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To us at the Law School it seems important to speak to you from time to time about our courses and our teaching, for this is our central activity—it is what matters most to you and to your successors now at the Law School—and you are not likely to hear much about it in other ways. I would like to talk to you briefly about a writing seminar that I have been teaching for some years now—a few of you may even have taken it—using my book, *The Legal Imagination*.

I say that this is a writing course, but as you will shortly see, it is really about how to conceive of the activity of law, its practice and its education; how to conceive of it as a kind of writing.

I will not try to summarize the book, which contains a wide range of passages drawn from legal and other literature, interspersed with questions and writing assignments; what I will try to do instead is to identify the basic problem the course addresses and the kind of “solution” that it suggests its students may achieve.

We can begin with one of the items included in the book, a passage taken from Mark Twain’s autobiographical *Life on the Mississippi*.

Twain has been learning the pilot’s art from Mr. Bixby and is now at the wheel of a river boat. Mr. Bixby asks him why he changed course. Twain answers that he did so to avoid a “bluff reef” (a kind of sand-bar).

“No, it wasn’t a bluff reef; there isn’t one within three miles of where you were.”

“But I saw it. It was as bluff as that one yonder.”

“Just about. Run over it!”

“Do you give it as an order?”

“Yes. Run over it!”

“If I don’t, I wish I may die.”

“All right; I am taking the responsibility.”

I was just as anxious to kill the boat, now, as I had been to save it before. I impressed my orders upon my memory, to be used at the inquest, and made a straight break for the reef. As it disappeared under our bows I held my breath; but we slid over it like oil.

“Now, don’t you see the difference? It wasn’t any thing but a wind reef. The wind does that.”

“So I see. But it is exactly like a bluff reef. How am I ever going to tell them apart?”

“I can’t tell you. It is an instinct. By and by you will just naturally know one from the other, but you never will be able to explain why or how you know them apart.”

It turned out to be true. The face of the water, in time, became a wonderful book—a book that was a dead language to the uneducated passenger, but which told its mind to me without reserve, delivering its most cherished secrets as clearly as if it uttered them with a voice. And it was not a book to be read once and thrown aside, for it had a new story to tell every day. Throughout the long twelve hundred miles there was never a page that was void of interest, never one that you could leave unread without loss, never one that you would want to skip, thinking you could find higher enjoyment in some other thing. There never was so wonderful a book written by man; never one whose interest was so absorbing, so unflagging, so sparkingly renewed with every reperusal. . . .

Now when I had mastered the language of this water, and had come to know every trifling feature that bordered the great river as familiarly as I knew the letters of the alphabet, I had made a valuable acquisition. But I had lost something, too. I had lost something which could never be restored to me while I lived. All the grace, the beauty, the poetry, had gone out of the majestic river! I still kept in mind a certain wonderful sunset which I witnessed when steamboating was new to me. A broad expanse of the river was turned to blood; in the middle distance the red hue brightened into gold, through which a solitary log
came floating, black and conspicuous; one place a long, slanting mark lay sparkling upon the water; in another the surface was broken by boiling, tumbling rings, that were as many-tinted as an opal; where the ruddy flush was faintest, was a smooth spot that was covered with graceful circles and radiating lines, ever so delicately traced; the shore on our left was densely wooded, and the somber shadow that fell from this forest was broken in one place by a long, ruffled trail that shone like silver; and high above the forest wall a clean-stemmed dead tree waved a single leafy bough that glowed like a flame in the unobstructed splendor that was flowing from the sun. There were graceful curves, reflected images, woody heights, soft distances; and over the whole scene, far and near, the dissolving lights drifted steadily, enriching it every passing moment with new marvels of coloring.

