Ronald Coase, Clifton R. Musser Professor Emeritus of Economics at the Law School, receives the 1991 Alfred Nobel Memorial Prize in Economics from King Carl XVI Gustaf of Sweden.
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Ronald Coase is, quite simply, the most important figure in the field of law and economics—ever.

Ronald Coase's receipt of the 1991 Nobel Memorial Prize in Economics is a great event in the history of the University of Chicago Law School, for Ronald is the very first member of a law school faculty ever to win this award. As a dean, I would like to think, that institutions, and even deans, deserve some credit for the achievements of their faculty. In this instance, a succession of deans have played an important role in building a tradition at our Law School within which Ronald has played so central a role.

Sixty years ago, Dean Harry Bigelow had the foresight to invite Professor Henry Simons of the Department of Economics to offer an informal seminar in economic theory to the members of the law faculty, thus initiating a movement that eventually would trigger reconsideration of entire fields of the law. Dean Wilber Katz went even further than Bigelow and appointed Henry Simons to the faculty of the Law School, making him the first non-lawyer economist ever to join a law faculty. Gathering momentum, Dean Katz thereafter established the Law School's Program in Law and Economics, the first program of its kind, and later appointed economist Aaron Director Professor of Economics in the Law School.

Building upon Bigelow's and Katz's legacy, Dean Edward Levi established the Henry Simons Lectureship in Law and Economics, created the Journal of Law and Economics, and, on the enthusiastic recommendations of Nobel Laureates Milton Friedman and Ted Schultz, initiated the process of recruiting Ronald Coase to join the faculty of the Law School. Dean Phil Neal successfully completed that process and appointed Ronald Coase to the law faculty, as well as Richard Posner, Richard Epstein, and William Landes. He also established the Journal of Legal Studies, the Law School's Clifton R. Musser Professorship in Economics, and established the Sarah Scaife Foundation Fund for the Study of Law and Economics.

Not to be outdone, Phil Neal's successor, Dean Norval Morris, appointed Frank Easterbrook to the faculty, established a joint degree program between the Law School and the Department of Economics, created the Lee and Brena Freeman Professorship, which has since been held by Richard Posner, Frank Easterbrook, and Daniel Fischel, and established the John M. Olin Fellowships in Law and Economics. Finally, Dean Gerhard Casper strengthened the Law School and its Program in Law and Economics still further by appointing Professors
Ronald H. Coase
Clifton R. Musser Professor Emeritus of Economics

Born: 1910
Education: B. Com., 1932, D.Sc. (Econ.), 1951, London School of Economics.
Honorary Degrees: Dr. Rer. Pol. h.c., 1988, University of Cologne; D. So. Sc., 1989, Yale University.

After holding positions at the Dun­
dee School of Economics and the University of Liverpool, Ronald H. Coase joined the faculty of the London School of Economics in 1935. In 1947, he was appointed Reader in Economics with special reference to Public Utilities. Mr. Coase has held both a Sir Ernest Cassell Travelling Scholarship and a Rockefeller Fellowship. He has also been a Fellow at the Center for Advanced Study in the Behavioral Sciences and a Senior Research Fellow at the Hoover Institution.

During World War II, he served as a statistician with the Central Statistical Office of the Offices of the British War Cabinet.


Douglas Baird, Dennis Carlton, Daniel Fischel, Geoffrey Miller, and Alan Sykes and by establishing the Aaron Director Fund to support research in Law and Economics, the Ronald Coase Prize in Law and Economics, and the Lynde & Harry Bradley Law and Economics Fund.

It is a long and unbroken commit­
ment to the integration of economics and law, and each of my predecessors has reason to bask in the eminence of our Law School's unparalleled achievements in this field. No dean, however, can take credit for what Ronald Coase has achieved. His work is fundamentally the product of his own extraordinary insight, imagination and brilliance. He is, quite simply, the most important figure in the field of law and economics—ever. Virtually all work in the past quarter century in this field builds upon and, indeed, must build upon, Ronald’s contributions.

This is not to say, however, that institutions do not make a difference. I would like to think that the University of Chicago Law School, as an institution, has made a difference in this regard in at least four ways. First, throughout the history of law and economics and, I dare say, throughout the history of the Law School, we have been very good at identifying excellence at an early stage. We’ve been good at identifying the excellence of ideas before others have taken note of them, and we’ve been good at identifying excellence of mind, as well.

Second, we’ve created and nurtured an environment in which scholars can pursue their work in an atmosphere of collegiality and challenge. Ideas are to be discussed, questioned, probed, tested, and then, having withstood such searching examination, shared with the world at large. The Law School’s infamous Workshop in Law & Economics, which meets a dozen times each academic year, is the most demanding and most daunting academic workshop anywhere in legal education and perfectly exemplifies the rigors of this process.

Third, in the best spirit of the Uni­
versity of Chicago, we have drawn heavily on resources from the whole University in our quest for understand­
ing, and our Program in Law and Economics has benefitted enormously over the years from the input of such colleagues as Milton Friedman, Ted Schultz, George Stigler, Gary Becker, Sam Peltzman, Harold Demsetz, Sherwin Rosen, Merton Miller, Peter Pashigian and other members of the faculties of the Department of Eco­

nomic and the Graduate School of Business.

Fourth, we are not afraid of new ideas, however provocative or contro­
versial. Law and economics has been attacked on every side since its inception but, over the years, it has won the field. This is due, more than to anything else, to the persistence, the confidence, the perseverance and the sheer intellectual power of Ronald Coase and his colleagues at the University of Chicago Law School.

For three decades, Ronald Coase, as a member of our Law School family, has played a central role in main­
ing and preserving these values and in helping us to keep faith with our highest ideals. Although we can claim no credit for Ronald’s achievements, we can, quite justly, take great pride in all that he has done. I would like to take this opportunity to thank Ronald, on behalf of all his students and colleagues at the University of Chicago and its Law School—past, present and future—for sharing with us his energy, creativity, enthusiasm and friendship. He is, truly, an inspiration.

Geoffrey R. Stone ’71
Harry Kalven Jr. Professor of Law
Dean of the Law School
The World According to Coase

David D. Friedman

When the Swedish Academy awarded the Alfred Nobel Memorial Prize in Economics to Ronald Coase in 1991, it was a surprise for two different groups of people. The larger group consisted of people who had either never heard of Coase, or heard of him only as the author of something called the "Coase Theorem," generally presented as a theoretical curiosity of no practical importance. The second and much smaller group consisted of people who were familiar with the importance of Coase's work—and assumed that the Swedish Academy was not.

Some people get the Nobel prize for complicated and technical work that is difficult for an outsider to understand. Coase is at the other extreme. His contribution to economics has largely consisted of thinking through certain questions more carefully and correctly than anyone else, and in the process demonstrating that answers accepted by virtually the entire profession were false. One side effect of his work was a new field of economics: economic analysis of law, the attempt to use economic theory to understand legal systems.

While there would probably be something called economic analysis of law if Coase had not existed, it would be a very different field.

One of Coase's important contributions to economics was to rewrite the theory of externalities—the analysis of situations, such as pollution, where one person's actions impose costs (or benefits) on another. His ideas are sufficiently simple to be understood by a layman, as I will try to demonstrate in the next few pages, and sufficiently deep so that they have not yet been entirely absorbed by the profession; to a considerable extent what is still taught in the textbooks is the theory as it existed before Coase.

To understand the significance of Coase's contribution to the theory of externalities, it is useful to start with the theory as it existed before Coase published "The Problem of Social Cost," the essay that first introduced the Coase Theorem to economics. The basic argument went as follows:

In an ideal economic system, goods worth more than they cost to produce get produced, goods worth less than they cost to produce do not; this is part of what economists mean by economic efficiency. In a perfectly competitive private property system, producers pay the value of the inputs they use when they buy them from their owners (wages to workers in exchange for their labor, rent to land owners for the use of their land, etc.) and receive the value of what they produce when they sell it. If a good is worth more than its cost to produce, the
One is direct regulation—the government tells the steel company how much it is allowed to pollute. The other is emission fees—referred to by economists as Pigouvian taxes (named after A. C. Pigou, the economist whose ideas I am describing).

Under a system of Pigouvian taxes, the government charges the steel company for the damage done by its pollution—$10 per pound in this example. By doing so it converts the external cost into an internal cost—internalizes the externality. In deciding how much steel to produce and what price to sell it at, the company will now include the cost of its pollution—paid as an emission fee—along with other costs. In deciding how much pollution control equipment to buy, the company balances the cost of control against its benefits, and buys the optimal amount. So a system of emission fees can produce both an efficient amount of steel and an efficient amount of pollution control.

In order to achieve that result, the government imposing the fees must be able to measure the cost imposed by pollution. But, unlike direct regulation, the use of emission fees does not require the government to measure the cost of preventing pollution—whether by installing air filters or by producing less steel. That will be done by the steel company, acting in its own interest.

I have just described the theory of externalities as it existed before Coase. Its conclusion is that, as long as externalities exist and are not internalized via Pigouvian taxes, the result is inefficient. The inefficiency is eliminated by charging the polluter an emission fee equal to the damage done by his pollution. In some real world cases it may be difficult to measure the amount of the damage, but, provided that that problem can be solved, using Pigouvian taxes to internalize externalities produces the efficient outcome.

That analysis was accepted by virtually the entire economics profession prior to Coase’s work in the field. It is wrong—not in one way but
in three. The existence of externalities does not necessarily lead to an inefficient result. Pigouvian taxes, even if they can be correctly calculated, do not in general lead to the efficient result. Third, and most important, the problem is not really externalities at all—it is transaction costs.

I like to present Coase’s argument in three steps: Nothing works, Everything works, It all depends.

Nothing Works

The first step is to realize that an external cost is not simply a cost produced by the polluter and borne by the victim. In almost all cases, the cost is a result of decisions by both parties. I would not be coughing if your steel mill were not pouring out sulfur dioxide. But your steel mill would do no damage to me if I did not happen to live downwind from it. It is the joint decision—yours to pollute and mine to live where you are polluting—that produces the cost.

Suppose that, in a particular case, the pollution does $100,000 a year worth of damage and can be eliminated at a cost of only $80,000 a year (from here on, all costs are per year). Further assume that the cost of shifting all of the land down wind to a new use unaffected by the pollution—growing timber instead of renting out summer resorts, say—is only $50,000. If we impose an emission fee of a hundred thousand dollars a year, the steel mill stops polluting and the damage is eliminated—at a cost of $80,000. If we impose no emission fee, the mill keeps polluting, the owners of the land stop advertising for tenants and plant trees instead, and the problem is again solved—at a cost of $50,000. In this case the result without Pigouvian taxes is efficient—the problem is eliminated at the lowest possible cost—and the result with Pigouvian taxes is inefficient.

Moving the victims may not be a very plausible solution in the case of air pollution; it seems fairly certain that even the most draconian limitations on emissions in southern California would be less expensive than evacuating that end of the state. But the problem of externalities applies to a wide range of different situations, in many of which it is far from obvious which party can avoid the problem at lower cost, and in some of which it is not even obvious which one we should call the victim.

Consider the question of airport noise. One solution is to reduce the noise. Another is to soundproof the houses. A third is to use the land near airports for noisy factories instead of housing. There is no particular reason to think that one of those solutions is always best. Nor is it entirely clear whether the “victim” is the landowner who finds it difficult to sleep in his new house with jets going by overhead or the airline forced by a court or a regulatory agency to adopt expensive sound control measures in order to protect the sleep of people who chose to build their new houses in what used to be wheat fields—directly under the airport’s flight path.

Consider a simpler case, where the nominal offender is clearly not the lowest cost avoider. The owner of one of the adjoining tracts of land has a factory, which he has been running for twenty years with no complaints from his neighbors. The purchaser of the other tract builds a recording studio on the side of his property immediately adjacent to the factory. The factory, while not especially noisy, is too noisy for something located two feet from the wall of a recording studio. So the owner of the studio demands that the factory shut down, or else pay damages equal to the full value of the studio. There are indeed “external costs” associated with operating a factory next to a recording studio—but the efficient solution is building the studio at the other end of the lot, not building the studio next to the factory and then closing down the factory.

So Coase’s first point is that externalities are a joint product of “polluter” and “victim,” and that a legal rule that arbitrarily assigns blame to one of the parties only gives the right result if that party happens to be the one who can avoid the problem at the lower cost. Pigou’s solution is correct only if the agency making the rules already knows which party is the lower cost avoider. In the more general case, nothing works—whichever party the blame is assigned to, by government regulators or by the courts, the result may be inefficient if the other party could prevent the problem at a lower cost.

One of the arguments commonly offered in favor of using Pigouvian taxes instead of direct regulation is that the regulator does not have to know the cost of pollution control in order to produce the efficient outcome—he just sets the tax equal to damage done, and lets the polluter decide how much pollution to buy at that price. But one of the implications of Coase’s argument is that the regulator can only guarantee the efficient outcome if he knows enough about the cost of control to decide which party should be considered the polluter (and be taxed) and which should be considered the victim.

Everything Works

The second step in Coase’s argument is to observe that, as long as the parties involved can readily make and enforce contracts in their mutual interest, neither direct regulation nor Pigouvian taxes are necessary in order to get the efficient outcome. All you need is a clear definition of who has a right to do what and the market will take care of the problem.

To see how that works, let us go back to the case of the steel mill and the resorts. Suppose first that the mill has a legal right to pollute. In that case, as I originally set up the problem, the efficient result occurs immediately. The lowest cost avoiders are the owners of the land downwind; they shift from operating resorts to growing timber.

What if, instead, the legal rule is that the people downwind have a right not to have their air polluted? The result will be exactly the same. The mill could eliminate the pollution at a cost of $80,000 a year. But it is cheaper to pay the landowners some amount, say $60,000 a year, for permission to pollute. The landowners will be better off, since that is more than the cost to them of changing the use of the land, and the steel mill will be better off, since it is less than the cost of eliminating the pollution. So it will pay both parties to make some such agreement.

Now suppose we change the numbers in the example, to make pollution control the more efficient
option—say lower its cost to $20,000. In that case, whether or not the mill has the right to pollute, it will find that it is better off not polluting. If it has the right to pollute, the landowners will pay more than the $20,000 cost of pollution control in exchange for a guarantee that it will not exercise its right. If it does not have the right to pollute, the most the steel mill will be willing to offer the landowners for permission to pollute is $20,000, and the landowners will turn down that offer.

The generalization of this example is straightforward.

If transaction costs are zero—if, in other words, any agreement that is in the mutual benefit of the parties concerned gets made—then any initial definition of property rights leads to an efficient outcome.

It is this result that is sometimes referred to as the “Coase Theorem.” It leads immediately to the final stage of the argument.

It All Depends (On Transaction Costs)

Why is it, if Coase is correct, that we still have pollution in Los Angeles? One possible answer is that the pollution is efficient—that the damage it does is less than the cost of preventing it. A more plausible answer is that much of the pollution is inefficient, but that the transactions necessary to eliminate it are prevented by prohibitively high transaction costs.

Let us return to the steel mill. Suppose the mill has the right to pollute, but that doing so is inefficient—pollution control is cheaper than either putting up with the pollution or changing the use of the land downwind. Further suppose that there are a hundred landowners downwind.

With only one landowner, there would be no problem—he would offer to pay the mill the cost of the pollution control equipment, plus a little extra to sweeten the deal. But a hundred landowners face what economists call a public good problem. If ninety of them put up the money and ten do not, the ten get a free ride—no pollution and no cost for pollution control. Each landowner has an incentive to refuse to pay, figuring that his payment is unlikely to make the difference between success and failure in the attempt to bribe the steel mill to eliminate its pollution. If the attempt is going to fail even with him, then it makes no difference whether or not he contributes. If it is going to succeed even without him, then refusing to contribute gives him a free ride. Only if his contribution makes the difference does he gain by agreeing to contribute.

There are a variety of ways in which such problems may sometimes be solved, but none that can always be expected to work. The problem becomes harder the larger the number of people involved. With many millions of people living in southern California, it is hard to imagine any plausible way in which they could voluntarily raise the money to pay all polluters to reduce their pollution.

This is one example of the sort of problem referred to under the general label of “transaction costs.” Another would occur if we reversed the assumptions, making pollution (and timber) the efficient outcome but giving the landowners the right to be pollution free. If there were one landowner, the steel mill could buy from him the right to pollute. With a hundred, the mill must buy permission from all of them. Any one has an incentive to be a holdout—to refuse his permission in the hope of getting paid off with a large fraction of the money the mill will save from not having to control its pollution. If too many landowners try that approach, the negotiations will break down, and the parties will never get to the efficient outcome.

Seen from this perspective, one way of stating Coase's insight is that the problem is not really a question of externalities at all, but of transaction costs. If there were externalities but no transaction costs, there would be no problem, since the parties would always bargain to the efficient solution. When we observe externality problems (or other forms of market failure) in the real world, we should ask not merely where the problem comes from, but what the transaction costs are that prevent it from being bargained out of existence.

Coase, Meade, and Bees

Ever since Coase published “The Problem of Social Cost,” economists unconvinced by his analysis have argued that the Coase Theorem is merely a theoretical curiosity, of little or no practical importance in a world where transaction costs are rarely zero. One famous example was in an article by James Meade (who later received a
Nobel prize for his work on the economics of international trade).

Meade offered, as an example of the sort of externality problem for which Coase’s approach offered no practical solution, the externalities associated with honey bees. Bees graze on the flowers of various crops, so a farmer who grows crops that produce nectar benefits the beekeepers in the area. The farmer receives none of the benefit himself, so he has an inefficiently low incentive to grow such crops. Since bees cannot be convinced to respect property rights or keep contracts, there is, Meade argued, no practical way to apply Coase’s approach. We must either subsidize farmers who grow nectar rich crops (a negative Pigouvian tax) or accept inefficiency in the joint production of crops and honey.

It turned out that Meade was wrong. In two later articles, supporters of Coase demonstrated that contracts between beekeepers and farmers had been common practice in the industry since early in this century. When the crops were producing nectar and did not need pollination, beekeepers paid farmers for permission to put their hives in the farmers’ fields. When the crops were producing little nectar but needed pollination (which increases yields), farmers paid beekeepers. Bees may not respect property rights but they are, like people, lazy, and prefer to forage as close to the hive as possible.

The fact that a Coasian approach solves that particular externality problem does not imply that it will solve all such problems. But the observation that an economist as distinguished as Meade assumed Coase’s approach was of no practical significance in a context where it was actually standard practice suggests that the range of problems to which the Coasian solution is relevant may be much greater than many would at first guess.

Coase, Property, and the Economic Analysis of Law

“The Problem of Social Cost” provides more than merely a revolutionary rethinking of the question of externalities. It also suggests a new and interesting approach to the problem of defining property rights.

A court, in settling disputes involving property, or a legislature, in writing a law code to be applied to such disputes, must decide just which of the rights associated with land are included in the bundle we call “ownership.” Does the owner have the right to prohibit airplanes from crossing his land a mile up? How about a hundred feet? How about people extracting oil from a mile under the land? What rights does he have against neighbors whose use of their land interferes with his use of his? If he builds his recording studio next to his neighbor’s factory, who is at fault? If he has a right to silence in his recording studio, does that mean that he can forbid the factory from operating, or only that he can sue to be reimbursed for his losses? It seems simple to say that we should have private property in land, but ownership of land is not a simple thing.

The Coasian answer to this set of problems is that the law should define property in such a way as to minimize the costs associated with the sorts of incompatible uses we have been discussing—factories and recording studios, or steel mills and resorts. The first step in doing so is to try to define rights in such a way that, if right A is of most value to someone who also holds right B, they come in the same bundle. The right to decide what happens two feet above a piece of land is of most value to the person who also holds the right to use the land itself, so it is sensible to include both of them in the bundle of rights we call “ownership of land.” On the other hand, the right to decide who flies a mile above a piece of land is of no special value to the owner of the land, hence there is no good reason to include it in that bundle.

If, when general legal rules were being established, we somehow knew, for all cases, what rights belonged together, the argument of the previous paragraph would be sufficient to tell us how property rights ought to be defined. But that is very unlikely to be the case. In many situations a right, such as the right not to have noises of more than X decibels made over a particular piece of property, may be of substantial value to two or more parties—the owner of the property

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Student Scholarship Recognized

In 1951, Leo Herzel, then a second-year student at the Law School, published a comment entitled “Public Interest and the Market in Color Television Regulation,” in volume 18 of The University of Chicago Law Review. The comment discussed regulation versus market solutions to the problem of broadcast channel allocations.


