. Insiders need not disclose what they know. When federal securities laws do not apply (for example, when the transaction does not take place in interstate commerce), this is contemporary law.

Some jurisdictions, following the lead of the Supreme Court in a case decided under federal common law, condemn trading if the plaintiff proves "special facts"—that his trade was induced by express or implied misrepresentations concerning the value of the securities or the identity of the purchaser. Corporations also have been allowed to recover under the corporate opportunity doctrine from insiders who take advantage of their knowledge in ways that harm the firms' business. For example, an employee who, upon learning of an impending land purchase or corporate repurchase plan, rushes out and purchases the land or shares in order to resell to the firm at a high price would be held to have usurped a corporate opportunity.

The "special facts" rule is easy to understand. If the insider (or someone acting on his behalf) makes misrepresentations about the value of the firm or his identity in convincing an

Insider Trading and the Coase Theorem

Trading by insiders or others in possession of nonpublic information will not be uniformly beneficial or detrimental. Whether such trading is beneficial varies from firm to firm, industry to industry. Even within

uninformed outsider to sell, any informational benefits of the trade are lost. Indeed the trade, like other types of fraud, moves prices away from, rather than toward, the “correct” price, particularly if the trade is a face-to-face transaction as opposed to an impersonal one. Moreover, the incentive created by allowing such trades is to distort information as opposed to producing new information. The “special facts” rule, therefore, grows out of recognition that trading by insiders is not always efficient. Permitting trades in public corporations and prohibiting them in close corporations shows a close correspondence between the common law and economic analysis.

The rationale for applying the corporate opportunity doctrine to insider trading is also clear. Actions based on insider information that harm the firm are prohibited—if not by contract, then by implication in the absence of a writing. In the land case, the firm must negotiate with the employee instead of buying in a competitive market. Transaction costs and prices have risen. Similarly, the purchase of a target’s shares in advance of a takeover probably usurps the bidder’s opportunity. The action may drive up the price of the target firm’s shares or tip the bidder’s hand, making the acquisition less likely to succeed.

Section 10(b) and Rule 10b-5

Courts have interpreted Section 10(b) of the Securities Exchange Act of 1934 and the SEC’s Rule 10b-5 to require corporate insiders and tippees either to disclose material information or to abstain from trading.

Disclose-or-Abstain-from-Trading

Section 10(b) and Rule 10b-5 do not prohibit insiders from trading; they proscribe fraud. Trading after full disclosure is not “fraud.” Insiders therefore may either disclose the nonpublic information and trade, or keep silent and refrain from trading when withholding material nonpublic information amounts to fraud. Despite this formulation in the alternative, the rule effectively prohibits trading (provided other elements such as materiality are present). In many cases, the insider may not be able to disclose the information. For example, the information might be valuable to competitors. It is in precisely such situations that insider trading may provide firms with a valuable method of transmitting information to the market by price without revealing the details. Compulsory disclosure removes firms’ ability to use insider trading when it is most needed. We end up with neither trading nor disclosure.

When disclosure is possible and not harmful to the firm, the release of news to an efficient capital market eliminates gains from trading. This is undesirable to the extent that the lure of profits from trading gives managers an incentive to maximize the value of the firm. The disclosure-or-abstain-from-trading rule weakens this incentive. Effects extend beyond managers. Investment analysts deemed “inside traders” when they acquire news may be discouraged from searching. Prospective tender offerors also search less to the extent they cannot use information about their own plans to increase the chance their bid will succeed. Problems would be fewer if courts and regulators would distinguish between consensual and nonconsensual uses of information. Ray Dirks exposed one of the largest securities frauds in recent years, at the price of telling his clients what was afoot; the SEC should have given him a medal even while condemning forms of inside trading that injure investors.

“Material” Inside Information

The effect of Rule 10b-5 should not be exaggerated. The disclose-or-abstain-from-trading rule applies only if a defendant trades on the basis of “material” inside information. That means big news, such as an impending merger or a major change in earnings. Trades motivated by knowledge of “bombshell” events are the substance of lawsuits but the aberration in practice. Most news is less dramatic; insiders remain free to trade on their knowledge. Knowledge that one of the firm’s top managers is dispirited because of family problems, for example, may be very valuable but is almost surely not legally material. As long as insiders own and trade shares, therefore, Rule 10b-5 is likely to have slight effect on insiders’ ability to outperform (and inform) the market.

There is more. Because of their superior access to information, insid-
ers will outperform the market without trading. Their knowledge may tell them not to sell at times the less well informed would sell. Knowledge about the industry may be the basis of trading in other firms' stock—trades on the basis of "material" information, often, but not "inside."

The materiality requirement tends to limit the operation of Rule 10b-5 to inefficient insider trading. Lawyers, accountants, brokers, printers, football coaches, and public officials receive valuable information after it has been produced and are not responsible for (and incur none of the costs of) the risky decisions that led to its generation. Because the benefits of allowing them to trade are trivial, the firm may want to ban such trading. Explicit contracts between firms and these outsiders typically require confidentiality and bar trading. Rule 10b-5 puts teeth into these promises. Most of the inside trading cases brought in the last decade involve conduct squarely prohibited by contract. In the rare cases of bombshell events, where the rewards are large and uncertain, the value of the uncertain trading profits to risk-averse managers (and others) will be low compared to the expected value of the event. Here again inside trading might be an inefficient compensation scheme. In both classes of cases, firms might want to ban inside trading, but because the precipitating event is so rare (and perhaps because the enforcement costs are so high) it is not worth the cost of including the prohibition in a contract. If the materiality requirement acts as a filter distinguishing these two classes of cases from the more typical but less dramatic cases where insiders earn positive abnormal returns, the rule may turn out to be beneficial without regard to the damage a general ban could do.

Fiduciary Duty
The Supreme Court has drawn a line between the ability of managers to trade on material inside information and the ability of others, such as printers or government officials, to do so. Because managers are employed by the firm and thus owe a fiduciary duty to investors, the Court has reasoned, they may not trade on the basis of inside information. Outsiders owe no such duty and so may trade without violating Section 10(b) or Rule 10b-5.

"Fiduciary duties" are a dubious basis on which to distinguish insiders from others. The difficulty with limiting the class of "insiders" to those within the firm is that long-term contracts are often a substitute for horizontal or vertical integration. Outside suppliers or outside counsel may have as much inside information and ability to affect the fortunes of the firm as employees. Under current rules, for example, a supplier to a firm could not be liable for selling the shares of the firm short, but it could be liable if the supplier were vertically integrated into the firm. That's not a useful line. Actual contracts, when we observe them, forbid trading by outsiders such as printers and messengers but not by insiders, the opposite of the result derived from an emphasis on "fiduciary" duty.

One positive outcome from the emphasis on duty, though, has been the development of the misappropriation theory. People may accept duties by agreement. If by contract a person promises not to trade, the argument goes, he has a "duty" not to trade; the identity of the misappropriating party becomes irrelevant. Consistent application of this approach would go a long way toward bringing the law of insider trading into harmony with the economics. (It is important that the corollary of the misappropriation theory also be recognized—that there should be no prohibition where the use of information is allowed by explicit contract.)

The Proper Plaintiff
Federal law creates both private and public enforcement devices. Rule 10b-5 gives shareholders who bought and sold during the time insiders were trading standing to bring private damages suits. The Department of Justice also may bring injunctive and criminal actions on behalf of the United States. Finally, the SEC may file suits to recover restitution and up to three times the trading profits from those who trade illegally.

One of the themes we emphasized is that the dispute concerning inside trading is really about how managerial and other contracts allocate the property right in valuable information. If this property right is allocated to the managers, neither shareholders nor the government should have a claim—at least, no greater claim than they would have about excessive managerial salaries. In cases of nonconsensual trading, the firm should have a claim analogous to damages for breach of contract or to recovering the value of stolen property. Shareholders could pursue derivative actions in the right of the corporations, if so it should make no difference whether the complaining shareholder traded at the same time as the insider or, for that matter, traded at all.

Because the probability of detection in situations involving nonconsensual trading is less than one, and because the gains from trading are potentially great, public enforcement is appropriate to increase the sanction (if necessary, to send to jail those whose wealth is too small to pay an optimal monetary penalty). Insider trading laws to this extent do not differ from the use of public prosecution to enforce other limitations on the use of intellectual property, such as trade secrets, trademarks, and copyrights.

Takeovers and Trading
In all corporate control transactions the acquiring firm acts through many agents with access to inside information. We have emphasized that theft of this information, as in Chiarella, is the core case for liability. Other than clapping the offender in leg irons, though, how does the legal system respond? Suppose Bidder's lawyer uses the information to buy shares of Target. Doubtless Bidder may recover the trader's profits. What if Bidder maintains that Lawyer's trades caused it to pay more for Target and seeks this increment from Lawyer?

A higher price is a consequence of the trading and may create social as well as private loss. Offenders must pay for the social loss they create as well as the private gains they reap. Yet Bidder will face an uphill fight to demonstrate that it suffered loss. It is unaffected unless Lawyer's trades lead to a higher price for Target's stock before the bid, and that higher price forces Bidder to raise its offer.

Anonymous trades do not affect price. Other traders do not infer information from (apparently) random purchases by unheard-of persons. Unless professional investors deduced Lawyer's identity and
inferred that something was afoot, the price of Target’s stock would not budge.

If it moves, so what? Whether investors tender at a given price depends on their next-best options—whether a bid from someone else, a buyback, or holding in the hope that the market price will adjust. This next-best option, not the market price the day the bid lands on the table, dominates what Bidder must pay. Any run-up attributable to insiders’ purchases does not affect the next-best option and therefore does not affect the price Bidder pays.

SECTION 16

Section 16 of the Securities Exchange Act of 1934 requires directors, officers, and large stockholders (owning over 10 percent of the firm) to report trades in equity securities of their firm on a monthly basis, provides the firm with a right to any profits made from the purchase and sale of securities in a six-month period, and prohibits short selling. Section 16 differs from Section 10(b) and Rule 10b-5 in several respects: (1) Section 16 is not limited to trading on inside information; (2) it applies only to matched purchases and sales within six months; (3) it covers only specified insiders; (4) it allows only the firm to recover.

Reporting Requirements

Reporting of insiders’ trades allows investors to make more accurate inferences about insiders’ compensation. Moreover, reports provide information to future managers about potential compensation that is available. An additional benefit is that the information effect of the insiders’ trades will be strengthened if trades are observable. These benefits may be small, however, because of the difficulty of inferring information from trading profits when portfolio decisions may be governed by many factors, and because those who trade in violation of contracts and substantive rules are unlikely to report their misdeeds. But because the cost of reporting is small, even a slight benefit carries the day.