I stood like one bewitched. I drank it in, in a speechless rapture. The world was new to me, and I had never seen anything like this at home. But as I have said, a day came when I began to cease from noting the glories and the charms which the moon and the sun and the twilight wrought upon the river’s face; another day came when I ceased altogether to note them. Then, if that sunset scene had been repeated, I should have looked upon it without rapture, and should have commented upon it, inwardly, after this fashion: “This sun means that we are going to have wind to-morrow; that floating log means that the river is rising, small thanks to it; that slanting mark on the water refers to a bluff reef which is going to kill somebody’s steamboat one of these nights, if it keeps on stretching out like that; those tumbling ‘boils’ show a dissolving bar and a changing channel there; the lines and circles in the slick water over yonder are a warning that that troublesome place is shoaling up dangerously; that silver streak in the shadow of the forest is the ‘break’ from a new snag, and he has located himself in the very best place he could have found to fish for steamboats; that tall dead tree, with a single living branch, is not going to last long, and then how is a body ever going to get through this blind place at night without the friendly old landmark?”

No, the romance and the beauty were all gone from the river. All the value any feature of it had for me now was the amount of usefulness it could furnish toward compassing the safe piloting of a steamboat.

While this passage is about learning to become a river pilot, it states real issues for any education, and especially for a professional education. What Twain says is true: learning the river, or the law, is wonderful. It makes a new kind of book out of the world, creating new kinds of significance and new kinds of competence. One can now read as intelligible what was before confusion, and one can act in new and competent ways on the basis of what one sees. But it is also true that a professional education can entail a loss as well, a conversion of life into technique. Whether this is what will happen is certainty a real question for many of our students, and it ought to be for all of them.

My course is meant in part to offer the student an opportunity to examine this question for himself, in an independent and intellectually disciplined way. We are fond of saying that a professional education worthy of the name must be a true education, not merely a training in technique and method; and a part of any true education, perhaps its central part, is an examination of the education itself, an assumption of responsibility for what one does and becomes. But how is it possible to bring into focus for thought and analysis those activities of lawyering we learn so completely that they become a part of ourselves?

There are no doubt many possibilities for doing this, but the basic method of The Legal Imagination is that of comparison. As you can probably surmise from what I have already said, in this text I juxtapose passages that show what Karl Llewellyn would have called “law people” thinking and speaking and acting in their characteristic ways, with other passages, which establish other possibilities for life and expression. The idea is to define, by contrast and comparison, the field of legal discourse and action, the set of intellectual and rhetorical practices that make up the world of the law. At the beginning of the book, at least, I structure this comparison to make a rhetorical point, to bring to the surface the question the student may already be asking himself: “How can I bear to talk this way? When there are so many rich and alive and wonderful ways to talk in the world, how can I contemplate a future defined by the dull and impersonal language of the law?” This is a version of Twain’s question: how can you stand to make of yourself what a pilot, or a lawyer, makes of himself, to give yourself such an education as this? (Will not all the romance and beauty be gone from the river?) My course puts this question to the student and expects him to write his own way to a response, as he discovers what he can do with legal and other language, and what he cannot.

To help the students with this task I ask them to engage in another kind of comparison as well, in their own writing. They are required to write a paper each week, the typical form of which invites them first to function as a lawyer, speaking in legal ways, and then in some other fashion, congenial to some other aspect of themselves. They are asked, in the language of Mark Twain’s passage, to speak both as pilot and as passenger and to compare the results.

My original idea was that the richness of the stu-
dents’ nonlegal writing would sharpen their perception of the formality and imitativeness of their legal work, both intensifying their sense that maybe there was something wrong about the education they were engaged in and establishing a meaningful standard of excellence by which their legal writing could be judged. But in practice one finds that many students function rather weakly in both voices, that they have a “student” voice which is as little under their control as their “law” voice. When this is true, the seriousness of the difficulty deepens: the question is no longer how to give one’s legal writing the kind of richness and life one’s other writing has, but how to learn to write at all as a fully engaged and responsible mind.

That is enough of a problem for anyone, in life let alone in a course, and I count the seminar successful to the extent that the question becomes real for the student, and he or she gets a start on a genuine intellectual engagement with it. All this is not to leave professional education behind, for to assume responsibility for what one says and does, for what one becomes in one’s writing, is to address a central deficiency of modern education, including legal education: its use of imitation as a method of learning, and of life. (Think, for example, of the associate who constantly seeks direction in all that he does, not yet understanding that to be a good lawyer he must learn to make his own judgments his own way, and be responsible for the consequences.)