A recent editorial in the Wall Street Journal recalled the early articles and reminded its readers of the dangers of regulating broadcasting channels now the government is considering re-regulation.
the mill would face (in the case where pollution is efficient) in buying permission from all of the landowners.

A full explanation of how Coase's argument can be applied to figuring out what the law ought to be (more precisely, what legal rules lead to the best outcome from the standpoint of economic efficiency) would require a much longer article—perhaps a book. I hope I have said enough to make clear the basic idea, and enough to show the unique and extraordinary nature of one of Ronald Coase's principal contributions to economics. He started with a simple insight, based in part on having read cases in the common law of nuisance—the branch of law that deals with problems such as noisy factories next door to recording studios. He ended by demonstrating that what everyone else in the profession thought was the correct analysis of the problem of externalities was wrong, and, in the process, opening up a whole new approach to the use of economics to analyze law.

There is at least one more thing worth saying about "The Problem of Social Cost." Economists, then and (to some degree) now, tend to jump from the observation that the market produces an inefficient result in some situation to the conclusion that the government ought to intervene to fix the problem. Part of what Coase showed was that, for some problems, there is no legal rule, no form of regulation, that will generate a fully efficient solution. He thus anticipated public choice economists, such as James Buchanan (another Nobel winner), in arguing that the real choice was not between an inefficient market and an efficient government solution but rather among a variety of inefficient alternatives, private and governmental. In Coase's words: "All solutions have costs and there is no reason to suppose that government regulation is called for simply because the problem is not well handled by the market or the firm."

References


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This article first appeared in Liberty Magazine, volume 4 (no. 3), in January, 1992, under the title "The Swedes Get It Right." It is reproduced with permission.
A Look Forward:
The Next 100 Years

The fall issue of the Law School Record celebrated the University of Chicago Centennial through a look back to events in the early life of the Law School. But a Centennial is about more than nostalgia—it looks forward to the next century. In this spirit of the Centennial celebration, we asked our faculty, alumni, and the president of the Law Students Association to offer predictions about the future direction of law practice, the courts, legal education, and legal doctrine.

We begin with three articles about the court system. Albert Alschuler discusses the criminal justice system, Larry Lessig looks at the Supreme Court, and Terry Hatter examines the federal judicial system. The next four articles consider particular fields within law practice. After Don Samuelson discusses professional responsibility, Cass Sunstein addresses environmental law, Leo Herzel discusses corporate practice, and Lillian Kraemer examines the future of bankruptcy law. The final four articles turn to areas of legal thought within the academy. Tia Cudahy sets out her ideas for the law school of the future, Gary Palm lays out a blueprint for clinical education, Douglas Baird writes about law and economics and Mary Becker discusses feminist theory.
The Future of Criminal Justice

Albert W. Alschuler

Winston Churchill once observed that the quality of a nation's civilization can be largely measured by the methods that it uses in the enforcement of its criminal law. In the final decade of the twentieth century, Americans can hope that there are other yardsticks.

Recent years have marked some milestones in our nation's penal history. Over one million Americans are currently behind bars, and the United States now imprisons a substantially higher portion of its population than any other nation whose incarceration rates we can approximate. A decade ago, South Africa and the Soviet Union imprisoned more people per capita than we did, but we have now overtaken them by a substantial margin.

As the number of Americans behind bars has burgeoned, so has the number under other forms of correctional restraint. The Bureau of Justice Statistics offered the following comparison: "At the end of 1980, approximately 1.8 million persons were under the care, custody, or control of a correctional agency or facility. At the end of 1989, total correctional populations numbered nearly 4.1 million adults." The BJS reported that at the end of 1989 "[o]ne in every 25 men and 1 in every 173 women were being supervised."

Some demographic groups are obviously more vulnerable to participation in crime and to punishment than others. Today nearly one out of four black men in their 20s is under some form of criminal restraint—prison, jail, probation, or parole.

The doubling in the rate of criminal punishment during the past decade is not attributable to any increase in the rate of crime. Indeed, crime rates are lower today than they were a decade ago in almost every offense category. Americans appear to know more about occasional upward blips in the crime rate (the city's "bloodiest weekend in a decade") than about the generally downward slope. Because crime is news, some tilt in media reporting seems inevitable. In the electoral arena, moreover, figures who appeal to and contribute to the public's fear of crime seem never to have had the field so fully to themselves.

Political scientists suggest that we live in the time of the "plebiscite Presidency." Public officials can no longer count on the backing of stable coalitions organized along party lines. Their goal is often short-term approval, and they seek issues that promise immediate payoffs and that already have strong public support. Partly for this reason, they fear endorsing any position that an opponent can characterize as "soft on crime" in a 30-second television commercial.

As America's prison population doubled and more during the 1980s, the proportion of Americans who said that criminal sentences were "not harsh enough" increased from 79 percent to 85 percent. A former Chairman of the Illinois House Judiciary Committee, John Culerton, told a conference of judges that he had struck a bargain with the other members of his committee. No one would seek to increase the sentence for a crime by more than one "level" during a single session of the legislature.

"That way," Culerton explained, "we could leave room to do it again."

The politics of resentment are more marked in America than elsewhere. Our treatment of capital punishment illustrates the contrast. Every Western democracy other than the United States has effectively abolished the death penalty, and when members of Canada's Parliament proposed re-instanting of this penalty in 1987, the nation's Conservative Prime Minister led a decisive majority in opposition. America alone continues to enact new death penalty legislation and to impose capital punishment more frequently.

Similarly, America has embarked on a $10 billion-per-year war on drugs. Presidents and "czars" speak of a drug epidemic. As best anyone can judge, however, the rate of drug offenses has declined more substantially than the rate of other crimes. Only the number of drug cases in the courts has soared.

The drug war itself probably is not the major cause of the decline in drug use. Law enforcement efforts have focused primarily on limiting the supply of drugs, yet cocaine and heroin have among the few commodities in America whose prices have moved in the opposite direction from inflation. The combination of declining use and declining price suggests that diminished drug use is the product of reduced demand rather than reduced supply. People "just say no," and the use of legal drugs—alcohol and tobacco—has declined along with the use of illegal substances.

American criminal procedure has become an almost schizophrenic system of feast and famine. In 1990, the longest criminal trial in American history came to an end two years and nine months after it had begun. This trial did not involve financial machinations of great complexity or an army of white collar defendants; the defen-
dants were members of a preschool staff charged with sexually abusing children at their school. Of the two defendants whose cases reached the jury, one had spent five years in pre-trial detention, the other two. The preliminary hearing in the case itself had lasted 18 months and had cost $4 million. The trial jury heard 124 witnesses, and after paring down the charges, the judge permitted 65 allegations of molestation and conspiracy to go to the jury. The jury acquitted one defendant but failed to reach agreement on the other. When a retrial later the same year produced a second hung jury, the prosecutor dismissed all remaining charges. The McMartin Preschool case had ruined several lives and also had cost the taxpayers $15 million.

This case was the product of unusual blunders, but overproceduralization has infected the American criminal trial. Prolonged, privacy-invading jury selection procedures, cumbersome rules of evidence, the repetitive cross-examination of witnesses, courtroom battles of experts, jury instructions that all the studies tell us jurors do not understand, and more have made trials inaccessible for all but a small minority of defendants.

Lawyers extol our trial procedures on Law Day. They tell us later that the courts would be swamped if we used them. "Practical necessity" requires pressing the overwhelming majority of defendants to abandon their day in court. Ninety-one percent of the defendants convicted of felonies in the state courts now plead guilty rather than exercise the right to trial. We allocate limited resources about as sensibly as a nation that decided to solve its transportation problem by giving Cadillacs to 10 percent of the population while requiring everyone else to travel by foot.

Less publicized than the McMartin Preschool case was the case of Robert H., a defendant who recently spent six months in an Atlanta jail without any formal charges filed against him and without ever appearing in court or seeing a lawyer. On the day that Robert H. met the public defender who represented him, the public defender advised him to plead guilty. Robert's was one of 30 felony cases in which this public defender made court appearances that day—and one of more than 500 cases that he handled during the year. Robert followed her advice.

The authorities later realized that Robert H. was not guilty of the charge to which he pleaded guilty; through a bureaucratic error, they had confused him with someone else. Despite Robert's innocence, however, the public defender may not have given him bad advice. She told him that, if he pleaded guilty, he could go home that day; and if he wanted a trial, he could have one—after waiting in jail for perhaps another year.

Albert Alschuler

Sentencing guidelines and mandatory minimum sentences have done for sentencing what plea bargaining has done for adjudication. Judges and other officials need no longer pause to consider the facts of their cases. We allocate punishment wholesale.

One recent Federal Drug Control Act, for example, imposes a mandatory minimum sentence of five years for the possession of five grams of crack cocaine. Five grams is the weight of two pennies or five paperclips. A gram of crack contains three to five "hits," and five grams seems roughly to mark the borderline between possession for personal use and possession for small-scale dealing. During the fiscal year that ended in the summer of 1989, federal judges sentenced about 400 first offenders for the possession of five grams of crack. These judges—mostly Reagan, Carter, Ford and Nixon appointees to the bench—placed 300 of the 400 offenders on probation. Had the same 400 offenders been sentenced under the current statute, the correctional cost to the taxpayers would have gone from $1.5 million to $30 million, not including prison construction costs. Similarly, under recent Illinois legislation, the sale of one gram of cocaine near a school, a public housing facility, or a park is a Class X felony. This crime carries a mandatory prison sentence of six years.

Sentencing guidelines designed to promote equality have scattered years of imprisonment almost by lottery. Because describing the appropriate influence of situational and offender characteristics on sentencing is difficult, sentencing commissions have emphasized rough indicators of social harm instead. These commissions have counted the dollars, weighed the drugs, and forgotten about more important things.

Indeed, the Supreme Court held last year that the Federal Guidelines require a court to weigh blotter paper, gelatin cubes, and sugar cubes containing LSD along with the drug itself in determining an LSD dealer's sentence. Although the sentence for a first-offender who sold 100 doses of LSD in sugar cubes would be 188 to 235 months, the dealer's sentence would have dropped by two-thirds if she had sold the same 100 doses in blotter paper. The dealer's sentence would have been cut more than in half again if she had used gelatin capsules, and the sentence would have been cut in half once more (to 10 to 16 months) if she had sold the LSD in pure form. The First Circuit recently held in fact that the weight of a drug courier's suitcase should determine his sentence; the cocaine that this courier had carried was chemically bonded to the suitcase. (The court did agree to omit the weight of the suitcase's metal fittings.) Results like these would have been inconceivable in the old regime of discretionary sentencing. Some judges are odd, but determining how many years to imprison someone by weighing blotter paper and suitcases is madness. As Richard Posner has remarked, we might just as well base punishment on the weight of the defendant. Sentencing guidelines and mandatory minimum sentences plainly have marked a changed attitude toward punishment—one that looks to collections of cases and to crude measures of social harm rather than to
individual offenders and the punishments they deserve.

As to the future, I offer two predictions. First, the prophesy that Abraham Lincoln called true and appropriate in all situations: "This too shall pass away." (Alas, I see little sign that it will happen any time soon.) And second, a still older prediction: "Whatsoever a man soweth, that shall he also reap." As Winston Churchill recognized, we cannot diminish the least favored members of our society without at the same time diminishing ourselves.

Albert Alschuler is Wilson-Dickinson Professor of Law.

The Supreme Court and Our Future

Larry Lessig

If a century ago one had predicted the Supreme Court's next hundred years, one would no doubt have gotten it wrong. Within five years of such a forecast, the Court would have held that segregation was consistent with the equal protection of the law; sixty-three years later, that it was not. Within six years, the Court would have begun the transformation of the 14th Amendment from a guarantee of equality to a guarantor of economic liberty; forty-six years later, on that front at least, it would have beaten a full retreat. Within some sixty-six years, it would have launched a different activist campaign, this time to protect the rights of some of the weakest in society, but as the century closes, that battle too has come to an end. At best, it was a century of cycles; at worst, it was confused.

Of a prediction of the next hundred years, there is little reason to expect anything more. At most we can speak about the very near future, a clue to which may be found in the very recent past. Consider just one case. It is the law that a criminal conviction obtained by general verdict cannot stand if one of the grounds upon which the conviction could have rested is unconstitutional or in some other way illegal. As the Supreme Court held in Yates v. United States in 1957, "a verdict [must] be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected."

In Griffin v. United States, decided this Term, the Court considered the types of insupportable grounds that are within the rule of Yates—specifically, whether the Yates rule covers a ground that is insupportable because the evidence relied upon is insufficient as a matter of law. In an opinion written by Justice Scalia, the Court (without dissent) said that it did not. The Yates rule, the Court held, applied to "legal errors" only, and for these purposes, insufficiency of evidence is not "legal error." True, the Court said, in some cases the Court has held that insufficiency of evidence is legal error; indeed, it is constitutional error. But even if sometimes insufficiency of evidence is "legal error," sometimes it is not. In this case, not. As the Court viewed it, the difference was mere "semantics."

For what was important was that "what the petitioner seeks is an extension of Yates' holding...to a context in which we have never applied it before." Griffin is a criminal (or at least may be); with respect to criminals, the Constitution now protects only what it now protects; its protections will not be extended to something more.

Which is not to say that they will not be contracted to something less. The recent past is littered with examples of the Court's willingness to change constitutional law when change means less protection for the currently disfavored, and more protection for the currently favored: Less protection for criminals, for the poor; more protection for states, for racial majorities, and for the police. For this is no less an activist Court than courts before—activist both in the sense that it constructs constitutional barriers to the decisions of democratic majorities (by resisting affirmative action and creating "states' rights"), and in the sense that it pursues its reconstructive task at an ever increasing rate.

Conservatives argue that such change is conservative because restorative, but restorative to what end? Even if the Constitution has been illicitly "amended" by past activist Courts, does anyone really believe that the public views this current restoration as a reaffirmation of original principles rather than as yet another illicit and political attempt by yet another president to "amend" the Constitution through judicial appointment? Will the result of this restoration be a public reawakened to the possibility of constitutional law, or a public increasingly cynical about constitutional politics? The Court calls itself conservative, but we have known conservatives. Justices Harlan and Frankfurter were conservatives. These justices are not. This Court, like the Court before it, like the Court before it, and like the Courts before it, has its own conception of a properly activist role, and with a certain unseemliness, is quite eagerly pursuing it.

The result will be a relatively more statist society, though statist in an oddly skewed sense. Government will have more power as individual rights are curtailed; but less power as majority rights (resisting affirmative action) and states' rights (resisting regulation by Congress) are expanded. (The one exception may be economic and property rights. There, individual rights may increase—a gain for some of those already possessed of the most power in society.) And barring calamity, this will be the pattern for at least the next two decades, for the conservatives have succeeded in lacing the court with youth—the average age of the last five appointees is fifty-three, the average retirement age over the century is seventy-two; the most recent addition, Justice Thomas, will just speed the reform.

Beyond substance, however, there is something particularly arresting about
the form of the Court's most recent turn, a change that should lead some of us to ask whether we give the Court more attention than is due. Few doubt that the legal work-product of the Court has declined, as less is done by Frankfurters, or Jacksons, or Stones, or Holmeses, and more by clerks—our students, good students, but students just two years out of law school. Similarly, few doubt that the political product of the Court has increased, due again to who the Justices are not, and to what they have let their clerks become. Both trends should suggest the intellectually barren terrain that is the Court.

And yet the largest category of legal scholarship continues to be directed to the Court, reflecting on its work, its method, and its mission. Why? For what is most striking about this Court is its complete disengagement from anything like a reflective perspective on its work. While the academy continues to grind out essay upon essay struggling with the substance and theory of much of the Supreme Court's job (over the past decade, for example, there were some 1600 published articles discussing theories of constitutional interpretation), there is an inescapable sense that this is not a perspective that the Court finds either interesting or important, let alone comprehensible. Instead of advancing a theoretical debate to advance the practice for which it is a debate, we have engendered a theoretical debate for theory's sake alone. The rod has disengaged from the piston.

No doubt this is in part due to a change in our own work-product as much as to a change in the Court, as academics flee the law for economics, or philosophy, or literature, and as more and more of our work appears political, if only because it reveals the premises that we no longer share. But in part too it is due to an attitude of the current judiciary that abjures theory for approaches more pedestrian, that scorns the reflective to embrace the reactive, that has given up any sense that there is sense to be made of the practice as a whole, or at least that part which is the Court's practice.

My point is not about blame. It is instead to ask how we should respond to this current separation, whatever its cause. When the academy and the Court were closer, both in attitude and in interest, we may well have been right endlessly to engage questions of constitutional theory or theories of interpretation. These are, after all, questions about a certain kind of interpretive practice, and make sense as questions so long as they remain questions of that practice. But do they make sense when at most their answers play to an audience of none? Do they make sense in a world where most of what law routinely does it does quite poorly, and where they address not at all issues about what law routinely does? Is it possible that our greatest contribution is no longer to constitutional theory, but to ordinary practice? To the questions raised and yet unanswered by Zeisel and Kessler, rather than Dworkin and Rawls?

Whatever the Court will become a century from now, we know what it will not be for the next generation. It will not be the institution that advances this nation's, or law's, ideals. At best, it will wait for democrats to do that; at worst it will lend aid to the resistance. We should accept this and move on to more fertile ground.

Larry Lessig is Assistant Professor of Law. He is currently writing (yet another) article on interpretation.

Future of the Judiciary

Terry J. Hatter Jr.

Our University is celebrating its Centennial, and the nation is still commemorating the two hundredth anniversary of the Bill of Rights of the Constitution. Most of us understand and appreciate what great University has given us as we look back at our educational experience, and, of course, we exist in the codification of rights that we share as Americans through the first ten amendments. As important as this reflection on the past is, it is no less important that we attempt an assessment of what the future portends—particularly for the federal judiciary.

As a member of that judiciary, I have a great concern for its direction and as a citizen, I have an even greater need to believe that a strong and independent Judicial Branch will be a part of this nation's future. Indeed, I am quite fond of telling my jurors (and anyone else who will listen) that it is our independent judiciary, established by Article III of the United States Constitution, that sets our nation apart from the other nations of the world, even the so-called “free” ones. While it is the Constitution and its Bill of Rights that afford us great protections, it is through the interpretations of this “principled” document by the courts that we actually realize the rights as applied in today's society and, we hope, in tomorrow's rapidly changing world.

It is uncertain, at best, that our Third Branch will continue to evolve and remain a co-equal branch of federal government. There are danger signals all around us that give pause to an assurance that the court system as we have come to know it will continue to exist. For some, it is not necessarily a bad thing that the courts may be weakened in the future. However, for the majority, including minorities and women, a diminution of shared powers by the judiciary augers disaster. Indeed, without a constantly strong and independent judiciary, there is the true danger of tyranny by majority away without the protection of minority rights otherwise safeguarded by the Constitution—no real chance for all of us to play on a level playing field.

What danger signals? First, and foremost, how many people (even University of Chicago educated) realize that we spend less than one-tenth
of one percent of the national budget on the entire Third Branch of government. Every time a B-1 prototype goes down in a test flight in the California desert it represents an amount equal to at least a half-year's funding of the federal judiciary. For the first time in history, we have reached just two billion dollars of annual funding. We are the only courts of record without assigned bailiffs—a district judge must give up a law clerk in order to secure a bailiff to staff the courtroom. We are the last branch to obtain full computer capability, even while our caseloads sky-rocket.

Together with an increasing caseload, there are more and more complex cases, both civil and criminal. What once a court of limited jurisdiction has become essentially a general forum. This is in great part the result of ill-thought congressional legislation that has grown out of "tough-on-crime" politics. Such strange political bedfellows as Senators Ted Kennedy and Strom Thurmond have co-authored the Sentencing Guidelines, which are not guidelines at all but, instead, mandates that have effectively taken discretion in sentencing from life-time Article III judges and transferred it to young prosecutors. This "reform," along with mandatory minimum sentences, also legislated by the Congress, has added greatly to the number and length of criminal hearings.

The civil bar initially did not feel threatened by the "tough-on-crime" bills. As it becomes more difficult to find firm trial dates, however, the ABA and state and local bar groups are beginning to express their concern directly to the Congress. Even with this welcome intervention, it will take decades to undo the harm already done to a balanced civil and criminal caseload.