The Ban on Profit from Short-Swing Trading

Section 16(b), which authorizes the corporation to obtain its insiders’ short-swing profits, has the advantage of directing recovery to the corporation. What is less clear, however, is whether the six-month rule serves a useful purpose. If trading is nonconsensual, it should not matter whether a matched purchase and sale occur within six months; if the trading is consensual, why should the wash matter?

One reply is that the prohibition of short-swing trading decreases insiders’ incentive to manipulate stock prices (that is, to move prices away from their equilibrium value). Suppose insiders know that their purchases cause the price of shares to rise. In this event, insiders could gain by purchasing shares and then immediately selling (or selling short) before the market became aware of the manipulation and settled back to its former level. Prohibiting matched buying and selling within a short time reduces the ability of insiders to play games of this kind.

Yet the prohibition may entail substantial costs. Both the incentive and information effects of insider trading are weakened if a substantial set of trades is off limits. The prohibition of short-swing trading also has the effect of forcing managers who buy their firms’ stock to hold non-diversified portfolios for longer periods. Firms must compensate by raising managers’ compensation from other sources. Moreover, the ability of insiders to manipulate stock prices should not be exaggerated. The reason the market price might rise if insiders purchase is that investors believe such purchases are based on (and so imply) valuable information about the firm’s prospects. Investors believe this a second time only if the message is borne out by an increase in the firm’s earnings. Manipulation is a short-run or one-shot phenomenon.

The Prohibition Against Short Sales

The perverse incentives created by the ability to trade are most acute when insiders engage in short selling. Many explicit contracts prohibit short sales; it is appropriate to imply such agreements widely in the absence of evidence that firms desire to permit

Graduates in Business

Real estate development, photography, communications, film production, theme park management, construction, writing, designing, trading stocks—you name it, a Law School graduate is doing it. Over two hundred of our graduates are pursuing careers in business, some having never entered the legal profession at all, while others have seized an opportunity that arose in their early years of practicing law. We would like to introduce six graduates in business.
Irving I. Axelrad '39
Film Producer
Beverly Hills, California

Irving Axelrad describes his entry into the world of movie production as being “in the right place at the right time.” Knowing the right people helped, too. For thirty-five years, Axelrad had worked for a Los Angeles law firm that represents actors and actresses and he numbered Paul Newman among his clients and friends. He was thus in a good position to persuade the star to make a sequel to “The Hustler.” As producer of “The Color of Money,” Axelrad was involved in finding a studio to buy the property, raising finance, choosing a director, helping to cast, scouting locations, and getting the film made, edited, and distributed. Deals with two studios fell through before Disney bought the property and made the movie. Axelrad has now signed a multiple-picture contract with Disney.

Axelrad became a movie producer at an age when most people are thinking of retiring. “I’m in my fifty-first year of work and it has never occurred to me to retire,” he says. At the beginning of his career he was pleased to have any kind of job. “The legal world was in a depression and most graduates did not have law jobs. Edward Levi helped me to find a job in the federal government, in the antitrust division.” He worked for the federal government for thirteen years until he decided government service did not pay enough and moved to Los Angeles.

Between representing the stars and putting them on screen, Axelrad also had a brief career as an oil executive. “Armand Hammer offered me a job at Occidental. It was fun for a while but tiring. Hammer is a workaholic.” Axelrad still represents a few clients, including Newman, dabbles in real estate and makes movies. At the end of a long and successful life, he still has one unfulfilled ambition. “For my sixty-fifth birthday my wife had my piano rebuilt, the one I had as a child. I’m out of practice but I’m determined to learn to play jazz on that piano.”

Bruce Engel '64
President
WTD Industries, Inc.
Portland, Oregon

“When I found myself representing the owner of a failing lumber mill in Southern Oregon and realised to my frustration that this was the third owner I had represented (out of a total of six) of the same mill, and that none of them was taking my advice on how to improve business I decided I could do better.”

With a down payment of $3,000 and his personal signature for a loan of $2 million, Bruce Engel bought the company, gave up practicing law, and went into business. That was in 1982. Today, WTD Industries, which produces lumber and forestry products, is the fourth largest producer in the United States with twenty-nine plants in the Western U.S. and one in New York State. Besides WTD, now a public company, Engel owns eleven other companies in various fields—manufacturing, a business magazine, a tennis club. He enjoys the challenge of taking troubled companies and making them successful.

Engel was raised on a farm in a small town in Oregon and originally had no wider ambition than to be a farmer himself. Although a straight-A student at high school, he had not thought about further education until his high school coach persuaded him to go to college and helped him figure out the finances. He graduated in history at Reed College, Oregon, and decided in his final year to try law school, more because he enjoyed problem solving and occupations oriented toward people, than out of a hunger to study law. The University of Chicago Law School was recommended to him and he never applied anywhere else. Engel enjoyed his years at the Law School and is enthusiastic about the benefit of a legal training. “Legal training and practice are very helpful, especially in building a company out of its ashes. The technical skills and confidence that you gain equipped you for all kinds of careers.” Engel adds to that background a strong competitive streak and apparently limitless energy. Besides his businesses, which continue to expand, he enjoys an active outdoor life and has not forgotten his early ambition to be a farmer. He owns a farm in Portland and a ranch in British Columbia.
David R. Greenbaum ’76
Executive Vice President and CFO
Mendik Realty Company, Inc.
New York

Real estate was always dear to David Greenbaum’s heart—his mother had told him that owning property was a smart move—but he originally thought he wanted to be a tax lawyer.

Jeffrey Keenan JD/MBA ’83
Partner
Acadia Partners, L.P.
New York

At a time when most high-school kids have no idea what to do with their lives, Jeffrey Keenan knew he wanted to go into business. His work experience had extended to mowing yards in his small hometown in western Pennsylvania and working in steel mills during summers at high school, but a business career was in his blood, since his father was CEO of several companies. Keenan planned his career carefully. He majored in math and economics at the University of Chicago, then enrolled for the joint JD/MBA degree at the Law School and the Graduate School of Business. He never had any intention of practicing law, but included a law degree in his plans because he wanted training in the areas of securities, tax, and bankruptcy and to strengthen his writing and analytical skills. “I got exactly what I wanted,” says Keenan. “I enjoyed every minute of the U of C and I loved law school. I’m a real fan of Frank Easterbrook’s and a true believer in the ‘Chicago School’ approach to law, business, and the markets.” Although his father had supported him through college, Keenan paid his own way through graduate school. “My father believes in the American work ethic, where you make your own way in the world.”

Such single-mindedness and determination set the pattern for Keenan’s career. After graduation, he joined Lehman Brothers, where he developed an interest in mergers and acquisitions. After three years with Lehman, he became a managing director at AEA Investors, Inc., an investment firm. During the two years he was with AEA, he led the firm’s acquisition of twelve companies and the investment of over $1 billion. In 1988, Keenan became a partner in Acadia Partners, L.P., a major investment firm with $1.8 billion in capital, which manages its own high-yield portfolio and invests in leveraged acquisitions. Keenan concentrates on the acquisitions side of the firm and on investments in the securities of bankrupt companies. Over the past year, Acadia has been involved in more than ten acquisitions including Bell & Howell and American Savings & Loan. The firm has a number of major institutional investors including the Robert M. Bass Group, American Express, and Equitable. Keenan credits much of his success to his University of Chicago education. When asked if he expects his sons (ages 4 and 2) to follow in his footsteps, he said, “Whatever they want to do is fine. But they will start off by going to the University of Chicago. That’s a given.”
Robert F. Lusher '59
Buildiers Federal
Hong Kong

In 1963, when Robert Lusher was working for Cravath, Swaine & Moore in New York, an individual from Taiwan came to see him. A former colleague of Lusher's had suggested they meet. The man was looking for a partner to assist in arranging finance for a big construction project in Taipei. Lusher had been to Taiwan when serving as a Navy pilot, before he entered law school, and was intrigued with the idea of returning to Asia. He agreed to help, in spite of strong doubts as to the chance of success. By the end of 1964, however, the Taipei project had become reality and Lusher founded Builders Federal.

The firm, which is involved in construction throughout Asia, concentrates in specialized projects needing high technical skills, such as curtainwall installations for high-rise buildings and sound attenuation installations. The company transferred to Hong Kong in 1977 and now has offices in Shanghai, Taipei, and Singapore, and factories in Hong Kong and Singapore. Turnover of the company exceeds $100 million per year. All but ten of the company's 700 employees are Chinese. Lusher has high praise for his employees.

"The Hong Kong Chinese are a truly unique [people], and one of the greatest joys of my life has been the opportunity to work among them. They have a marvelous combination of all the best qualities: drive, ambition, good intellect, integrity, team spirit and loyalty."

Lusher's first foray into business was not a resounding success. At the age of fourteen, in the farming community in Ohio where he grew up, he borrowed $175 to buy a flat-bed truck and hauled baled hay from the fields to barn storage for winter feeding.

"My net profit was $1,400. This gave me the capital for my first (and last) foray into the stock market. Within six months, the value of my investments had fallen by 25 percent. I decided at that time never again to invest in companies over which I had no control. I've stood by that decision."

Lusher's biggest uncertainty today is the future of Hong Kong after communities fraud and antitrust, she realized that Perry Mason and real-life litigators were poles apart and changed her career to television. Less than one year after joining WBBM-TV in Chicago, Nissenson won her first Emmy Award as Chief Investigator of the Factfinder Unit. Over the next ten years she worked as investigative reporter and anchor for all three networks, collecting numerous awards including the George Foster Peabody Award, broadcast television's highest honor, in 1980 for her series on the Solidarity movement, "Poland: Changing Nation." Among her more notable assignments was Harold Washington's mayoral race in 1984, for NBC Network News. Nissenson was the first network correspondent to foresee and broadcast Washington's likely victory.

Despite receiving two Emmy Awards in 1988 for her coverage of Mayor Washington's death and Pope John Paul II's visit to America, Nissenson was growing unhappy with TV news. She refocused her goals and started her own agency, Foresight Communications. The agency advises Fortune 500 companies on how to get greater mileage from their advertising budgets and generate good publicity by funding public service projects with lasting benefit to the community. The agency draws on free-lance talent and outside production facilities for its projects, which include full-length television documentaries, video news releases, industrial videos, and public service announcements. One of its major projects during the company's first year was the creation and implementation of a breast cancer awareness program sponsored by the Coors brewing company. The agency has found its niche, confirmed by its first year's gross revenue of $1.3 million.

