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Law School Record Editors

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Inside:
Copyright as a rule of evidence
Law School Centennial approaches
Message from the Dean

Faculty News

Martha Nussbaum
Mandel Legal Aid Clinic
Geoffrey Stone
David Strauss
Norval Morris
Lectures
Military Tribunals
Media Sightings

Student Life
Student groups and activities

Alumni News
Law School welcomes Associate Dean Jonathan Stern
Following up: James B. Comey and Dan Doctoroff
Larry Korfe
Steve W. Berman
Lunco and Manjorie Lindblom
Oscar A. David

Alumni In Memoriam

Alumni Class Notes
100 Years: A Century of Ideas and Action

A preview of the Law School’s upcoming year of Centennial celebration, plus exciting ways to be part of the Centennial.

Copyright as a Rule of Evidence

Professor Douglas Lichtman explains why evidentiary issues keep turning up in his copyright class, how plain facts might be subject to copyright, and the pros and cons of a creatively-organized phone book.

A Day in the Life of the Law School

In an expansive photo essay, the Record attempts to capture the wide range of activities that happen in a single day at the Law School.

2 Message from the Dean

6 Faculty News

Martha Nussbaum
Mandel Legal Aid Clinic
Geoffrey Stone
David Strauss
Nerel Morris
Lectures
Military Tribunals
Media Sightings

30 Student Life

Student groups and activities

35 Alumni News

Law School welcomes Associate Dean Jonathan Stern
Following up: James B. Comey and Dan Doctoroff
Larry Haylb
Steve W. Berman
Lance and Marjorie Lindblom
Doris A. David

41 Alumni In Memoriam

43 Alumni Class Notes

A Day in the Life of the Law School

The occasion of the Law School’s Centennial year inspires historical curiosity. What was life like for the members of the first entering class? What went on in the classroom? What preoccupied the faculty? How did the students spend their time when they weren’t learning in class or studying outside of it?

These and many other questions will be answered as research for the Centennial Celebration continues. You can read more about plans for the Centennial, and glimpse some evocative historical mementos, on page 3. The rest of this issue of the Record aims to document—perhaps for the curious of 100 years hence—what the Law School experience is like today, showing a typical day in its confines (page 24), sharing the insights of the Law School’s newest tenured professor and his method of communicating them to students (page 18), examining the nature and roles of student-run organizations (page 30), and otherwise describing and depicting the many activities and accomplishments of the Law School’s faculty, students, and alumni—activities that add together, just as a diverse series of classes and events make up “A Day in the Life,” to form the unity that is the University of Chicago Law School.
Message from the Dean

Comings and Goings

If a central purpose of the Record is to record the comings and goings at the Law School, then there could not be a more important piece of immigration to report than Geof Stone’s return to full-time teaching and writing here. Geof, of course, been the Provost, or chief academic officer, of the University for the last eight years, and before that he spent seven years as Dean of the Law School. When faculty members here and elsewhere congregate and chat (though penetrating debate is a great deal more common than chatter around here), a familiar remark is that no one ever returns to academic work from university administration—and certainly not from many years of it—to be a serious teacher and scholar.

But we are not a law school accustomed to conforming to national averages, and Geof Stone is hardly a person to be stereotyped so easily. Let me record, then, that Professor Stone has been back on the job in full force. Geof has already been to more faculty workshops than he could possibly have experienced in the previous few years. And it goes almost without saying that he is no mere wallflower, but rather that he participates with penetrating questions, quizzical and serenely happy looks, and nods of definite approval. He acts like a fish happy to be back in the water and not at all like a tourist who returns to find home a bit too comfortable. And of course Geof has never stopped being a dedicated teacher and scholar.

As he was returning to us in full force, there were events celebrating Geof’s service to the University. He spoke beautifully, intellectually, and generously about his administrative colleagues. The thousands of meetings and hundreds of thousands of e-mails we can now look back on with amazement were not meaningless events but serious, purposeful steps toward the important goal of ensuring our University’s excellence.

We enjoyed a terrific program at the Law School early in the winter quarter on the history, legality, and wisdom of military tribunals. Geof participated in this event—focusing on whether it was good or bad that the tribunals were to be applied only to defendants who were non-citizens—and he was passionate, interesting, and quick on his feet. Three times that same week I stopped by his office to say hello, but I could not get in because there were students talking with their new professor. In short, we are fortunate to have this great role model among us.

Another important migration has taken place largely within the Law School. I was fortunate to be at a reception honoring Randolph Stone’s years as director of the Mandel Legal Aid Clinic. Randolph is now on leave, but do not fear; for he is returning soon to the Clinic where he will continue to do excellent and important work and to inspire great students. Everywhere I go there are graduates whose best memories of the Law School include their experiences working in the clinics, enjoying a serious and involved mentor, and learning about their chosen profession through hands-on experiences. So let us take note not only of the good that happened under Randolph’s directorship but also of all the good work and learning made possible because of the terrific and dedicated students who passed through our clinics. Some of you passed through when the Clinic was housed in what now seems like a few closets; some worked with lawyers outside the building; and some recent graduates have experienced the new and exceptional clinic building made possible by Arthur Kane, ’39, and other generous alumni and friends. However much we succeed in making clinical opportunities available to more of our students, and in doing good for those who cannot afford first-rate legal services, I will take pride in emphasizing our quality rather than our quantity. This is a law school that has risen to the very top of the world of education not by being bigger, and not by having more programs, more visitors, and more far-flung enterprises than other law schools or institutions, but rather by concentrating on doing things exceedingly well while maintaining a relatively small faculty and student body. With these exceptional people and, of course, with your help we will continue with this strategy, and do even more than before.

You will soon see messages from the Law School sent out on our Centennial stationery, for we are about to mark 100 years, and you will be reminded that the Law School’s history has consisted of “A Century of Ideas and Action.” Fortunately, there are some people, like Geof Stone and Randolph Stone, who come, go, and then return. But those who come and go—most especially students who turn into alumni—also make their mark, and indeed form the most important evidence of our collective worth. Ideas and actions stay with us, and they do so whether they are associated with faculty and students who work here or with alumni whose excellent work is done outside these walls. Those of us fortunate enough to work here celebrate the achievements of our graduates and friends, much as I have seen our alumni everywhere appreciating the accomplishments of our faculty and students. Personally, I look forward to the opportunity offered by our Centennial to draw attention to all the ideas and actions linked to this great law school.

Saul Levmore

THE UNIVERSITY OF CHICAGO LAW SCHOOL • SPRING 2002
In his 1952 address to the community marking the 50th anniversary of the Law School, Dean Edward H. Levi spoke of the connection between the founders' farsighted vision and its realization in the contemporary world. He said, "The ideal of the School continues to be that of an institution which in itself symbolizes the living law, through its dedication to teaching and research and through the creation of a community broadly conceived... It is an ideal which dwarfs particular events, overcomes deficiencies, and unites those who celebrate this 50th Year."

In a year-long Centennial Celebration that will officially begin on October 2 of this year, the Law School will honor and further its great traditions, commemorating a century of ideas and action while looking forward to the future. Many members of the Law School community are presently at work to capture the images and words associated with the century gone by—artifacts and essays that will help bring to light, through print and visual media, the treasure that is the University of Chicago Law School.

Who better to orchestrate the entire range of Centennial events and publications than the person who manages the complicated academic and social lives of 600 students day in and day out: Ellen Cosgrove, '91, the Law School's associate dean and dean of students. Says Dean Levmore, "Beyond orientation, graduation, and everything in between, Ellen’s latest challenge has been to help convey a sense of the rich and amazing history of this institution for all members of the community. The Centennial is a perfect opportunity, and Ellen the perfect person, to do this."

What’s Cosgrove most looking forward to?
"All of it: from the convocation to the exhibits, from the coffee-table book to the online store, from the special lectures and symposia to the Centennial Gala." But, she says, "as much as I love working with students, I have really enjoyed an opportunity to work more closely with other members of the Law School community—alumni who are writing essays, faculty who are writing articles, staff who are designing exhibits and publications, and, of course, students who are generating ideas."—K.S.
100 Years... Timeline Exhibit

A historical timeline exhibit will be viewable at the Law School in 2002-2003 and contain such illustrated images and artifacts as these: A. brochure announcing Beecher Hall as the Law School's new dormitory, circa 1952; B. Law School class of 1904; C. 1902 telegram from University President William Rainey Harper to James Parker Hall proposing a Law School professorship; D. early 1950s faculty photo; and E. 1902 dinner invitation from Harper to Law School faculty.
100 Years . . .
Ways of Participating

Memorabilia & memories
Alumni and friends who wish to contribute Law School memorabilia in honor of the Centennial should send their contributions to:
Law School Centennial Committee
University of Chicago Law School
1111 East 60th Street
Chicago, Illinois 60637
or e-mail us at centennial@law.uchicago.edu to make special arrangements.
The Centennial Committee would of course prefer donations, but items on loan are most welcome. If you wish to contribute reflections on your Law School experience, please e-mail us at centennial@law.uchicago.edu to add your essay to the collection.

Free Centennial T-shirts!
Josh Kantor, '87, wore his Centennial T-shirt to the Winter Olympic Games in Salt Lake City. Where will you wear yours?
Alumni who live in or are traveling to exotic or remote destinations can request a Centennial T-shirt. The shirt is free in exchange for a photo of you wearing the shirt. We are looking for great round-the-world shots with interesting backdrops, famous landmarks, and famous people. The photos will be put together in a Centennial collage for use in our upcoming Centennial publications. If you want to request a shirt, please e-mail centennial@law.uchicago.edu and include the following information: name, class year, size (M–L–XL–XXL), location of anticipated photo, and general timing of trip. You can e-mail your digital photos to centennial@law.uchicago.edu.
You can also request a shirt from or mail photos to the Law School Centennial Committee, University of Chicago Law School, 1111 East 60th Street, Chicago, Illinois 60637.
Don't forget to say cheese!

Centennial Events:
Unless otherwise indicated, all events will take place in Chicago.

FALL
European Centennial Gathering
September 13–14, 2002
First Monday Luncheon, Washington, D.C.; Professor Geoffrey Stone, '71
September 23, 2002
First Monday Luncheon, New York City; Professor Geoffrey Stone, '71
September 24, 2002
Visiting Committee
October 3–4, 2002
Centennial Convocation
October 4, 2002
Post-Convocation Reception
October 4, 2002
First Monday Luncheon, Chicago; Professor Geoffrey Stone, '71
October 7, 2002
First Monday Luncheon, Los Angeles; Professor Geoffrey Stone, '71
October 16, 2002
First Monday Luncheon, San Francisco; Professor Geoffrey Stone, '71
October 17, 2002
Schwartz Lecture: Nadine Strossen, President, American Civil Liberties Union
Loop Luncheon on the North Shore
December 2, 2002
“Chicago’s Best Ideas” Discussion Series *

WINTER
Supreme Court Swearing-In Ceremony
Washington, D.C.
January 27, 2003
Centennial Dinner, Washington, D.C.
January 27, 2003
Breininger Dinner for women graduates & students
February 4, 2003
Loop Cocktails and Katz Lecture
February 24, 2003

SPRING
Coase Lecture: Professor Emeritus Ronald Coase
April 3, 2003
Centennial Dinner, New York City
April 3, 2003
Centennial Dinner, Los Angeles
April 9, 2003
Dowey Lecture Amy Gutmann, Provost, Princeton University
April 15, 2003
Fulton Lecture Frank Zimring, '67, Professor, University of California, Berkeley
May 1, 2003
Loop Luncheon
May 2, 2003
Reunion
May 2–4, 2003
Centennial Gala at the Field Museum
May 3, 2003

* Throughout the year, the Law School will host a discussion series, “Chicago’s Best Ideas,” where faculty will present a number of ideas generated by our faculty during the past 100 years.
The rewards of liberal education: Martha Nussbaum wins Grawemeyer Award

Martha Nussbaum, the Ernst Freund Distinguished Service Professor of Law and Ethics, won the prestigious Grawemeyer Award in Education this year for her book *Cultivating Humanity: A Classical Defense of Reform in Liberal Education.*

In the book she contends that "non-traditional areas of study—including courses on non-Western cultures, African-American studies, women studies and the study of human sexuality—have been successfully integrated into an undergraduate liberal education," says the award citation, and that such reforms are essential "to maintain democratic principles in the nation's multicultural society" and "enable critical examination of the status quo."

In addition to education, the annual Grawemeyer Awards, issued by the University of Louisville and valued at $200,000, are granted in musical composition, psychology, religion, and "improving world order." Previous winners include Mikhail Gorbachev, composer Pierre Boulez, and political scientist Samuel Huntington. Each Grawemeyer Award is given for a single idea in its field rather than a body of work. Indeed, the awards bill themselves as "the first major international awards to honor powerful ideas rather than achievement." In addition to acknowledging the winner, the awards seek to endorse and promote the ideas that they honor.