The most recent Congressional foray into the operations of the Third Branch comes under the guise of case management legislation, entitled the Civil Justice Reform Act. Written principally by Senator Joseph Biden, this bill "authorizes" district courts to set timetables and discovery limits, among other things, but, in actuality, represents little more than an attempt at Congressional oversight of the judicial process. Many of my colleagues in the Central District of California agree that the Civil Justice Reform Act mandates actually mirror the Local Rules that our court has had in place for many years in this, the largest district in the nation, which serves some fifteen million people. They also agree that this Act is a thinly-veiled encroachment on the federal judicial prerogative to establish and maintain procedural—not substantive—rules for the functioning of the courts.

Every time a B-1 prototype goes down in a test flight in the California desert it represents an amount equal to at least a half-year's funding of the federal judiciary.

Another area of concern is the preservation of the jury system. I was a student at the Law School when Professors Kalven and Zeisel were doing their formative work that led to their groundbreaking study, The American Jury. Many of the insights, problems, and proposed solutions in that 1966 work are no longer timely, but they still give focus for the future. While many practitioners and law professors lament such jury changes as less than twelve-person juries, judge conducted voir dire, and limited use of preemptory challenges, my concern is more with the increasing length and complexity of jury trials. I can envision our federal jury system emulating England in that jury trials will be seen only on the criminal side, and even there it will be difficult to obtain juries that are "legally" representative of a cross-section of the community. How can we expect ordinary citizens to take many months—and, indeed, years—away from work and family to sit on juries resolving other people's disputes? Moreover, the complexity of issues that jurors are asked to resolve is increasing as litigation itself increases, particularly in such fields as antitrust, patent, copyright, environmental, and space law.

Some champion ADR (alternate dispute resolution) as a cure for many of the present and perceived future ills of the judicial system. We see more arbitration, mediation, summary jury trials, and other experimental projects being tried in place of the traditional courts. In California, we even have something called "Rent-A-Judge." This "private judging" is another ADR tool that has proven effective in certain situations, but it also presents problems of its own. First, there is the appearance—indeed, the actuality—of a two-tiered justice system. One tier is swift and efficient and is available only to those few who can afford it. The other is the same crowded, under-funded system that less privileged litigants must continue to use. Second, many fine, experienced judicial officers are being siphoned into the more attractive (better pay, better hours) private system at further risk to the public courts. Especially worrisome in the long run is the fact that less attention will be given to improving the traditional court system as more of the "big players" leave it for the world of private judging.

Overlying the foregoing is what I perceive as a failure of confidence by the general public in the process of selecting federal judges, particularly at the highest level—the United States Supreme Court. The recent Senate confirmation hearings for Justice Clarence Thomas, while at times dramatic, were disquieting in result. As in the confirmation hearings of the two justices preceding Thomas, there was the constant undertone expressed by Senators of both parties that the President is owed deference in the nominating process. I submit that nowhere in the Constitution is "deference" to be found. Nor can it be argued that it was the original intent of the Founding Fathers to give deference to a President's Supreme Court nomination. Indeed, the Senate has done violence to the separation of powers which is, together with the Bill of Rights, the cornerstone of our Constitution. The repeated failure of the Congress to exercise vigorously its mandate to ensure a constitutionally selected Supreme Court "...by and with the Advice and Consent of the Senate" spells political disaster. It is the Court, not the nominee, to whom
The conclusions

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The Need for a Renewed Professionalism

Don Samuelson

The law industry has just completed two decades of unprecedented prosperity and growth. Lawyers have increased in number from 300,000 in 1970, to 600,000 in 1980, to 900,000 in 1990. Law is presently a $90 billion industry which has grown at a 10 percent rate during the last decade compared to a 3 percent growth in the American economy. It has been common for partners in big firms in big cities to make between $300,000 and $900,000 per year. The law industry clearly prospered in the 80s.

What are the prospects for the 90s? In the economy in general, there is emphasis on quality, on value, on providing cost effective solutions to the needs of consumers. These are the principles that will be applied to the legal industry in the 90s. Are clients satisfied with the legal services they have been receiving? From a recent survey of owners of mid-sized businesses in Chicago, apparently not. The conclusions are:

1. Clients are dissatisfied with lawyer attitudes, narrow perspectives and costs.

2. Clients do not feel they are getting good value. The incentives in the current billable hour system appear to favor inefficiency, delay, and lawyer interests.

3. Lawyers do not adequately understand their clients' businesses. As a result, they don't appreciate the ways in which their experience, knowledge, and connections could create value for their clients.

4. Associate salaries and costs bear little relation to the value of their work. This is good for associates, good for leverage, good for senior partners, but bad for clients.

5. Law firms appear to have made little "investment" in their practices—developing products and systems, substituting technology for labor—to provide superior services at lower costs.

6. There is a paradox in the significant values that can be provided clients by senior lawyers in the early diagnostic and design phases of a legal matter and the great costs—rather than values—generated by younger lawyers in manufacturing the service. As much as 90 percent of the value can occur in the first 10 percent of the time. The remaining 90 percent of the time—and cost—produces the final 10 percent of the value.

Law is a profession, but it is subject to business principles. The legal industry today is a mature and competitive marketplace. It is a marketplace that is undergoing rapid and perhaps structural change. All industries proceed through stages in a common evolutionary process. The first stage emphasizes production. The product or service is new. The demand is high. There are few suppliers. The problem is in manufacturing the service and getting it out the door. This was the legal industry in the 70s and 80s, responding to the regulatory requirements of the Great Society.

The second stage involves "selling." Demand is now sufficient to "clear" all of the available product. Sometimes customers need to be persuaded to buy. Law firms added "marketing" staff to assist in this selling function in the late 80s.

The third stage requires "marketing." The focus is on the customer. What do they need? What value is the service to them? The basic elements are: a) the client has a problem; b) the lawyer has a solution; c) the client receives a benefit; d) the benefit is of value; and e) there is a reasonable relationship between the value and the price. These principles make up the "business" of law. By this I mean the client centered and efficient delivery of an appropriate and needed level of service.

When an industry enters the mar-
Marketing stage of its evolution, the producer's challenge is to develop a system which can produce services at a cost less than their value to the client. The key point is VALUE TO CLIENTS. The practice of law in the 90s will not be "interesting cases" for lawyers. It will be recommending and executing a course of action—among a variety of alternatives—that is appropriate to the client's needs and objectives. For too long now lawyers have been looking through the wrong end of the telescope.

What must lawyers do to produce values for their clients in the 90s? First, they need to understand the principles, language, values, and motivations of the business community they seek to serve. A law firm does not need to become a business. It does need to understand business.

Second, lawyers need to be able to array a spectrum of legal solutions to client problems—not simply a single, zero defect conclusion. The art of lawyering will be to assist clients in selecting appropriate, co-effective solutions among a variety of options.

Third, the legal industry needs to develop systems and procedures—and the technology—so that the needed services can be produced cost-effectively, with the requisite degree of service and quality control, and at a price which is perceived to be a value to the client.

Fourth, lawyers need to reduce their manufacturing costs. They can "design" solutions with minimal manufacturing needs. They can substitute technology for labor in the manufacturing process. They can reduce labor (associate) costs. At the moment, lawyers produce high value diagnostic and design services. Their manufacturing processes result in low value products and services. A great deal of the current manufacturing process is unnecessary.

Fifth, both lawyers and law firms need to take longer term perspectives of their careers and law practices. They need to invest time, capital and creativity so that the costs of legal services can be reduced, resulting in increased value to clients. Lawyers cannot continue to sell hourly rate services, at ever increasing hourly rates, independent of the value of those services to clients.

Sixth, lawyers need to communicate their skills and capacities to clients in a persuasive and efficient manner, demonstrating how their services can be cost effective in advancing the interests of the clients.

The basic problem? There are not sufficient ownership interests in a law practice today to induce lawyers to take long term perspectives or to make investments in their firms or practices at the expense of current income. As a result, the prices for legal services rise—to reflect the increased costs of labor or the desire of partners for increased profits—with no offsetting increase in productivity. Markets shrink or are lost to more efficient industries. Revenues drop. Practices deteriorate. And law firms go out of business.

There is a message in this for the law industry. The practice of law needs to rediscover its professional premises. In a profession—or in any competitive marketplace—the interests of clients come first, not profit, not leverage, not the conversion of normal expenses and overhead items into cost-plus profit centers. Paradoxically, the marketplace pressures currently facing lawyers today are likely to result in renewed attention to the "professional" aspects of law practice.

Environmental Protection in the Twenty-First Century
Cass R. Sunstein

In the United States, environmental law has come in two stages. The first stage—from the creation of the Republic to about 1970—involves the use of the common law. The second stage—from about 1970 to about 1980—involves an extraordinary explosion of federal statutes. We are now entering an exciting third stage, whose contours are just beginning to emerge, and which might well simultaneously promote economic, environmental, and democratic goals. To understand that third stage, it is necessary to explore its predecessors.

As a regulatory system for protecting the environment, the common law had many advantages. It was highly flexible; it was decentralized; it allowed different accommodations to be reached in different areas. For many years, the common law worked reasonably well, at least insofar as it could control the worst abuses without imposing unnecessary obstacles to economic development.

As a complete solution, however, the common law is hopelessly inadequate. Judges are not experts in the complex issues of environmental protection. Equally important, they are not democratically accountable. The common law depends on the assumption that causation is clear; in the environmental context, causation is typically ambiguous. Finally, the common law depends on private initiative, when environmental protection affects so many people (including future generations) as to require a public role.

But what should replace the common law? The first generation of national environmental law was built on the understanding that the government should enact clear requirements, often to protect a "right" to a clean environment and usually to be imposed on all firms in order to bring about immediate compliance with new national principles. Some of these requirements were unrealistic, in the sense that they attempted to eliminate pollution entirely. Some of the requirements were based on sensationalistic anecdotes rather than a thorough
levels of reduction are appropriate, but instead on the largely incidental and nearly impenetrable question of what technologies are now available. The focus on the question of “means” also tends to increase the power of well-organized private groups, by allowing them to press environmental law in the service of their own parochial ends.

BAT strategies are simply one example of what is wrong with our current system: insufficient attention to incentives, excessive interest-group power, and too little information about the real-world of pollution control. In thinking about the next hundred years of environmental law, we are likely to focus on four emerging possibilities: (1) economic incentives, under the basic principle of “polluters pay”; (2) pollution prevention; (3) information and disclosure; and (4) the internationalization of environmental law.

1. By far the most important step involves the creation of economic incentives to engage in environmentally desirable conduct. An increasingly popular approach is to impose a tax on environmentally harmful behavior, and to let market forces determine the response to the increased cost. Most generally, government might adopt a simple, two-step reform policy. First, those who impose environmental harm must pay for it by purchasing permission to do so, perhaps through a licensing procedure. Second, those who obtain the resulting permission should be able to trade their “licenses” with other people. This would mean that people who reduce their pollution below a specified level could trade their “pollution rights” for cash. In one bold stroke, such a system would create market-based disincentives to pollute and market-based incentives for pollution control. Such a system would also reward rather than punish technological innovation in pollution control and do so with the aid of private markets. An idea of this kind might be part and parcel of a system of “green taxes.”

A large advantage of this shift would be democratic: it would ensure that citizens and representatives would be focusing on how much pollution reduction there should be, and at what cost. The right question would be put squarely before the electorate. Moreover, a system of financial penalties allows far less room for interest-group maneuvering. Special favors cannot readily be provided through a system of economic incentives.

2. Regulators will increasingly avoid specification of the technology “at the end of the pipe.” Instead they will create incentives to ensure that pollution and other harms are addressed at their source by, for example, eliminating lead from gasoline. Pollution prevention, rather than technological fixes, is an increasingly prominent principle for environmental law. This means that regulators should reduce the levels of dangerous substances that are actually introduced rather than control those substances that have already been introduced.

3. In the future, environmental law will rely increasingly on education, disclosure, and the provision of information. An inexpensive way to prevent pollution is to promote awareness of the resulting risks, and to encourage people voluntarily to reduce pollution levels. Education of this sort has helped to reduce littering and to promote recycling. In addition, there will be a strong movement away from government dictation of particular outcomes and toward provision of information about the environmental risks that people face in their day-to-day lives. New laws increasingly require companies to disclose environ-

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People who reduce their pollution below a specified level could trade their “pollution rights” for cash. In one bold stroke, such a system would create market-based disincentives to pollute and market-based incentives for pollution control.
mental risks. These laws can trigger "market" responses from affected citizens, and they can also play a role in environmental education, which can in turn produce better-informed laws.

4. It is increasingly clear that environmental problems cannot be handled within national boundaries. With respect to the destruction of the ozone layer and the danger of global climate change, international agreements and international law are necessary. These developments bring home with new clarity the close connections among environmental issues, new technologies, energy, and the distribution of resources among rich and poor nations. International cooperation, resulting in changes in domestic law, will be a hallmark of environmental protection in the next hundred years. It is fervently to be hoped, and perhaps to be expected, that the international efforts will draw on the three emerging innovations—economic incentives, pollution prevention, and information and disclosure—in domestic law. If so, the third stage of environmental law will be able to avoid the severe difficulties associated with the first two.

Cass Sunstein is Karl N. Llewellyn Professor of Jurisprudence.

The Future of Corporate Law

by Leo Herzel

Predictions about corporation law are hazardous. They are entangled with predictions about business, finance, politics and developments in other countries. Adding to the complications, in this article I do not separate corporate law from the practice of corporate law. Very large portions of corporate law never appear in statutes or court opinions. Practicing corporate lawyers create and recreate them every day using experience, intuitive ideas of fairness, and guesswork about what judges, administrators and the marketplace are likely to accept. Moreover, I expect that many of my readers will be more interested in predictions about the practice of corporate law. Without any more preface, here are my predictions of the main developments in corporate law and corporate law practice in the 1990s.

International corporate transactions, already very important, will become more important. Mexico, Central and South America, Europe (particularly the E.C.) and Japan are likely to be especially significant. However, the lessons for U.S. corporate law from foreign law will continue to be difficult to decipher or to apply.

There will be fewer voluntary or involuntary domestic mergers and acquisitions. Most domestic mergers and acquisitions are likely to be in the same or closely related industries. In the U.S., conglomerate acquisitions have in general been failures. Financial markets and boards of directors in the U.S. are likely to remember this for as long as five to ten years. Antitrust law enforcement in the U.S. with regard to mergers and acquisitions in the same or closely related industries is likely to remain relaxed because of the concern of politicians about very large, successful competitors in Japan and Europe. The number of foreign acquisitions in the U.S. will increase. Most of these will be voluntary, not hostile takeovers. Many of them will be by foreign conglomerates. Surprising as it may appear, Europe and Japan do not seem to have learned the lessons of failed conglomerations from the U.S. yet.

Institutional stockholders who now own approximately 50 percent of the stock of large U.S. public companies will continue to increase their stock ownership absolutely and relatively. And they will continue to try to define what they can and should do with their power. There are many legal and practical obstacles to the effective use of that power and these are unlikely to go away. From the standpoint of the U.S. economy, the big danger is that institutions will try to do too much, in particular, that they will yield to pressures from their constituents and politicians and contribute to politicizing the U.S. economy.

As always, there will be pressure for more federal regulation of corporations. However, concern about international competitiveness may act as a moderating factor. U.S. law and enforcement policies will continue to be too late and too punitive with regard to legal-ethical transgressions by large companies, particularly investment banks and other financial companies. The reasons for this are deeply embedded in U.S. society and are unlikely to change soon.

Delaware will continue to dominate state corporation law. Large states appear unable to separate corporation law from politics sufficiently to become effective competitors. It is probably too late for small states to duplicate the economies of scale which Delaware has with its chancery court system and corporate bar.

As the takeover market declines in importance, more attention will be paid to making boards of directors more effective. Boards perform quite well during crisis but their day-to-day performance is generally considered mediocre. There is no widely agreed upon solution to this important problem.

Derivative and class stockholder litigation will continue without much change. Arguments about conflict of interest and effectiveness will remain unresolved and legislative and judicial reforms will be minor. Litigation among large corporations will continue at high levels despite organized efforts for reduction by using alternative dispute resolution techniques. The high propensity to litigate reflects the combative nature and divisions in American society.

Corporate law practice will continue to become more specialized but very
often specialization will be a race to stay ahead, not a static condition. For example, financial instruments issued by companies to obtain financing and to hedge risks will become even more complex. Specialist lawyers who can make important contributions to the design of these instruments will be treasured. Once designed, however, even the most exotic of these instruments will soon become mundane commodities requiring only routine law work by lawyers or paralegals.

**Corporate law practice will continue to become more specialized but very often specialization will be a race to stay ahead, not a static condition.**

Federal income tax law will retain the system of separate taxation of corporations and stockholders without offsetting deductions or credits, which contributes to so many inefficiencies in U.S. corporations and capital markets. Lower capital gain rates will return and corporate tax law practice will benefit from the inevitable increase in legal complexity. There will continue to be large losses of value in corporate bankruptcy reorganizations caused by cooperation and agency problems among creditors, equity holders, and debtor management and, to a lesser degree, the large fees paid to investment bankers, lawyers, accountants, and other expert participants in the process. Reorganization outside bankruptcy will continue to be very difficult because of cooperation and agency problems which are even more acute than those in bankruptcy. A bad tax rule which includes taxable gross income gains from the discharge or cancellation of indebtedness will continue to contribute to the difficulties of accomplishing corporate reorganizations outside bankruptcy. "Prepackaged" bankruptcies, where the debtor and sufficient creditors (two-thirds in amount and more than half in number) agree on a reorganization plan immediately before bankruptcy, will probably increase in number and will solve some of these problems.

Corporate law practice in the 1990s will be highly competitive, as it was in the 1980s. One of the main reasons for this is that the old social compact among large gentry law firms to substitute leisure for income broke down completely in the 1980s. It appears highly unlikely that it will be revived. Another important reason is the sharp increase in the importance of inside general counsels during the last 25 years, which is unlikely to be reversed in the 1990s. Happily, the immediate practical implications for law students and young lawyers of these portentous pronouncements about the future are quite modest. Learn two foreign languages. The sooner the better. It is much easier when you are young and have more time. Spanish would be my first choice.

Specialize as soon as possible. Very able general lawyers will still be eagerly sought after. Mainly, however, they will be older lawyers who are senior partners in large corporate law firms or general counsels of large companies. The best way to increase the probability of becoming a top general lawyer is to begin early as a successful specialist. Furthermore, specialists find it much easier to change jobs or careers. On the other hand, specialties frequently decline suddenly, for example, antitrust litigation in the 1980s and mergers and acquisitions at the end of the 1980s; or they may disappear completely when, for example, the law changes or a large client shrinks or leaves. In that case one must quickly change to another specialty or change jobs.

In large corporate law firms, young lawyers must be prepared to work very hard. The forces that have increased the competitiveness of corporate law practice in the last 25 years are unlikely to be reversed. Most important, stay clear of the ethically dubious. The stakes will be higher than ever in the 1990s.

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Leo Herzel '52 is a partner with Mayer, Brown & Platt in Chicago.
War II through the 1960s allowed several generations of lawyers to comfortably ignore bankruptcy. The much more volatile prosperity of the roaring '80s harbored at all times significant pockets of economic distress (such as farming, agricultural equipment, steel, airlines) that kept a growing bankruptcy bar well occupied.

Second, it is extremely important that bankruptcy has acquired a plausibility, even a respectability. Little more than a decade ago herculean efforts were made to avoid bankruptcy by companies in certain industries (automobiles and, however hard this may be to believe, air travel) that, it was thought, could not operate under court protection and by creditor groups who found the problems too big for resolution through cumbersome court processes. During the 1980s, however, a combination of factors brought huge, household name enterprises into and (in most cases) through bankruptcy and so demystified the process. In part, bankruptcy became more inevitable as the constituencies affected by an enterprise's financial distress became more diverse. Today a bankrupt enterprise's parties in interest consist of many different types of lenders where once only banks and insurance companies were found. Other players include "bottom fishers," who bring claims acquired for large discounts from par to the table, and government agencies such as the Pension Benefits Guaranty Corporation and Environmental Protection Agency advocating their own complex agendas. Such disparate players are much less likely to reach the requisite unanimous consensus on the principles of an acceptable out-of-court reorganization. Perhaps even more important, in a society less sure of itself and its priorities, more and more fundamental social issues tend to get played out in the court of last resort—bankruptcy. Witness, for example, Manville's use of Chapter 11 to resolve its mass tort exposure, Continental and Eastern Airlines' resort to bankruptcy to address labor problems, Texaco's filing for bankruptcy to resolve an otherwise unappealable (because unbondable) massive judgment in favor of Pennzoil, LTV's ongoing attempts to resolve its pension and retirement benefit liabilities in its six-year Chapter 11, and the current flurry of environmental liability issues being addressed in bankruptcy courts. This developing use of the bankruptcy law to resolve important social policy issues will continue until legislatures, guided by clearer messages of society's priorities than seem now to exist, provide more coherent standards or at least better resolution mechanisms than the bankruptcy process. And this will continue whether the economy is in boom or bust.