Nissenson stresses the team spirit of her small, informal company of four full-time staff. "Of all the things in recent years that have happened to me, the most important was not the Emmys or hosting the 'Today' show. The most worthwhile thing was when an accountant came to the agency in summer 1988 to explain the benefits package to the staff. He also explained that if we all gave up benefits to the first of the year, it would be a better tax break for the firm. The team agreed unanimously. Their support was heartwarming."
APPOINTMENTS

Faculty

Larry B. Kramer has been promoted to the rank of Professor of Law, with tenure, effective July 1, 1990. Mr. Kramer graduated cum laude in 1984 from the University of Chicago Law School, where he was a Comment Editor on the Law Review and a member of the Order of the Coif. After graduation, Mr. Kramer served as law clerk to Judge Henry J. Friendly of the U.S. Court of Appeals for the Second Circuit and for Justice William J. Brennan of the U.S. Supreme Court. He joined the faculty in 1986. Mr. Kramer’s research and teaching interests lie in the areas of civil procedure and conflicts of law, and evidence. He recently published an article in the Columbia Law Review entitled “Rethinking the Choice of Law,” in which he develops a comprehensive theory of how to choose the law in a multi-state case. The paper is the first to apply game theory in this field. Mr. Kramer has recently completed his work as reporter for the Federal Courts Study Committee. In January, he presented a 700-page draft report which was subjected to twelve days of hearings across the country. The final report was due to be submitted to Congress on April 2.

Alan O. Sykes has been granted tenure and promoted to the rank of Professor of Law, effective July 1, 1990. Mr. Sykes graduated from the College of William and Mary in 1976. He was a National Science Foundation Graduate Fellow in Economics at Yale from 1976–79 and received his J.D. in 1982 from Yale Law School, where he served as an Articles Editor on the Yale Law Journal. He received his Ph.D. in economics from Yale University in 1987. Before joining the faculty in 1986, Mr. Sykes lectured on the economics of law at the University of Pennsylvania Law School and was in private practice in Washington, D.C. His research and teaching interests include international trade, torts, and economic analysis of law. Mr. Sykes’s most recent article, “The Doctrine of Commercial Impracticability in a Second-Best World,” which appeared in the January issue of the Journal of Legal Studies, deals with the impossibility and impracticability doctrines in contract law and under the Uniform Commercial Code.

Visiting Faculty

William I. Miller has been appointed Visiting Professor of Law for the Fall Quarter, 1990. Mr. Miller is Professor of Law at the University of Michigan Law School. He is one of the nation’s leading legal historians and is an expert on medieval Icelandic law, on which he has written two books and a dozen articles. Mr. Miller graduated from the University of Wisconsin, Madison, in 1969 with a B.A. in history. He received his M.Phil. and Ph.D. in English from Yale University in 1973 and 1975 and his J.D. in 1980, also from Yale. While at the Law School, Mr. Miller will teach the first-year property course and a seminar in Icelandic law.

LAW SCHOOL NEWS

Legal Forum Symposium

“The Role of the Jury in Civil Dispute Resolution” was the theme of the fifth annual symposium of the University of Chicago Legal Forum, held on October 27 and 28, 1989, at the Law School. Funding for the symposium was provided by the Defense Research Institute under the auspices of Perry Fuller ’49, Chairman of the DRI Committee. The symposium brought together leading scholars and practitioners to examine the current state of civil jury trials, the problems and the possible solutions. Paul Carrington, professor and former dean of Duke University Law School, gave the keynote address, “The Seventh Amendment: Reflections on Its Bicentennial,” on Friday afternoon. After discussing the original intent of the Seventh Amendment, which guarantees trial by jury, he looked at the benefits and disad-
vantages of jury trials today. Professor Carrington then turned to modern procedural reforms, including a trend to reduce jury size in federal trials from twelve jurors to six. He pointed out that the current system is no longer suited for the use of juries as cases become more complex and last longer. He suggested some ways of shortening jury trials, including the use of videotaped testimony, and also described the increased use of professionally prepared evidence.

On Saturday, members of the four panels delivered papers that will be published in the 1990 issue of the Legal Forum. The morning panels were moderated by Susan Getzendanner, a former federal district court judge, now a partner at Skadden, Arps, Slate, Meagher and Flom. The first panel focused on historical and practical views of the jury. Stephen Yeazell, Professor of Law at UCLA, spoke on the emergence of the modern jury. George L. Priest ’73, John M. Olin Professor of Law and Economics at Yale Law School, examined the role of the civil jury, and the Honorable Prentice Marshall, U.S. District Court for the Northern District of Illinois, gave some practical perspectives on juries from his viewpoint on the bench. The second panel discussed the system at work. Marc Galanter ’56, Evjue-Bascom Professor of Law at the University of Wisconsin, Madison, spoke on “Jury Shadows: The Civil Jury as a Regulator,” and Peter Huber, a senior fellow at the Manhattan Institute for Policy Research, spoke on the attempts by “expert” witnesses to prove causation through the use of statistical evidence.

The afternoon panels were moderated by Albert W. Alschuler, Wilson-Dickinson Professor of Law. The first panel examined Alternative Dispute Resolution. Wayne D. Brazil, United States Magistrate for the Northern District of California, replied to critics of ADR with experiences from Northern California. Deborah R. Hensler, Research Director of the Institute of Civil Justice at the Rand Corporation, discussed court-ordered arbitration. Diane Wood, Professor of Law and Associate Dean, also discussed court-annexed arbitration, but disputed the applicability of such procedures to a wide variety of cases. The final panel of the symposium dealt with Judicial Management. The Honorable William W. Schwarzer, U.S. District Court for the Northern District of California, made several suggestions for reforming jury trials. Francis E. McGovern, Francis M. Hare Professor at the University of Alabama School of Law and Professor of Public Health Law at the School of Public Health, University of Alabama at Birmingham, discussed his experiences as a Special Master in the Dalkon Shield litigation. Judith Resnik, Professor of Law at the University of Southern California and former Visiting Professor at the Law School, discussed the effect on the federal courts and on the role of the jury of the aggregation of cases into “litigations” and “multi-district litigations.”

Symposium papers and student comments will be published in the 1990 volume of The University of Chicago Legal Forum. For further details about the symposium or to obtain copies of the publication, contact The University of Chicago Legal Forum, 1111 East 60th Street, Chicago, Illinois 60637 (312/702-9832).

Musser Lecture

Former U.S. Senator Lawton Chiles (Florida) delivered the Clifton R. Musser Lecture at the Law School on November 1. In his talk, “The Pillars of Competitiveness: Charting a Course for a New America,” Mr. Chiles spoke of the momentous political changes taking place in the world, especially in Europe, and what the United States must do to meet the challenges of the future and maintain its competitive position in the world. He called for the restoration of high ethical standards, for investment in human capital instead of squandering it, and for a return to the virtues of service and sacrifice. The current taste for instant gratification should be replaced by a willingness to seek long-term gains. This includes investing in technological development to a much greater degree than at present.
A Note from Kathryn R. Stell, Assistant Dean of Students and Director of Public Service Placement

Many thanks to the dozens of Law School alumni who responded to the Public Service Questionnaire in the last issue of the Record. With your help, we will establish a network of students and alumni interested in public service. The Placement Office will work with the network to locate public service positions for students and alumni.

The Placement Office is also developing a computerized database of public service employers and current job opportunities. This database will enable me to inform students and alumni of public service opportunities.

Finally, my heartfelt thanks to those graduates whose generous contributions have made public service positions financially feasible for interested students and alumni. With your help, public service is becoming a viable alternative for those who choose it.

Please feel free to contact me at the Law School at (312) 702-6769 to share your thoughts and insights with me. I would very much like to hear from you.

Tax Conference

The forty-second annual University of Chicago Law School's Federal Tax Conference took place on October 18-20, 1989. Topics covered at this year's conference included international corporate tax, pension trusts, business planning, debt and leverage, and accounting problems. Robert H. Aland's (Baker & McKenzie, Chicago) section on international tax was one of the highlights of the conference. Other speakers of special note were Thomas L. Evans '83 (University of Texas School of Law), who discussed the evolution of federal income tax accounting; Frederic W. Hickman (Hopkins & Sutter, Chicago) and Donald C. Lubick (Hodgson, Russ, Andrews, Woods & Goodeyar, Washington, D.C.), who examined tax legislative history in light of changing realities; and M. Bernard Aidinoff and Willard B. Taylor (Sullivan & Cromwell, New York), whose talk "Approaches to Debt: Is Integration the Answer?" attracted national attention.

Harold J. Green Faculty Fund

The Harold J. Green Foundation has donated over $330,000 to establish the Harold J. Green Faculty Recruitment and Retention Fund. The Foundation and the Green family desire the Law School to continue to have the most outstanding faculty in the nation. Expenditures from the Fund are to be used at the discretion of the Dean of the Law School to support the recruitment and retention of outstanding teachers and scholars for the Law School's faculty. The gift is made in anticipation of the University's Centennial Campaign. Harold J. Green '28, who died in December, 1988, was a long-time benefactor of the Law School. He funded the construction of the first-floor "Green Lounge," a favorite place for relaxation, in 1959, and supported the extension of the lounge when the D'Angelo Law Library expansion was built in 1987.

Stuart and JoAnn Nathan Establish New Fund

In celebration of Mr. Nathan's 25th Reunion and in anticipation of the Law School's needs within the upcoming University Centennial Campaign, JoAnn and Stuart C. Nathan '65 have pledged $200,000 to the Law School. A substantial portion of this gift will be used to create the Stuart C. and JoAnn Nathan Faculty Fund for promoting scholarly research by the faculty. The remaining part will be divided between the Jill Harris Scholarship Fund and the Bernard and Emma S. Nathan and Maurice and Dorothy S. Kay Law Library Fund, both of which were created by the Nathans during the Law School's previous Capital Campaign. Stuart Nathan is Executive Vice President of JMB Realty Corporation and is a member of the Law School's Visiting and Major Gifts Committees.

Public Service Funds Boosted

The Thomas Loren Karsten Public Service Fund has been created by Marilyn Herst Karsten (Ph.B. '44) in honor and in memory of Thomas L. Karsten '39. The fund will support summer fellowships for law students, loan deferment or forgiveness for Law School alumni, and other projects in connection with the Law School's public service program. Thomas Karsten was a long-time supporter of the Law School and served as Western Region chairman for the Capital Campaign.

The Weigle family have created the Maurice S. and Helen R. Weigle Fund for Public Service in memory of Maurice Weigle (Ph.B. '33, J.D. '35). The fund will provide support for the Law School's existing public service loan forgiveness program and other appropriate projects. The family particularly hopes to support graduates utilizing their skills in the protection of the rights and welfare of children. Mr. and Mrs. Weigle (A.B. '35) have been long-time supporters of the Law School and have been active in University affairs as well.