Specifically, the Grawemeyer Awards for education aim to "stimulate the dissemination, public scrutiny and implementation of ideas that have potential to bring about significant improvement in educational practice and advances in educational attainment."

Nussbaum says that *Cultivating Humanity* seems to be stimulating such improvements and advances: "The book has already given encouragement to people who are promoting an undergraduate education that includes much more study of nations outside the U.S. and Europe," she says. "I know that it is often used by faculty and trustee groups who are holding curricular discussions ... Most recently, it has also played at least some role in reflections about the new Asian Women's University, a liberal arts college for women that is being set up in Bangladesh and on whose advisory board I serve."

As further evidence of *Cultivating Humanity*'s considerable power to capture imaginations, Nussbaum remembers her surprise at learning that it is popular reading for educators in Europe. "I thought it a very American book in that it focuses on the structure of liberal arts education, which is a concept little known outside the U.S.," she says. European universities train students narrowly in their chosen fields, and don't include general broad education in the curriculum. Nonetheless, Nussbaum found that in Europe, "university educators are searching for ways to integrate studies of race, women's studies, and other new forms of study into their existing curricula. It is difficult to do this when students basically come to university to study a single subject."

Nussbaum thus finds herself in the happy situation of seeing that her book addressing issues of American education "has promoted an increased interest abroad in the very concept of liberal arts education, as offering something of importance for citizenship in a multicultural society and an interlocking world."

*Cultivating Humanity* had already gained a great...
deal of ink and acclaim before the award was announced. It won the Association for American Colleges and Universities Frederic W. Ness Book Award in 1999 for the most significant contribution to studies on liberal education; it was reviewed in The New York Times, which called it "the best answer to attacks on multiculturalism"; and Publisher's Weekly marveled at how Nussbaum, far from "casting multicultural instruction as a type of payback for the sins of Western racism and sexism... artfully argues how

_Cultivating Humanity_ has promoted an increased interest in the very concept of liberal arts education as something of importance for citizenship in a multicultural society and an interlocking world.

the Western philosophical tradition itself leads directly to a multicultural agenda."

As for the award money, Nussbaum proudly says, "I am giving the money to support the activities of the new Center for Comparative Constitutionalism and the Implementation of Constitutional Rights. The new Center at the University will focus on the variety of social forces that contribute to, or impede, the implementation of rights. We plan to study the role played by religion, by the policies of multinational corporations, by legal education and the structure of the legal system, in a variety of countries, asking how rights that exist on paper may be more fully implemented: in short, how a Constitution can work for the people." The center, founded by Nussbaum, will include her and fellow Law School professors Richard Epstein and Geoffrey Stone on its board.—K.H.

Martha Nussbaum on the genesis of _Cultivating Humanity_

"The book began as a reaction to a situation in which only two positions were being represented in popular discussions of higher education: a conservative defense of a "great books" approach (as in Allan Bloom's book _The Closing of the American Mind_), and approaches to the inclusion of _new_ topics that were based on an idea of identity politics (we include the study of race, for example, as a way for minority students to affirm their own identity). I thought there was room for a principled defense of these new studies as important elements of citizenship for all students, and I also thought that many educators around the country were pursuing them in exactly that spirit. So I tried to record a lot of the good work that was going on, and to articulate a theoretical rationale for it."
Mandel Clinic hosts symposium on rarely-discussed issue of guardianship

More than 50 participants gathered at the Law School on September 14, 2001 for a symposium entitled "Making the Right Decision: Balancing Self-Determination and Protection from Harm in Guardianship," which was sponsored by the Mandel Legal Aid Clinic, the MacLean Center for Clinical Medical Ethics at the University, and Equip for Equality, an advocacy group for the rights of the disabled.

A person who is under a plenary guardianship loses the right to make almost any decisions concerning his person or property, including decisions concerning health care and where to live. The symposium was organized to bring attention to serious problems in the guardianship system in Illinois which were highlighted by the work of the multi-year Guardianship Reform Project. Mandel Clinic interim director Mark Heyrman, '77, who chairs that project, explained, "Given the large number of people who are under guardianship and the important rights and protections at stake, it is disturbing how little attention is paid to this topic."

The symposium gathered a diverse group of professionals to discuss a broad range of issues surrounding guardianship. Mary Mahowald from the University’s Pritzker School of Medicine and Heyrman discussed what legal and ethical dimensions define the need for guardianship and the need for changing Illinois’s statutory language. Following were addresses by Benedict Gierl from the Rush Hospital Alzheimer’s Disease unit, who spoke about how appropriate assessments about guardianship are made and interpreted, and Thomas Appleton, a judge on the Illinois Seventh Judicial Circuit, who discussed the challenges of interpreting medical assessments and transforming them into judicial orders.

Bradley Geller from the Washtenaw County (Michigan) Probate Court further discussed the need to consider alternatives to guardianship, referring to what had been accomplished in one Michigan court. Finally, the group heard the words of Sally Bach Hurme, an attorney in consumer protection at AARP. Hurme, a national expert on monitoring guardianships, was unable to attend due to the events of September 11, but her paper was read by Susan McMahon, the president of the Illinois Guardianship Association.

The symposium’s principle conclusion was that standards for the appointment of a guardian should focus on the ability of the respondent’s decision-making capacity rather than categories of disability.—K.S.
The return of Professor Geoffrey Stone

Upon his resignation as the University's provost and return to teaching full-time at the Law School this past fall, the editors asked Geoffrey R. Stone, '71, the Harry Kalven, Jr. Distinguished Service Professor of Law, a few questions.

What is the best part about being back?

I loved academic administration, but 15 years as dean and provost is enough for anyone. I first joined the faculty not to worry about financial aid budgets, telescopes, and music programs, but to teach lawyers and to worry about civil liberties. I'm thrilled to be back full-time where I belong. I'm teaching a class of 185 students the First Amendment this quarter, and it's an absolute delight. I've set aside an hour every day for students to join me for a cup of coffee because I've missed having the time to get to know them. The students are as bright, lively, and engaged as ever. I've also enjoyed getting to know our new younger faculty. Of course, as provost, I approved all their appointments, so I had a clear sense of their paper credentials. And I always made it a point to take our new faculty to lunch. But until now, I really haven't had an opportunity to see them in action. Quite frankly (and don't tell them I said this), they're amazing—dedicated teachers, serious and productive scholars, and challenging colleagues. As we've all been told, and I can now certify, they're the best young faculty in the nation.

The worst?

To be perfectly honest, there is no "worst." Every day brings a new adventure as I now have time to read workshop papers and drafts of articles, attend faculty roundtable lunches, and participate in a broad range of faculty seminars. I feel like a kid in a candy shop. I've even taken up playing the banjo, speaking of new adventures. I suppose the hardest adjustment is that as provost I was never alone. Every minute of every day was filled with meetings—with deans, department chairs, scientists, philosophers, budget directors, architects, etc. Now, I actually have time to think. Sometimes that does seem rather solitary. But, for the moment at least, the quiet is very welcome. I remember one day about twenty years ago I wandered into Phil Kurland's office and he was staring out his window across the Midway. I asked what he was doing. He gave me a sharp look and said "Working, of course."

What is the biggest change since you were last here full-time?

The faculty has changed substantially over the past eight years. More than half of the current faculty was not here when I became provost in 1993. Another marked difference is the curriculum. We've continued to expand our course offerings, and there are many more seminars. The legal aid clinic has a wonderful new building, and it seems to be flourishing. On the other hand, I'd like to see the Law School's public service program strengthened.

What should we expect in your next article or book?

Even before September 11, I was very interested in the problem of civil liberties (and especially freedom of speech) in wartime. I am beginning work on that project now. I'm also quite interested in changes in First Amendment doctrine over the past decade. There is a good deal of criticism of current free speech jurisprudence, and I don't think I share that view. I would like to try my hand at a paper that will explain and defend much (if not all) of current First Amendment law. Of course, I still co-edit the Supreme Court Review with David Strauss and Dennis Hutchinson (I've been doing that for a decade) and I have to keep up the casebook in constitutional law that Cass Sunstein and I co-author. This summer, I have to prepare a new edition of the First Amendment casebook that derives from the larger work. This fall, Lee Bollinger (the new president of Columbia University) and I published Eternally Vigilant: Free Speech in the Modern Era, a collection of essays by the leading First Amendment scholars of our time, including David Strauss, Cass Sunstein, and Richard Posner. At some point, I'd like to do a similar volume on either freedom of religion or issues in higher education.

Rumor is that you will teach Criminal Law. Is this a research interest? Why Crim Law?

The rumor is true. I don't have a specific research interest in criminal law, although it's an area that's always interested me, and I have written in the related field of constitutional criminal procedure (e.g., the Fourth and Fifth Amendments). I love teaching first-year students, and I haven't had a chance to do that for many years. In the past, I've taught Civil Procedure and Contracts just for the sheer joy of teaching first-years. I know the Law School was looking for someone to help with Criminal Law, and I figured, why not, it's something else to learn.
David Strauss spurs Supreme Court to unanimous decision

David Strauss, the Harry N. Wyatt Professor of Law, argued his 17th case before the United States Supreme Court on December 3, 2001, and on January 15, the Court ruled unanimously in favor of his client, the Chicago Park District. The case, Thomas v. Chicago Park District, was a First Amendment challenge to the way in which the Park District decides whether to issue permits to groups that want to hold events in the parks.

The plaintiffs in the case had applied for permits to hold festivals calling for the legalization of marijuana. When the Park District denied some of their applications, they sued, claiming that the Park District was censoring their speech. Under Supreme Court precedents from the 1960s, any government agency engaged in censorship has to follow strict procedures—for example, it has to seek approval for its decisions from a court, and it has to allow the speech to take place if the courts do not act within a brief period of time. The plaintiffs said that the Park District violated the First Amendment by not following those procedures.

Several federal courts had accepted similar claims in other cases, but the Supreme Court did not; it agreed with Strauss's argument that because the Park District was not concerned with the content of anyone's speech, but only with accommodating competing uses of the parks, the Park District did not have to follow the strict procedures that apply to censorship. The Court also ruled that the criteria the Park District used to decide permit applications were specific enough to satisfy the First Amendment.

The Park District was supported in the case by the United States government, the City of New York, and several state and local government groups, all of whom said that a ruling against the Park District would undermine their ability to manage parks and other government-owned property. "I think we were able to convince the justices that the Park District was just in the business of managing the parks and wasn't at all like the movie censorship boards that were involved in the cases from the 1960s," Strauss said, in explaining why the Court had ruled unanimously and unusually quickly. "Of course, when you're an advocate, you always persuade yourself, but I think both the law and the common sense of the situation were on our side."

Norval Morris's new novel explores the beginnings of prison reform

In his latest book Norval Morris, dean of the Law School from 1975 to 1978, brings his 53 years as a leading scholar of crime and punishment to a fictionalized historical narrative with profound and sobering implications for America's penal system.

Morris, the Julius Kreeger Professor of Law and Criminology Emeritus, recently published Maconochie's Gentlemen: The Story of Norfolk Island and the Roots of Modern Prison Reform. The book tells the story of Alexander Maconochie, a retired British naval captain who in 1840 volunteered to become superintendent of England's most punitive and remote penal colony, Norfolk Island, located 1,000 miles off the east coast of Australia.

In the severity of its isolation and punishments, Norfolk Island was not unlike today's American "supermax" prisons. Two thousand prisoners were housed in harshly primitive and overcrowded facilities, and fed in sheds or in the outdoors next to the communal outhouses. Knives and forks were prohibited, and prisoners were not allowed to bathe or wash their clothes with any kind of regularity. There were horrifying punishments for infractions of the rules: hanging, solitary confinement in cavelike cells, lashing, gagging. Morris documents other stark constants of prison life such as brutal guards, sexual assaults, and gangs.

"There was a great deal of unnecessary cruelty," says
Morris, with his typical and eloquent understatement, Maconochie, influenced by the early abolitionists in the United States, volunteered to move himself, his wife, and six children to Norfolk to undertake a bold experiment notable for its quiet humanity—and for its success.

Maconochie introduced the marks system, under which prisoners could earn "marks" for good behavior that would be credited toward reducing their sentences. Swiftly, Morris says, Maconochie turned the prison into a well-run, productive, and relatively peaceful institution. The guiding principle, says Morris, is what is called in progressive prisons today "voluntary programming"—assessing the needs and interests of the incarcerated and giving them some sense of dignity and control in activities pursued while in prison.

Not only did Maconochie introduce the marks system, but he also imported musical instruments, opened a library, and allowed prisoners to plant their own gardens. "He brought fair and considered decision-making and rational sanctions to the punishment of prison offenses," says Morris. "He fostered educational and vocational training, gave measures of increased privacy and independence to those who earned those privileges, and demonstrated the feasibility of a firm but humane administration."