Finally, there is an element of having let the genie out of the bottle. Lawyers and businessmen who have been through bankruptcy will be less likely to ignore bankruptcy principles in planning business ventures. For example, in the 1960s and 70s, very few corporate lawyers had ever used the words, much less understood the elements of, fraudulent conveyance. In the post-LBO world, lawyers will, I submit, study proposed transactions very carefully for signs of this dread injustice to creditors. Similarly, rating agencies who once looked at individual company balance sheets have learned about the risks of a weak link in an affiliate chain and the formerly little known doctrine of substantive consolidation has crept, if not galloped, into the corporate lawyer's lexicon.

Thus the future of bankruptcy is, I submit, all too bright. The perhaps harder question is what will happen to the system as we know it today over, say, the next twenty years? Here it is very hard to separate prediction from wish fulfillment—it is very human to assume that if one perceives a serious problem, the future will address it.

With this principle in mind, can it be doubted that the future will resolve the wasteful jurisdictional morass that remains the legacy of Northern Pipeline Construction Co. v. Marathon Pipe Line Co. by creating Article III bankruptcy courts? It boggles the mind that with over 1,100,000 cases pending in the nation's bankruptcy courts at June 30, 1991, with each of the 291 then sitting bankruptcy judges receiving on average 3,025 new cases during the twelve months then ended, and with the largest of these cases raising issues of fundamental socio-economic policy, we can continue to consider bankruptcy judges as not "deserving" of Article III status, not to mention that it is downright lunacy to continue to plague a wildly overburdened system with jurisdical gamesmanship.

Similarly, given the widespread recognition that bankruptcy remains an inefficient, overly long and overly expensive process, can it be doubted that the future will produce developments both to diminish the need for recourse to bankruptcy and to streamline the process? We might anticipate a resurgence in the appetite to resolve financial distress through consensual workouts, this time not because bankruptcy is a feared unknown but precisely because it is a known, far from perfect system. For this prediction (wish) to eventuate would, however, likely entail at least a significant change in tax law which now strongly favors in-court reorganization and perhaps some changes in bankruptcy law, such as to undo the effects of the LTV decision limiting the allowability of claims of bondholders who have accepted pre-bankruptcy exchange offers. We might expect to see embroilings on the pre-packaged bankruptcy concept with a view to making its major benefit—combining out-of-court majority consensus on the acceptable elements of a restructuring with bankruptcy law's ability to bind the dissenting minority—more broadly available.
Surely in the absence of such developments, there will be increasing and not necessarily salutary pressures to deal with perceived inefficiencies and excessive costs. Addressing these problems is necessary and laudable but not without risk. Too often the knee-jerk reaction to perceived inefficiencies or injustices is ill-advised special interest legislation. Well-intended cost control initiatives can result in measures that drive qualified professionals from the field generally or in certain geographic areas. This practitioner, at least, believes that the generalism and flexibility of the Bankruptcy Code that has been in effect since 1978 has allowed the system to deal with issues unprecedented in number, size, and complexity more effectively than anyone would have predicted twenty years ago. If we are, as I have suggested, looking at a legal future in which bankruptcy law and practice are important elements, we should remember that the statutory and administrative framework with which we commence the future has served us well during the recent extraordinary past.

Lillian Kraemer '64 is a partner at Simpson Thacher & Bartlett in New York City.

Law School of the Future

Tia Cudahy

The law school of the future will reflect the composition and needs of the entire community. Law schools will attempt to attract students from all backgrounds in order to ensure that important discussions about intractable social problems will include a broader range of viewpoints. Recognizing their unique relationship with law students, law schools will actively foster a sense of responsibility to the profession and society.

Law schools adhere to traditional performance indicators such as undergrad grade point averages and LSAT scores in an effort to produce smart lawyers. Placing more emphasis on diversity of experience will create a less homogeneous community; perhaps one that is better equipped to think creatively about old problems.

tia cudahy

Revitalizing the intellectual inquiry in the classroom will improve the quality of discussion while also generating greater respect for legal education. The purpose of such an extension in admissions criteria is not merely affirmative action, but to reinvigorate legal scholarship by expanding the class of people equipped to think about legal issues. Some will argue that the quality of scholarship will deteriorate without rigid adherence to traditional performance indicators, but, from a student's perspective, at the very least diversity will enrich classroom discussion. Ideally, diversity in the classroom will reflect the diversity of society so that everyone will receive representation in the exchange of ideas.

The admissions office will also consider carefully each applicant's reasons for applying to law school. Law school too often serves as a default for intelligent but unfocused liberal arts majors who lack the imagination and inclination to figure out what they enjoy doing. These students are unhappy at law school and detract from the experience for everyone. The University of Chicago is one of the few schools that devotes the energy to conducting interviews of some applicants, and these interviews present at least one opportunity to investigate an applicant's motivations. The model law school will interview all eligible applicants, recognizing that an applicant is more than a sheaf of papers in a file. From a classmate's perspective, a student's interesting background and genuine desire to study law more than balance out a few missed questions on the LSAT.

Last, law schools will actively encourage a sense of responsibility for the profession and for society among students. The practice of law often means advising individuals in the most difficult moments of their lives, but law schools overlook the human element of a career in the law. Lawyers confront conflicts of interest and breaches of professional responsibility among colleagues far more regularly than they encounter most of the legal doctrines taught in law school, but classroom discussion is almost inevitably focused on the reasoning of the highest court to hear a case. Naturally students need to learn how judges reach decisions, but greater emphasis on legal ethics and professional responsibility will convey equally important skills and knowledge. Professional responsibility will be incorporated into every course, rather than packed neatly into one required but uninspired class. Students will gain respect for that aspect of practice and conduct themselves accordingly, and the resulting benefit to clients will enhance respect for the profession.

Law schools will also remind their captive audience that lawyers occupy a special place in society; we formulate public policy in disproportionate numbers and act as conduits between the public and justice. Although litigants realistically need lawyers to navigate the legal system for them, most Americans cannot afford to hire a lawyer. Given the importance of legal training in our society and the shortage of lawyers for the poor, lawyers have an affirmative moral obligation to return some service to the system that benefits us so much. Mandatory pro bono policies may be moot if each lawyer, encouraged by her law school, feels a personal obligation to pay this debt to society.

The renewed emphasis on the needs of those who cannot afford legal services will inevitably reshape law school curricula. Students will require more clinical education and public interest classes, as well as instruction on such far-reaching statutes as the Social
Security Act. In a litigious society, lawyers are in a unique position to help those who would otherwise lack a fair chance in the legal system, and law schools have a unique opportunity to reach aspiring lawyers with that message.

Tia Cudahy '92 is President of the Law Students Association.

Clinical Legal Education

Gary H. Palm

As I look to the future, I imagine a law school Clinic that adopts some of the best features of a teaching hospital operated by a great research-oriented University. The primary goals, as there, should be to provide excellent service to clients, practical instruction to students and applied research. At the teaching hospital, state-of-the-art equipment is purchased. First rate physical facilities are provided. Staffing arrangements are consistent with excellent services. The newest techniques and innovations are used or tested. Funding is from a combination of payments for patient services, government research and training grants, private philanthropy, foundation gifts and tuition. Low student/teacher ratios are maintained and all students are required to receive some clinical instruction. The legal clinic of the future should feature similar standards to assure that it too can fulfill its goals with excellence.

In a typical year, over 100 second-year students apply for the Clinic. In order to maintain a low student/teacher ratio of ten to one, fifty students cannot be accepted, resulting in a waiting list. Although many students on the waiting list eventually do get to work in the Clinic, others become discouraged or pursue other activities. It is my hope that, in the future, all students interested in the Clinic will be admitted. The Clinic will need at least fourteen clinical teachers, double the current number, to meet the on-going demand during the next twenty years. Different credit allocations and some changes in the program will be necessary too, but the most important change is a significant increase in the number of clinicians and the size of the Clinic.

The role of clinical legal education at a leading research-oriented University should include the use of law to eliminate poverty or alleviate the suffering caused by it. It is appropriate for the Clinic to help individuals who are seeking to escape poverty and use the legal system to secure entitlements from government and the private sector. But clinical teachers and students should also be expected to develop new legal strategies to meet the needs of the poor and even to eliminate poverty. Law reform and systemic change have always been at the heart of the research mission of the non-clinical law faculty. Therefore, it is also appropriate that the Clinic continue to represent clients in administrative rulemaking proceedings, legislative advocacy, test cases and class actions.

The Clinic should also continue to propose improvements in methods of advocacy used on behalf of the poor and work with other legal service organizations, the private bar, pro bono volunteer groups and governmental agencies to assure that poor clients receive prompt and effective representation. Indeed, as we train more stu-

students and introduce them to their obligations to serve the poor, I expect we will continue to see increasing numbers of our graduates providing pro bono work, leading legal service agencies, serving on bar committees relating to rights of the poor and generally working in their careers to improve the conditions confronting the poor. Our Clinic will continue to help our students to become more imaginative and productive at using the legal system to solve the underlying problems of poor persons through systemic legal methods.

The very idea of locating a law office serving the poor in the Law School was startlingly innovative in the 1950s when our new law school building was planned. Through the years, all the deans have tried to meet the Clinic's space needs but without long-term success. To provide effective instruction now we need more space and, as important, better designed space. Furthermore, today we have equipment and a sizeable support staff for our extensive litigation practice that were not contemplated in the original design for a legal aid office. If we are to meet the student demand, we need much more space. The only long-term solution is a new building or addition for the Clinic. The Clinic of the future will have adequate space for each student to share an office with one or two others; rooms for interviewing and counseling clients; areas for preparing for trials and practicing oral arguments; and small classrooms designed to teach lawyering skills and strategies. The offices, meeting rooms and secretarial space will be a part of a central computer network. Video
taping and playback facilities will be built into all the attorneys' offices and the other teaching rooms. I fearlessly predict that together, those of our alumni, students, clinical teachers and non-clinical faculty who have given so much already to start the Clinic and develop it, will somehow find the way to build the best clinical teaching facility in the country.

Funding for the Clinic will need to increase. Our base of support will continue to be the regular budget of the Law School. The joint venture with United Charities of Chicago is strong and should continue to provide funding through its Legal Aid Bureau. The amount of federal grants from the Department of Education and the Legal Services Corporation will likely increase modestly. Restricted alumni donations should continue to provide increased resources for expansion and improvements as clinical donors “mature.” Attorneys' fees will provide a substantial amount of funding as the Clinic obtains attorneys' fees awards for representing the prevailing party in civil rights litigation.

Although it seems unlikely, it is not impossible that, following the medical model, the Clinic may someday accept fees from at least some clients. Already some ineligible clients seek out the Clinic's expertise in discrimination cases, mental health issues, and criminal defense. Also, the Clinic will begin more innovative projects with support from foundations and government agencies. Our strategy will be to diversify the Clinic's funding so that it will be able to withstand cutbacks from one or two of its major areas of financial support.

I fully expect that pressures will grow for all law schools to teach more about professional responsibility and lawyering skills through clinical education. The American Bar Association will likely increase its requirements by new interpretations of Accreditation Standards since nationwide data show a great unmet need for more clinical and professional skills instruction. I predict that the University of Chicago Law School will lead the expansion of clinical education through further development of our model of an excellent in-house Clinic serving the poor.

The Future of Law and Economics
Douglas G. Baird

Law and economics has already worked a revolution in legal scholarship and education, but its promise continues to be great because it provides judges, lawyers, and legal scholars with two valuable tools. First, economic analysis of law offers a way to understand the structure of the law itself. Complicated legal doctrines, such as remedies for breach of contract, are often neither random nor arbitrary. A few basic principles may unite them and these principles are frequently economic ones. Economics, in other words, sometimes gives us a way to organize the law and understand the connections between rules that on their surface appear to have nothing in common. Second, and equally important, economics also helps us to understand what effects legal rules have. When we subject laws or judicial opinions to scrutiny or ask what shape incremental law reform should take, the effects of a legal rule are important.

We want to know what makes a law fail or fulfill its ambitions. We want to know whether it can make the world a better place and at what cost. Law and economics addresses precisely these concerns.

The earliest successes in law and economics were in antitrust because antitrust law embraces a policy that is based explicitly on economic principles. Law and economics has done much to aid our understanding of joint ventures, predatory pricing, tie-in sales, and vertical price restraints, but it has since shed light on many other areas of the law. Copyright and patent law, by constitutional design, offers writers and inventors rights to their work for a limited time in order to give them an economic incentive to create in the first place. Determining how much of an incentive writers and inventors require and how to balance this incentive against the need to make new ideas accessible to others requires us to ask questions that economics may equip us to answer. The law of torts is designed in large measure to ensure that parties take account of the costs their activities impose on others. Environmental law may be similarly designed to ensure that firms take account of both the social and private costs of their actions.

In short, much of the process of lawmaking and judicial decision making requires a weighing of costs and benefits and here law and economics is in its element. Law and economics can take us further than intuition alone. It enables us to make sense of legal rules and to understand their effects. For both reasons, law and economics is now part of mainstream legal education and economic concepts such as cost-benefit analysis, moral hazard, marginal cost, comparative advantage, public goods, and least cost avoidance are a standard part of every law student's vocabulary.

Henry Simons, Edward Levi, Aaron Director, Ronald Coase, and others mapped the basic terrain. Today, the general principles of law and economics are well understood. Much work, however, remains to be done. The world, after all, is a complicated place and the behavior of discrete individuals cannot easily be reduced to a single algorithm. Account must be taken of imperfect information and the possibility of strategic behavior to understand how any group will respond to a legal rule. Even in fields such as antitrust that have been a focal point for

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Gary Palm '67 is Clinical Professor of Law.

Douglas Baird
scholarship for many years, there are still new insights to be made. New advances in economics itself, especially in game theory, make subjects such as predatory pricing as interesting and as controversial as ever.

At Chicago, we seem well positioned to continue to advance the field. Our scholars remain productive and eager to explore new fields and re-examine old ones. Ronald Coase, Richard Posner, William Landes, and Richard Epstein, who gave shape to the field, remain active scholars at the Law School. My own contemporaries,

Many contributions to law and economics that have been made at Chicago are now so much a part of the established wisdom that it is easy to forget the controversy they originally provoked. These well understood contributions are not regarded as economic analysis of law, but simply as common sense.

including Daniel Fischel, Frank Easte-erbrook, and Geoffrey Miller, set much of the terms of the debate in law and economics in the 1980s and continue to find new paths to explore. Young scholars, such as Alan Sykes, Dan Shaviro, Stephen Gilles, and Randal Picker, are poised to challenge the conventional wisdom, even if what is now the conventional wisdom was once cutting edge law and economics.

The ultimate ambition of legal scholarship is to say useful things about how the world works. Hence, the question is not whether the assumptions of law and economics capture all the nuance and ambiguity that exists in the world, but whether these assumptions capture enough of the essence of our world to shed light on how it works. In the end, every contribution to law and economics should lead to an empirical test. In many cases, such as the law and economics of corporate and securities law, there is a wealth of data and the tests are easy. In other areas, data is less accessible and the challenges are greater.

A brief survey of the current projects at the Law School gives a sense of the many facets of law and economics, its broad focus, and its commitment to rigorous examination of areas of the law that matter the most. Richard Epstein is writing on health law and the many ways in which government regulation of the medical profession affect the quality of health care in this country. Randal Picker continues his work on the basic principles of the law of bankruptcy and corporate reorganization. Daniel Shaviro is undertaking a major reexamination of our law of corporate income taxation. Alan Sykes continues using economics as a way of understanding the structure and the policies inherent in the laws governing international trade regulation. We remain confident that in these and other areas, careful and thoughtful economic analysis will make it possible to understand and improve the law.

Many contributions to law and economics that have been made at Chicago are now so much a part of the established wisdom that it is easy to forget the controversy they originally provoked. These well understood contributions are not regarded as economic analysis of law, but simply as common sense. Of course, if the idea had been a commonplace at its inception, it could not have been much of a contribution. Too often, however, we forget that the idea was first greeted with derision, hostility and disbelief. The ultimate test of good scholarship is whether it can make the passage from being an idea that is obviously wrong to being one that is obviously right. As one might expect, one of the swiftest passages was made by Coase's "The Problem of Social Cost." When he first presented the paper at Chicago, a vote was taken at the outset on whether Coase was in error and the vote was twenty to one against Coase. As George Stigler explained later, "If Ronald had not been allowed to vote, it would have been even more one-sided." At the end of the evening another vote was taken, and there were twenty-one votes in Coase's favor and none against.

Douglas G. Baird is Harry A. Bigelow Professor of Law and Director of the Law and Economics Program.

Mary Becker

The Future of Feminism

Mary Becker

The contemporary feminist movement began with a strong emphasis on sensuality: that women should be treated like men because similarly situated. This was the thrust of the ERA, which dominated early analysis of women's legal issues. Feminists concentrated throughout the seventies on equality arguments and the need to eliminate laws that categorized people on the basis of their sex.

In the eighties, many feminists writing in law began for the first time to talk about differences and the need to look beyond practices that treated women and men differently. Catharine MacKinnon paved the way with her criticism of the ERA approach in her first important book, Sexual Harassment of Working Women, which shattered the calm of a single shared image of the relationship between sexual inequality and law.
Since the early eighties, legal feminism has been filled with controversy and conflict among feminists, with each year bringing more disagreements on how best to use the legal system to improve women's status and lives. Many of the new controversies and insights are related to a greater appreciation of differences: how women and men differ and how women differ from each other; why they differ; how to accommodate difference without accepting inequality.

There has still been little exploration among academic feminists in law, however, of women's feelings and how those feelings differ from the feelings of men. One of the weaknesses of much feminist legal-academic writing is that it tends to be abstract, obscuring, rather than illuminating the ways in which specific laws or practices contribute to women's subordination or are inconsistent with women's needs. One reason for the tendency toward abstraction may be that for many issues, concrete exploration of the issue may reveal conflicts among women of different colors or races or sexual orientations or marital status or generations. In addition, discussing women's feelings is often dangerous.

Let me use child custody to illustrate some of these points. Custody rules should make sense on an emotional level. Yet we tend to ignore emotions in analyzing custody. Ignoring emotions is not gender neutral. Custody laws ignoring emotions stronger for women (and their children) inevitably tend to be more consistent with men's emotional needs than women's (and children's).

Although we all know that children mean different things emotionally to most women and most men, feminists writing about custody standards have tended to downplay that difference. Indeed, with the notable exception of Martha Fineman ('75), feminists have not even mentioned the fact that women's bonds with their children are important. And no one has explored in any depth the differential quality of the emotional relationship of women and men with children.

This silence is easy to understand. Discussions of the emotional differences between mothering and fathering are dangerous and likely to produce, as well as reveal, conflicts among women. Such discussions are dangerous because they reinforce traditional stereotypes of women as mothers, as people whose essential fulfillment is in nurturing rather than self-actualization or achievement.

Such discussions are likely to produce conflict because different generations of women are likely to have different perceptions about the emotional meaning of mothering. Older women who have mothered are likely to realize that, no matter how important self-actualization and achievement are for them, mothering is also extremely important emotionally and more important to them than fathering is for the fathers of their children. Older women are likely to realize that equal parenting cannot be achieved by an act of egalitarian will by even the most egalitarian of couples. Younger women are more likely to believe that equal parenting is a real possibility, and that they and their partners will achieve it. Many women in both groups believe that equal parenting is necessary for equality between the sexes, and this belief silences older women, who are reluctant to make equality more difficult for younger women to achieve or to dampen young women's hopes for realizing equality in their lives. Older women rightly realize that expressing their feelings about the importance of mothering will inevitably reinforce harmful stereotypes and make it more difficult for individual women to negotiating equal parenting in their relationships with men. Any exploration of maternal feelings in the context of child custody reveals a conflict between two goals, both of which are critically important for feminists: improving the quality of women's lives, including their emotional lives, and reducing women's subordination to men.

Yet silence is also dangerous. As Audre Lorde eloquently puts it in an essay in her book *Sister Outsider*: "What is most important to me must be spoken, made verbal and shared, even at the risk of having it bruised and misunderstood." In the context of custody, silence can mean deep emotional injury for mothers and children when emotionally distant fathers receive custody because women's emotional labor is invisible.