Olin Foundation Grant to Law and Economics

The John M. Olin Foundation of New York has renewed its long-time support of the Law and Economics Program with a two-year grant of $732,000. The Foundation will support visiting faculty fellowships, the Workshop in Law and Economics, nine John M. Olin Student Fellowships, and the annual John M. Olin Student Prize in Law and Economics. In addition, the grant will fund a conference celebrating fifty years of Law and Economics in Chicago, to be held in April, 1992, in conjunction with the University's Centennial commemorations. The John M. Olin Foundation has supported the Law and Economics Program at Chicago since 1977.
Llewellyn Book Published


Town Meeting

On November 17, Dean Geoffrey R. Stone met with students at the now-traditional question and answer session held each quarter. Following his precedent, Dean Stone first answered written questions. He reported on the Visiting Committee, the issue of a computer lab for students, and the problems of parking in the Law School’s parking lots. Responding to questions from the audience, Dean Stone said the Law School has no plans to require a minimum number of hours of community service from students, a program that a few other law schools have recently inaugurated. The Dean agreed to change the presentation of the grading scale on official transcripts, on the ground that the current system could mislead prospective employers, but he dismissed the possibility of changing the Law School calendar to semesters instead of quarters.

Talent Show

While singing in the shower one day last Fall Quarter, 3rd year student Nancy Rotering wondered if there might be fellow Law Schoolers with hidden talents who would enjoy a chance to show what they could do. So she organized a Talent Show for January 12, which gave participants time to practice over the holidays, started off the cold, uneventful Winter Quarter on a high note (!), and also raised $621 in ticket sales for donation to the Mandel Legal Aid Clinic. Thirteen acts welcomed the chance to display their talents, and students sang, played instruments, did impressions, told jokes, and hurled insults in a fun-filled evening.

Guest judges Geoffrey Stone, Mary Becker, and Douglas Baird had the difficult task of awarding prizes. “Best Talent” and a $100 prize, went to Janine Goodman (1L) and Kristen Allman (1L). Janine sang three original songs to guitar accompaniment, with Kristen providing harmony. Michel Mengal (Graduate Program) received the “Funniest Talent” award for his rendition of several French tongue twisters and poems, while “Most Bizarre Talent” went to Karen Diliberto (3L) for her reading of Fletcher v. Rylands to Don McElliott’s (3L) rendition of The Nutcracker Suite. Nancy was satisfied with the evening.

“I was surprised and thrilled with the variety and quality of the talent offered. Not only was it an enjoyable evening for all, it was an opportunity to help out the Clinic, which we all feel strongly about—some people who couldn’t attend still wanted to make donations to the Clinic.”

Student Liaisons

At the beginning of his term of office, Dean Geoffrey Stone suggested a way of involving students more directly in Law School affairs by appointing student liaisons to faculty committees. Liaisons meet with faculty contacts from designated committees before committee meetings to learn the issues to be discussed and to voice student opinion on matters of concern. The liaisons are then responsible for reporting back to the student body through the medium of the *Phoenix*, the bi-weekly student newspaper. The scheme has operated for three years and, according to John Dent, President of the Law Students Association, “Students now know who the liaisons are and work with them to bring matters to the committees’ attention.”

Students are invited to submit applications to be liaisons. The program coordinator, Catherine Winterburn, together with the first- and second-year LSA representatives, then selects the most appropriate candidates. “We try to have one student from each year assigned to a committee, and students who have served before get priority the next year. This provides continuity and a fund of experience.” This year, liaisons were assigned to the Committees on Alumni Relations, Financial Aid, the Library, Admissions, Appointments, the Bigelow Program, Clinical Legal Education, Curriculum, the Building, and Placement. Dean Stone expressed his satisfaction with the program. “Students have provided valuable input into the decision making process, and through the liaisons’ reports in the *Phoenix*, we have been able to inform students generally about the administrative processes of the Law School.”

Students to Welcome Newcomers

The student liaisons to the Admissions Committee, third years Ellen Cosgrove and Marianne Culver and first-year David Nagler, are organizing a program of events to welcome accepted applicants to the Law School and to encourage them to make the University of Chicago their school of choice. “We are competing with the palm trees of California and the reputations of the Ivy League,” says Ellen Cosgrove. “We want to show newcomers that Chicago is a great school
to attend.” Almost half the student body has signed up to participate in some aspect of the welcoming program. Traditionally, Dean of Students Richard Badger ’68 has taken prospective students on tours of the Law School. Marianne and David are now coordinating a greatly expanded program of tours, whereby interviewees or accepted applicants who are visiting Chicago can be shown around the Law School and the New Graduate Residence by students, enjoy lunch with a student on a one-to-one basis, and be escorted to class. Ellen is also arranging two admissions weekends, in April and May, at which prospective students can enjoy classes, tours, and Wine Mess with the faculty on Friday, followed by dinner with small groups of students and a party. On Saturday, students hold a panel discussion to talk about every possible aspect of student life in Chicago. The Law Women’s Caucus is organizing a program aimed at women applicants, followed by luncheon and a bus tour of Hyde Park and downtown.

Help for the Homeless

Students at fourteen of the nation’s leading law schools, including the University of Chicago, have joined in an effort to raise money for homeless shelters across the nation. Students are being asked to give up some of the extravagant benefits, such as luxury hotels and expensive meals, bestowed on them by law firms during callback interviews. Each participating law firm then donates the money it saves to designated homeless shelters in the law firm’s own city. Students in Chicago are also asked to use one particular travel agent in Hyde Park for all travel not arranged by firms, including vacation travel. The agency has agreed to donate half its commission to the shelters. Students are not asked to donate any money themselves, nor do law firms incur any additional costs. The project is coordinated by Robert Lystad, class of ’90.

“Some law firms have decided not to participate in the scheme but instead are making outright donations. Including these firms, there are fourteen firms participating in Chicago, 150 nationwide. More than half the second- and third-year students have signed up to take part in the program.”

Although final figures for 1989-90 are not yet available, preliminary indications are that more than $10,000 will be donated to two Chicago shelters, the Tabitha Community Service, a 90-bed shelter that temporarily houses homeless women and their children while helping them get started again, and the Ecumenical Night Ministry, a program that provides foster care and crisis intervention for homeless youth.

The winning football team

Women’s Football Triumphs Again

The women’s intramural football team won the University championship for the fourth year in a row. Not able to sustain the success of the Law School’s team of the previous three years, when no team scored any points against them, the 1989 team played a closely contested final in November, stopping a last-minute touchdown attempt by the opposing undergraduate team on the last play of the game, to win 19-18.

As a warm-up to the intramural championship game, alumni from the Law School’s previously undefeated and unscorched-upon team returned to the Law School in October for a hotly contested battle with the current team, which the alumni won 30-18.

Heather Sawyer (Class of ’91), the current Law School quarterback, said, “The alumni beat us this time because of the cunning of their advanced years—but never again! At least we broke their no-points scored record. This was a rebuilding year for us, as we had only four returning players, and the intramural win was too close for comfort. Next year we will recapture the glory of our past!”

Visiting Committee

The Law School’s annual meeting of the Visiting Committee took place on November 9–10. The theme of this year’s meeting was “Public Service, Diversity, and Contemporary Legal Education.” Members of the Committee gathered for a Continental breakfast on the first morning and to listen to introductory remarks by Dean Geoffrey R. Stone ’71. Two panel discussions followed. Professors Douglas Baird, Stephen Schulhofer, Cass Sunstein, and Diane Wood discussed the faculty appointments process and the efforts the Law School is making to attract women and minority faculty. The Committee then heard from Professors Mary Becker ’80 and Alan Sykes, Dean of Students and Assistant Dean Richard Badger ’68, and Assistant Dean of Students and Director of Public Service Placement Kathryn Stell ’86 on the admissions process. The panel explained the Law School’s policies on affirmative action, diversity, and financial aid.

Committee members met with students over lunch in the Harold J. Green Lounge before gathering to hear Dean Stone, Professor Larry Kramer ’84, Dean Badger, and Ms. Stell discuss public service careers. The panel described programs in the Law School that aim to increase the visibility of public service career options, make students more aware of opportunities in the public sector and encourage them to consider alternatives to private practice.

Professor David Currie, Chair of the Graduate Studies Committee, Assistant Professor Anne-Marie Burley, and Roberta Evans ’61, Assistant Dean and Director of Graduate Student Affairs, spoke to the Visiting Committee about recent developments in the Law School’s program for graduates of foreign law schools. Because of the internationalization of the practice of law in recent years, and interest in U.S. law as the medium of commercial exchange, there is increasing interest in the graduate studies program. This year, students in the Law School’s program represent nineteen countries and the number of foreign students participating in the program has increased sixfold in the last six years.
Norval Morris, Julius Kreeger Professor of Law and Criminology, delivered the annual Wilber G. Katz Lecture in the Weymouth Kirkland Courtroom. His topic was “The Honest Politician’s Guide to Drug Control.” Mr. Morris claimed, “There is not a drug problem in this country; there are a series of troubling social problems to which drugs differently relate.” He claimed that sufficient resources exist to fight these problems but that they are poorly allocated. “The great debate between the prohibitionists, with their dream of a drug-free America, and the legalizers, with their abundant confidence in freedom of choice, should be put aside since...prohibition is unachievable in practice and...legalization is unachievable in political reality. We should concentrate on what matters to us.” He listed seven areas that he would choose to concentrate on: crimes committed against innocent people by those on drugs; injury to young people from addictive drugs; destruction of neighborhoods by drug dealing; occupations where drug use puts other people’s lives at risk; highway safety; the spread of AIDS; the availability of drugs in prison. Each area of concentration needs a different strategic approach. Mr. Morris argued that if resources were focused on these areas, success would be measurable. “The overall aim should be neither to remake man nor to indulge his weaknesses, but rather to use governmental and community resources to minimize the damage that drugs do in those areas where they most forcefully impinge on the decencies of life in a democratic society.”

The lecture was followed by a reception. Members of the Visiting Committee then adjourned to Lower Burton-Judson Lounge for dinner.

On the second day of the meeting, members of the Committee met with representatives of the Law Students’ Association and discussed current issues of concern to students. An executive session with Dean Stone followed. The 1989 meeting concluded with luncheon with the faculty. As is the custom, the newest member of the faculty, Assistant Professor Randal Picker ’85, delivered the final address. He discussed the importance of faculty scholarship and the exchange of ideas.

Visiting Committee Members

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

Terms Expiring 1989–90

Jules-Marc Baudel ’67
Baudel Sales Vincent & Georges
Paris, France

Debra A. Caffarelli ’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. Hormel ’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
Washington, D.C.