Morris explores the Maconochie reforms—the "gentlemen" in the title refers to the transformation of the hardened Norfolk convicts—through a fictional narrative that explores the points of view of warden, guard, and prisoner with equal humanity. Morris explains that his mentor and friend Sir John Barry, of the Supreme Court of Victoria, Australia, had already factually explored the topic in a biography of Maconochie.

"Some things you can do better in fiction than in analysis," Morris says. "You can explore the different perspectives in a Rashomon-like approach that is more emotionally compelling and satisfying."

Maconochie's methods were widely derided by politicians as coddling or maudlin, and despite the support of the governor of New South Wales, he was dismissed after four years at Norfolk Island. The administration that succeeded Maconochie's abandoned his policies and returned to practices of "debasing cruelties," according to one contemporary observer.

In that derision and dismissal, Morris finds more parallels to America today.

"Our mindless, tough approach to crime has been a spectacular failure," Morris says. "And it has gotten markedly worse since the 1970s, with mandatory and indeterminate sentencing, supermax facilities, and the disastrous war on drugs. We have failed to document the chaos around us, even though we have documented well that excessive punitive practices do more harm than good."

Today, "we have two million people in prison in America, six to twelve times the rate of incarceration in all other industrialized countries—even though our crime rate is somewhere in the middle," Morris says. "Last year, we had more than 600 thousand prisoners released with no place to live, no skills, and no job. One does not have to be a student of crime and corrections to realize what this must do to the fabric of our communities."—C.A.
Memorable Fulton Lecture
assays lawyers' part in Nazism
and postwar reconstruction

In an enthralling Fulton Lecture hosted by Professor Richard Helmholz and delivered in November, German legal historian Michael Stolleis addressed the role that lawyers and legal scholars played in the Third Reich and then in Germany's postwar efforts to regain international acceptance. He also considered how lawyers' self-image abetted their roles in both contexts, and how legal scholars have done at facing up to the intricate issues of complicity and reconstruction that those times present.

The title of his presentation, "Reluctance to Glance in the Mirror: The Changing Face of German Jurisprudence after 1933 and post-1945," suggested a principal theme, which was elaborated in this remark of Nietzsche's cited by Stolleis: "This I have done,,' says my memory. 'This I cannot have done,' says my pride and remains intractable. In the end, memory gives in."

The lecture was timed to coincide with the opening of the 2002 meeting of the American Society for Legal History, which was held in Chicago, so Stolleis also served as the plenary speaker for that event.

The Nazi regime held an ambivalent view of lawyers, Stolleis said: "The NSDAP saw the traditional civil service system, dominated as it was by lawyers, as a reactionary force that was an impediment to the Nazi movement. At the same time, the Party was dependent on these structures at every level, from the highest offices in the Reich to the regional and municipal authorities. The Nazis' mixed view of lawyers, Stolleis observed, mirrored a self-perception among lawyers that had emerged over centuries: 'attitudes... oscillated between respect and disdain, trust and distaste.' He cited a German saying that was first recorded around the year 1300: "Lawyers are wicked Christians."

Thus the Reich's increasingly hostile practices toward lawyers, Stolleis said, 'fitted well with the lawyers' own self-image. Indeed, it seemed heaven-sent, for it underpinned their notion of a 'suffering judiciary' and lent credence to the idea of lawyers as the 'most hated profession...'

Most lawyers found a way to retain their livelihoods during the Nazi years, when much legal theory and practice was reoriented to support the views of the ruling regime. When the war ended and it was necessary to "restore Germany's place in the civilized world," there were few members of the legal profession who were unainted by association with the Reich, and yet it was necessary to reestablish rule of law in order to reclaim Germany's place among civilized societies.

"Through tacit coalition and active association, virtually all the lawyers who had practiced in the Third Reich were reinstated in public office and private law firms," Stolleis said. "This broad consensus was rarely disturbed by dissonant voices crying that it was not 'legal positivism' that had been the main problem, but a dearth of courage and a general compliance on the part of the lawyers... Colleagues without a Nazi past wrote dozens of certificates... attesting the recipient's conscience to be 'whiter than white.'"

He elaborated the many ways in which unwillingness to "glance in the mirror" shaped German legal institutions during those times and affected the subsequent understanding by legal historians of what actually happened then: how it permitted many legal professionals to support Nazism and then implicitly or explicitly disavow that support after the war; how it affected theory and practice during wartime and during postwar reconstruction; and how scholars are challenged today in understanding those times by the silence and obfuscation that was perhaps necessary for all that to transpire.—G. de J.

For a printed copy of the lecture, please e-mail dick_helmholz@law.uchicago.edu.

**Named Lectures**

Organized and presented by faculty, and funded by generous members of the Law School community, these annual named lectures exhibit the scholarship of speakers from the Law School and around the world.

- **The Coase Lecture in Law and Economics:** David Weisbach, Professor of Law, "Taxes and Torts in the Redistribution of Income."
- **The John Dewey Lecture in Jurisprudence:** Ronald Dworkin, Frank H. Sommer Professor of Law, New York University, "Hart’s Postscript and the Point of Political Philosophy."
- **The Maurice and Muriel Fulton Lecture in Legal History:** Michael Stolleis, Director, Max Planck Institute for European Legal History, Frankfurt, "Reluctance to Glance in the Mirror: The Changing Face of German Jurisprudence after 1933 and post-1945."
- **The Wilber G. Katz Lecture:** Frank Easterbrook, ’73, Senior Lecturer in Law and Judge, U.S. Court of Appeals for the Seventh Circuit, "Judicial Discretion in Statutory Interpretation."
Symposium on military tribunals reflects Law School's impact on public policy

As is so often the case, Law School faculty and alumni have recently been at the center of a policy issue of great national significance. As innovators, scholars, advisors, and commentators, they have shaped the evolution of that policy and assisted citizens in understanding its implications and assessing its desirability.

In this instance, the policy is the use of military commissions, or tribunals, to prosecute cases against suspected terrorists and terrorist leaders.

The Chicago nexus

On November 6, 2001, an op-ed article by professors Bernard Meltzer, '37, and Jack Goldsmith appeared in the Financial Times. Titled "Swift Justice for Bin Laden," it made the case that the best way to handle prosecutions against terrorists and their leaders would be to try them before military commissions. "Such a trial," Meltzer and Goldsmith wrote, "would be much shorter and more tightly controlled than one in an international tribunal or a civilian court and could relax rules of evidence."

Within a few days, major news outlets were reporting that President Bush would indeed choose the option of military tribunals, and on November 13 the president issued a military order authorizing them. The president's order, directing the secretary of defense to promulgate the specific "rules for the conduct of the proceedings of military commissions, including pretrial, trial, and post-trial procedures, modes of proof, issuance of process, and qualifications of attorneys," was met in some quarters with concern that it might be an overreaching of presidential authority, or that the rules eventually created for the tribunals might violate constitutional protections.

Early in December, Attorney General John Ashcroft, '67, told a Senate committee that he was confident in both the President's authority to issue such a military order as commander in chief, and in the Defense Department's commitment to respect the rights of defendants.

Law School faculty continued to play prominent roles amid heightened public scrutiny of the tribunals. Among other things, Dennis Hutchinson wrote a Chicago Tribune opinion piece, Cass Sunstein testified before a Senate panel, Richard Posner made his voice heard and was cited in many columns, and Goldsmith appeared on National Public Radio. After the president's order was issued, Meltzer—who served as an assistant trial counsel at the Nuremberg International War Trials—and Goldsmith served as informal advisors to the Defense Department concerning the procedural rules for military commissions and other related matters.

The symposium

The debate moved to the Law School's Weymouth Kirkland Courtroom on January 17, 2002, with two panel discussions convened under the general topic "Military Tribunals: History, Legality, Policy." Meltzer moderated the first panel, which focused on the subject of the tribunals' legitimacy. Along with professors David Currie and Adrian Vermeule, Goldsmith and Sunstein made presentations on that topic and also responded to lively questioning from the audience.

The second panel, on civil rights issues, was moderated by Kenneth L. Adams, '70, a partner at Dickstein, Shapiro, Morin & Oshinsky in Washington, D.C. The panelists were professors Hutchinson, Geoffrey Stone, '71, and David Strauss, joined by Herbert J. Stern, '61, a name partner at Stern & Greenberg in Roseland, New Jersey. Stern, a former District Court judge, presided over
the last military tribunal conducted by the United States—over a 1979 Berlin airplane hijacking. His book recounting that experience, *Judgment in Berlin*, won a Freedom Foundation award and was made into a feature film starring Martin Sheen and Sean Penn. Among the decisions he had to make in Berlin was whether defendants in military courts were entitled to a jury trial.

**What they said**

The presentations and ensuing discussions ranged over many important subject areas with the depth and sophistication that would be expected from such panelists and moderators. Only a very limited sample of the considered opinions that were expressed can be captured on these pages. Regarding the president's constitutional power to create the tribunals, there was so much affirmative agreement among the panelists—along the lines of Sunstein's assertion that "the order both serves legitimate interests and is constitutionally fine"—that Vermeule was prompted to observe, "About 90 to 95 percent of academic scholars have taken the position that the order is fully constitutional, on its face, period. Why is everyone not at the U of C so obviously wrong?"

Currie, accepting that if the Supreme Court were called upon to review the order it would probably find that it was authorized by statute, suggested that without such statutory authority, "There is a case that this is such a basic policy decision that it ought to be taken, by the standards of the *Steel Seizure* case, by the Congress and not the president." Stern addressed both sides of the issue, beginning his remarks by saying, "First of all, make no mistake about it—military commissions are constitutional. Second of all, make no mistake about it— they are not authorized by statute."

Similarly complex crosscurrents, forthright assertions, enlightening insights, and challenges to think more deeply were offered on many other topics, as indicated in the excerpts that follow. You can find materials to help you examine this topic in more detail at the symposium's Web site, www.law.uchicago.edu/tribunals/index.html.

**The constitutionality of the tribunals' procedures**

The actual procedures to be used by the tribunals had not been promulgated at the time of the symposium, so this issue was addressed in an anticipatory manner.

*Sunstein:* "We have always given constitutional rights to those who would seek to destroy our Constitution—that's a great source of pride . . . How can we serve the legitimate interests behind the president's order while also insuring that innocent people aren't convicted? The ways are simple, and there are just three of them: narrow the scope of the order, insure ample procedural safeguards, and promote the goals of independence and review."

*Stone:* "To what extent will we allow fear, anger, hurt, and hysteria to affect our better judgment? We have a long and disappointing history in this country of allowing circumstances like these to lead us into regrettable decisions . . . The order says practically nothing about procedural rights. It seems to me perfectly reasonable that the fact that it didn't speak volumes. It's no wonder that law professors looking at such an order might be nervous."

*Strauss:* "For many years, until the middle of the twentieth century, the Bill of Rights did not govern prosecutions in state courts. While the states didn't have to conform to the particulars of the Bill of Rights, they did have to provide fundamentally fair proceedings. That model could be a way to think about military tribunals: this is a separate jurisdiction within the United States; proceedings in that area have to be fundamentally fair. Some of the rights that defendants have really are necessary for fundamental fairness . . . On the other hand, certain rights we're accustomed to seem not to be essential to fundamental fairness."
Mechanisms for review

Individuals covered by the order are barred from seeking remedy in "any court of the United States, or any State thereof."

Carrie: "Does the provision [in the order] that ousts the ordinary courts suspend habeas corpus? If so, we're in trouble, because the circumstances under which habeas corpus may be suspended are narrowly limited by the Constitution."

Goldsmith: "[The Roosevelt-era Supreme Court] interpreted language [in Roosevelt's order establishing a military commission] saying there shall be no review by any court to permit habeas corpus review, and the Bush order, I predict, will be similarly interpreted."

Hutchinson: "I would hope very much that the federal courts would keep out of it. My anxiety is that I think it very dangerous for federal courts to try to superintend the procedures of military tribunals... I think there is an enormous risk that in doing so the Court will do mischief not only with respect to the military tribunals, but with respect to the rest of its due process jurisprudence." [He then read an unpublished opinion from Justice Jackson, which said in part, "To avoid giving the impression that we are hampering the war, we adopt constructions which distort the law and compromise our institution, do little to ensure civil liberties, and perhaps disable ourselves through bad precedents from helping their restoration when peace comes."]

International law implications

Goldsmith: "Have members of Al Qaeda committed war crimes? This turns out to be a fairly difficult question, because traditionally the laws of war apply to state actors. Al Qaeda probably aren't state actors, so the question is, can non-state actors commit war crimes? I think the answer is yes."

Efficacy as a policy matter

Will the tribunals bring about swift and sure justice for guilty parties?

Stern: "I want the people who committed these crimes to be punished. It will be a lot easier to convict them before the courts of the U.S. than before these tribunals... because people brought before these tribunals will have defenses that they would not have if we buckled down and tried them before ordinary courts. They'll be able to say that the court has no jurisdiction... They'll have a big argument about whether the Hague and Geneva conventions apply at all to individuals who are not representatives of sovereign states... They can argue that attacks on civilian populations may not be prohibited under the laws and rules of war; they're going to scream about the fact that what somebody does from 20,000 feet from an airplane someone else can do from 500 feet from an airplane... They'll say they can't possibly get a fair trial in the United States."