Although I have used custody rules to make my points, I think that in the future feminists need to explore many legal rules and practices from the perspective, not just of sexual inequality, but also from the perspective of the needs of women living today, including their emotional needs. And similar conflicts are likely to arise in analyzing many issues: rape, pornography, sexuality, cosmetic surgery, religion, military service, maternal-paternal leave, marriage, sexual harassment, and beauty standards in employment, to name a few.

Feminist legal writing is still in its infancy. It is only within the last decade that feminist legal academics have begun the difficult task of exploring, in light of the differences between women and men and among women, how legal rules and practices should be adjusted both to move toward sexual equality and to reflect and protect women's needs (including emotional needs). Although both goals are crucial, they often conflict. Exploring these conflicts and the conflicts among women is the feminist agenda of the nineties.
An Indigent Willie Smith Might Be in Jail

Stephen J. Schulhofer

A recurrent theme in commentary on the William Kennedy Smith rape trial was that money made the difference. The New York Times reported that the outcome—Smith's acquittal—hinged in large part on a disparity of resources and talent: two civil servants for the prosecution versus four private practitioners, including a man many regard as the finest criminal defense lawyer in southern Florida. News reports stressed the prosecutor's strategic errors and supposed lack of polish. The skilled defense team also hired a leading consultant on jury selection and spent tens of thousands of dollars on experts and exhibits. By one account, the defense cost about $1 million.

A few experts, with 20-20 hindsight, assure us that the state's case was a loser all along. Some even charge that the prosecutor was irresponsible to bring it. But the accuser showed bruises consistent with a physical assault and her demeanor in the hospital emergency room strongly corroborated her claim of having suffered a traumatic experience. Taking date rape seriously means that complaints of this sort cannot easily be disregarded.

If it is proper to prosecute in this kind of case, will resources make a difference to the outcome? You bet. Without the financial backing that his family provided, Smith could today be a convicted rapist sentenced to one of Florida's oppressively overcrowded prisons.

Does this mean that a fair system would have convicted him? Not for a minute. It means only that the adversary system worked as it should. Vigorous cross-examination exposed weaknesses in the prosecutor's case, a jury applied its common sense to conclude that the state had not proved guilt beyond a reasonable doubt.

Smith deserved the acquittal, but he was also lucky—lucky he got the chance to invoke safeguards that should be available to all. In most cities, 80 percent of criminal defendants are poor. Until 1963, an indigent Florida defendant in a case like Smith's would have faced trial without the help of any defense attorney at all. It was only the Supreme Court's Gideon v. Wainwright decision, requiring courts to appoint counsel for indigent felony defendants, that put a stop to this travesty of justice.

But the promise of the Gideon case was never fully implemented, and the current Supreme Court is busy dismantling it. Big city public defenders often must handle fifteen to twenty felony cases in a single day. Many are skilful and do their best under adverse conditions, but they are forced to render perfunctory service. Many are not so skilful. Low salaries for public defenders force rapid turnover, and court-appointed private practitioners in many states receive only $10 to $30 per hour, with a cap of $500 or $1,000 per case—often not even enough to cover overhead.

In theory, the Constitution requires counsel to render "effective assistance." But standards of acceptable performance are low, and doctrines defining "effectiveness" are too vague to serve as real safeguards. There are no minimum requirements for investigation or trial preparation and no minimum standards of competency. Any member of the bar is presumed competent, even in a capital case and even if he or she has no prior trial experience or has never before worked on a criminal matter.

There is another problem. How can the indigent defendant claim ineffective assistance? Usually the only viable way is to file a complaint after conviction. But the Supreme Court has held that there is no right to counsel for such complaints, which are known as "post-conviction" proceedings. Even prisoners on death row have no constitutional right to post-conviction legal assistance in trying to show unfairness at their trials. So the uneducated, often illiterate inmate who wants to challenge the performance of his trial attorney must do so without professional help.

In 1990, the court erected another hurdle. Roger Coleman, a prisoner on Virginia's death row, sought a hearing on his claim of ineffective assistance. But in prior state proceedings, his new attorney had filed the appeal papers three days late. Justice Sandra Day O'Connor wrote for the majority that this procedural technicality prevented federal courts from inquiring into the competence of the lawyer who represented Coleman when he was on trial for his life. "This case," O'Connor wrote, "is at an end."

Rules like these remove any incentive for states to provide decent representation for the indigent. If defendants are incompetent or make mistakes, their clients, innocent or guilty, will pay the price.

Money made a big difference in the Smith case. It makes an even bigger difference in common criminal cases where the charge by itself does not elicit skepticism. Every day, defendants without resources are convicted on shaky evidence in our urban courts. Many of them may be guilty anyway. Some of them almost certainly are not. The rich will continue to get special justice because our society remains unwilling to make the constitutional guarantee of a fair trial a reality for all.

Stephen J. Schulhofer is Frank and Bernice J. Greenberg Professor of Law and Director of the Center for Studies in Criminal Justice. This article first appeared in the Los Angeles Times, December 17, 1991, in the Metra Section, Part B, page 7.
APPOINTMENTS

Geoffrey Stone is Reappointed Dean

President Hanna Holborn Gray has appointed Geoffrey R. Stone '71 to a second five-year term as Dean of the Law School; effective July 1, 1992. "Geof has provided wonderful leadership to the Law School and has contributed greatly to our university. All of us are fortunate in his collegialship and his activity on behalf of the school and the University," said President Gray. During his first five years, Dean Stone has extended the Law School's public service program, expanded the Mandel Legal Aid Clinic, established the Law and Government Program and the Center for the Study of Constitutionalism in Eastern Europe, encouraged closer dialogue with students, and expanded interdisciplinary studies. At the Fall Quarter's Town Hall Meeting, Dean Stone addressed the students' question of his agenda for the next five years, saying he did not have one. "I see the Dean's role as making use of opportunities as they arise, rather than trying to impose an agenda on the institution. I will continue to promote the things I care most about: teaching, scholarship, collegiality, and good relations between faculty and students in a mutually supportive environment."

Faculty

Gerhard Casper, who has served as Provost of the University of Chicago since 1989, has announced his resignation effective July 1, 1992. Mr. Casper, the William B. Graham Distinguished Service Professor of Law and former Dean of the Law School, has accepted appointment as President of Stanford University in California. He will take up his new appointment on September 1. "Gerhard has served the Law School and the University for more than a quarter of a century," said Dean Stone. "We are all deeply grateful for all he has done for us and we wish him well in his new endeavor."

Retiring Professors Honored

Faculty and staff of the Law School honored Professors Philip B. Kurland and Jo Desha Lucas at a reception on December 4, 1992, on the occasion of their retirement from the faculty. In a time-honored tradition stretching all the way back to 1988 (as Dean Stone put it, "short, but no less a tradition"), the faculty presented the two professors with University of Chicago rocking chairs. In his address to the gathering, Dean Stone expressed the hope that these chairs "will not be used for leisure but for piling up your papers and files as you work on your next books."

Dean Stone also took the opportunity to look back to 1953, the year both professors joined the faculty, when the student body totaled 250 and tuition was $738 per year. He found that the core curriculum was much the same as it is today, although there are now many more courses. In reply, Jo Lucas, Arnold I. Shure Professor Emeritus in Urban Law, told several anecdotes about those early days, while Philip Kurland, William R. Kenan Jr. Distinguished Service Professor Emeritus, said that the strength of a great law school comes from within, from the quality of its faculty and students. Both men paid tribute to former Dean Edward Levi '35, who was responsible for appointing them to the faculty. Alumni will have the opportunity to honor Professors Kurland and Lucas at this year's Annual Dinner, on May 7.

Visiting Faculty

Eleanor B. Alter returns to the Law School as Visiting Professor of Law in the Spring Quarter, 1993. Ms. Alter, one of the nation's leading matrimonial lawyers, is a partner in the New York law firm of Rosenman Colin Freund Lewis & Cohen. She teaches in the areas of family law, remedies and legal ethics. Ms. Alter has been a frequent visitor to the Law School and most recently taught the Remedies course in Spring 1991.

David J. Cohen, who visited the Law School last spring, returns as Visiting Professor of Law in the Autumn Quarter 1992. Mr. Cohen is Associate Professor of Rhetoric at the University of California, Berkeley. He combines interests in law and ancient history and is an expert in ancient Greek and comparative law. Mr. Cohen has served as a visiting professor at the University of Frankfurt at the Max Planck Institute for Comparative Legal History.

Hideki Kanda, Professor of Law at the University of Tokyo, will serve as a Visiting Professor for one quarter during both the 1992-93 and 1993-94 academic years. Mr. Kanda has written...
Daniel Shaviro Appointed Associate Dean

Professor Daniel N. Shaviro has accepted appointment as Associate Dean of the Law School, effective July 1, 1992. Mr. Shaviro succeeds Professor Diane P. Wood, who has held the appointment for the past three years. Mr. Shaviro sees his main task as Associate Dean in organizing the curriculum. “The Law School cares about offering the right mix of courses that the students will find most useful. This requires the faculty’s cooperation, and I look forward to guiding and overseeing the plan. Tax is one area, for example, where I know there may be some restructuring.” The Associate Dean is also responsible for matters concerning the Law School building and acts as a liaison between the faculty and the administration. Mr. Shaviro already has a list of specific projects he would like to undertake, such as promoting faculty-student lunches. He is looking forward to working closely with Dean Stone over the next two years.

Professor at the Law School for the Autumn Quarter, 1992. Ms. Nussbaum is the author of numerous scholarly articles and her books include The Theory of Desire: Theory and Practice in Hellenistic Ethics (forthcoming), Love’s Knowledge: Essays on Philosophy and Literature (1990), and The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy (1986). Ms. Nussbaum will teach a course on law and literature.

Ingo Richter will serve as the Law School’s Max Rheinstein Visiting Professor of Law in the Autumn Quarter, 1992. Mr. Richter is a professor at Hamburg University School of Law, where he teaches in the fields of constitutional law and administrative law. Before joining the Hamburg faculty, Mr. Richter studied law in Göttingen, Munich, Hamburg and Paris and served for ten years as Research Director of the Max-Planck Institute for Educational Research in Berlin. He is the editor of the Journal of Education Law and the author of several books, including a recent work on public labor law. Mr. Richter will teach a course on legal problems of the welfare state in Europe.

Andras Sajo is the Hungarian Affiliate of the Law School’s Center for the Study of Constitutionalism in Eastern Europe. He will serve as Visiting Professor in the Winter Quarter, 1993. Mr. Sajo is professor of comparative and international business law at the School of Economics, Budapest, scientific counselor to the Institute for Legal and Political Sciences of the Hungarian Academy of Sciences, and a member of the Hungarian Constitution Drafting Committee. Mr. Sajo has written several books and numerous articles on such subjects as social and legal change, international law, and legal philosophy. He will be teaching a course on human rights in Eastern Europe.

Peter G. Stein, the Regius Professor of Civil Law at the University of Cambridge and a Fellow of Queens’ College, returns to the Law School in the Autumn Quarter, 1992, as Visiting Professor. Mr. Stein, who is one of the leading experts in Roman law of his generation, has visited the Law School several times in the past, most recently in 1990. He will teach a course in Roman law.

LAW SCHOOL NEWS

Support for Eastern Europe Center

The Law School has entered into an agreement with philanthropist George Soros that will provide substantial support for the Law School’s Center for the Study of Constitutionalism in Eastern Europe. Researchers at the Center are conducting a multi-year, comparative study of the constitution-making processes in seven countries and five republics of the former Soviet Union: Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Romania, Yugoslavia, Estonia, Latvia, Lithuania, Ukraine, and Russia.

“The Soros Foundation is financing activities that the Center was already committed to pursuing, as well as ventures we wouldn’t have been able to afford,” said Dean Geoffrey Stone. “By supporting our affiliates in Eastern Europe and sponsoring conferences where lawmakers, academics and observers can meet to exchange information and ideas, Mr. Soros has demonstrated his genuine commitment to democracy, pluralism and the...
pursuit of knowledge," he said.

As part of the agreement, Central European University, which was established by Soros in 1990 with campuses in Prague and Budapest, will serve as the exclusive European repository to house the materials gathered by the Center. Through the Soros Foundation, Central European University will support the information gathering and reporting activities of the Center's affiliates in Eastern Europe. The network of collaborators continues to grow as dozens of observers witnessing each country's constitution-making process, ethnic conflicts, advancement in privatization and party formation send reports and other documents to the D'Angelo Law Library.

The vast selection of materials, which includes constitutional drafts and transcripts of debates about the drafts, are collected by Dwight Semler, coordinator for the Center. "The whole idea behind this archive is that in ten years somebody could come here and say 'I want to know how the Bulgarian constitution was written' and all the information could be found right here," Semler said, "What's different about the Chicago collection is that no one else is studying all of the countries. Only we will know what goes on in Poland compared to what takes place in the Baltics."

As part of the partnership between Central European University and the Law School, each will sponsor at least one conference every year.

Conferences on Eastern Europe

Chicago

On October 18-20 the Law School's Center for the Study of Constitutionalism in Eastern Europe organized its first full-scale conference, "Constitutional Revolutions in Eastern Europe." The conference opened with a keynote address by Juan Linz, Professor of Political and Social Science at Yale University. A leading scholar on the subject of political transitions to democracy, his address was: "Presidentialism and Parliamentism: Does it Make a Difference?"

Of the more than fifty participants, half were East European constitutional scholars, the majority of whom maintain a direct working relationship with the Center here at the Law School. The other half comprised West European and American legal scholars. The two-day conference covered five topics: Executive and Legislative Relations, Ethnic Conflict and Federalism, Retribution and Restitution, Judicial Review, and Electoral Laws. The Center's design for the conference was to cover the topics so as to allow for a broad comparison of the entire region. All of the East European participants prepared papers in advance of the conference for the other members to read and study. This approach allowed the sessions to become an exchange of questions and ideas among all of the participants.

Participants in the conference included: Katalin Balazs-Veredy, Librarian of the Hungarian Parliament, Budapest; Victor I. Borisyuk, Professor of Political Science, U.S.A. & Canada Institute, U.S.S.R. Academy of Sciences, Moscow; Milos Calda, Professor of Languages, Charles University, Prague, Czech and Slovak Federal Republics; Vojtech Cepl, Professor of Law and Vice Dean, Charles University, Prague; György Frunda, Member of Parliament, Bucharest, Romania; Dieter Grimm, Justice of the Supreme Court of Germany; Elzbieta Golik-Morawaska, Researcher, Institute of Jurisprudence, Warsaw, Poland; Aanund Hylland, Professor of Economics, Oslo University, Norway; Deyan Kiaranov, Program Director, Center for the Study of Democracy, Sofia, Bulgaria; Rumyana Kolarova, Professor of Sociology, Sofia University, Bulgaria; Peter Kresák, Professor of Law and Vice Dean, Comenius University, Bratislava, Czech and Slovak Federal Republics; Krenar Loloçi, Professor of Constitutional Law, University of Tirana, Albania; Claus Offe, Professor, Zentrum für Sozialpolitik, University of Bremen, Germany; Wiktor Osiatynski, Program Director, Center for Human Rights in Eastern Europe, Warsaw; Gueorgui Poshtov, Researcher, Institute for State and Law, Sofia; Ulrich K. Preuß, Professor of Law, University of Bremen, Germany;
Andras Sajo, Professor of Comparative and International Business Law, School of Economics, Budapest; Branko Smerdel, Professor of Constitutional Law and Comparative Political Institutions, Zagreb Law School, Yugoslavia; Vilmos Sos, Senior Fellow, Hungarian Academy of Sciences, Budapest; Eugene Tantchev, Professor and Dean, Sofia University Law School, Sofia; Michel Troper, Professor of Law, University of Paris, Nanterre, France.

Prague

On December 13-15 the Law School's Center for the Study of Constitutionalism in Eastern Europe, in conjunction with Central European University of Prague, Czechoslovakia and the Open Society Fund of New York, sponsored the second in the series of conferences planned by the Center. The conference was entitled "Political Justice and Transition to the Rule of Law in East Central Europe: Moral, Legal, and Social Problems." It was convened on the campus of Central European University. In order to allow for a maximum of scholarly exchange, the conference maintained the same format as the October conference. Papers and commentary were exchanged prior to the meetings, while the conference was used to discuss widely varying opinions. The central focus of the conference concerned the issue of retribution, or how the retribution of former communist governments will confront former communist party members who stand accused of crimes committed during the communist period. Conference sessions included: "Injustices under Socialism and Laws Passed and Pending to Remedy those Injustices"; "Retroactivity in Criminal Law"; "Retribution, Restitution and Justice"; "The Judge's Perspective"; "Groups Responsible for State Crimes and Oppression"; "Experiences with Punishment and Amnesty in Transition to Democracy"; and "Social Functions of Political Justice."

The issue of retribution is particularly critical now because of the deep resentment shared by the majority of people in East Central Europe toward their former communist governments and officials of the communist party. Resentment has grown since the overthrow of the communist governments because former communist party members were well placed to profit from their positions of authority even after the collapse of the party. In Hungary and Czechoslovakia, laws of broad and sweeping character have already been passed to punish former communist party members. Poland is considering legislation similar to the Hungarian law, which would punish those who collaborated with the former Soviet Union and who participated in the crushing of the Solidarity movement. If the laws remain in place and are applied, hundreds of thousands could be prosecuted. From a legal standpoint the retribution laws are highly excessive. Except for cases of murder, nothing within the new laws was illegal during the communist period. To punish now what was not previously illegal has deeply divided the fledgling democracies. President Vaclav Havel of Czechoslovakia, who himself was punished during the communist period, has expressed his discomfort with the law. Hungarian President Arpad Zeneck, also a victim under the communists, could reach no decision on the law and has sent it to the Constitutional Court for an opinion.

Those present at the conference included legal scholars, constitutional lawyers and judges from the U. S., Western Europe, and East Central Europe. In addition, legal scholars from Argentina were in attendance because that nation has faced similar issues following the collapse of its military government.

The entire conference was conducted in English and Czech. It was also audio-taped in both languages and video-taped in English. Copies will be available in the Spring. The Center’s next conference is tentatively scheduled for mid-September in Prague. It will cover the issue of retribution, as well as questions of restitution.

The Maroonbook Gains Ground

"This chapter adopts the sensible approach to legal citations introduced by The University of Chicago Manual of Legal Citation, popularly known as the Maroonbook." So begins chapter four, Citation Forms, of a new book, Judicial Opinion Writing Manual, published last year by the American Bar Association, a product of the Appellate Judges Conference and the Judicial Administration Division. The book offers judges advice on how to cite, and expresses its support of the Maroonbook for citation style.

Jerome Marcus ’86, one of the co-authors of the citations chapter, was the chair of the student committee, consisting of members of the University of Chicago Law Review and the University of Chicago Legal Forum, that drafted the Maroonbook, which was first published in 1986. Their original inspiration for the book came from Professor (now Judge) Richard Posner, who headed an early faculty committee that began the task of writing simplified citation guidelines. "I have been convinced from the outset that citations should be simple and straightforward," said Marcus. "There is a tremendous appetite among lawyers for needless precision. The old rules enabled them to wrap themselves in precision and spend a great deal of time to no real advantage."

Dale Carpenter ’92, current Editor-in-Chief of the Law Review, was enthusiastic about the judges’ book. "The adoption of the Maroonbook in the opinion writing manual reflects a growing awareness in the legal profession that citation form should not consume so much energy. It need only get us to the source cited. We’re also delighted that 3rd Circuit Judge Edward Becker has decided to use the Maroonbook in his opinions. Now, if we can only get certain 7th Circuit judges to do likewise, we may yet break the hold of persnickety citation."
Visiting Committee

October 24 and 25, 1991, the Law School welcomed the Visiting Committee for its annual meeting. This year, the program focused on the academic mission of the Law School. After the traditional continental breakfast and welcome from Dean Stone, committee members listened to Professors Richard Helmholz, David Strauss, and Richard Epstein discuss why scholarship is central to the Law School’s mission.

In the next session, Professors Douglas Baird and Geoffrey Miller and Law Librarian Judith Wright discussed how scholarship is promoted. Mr. Miller concentrated on the nature of the institution, identifying the characteristics that have brought the Law School success. Mr. Baird discussed the Law School’s workshops and fellowships. Ms. Wright talked about the challenges that the library faces in light of the ever diversifying interests of the faculty.

During the lunchtime break, members of the Committee held concurrent seminars for faculty and students. James Hormel ’58 and Marc Wolinsky ’80 discussed gays in the military; Jeffrey Peck ’82 spoke on the confirmation process for Supreme Court Justices, and Judge Edith Jones discussed Vice-President Quayle’s proposals for civil justice reform.