The meetings of the seminar are meant to deepen understanding of writing by engagement in the practice of criticism. One group of passages we criticize are those collected in The Legal Imagination itself, where my questions are meant to provide a kind of preliminary training in criticism. The other group of passages we criticize are from the students’ own papers, portions of which are distributed anonymously before class. The hope is that the critical capacity developed by each student with respect to the writings of others, in the book and in the class, will ultimately become internalized; if so, when the student writes he or she will start to hear another voice, critical of the writing as it is composed, and this can be the beginning of writing of a new kind.

How we criticize the passages we read—what we come to mean by good writing, in the law and elsewhere—are complicated questions which must await another day. But I can say that I do not have a theoretical system of criticism, beyond the premise that collective attention to the significance of words and sentences, to the social and intellectual meaning of what one says, leads to fuller understanding and wider capacities.

To talk about what one hopes for from a class is always difficult—the ideal student does not exist, nor does the ideal teacher—but I can say that my hope is that through this process the student comes to see his or her legal writing not as the arcane manipulation of a specialized vocabulary nor as a kind of clothing that disguises policy preferences, but as real writing, subject to his control and under his responsibility. As for the law, I hope the student comes to see it as an inheritance of great value, a cultural resource that makes certain kinds of writing, certain kinds of argument, possible; a field of activity as rich and full of meaning as any other; and that it greatly expands the possibilities for collective and individual life. By the end of my book, that is, and by the end of my course, the rhetorical stance is reversed: law is seen not as the life of restriction but—at least for the student who can make it so—as a life of expansion.

To return now to Twain. I have been speaking as if the lawyer were like a pilot, but there is an important difference between them: the lawyer is a writer as well as an actor, and in some sense can therefore unite what Twain presents as separate. In fact, the resolution suggested for the law student—if he can do it—is like the resolution achieved by Twain himself: he is to be neither pilot nor passenger, but a writer, able to incorporate and respond to the views of both of the others, and able to make something new of his own. This is part of what it means to reconceive of the lawyer as a writer.
Buying Scenery: Land Acquisitions for the National Parks

Joseph L. Sax*

Years ago, if the government wanted to establish a National Park, it simply carved the desired area out of the vast public domain in the West. The parks were protected by their own isolation and by the largely unused federal forest or desert land that surrounded them. While the establishment of major new parks is nearly completed, protection of existing parklands is just beginning to reach an acute stage. Booming recreational development has brought urban influences right to the edge of even our remotest National Parks, and western energy development of a kind never seen before is now underway. Moreover, in the last few decades new parks have been created much nearer to developed areas: the National Seashores along the Atlantic coastline, National Lakeshores on the Great Lakes, and urban national parks in New York and San Francisco, Los Angeles, Cleveland, and New Orleans.

Protection of the parks' natural resources against nearby incompatible private developments presents a number of delicate problems. Federal zoning of private land, even when constitutional obstacles have been overcome, has always been anathema in the Congress. Local communities, understandably, are reluctant to zone themselves to the extent necessary to fulfill the parks' preservation mandate. And traditional land acquisition is both expensive and unsatisfactory; to extend park boundaries by fee purchase of neighboring lands usually just moves the problem of incompatible development a little further down the road.

It is now widely agreed that, for most areas, some kind of developmental controls, such as scenic easements, are the most desirable device. By such means, vulnerable nearby lands can remain in private ownership and on the tax rolls; the federal government will not have to manage them; and compatible private uses, such as agriculture or low density residential use, can buffer sensitive parklands. Yet development controls present many of the same problems that outright acquisition does, and their cost is often nearly as high as acquisition of the land in fee simple.

A dramatic example of the problem is presented by Grand Teton National Park. Most of the land in Teton County, Wyoming is federally owned. The 50,000 acres of private holdings are surrounded on the north by the park and on the other three sides by National Forest land and the National Elk Refuge. Most of the private land is in a large open valley known as Jackson Hole, which had long been primarily a ranching area. The traditional agricultural community was not only compatible with the park, but was an affirmatively desired private neighbor. Western ranching provided an historically attractive foreground and setting for the park, though the Park Service had no interest in managing or using these lands.