Alison W. Miller ’76
Stearns Weaver Miller Weissler Alhadeff & Sitterson, PA
Miami, Florida

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

Members of the Visiting Committee prepare for the opening session of the annual meeting.
Ellen Newcomer '73 and Randolph Stone exchange views at the annual meeting of the Visiting Committee

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

Ellen G. Newcomer '73
Butler Rubin Newcomer
Saltarelli & Boyd
Chicago, Illinois

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

Roberta 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 American League
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

Hon. Carol E. 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

The Hon. Terry J. Hatter, Jr. '60
United States District Court
Central District of California
Los Angeles, California

Elmer M. Heifetz '37
Engelhard Krogman, Inc.
Chicago, Illinois

Peter D. Lederer '57
Baker & McKenzie
New York, New York

Stuart C. Nathan '65
JMB Corporation
Chicago, Illinois

George Phocas '53
London, U.K.

James H. Shimberg '49
Town 'n Country Park, Inc.
Tampa, Florida

Mark R. Wilkow '74
M & J. Wilkow, Ltd.
Chicago, Illinois

Joseph T. Zoline '35
Joseph T. Zoline Investments
Beverly Hills, California

Lillian Kraemer '64 and Peter Lederer '57 share a thoughtful moment at the Visiting Committee breakfast
The Hon. Milton Shadur '49
United States District Court
Northern District of Illinois
Chicago, Illinois

Randolph N. Stone
Public Defender
Chicago, Illinois

Stephen E. Tallent '62
Gibson Dunn & Crutcher
Washington, D.C.

Edward W. Warren '69
Kirkland & Ellis
Washington, D.C.

The Hon. J. Harvie Wilkinson
United States Circuit Court
Fourth Circuit
Charlottesville, Virginia.

FACULTY NOTES

In October, Albert W. Alschuler, Wilson-Dickinson Professor of Law, gave the welcoming address at the Law School's dinner for entering students. He also spoke at the University of Chicago Legal Forum's symposium on the civil jury. He and Professor Stephen J. Schulhofer were coauthors of a paper on "Judicial Impressions of the Sentencing Guidelines," which appeared in the September issue of the Federal Sentencing Reporter.

Douglas Baird

Douglas G. Baird, Harry A. Bigelow Professor of Law, attended the National Bankruptcy Conference on October 19-21. On December 1-2 he lectured at the 14th Annual Stetson College of Laws Bankruptcy Seminar. He gave a workshop at New York University on December 6 on the right to a jury trial in bankruptcy cases in the eighteenth century and held a workshop at Columbia the next day on fraudulent conveyance law and leveraged buyouts. He also spoke to Law School alumni in New York on fraudulent conveyance law.

In September, Mary Becker '80, Professor of Law, was a member of a panel addressing the effect of recent Supreme Court decisions on women, at a luncheon seminar sponsored by Chicago Women in Government Relations, Illinois Women in Government, and the American Society for Public Administration. Ms. Becker spoke on the effect of the Court's decisions on women's personal lives. In October, she was a panelist in a Forum on Abortion at DePaul University College of Law. She spoke on "What's Good about Webster v. Reproductive Health Services" at the University of Chicago Midwest faculty seminar on feminism and was the moderator of a panel discussion at the Law School on "Gay Marriage or Domestic Partnership: What Should We Want from the Law?" She took part in a panel discussion on the current situation of access to abortion and reproductive rights, at the American Public Health Association's Annual Convention. Ms. Becker appeared on television twice in October, on the Live with Larry King Show and the Today Show, to discuss a recent case before the Court of Appeals for the Seventh Circuit, in which the Court upheld a decision allowing an employer to exclude all fertile women from a hazardous workplace without requiring a trial. In December, Ms. Becker argued for the regulation of pornography on a panel at Northwestern University Law School discussing "Two Feminist Views of the Legal Treatment of Pornography." Ms. Becker is chair-elect of the Women in Legal Education Section of the Association of American Law Schools. She has agreed to serve a three-year term, which began in January, 1990, as a member of the Advisory Committee of the Journal of Legal Education and has also been elected to the Board of Governors of the Society of American

In September, Anne-Marie Burley, Assistant Professor of Law, took part in a Bicentennial Conference on the Judiciary Act of 1789, sponsored by Georgetown University. In October, she participated in the annual conference of the American Association for the Study of Comparative Law in Puerto Rico. At a conference on Multilateralism in International Relations, held at Stanford in October, she presented a draft outline for a chapter to be published as part of an edited volume. Also in October, she took part in a conference entitled “The Federal Republic of Germany as History,” sponsored by the Minda de Gunzburg Center for European Studies at Harvard University and the German Historical Institute in Cambridge, Massachusetts. In November, she published an article in Foreign Affairs entitled “The Once and Future German Question.”

In September, Gerhard Casper, William B. Graham Distinguished Service Professor of Law and Provost of the University, attended a conference in Berlin on Constitutionalism, sponsored by the American Council of Learned Societies. He also gave the key address at ceremonies held in September at the United States Supreme Court to observe the two hundredth anniversary of the Judiciary Act of 1789.

Ronald H. Coase, Clifton R. Musser Professor Emeritus of Economics, participated in a conference on intellectual property (patents and copyright) held at Aix-en-Provence, France, in August. He gave a talk on Sir Arnold Plant.

In October, David P. Currie, Harry N. Wyatt Professor of Law, spoke on substantive due process in West Germany at a series of symposia in San Francisco, Stanford, and Berkeley commemorating forty years of the Basic Law of the Federal Republic.

Richard A. Epstein, James Parker Hall Distinguished Service Professor of Law, was visiting professor and lecturer at Brooklyn Law School from September 5 to 12. He presented papers on the antidiscrimination laws, tort reform, and the preservation of religious liberties in the welfare state. On October 6, he gave the John Randolph Tucker Lecture at Washington & Lee University. His topic was “Race Relations and Police Power.” Later that month, Mr. Epstein delivered a paper on the varieties of self-interest at a conference on Ethics, Politics and Human Nature, sponsored by the Social Policy and Philosophy Center at Bowling Green, Ohio. He also spoke at the Center for Clinical Medical Ethics at the University of Chicago Medical Center on “The Physician-Patient Relationship: Perils of Relational Contracts.” In November, Mr. Epstein gave a paper on “The Independence of Judges: The Uses and Limitations of Public Choice Theory,” at a conference on Public Choice and the Judiciary organized by Utah State University. He spoke on tort reform at a luncheon in Chicago on November 15, sponsored by the Manhattan Institute. Mr. Epstein took part in a workshop on Modern Problems in Medical Malpractice, held at the Department of Ophthalmology of the University of Illinois at Chicago on November 29.

Richard H. Helmholz, Ruth Wyatt Rosenson Professor of Law, Russell Baker Scholar, and Director of the Legal History Program, spent the fall semester as a visiting professor at Cornell Law School. He organized and participated in a September conference on the history of the canon law after the Reformation, held in Trinity College, Dublin. Also in September, he gave a paper at a conference on Religious Law and Legal Pluralism, held at Cardozo Law School in New York.
Isenbergh's *International Taxation*

Daniel N. Shaviro

In writing a review of Joseph Isenbergh's *International Taxation: U.S. Taxation of Foreign Taxpayers and Foreign Income*, I am following a well-traveled path. The last time an academic published a tax treatise of comparable ambition and quality—Boris Bittker's *Federal Taxation of Income, Estates, and Gifts*—Professor Isenbergh himself wrote a review (Musings on Form and Substance in Taxation, 49 U. Chi. L. Rev. 859 (1982)). That review began with a short section commending Professor Bittker's efforts, but then it became something quite different: an exposition of Isenbergh's views about tax policy, at a theoretical level that Bittker, in the context of a treatise, had been obliged to forgo.

I regret that a similar course of action is not open to me. Given both my degree of specialization in international tax and Isenbergh's understanding of the subject, the only logical first step would be to ask him what he thought I should write about. Ultimately, our discussions might lead to the unacceptable conclusion that he should be the one to write the review.

I must therefore comment only on the book itself. The treatise is written for experts and novices, practitioners and academics. In addition to answering technical questions (such as how to compute the foreign tax credit), it examines a wide range of possible transactions, explaining why they might benefit the parties, how they should be structured, and how likely they are to work.

All attorneys with a practice that includes international transactions will find the book extremely useful and will appreciate Isenbergh's sense of balance. In the yawning gaps in the law where interstitial interpretation is necessary, he does not pretend to certainty even if he has a strong hunch. As a good lawyer, he presents both sides so that the reader, if considering an actual legal problem, can make a balanced assessment.

Academics will appreciate that *International Taxation* revives the lost art of academic treatise-writing. Unlike most treatises, it has personality and wit. Moreover, it implicitly raises fundamental issues about how policymakers should approach international taxation.

Given the esoteric subject matter, the clarity of the book is remarkable. Multiple foreign income "baskets," for both regular tax and alternative minimum tax purposes; entities called FSCs, RPHCs, and PFICs; transactions such as loan-outs and Dutch sandwiches and the like are made accessible to the reader. As Isenbergh comments in his preface, while the Internal Revenue Code is extraordinarily well drafted, contrary to popular belief, in the sense of meaning what its drafters intended it to mean, it is extremely poorly drafted from the standpoint of intelligibility. He has done the work that others would hate to do, by both determining meanings and explaining them clearly. Both textual explanations and concrete examples help to make the book remarkably user-friendly.

Isenbergh realized that a treatise is not the right place to discuss a sensible program for improving the law. Yet the careful reader will discern enough hints to suggest that Isenbergh has more than a few thoughts on the subject. Those interested in learning these views will have to wait for his next book—or perhaps his review of this one.

Daniel N. Shaviro is Assistant Professor of Law.

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**William M. Landes**, Clifton R. Musser Professor of Economics, has been appointed a member of the editorial board of *Intellectual Property Fraud Report*. He is also a member of the Council of Academic Advisers of the American Enterprise Institute.

**Michael W. McConnell '79**, Professor of Law and Director of the Law and Government Program, participated in a conference on the First Amendment, sponsored by the Pacific Research Institute and held in San Francisco in mid-July. At the end of October, he delivered oral argument before the United States Supreme Court in *Jimmy Swaggart Ministries v. California Bd. of Equalization*. In November, he delivered a paper entitled "Insiders, Outsiders, and the Religion Clauses of the First Amendment," in a conference on Christians, Jews, and the First Amendment, sponsored by the Institute on Religion and Public Life in New York City. He also spoke on "Recent Developments in Constitutional Law" at a symposium on Legal Issues for Religious Institutions, sponsored by the DePaul Center for Church-State Studies in Chicago. In December, he addressed a conference on Religious Participation in Child Care, sponsored by the National Council of Churches in New York City. Mr. McConnell has been named Senior Fellow of the John M. Olin Center for Inquiry into the Theory and Prac-
vice of Democracy at the University of Chicago.