After lunch, Professors Anne-Marie Burley, Michael McConnell ’79, Randal Picker ’85, and Cass Sunstein spoke to the Committee on new scholarly directions in the Law School. Mr. Burley described the international law curriculum. Mr. Picker described recent advances in “game theory.” Mr. McConnell discussed the Law and Government Program and its effect on the promotion of scholarship through faculty workshops and student research, and Mr. Sunstein described the Center for the Study of Constitutionalism in Eastern Europe. The Committee then met with students from Law Review, Legal Forum, moot court, and the Law Students Association to discuss the student contributions to scholarship.

At 4:00 p.m., the Weymouth Kirkland Courtroom was standing room only as the Visiting Committee, faculty, staff, and students gathered to listen to the 1991 Wilber C. Katz Lecture, which was delivered by Professor Mary Becker ’80. Her topic was “The Politics of Women’s Wrongs and the Bill of Rights: A Bicentennial Perspective.” A reception followed the lecture, after which the Committee gathered in Burton-Judson lounge for dinner. The following day, the Committee met with members of the Law Students Association before entering executive session with Dean Stone. Lunch with the faculty ended the Visiting Committee’s program with a talk from the faculty’s newest member. Randolph Stone, Clinical Professor of Law and Director of the Mandel Legal Aid Clinic, entitled his talk “From Public Defender to Clinical Professor of Law.”

Committee members were invited to attend the Bill of Rights conference, which followed immediately.

Visiting Committee Members

Chair 1990-91

James C. Hormel ’58, Equidex, Inc., San Francisco, California

Terms Expiring 1991-92

Dennis Archer, Dickinson, Wright, Moon et al., Detroit, Michigan.

Irving I. Axelrad ’59, Beverly Hills, California.

Sara Bales ’70, Chicago, Illinois.


Bruce L. Engel ’64, WTD Industries, Inc., Portland, Oregon.

Daniel Greenberg ’65, Electro Rent Corporation, Van Nys, California.


Chester T. Kamin ’65, Jenner & Block, Chicago, Illinois.

Milton Levenfeld ’50, Levenfeld Eisenberg Janger et al., Chicago, Illinois.


Robert F. Lusher ’59, Builders Federal, Hong Kong.

The Hon. Mary K. Mochary ’67, U.S. Department of State, Washington, D.C.

The Hon. Stephen Reinhardt, U.S. Court of Appeals, 9th Circuit, Los Angeles, California.

The Hon. William Sessions, Director, Federal Bureau of Investigation, Washington, D.C.


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

The Hon. Patricia Wald, U.S. Court of Appeals, D.C. Circuit, Washington, D.C.

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

Terms Expiring 1992-93

John Friedman Jr. ’70, Dewey Ballantine Bushby et al., New York, New York.
Jean Reed Haynes ’81, Kirkland & Ellis, New York, New York.
The Hon. Thelton E. Henderson, U.S. District Court, Northern District of California, San Francisco, California.
Colette Holt ’85, Park District, Chicago, Illinois.
Elmer Johnson ’57, Kirkland & Ellis, Chicago, Illinois.
The Hon. Phyllis Kravitch, U.S. Court of Appeals, 11th Circuit, Savannah, Georgia.
Jeffrey Peck ’82, U.S. Senate Committee on the Judiciary, Washington, D.C.
Herbert Portes ’36, Horwood Marcus & Braun, Chicago, Illinois.

Terms Expiring in 1993-94

Hillary Rodham Clinton, Rose Law Firm, Little Rock, Arkansas.
Nancy G. Feldman ’46, Tulsa, Oklahoma.

Steve Barnett ’66, Terry Diamond ’63, Michael Donnella ’79, Mark Mamolen ’77, and Allen Turner ’61 prepare for the start of the annual meeting of the Visiting Committee.

Alfons Puelinkx ’65, Puelinkx, Linden, Grolig, Uyttersprot, Brussels, Belgium.
The Hon. Stephanie Seymour, U.S. Court of Appeals, 10th Circuit, Tulsa, Oklahoma.

The Hon. Charles Freeman, Illinois Supreme Court, Springfield, Illinois.
Maurice Fulton ’42, Glencoe, Illinois.
Laura B. Hoguet ’67, White & Case, New York, New York.
Lillian E. Kraemer ’64, Simpson, Thacher & Bartlett, New York, New York.
Mark C. Mamolen ’77, Carl Street Partners, Chicago, Illinois.
Michael J. Marks ’63, Alexander & Baldwin, Inc., Honolulu, Hawaii.
The Honorable Monroe G. McKay ’60, U.S. Court of Appeals, 10th Circuit, Provo, Utah.
Sir Geoffrey W. Palmer ’67, Wellington, New Zealand.
Barry S. Wine ’67, New York, New York.

Dean Stone greets Judges Karen Henderson (left) and Phyllis Kravitch. Steve Barnett ’66 stands behind Dean Stone.
Bill of Rights Symposium

Constitutional scholars from the Law School and other leading institutions celebrated the bicentennial of the Bill of Rights at a conference "The Bill of Rights in the Welfare State" October 25-26, 1991, at the Law School. The symposium formed part of the year-long celebration of the University of Chicago’s Centennial. Mary Becker ’80, Professor of Law, provided a prologue to the symposium with her delivery of the Wilber C. Katz Lecture on October 25. In her talk, "The Politics of Women’s Wrongs and the Bill of Rights: A Bicentennial Perspective," Ms. Becker argued that the Bicentennial of the Bill of Rights may not be a cause for women to celebrate, since the original Bill was written by white, propertied males who were aiming to establish and protect rights for their own kind. Since then, some provisions of the Bill have even increased inequities for women rather than corrected them, while the reverence felt for the Bill has often impeded legislative reform. "The Bill of Rights incorporates a public-private split and a negative concept of rights. Both contribute to viewing women’s concerns as beyond the scope of government," she said. Ms. Becker illustrated her argument with examples from seven specific clauses, especially from the religious freedom clauses of the first amendment.

Justice John Paul Stevens of the United States Supreme Court gave the keynote address of the symposium to a packed house in the Glen A. Lloyd auditorium, while the overflow watched on video relay in the Courtroom and Classroom I. Justice Stevens entitled his talk "The Bill of Rights: A Century of Progress," which he said referred back to the Chicago centennial world’s fair of 1933, also optimistically titled "A Century of Progress," although it took place in an environment of economic depression, gangsterism, the rise of Fascism in Europe, and the assassination of the city’s mayor. Justice Stevens could see alarming parallels between 1933 and present day woes of financial mismanagement, the collapse of the Soviet Union, unrest in Europe and "an extraordinarily aggressive" Supreme Court which was curtailing constitutional protection of individual liberties. He said that during the first century of its existence, the Bill of Rights was static, merely confirming that the government is obliged to obey the law of the land. "In the second century of its life, however, the Bill of Rights became a dynamic force in the development of American law. The United States Supreme Court played a major role in that development." Justice Stevens then discussed some of the major Supreme Court cases illustrating how interpretations of the Constitution and the amendments gradually changed over the century, enlarging the concepts of liberty and tolerance. Speaking of the controversies over abortion rights and the right to die, he maintained that tolerance must be the guiding principle in a
secular state. Judges have a duty to develop the law. "Judgments that apply principles that are embedded in the Constitution, that are supported by a candid attempt to explain the application of the principle and the relevance of prior decisions, represent appropriate developments of the law even when neither text nor history supplies the entire basis for the new decision."

Participants in the symposium, alumni, and guests of the Law School attended a dinner later that evening in the Harold J. Green Lounge. Mary Ann Glendon ’61, Professor of Law at Harvard Law School, spoke after dinner. In her talk, entitled "Rights in Twentieth Century Constitutions," she contrasted the U.S. Constitution and Bill of Rights with the systems of other democracies. Many countries developed constitutions only within this century when the foundations of the welfare state already existed. They built welfare obligations into their constitutions. In contrast, the U.S. Bill of Rights enumerates negative rights, in keeping with traditional American distrust of government. Both kinds of systems face difficulties. "The problem of the Bill of Rights in the Welfare State," said Ms. Glendon, "is nothing less than the great dilemma of how to hold together the two halves of the divided soul of liberalism—our love of individual liberty and our sense of a community for which we accept a common responsibility."

The symposium itself took the form of five debates. The first, following immediately after Justice Stevens’s speech, pitted Richard A. Epstein, James Parker Hall Distinguished Professor of Law, against Professor Frank Michelman of Harvard University in a discussion of property rights and the amount of protection they should enjoy. Mr. Epstein called for a broad interpretation of the fifth amendment takings clause and advocated the same degree of protection of property as is afforded to speech. Mr. Michelman argued that speech and property should not be treated equally and that government should generally be trusted when it regulates property.

Carol M. Rose ’77, Fred A. Johnson Professor of Property at Yale University, moderated the debate. On Saturday, October 26, Stephen L. Carter, William Nelson Cromwell Professor of Law at Yale, moderated a debate between Professor Michael W. McConnell ’77 and Professor Kathleen M. Sullivan of Harvard University over interpretation of the religion clauses of the first amendment. Mr. McConnell argued that the establishment clause should be used to increase the number of religious choices and give religious voices a chance to be heard in public life, while Ms. Sullivan maintained that the establishment clause permits only minimal acknowledgment of religion.

Vincent A. Blasi ’67, Corliss Lamont Professor of Civil Liberties at Columbia University, served as the moderator of a debate between Cass Sunstein, Karl Llewellyn Professor of Jurisprudence, and Charles Fried, Carter Professor of General Jurisprudence of Harvard University, on speech in the welfare state. Professor Fried argued that the First Amendment protects individual autonomy

Papers from the Symposium will be published as vol. 59, no. 1 of the Law Review and also as a book by the University of Chicago Press.

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and criticized the fairness doctrine, the anti-pornography movement, and hate speech codes as inconsistent with this freedom. Mr. Sunstein said the First Amendment must be understood through the lens of democracy. It is about political deliberation, and commercial speech, libel, and pornography are not within the First Amendment's core. Moreover, the problem today is that insufficient attention is given to public issues and diversity of viewpoints. Some government regulation designed to promote public debate will promote the purposes of the First Amendment, even though it may intrude on the free market.

Judge Frank H. Easterbrook '73 of the U.S. Court of Appeals for the 7th Circuit and Bruce A. Ackerman, Sterling Professor of Law and Political Science at Yale, argued about the nature of constitutional interpretation. Mr. Ackerman argued for a broad approach, saying that the Constitution was transformed over the past century and that increased legislative and regulatory powers call for a corresponding increase in rights. Judge Easterbrook rebutted this argument, saying that the original understandings of the Constitution still have validity and that judicial interpretation must be justified by the constitutional text. The debate was moderated by Professor Margaret Jane Radin of Stanford University.

The concept of unenumerated rights was the theme of the final panel of the symposium, in which Judge Richard A. Posner of the U.S. Court of Appeals for the 7th Circuit challenged the views of Professor Ronald Dworkin of New York and Oxford Universities. Thomas C. Grey, Stanford University's Switzer Professor of Law, moderated. Professor Dworkin said that the Constitution's text will not resolve any significant issues of constitutional law and that there is no real difference between cases such as Roe v. Wade and cases involving difficult questions of free speech, such as whether burning the U.S. flag violates the First Amendment. Applying this analysis to Roe v. Wade, Mr. Dworkin argued that the constitutional right of abortion can be derived from a number of clauses of the Constitution, including the free exercise of religion clause of the First Amendment. Although Judge Posner agreed there are no simple shortcuts, such as textualism, to the decision of constitutional cases, he argued that the abstract theorizing of Mr. Dworkin was ultimately futile and that the only hope for sound constitutional law was greater immersion by judges in the facts underlying constitutional disputes, citing Justice Holmes as an example.

Papers from the Bill of Rights Symposium will be published in volume 59, no. 1 of the University of Chicago Law Review and as a book by the University of Chicago Press. If you are interested in the Law Review or the book, please send in the form on the previous page.

Tax Conference

The Law School's 44th annual Federal Tax Conference, a leader among the nation's tax conferences, took place October 28-30 at the Swissotel, Chicago. During the three days of the conference, participants considered aspects of taxing individuals, financial products, corporate and shareholder arrangements, and international tax questions. Speakers included Burton W. Kanter '52 (Neil Gerber & Eisenberg), who analyzed estate planning concepts for building wealth, protecting wealth from creditors, and reducing taxes on intergenerational transmission of wealth; Christian E. Kimball '83 (Kirkland & Ellis), who discussed the practical difficulties and tax questions arising when the purchase price of stock is tied to future stock value; and Richard M. Lipton '77 (Sonen-schein Nath & Rosenthal), who talked about the tax effects of transfers of indebtedness. This year marked the first time that a whole day was devoted to international tax matters. The international section of the program was organized under the direction of Robert Aland of Baker & McKenzie.

Legal Forum Symposium

The seventh annual symposium of the University of Chicago Legal Forum took place on January 30-31, 1992, as part of the University's Centennial celebration. In the spirit of the Centennial, the symposium looked forward to the next century as scholars from the United States and Europe discussed "Europe and America in 1992 and Beyond: Common Problems... Common Solutions?" Francis Jacobs, Advocate General of the European Court of Justice, was the keynote speaker of the symposium. He spoke on "Europe after 1992: The Legal Challenge." The symposium took the form of three panel discussions on Friday, January 31. Assistant Professor Anne-Marie Burley moderated the first discussion which looked at the role of the courts in the European Community. Discussants were Koen Lenaerts of the Court of First Instance of the European Communities; Hjalte Rasmussen, Professor of E.C. Constitutional Law at Copenhagen Business School and the College of Europe, Bruges; Martin Shapiro, Professor of Law at the University of California, Berkeley; and Joseph H.H. Weiler, Professor of

James Rill, Diane Wood, and Claus Dieter Ehlermann spoke on the final panel of the Legal Forum Symposium. Eleanor Fox was the moderator.
Law at the University of Michigan. After lunch, Richard Stewart, Assistant U.S. Attorney General for the Environment and Natural Resources Division and Rolf Wagenbaur, Head Legal Adviser to the E.C. Commission’s legal service team on Transport, Environment, and Consumer Affairs, discussed the regulation of the European environment.

Professor Cass Sunstein moderated the panel. The final panel examined competition law and antitrust developments in the United States and the E.C. Discussants were Claus-Dieter Ehlermann, head of the Directorate General for Competition of the E.C.; James F. Rill, Assistant U.S. Attorney General in the Antitrust Division; and Diane P. Wood, Harold J. and Marion Green Professor of International Legal Studies.

Kimball Receives Award

Spencer L. Kimball, Seymour Logan Professor Emeritus of Law, was the first recipient of the Robert B. McKay award, established by the Council of the Torts and Insurance Practice Section of the American Bar Association. The award will be given annually in recognition of an individual’s lifetime contributions to tort and insurance law. Robert McKay was a dean of NYU School of Law and a member of the ABA Board of Governors who exhorted lawyers to strive for “fairness and justice while safeguarding the ethical standards of what it means to be a lawyer.”

Campaign for the Next Century

The Campaign for the Next Century is a five year, University-wide effort seeking to raise $500 million in support of endowments, building projects and ongoing support of programs. The Law School’s portion of the Campaign is $25 million. The effort extends through June 30, 1996.

Olin Grant for Law and Economics

In a continuation of its long history of support of the Law School, the John M. Olin Foundation has announced a two-year grant of $731,000 to the Law School’s Law and Economics Program. This grant will support research of senior scholars working in the area of Law and Economics, Law and Economics workshops and working papers, The Journal of Law and Economics, and The Journal of Legal Studies. The grant will also continue the Foundation’s support of the John M. Olin Law and Economics Fellowship, which brings promising young scholars to the Law School and the John M. Olin Student Fellowships.

The grant will also establish two new programs. A series of lectures, named in honor of 1991 Nobelist in Economics Ronald H. Coase, will address issues of Law and Economics. A conference on new developments in economics and how they will change the field of Law and Economics will be held during the 1993-94 academic year, in honor of the twentieth anniversary of the publication of Judge Richard Posner’s ground-breaking book, Economic Analysis of Law.

Olin Foundation Executive Director James Piereson, in announcing the gift, said, “The Law and Economics Program at Chicago is truly outstanding, and we consider our grant there to be a wonderful investment in the future.” The Law School has benefited from the support of the Foundation since 1977.

Judge Prince Pledges Bequest

Former Cook County Circuit Court Judge Kenneth C. Prince, a longtime volunteer for and supporter of the Law School, has pledged a bequest gift of $200,000 to establish The Kenneth C. Prince Family Faculty Fund, which will help the Law School recruit and retain distinguished scholars and teachers in the future.

Judge Prince is a member of the College Class of 1932 and the Law School Class of 1934. Before his appointment to the bench in 1982, he was for 34 years associated with the Chicago firm that became Prince, Schoenberg, Fisher and Newman. Since 1984, he has been of Counsel to the firm—now known as Schoenberg, Fisher and Newman—and is affiliated with Endispute of Chicago, which specializes in alternative dispute resolution. He was President of the Chicago Bar Association, Chairman of the Chicago Bar Foundation and of
The Margaret and Richard Merrill Fund in Taxation at the Law School, which supports both student and faculty research. Mr. Portes is also a supporter of the President's Fund of the University.

In announcing the gift, Dean Stone called Mr. Portes, "A shining example of a University of Chicago Law School graduate. He is a distinguished practitioner and a leader of the alumni community in word and deed. The Law School is delighted by Herb's and Abra's continuing and generous support."

Law School Gift from Herbert Portes

Herbert Portes, a member of the Visiting Committee and a long-time supporter of the Law School, has made a five-year pledge of $150,000 in response to the Law School's needs within the University's Campaign for the Next Century. Mr. Portes, a resident of Northbrook, Illinois, graduated from the College in 1934 and is a member of the Law School Class of 1936.

Part of the gift will be added to the Abra and Herbert Portes Law Library Fund, which was created in 1987 by the Portes family in honor of Mr. and Mrs. Portes' fiftieth wedding anniversary. The remainder will be designated by the Dean to support the central mission of the Law School.

Mr. Portes is of Counsel to the firm of Horwood, Marcus & Braun in Chicago, and spent many years as partner and President of his own firm, Portes, Sharp, Herbst & Fox. In 1990, he was instrumental in establishing

Every spring, the Healthcare Law Society sponsors a Blood Drive

his professional life and that led to the establishment of this important gift.

Bernard J. Nussbaum Pledges Gift to the Law School

Bernard J. Nussbaum '55, a partner at Chicago's Sonnenschein, Nath & Rosenthal, has pledged $100,000 over five years to the Law School as part of the University-wide Campaign for the Next Century. This gift will be added to the Nussbaum Fund, which was established by Mr. Nussbaum in 1983 and endowed in 1990 in honor of his brother, Michael '61, and his sons, Peter (J.D. Yale '85), Andrew '91 and Charles (M.D. Rochester '84). The Fund currently supports projects central to the mission of the Law School as designated by the Dean.

Mr. Nussbaum is a long-time supporter of the Law School. He has served as Chairman of the Fund for the Law School and President of the National Law School Alumni Association. As a member of the National Steering Committee, Mr. Nussbaum helped to guide the Law School through its highly successful 1981-86 Capital Campaign. On three occasions, Mr. Nussbaum has chaired his Class's reunions, and he has spent two terms on the Law School Visiting Committee.

"Bud Nussbaum's support of the Law School, in word and deed, is deeply appreciated," said Dean Stone in announcing the pledge. "He helps set a

Students raised $9,000 at a charity auction January 17 in aid of community services at the Blue Gargoyle in Hyde Park. Professor Richard Epstein was the auctioneer. The auction was part of a Community Services Weekend, organized by LSA, in which student volunteers painted senior citizen housing, served meals, built a pantry, and packaged food for the needy.
First years Marin Cosman and Abby Rudoff (left) were the winners of the annual Talent Show, held in January, with their Gilbert and Sullivan-style song about women's life in law school. Third year Janine Goodman played her own compositions on the guitar.

standard for alumni commitment to higher education, and the entire Law School family is deeply indebted to him.”

Gene Dye Makes Gift to the Law School

In celebration of the 25th Reunion of the Class of 1967, class member **Gene E. Dye** has committed a gift of $100,000 to the Law School. The gift, which will be paid over four years, will support the Class of 1967 Fund and the annual Fund for the Law School.

A native of Valparaiso, Indiana, Mr. Dye entered the Law School in 1963, where he served on the Law Review. After taking a year off to work for a federal judge in the U.S. Virgin Islands, Mr. Dye returned to the Law School and graduated with the Class of 1967. Since that time, Mr. Dye has practiced in Paris where he is a Senior Partner of Salans, Hertfeld & Heilbronn, and is a lecturer in the University of Paris law faculties.