Another agenda?

Adams: "Don't make the mistake of paying attention only to Section 4 of the order, which talks about tribunals and how people are going to be tried. Look at Section 3 of the order, which talks about detention... I think the first thing to look at here is the number of people who have been taken off the streets and detained. That may have been the primary political mission two months ago: Get people off the street who might do something else in the near term, and worry later about the tribunals. I'm not sure there will

Moderator Kenneth L. Adams

even be a lot of trials in these tribunals, at least not in the United States—I think the fact that they've been able to scoop up a lot of people and get them into jail and hold them there met the first political objective." —G. de J.
MEDIA SIGHTINGS

August 2001

A rock and a hard place
On the settlement of a personal injury claim against Bridgestone/Firestone for $7.5 million, Professor Alan Sykes explained, “Obviously they settled because they thought they were risking a worse outcome” from a jury verdict and award. “It’s a business decision that business people have to make.”

Treating kids like kids
In a story in the Chicago Tribune on juvenile justice in Illinois, Professor Tracey Meares, ’91, said that proposed reforms “just scratch the surface. For example, prosecutors in Illinois have a lot of discretion to transfer juveniles to adult court,” an issue not addressed by the reforms.

“The economic crisis du jour”
That is the way that Crain’s Chicago Business described Professor Kenneth Dam’s new challenge in the U.S. government. Dam, ’57, is on leave from the Law School, serving as deputy secretary of the treasury.

September 2001

AOL makes the rules in chat rooms
Quoted in the Financial Times, Professor Cass Sunstein said, “because of the sheer volume of communications it hosts, AOL has a large role—a quasi-governmental role—in controlling public space.”

September 11 and First Amendment freedoms
Professor Dennis Hutchinson was covered in the Chicago Tribune, which described him as “heartened by the manner in which public officials, including President Bush, already have expressed concern about potential threats to civil liberties and how they have condemned threats or violence toward Arab-Americans.”

M.D.s vs. HMOs
In Medical Economics, Professor Richard Epstein summed up the current debate on managed care: “The point of an HMO is to say that at times medical judgments will be trumped by financial considerations. The question is whether doctors or the finance guys get to decide who’s going to make that decision.”

October 2001

Whose fault is it?
Dean Saul Levmore discussed airline liability for September 11 in an article in Forbes: “We do have this strange tradition of holding airlines liable for lots of accidents even when we more or less know it’s not that airline’s fault.”

Back to the classroom
On Geoffrey Stone’s return to the Law School after a long tenure as provost, University President Don Michael Randel was quoted in the Chicago Sun-Times: “One is bound to understand and respect his wish to return to the teaching and scholarship that made him an important citizen of the university in the first place.”

A living link to history
The Buffalo News noted that Professor Bernard Meltzer, ’37, an assistant prosecutor at the Nuremberg trials, would visit Chautauqua for a roundtable to discuss the work of Nuremberg’s chief prosecutor, Robert H. Jackson, and to share insights on how the prosecution of Nazis offers lessons for bringing Osama bin Laden to justice.

True patriotism
The Washington Times quoted Professor Martha Nussbaum’s argument against teaching “irrational” patriotism “full of color and humanity and passion.” Nussbaum advocates telling children that they are “citizens of the world of human beings.”

Microsoft intact
Professor Randal Picker, ’85, appearing on PBS’s Nightly Business Report, said, “I think the D.C. Circuit opinion made clear that a breakup in this situation would have been unusual and probably unwarranted and so I think it’s not surprising that the Department of Justice has chosen to drop that.”
November 2001

**Tribunals and the framers**
Susan Gzesh, director of the University's Human Rights Program and a lecturer at the Law School, was quoted in the *Chicago Tribune* on the proposal to use military tribunals to prosecute prisoners in the war on terrorism: "The wording speaks of 'the people,' 'the accused,' and 'any person' without reference to citizenship. The Supreme Court has consistently held that those rights are enjoyed by everyone in the country, not just citizens."

**Another view on tribunals**
Judge Richard Posner, a senior lecturer in the Law School, was quoted by George Will in his syndicated column: "We should remember that the constitutional language conferring rights such as 'due process' is vague. Such language has acquired its content incrementally, over many years, from judicial interpretations."

**Why are they there?**
Lawrence Bowman, '82, director of the MacArthur Justice Center, noted in the *Chicago Sun-Times* that a "significant number of Death Row inmates from Cook County had lawyers who would not be acceptable under the new standards. We have to look backward at those people who were placed on Death Row with incapable counsel."

January 2002

**A champion of prison reform**
A *Washington Post* review of former dean Norval Morris's new book, *Maconochie's Gentlemen: The Story of Norfolk Island and the Roots of Modern Prison Reform* (see page 10), concludes: "As to whether prisons should be designed to deter or rehabilitate, Morris argues that the more relevant point is the fact of imprisonment itself, and the irrevocable harm that confining so many of our citizens behind bars—America has the highest number of prisoners in the world—does to the fabric of our society."

**A big, blurry case**
Professor Douglas Baird was quoted by the *Orlando Sentinel* on the need to avoid premature judgments in the Enron case. "There may not be a clear rule of law" that applies to any accounting scheme. "There aren't very well-defined offenses." Baird explained that prosecutions become "more likely when defective accounting practices hurt many people, involve large sums of money, and yield huge profits to conspirators."

**Police and public housing**
In the *Chicago Sun-Times*, Assistant Clinical Professor Craig Futterman explained a complaint by residents of a public housing development against police: "The true purpose is to change police practices in the Stateway community so that the police are truly accountable to the residents."

**Taking U.S. law offshore**
Professor Jack Goldsmith was quoted in *The Irish Times* and *The New York Times* with a cautionary note on the consequences of applying U.S. law all over the world: "Americans have not considered the consequences. The U.S. loves to export its values, but not if it gives other countries the power to review what we do."

**Disputed grading**
In criticizing the performance of the majority in the *Bush v. Gore* decision, Professor Elizabeth Garrett dissented from strong support offered elsewhere by Posner and Epstein, among others. Garrett said, "Maybe closure was important here, but legal opinions are supposed to be analyzed on the basis of their reasoning and the justices' opinions are analyzed with respect to their consistency to their jurisprudence, and on those grounds the opinion doesn't get very high marks."—PS.
Copyright as a Rule of Evidence

by Douglas Lichtman
Many copyright doctrines are best understood as tools that exclude cases where evidentiary issues would likely so increase the costs of litigation that those costs would outweigh the social value derived from offering copyright protection in the first place.

I teach an introductory copyright course at the Law School, and in that course I find myself repeatedly talking about evidence. I talk about the obvious evidentiary issues—for example, the elements of a prima facie infringement case and the logic behind various limitations on the use of expert testimony. But I also talk about evidence in many settings where evidentiary issues might not readily come to mind.

For instance, it is now well accepted that a work of authorship must show at least a modicum of creativity in order to qualify for copyright protection. Students typically find this requirement intuitive. Novels, plays, and musical compositions are at the core of copyright, after all, so naturally some bit of creativity is required. I nevertheless ask my students to defend creativity as a legal, as opposed to artistic, threshold—in essence, to explain why a well-designed copyright regime would exclude ordinary, or what I call “banal,” expression. That conversation inevitably leads us toward a discussion of evidence.

Of course, no one starts there. The first responses typically come from students who argue that copyright favors the creative over the banal simply because banal work is not valuable to society. Obviously copyright excludes banal expression, these students tell me; why incur the costs of administering a complex legal regime with respect to worthless work? The class usually accepts this argument for a few minutes, but then someone offers an example of a banal yet valuable work, and the argument unravels. The phone book lacks any creative spark, but telephone listings certainly serve an important function in society. In fact, a creatively organized phone book—say, one organized by the named party’s height—would likely be less valuable than a traditional, alphabetical one. Databases similarly are often banal but valuable. The Kelley Blue Book, for example, greatly assists purchasers of used cars by gathering information about the market value of various vehicles, but the result is definitely not the kind of book that makes for exciting bedtime reading. The American Bone Marrow Donor Registry is similarly an utterly uncreative but nonetheless valuable work.

Having rejected the idea that creativity is a filter for social value, the class traditionally turns next to an argument about costs. Maybe copyright excludes banal work because it is inexpensive to create. No point in incurring the costs of the copyright regime with respect to works that are cheap to create, the class tells me this time; even without protection, firms and individuals would still find it worthwhile to produce inexpensive work. This argument falls more quickly than the first, mainly because the same examples that debunked the social value theory serve to undermine the cost theory, too. There are significant up-front costs associated with compiling new phone books and researching new databases. So, while it is true that banal expression is sometimes cheap to produce, this is not true across the board, and, overall, there is no reason to think that a lack of creativity is a good proxy for a lack of production costs.

The arguments from here get more sophisticated. For example, sometimes students suggest that copyright excludes banal work as a way of encouraging authors to focus on creative work. Increasing the reward for banal work might distract authors, these students argue, causing them to spend more time developing
dictionaries and databases and less time writing *Moby Dick* and *Canterbury Tales*. This distraction argument has some appeal at first, but it ultimately proves too much. For starters, it is hard to imagine that Mark Twain was torn between either working on the phone book or penning American classics; so, when we talk about marginal incentives, we really are thinking about the decisions made by investors, publishers, and similar business entities, but not authors themselves. If our focus is on these sorts of business entities, however, the argument does not just argue against protecting banal work; it actually expands to argue against almost any legal protection. That is, if we were to change the law so as to make any business less attractive—from cattle ranching to, yes, database production—that would, at the margin, slightly increase the allure associated with investments in creative expression. Yet surely no one argues against federal farm subsidies on the grounds that a more precarious cattle industry would lead to better Hollywood scripts. Just the same, the argument is not compelling as applied to banal expression, unless (again) we think banal expression either is of extremely low social value or is extremely inexpensive to produce.

Note that, during the conversation in which all of these hypotheses are in turn brought forward and rejected, my class inevitably finds itself growing less and less comfortable with the creativity inquiry itself. In making the above arguments, students naturally offer what they believe to be no-brainer examples of banal work. Yet, in every case, at least someone in the room disagrees with the example as offered. Creativity, it becomes clear, is hopelessly subjective. As students struggle to explain creativity's role in the copyright regime, then, they also begin to wonder whether judges and juries are capable of measuring creativity in the first place. Is Piet Mondrian's painting *Composition with Yellow Patch* really a work of creative art, or is it just a few ordinary squares painted in black with one small patch of yellow? Can Campbell's Soup cans ever be anything more than boring cupboard material? As Justice Holmes said in an earlier era, it is "a dangerous undertaking for persons trained only [in] the law to constitute themselves judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits."

But then I point the class back to an explanation tied to something Not only does factual work not present problems with respect to proof; it also presents a very sympathetic case for some form of intellectual property protection.

judges are quite competent to evaluate: evidence. My argument is simple. If the copyright system were to recognize rights in banal work, courts would be overwhelmed by difficult evidentiary disputes. Two parties would come forward with remarkably similar banal works, and the court would find it virtually impossible to determine whether one copied from the other (impermissible infringement) or whether instead any similarity between the works was just a natural outgrowth of the fact that both works were banal. Ask four students to create a directory of Asian restaurants in Chicago and, whether they copy or no, the four will likely produce markedly similar directories. A creativity requirement, then, empowers courts to exclude from the copyright
system a particularly messy class of cases: cases where courts would not be able to use similarity as the basis for even a weak inference as to the likelihood of impermissible copying.

Evidence is a topic of conversation throughout my course, helping to explain not only the treatment of banal work but also copyright doctrines as diverse as the merger doctrine, the doctrine of *scènes à faire*, and the fixation requirement. The details of the argument change in each setting, but the basic point is always the same: copyright is in part a rule of evidence. Many copyright doctrines are best understood as tools that exclude cases where evidentiary issues would likely so increase the costs of litigation that those costs would outweigh the social value derived from offering copyright protection in the first place.

To examine one implication of this thesis—a thesis that I develop and analyze more fully in the working paper on which this essay is based—let us focus again on the question of why copyright law today needlessly denies protection. Protection is denied due to a lack of creativity, but there is no underlying evidentiary concern.

Consider, for example, factual works. Factual works like directories and databases often lack creativity, but issues related to evidence can be quite manageable in these settings. A famous example involves a telephone directory. The firm that produced the original directory thought ahead and, with evidentiary issues in mind, peppered its listings with a smattering of fictitious entries. Those entries did no harm since no consumer was ever going to look up a nonexistent neighbor; but when a rival entered the market and copied the existing directory instead of gathering the data anew, those fictitious listings proved who copied from whom. If the rival had compiled its own telephone listings, or if it had even simply confirmed the existing listings, it would have detected all of the false entries and eliminated them. But the rival did not. Four fake listings thus appeared in the new directory, testifying both to the fact of copying and also to its approximate extent.