Geoffrey P. Miller, Professor of Law, spoke to the KAM Isaiah Israel Congregation in October on "Contracts of Genesis" and also spoke to the University of Chicago Faculty Committee on Jewish Studies in November. With Visiting Professor Jonathan R. Macey, he participated as adviser to the Administrative Conference of the United States Special Committee on Financial Services. The Council of the Administrative Conference voted to adopt a set of recommendations based on their report.

Geoffrey Miller

Noreal Morris, Julius Kreeger Professor of Law and Criminology, is serving as Special Master in Williams v. Lane, a case involving protective custody at Stateville prison. In July, he gave a lecture on prison crowding at an international conference in England, convened by the Bishop of Lincoln. In August, he attended a planning meeting of the National Institute of Corrections on prison conditions and the role of the federal courts. Later that month, he was co-moderator, with Justice Harry Blackmun, of a seminar at Aspen, Colorado, on Justice and Society. Mr. Morris was part of a planning group on AIDS and the criminal justice system at the National Institute of Justice, Washington, D.C., in September and also gave the keynote speech at the annual conference of the Criminal Justice Statistics Association in Key West, Florida. At the end of September and beginning of October, he visited juvenile courts, correctional institutions, schools, and a mental hospital in Moscow, Kiev, and Leningrad, U.S.S.R., as part of the Citizens Ambassador Program. He gave the keynote speech in Chicago to the Midwest Criminal Justice Association's annual meeting on October 12. From October 16 through November 7, he served as visiting Phi Beta Kappa Professor at Hobart and William Smith Colleges, Geneva, New York; St. Lawrence College, Canton, New York; the University of Florida at Gainesville; the University of Tennessee at Knoxville; and the University of Ohio at Athens. In December, Mr. Morris presented a paper at a conference on Health Care in Prison, sponsored by the National Institutes of Health.

Gary H. Palm '67, Professor of Law, took part in a panel discussion of the role of law school clinics in training future lawyers to support legal services for the poor, at the Annual Meeting of the National Legal Aid and Defender Association in Kansas City, Missouri, on November 18. Mr. Palm has been reappointed to serve on the Accreditation Committee of the American Bar Association's Section on Legal Education and Admissions to the Bar.

Gary Palm

Stephen Schulhofer

Stephen J. Schulhofer, Frank and Bernice J. Greenberg Professor of Law and Director of the Center for Studies in Criminal Justice, continued his study of the implementation of the federal sentencing guidelines. In August, at a public meeting of the U.S. Sentencing Commission, he testified about the effect of prosecutorial discretion and plea bargaining on guidelines sentencing. During the latter part of the year, under the auspices of the Commission, he visited four federal districts to investigate variation in the charging and bargaining process. In October, he spoke on recent developments in criminal procedure at a Federal Judicial Center workshop for judges of the Seventh Circuit in South Bend, Indiana. In December, he participated in a Federal Judicial Center seminar for newly appointed federal appellate judges in Washington, D.C., and spoke on appellate decision making in the field of criminal procedure. Also in December, he delivered a lecture at the law school of Loyola University in New Orleans on the subject of "The Gender Question in Criminal Law."

Daniel N. Shaviro, Assistant Professor of Law, presented a paper entitled "Risk and Accrual: The Tax Treatment of Nonrecourse Debt," at a seminar on current research in taxation, sponsored by Harvard Law School and held in Chatham, Massachusetts, in late August.
On July 17, Geoffrey R. Stone ’71, Harry A. Kalven Jr. Professor of Law and Dean, participated in a panel discussion with the Honorable Douglas Ginsburg ’73 and the Honorable Robert Bork ’53 before the Business Roundtable in Washington, D.C., on the 1988 term of the United States Supreme Court. He faced Judge Bork again the same day in a debate on substantive due process and the first amendment at the American Enterprise Institute’s forum on the Supreme Court’s 1988 term. Together with Dean Lee Bol­linger of the University of Michigan Law School and former Dean Erwin Griswold of the Harvard Law School, Dean Stone led the effort among professors of constitutional law to oppose the proposed constitutional amendment on flag desecration. In August, he testified before the Senate Judiciary Committee during hearings of the United States Supreme Court decision in Texas v. Johnson. In October, he delivered the keynote address to the Constitutional Rights Foundation Conference on “Constitutional Interpretation and the Rehnquist Era.” Later that month he visited the University of Iowa where he delivered a lecture on “Original Intent: The Fate of an Idea whose Time Is Past” and spoke at a faculty workshop on “Flag Burning and the Constitution.” In Chicago, he spoke to students at Woodward Court at the University of Chicago on “Offensive Speech in the University Environment.”

Cass Sunstein, Karl N. Llewellyn Professor of Jurisprudence, Law School, Department of Political Science, and the College, was one of the American instructors at the Salzburg Seminar, held in Salzburg, Austria, in July. He gave lectures on constitutional law and administrative law and taught a course on constitutional law. In early September, he spoke at the annual meeting of the Political Science Association on liberalism and republicanism in constitutional law. In October, he spoke at Brent House at the University of Chicago on legal ethics in an adversary system. Mr. Sunstein gave a lecture on “Government Regulation and Endogenous Preferences” at the University of Chicago Seminar on Rational Models in the Social Sciences in November. On December 1, he spoke at Boston University on the subject of “Public Funding and Private Rights: Abortion, Speech, and other Problems.” The speech will appear in the Boston University Law Review. Later that month he spoke at Yale University on “The Limits of Compensatory Justice,” a lecture that dealt primarily with environmental law.

Cass Sunstein

Alan Sykes, Assistant Professor of Law, delivered a paper entitled “Protectionism as a ‘Safeguard’: An Economic Analysis of GATT Article XIX” to law and economics workshops at the University of Pennsylvania, Harvard, and Chicago. He also served as chair of the AALS Section on Law and Economics for 1989-90 and moderated a panel at the January 1990 convention in San Francisco on the topic “Games and Information in Law and Economics: Some Applications.”

Diane P. Wood, Professor of Law and Associate Dean, gave a speech at the ABA Annual Convention in August on the subject of the antitrust laws and international competitiveness at a program co-sponsored by the Antitrust Section and the International Law and Practice Section. On October 28, she delivered a paper entitled “Court-Annexed Arbitration: The Wrong ‘Cure’ for the Disease,” at the University of Chicago Legal Forum’s conference on the role of the civil jury. In November, she attended the fall meetings of the ABA International Law and Practice Section in her role as Council member. She also participated in a televised satellite seminar program, “1992: Doing Business with Europe,” discussing EC rules for the extraterritorial application of the competition law under Articles 85 and 86 of the Treaty of Rome. Ms. Wood continues to be a member of the Board of Directors of the Foundation for Change, which recently concluded its civil justice project with the Brookings Institution and has commenced a project on the strategic implications of European unification.
To the Editor:

After reading Alan Gordon's letter in your last issue [letter referring to Myron Orfield's Spring 1989 article "The Exclusionary Rule in the Chicago Criminal Courts," Ed.], I think that Mr. Orfield should decline his invitation to become a public defender. Working for the New York Legal Aid Society will only destroy Mr. Orfield's ability to understand how the police behave on the street. I know Alan Gordon and respect his professional skills but I think a lot of the things he says are just plain wrong.

To begin with, many police officers are worried about losing evidence. Their worries prompt them to ask prosecutors' legal advice before acting. This is particularly true of police officers who do investigative work. They deal with prosecutors routinely and learn from bitter experience how a failure to get a search warrant, an arrest without probable cause, or running an unfair line-up can be disastrous. Fear of suppression certainly influences their behavior.

The police officer on patrol, however, does not have the luxury of consulting a lawyer before acting. He does not initiate. He reacts. Fluid, swiftly developing situations on the street call for quick judgments. In making these judgments, the police officer on the beat follows intuitions refined by thousands of interactions on the street. These intuitions, while not infallible, are remarkably good. The officer may not be able to articulate his reasoning with the precision demanded by the 4th Amendment. How, for example, does someone articulate the concept of a person who acts "dirty," "fish-eye," or gives you the "fish-eye look"? But he is still able to predict with a high degree of accuracy whether someone has drugs or a gun.

For example, I recently was involved in handling a murder case where a drug dealer was gunned down on a street corner. Minutes after the shooting, an unmarked patrol car saw the defendant walking down the street a few blocks away from the murder scene. By reputation, the defendant was known to the officers as a contract-assassin for a drug organization. He was walking quickly and looking around nervously. Both hands were planted firmly in the pockets of a long leather coat. For two blocks, the hands never moved. The police officers thought he looked "dirty." They turned on their detachable dome light and drove toward him. He started running. The police gave chase and eventually caught him. They recovered an automatic pistol in the defendant's pocket whose ballistics matched spent shells found at the crime scene. Other than this evidence, nothing else links him to the murder.

By the canons of the street, I believe the police officers' reasoning was impeccable. Still, the fruits of this search will be suppressed. Under New York law, the defendant's behavior would be considered wholly innocent and I have little doubt that he will get away with yet another murder — number eight that we know about.

No amount of exclusion is going to stop a police officer from relying on his view of what constitutes "probable cause." The average police officer is not the faddistic creature Alan Gordon believes him to be — violating people's rights with brazen indifference. He just reasons differently from lawyers and has a different sense of priorities. When faced with a choice between the dictates of the 4th Amendment and his personal safety, he is not too surprisingly prefers the latter. When faced with someone who looks and acts "dirty," he will search first and leave it to the prosecutor to sort out the constitutional niceties later. Exclusionary rules will never deter police officers on the street from resolving borderline probable cause judgments in favor of a search. It is not as if waiting or gathering more information will reduce the uncertainty or afford you an opportunity to act when you are more sure of your conclusions. Act now or the suspect will vanish into the street swarm. Act now or the suspect may decide to shoot you.

Do police officers lie? Of course they do. Do they lie with the numbing frequency Mr. Gordon thinks they do? I doubt it. I decline to prosecute quite a few arrests every year because of bad searches. If the police were lying to me systematically, most of these cases would wind up in court. If the police lied as frequently as Mr. Gordon thinks they do, he would not be winning as many hearings as he does based on "purely legal grounds." An officer would simply fabricate facts giving him probable cause or bringing him within one of the well-known exceptions to the warrant requirement.