In accepting Mr. Dye’s gift, Dean Stone remarked, “Gene Dye’s generosity holds special meaning for the members of the Law School community, for it represents, in the most tangible way, Gene’s reflections on the role the Law School has played in his life and career. We are honored by and grateful for this magnificent support.”

**Faculty Notes**

In July and August, **Albert Alschuler**, Wilson-Dickinson Professor of Law, spent five weeks as a resident scholar at the Rockefeller Foundation’s Study Center in Bellagio, Italy. In September, he gave two lectures at the University of Pittsburgh Law School as part of the School’s Mellon Lecture series. His talks were entitled “Would You Have Wanted Justice Holmes as a Friend?” and “Oliver Wendell Holmes and the Decline of Rights.” In October, Mr. Alschuler offered “A Brief History of the Criminal Jury in America” at Valparaiso University’s Bicentennial Symposium on the Bill of Rights. Later that month, he appeared on a panel conducted by Arthur Miller on “The Adversary System: Dinosaur or Phoenix?” during the annual meeting of the Litigation Section of the American Bar Association. On November 7 and 8, Mr. Alschuler again lectured on Justice Holmes, this time at the University of Arkansas Law School at Fayetteville. At Arkansas, he also conducted a workshop for federal judges and faculty members on the Federal Sentencing Guidelines.

In October, **Douglas G. Baird**, Harry A. Bigelow Professor of Law, spoke at the AALS Workshop on Bankruptcy in Washington, D.C. While in Washington, he also attended the National Bankruptcy Conference. Later that month, he spoke at the annual Workshop on Commercial and Consumer Law in Toronto.

**Mary Becker** ’80, Professor of Law, was a panelist at the September Midwest Clinical Teachers’ Conference on Law Reform Litigation in the Nineties. She spoke on the “Agenda for Women in the Nineties.” In October, she spoke on “Feminist Theories” at a luncheon sponsored by the Law School. She participated in workshops at the University of Miami and Emory University in November, speaking on “The Politics of Women’s Wrongs and the Bill of Rights: A Bicentennial Perspective.” The same month she gave a talk on feminist legal theory to students at the Law School.

In July, **Anne-Marie Burley**, Assistant Professor of Law, attended a meeting of the Executive Council of the American Society of International Law in Washington, D.C. In November, she presented a paper entitled “Liberal Internationalism and the Act of State Doctrine” at the Program on International Economics, Politics and Security at the University of Chicago.

**Gerhard Casper**, William B. Graham Distinguished Service Professor of Law and Provost, gave six weeks of lectures through the end of July as a
Philip B. Kurland

Philip B. Kurland, William R. Kenan Jr. Distinguished Service Professor Emeritus, who retired December 31, 1991, has no plans to put his feet up and relax. He is currently editing Justice Felix Frankfurter's correspondence from 1939 to 1963, which he will publish as a book. He is also planning a further book on constitutional law and intends to continue as a consultant to the Chicago law firm of Rothschild, Barry & Myers.

Mr. Kurland's career as a teacher and scholar of constitutional law and legal history spans more than forty years. He joined the Law School faculty in 1953 after a short period teaching at Northwestern University. In 1973, he was appointed William R. Kenan Jr. Professor in the College and in 1977, Distinguished Service Professor. His expertise as an authority on the Constitution was frequently sought by public agencies: he has served as consultant to the Conference of Chief Justices, reporter for the Illinois Supreme Court Committee on Pattern Jury Instructions, consultant to the U.S. Economic Stabilization Agency, consultant to the Department of Justice and, for the period 1967-74, chief consultant to the U.S. Senate Subcommittee on Separation of Powers.

Forty years of law students looked forward eagerly to his classes. In 1954, he originated the Supreme Court seminar, which analyzes the work of the U.S. Supreme Court and its opinions for the current term. Mr. Kurland's scholarly work is well known. In 1960, he founded the Supreme Court Review, an annual volume of criticism of the work of the U.S. Supreme Court, which he edited until 1988. He is the author of numerous books, including *Jurisdiction of the Supreme Court of the United States* (1951), *Religion and the Law* (1962), *Of Life and Law and Other Things That Matter* (1968), *Felix Frankfurter on the Supreme Court* (1970), *Politics, the Constitution, and the Warren Court* (1970), Mr. Justice Frankfurter and the Constitution (1971), *Watergate and the Constitution* (1978), and *Cablespeech* (1984). In 1987, he and co-author Ralph Lerner edited a five-volume set of materials on the origins of the Constitution entitled *The Founders' Constitution.* Dean Stone said of Mr. Kurland, "The University of Chicago Law School has been graced throughout its history with a remarkable succession of constitutional law scholars, including James Parker Hall, William Winslow Crosskey, Harry Kalven, Gerhard Casper, David Currie, Antonin Scalia, Richard Epstein, Cass Sunstein, Michael McConnell, David Strauss, and others too numerous to mention. It's not open to argument, however, at this Law School, which so loves debate, that preeminent among these constitutional scholars is Phil Kurland. Indeed, Phil is truly one of the most distinguished and influential scholars in the history of American constitutional law."

Visiting Professor at the University of Munich. His theme was "Current Developments in American Constitutional Law." On July 4, he gave a lecture on "Separation of Powers" at the University of Tübingen.

David P. Currie, Edward H. Levi Distinguished Service Professor of Law, spent the autumn quarter as Visiting Professor in the European University Institute in Florence, learning about the European Community and the Italian Constitution.

In September, Richard A. Epstein, James Parker Hall Distinguished Professor of Law, was the first distinguished visiting Professor in Law and Economics at the University of Kansas Law School. Topics he lectured on included access to health care, mandatory retirement for university professors, affirmative action in law schools, bargaining with Government, and an examination of the employment discrimination laws. Later that month, he was the first John M. Olin Lecturer in Law and Economics at Fordham University, where he lectured on "Legal Rules of Conflicts of Interest for Lawyers." At the beginning of October, he chaired a panel at the University of Chicago's Centennial Conference on the University of the Twenty-First Century, which examined the resources required to meet the challenges of the next century. The same month, he spoke to the Real Estate Section of the Chicago Bar Association on "Some Aspects of Takings Law in Land Use Cases." On October 25, he debated with Frank Michelman on the topic of "Property and the Politics of Distrust" at the Bicentennial Conference on the Bill of Rights at the Law School. In November, he lectured at Dartmouth College Humanities Institute on Constitutional Interpretation on the topic, "A Common Lawyer Looks at Constitutional Interpretation." He spoke at the University of Chicago School of Social Service Administration's Centennial Conference on Altruism on the subject, "Altruism: Universal and Selective." Also in November, he lectured at Valparaiso Law School on "Legal Constraints on the Use of Expert Witnesses in Mass Tort Cases." In December, he spoke at the Conference on Constitution Making for Eastern Europe, sponsored by the National Taxpayers Union Foundation in Westfields, Virginia, on the subject of "Constitutional Protection for Property Rights."
In October, Abner Greene, Assistant Professor of Law, appeared on WMAQ TV discussing the Senate’s confirmation of Clarence Thomas. In November, he participated in a panel sponsored by the Democratic Circle, discussing the Court after Thomas.

Richard H. Helmholz, Ruth Wyatt Rosenson Professor of Law, has been elected President of the American Society for Legal History for a two-year term. He has also been appointed to serve on the Committee for Documentary Preservation of the City of New York Bar Association.

In November, Spencer L. Kimball, Seymour Logan Professor Emeritus of Law, participated in an international conference in Warsaw, Poland. The conference was sponsored by the Polish Chapter of the International Association of Insurance Law, with support from the Insurance Unit in the Commission of the European Communities. Mr. Kimball has completed his casebook, Cases and Materials on Insurance Law, which is being published in 1992.

At the end of August, Michael W. McConnell ’79, Professor of Law, was a member of a panel discussion on “Real Meaning of Theories of Constitutional Interpretation” at a meeting of the American Political Science Association in Washington, D.C. In October, he spoke on “Religious Participation in Public Programs” at the Law School’s Bill of Rights Conference. On December 10, he took part in a WFMT radio program in Chicago with Geoffrey Stone and Cass Sunstein discussing “Freedom of Expression: A Bicentennial Perspective.” Two days later, he appeared with William Van Alstyne on a WNYC radio show discussing the religion clauses of the First Amendment.

Geoffrey P. Miller, Kirkland and Ellis Professor of Law, participated in a panel discussion on the Thomas nomination on the Mara Tapp show, WBEZ radio, on September 26. At the beginning of October, he was the speaker at the Law School’s Entering Students Dinner. On October 11, he presented a monograph on federalism and the insurance industry to a conference at the American Enterprise Institute, Washington, D.C. Later that month, he was a guest on the Ed Schwartz show, WGN radio.

In November, he spoke on “The Plaintiff’s Attorney’s Role in Class Action Litigation” before the Chicago Bar Association Class Action Committee. He participated in a conference on maxims of interpretation at Vanderbilt University Law School and in a conference on corporate law at Washington University Law School. The same month, he attended a conference on structural change in banking at New York University.

In early July, Norval Morris, Julius Kleege Professor of Law and Criminology, received an award from the National Parole and Probation Association in Atlanta for his book Between Prison and Probation, as the best scholarly contribution of the year. During August, Mr. Morris was co-moderator, with Justice Harry A. Blackmun, of the annual Aspen Seminar on Justice and Society, in Aspen, Colorado. In September, he addressed a plenary session of the Annual Meeting of the Federalist Society. His talk was entitled “Personal Guilt or Social Responsibility?” Mr. Morris delivered a paper entitled “Deinstitutionalization of Correctional Measures” at the first international conference of the Korean Institute of Criminology, held in Seoul, Korea, in October. During November, he was the keynote speaker at a conference of the Maine judiciary on sentencing, held in Portland, Maine. He also chaired a Rand conference, held in Bellagio, Italy, of governmental officials from seven European countries, Canada and the United States, who discussed drug policies and their efficacy. In December, Mr. Morris was the keynote speaker at the dinner held in Chicago to celebrate the ninetieth anniversary of the John Howard Association. He discussed his book, Between Prison and Probation and compared correctional systems of other countries with that of the United States. On December 17, he gave the keynote address to a conference of Minnesota Department of Corrections management personnel in St. Paul, Minnesota. The following day, he spoke on community-based punishments to the Community Corrections Division of the Minnesota Department of Corrections.

Gary H. Palm ’67, Clinical Professor of Law, has been appointed to a further two-year term on the Accreditation Committee of the American Bar Association. He serves on two subcommittees: on internships and on summer foreign programs. In July, 1991, he served as a site inspector for two summer programs offered by American law schools in London. He is currently setting up a pro bono program with several Mandel Clinic alumni to bring action under 42 U.S.C. Section 1983 to enforce clients’ rights to effective and prompt child support services under the Family Support Act.

Randal C. Picker ’85, Assistant Professor of Law, gave a paper, “Security Interests, Misbehavior and Common Pools,” to the September Law and Economics workshop at Harvard Law School. In October, he attended the fall meetings of the National Bankruptcy Conference in Washington, D.C. He serves as project reporter for their continuing review of the Bankruptcy Code. In November, Governor Jim Edgar of Illinois appointed Mr. Picker to the Illinois delegation to the National Conference of Commissioners on Uniform State Laws. The “University of Chicago” seat he filled was most recently held by former professor John Langbein and has been held in the past by Karl Llewellyn, Soia Mentschikoff and others.
In September, Stephen J. Schulhofer, Frank and Bernice J. Greenberg Professor of Law, was heard on WBEZ radio in Chicago discussing the right to jury trial, as part of the station’s series commemorating the right to jury trial. In October, Mr. Schulhofer appeared again on WBEZ to talk about the right to counsel and the confrontation clause. Also in October, he delivered a lecture on the privilege against self-incrimination at Valparaiso University Law School’s bicentennial celebration of the Bill of Rights. In November, Mr. Schulhofer presented a report to the U.S. Sentencing Commission on the results of his two years of research into charging and plea bargaining practices under the federal sentencing guidelines.

During the Fall quarter, Daniel N. Shavrio, Professor of Law, served as Visiting Professor at Columbia University Law School. On September 30, he presented a paper entitled “An Economic and Political Look at Federalism in Taxation” at Columbia Law School’s Law and Economics workshop. He spoke on the same topic in October at a faculty workshop at NYU and at a seminar at the University of Pennsylvania Law School. On October 12, he spoke on “The Confrontation Clause of the 6th Amendment” at Valparaiso University’s symposium on the Bicentennial of the Bill of Rights.

Geoffrey R. Stone ’71, Harry Kalven Jr. Professor of Law and Dean, delivered the Jerome W. Sidel Memorial Lecture in September at Washington University School of Law. His topic was “The Bill of Rights: The Next 200 Years.” The same month, he spoke at the University of Maine Law School on “The Selection of Supreme Court Justices” and delivered the Louis Scolnik Lecture on “Contemporary Challenges to the Principle of Free Expression,” to the Maine Civil Liberties Union. He also appeared on “Chicago Tonight” with host John Callaway on WTTW-TV in Chicago, discussing the nomination of Clarence Thomas. In October, he delivered a lecture at Northern Illinois University College of Law on “The 200th Anniversary of the Bill of Rights.” In December, Mr. Stone participated in a debate with Professors Michael McConnell and Cass Sunstein on “Freedom of Expression: A Bicentennial Perspective,” on WFMT radio in Chicago.

Randolph N. Stone, Clinical Professor of Law, was a member of the faculty of the National College of Criminal Defense, a summer program at Mercer Law School, Macon, Georgia. He also served as a faculty member of the New York State Defenders Association Trial Advocacy Program in Troy, New York. He was a panelist at a July town meeting on “Police Brutality and Civilian Complaint Review Boards” in St. Petersburg, Florida. He also took part in two panel discussions, on “The U.S. Constitution: Is It a Hostage to the War on Drugs?” and “Dream Deferred? Black Males in the Criminal Justice System,” at the ABA Annual meeting in Atlanta. In September, Mr. Stone was a lecturer on law and a team leader at Harvard Law School’s Trial Advocacy Workshop. He was heard on WBEZ radio in Chicago, discussing the Clarence Thomas nomination. In October, Mr. Stone gave the keynote address, “The Killing of Charles Walker,” at the Criminal Practice Institute in Washington, D.C. In November, he served as a panelist at the National Conference on Substance Abuse and the Courts, sponsored by the National Center for State Courts, in Washington, D.C. During November, Mr. Stone also took students from the Mandel Legal Aid Clinic to view night bond court at 26th and California. Mr. Stone has been appointed to the Board of

Jo Desha Lucas

Jo Desha Lucas, Arnold I. Shure Professor Emeritus of Urban Law, who retired December 31, 1991, intends to continue after retirement “just as before except for teaching.” Mr. Lucas will remain the editor of Moore’s Federal Practice, one of the two standard works on federal civil procedure, a position he has held for many years. He is one of the leading authorities in the field of practice and procedure and formerly served as the author of all the annual Federal Practice supplements.

Mr. Lucas’s career at the Law School began in 1952 when he served as a Bigelow Teaching Fellow. He was appointed to the faculty in 1953 as Assistant Professor of Law and was simultaneously appointed Assistant Dean and Dean of Students, a position he held until 1961, when he was promoted to Professor of Law. B. Mark Fried ’56 said of Mr. Lucas: “I applied very late to the Law School and I will always believe I would not have got in if it were not for Jo Lucas. I enjoyed the course I took with him and I always enjoyed him as a person. He epitomized the perfect Southern gentleman, rationality cloaked in gentility and charm.”

Mr. Lucas was appointed the Arnold I. Shure Professor of Urban Law in 1982. He is an expert in state and local government, American Indian law, and maritime law, and his cases in Admiralty, now in its third edition, is a standard work in the field. Dean Geoffrey Stone said of Mr. Lucas: “Jo Lucas has given almost forty years of dedicated service to the Law School, as a teacher, scholar, colleague, and administrator. He has strengthened the Law School in all of its facets and has enriched us all.”
Cass R. Sunstein, Karl N. Llewellyn Professor of Jurisprudence, currently serves on committees providing advice to the governments of Albania and Poland on the contents of their new constitutions. In July, he participated in a conference in Warsaw, Poland, under the title “The Constitutional Moment.” His paper dealt with possible approaches for constitution-making in Eastern Europe. In August, he participated in a conference in Helsinki, Finland, on the general subject of human capabilities and international development. In October, he delivered a lecture at Harvard Law School on the subject of legal reasoning, with special reference to abortion. In November, he participated in a conference at the University of Chicago on the subject of constitutionalism in Eastern Europe. The same month, he participated in the Law School’s conference on the Bill of Rights. His talk dealt with free speech in the welfare state. In early December, he gave the Donahue Lecture at Suffolk University; his talk was entitled “Democratizing America through Law.” The paper argues for large-scale changes in our regulatory system, changes designed to promote both democracy and efficiency. Also in December, he testified before the House Subcommittee on Health and the Environment, on the role of the legal issues associated with the Vice President’s Council on Competitiveness. Mr. Sunstein has been awarded a Certificate of Merit from the American Bar Association for his book, After the Rights Revolution (Harvard University Press, 1990).

In November, Alan O. Sykes, Professor of Law, addressed a Harvard faculty workshop on the subject of “Constructive Unilateral Threats in International Commercial Relations: In Defense of Section 301.” In November, he discussed the topic again at a Law, Economics and Organization workshop at Yale. Mr. Sykes spent the Fall Quarter, 1991, as visiting professor of law at Harvard Law School.

From July 22 through August 9, Diane P. Wood, Harold J. and Marion F. Green Professor of International Legal Studies and Associate Dean, co-taught a course in the Law of the European Community for the University of San Diego’s Institute on International and Comparative Law, at Regent’s College, London. In August, she represented the Law School at a conference on “The Rule of Law in Central and East Europe” held at the Salzburg Seminar, in Austria, which was attended by the deans or representatives from many Central and East European law schools, several West European scholars and government officials, and American law professors and deans. Twice during late August, she appeared on the CNN program “Crier & Co.” to discuss the developments in the USSR during and after the attempted coup. In October, she participated in the first conference held by the Law School’s Center for the Study of Constitutionalism in Eastern Europe, moderating the panel on judicial review. On October 24, she gave a paper at the 17th Annual Fordham Corporate Law Institute on U.S. and E.C. Competition Law, entitled “International Competition Policy in a Diverse World: Can One Size Fit All?” In November, she attended her first meeting as a member of the ABA Standing Committee on Law and National Security, held in Washington, D.C.

Professor Diane Wood and her daughter, Katy, were a star attraction at the annual Talent Show.
Speakers' Corner

Recent speakers at the Law School have included:

Cook County States Attorney Jack O'Malley '81 on law enforcement in the 90s

Lori Potter of the Sierra Club Legal Defense Fund on defending the wilderness

Senator Orrin Hatch (R—Utah) on civil rights policy

Walter Olson of the Manhattan Institute on the litigation explosion

Federal District Judge Jose Cabranes on the Federal Sentencing Guidelines

Civil rights activist Julian Bond on race and racism

Former Senator George McGovern on civil liberties and politics—the 1992 presidential campaign

Chicago lawyer Al Hofeld '64 (twice) on his career as a trial lawyer and on his 1992 campaign to become a U.S. Senator
**POINT OF VIEW**

We asked randomly selected members of the student body, as well as members of the faculty, the following question: "Is it appropriate for a United States Senator to vote against the confirmation of a nominee to the Supreme Court because the Senator (a) disagrees with the nominee's judicial philosophy or (b) is concerned with imbalances in the ideological composition of the Court?"

Students
a) 82% yes, 18% no
b) 82% yes, 18% no
Comments:
"Nominees should be judged solely on the basis of their competence and experience. Nominees should not be questioned about or evaluated on the basis of their judicial philosophies."

"The Senate vote is the one and only chance (short of impeachment) that the public has to have input into the composition of the Court."

"It is interesting that this question does not mention the opinions of the Senator's constituency. Since the individual voters have no direct input on the decision to confirm, clearly their representative has the freedom to accept or reject the nominee based on any rationale she or he may have."

"I vote a strong yes to both questions. A Senator's job is to confirm the best candidate, not just approve a minimally qualified judge. A Senator's judicial philosophy plays a necessary role in his determination of the best candidate. Although I tend to have conservative opinions, I see a potential 'group think' problem with a completely conservative Court. The same is also true of a stacked liberal Court. A balance of ideas and the promotion of meaningful debate is best on the nation's highest court."