Now admittedly this sort of subtle trickery is only possible for certain types of work. Fictional entries on maps, for example, could be problematic. Even where such tricks are impractical, however, evidentiary issues concerning fact-intensive works should be easily resolved since the labor put into these works will typically provide all the evidence a court might need. Suppose, for example, that two biographers each chose to write the life story of boxer Lennox Lewis. True, the works would both likely tell a similar tale of a young man who grew up in London and went on to win Olympic Gold in Seoul. But a court would have no trouble determining whether the biographers copied from one
another as opposed to working independently. After all, the very act of researching Lewis’s life should generate a rich paper trail of airline tickets, taped interviews, and the like, evidence that would clearly and easily distinguish cases of innocent similarity from cases of impermissible copying.

Not only does factual work thus not present problems with respect to proof; it also presents a very sympathetic case for some form of intellectual property protection. Facts can be extremely expensive to uncover, yet they are subject to free-rider problems the moment they are revealed to the public. Leaving facts unprotected therefore diminishes the incentive to discover and disseminate them, since the first party to do so will always be at a disadvantage vis-à-vis later parties that can avoid the up-front costs by copying. This might on balance significantly decrease the flow of factual information in society, an effect that could be reversed by an appropriately tailored form of intellectual property protection.

Readers might object, worried that by recognizing copyright in facts, copyright laws will create monopolies in factual information.

Readers might object, worried that by recognizing copyright in facts copyright law will create patent-like monopolies in factual information. But that is not the case. Copyright stops only unauthorized borrowing. So, even if one party were to hold copyright in some particular fact it discovered, another party could always go back to primary sources and re-gather that same information. That is, recognizing copyright in that biography of Lennox Lewis would not mean that there would be only one book about his life; it would simply mean that later authors would either have to confirm the various factual claims themselves or cut a deal with the first author. The exact scope of permissible borrowing would need to be worked out—it would be hard and costly, for example, to negate all the benefits that a second researcher inevitably enjoys—but no matter how the nuances are resolved, it is clear that one can recognize copyright in these instances without creating monopolies in factual material.

Readers might also worry that in certain settings a second-comer might not be able to re-confirm a first author’s factual claims. That is admittedly an important special case, and it might be that a doctrine like the fair use doctrine should be available to excuse unauthorized borrowing in such circumstances. It would be impossible, for instance, for a second videographer to capture footage of the Kennedy assassination, and certainly that is relevant when considering the appropriate scope of protection for the original video images. Similarly, some factual research might be so expensive as to exhibit natural monopoly properties. The costs of sending an unmanned vehicle to explore the Titanic wreckage are exorbitant even given modern technology; so, while it is technically feasible for a second exploration, the economics might cause us to think about the Titanic example in the same way we think about the Kennedy example. But, again, these are special cases that would likely justify special exceptions.

In most situations, however, facts can be independently gathered by multiple parties and thus copyright would not yield monopoly.

Another concern that must be accounted for is the worry that protection of factual information will lead to wasteful duplication of research. The possibility of Coasian bargaining calls that claim into question; the fact that the second-comer can re-gather the information should set up a dynamic where the first party licenses to the second and thereby avoids any wasteful duplication.
But many respected commentators worry that transaction costs will block the bargain and, in cases where that seems plausible, again intellectual property rules could be tailored accordingly.

Lastly, a reader might object on grounds that the public has a strong interest in making full use of factual information. As the Supreme Court once framed this objection, the "very object of publishing a book on science or the useful arts is to communicate to the world the useful knowledge which it contains," and "this object would be frustrated if the knowledge could not be used without incurring the guilt of piracy of the book." But this objection, too, misses the mark. Copyright protection simultaneously increases and decreases the amount of information available to the public. It increases the available information to the extent that it gives authors an added incentive to develop and disseminate useful work. It decreases the available information to the extent that it allows authors to charge a nonzero price for information they reveal. If a court's purpose is to increase the free flow of a particular type of information, then, it is not by any means clear that the best option is to deny copyright protection to that class of works. Instead, the best option might be to increase protection and in that way increase the incentive to gather and share the desired information. It all depends on which of the two above-referenced effects dominates.

This is of course not to say that factual work raises exactly the same incentive/access tradeoff that is raised by creative work. Quite the opposite, one can easily distinguish factual from creative work along this dimension. For example, one might reasonably argue that the public has a stronger need for access to factual information than it does to fictional because important public policy decisions often turn on factual data. On this argument, former President Ford deserves less protection for the facts presented in his autobiography than George Lucas deserves for the creative elements inherent in his Star Wars movies. Ford's memoir, after all, tells us important details about Watergate and the Nixon pardon. One might reasonably argue the opposite point, too, namely that the public has a weaker need for access to factual information since in most cases a second author can invest his own time, money, and energy and in that way independently gather any factual information that is of interest. On this argument, it might be harder to create a substitute for Star Wars than it would be to reinvestigate the facts that led to the downing of the German airship Hindenburg. Overall, then, there is no reason to believe that, for factual work, the incentive/access tradeoff is skewed completely to one side. The scope of protection might vary depending on the nature of a given work, but the fact that the public often values factual information certainly does not explain why factual work should be left unprotected.

In short, one insight of the evidence theory is that a lack of creativity itself is not a good reason to deny protection to factual works. False facts and rich paper trails both operate in this context to minimize any evidentiary concerns. And, given that, there are strong arguments to be made in favor of at least some narrow form of protection. Debate over this possibility is prematurely cut off by the modern insistence on creativity per se, and the result may very well be an information economy where too few resources are spent preparing and disseminating factual works like databases and directories.

This article is adapted from a fuller working paper which is available directly from Professor Lichtman via e-mail at dgl@uchicago.edu. Comments and feedback are appreciated.

1 Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 251-52 (1903).
3 The fair use doctrine excuses infringement in instances where various public policy concerns support that result. See 17 U.S.C. § 107.
A Day in the Life of the Law School

The temperature at the Law School reached 42 degrees on Thursday, February 7, 2002, a far cry from the blustery cold that so many graduates will remember from their own Law School winters. Aside from the weather, though, February 7 was a typical day at the Law School, energized by the scholarship and activities of students, faculty, and staff. For this photographic chronicle of that day, the Record tightens its usually wide perspective on the Law School's achievements and events in part to see just how much happens at the Law School in one day.
Registrar's Office

Foreign Affairs & the Constitution, Professor Jack Goldsmith and students

SPRING 2002 • THE UNIVERSITY OF CHICAGO LAW SCHOOL
Issues in Public Sector Labor Relations seminar, Andrea R. Waintroob, '78, Lecturer in Law

American Legal Theory seminar, Shubha Sastry, '03

Evidence. Senior Lecturer Richard Posner and students

4:34 p.m. Room C

4:45 p.m. Room F

Ethical/Legal Aspects of Health Care seminar, Ila Rothschild, Lecturer in Law (right), and guest Dr. James Meserow

4:14 p.m. Courtroom

5:06 p.m. Room G

Issues in Public Sector Labor Relations seminar, Andrea R. Waintroob, '78, Lecturer in Law
Ben Guthrie Stewart, '03, blocks access to the Law School Musical's private rehearsal.

when the pizza and questions are gone at 9:17 p.m., the students head home. It's colder outside now, but tomorrow will again dawn unseasonably mild. The Law School is empty, except for Claude Surpris, tonight's visitor control attendant, and those students who have chosen to remain until the library closes at 2 a.m.

Fundamentals of Commercial Real Estate Transactions, James Rosenbloom, '72, Lecturer in Law

Law School Film Festival, Mark Warnick, '02, introduces Inherit the Wind, to be followed by comments from Geoffrey Stone.

...
Student organizations extend Law School education

Richard Epstein has a hammer. You would think that a building with its own courtroom would hold a gavel someplace. But it's Friday evening and Wine Mess has been in effect for an hour and nobody seems to mind that this year Epstein has to gesticulate, point, and bang with a cheap black claw hammer.

Reminding the crowd of hundreds—students and a contingent of faculty and staff—that the Chicago Law Foundation's Annual Charity Auction benefits some very good causes, Epstein encourages the bidders to "engage in what Mr. Greenspan called—a long time ago—'irrational exuberance'" with their wallets. The more money that CLF, one of the Law School's many student groups, gets from the auction, after all, the more grants they can offer to students who forego the relatively high pay of summer associate jobs in order to work in the public interest with nonprofits or community groups that can't afford to pay them.

Liveliness is the order of the night, and Epstein leads by example, taunting the crowd, "Going once . . . going twice . . ."
"Am I going to have to drop this gavel?"
"The higher you bid, the better you eat!"
And finally, "It is sold."

The audience is ripe for going along. Banter, laughter, and cheering mark the evening as items that include poker games with Assistant Dean Richard Badger, '68, and Professor Alan Sykes, a powerboat ride with Professor Randall Schmidt, '79, and passes to Wine Mess are bid up and over their fair-market value, as Epstein insists Dean Levmore is adamant about.

This is the playful, carefree side of CLF, but the organization exists for the earnest and significant purpose of fostering community service and superior legal work in the public interest. Faculty, staff, and students donate and bid on auction items knowing that their contributions as well as their socializing and play are tied to an outside-world confirmation of the importance of what they do at the Law School.

Here, at the intersection where exuberance meets the serious business of putting a legal education to work, is where CLF and its auction exemplify the purpose of the Law School's student groups and the activities that they sponsor.
The rise in student groups

In 1986 there were 13 recognized student groups at the Law School, excluding journals, the Hinton Moot Court, and clinical activities; in 2002 there are 48, and more are expected. And law students are becoming more active. Law Students Association president Matt Schernecke, ’02, points out that the Law School Musical had a record turnout for auditions this year. “In the range of 70 as opposed to the usual 30,” he says.

What accounts for the dramatic rise in the number of student groups and the quantity of participation in student activities? Are current students more energetic than their predecessors? “I would be hesitant to say that,” says Schernecke, “because I’ve worked for a lot of partners who went here and I know they’re pretty energetic.” But, he allows, “maybe they were energetic in a different way.”

According to Badger, assistant dean for the L.L.M. program and alumni development, students of today can devote more of their energy to activities because they have more time to do so. “Earlier,” he says, “more people worked and supported themselves while they were in school,” a practice that is less often necessary now because of grants, scholarships, and especially loans.

“You’re not even allowed to do more than, I think, 20 hours of work each week,” Schernecke says, “so not that many people do that.”

More community, more services, more student groups

One likely reason for the upsurge in the number of student groups is simple demand. Many law students come straight from college accustomed to the idea of myriad student organizations, says Schernecke. “There’s a hundred or three hundred groups at college, and students are disappointed when they don’t find the group for them at the Law School, so they want to start that group,” he says.

Students come to the Law School comfortable with their ability to manage hectic and varied schedules “We’ve built a student body that is proficient at juggling many classes and activities,” Badger says.

And Law School students are enthusiastic about their activities. Take the newly-chartered American Constitution Society, for instance. The organization’s co-chairs, Don Gordon, ’02, and Suyash Agrawal, ’02, announced that “our chapter has more registered national members of ACS than any other chapter. Close to 15 percent of the student body is involved.” Those numbers are quite impressive for a group established only last October.

So far, ACS is actually quite impressive all over. According to Gordon and Agrawal, “ACS is on course in its inaugural year at Chicago to sponsor more on-campus events than any other student organization.” Those activities include talks from “Chicago-based and nationally prominent thinkers with progressive and moderate views,” including Harvard constitutional scholar Laurence Tribe, former acting solicitor general Walter Dellinger, and Ralph Neas, ’71, president of People for the American Way.

ACS also exemplifies the dedication that Law School faculty have to the success of student groups. In addition to praising Professor David Strauss for his generous assistance and advice as the organization’s faculty advisor, Gordon and Agrawal feel fortunate to have access to Visiting Professor Abner Mikva, ’51, who sits on the national board of ACS.

Waiting for the movie to start, students unwind before a showing at the Law School Film Festival.

The Latino's Law Students Association with Judge Ruben Castillo. (Left to right) Roberto Campos, ’03, Macrui Dastourian, ’03, Cristina Regojo, ’03, Castillo, Maria Amelia Calaf, ’03, Miguel Fernandez, ’03, Andy Roman, ’03.

It’s not only faculty who are committed to the success of student groups. The administration has put its weight behind enhancing the Law School’s extracurricular experience. As Dean Levmore told the Visiting Committee at its last session, “The trend is toward more community, more services coming from the Law School, which is good because most student groups are extraordinarily educational.”
expressed his commitment since then to making sure that any plan for expansion of the Law School's facilities includes increased space for student organizations. The administration's commitment shows to the students. Schernecke says that "Dean Levmore has been really good about setting aside extra money for student groups and for symposia." Maria Amelia Calaf, '03, the head of Latino/a Law Students Association (LLSA), says, "The administration is very supportive of all our efforts and always willing to go the extra mile to ensure that our events are a success." Dean Levmore goes so far as to introduce many of the speakers that student groups bring to campus, as he did when LLSA brought in Ruben Castillo, the first Latino federal judge in Chicago, to talk about the status of minorities on the bench.