Nor can I accept Mr. Gordon's premise that police officers decide to make a bad search and then lie to make it seem like a good one because they know a judge will automatically believe them. I suspect they lie to protect themselves from the perceived consequences (such as civilian complaints and civil suits) or bad search decisions made in good faith in trying situations. I do not believe that they have yet had Mr. Gordon's brilliant insight into the essential corruption of the criminal justice system. Most of them suffer not from an excess of cunning but an excess of caution. They will go out of their way to avoid arresting people even when the opportunity clearly presents itself except when they need to earn overtime to pay for Christmas gifts or an overdue addition to the house. They prefer steady midnight tours to testifying in the courtroom. The important thing is to retire after twenty years with half your salary, not to perjure yourself under oath and get indicted.
Do prosecutors who believe that a police officer is lying prosecute those cases anyway? I should hope not. I know any number of my colleagues who have declined to prosecute because of severe doubts about police officers’ credibility. Indeed, if prosecutors have such a lust for victory, how could they rationally conclude that putting obvious perjurers on the stand is the key to fattening their win-loss records? Perhaps this would be so if the judges were as credulous as Mr. Gordon thinks they are. In point of fact, most of the judges in the New York City system are ex-legal aid lawyers and prosecutors. While they may not have experience on the street, they have extensive experience either preparing police officers to testify or cross-examining them. They can tell when a story hangs together and when it doesn’t. And when it doesn’t, they suppress.

Mr. Gordon may well have a basis for thinking that police officers have good reason to deceive a survey taker and exaggerate their compliance with the Fourth Amendment. What is disconcerting is his willing suspension of disbelief when it comes to his own clients. Once he enters the holding pens, his skepticism seems to vanish completely and he becomes perfectly willing to credit his client’s complaints about Fourth Amendment violations. Does Mr. Gordon really believe that his clients are more deserving of belief than the police officers whose credibility he finds so suspect? I don’t know what is more troubling: Mr. Gordon’s belief that the police systematically lie or his faith in his clients’ self-serving reports of the events that led up to their own arrests.

In a sense, Mr. Gordon and I agree. The Fourth Amendment does not deter unconstitutional searches on the street. We just disagree over the reasons for those searches. He sees a cabal in the criminal justice system that reinforces and rewards police misconduct. I see police officers who will simply not be deterred from relying on their sixth sense of when something is awry and will always prefer their own safety to the dictates of the Fourth Amendment.

Sincerely,

Zachary Weiss ’81

[Editor’s note: Thank you to all who showed an interest in Myron Orfield’s article. Correspondence in the Law School Record on this article is now closed.]
AALS

Graduates and friends of the Law School in teaching joined Dean Geoffrey R. Stone ’71 and members of the faculty attending the Association of American Law Schools Meeting at an evening reception on Saturday, January 6, 1990. Professors Mary Becker ’80, Walter Blum ’41, Mark Heyrman ’77, Randall Schmidt ’79, Daniel Shaviro, Alan Sykes, and Associate Dean Diane Wood were present from the Law School, as well as Assistant Deans Dennis Barden, Holly Davis ’76 and Roberta Evans ’61. Thomas Morgan ’65, the President of the AALS, and Judge Mary Schroeder ’65, a panelist at the meetings, also attended.

Brussels

Graduates of the Law School living in Europe celebrated their biennial reunion in Brussels, Belgium, on September 1–2, 1989. The festivities were organized by Alphons H. Puelinckx MCL ’65 and his wife Maria Coene MCL ’65. Graduates were guests of the mayor of Brussels for a champagne reception and tour of the historic Gothic City Hall on Friday evening, followed by dinner. On Saturday morning, alumni attended a reception hosted by the Commission of the European Communities. Mr. Karel Van Miert, a director of the Commission, welcomed the group and answered questions about the Communities. After lunch, alumni took part in a panel discussion on “1992: The Legal Aspects of a Single Market.” Mr. Puelinckx moderated the panel and the speakers were John K. Temple Lang (Bigelow Fellow 1961–62) and Hans Clausius Taschner (Fellow 1967–68), both directors of the European Communities, George J. Phocas ’53, and Zacharias Sundstrom MCL ’63. Forty-seven alumni, with spouses and friends, attended dinner at the De Warande Club and heard Dean Stone speak on “What the Class of ’92 Will Find on the Midway.” Roberta Evans ’61, Assistant Dean and Director of Graduate Student Affairs, also attended from the Law School.

Chicago

Reunion Breakfast for Double U of C Graduates

Last summer, Dean Stone invited graduates of the Law School who were attending their College reunion at the University to join him for breakfast at the Law School on Saturday, June 3. Twenty-two Law School graduates and their spouses attended, enjoying the opportunity of an informal Law School reunion. Assistant Deans Dennis Barden and Holly Davis ’76 attended the breakfast, as did Professor Emeritus Walter Blum ’41, who was celebrating his College reunion. The alumni office plans to repeat the event during this year’s University reunion weekend, June 1–2. If you are celebrating a reunion from the College or another graduate school at the University of Chicago, and do not receive an invitation to the Law School breakfast, call Holly Davis at 312/702-9628.

Loop Luncheons

The format of an informal box lunch followed by a talk on a topic of current interest continues to prove irresistible to alumni and the Fall series of Loop Luncheons was a sellout.

The ever-popular Dr. Mortimer Adler, Director of the Institute of Philosophical Research and former Professor of Philosophy of Law at the Law School, spoke to graduates on October 13 on “Capitalism, Communism, and their Future.”

Dean Geoffrey R. Stone, Harry Kalven Jr. Professor of Law, spoke on “Flag Burning and the Constitution” at the October 25 luncheon.

James R. Reilly ’72, Chief Executive Officer of Metropolitan Pier and Exposition Authority and former Deputy Governor of Illinois, closed the series on November 29 with a talk entitled “Super Loop: McCormick Place and Navy Pier.” Mr. Reilly’s enthusiasm for his new job was clear to all as he explained the immediate plans and long-term proposals for the area under his jurisdiction.

Loop Luncheons are held monthly in the University of Chicago Board of Trustees Room at One First National Plaza. Alan R. Orschel ’64, chair of the organizing committee, invites you to attend future series. New graduates of the Law School are invited to attend their first Loop Luncheon as guests of the Alumni Association. If you would like to volunteer your services for the committee or require more information about the luncheon series, please call Assistant Dean Holly Davis ’76 (312/702-9628).

California Alumni Dinners

California now has the second largest number of graduates in the country, behind Illinois. The alumni office decided to celebrate this event with reunion dinners organized in San Francisco and Los Angeles in January. Modeled on the Annual Dinner in Chicago each May, the evenings began with a cocktail hour, at which graduates had an opportunity to renew old acquaintanceships.

In San Francisco, the newly appointed president of the local chap-

Mrs. Nancy Stone talks to Maria Coene MCL ’65 at the Brussels reunion. Dean Stone is in the background.
ter, Lock Holmes '73, presided over the dinner, standing in for Roland Brandel '66, the longtime chapter president, who was unable to attend. Lock Holmes introduced Dean Geoffrey R. Stone '71, who spoke briefly about the Law School before introducing Professor Emeritus Walter J. Blum '41, who made brief remarks. The dinner, held at the City Club of San Francisco on January 4, was attended by sixty alumni and their guests as well as Associate Dean Diane Wood, Professors Mary Becker '80 and Michael McConnell '79, Senior Clinical Lecturers Mark Heyrman '77 and Randall Schmidt '79, and Assistant Deans Dennis Barden, Holly Davis '76, and Roberta Evans '61 from the Law School. Lock rounded off the ceremonies by declaring that this dinner establishes a new tradition of West Coast reunions.

The Beverly Hills Country Club was the venue for the inaugural Los Angeles reunion dinner, held on January 8. Over 60 graduates and their guests attended. Joel Bernstein '69, president of the Los Angeles Chapter, introduced Dean Geoffrey Stone, who talked about the Law School. Professor Walter J. Blum was again the featured speaker of the evening. Concluding the ceremonies, Joel echoed the hopes of his San Francisco counterpart, Lock Holmes, that this dinner would become the first in a series of annual dinners on the West Coast.

Miami
The Miami chapter sponsored a luncheon for alumni at the offices of Stearns, Weaver, Miller, Weissler, Alhadeff and Siherson on January 23. Emeritus Professor Walter J. Blum gave a short talk intriguingly entitled “Some Questions and Perhaps Some Answers.” Alison Miller '76, the new president of the Miami chapter, presided over the luncheon.

New York
Through the sponsorship of Laura Hoguet '67, the firm of White & Case was the setting for a luncheon on December 7. Bob Lucic '89 acted as host and introduced the speaker, Douglas G. Baird, Harry A. Bigelow Professor of Law. Professor Baird spoke on “Leveraged Buyouts and Fraudulent Conveyances.” This hot topic attracted a capacity crowd and generated a lively dialogue between the speaker and the audience.

Oakland
West Coast graduates from the Class of 1970 decided they could not wait until May for a 20th Reunion celebration. Shelley McEwan, Marjorie Gelb, Bernie Zimmerman, Mark Simons, Ruth Friedman, and Ralph Faust arranged a party “to celebrate the onset of the third decade of practice” at Ralph Faust’s home in Oakland on January 6. It looks as if the Class of 1970 intends to party all year. The Law School hopes to see the January crowd and everyone else in the class at the “official” reunion on May 10–13 in Chicago.

Washington, D.C.
Peter B. Work '64, a partner at Crowell & Moring, provided the conference room at his firm for a luncheon on November 6 at which graduates heard Diane P. Wood, Professor of Law and Associate Dean, speak about “International Competition in the 1990s.” The Alumni Office intends to hold its luncheon meeting in Washington on or around Election Day each year, and again in May at the time of the ALI meetings. If you wish to attend these events but do not receive an invitation, contact Assistant Dean Holly Davis at 312/702-9628.

Chapters Change Chiefs
Three chapters of the University of Chicago Law School Alumni Association have new presidents. In San Francisco, Oliver Lockhart (Lock) Holmes '73 has assumed the responsibilities of chapter president. Lock is a partner with the firm of Pettit & Martin. Alison W. Miller '76 has been appointed the Miami chapter president. She is a partner with the firm of Stearns, Weaver, Miller, Weissler, Alhadeff and Siherson. Richard N. Ogle '61, a partner with Calfee, Halter & Griswold, is the new president of the Cleveland chapter.
'28 Henry Weikofen was presented with the Distinguished Service-Lawyer Award by the State Bar of New Mexico at the 103rd Annual Convention held in September, 1989.

'30 At the age of eighty-five, LeRoy Dahlberg has retired from the practice of law. For most of his career, he was a partner in the law firm of Dahlberg, Simon, Jayne, Woolfenden & Gawne in Detroit and Birmingham, Michigan. He lives with his wife in Birmingham.