In the last decade, however, the situation began to change. The growth of alpine skiing and the development of a ski resort on National Forest land adjacent to the park were important factors, as was the general growth of recreation that brought more and more visitors to the Jackson Hole area. Land values rose rapidly. Ranches were sold and subdivided for hotels and vacation homes. The town of Jackson grew, commercial enterprises started to line the entrance roads, heavy traffic and crowds
appeared, and homes sprang up on rises visible from the park. Development was also threatening the wintering range of the resident elk herd.

As in many rural communities, there was little land use regulation in Jackson County—certainly too little to control burgeoning growth. Ranch land available for development is valued at about $5,000 per acre, of which only about $500 consists of its value for ranching. Acquisition of just the development rights could cost as much as $250 million. Obviously Congress is reluctant to make such purchases and equally obviously the people in Teton County are reluctant to give up these huge land values, though there is widespread local sentiment that a continuation of recent development trends would be undesirable. Moreover, even if Congress were willing to spend the money, there is a great deal of public sentiment opposed to federal exercise of the eminent domain power. Many people—and particularly those in rural areas—feel that condemnation of their land, even with full value compensation, is an intrusion on their rights. However unwarranted any such sentiment may be as a legal matter, it presents an intense political dilemma for the Congress.

Over the years, in response to problems like that at Jackson Hole, Congress has evolved a political strategy that, on first consideration, seems quite clever. Examined more closely, as we shall see, it is a good deal less attractive than it seems.

The strategy is this. Acquisition by eminent domain of private lands threatening incompatible uses is invoked only as a last resort. Every effort is made either to acquire such lands by purchase, gift or exchange, and by holding out the prospect of eventual condemnation in order to discourage owners from developing their lands incompatibly with the parks. In addition, Park Service officials seek to work with local governments to encourage the adoption of protective zoning ordinances. By these means, the power of the federal government is meant to be imposed on unwilling landowners as little as possible, or as long deferred as possible, and voluntary resolution of conflict is encouraged. In addition, the actual cost to the government is sought to be minimized. That, at least, is the idea.

In practice, things work out quite differently. The effort to get landowners to sell development interests in their land works least well—just as one might expect—where the lands are rising rapidly in value. Of course the most rapidly rising land values occur in those places where the prospect of development is greatest, and thus where the threats to the parks are greatest. But it is in precisely such cases that owners are most unwilling to sell out voluntarily because their land is the best investment they can hope to hold. For example, a recent survey I made of properties whose development would be incompatible with the parks revealed 90% had at least doubled in value over the last five years and had at least tripled over the past ten years. Eighty-five percent had at least quintupled, and 50% had risen tenfold or more over ten years. At the actual rates of interest in effect during the past five years, land that had done no more than keep pace with money invested at interest would have risen to less than one-and-a-half times its value five years earlier. As one goes back in time ten years or more, when interest rates were markedly lower, the differential between the rise in land values and the increase in the value of invested money becomes even more dramatic. So one might expect that a policy designed to encourage voluntary sales would be rather ineffective. And, in fact, my survey evidence confirms that the policy is ineffective. Most landowners are not willing to sell, at least until they believe their lands have already reached their maximum value.

Since ultimately Congress does buy out those private lands whose development seriously threatens the park, a major consequence of treating condemnation as a last resort is simply to defer acquisition, and to assure that the ultimate cost to the federal taxpayer is maximized. By indulging a few (rather conservative) assumptions, one can roughly estimate the economic consequences of a policy of deferring acquisition until development is imminent. If the average period of deferral from the first opportunity for acquisition of development rights until actual acquisition is ten years, and if the average rate of interest during that period were 10% per year, then—based on the estimates of land value appreciation revealed by my survey—the ultimate cost of acquisition to the government is almost six times as much as if the development rights had been acquired ten years earlier. This figure takes into account the savings to the government by deferring acquisition costs for the ten years.