**A diversity of student interests**

Ellen Cosgrove, '91, associate dean and dean of students, says that the increase in the number of student groups "reflects the growing diversity of student interests, and not just in terms of identity organizations—though we've seen an explosion in those." Many student groups at the Law School, like LLSA, founded in 1986, reflect the growing popularity of these identity organizations, which began with the founding of the Black Law Students Association and the Law Women's Caucus in the late 1960s. Since then, says Badger, "as the student body has increased in diversity, groups based on that diversity have emerged." They include the Asian Pacific American Law Students Association; OutLaw, the gay and lesbian student association; and the South Asian Law Students Association. Students who join such groups tend to be especially active.

"A lot of times I don't know how they get it all done," says Schernecke. "The minority student groups may not be big, but they have a quite dedicated membership." LLSA testifies to that, this year hosting presentations by Guatemalan labor leader Manuel Ibarra on the challenges of organizing workers, Mexican American Legal Defense and Educational Fund senior litigator Maria Valdez on voting rights legislation, and Jaime Ruberte, president of the Colegio de Abogados—the lawyers' association of Puerto Rico—on environmental justice and the case of the island of Vieques.

Far from only hosting speakers, LLSA also contributes to the entire Law School community. They presented Visiting Committee member Jesse Ruiz, '95, in a session for first- and second-year students providing...
Mentoring Program and Lawyers as Leaders as well as groups that emphasize intellectual property, human rights, public interest, and international law. Except for the Environmental Law Society, each of those groups was organized after 1989.

Badger hypothesizes that the upsurge in such groups may reflect another demographic change in the Law School: “The student body has gotten older, on average. You would think that older students, with families and children, would be less likely to take part in student activities. But it seems that students know better what they want to do these days than they have in the past. The notion of a practice-area group like the Intellectual Property and Entertainment Law Society is a relatively recent phenomenon. So it’s possible that the older students have a better idea while they’re in law school of what they want to do.”

Another possible reason that Badger sees for the number of career-minded student groups concerns a change in the opportunities that law students have. “It used to be very hard for students to get jobs in the law, even for the summer,” he says. Students who now get summer associate jobs, though, have a better chance to discover the areas that they are interested in.

**Balance in life**

Cosgrove sees the greater interest in student activities as being generational. Current students have “an interest in balancing work and life,” she says. “Student organizations are a very good way of trying to balance students’ lives so that they are still serious students and doing everything they need to do, but they are also making their outside lives a priority.”

Schernecke concurs: “Students in law school are more interested in doing extracurricular things than they used to be. It’s not just a professional thing where you just do your job at school and that’s it.”

The Law School has always fostered the necessity of blowing off steam, of course. And ad hoc student groups are nothing new: One could probably reverse-engineer the tradition of Wine Mess and come up with something similar to the contemporary Bar Review, where students unofficially gather at a different tavern each week. But students have found that organized recreation at the Law School has its advantages as well. The Law School Musical and even the Trivia Contest gain their special flavor from their slightly twisted perspective and the distinct Law School quality of their participants, but also from their cavernous venues, the echo-chamber classrooms and auditorium of the Law School.

Recent additions to the slate of organized recreational student groups include Res Musica (a classical-music group), the Bridge Club, and the Law School Film Festival, launched last winter quarter by Mark Warnick, ’02, where professors screen and discuss a favorite law-related movie with students while everyone enjoys popcorn and pizza.

But it is obvious that student activities are rarely mere relief valves for the pressures of law school. They serve as a way of cementing what a Law School education is all about, bringing students together with each other and with the Law School’s faculty, intellectual traditions, and curriculum. As Crista Leahy, ’02, says, “The Law School has provided me with plenty of opportunities to satisfy my intellectual and social curiosity outside of the classroom. I thought law school would be more joblike and wouldn’t have as much a sense of community. I have found my experience at Chicago to be quite the contrary.”

Leahy is heavily involved in student activities at the Law School, serving as president of the Federalist Society and formerly as chairman of the Edmund Burke Society, a conservative parliamentary debating society. The Burke Society strikes an interesting balance between the social and intellectual in its regular debates. “The topics,” says Leahy, “are usually always issues on which conservatives are split (or at least there is a conservative/libertarian split). For example: ‘Resolved: America is in a Hopeless State of Decline,’ ‘Resolved: Keep Your Huddled Masses,’ ‘Resolved: All is Fair in War.’”

Leahy characterizes a Burke Society debate as a “rare opportunity to get together with colleagues and friends in a social atmosphere and discuss serious issues.” Make that “mostly serious issues”: a topic from a recent debate was “Resolved: Lawyers are Bad People.”
Student Life

A higher road

Leahy says that the Burke and Federalist Societies don't just balance her outside life with her professional education, but give meaning and form to what she learns in class. "Sometimes, we get caught up in doctrines and black-letter law in classes," she says. "The Burke Society and the Federalist Society provide a great environment to think about issues in a more free-form way, and to try to piece together ideas to formulate a more coherent philosophy."

Leahy's aversion to considering the classroom the extent of her education is typical of the Law School students who make student organizations and activities what they are. As Cosgrove explains, "Faculty members have a number of topics that they need to address in class, and so hot topics may come along from time to time that students are interested in exploring, but the classroom really isn't the right forum for exploring those issues." Student groups take such "hot topics" or timeless topics or any topics at all and find ways of addressing them in the Law School's typical relentlessly inquisitive manner. The sportive nature of student activities is actually a great testament to students' seriousness about their educations, personal careers, and profession, because students use the freedom given by extracurricular activities to apply the skills and values they find at the Law School to everything. Whether exploring their interests together, putting them through the crucible of debate and discussion, or plunging into them creatively, students put their stamp on the events and issues around them and in turn show the Law School's stamp upon them.

"An increasing number of student groups are tackling putting on symposia," says Cosgrove, highlighting one more trend that indicates the increasing amount of energy students are putting into their Law School activities. "It's a way of integrating what they're doing inside the classroom and legal issues that are out in the world, and bringing them together in the Law School in a format that's truly intellectual."

In so many of their activities, students' refusal to be satisfied with a mere toptnotch legal education shines through. They favor a higher road of involvement, commitment, and engagement with the outside world, prefer to test their classroom lessons and expand their knowledge of the issues of the day and to their lives in general.

As Suyash Agrawal says of the American Constitution Society, student groups provide "an opportunity to reflect on timely topics, challenge prevailing legal and policy paradigms, meet fascinating national personalities, and contribute to the intellectually thriving atmosphere that makes Chicago the most engaged law school in the country."

Hitting the limit?
The recent increase in the number of student groups is impressive, but one suspects that it must end eventually. Is the Law School approaching the maximum number of student groups it can sustain? Cosgrove thinks so, saying that "with a population of 600 students, 40 student organizations does mean that some people are stretched pretty thin working in a few different organizations."

That doesn't quite tell the whole story, however. Cosgrove says, "What I've seen happen over the last seven years is not so much an increase in the number of groups, but a change in the groups that exist. We've probably started 15 or 20 new organizations and seen another 15 go by the wayside. One nice thing about the smallness of the School is that we're able to adapt each year to students' interests, and student organizations come and go as there is interest in supporting them. So in a way it's limitless."—K.H.
Law School welcomes Jonathan Stern, Associate Dean for External Affairs

Last September the Law School welcomed Jonathan Stern to the pivotal position of associate dean for external affairs. Apart from overseeing the Law School’s alumni relations, communications, development, and special events units, Jon will lead the capital campaign that kicks off in October 2002. It is a reunion with the University of Chicago community for Jon, who worked in the University’s central development office for ten years before joining Northwestern Law School as its assistant dean for development and alumni relations, where he achieved historic contribution levels. Since his return to campus, he has been busy reconnecting and collaborating with old friends and colleagues, while at the same time sharing his insights and planning skills with Dean Levmore and the larger community.

Even after his highly successful tenure at Northwestern, the responsibility he now holds for leading the Law School’s five-year effort to raise $100 million could be a daunting task for anyone. But Stern says he’s confident: “Our goal is significant, but the Law School’s alumni and friends have always been tremendously supportive of this wonderful institution.” Moreover, he says, “we have so many people who are willing and able to lead by example. There are already a number of individuals who have made significant gifts or who have committed to do so during the course of the campaign. These are dedicated and enthusiastic individuals who themselves personify the immense pride that we should all have in this great law school.”

His current and future focus will be to continue communicating the importance of alumni involvement and participation and how each gift makes an impact. “The advances that we are seeking to achieve in our programs, space, and human capital are more than just exciting improvements; they are quite important for sustaining Chicago’s status as one of the nation’s preeminent law schools. As we move forward, there will be increasing opportunities for articulating the Law School’s vision and gaining input from our graduates and friends. The forthcoming Centennial Celebration will also be a great occasion for remembering and celebrating the enduring values of this very special place, with which I am very glad to be associated.” —K.S.

Following up:
James B. Comey serves as U.S. Attorney

For a time, James B. Comey, ’85, made headlines as the Richmond, Virginia, assistant U.S. attorney who headed up the much-admired Project Exile, prosecuting handgun felonies with tenacity and bringing down homicide rates as a result (see the Fall 2000 Record). Now Comey’s in the news again. In January, he moved north to rejoin the office where he first worked in the late ’80s as a prosecutor under Rudy Giuliani—but this time, he’ll serve in Giuliani’s former role of U.S. Attorney for the Southern District of New York.

Comey replaces Mary Jo White, a Clinton appointee who earned a reputation as the country’s most important prosecutor of international terrorism. And in fact, Comey’s own experience prosecuting terrorism is part of what impressed those who recommended him for the job: last spring, then-FBI director Louis Freeh grew impatient with the pace at which Washington feds were moving to issue indictments in the 1996 bombing of the Khobar Towers apartment building in Saudi Arabia. Comey was asked to take charge of the case, and three months later, Attorney General John Ashcroft, ’67, announced a 46-count indictment of 14 men.

Freeh was just one of many who heaped praise upon Comey in The New York Times when he was nominated for the job. Comey’s reputation in the law enforcement and national security fields “could not be stronger,” Freeh enthused. Jerry A. Oliver, the chief of police in Richmond, said of Comey that “once he gets his teeth into a project, he’s like a bulldog.” And White called her successor “the ideal leader for this office at this time.”

He is a commanding presence, not just intellectually, but at 6’8”, physically as well. The grandson of a police commissioner, he studied religion and chemistry in college at William & Mary. His move to New York was a homecoming of sorts: Comey was born in Yonkers and grew up in New Jersey, and after law school—before joining Giuliani’s office—he clerked for Judge John M. Walker, Jr., in Manhattan.—J.E.
Following up:
Dan Doctoroff, new deputy mayor of New York City

In the wake of September 11, and with a recession on hand, New York City mayor Michael Bloomberg’s new deputy mayor for economic development and rebuilding has his work cut out for him. But Dan Doctoroff, ’84, the person Bloomberg has chosen for the post, is no stranger to enterprise. Doctoroff founded and, until his new appointment, presided over NYC2012, a non-profit group lobbying to bring the 2012 Olympic Games to the Big Apple (see the Fall 2000 Record).

“Dan has the proven talent, energy and experience to lead our efforts to rebuild the city and enhance our economy,” Bloomberg said recently in announcing a new cadre of deputies and commissioners. He cited not only Doctoroff’s experience with NYC2012, but also his work in the private sector as managing partner of private equity investment firm Oak Hill Capital Management. Doctoroff retired from Oak Hill to take the position in City Hall, for which he has accepted a salary of $1.

As deputy mayor, Doctoroff will oversee the city’s economic policies and planning. He is responsible for coordinating efforts to attract and retain members of the New York business community in order to maintain, and hopefully increase, New York City’s economic vitality.

Doctoroff and Bloomberg said they will both continue with the effort to bring the Olympic Games to New York. Since September 11, Doctoroff has said he feels that endeavor is more important than ever.

“I saw in the Olympics a catalyzing for change as well as hopefully a celebration,” he told The New York Times. “But I’ve also realized over the past several weeks that if we don’t do the right job of rebuilding both downtown and our economy in general, there’s not going to be anything to catalyze.”

Along with the Lower Manhattan Redevelopment Corporation, Doctoroff’s office will consider whether the former site of the World Trade Center will be rebuilt, whether it will be home to a memorial, or both.

“I believe fervently that this is a time that demands that New Yorkers answer the call to serve,” he wrote in a letter posted on the NYC2012 Web site. In his new position as deputy mayor, he has the opportunity to answer that call—an opportunity he seems to relish.

New York, he says, is “the place that celebrates the power of dreams and the triumph of the human spirit. It is that spirit that we will channel to achieve great things.”—J.E.