Joseph Swidler of the Washington, D.C., firm of Swidler & Berlin, still goes to the office most days, "But I do no heavy lifting," he says. Combining a career of government service with private practice, he has worked as General Counsel of the Tennessee Valley Authority, Chair of the Federal Power Commission, and Chair of the New York State Public Service Commission.

CLASS OF 1940
Fiftieth Reunion

'40 More than half the class of 1940 are looking forward to attending the 50th Reunion. The highlight of the weekend will be the class dinner, on Saturday, May 12, at the Drake Hotel with its wonderful view over the lake. If you haven't yet made up your mind to come, there is still time to register for the weekend. Call Assistant Dean Holly Davis at 312/702-9628.

CLASS OF 1950
Fortieth Reunion


A Century of Wisdom

Judge Samuel B. Epstein '51, the Law School's oldest graduate, was 100 years old on November 15, 1989. Judge Epstein celebrated the event with a party at the Standard Club of Chicago. Thirty members of his family attended, including his son, Elliott S. Epstein '51, his daughter, Ruth Goldsmith, all his grandchildren, and two great-grandchildren. A tongue-in-cheek toast to Judge Epstein attributed his long life to "all the wrong foods, a sedentary life and a pessimistic outlook." Ruth Goldsmith said that the family is very proud of the judge's accomplishments. "All his life he has been a liberal who did not grow more conservative with age," she said.

Judge Epstein is best known ("infamous," as he terms it) for one case, the Tropic of Cancer case, actually Haiman v. Morris. In 1962, police in Chicago and several suburbs took it upon themselves to seize copies of Henry Miller's book from stores and arrest the merchants. Epstein issued an injunction against the police. Mayor Richard M. Daley appealed the decision to the Illinois Supreme Court, which overturned the decision. One week later, the United States Supreme Court upheld Judge Epstein's decision. In his ruling, Judge Epstein wrote, "Let the parents control the reading matter of their children. Let each reader be his own censor. But let not the government or our courts dictate the reading matter of a free people.)"
Stephen Speicher Heads Blind Lawyers Association

Blind lawyers can have a hard time competing on equal terms with their sighted colleagues, but **Stephen Speicher** and the American Blind Lawyers Association are trying to even up the odds. Speicher, a 1974 graduate of the Law School who has been totally blind since the age of two, has been President of the Association since July 1988. Through mailings to law schools, state bar associations, and judges, he is trying to bring the ABLA, which currently has about two hundred members around the country, to the attention of both visually impaired lawyers and those with normal sight. "Blind" is something of a misnomer, he states. "It encompasses the whole range of those whose vision is impaired, from those with no sight to those who can read a computer screen and people who can almost drive."

Speicher is hoping to reach more blind students and also practicing lawyers who do not even think of themselves as blind, such as those with vision impaired through glaucoma, diabetes, or age. The Association puts visually impaired lawyers in touch with each other to share experiences and offer mutual help. The Association's annual convention will be held in Denver at the end of June, and Speicher is contacting visually impaired judges to encourage them to attend. The ABLA also aims to educate the sighted world not to dismiss blind job applicants through fear of overwhelming difficulties. The Association is contacting larger law firms and bar associations to find out their needs and then pass on to students tips and skills to increase their ability to compete for jobs on an equal basis. "We want to bring blind people into the mainstream," Speicher says.

The American Blind Lawyers Association was incorporated in 1971 and Speicher has been associated with it since 1979. He sees his Presidency as an opportunity to make the organization more active. "We are also trying to get together with other organizations for the blind, such as the National Federation, to work for our common aims rather than competing, as has happened in the past."

Stephen Speicher is a solo practitioner in Lincoln, Nebraska, with a general practice that emphasizes disability and consumer credit cases. He worked for Legal Services and the Consumer Law Center after graduating from the Law School until setting up his own practice in 1981.

announces that effective January 8, 1990, he became a Senior Consultant at Hay Management Consultants, where he is establishing a division specializing in collective bargaining and human resources in the public sector. Prior to that, Bob had been Director of New York City's Office of Municipal Labor Relations and Chief Labor Negotiator since 1983, and since April of 1989 he had been both Director of Personnel and Director of Municipal Labor Relations. **Lee Martin** writes from Birmingham, Alabama, that he recently changed firms and is now a partner with Dominick Fletcher & Yelkling in Birmingham, where he represents public hospitals and tax-exempt organizations. He has two daughters, ages nine and thirteen, has been campaign manager and adviser to several Democratic candidates in Alabama, and was recently elected chief legal officer for Civitan International.

**Preston Moore** reports that he has relocated to Morrison & Foerster's Tokyo office. **Bill Pentelosvitch**, Minneapolis, represented Planned Parenthood of Minnesota in a case argued before the U.S. Supreme Court in November of 1989, in which Planned Parenthood was challenging a state statute requiring notice to parents of minors prior to abortions. A decision is expected this spring. Bill is one of three managing partners of Maslon Edelman Borman & Brand in Minneapolis, where he and his wife, Barbara, live with their three children.

**Dick Roddevig** is practicing law, principally land use and zoning, and is also president of Clarion Associates, a real estate consulting and appraisal firm. He frequently testifies in administrative hearings and trials involving real estate valuation issues. He is currently chairman of the ABA's Land Use, Planning and Zoning Committee of the Urban, State and Local Government Law Section. Dick, his wife Noreen, and their three children reside in Riverside, Illinois.

**Laurence Rosen**'s latest book, *The Anthropology of Justice: Law as Culture in Islamic Society*, was recently published by Cambridge University Press. He is Chairman of the Anthropology Department at Princeton University and Adjunct Professor of Law at Columbia Law School. **Mike Rosenhouse**, Rochester, New York, reports that he has recently published two articles, "One Bill, One Subject," in the October 17, 1988, issue of the *National Law Journal* and "Tort Liability: What Kind of Crisis?" — a book review in *Judicature* 56 (June–July 1989). **Donald Shapiro** heads the firm of Donald A. Shapiro, Ltd., in Chicago. The firm specializes in medical malpractice and product liability litigation for plaintiffs. He recently won a $1,500,000 verdict against Cook County Hospital on behalf of the estate of a woman who committed suicide while a patient there. **Barry Sullivan** writes that for the last two years he has served as the Chair of the ABA's Coordinating Committee on AIDS. Barry is a partner at Jenner & Block in Chicago, where he heads up their Appellate Practice Group.

**Nancy Schaefer** opened a new firm in mid-1988, Schaefer & Rosenwein, with two lawyers. They are now up to seven lawyers, and as Nancy writes, "Two of our goals were to have more fun and find a more balanced lifestyle—we've been having a lot of fun, and we're still working on the balance." Also announcing the opening of a new office is **John Strain**, who has opened an office in Long Beach, California, with a practice specializing in a broad range of tax matters, including international tax and employee benefits. **Carl Struby** is a partner with Gage & Tucker, Kansas City, Missouri, where he enjoys a
The Law School Record notes with sorrow the deaths of:

**Thomas R. Mulroy** '28, senior counsel and former partner in the law firm of Hopkins & Sutter, died September 25, 1989. Mr. Mulroy specialized in labor and corporate law and was a member of the American College of Trial Lawyers. In 1987, Mr. Mulroy established the Thomas R. Mulroy Endowment for Excellence in Appellate Advocacy. The endowment funds prizes awarded to the winners (first and second place) and semi-finalists in the annual Hinton Moot Court Competition at the Law School. Mr. Mulroy was a graduate of the College of the University, receiving the Bachelor of Philosophy degree in 1926.

**Robert B. Roesing** '36, of the International Investment Company, Miami, Florida, died on January 30, 1990. In the early 1970s, Mr. Roesing made a gift to the Law School to provide annual scholarship support for a graduate student. In 1977, he established the Robert B. Roesing Faculty Fund to support faculty research. Mr. Roesing graduated from the College of the University in 1935.

1920
George H. McDonald
June, 1989

Alfred M. Miller
May, 1987

1921
Simon H. Alster

1922
Donald R. Bear

1925
Hugh J. Dobbs
November 4, 1989

1926
Ralph F. Mohrdieck

1928
Peter Benda, Jr.
June 20, 1989

Constance Black
December 1, 1989

Herbert C. De Young
December 6, 1989

Melvin H. Spector
December, 1989

Benjamin L. Sacks
November 26, 1989

LeRoy H. Schurmeier
November 9, 1989

Henry J. Tepaske
March 23, 1984

Robert H. Waterford
December 25, 1986

1931
Morton J. Getzov
1989

Milton A. Gordon
January 29, 1990

1933
Theodore Tieken
December 24, 1989

1934
Geraldine H. Montgomery
November 1, 1989

1937
Harry Adelman

1942
Mozart G. Ratner
June 20, 1989

1944
Blakely M. Murphy
October 26, 1987

1955
James R. Allison
September 11, 1989

1970
Mary H. Mautner
August 24, 1989

1971
Stephen K. Kent
July 25, 1989

1974
June Marie Morgan
November 2, 1989

1975
Richard L. Conner
December 19, 1989

1986
Alan Arthur John
1989
DEATHS

Thomas M. Miller, Jr., in 2006, a noted attorney and former partner in the law firm of Thompson Hine, died December 15.

Robert M. Armacost, a stylist and interior designer, died January 9.

Billie E. Daugherty, a noted artist and writer, died January 10.

Henry A. Martin, a noted historian and author, died January 7.

Robert R. Bayley, D.D.S., of the University of Maryland, died January 10.

George H. Hedges, Jr., in 2006, a noted lawyer and author, died January 6.

Robert A. McMillin, in 2006, a noted lawyer and author, died January 8.

Richard J. Rounds, in 2006, a noted lawyer and author, died January 9.

Lawrence J. Teppek, in 2006, a noted lawyer and author, died January 4.

Millard M. Mitchell, in 2006, a noted lawyer and author, died January 7.

Thomas E. Scott, in 2006, a noted lawyer and author, died January 6.

Donald E. Tate, in 2006, a noted lawyer and author, died January 1.

Mary F. Fuchs, in 2006, a noted lawyer and author, died January 1.

Mary E. Stock, in 2006, a noted lawyer and author, died January 1.

Walter H. Hedges, in 2006, a noted lawyer and author, died January 1.

James McMillen, in 2006, a noted lawyer and author, died January 1.


Donald C. Moore, in 2006, a noted lawyer and author, died January 1.

Richard M. Rouse, in 2006, a noted lawyer and author, died January 1.

Lawrence J. Teppek, in 2006, a noted lawyer and author, died January 4.

Millard M. Mitchell, in 2006, a noted lawyer and author, died January 7.

Thomas E. Scott, in 2006, a noted lawyer and author, died January 6.