"Because recent Presidential nominations have become increasingly based on questions of judicial philosophy, party affiliation, and even nominees' views on particular topics, including abortion, I feel that Senators have little choice but to respond in kind with decisions on confirmation based on similar criteria. Although it would be nice to have a confirmation process without these aspects involved, it seems this trend has cemented itself in constitutional politics."

Faculty
a) 83% yes, 17% no
b) 78% yes, 22% no
Comments:
"The 'politicization' of the confirmation process is regrettable. It tends to give us safe, undistinguished, unoriginal, middle-of-the-road Justices lacking strong convictions and incapable of leadership. I'd much prefer a Court of Tribes and Borks to an all-Souter Court, and the appointments process generally works better when Presidents are afforded a reasonably free hand. In extreme situations, however (as when the Supreme Court is heavily dominated by a viewpoint not shared by most Senators and the President is unyielding), Senators must be concerned with viewpoint and with balance. The Warren Court never lacked articulate dissenters. With the departure of Justices Brennan and Marshall, the Rehnquist Court may. Able advocates of opposing viewpoints help to keep the process honest and bounded."—Albert Alschuler.

"The Constitution gives both the executive and legislative branches an ex ante political check over the composition of the judicial branch. Although perhaps the best system would be to appoint judges through blue-ribbon panels seeking the 'best' legal minds, in an era of divided government, if the President pushes one way, the Senate should push back the other way."—Abner Greene.

"No, usually, but perhaps in extreme cases, none of which has existed in my professional lifetime."—Spencer Kimball.

"Whether it is 'appropriate' or not, the convention against it is better for the Court and the nation. When the Senate agrees with the President, ideology-based voting has no point. When the Senate disagrees with the President, the effect of ideology-based voting is to encourage selection of uncontroversial nominees with a sparse public record, which is not a way to produce distinguished nominees. 'Balance' will be achieved over time."—Michael McConnell.

"The view that elected representatives should not take into account likely legal outcomes of interest to their constituents, or that only the President should weigh judicial philosophy, is preposterous."—Daniel Shaviro.

Let us know your point of view. We will publish a sampling of the comments we receive in the next issue.

The Editor
The Law School Record
University of Chicago Law School
1111 East 60th Street
Chicago, Illinois 60637

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Name ____________________________
Class Year ____________________________

"Is it appropriate for a United States Senator to vote against the confirmation of a nominee to the Supreme Court because the Senator (a) disagrees with the nominee’s judicial philosophy or (b) is concerned with imbalances in the ideological composition of the Court?"

(a) ___Yes ___No  (b) ___Yes ___No

Comments ____________________________________________________________

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AALS

The Law School hosted its annual reception for graduates and friends in legal education at the annual meeting of the Association of American Law Schools. Dean Geoffrey Stone '71 was joined by Professors Mary Becker '80, Richard Helmholz, Geoffrey Miller, Gary Palm '67, Randall Schmidt '79, Randolph Stone, and Law Librarian Judith Wright at the Hilton Palacio del Rio hotel in San Antonio on January 4.

University Centennial Celebrations

The University's Centennial year is the occasion for many celebrations throughout the world. Law School graduates were among the guests who flocked to The Rainbow Room in Rockefeller Plaza, New York, for a gala dinner dance held on November 12. James Evans '48 was honorary chairman of the evening. Hanna Holborn Gray, President of the University, was an honored guest at this event and also at the gala dinner dance held on November 23 in Washington, D.C., at The RitzCarlton Hotel, Pentagon City. Twenty-two graduates of the Law School attended that dinner, including Assistant Dean Holly Davis '76.

Emeritus Luncheon

The Law School kicked off its celebration of the University's Centennial with a luncheon honoring graduates from the Law School's first fifty years. Graduates of classes from 1921 through 1940 attended a luncheon held on September 12, 1991, and enjoyed the opportunity to reunite and reminisce. Over 100 alumni and their guests gathered at the Standard Club for the luncheon and to hear remarks from Dean Geoffrey

with a talk by Newton Minow, of Counsel with Sidley & Austin, and former Chair of the Federal Communications Commission. His talk, "Revisiting the Wasteland," discussed the current state of television in the nation. Leon M. Lederman, Frank L. Sulberger Professor in the Department of Physics and the Enrico Fermi Institute and the 1988 Nobel Prize-winner in Physics, gave the second Loop Luncheon talk on November 19. His talk, entitled "Fools Rush In: A Story of Science Education in Chicago" traced the development of science teaching programs in the Chicago public schools, with their emphasis on practical as well as theoretical teaching. The fall series ended on December 11 with remarks by Professor Philip Karland on the current United States Supreme Court. His brief talk opened the way for a lively question and answer session that only reluctantly broke up as time ran out. The Loop Luncheons are held in the Chicago Board of Trustees room at One First National Plaza. Alan Orschel '64, Chair, and the organizing committee invite you to attend future series. New graduates may attend their first luncheon as guests of the Alumni Association. For further information on the luncheons, please call Assistant Dean Holly Davis '76 at 312/702-9628.

Denver

Professor Albert Alschuler gave graduates an update on the criminal justice system in his talk at a luncheon on January 17 for alumni and friends of the Law School in the Denver area. Edward Roche '76, President of the Denver chapter, introduced Mr. Alschuler. The luncheon was held at the offices of Sherman & Howard, graciously hosted by James Hauzinger '61.
Los Angeles

Forty-one graduates from the Los Angeles area attended a luncheon at the firm of Pillsbury Madison & Sutro on August 14, 1991. The luncheon was hosted by Michael Meyer '67, a partner with the firm. Joel Bernstein '69, president of the Los Angeles chapter, presided at the luncheon and introduced Dean Stone who spoke on “Current Challenges to Free Expression.”

Miami

Professor Walter Blum '41 was the guest of honor at a reception held on January 12 for graduates in the Miami area, in celebration of the University's Centennial. The reception was held at the home of Joseph Bolton '74 and Alison Miller '76, President of the Miami chapter.

Minneapolis/St. Paul

On August 29, Dale Beihoffer '68, president of the Minneapolis chapter, presided at a luncheon held at Faegre & Benson for graduates in the Minneapolis area. He introduced Dean Stone, who spoke to the gathering on current events at the Law School.

New York

Professor Richard Epstein was the guest speaker at a luncheon held on September 24 at the offices of Skadden Arps Slate Meagher & Flom. Douglas Kraus '73, president of the New York chapter, and a partner at the firm, introduced Mr. Epstein, who spoke on “Voluntary Euthanasia: Of Cost and Choice.” His topic generated a lively debate after the talk and he answered many questions.

Portland

Richard Botheri '71, President of the Portland chapter, invited graduates and friends of the Law School to join him at a luncheon on February 10. Thomas Balmer '77 of Atter Wynne Hewitt Dodson & Skerritt graciously hosted the buffet luncheon at his firm. Professor Walter Blum '41 spoke to graduates on the University’s Centennial celebration and Assistant Dean Dennis Barden reported briefly on the Law School.

San Diego

James Couley '65, a partner with Latham & Watkins, provided a conference room at his firm on August 15 for a luncheon for graduates. Jerry Goldberg '73, president of the San Diego chapter, presided over the gathering and introduced Dean Stone, who spoke about the Law School.

Seattle

Graduates in the Seattle area were invited to join Gail Runnfeldt '79, President of the Seattle chapter, at a luncheon held at her firm, Karr Tuttle Campbell, on February 11. Professor Walter Blum was the guest speaker. He reported to the gathering on current events at the Law School and the University’s Centennial celebration.

Zurich

Graduates living in Europe held their biennial reunion in Zurich, Switzerland, September 6 and 7, 1991. Urs Baumgartner LL.M. '79 organized the event, which began on Friday evening with dinner at the Bauschänzli Restaurant. Saturday morning was free. The group gathered at the Zunfthaus zur Waag for lunch. A panel discussion on “The Changing Equation: Adding Eastern Europe to Western Markets” followed. The featured speaker at the discussion was the Honorable Morris Abram '40, permanent representative of the U.S. to the European Office of the United Nations and other international organizations. Urs Baumgartner moderated the panel, whose members were Stephen Holmes, Professor of Political Science and Law at the University of Chicago Law School, Michael Faure LL.M. '85 of Van Goethem law firm in Antwerp, Belgium, and Hillmar Raeschke-Kessler LL.M. '75, an attorney with the federal court in Ettlingen, Germany.

In the evening, the group traveled by boat to the Au Peninsula for dinner at the Halbinsel Au Inn. Dean Geoffrey Stone spoke to the group on “The Centennial and Beyond: The Second Century at the Law School.” Assistant Dean Roberta Evans '61 also attended the event.
Class Notes Section – REDACTED

for issues of privacy
David Kahn received the Independent Voters of Illinois—Independent Precinct Organization Bill of Rights Award for his efforts in securing freedom of religion for all Americans. The award was presented at a regalia for the Bill of Rights on January 13 this year.

'53 Jean Allard has left her partnership with Sonnen-Schein, Nath & Rosenthal in Chicago to become President of the Metropolitan Planning Council, a group involved with regional planning and joint ventures between Chicago and the suburbs.

Irving Mehler, with coauthor Martha Faulk, has published a book The Elements of Legal Writing, published by The Professional Education Group, Inc. The book gives quick answers to questions of structure and style and is the first desktop reference guide for legal writers.

Robert Poole was honored by the State Bar of New Mexico and their annual convention in September, 1991. He received the Professionalism Award “for exemplifying the epitome of professionalism throughout his distinguished legal career.”

Thirty-fifth Reunion

57 Reunion Correspondent: Barbara Fried. Fried Companies, Inc., P.O. Box 215, Springfield, VA 22150.

Even though the Class Dinner on May 9 will be held at the Park Hyatt and not Nicky’s Pizzeria, some things never change. The evening begins with cocktails, followed by dinner with wine and continues with post-dinner cocktails. Shades of Jimmy’s and U.T. Twenty-seven of us have given a definite “yes”: Jack Alex, Ronald Aronberg, Richard Berryman, Herbert Caplan, Alex Castles, Miriam (Mimi) Chesslin, Robert Claus, George Coucell, Kenneth Dan, Daniel Davis, John Donley, William Dunn, Curtis Everett, Barbara Fried, Robert Green, Rudolph Huszagh, Daniel Johnson, Elmer Johnson, Howard Krane, Wesley Liebeler, Louis Mangrum, Robert Navratil, Dallin Oakis, Peter Sivaslani, Payton Smith, Harry Sondheim, and Fredrick Yomkman. Hello to the “maybes” and “undecideds.” There is still time. Who knows, after that dinner, perhaps we will all sing “The Scales Fell on Mrs. Palzgraf” and remember all the words.

61 Class Correspondent: Herbert Stern, Stern & Greenberg, 75 Livingston Avenue, Roseland, New Jersey 07068.

I am your new Class Correspondent and hope to hear from the Class of ’61. Drop me a line or two about yourselves or any other members of our class that you might know—you can write to me at the above address. I will be sending postcards to you for use in future issues, which you can just drop in the mail to me. I am looking forward to hearing from you.

64 Melinda Aikins Bass has joined the New York state offices of the firm of Rivkin, Radler, Bayh, Hart & Kremer as a partner in charge of the firm’s health care and elder law practice.

From June 1990 to December 1991 Robert Donnellan was on temporary assignment from Ford Motor Company’s Office of General Counsel to the First Nationwide Bank of San
Francisco, where he served as Associate General Counsel and Senior Vice President.

David Porter, assistant general counsel for the Northern Trust Company, serves as a member of the faculty teaching the Graduate Program in Financial Services Law at the Chicago-Kent College of Law.

William Sharp has joined the firm of Schwartz & Freeman in Chicago as a partner. His practice concentrates in portfolio real estate workouts for financial institutions.

'66 At a seminar sponsored last September by the American Quarter Horse Association, Jewel Klein spoke to steward and racing official candidates seeking accreditation with the association. Her address focused on racing law and disciplinary hearings. In December, she spoke on legal issues for new horse owners at a seminar sponsored by the Illinois Thoroughbred Breeders and Owners Foundation.

CLASS OF 1967
Twenty-fifth Reunion

'67 Class Correspondent: Don Samuelson, Samuelson Associates, Suite 600, 68 E. Wacker Place, Chicago, IL 60601.

We will be having our 25th Reunion this May. Recently several of our classmates asked me why it would be worth their while to attend. Who would they meet? What would they talk about? Would it be worth the effort, time and expense? Here is the essence of my answer.

The obvious benefits. Everyone in the class knew between 5 and 100 members of the class. Relationships have been maintained over the years with some subset of that group. The Twenty-fifth Reunion in Chicago, May 7-9, 1992, represents a good time to get together again. In addition, there is value to maintaining networks, contacts and potential referral sources. All reunions generate some predictable benefits. But there are some less obvious benefits as well.

Some areas of interest to me:

Bill Achenbach—Charlottesville, Virginia. How do you manage to live in Charlottesville, have an office in Chicago and manage to maintain relationships with your partners and financial planning clients? What are the tools in your electronic cockpit?

Bruce Johnson—Portland, Maine. OK Bill can do it. But he isn't practicing law. How do you serve your Chicago area client base out of Keck Mahin's Oakbrook office, while living in Maine? For one thing the phone calls to Chicago connect with him in Portland. You say that billable hours should not be the currency of the profession. It should be some measure of the value added by the work of the lawyer. And how is your daughter doing in the big league beauty pageants?

Jim Hunter—Latham in Chicago. What was the process you went through in downsizing your law firm by sixty lawyers? Were these all associates? What are you going to do with nonproductive partners, or partners whose compensation is greater than their current or prospective value?

Mike Meyer—Pillsbury in L.A. You had great success in the L.A. office leasing market in the 80s. How are you adjusting to the market in the 90s? Every real estate lawyer in America has some variant of this problem.

Roberta Ramo—Albuquerque. Why are you running a second time for the presidency of the ABA? What do you plan to do if you win? Is there any way that your classmates could be of help?

David Minge—Montevideo, Minnesota. I very much enjoyed your son internning with me this fall. Excellent dude. However, I'd really like to hear your side of the story. You've got to discount somewhat the perspectives of the president of the Young Democrats of Dartmouth.

Art Massolo—First National, Chicago. What is happening to the world of banking? Where is real estate going? What about the economies of the third world? (Art has opinions and factual support. Get him to talk before he starts dancing.)

Hans Petter Lundgaard—Norway. Is there any way to translate your ombudsman...
being quite so adventuresome, I have joined my father's firm, where I shall have the opportunity to do not only litigation but also transactional work (both domestic and international) and just about anything and everything else you could think of. To suggest that I am excited about this change would be somewhat of an understatement. I guess once you have Missouri (pronounced Missouri[ah]) in your blood, you just can't get it out. So it's back to the banks of the Mississippi that I return to practice some law with my dad, attend Cardinal baseball games, hang out in the Central West End and dine at Rigazzi's now and then. Perhaps I even might dabble in a little politics (surprise, surprise).

Please send me news about yourselves either at the address of Schramm & Pines or at my new home address, which will be placed on the postcards which I promise to send you, soliciting news for the next issue of the Record.

Hope all is well with you.

'89 Class Correspondent Andy Ostroumoff, Debovois & Plimpton, 875 3rd Avenue, New York, NY 10022.

Wedding announcements are the first order of business. Scores of classmates are rushing to marriage like so many, dare I say, lemmings. Just kidding. Liz Domenn tells me that Michelle Fischer recently became engaged to Ken Hersh in Cleveland, where Michelle works as an associate at Jones, Day, Reavis & Pogue. Ken was not one, apparently, to go for the old bended knee, roses and champagne routine; his proposal was far more elaborate. Michelle happened to come home one day from work to find her house chock full of balloons, some of which carried messages which guided her further into the house. She eventually was led into the bedroom, where she found an engagement ring tied to a single rose. And who said romance is dead?

Mark Broude was engaged to Susan Zuckerman in the early fall, and plans a wedding in March. Mark and Susan met on January 1, 1991, at Mark's annual football party. I was fortunate enough to be in attendance at that party, and can report, in all seriousness, that I knew then that the match was perfect. For further details (and for all of you who save old newspapers as a hedge against inflation), you can see the wedding announcement in the January 12, 1992 edition of the New York Times. Best wishes to all the newly affianced.

The subject of weddings makes me think of the month of June (it's funny you don't have to worry about smooth transitions when you imitate James Joyce). June was a month of firsts for (Dr.) David Hymann. He was the first student in the history of the University of Chicago to graduate with a joint degree from the Law School and the Pritzker School of Medicine (a big congrats on that one!) and he and his wife had their first daughter, Rachel Ellen (an even bigger congrats). He is now working at Mayer, Brown & Platt, doing tax litigation and health care law. In his free time (what free time?), David continues to write articles.

Debbie and Andy Lee are enjoying the good life in Minneapolis-St. Paul (they work in Minneapolis, live in St. Paul). Andy works at Leonard Street & Deinard as a real estate lawyer in Minneapolis and Debbie works in a life insurance company. Who needs to

Leslie Cares

Many young professional people would like to take part in hands-on volunteer projects to help the needy, rather than just donating money, but find that their busy schedules allow them little free time. Leslie Bluhm '89 has discovered a way to tap that frustrated energy and put it to public service. She has founded a non-profit organization, Chicago Cares, which creates and manages hands-on volunteer projects, all of which take place after working hours. The aim is to make it as easy as possible for busy professionals to offer practical help. Volunteers undergo an orientation session then are sent a monthly project calendar. They can choose freely which projects to support and can allocate as much or as little time as they please. No regular commitment of time is required. Some volunteers even switch among projects. With a current roster of 700 volunteers, there are always enough people to continue the work. The twenty-six projects currently on the calendar including tutoring children at Cabrini Green (the only project that does require a regular commitment of time), writing resumes for the homeless, assisting at soup kitchens, and rehabbing homes for low-income families.

Leslie got the idea for Chicago Cares when she was an associate with the New York firm of Skadden, Arps, Slate, Meagher & Flom and devoted some of her time helping in a similar organization, New York Cares. She started Chicago Cares when she returned to live in Chicago last year. Leslie takes a long-term view of the organization and her young volunteers and foresees benefits well into the future. "By providing its volunteers with easy access to hands-on community service, Chicago Cares is able to expose them to critical problems faced by our community," she said. "Thus these volunteers will be better prepared to solve community problems when they find themselves in leadership roles in the future." Graduates interested in offering their services to Chicago Cares should call (312) 715-4060.
Arnold Shure 1906-92

In 1971, the Illinois House and Senate passed resolutions applauding Arnold Shure’s “creative and exemplary leadership in voluntary service,” thus giving official recognition to a lifetime of dedication to public service. Arnold Shure, a prominent Chicago attorney, who died on January 24 at the age of 85, was a pioneer in the area of plaintiffs’ litigation, especially in the field of securities law. Always an advocate of the “little guy,” he brought justice to many individuals who otherwise have had no remedy. His public service activities were legion. He served as President and Director of the Jewish Students’ Scholarship Fund, Director of the Clarence Darrow Community Center, Director of the Highland Park Community Chest, Director of American Friends of Hebrew University, Trustee of the College of Jewish Studies of Chicago, President of the German Students’ Relief Fund and in a host of other public service capacities.

His tireless work for the betterment of his fellow man is exemplified in his extraordinary support of the University of Chicago Law School, from which he received his J.D. degree in 1929. In 1945, Mr. Shure established the Frieda and Arnold Shure Research Fund at the Law School, noting at the time that “our small contribution will better serve if it makes available a fund to support research dealing with the immediate public welfare; e.g., housing, restrictive covenants, the small investor, and other such problems which touch closely the needs of the underprivileged or inadequately protected ordinary citizen.” In 1968, he established the Arnold I. Shure Professorship in Urban Law to encourage the study of laws affecting low-income and otherwise disadvantaged groups.

Mr. Shure’s commitment to the core academic mission of the Law School was reflected in his consistent support of the Law Library. In 1966, he established the Law Library Book Endowment; in 1991, he created the Kixmiller, Baar & Morris Law Library Fund; and, at various times throughout his life, he enriched the Law Library’s collection by the donation of major portions of his extensive personal library. In 1991, substantiating his belief in the importance of high quality legal scholarship, he expanded the purposes of the Shure Research Fund to support the research of senior members of the Law School faculty across a broad range of legal issues. In a passing remark to Dean Stone last year, Arnold Shure summed up the generosity of spirit and concern for others that governed his life. “You know, the only money you can take with you when you die is the money you’ve given away to others to make the world a better place.”