Larry Hoyle is just getting started

For a man who never set out to pursue a legal career, consider a career that includes these accomplishments: establishing your own firm; setting important precedents in critical areas of the law; working for legal reform; teaching at a law school; fighting police corruption; participating in the civil rights movement; serving four terms on your law school’s visiting committee and endowing an important fund there; earning the respect of your clients, colleagues, and adversaries.

Along the way, maybe you’d like to consider becoming deputy attorney general of a major state before you’re six years out of law school; starting a successful agricultural business that you love; raising thoroughbred racehorses; and helping to raise two successful kids.

To do a few of those things, you’d have to be pretty special or lucky. To do them all, you just might have to be Larry Hoyle, ’65. Or, as he modestly says, be “more lucky than talented.”

And he didn’t really want to be a lawyer in the first place.

Descended from a long line of North Carolina lawyers, Hoyle followed another longstanding family custom by attending Duke as an undergraduate.

“I wasn’t the greatest student,” he acknowledges, “and the one thing I knew was that I had followed family tradition far enough. There was going to be no law school for me.”

Instead, upon graduation from Duke, he joined the Marines, and it didn’t take him long to rethink his career options. “There had to be a more sensible life than the Marine Corps and one with more intellectual demands,” he says. So he enrolled at the Law School, and Hoyle turned out to be one of those students who actually found the study of law exciting. “As great as the faculty is today, ours back then was as least as good—Harry Kalven, Phil Kurland, David Currie, Soia Mentschikoff, Bernie Meltzer—to name a few terrific people with demanding intellects.”

After he graduated, he went to work at Schnader,
“My grandfather was still practicing law when he died in an accident at 94 years of age, and my grandmother lived to be 112,” he says, “and I have every intention of practicing a long, long time.”—G. de F.

Steve Berman: A full-throttle philosophy

With a widely-reported settlement of $10 million per year for 25 years as part of his payout from the largest Big Tobacco case ever tried in the United States, Steve W. Berman, ’80, would hardly qualify, under any definition, as an underdog.

But Berman, who in 2000 was named as one of the top 100 most influential lawyers in America by the National Law Journal, has devoted the last decade to “widows and orphans.”

From Hagens Berman, LLP, the Seattle firm he founded in 1993, Berman has crafted a career in multi-state class action suits representing otherwise-unheard plaintiffs in securities, investment fraud, product liability, antitrust, and consumer fraud cases. Hagens Berman recently opened offices in Phoenix and Los Angeles and has been courted by governments across the globe to help their countries recoup the costs of treating smoking-related illnesses. The Irish government is still deciding if it will proceed, but The Irish Times newspaper reported that Berman offered to contribute a significant portion of funds to try the case, should it go forward.

In addition to fighting Joe Camel, current clients include former Enron Corporation employees—going after Enron under the Racketeer Influenced and Corrupt Organizations Act—and the people of Bougainville Island in Papua New Guinea against the Rio Tinto mining company. Not always on the plaintiff’s side, he’s representing Microsoft in some of the 29 antitrust class actions suits it faces. Past cases have addressed the Exxon Valdez oil spill and Michael Milken litigation.

Looking out over Puget Sound from his office (on one of the city’s clear days), the Highland Park native cannot imagine moving back to Chicago because he feels the Pacific Northwest sensibility fits his personal philosophy. Berman worked for Jenner & Block in Chicago and Melvyn Weiss and Associates in New York before moving to Seattle.
“I think the lawyers here are little more courteous and respectful. The edges are sharper in Chicago. It may be that this is a smaller town.”

Those sorts of differences, Berman says, were clear, too, during his Law School days. “My philosophy is fairly different than the U of C. I’m not critical of the Law School, but I think it would be nice if students were exposed to the opposite of the economic model.” The Mandel Legal Aid Clinic, he points out, was one of the few Law School experiences that exposed him to plaintiff work.

“I grew up as a child of the ‘60s, when there was a lot of social cause work. When I was in law school, we looked at how much pro bono work a firm did as important. Law students are not as interested in cause-type work, even if it pays well.

“I think young law students do not want to work where things are at risk,” he says of the contingency-based model of pay that makes many firms shy away from plaintiff work. Such concerns at his former employers were one of the reasons he opened his own firm.

In 2001, the now 47-year-old Berman billed 2,900 hours, despite the fact that he has been successful enough to never have to work again.

“There are 27 lawyers here; most of them came to work with me,” he says, while worrying that he sounds arrogant. “I feel an obligation to getting them good work. And when you are involved in high-profile cases, the truth is you cannot do these cases at anything but full throttle, not if you want to be successful.”

Berman and his wife, Janet, try to isolate their three children, 13- and 10-year-old sons and a one-year-old daughter, from Berman’s high profile, but concede it’s difficult. The kids aren’t allowed to read articles that mention his income, and Berman follows a strict schedule of getting to the office by 5:30 a.m. and working through lunch so that he can be home for a family dinner by 6:30 p.m. During high-intensity periods, he’ll work after the kids go to bed.

But work topics aren’t off limits at those dinners. In fact, Berman finds explaining the cases to his boys often helps give him a sense of what difficulties he’ll face with jurors. While the Enron case has enabled the family to discuss employee reinvestment, loyalty and honesty, one case currently confounds him at home.

“I have traveled a lot for the Microsoft case, and have tried and cannot come up with examples that make [antitrust issues] clear to them,” he says. “As a trial lawyer, I want to be able to explain. It is frustrating to me.” —M.L.

Lance and Marjorie Lindblom: fundamentally, they agree

Lance and Marjorie Lindblom, both ’78, must have some interesting dinner conversations.

Marjorie has spent more than 20 years as a corporate litigator with Kirkland & Ellis, defending, one presumes, the market interests of her clients. Lance is a prominent leader in the international nonprofit world who throughout his career has been an outspoken critic of many aspects of the market economics pioneered by legal and economic scholars at the Law School.

Yet the couple possesses an obvious love and respect for one another, and they share another common bond: the fundamental values they acquired through the Law School.

“Chicago was rigorous,” Marjorie recalls. “You really learned how to analyze problems at a very deep level, and that is an ability that has served me very well in my career.”

“The Law School provided a rigorous education in the law that enabled me to hit the ground running,” Lance says. “Chicago taught me to think with my head instead of my heart.”

“Fundamentally, we agree,” says Marjorie. “It’s just that I work at a micro level, dealing with things like contract disputes, and he works at a macro level, dealing with the larger issues, like the proper role of corporate power in our society and what the countervailing influences should be.”

At Kirkland & Ellis, Marjorie Lindblom has been lead trial and appellate counsel in a wide variety of complex commercial litigation, including warranty, fraud, fiduciary duty, breach of contract, patent, and copyright litigation. She has had particular experience in cases involving computers and other technological issues, including jury and bench trials in state and federal courts as well as arbitrations.

Lance Lindblom is currently president and chief executive officer of the Nathan Cummings Foundation, which concentrates on social and economic justice, arts and culture, the environment, health care access, and Jewish life. His work there has put him in the forefront of critics of over-reliance on market forces in an era of globalization. In his view, overemphasis on market thinking has weakened the abilities of governments and their citizens to uphold economic and environmental protections.

Throughout his career, Lance Lindblom has been challenging economic inequality. Previous to his work at the Cummings Foundation, he was program officer at the Ford Foundation, where he helped to
create grant programs designed to foster equitable and sustainable economic growth, promote democracy, individual opportunity, social well being, and community. He served as executive vice-president of the Soros Foundations, one of the largest sources of philanthropic funding in the world, established to foster the development of open societies.

During 13 years at the J. Roderick MacArthur Foundation, Lance helped to build the family foundation from $800 thousand in assets to over $32 million, supporting programs in international human rights, civil rights, civil liberties, social justice, and freedom of expression. He also engaged in a contentious and highly publicized Freedom of Information Act battle to gain access to CIA and FBI files on the foundation and himself.

Back in the 1970s, the couple hadn't even intended to go to law school together. Marjorie had applied to the Law School and been accepted. Lance, who was deputy director of the budget under then Illinois governor Dan Walker, was thinking of relocating his job to Chicago from Springfield or of looking for another position in Chicago.

"I was talking to Dean Dick Badger about where we might live," Marjorie recalls. "I had brought in Lance's resume in case Dean Badger had any ideas about job opportunities for Lance. He took a look at the resume and asked if Lance had ever thought of going to law school. He had, but he hadn't applied because he didn't ever want to take another standardized test in his life."

Lance did eventually take the LSAT, and did very well. "After my scores and college and graduate records had been reviewed," says Lance, "I received a letter saying 'Congratulations, you've been admitted to the Law School. Please fill out the enclosed application.'"

Although the two recall the Law School in the 1970s as an intimidating place, the flexibility shown by Badger and others is still appreciated today. "They helped accommodate us as a couple returning to graduate school together, trying to make ends meet," Marjorie remembers. The two became resident heads of Shorey House.

Lance says that he has especially vivid and fond memories of classes with Gareth Jones, Labor Law with Bernard Meltzer, and Constitutional Law with Gerhard Casper.

Lance and Marjorie Lindblom remain connected with the Law School in a number of ways. Lance has served on the Visiting Committee, and Marjorie provides career assistance to alumni in the New York City area. The couple are regular donors to the Law School.

"The Law School has changed somewhat for the better since we were there," Marjorie says, "It's more diverse and probably a little more welcoming. But I would hate to see it lose that overriding focus on careful thought, because I don't think law students need to be coddled."

"The law school taught me a very important thing: look at the facts," says Lance. "But it was a tough place, like boot camp; the Law and Economics values that infused the place do not even begin to touch human values and experiences or deal with the maldistribution of power and resources in society. My main criticism of the Law School was that it seemed to be rationalizing the position of the powers that be in a Panglossian way, with a contemptuous dismissal of the concerns of social justice. To me, there is nothing incompatible between intellectual rigor and human concerns."

For the Lindbloms, this just might be the start of another interesting dinner conversation.—C.A.

Oscar A. David brings the community his talent for attracting capital

Among the countless lessons Oscar A. David, '87, learned at the Law School is that there are many different ways to do good. As a partner at Winston & Strawn in Chicago, David has found that his corporate finance, mergers and acquisitions, and private equity transactions work can serve the dual purposes of helping clients meet their strategic objectives and serving the community. For instance, there was the time he worked over 15 months as lead counsel in a difficult transaction helping a client purchase a Midwestern company that was close to bankruptcy—saving hundreds of the company's employees' jobs in the process. As a result of his client's ultimate purchase of the company, over 850 quality jobs were saved in a geographic area where similar jobs remain scarce.

But his most recent work as counsel for a handful of venture capital funds investing in low-income
communities is the sort of "doing good" that piqued the interest of Crain's Chicago Business. In November, the magazine honored David with a spot on its annual "40 Under 40" list. "We try to identify people who not only have a high level of achievement in their career," says Crain's senior reporter Paul Merriam, "but who have an interest in the Chicago community at large."

Indeed, David's career achievements are as tremendous as they are apparent. He has been principally responsible for generating business for his firm with Motorola, Inc., headquartered just outside Chicago. Whereas until recently Winston & Strawn did no transaction work for the tech and communications giant, David has handled in the last three years some $7 billion worth of transactions for them. "His ability to coordinate a deal team is exceptional," Donald McLellan, '90, vice-president of transactions in Motorola's legal department, has been quoted as saying. David has also recently been selected as one of 15 recommended attorneys in Chicago for corporate finance, mergers and acquisitions, and joint ventures by the publication Global Counsel 3000, which is published by the Practical Law Company in conjunction with PriceWaterhouseCoopers.

David was extremely busy with Motorola work when former Democratic National Committee chairman David Wilhelm brought a new endeavor to David's attention. Through his public affairs consulting firm, Wilhelm & Conlon Public Strategies, Inc., Wilhelm wanted to attract investors to historically poor, overlooked communities in the Midwest—regions like southeastern Ohio where Wilhelm himself was born. David saw merit in Wilhelm's idea and in his personal integrity, and agreed to act as counsel.

The timing for such venture capital efforts turned out to be right: In December 2000, the federal government passed legislation establishing the New Markets Venture Capital (NMVC) Program, to be administered by the U.S. Small Business Administration. Though only a couple of ventures would be selected for the final portfolio, Wilhelm's fund was flooded with business plans from entrepreneurs who wanted to be on board. Soon the $35 million Adena Partners Venture Fund, serving the Appalachia regions of Ohio, West Virginia, Eastern Maryland, and Western Kentucky, will be the very first fund to close with NMVC designation.

Wilhelm notes that he approached David with the knowledge that he is an excellent lawyer, but that David's contribution ended up being so much more than technical. "He is exactly what the term 'counselor' would seem to indicate—one who gives not just legal advice, but advice advice." Wilhelm credits him with grace under pressure, the sort of intelligence and composure that merits admiration and respect.

"When clients come to you, they're looking for more than just legal advice," David observes. A graduate of George Washington University in Washington, D.C., he tries to offer clients support, vision, and the requisite "close-the-deal" mentality in addition to the legal guidance they've hired him to provide. A big company like Motorola, he says, is already very sophisticated and needs advice on identifying and allocating legal risks in transactions, many of which are complex, "but a start-up needs to know it is on the right track from a more fundamental business and legal perspective."

Wilhelm introduced David to civil rights activist Jesse Jackson, and David soon began similar fund work on the LaSalle Street Project, a program affiliated with Jackson's Rainbow/PUSH Coalition. Like the Ohio Appalachian Development Fund, the LaSalle Street Project aims to bring venture capital and opportunity to low-income areas, in this case primarily inner-city neighborhoods in the Midwest. Currently, David is also advising Wilhelm on a second fund, this one focused on the southern Illinois, Iowa, Ohio, and Wisconsin regions.

When away from the office, David continues to take on new challenges. The father of three recently started teaching his five-year-old son's Sunday School class, which, he says, he does mostly for fun, but also as a learning experience. He has also recently been elected to serve a three-year term on his church's vestry (or governing body). His life now may seem intense, but he recalls the equal intensity of his years at the U of C, where he found himself surrounded by brilliant professors and "incredibly bright" classmates.

The traditional client work coupled with the venture capital work David does to bring opportunities to low-income communities requires all the legal skills in his repertoire and more. "It's extremely challenging," he says. "I'm dealing with new issues all the time." He's proud, he says, to work on such cutting-edge ventures, and also of the rewards that accompany such undertakings: "This is the kind of work," says David, "that pays dividends in other areas as well."—J.E.
1925
David Ziskind
July 2, 2001
Ziskind was a labor lawyer who represented both labor and management during his career. He began practicing law in Clarence Darrow’s office in 1925. An arbitrator for the American Association of Arbitrators, he founded in 1976 and wrote for the Comparative Labor Law and Policy Journal. Through the Lit.Law Foundation, which he also founded, he published works on labor-law provisions in constitutions around the world.

1929
Clement Springer
November 26, 2001
A long-time Chicago attorney, Springer retired in 1982. After the enactment of the Public Utility Holding Company Act of 1935, he became involved in the emerging field of corporate reorganizations. He served as general counsel to the Interstate Power Company of Dubuque, Iowa and was partner in the firm of Springer and Cardozo. Early in his career, he served a writ of foreclosure on Al Capone.

1930
R. Guy Carter
March 21, 2001
Carter practiced law in Dallas, Texas from the time he graduated from law school. His practice centered on civil litigation with an emphasis on domestic relations, torts, and workers’ compensation. He founded the Dallas firm of Carter, Jones, Magee, Radberg & Mayes. He was the first president (1949-1950) of the Texas Trial Lawyers Association.

1932
Norman Nachman
August 15, 2001
Nachman was often referred to as the “dean of United States bankruptcy lawyers.” In 1947 he founded the firm of Nachman Mintz & Swag, which dealt exclusively in bankruptcy matters. The firm merged into Winston & Strawn in 1987. He was president of the Chicago Bar Association from 1963 to 1964. He had appointments by Chief Justices Earl Warren and Warren Burger to the Supreme Court’s Bankruptcy Advisory Committee and served several terms on the executive committee of the National Bankruptcy Conference. Survivors include his son James Nachman, ’66.

1935
Lewis Groebe
October 8, 2001
Groebe practiced primarily in Chicago, specializing in savings and loan association law. He retired to Florida in 1985.

1938
Myra Nichols
October 18, 2001
Nichols worked for the University’s legal department after graduation. She returned to her hometown of Dixon, Illinois with her husband, George Nichols, ’36, and raised a family. She also served as a director of City National Bank.

1947
David Parson
December 15, 2001
After graduation, Parson worked at Kirkland & Ellis, where he represented media and communications clients, including the Chicago Tribune and WGN television and radio. He worked as deputy counsel under Edward R. Morrow at the United States Information Agency from 1961 to 1965, advising the Voice of America. After he left Washington, he opened a private practice in Chicago as a corporate lawyer serving small industries and manufacturing companies. He served as a trustee for the Village of Winnetka in the 1960s and 1970s and was on the advisory board of public radio station WBEZ.

1948
Michael Borge
August 14, 2001
After graduation, Borge joined the firm of Chapman and Cutler, where he practiced bond and public finance law for many years. In 1968, he started the firm of Borge & Flott from which he retired in 1982.

Forrest Tozer
December 3, 2001
Tozer was retired from Lord Bissell & Brook, where he practiced for many years primarily in the insurance defense field. He was a member of the Trial Lawyers Association. He served in the United States Marine Corps during the Korean War and received the Purple Heart for injuries received in the battle of the “Frozen Chosin” reservoir.

Morley Walker
March 15, 2001
Before retiring, Walker worked for the University of California, Berkeley in different positions, including director of personnel.

Rowland Young
August 14, 2001
Young worked 31 years in Chicago for the American Bar Association’s ABA Journal as an editor and writer, including the position of associate editor.

1950
Earle Buck
December 12, 2001
Buck retired in 1989 as president of New York Janitorial Service after more than 32 years with the company. He was an Army veteran and before starting law school was in charge of a hospital for prisoners of war.

1951
Arthur Baer
May 4, 2001
After law school, Baer was in private practice in Chicago as a corporate lawyer serving small industries and manufacturing companies. He served as a trustee for the Village of Winnetka in the 1960s and 1970s and was on the advisory board of public radio station WBEZ.

1952
James Gibson
December 5, 2001
Gibson was a corporate lawyer and executive. He was executive vice president and treasurer of International Minerals and Chemical Corporation and a founder of JMG Financial Group.

Lawrence Ross
May 7, 2001
Ross was retired from the University of Oregon College of Business, where he taught business for many years. He moved to Oregon in the late 1950s after practicing law in Indiana and working for the Great Books Foundation in California.

1958
R. Guy Carter
December 21, 2001
Carter practiced law in Dallas, Texas from the time he graduated from law school. His practice centered on civil litigation with an emphasis on domestic relations, torts, and workers’ compensation. He founded the Dallas firm of Carter, Jones, Magee, Radberg & Mayes. He was the first president (1949-1950) of the Texas Trial Lawyers Association.

1962
Michael Myers
January 31, 2001
Myers practiced in Chicago from the time of his graduation. He specialized in business law and corporate litigation.

1966
Richard Doyle
September 10, 2001
After law school, Doyle practiced in Greeley, Colorado, specializing in tax and estate planning. He was active in various bar associations, including serving as president of the Weld County Bar Association and Continuing Legal Education in Colorado.

Stephen Mochary
August 12, 2001
Mochary served on the Essex County Superior Court for 14 years. Prior to his appointment to the bench, he was in private practice with several different firms, including Mochary & Mochary, which he started with his first wife, Mary. ’67. He was an assistant professor at Loyola University Law School in Chicago from 1966 to 1967 and a professor of law at the University of Arkansas School of Law from 1967 to 1968. Survivors include his daughter Alexandra Bergstein, ’93.

1978
Don Affeldt Allen
September 11, 2001
Allen was a partner in the firm of Patton Boggus, LLP where he specialized in corporate and government relations. He was a co-author of A User’s Guide to Computer Contracting: Forms, Techniques and Strategies, later reprinted in Allen and Davis on Computer Contracting.

1982
Mark Orloff
September 7, 2001
Orloff was vice president and general counsel of Blue Cross and Blue Shield Association, which he joined in 1991. He oversaw a variety of antitrust, intellectual property, and general commercial litigation cases. Prior to joining Blue Cross and Blue Shield, he worked at Kirkland & Ellis and Altheimer & Gray, as well as his own firm, Levinson & Orloff. Survivors include his wife, Ann Ziegler, ’83.

1983
Frank Cunat
October 16, 2001
Cunat was a legal editor for the Bureau of National Affairs, specializing in tax law. He was also a playwright and received several awards for his writing, including the 2001 H.L. Davis Award presented during the Washington Theatre Festival.

Maris Monitz Rodgon
December 15, 2001
Rodgon attended law school after receiving a doctorate from the University. She clerked for Illinois Supreme Court Justice Seymour Simon and worked at Skadden, Arps, Slate, Meagher & Flom before joining Morgan Lewis & Bockius in 1995, where she was a partner. Rodgon’s practice focused on derivatives and other securities. She participated in the Financial Services Volunteer Corps, which advised former Soviet bloc countries. She commuted between New York City and Chicago, where her husband and two children live.

By Paul Woo
Associate Director, The Herbert B. Fried Office of Career Services

Herbert B. Fried, the person whose name graces the entrance to the Office of Career Services, passed away on December 3, 2001. Fried was the Law School’s first placement director and a loyal and generous friend of the School.

Following his graduation from the Law School in 1932, Fried practiced law in Chicago with his father. During World War II, he entered the Army and served with distinction as an artillery officer. He returned to private practice after the war. In 1952, his career took a new direction when he left private practice and joined the Chas. Levy Circulating Company, one of the nation’s largest distributors of paperback books and magazines, and in 1968, he became its president and chief executive officer.

After moving into semireirement from the company in 1975, Fried returned to the Law School to help administer the Mandel Legal Aid Clinic. In 1976, Dean Norval Morris asked him to establish and direct a placement office for the Law School. Fried organized and staffed the office, revitalized on-campus recruiting efforts, and counseled countless students and alumni about careers in private practice, public service, and business. Through his leadership, the Placement Office was more than ready to meet the demands of students, employers, and alumni in a lawyer-recruiting boom that took place in the 1980s.

Fried hired me as his placement assistant in 1980. I was extraordinarily fortunate to have him as a mentor, and even more so, in the following years, as a trusted friend and confidant. His demand for excellence was only exceeded by the patience he maintained while seeking that goal. Fried’s greatest virtue was his ability to instill a sense of confidence, trust, and professionalism to those he worked with and counseled. His greatest vice was his more than generous gifts of time and affection to those he loved and counted as friends.

Fried "retired" a second time in 1982. In the spring of 1989, Dean Geoffrey Stone invited Herbert Fried and his wife, Marjorie, to lunch at the Law School. Fried did not know that Dean Stone’s real intent was to honor him with a surprise luncheon celebrating his tireless support of the Law School. Many of Fried’s friends, as well as faculty, were there to wish him well and to witness the unveiling of the Placement Office’s new name: The Herbert B. Fried Office of Career Services.

We are grateful for Fried’s many generous contributions to the life of the Law School and the wise counsel he offered to so many of our students, alumni, and staff.

Burton W. Kanter, ’52, 1930–2001

Burton W. Kanter was an innovative tax attorney, investor, teacher, writer, and prominent member of the Chicago arts community. Kanter distinguished himself through his revolutionary tax work and his commitment to education and philanthropy. Throughout his career he earned the admiration and respect of his friends, clients, colleagues, and adversaries alike.

Kanter was born on August 12, 1930 in Jersey City, New Jersey, and grew up in Danbury, Connecticut. He graduated early from high school and was accepted at the University, where in five years he earned his undergraduate and law degrees. In 1951 he married his hometown sweetheart, Naomi Krakow, and after graduation the couple lived for a year in Bloomington, Indiana, where Kanter taught law at the University of Indiana. After a stint in Washington, D.C. working as an advisor to the U.S. Tax Court, Kanter settled back in Chicago, where he went into private practice in 1956. Later, he was one of the founding partners in what eventually became the Chicago firm of Neal Gerber & Eisenberg.

Kanter remained of counsel with the firm until the spring of 2000, shortly after his cancer diagnosis. Kanter’s clients included the likes of the Pritzker family, Hugh Hefner, Charles Dolan, Sam Zell, Saul Zaentz, Bobby Hull, and many others.

Not wanting to sacrifice his academic focus while in private practice, Kanter, in the late 1950s became an editor of “Shop Talk” in the Journal of Taxation, a forum for high-level discussion among tax professionals. Kanter also taught a tax course at the Law School for approximately 15 years, giving it up only when his health deteriorated. He authored over 100 articles in the course of his career.

Throughout the 1960s and ‘70s he turned his curious eye to the tax planning and financing needs of various industries. He was a key player in the initial years of Chicago’s venerable Second City and the Chicago International Film Festival.

By the 1980s, the Kanters had centralized their philanthropic activities through the Kanter Family Foundation, which has donated generously to various organizations and causes. Major beneficiaries of the Foundation’s activities have included the Museum of Contemporary Art, where Kanter was a longstanding member of the board of trustees, and the Law School, where the Foundation funded a chair in honor of Kanter’s teacher and mentor, Walter Blum.

Kanter is survived by his wife, Naomi Kanter, his brothers, Carl Kanter and Jerry Kanter, his children Joel (Ricki), Janis (Tom McCormick), and Joshua, ’87 (Catherine) and his five grandchildren. A sixth grandchild was born in December.
Class Notes Section – REDACTED

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