The calculation assumes, of course, that all land threatened with development would in fact be incompatibly developed. But even if only half the land in question, or a third of it, were in fact developed, the cost to the government would still be much greater than if there were a policy of early acquisition. The costs of a policy of "condemnation as a last resort" are as low as those under a policy of early acquisition only if as little as one-sixth of the land potentially incompatibly developable is actually developed.

It is possible that the cost of a policy of deferred acquisition is mitigated by the encouragement Park
Service officials give to local communities to zone themselves. While there is no hard, statistical evidence of the success of this policy, a review of survey evidence from park superintendents suggests just what one might expect. Where the community itself benefits from zoning, and where the benefits to it correspond closely to the benefits the Park Service seeks, local zoning is likely to occur. Thus, for example, where a park is part of an historic area, and where private land values are enhanced by maintaining the historic character of the neighborhood, the community is willing to zone in ways that by and large also meet the needs of the park. The same is true where there is an established residential community, with a strong self-interest in restraining unguided development, as at Cape Cod National Seashore. Where the demands of park protection far outstrip the economic interest of the residents in limiting development, however, as at Jackson Hole, Wyoming, there is no reason to believe the residents will voluntarily strip themselves of thousands of dollars of value per acre of land simply to contribute to the amenities of park users, or to preserve park resources.

Another element of present congressional strategy is the most troublesome of all. By adopting a policy of deferred acquisition, Congress hopes to discourage owners from making incompatible developments. The disincentive used is the threat of fee simple acquisition. Since many owners of land near National Parks want to remain where they are, the desire not to be dislocated does deter further development. For example, there may be a community of low density rural residences near a park. Though there is considerable opportunity for developing a more urban, higher density recreational community on some of the land, the owners do not want to be removed; so they knuckle under to the government's demand that they eschew any further development. In fact, they may have no choice. The threat of acquisition hanging over them may itself discourage potential buyers and may deter financial institutions from financing development.

To the extent that this approach succeeds, it gives the government the benefits of federal zoning without any formal act of zoning and without any procedural or financial protections for the landowner. He is effectively compelled to manage his land as the government wants simply because the threat of condemnation destroys his market. Unhappily, this policy works quite differentially, disadvantaging the smallest and least powerful landowners, but operating as a bonanza for others.

The threat of condemnation, as just described, works to the government's advantage only if the owner has a personal interest in remaining in his community, or if the threat undermines the market for his land. The long-established small residential owner is most likely to be affected. But there are some landowners in or near the parks for whom such threats are quite ineffective. They, in fact, have the ability to turn such a policy greatly to their advantage. For example, near the southern boundary of Lassen Volcanic National Park in California, a large tract of undeveloped forested land was in private ownership. For many years, the land was wholly unused, but in 1960 it was leased to the Phillips Petroleum Company for geothermal development. It was clear from the outset that such mining development would be an incompatible use, and would, if it went forward, ultimately lead to condemnation. But following its policy of eminent domain as a last resort, the government did not immediately acquire the tract. It sought to get Phillips to sell or to exchange the tract for other, less sensitive lands. But Phillips was not interested. And why should it have been? Like the lands at Jackson Hole described above, the Phillips tract was rising rapidly in value. The government made clear that if mining went forward, it would condemn. But Phillips was not deterred. It was perfectly capable of obtaining the financing it needed for mining exploration, and it had nothing to lose and everything to gain from pursuing its own interests. If it went forward with mining, and the government did not make good its threat to condemn, Phillips would profit from the mine. If the government did condemn, it would wait until the threat of development was imminent—which is to say, until the time that Phillips thought mining was most profitable—and in that case, Phillips would obtain as a condemnation award the full value of the land at its peak price. This is precisely what occurred. Survey data from Lassen estimates that the land has risen in value ten-fold in the last ten years, and is one hundred times more valuable than when the park was first established.

While there are obviously some situations in which Congress will properly decide not to acquire incompatible private interests at all and to permit the parks to suffer some degradation in order to serve other public interests, such as energy development or community growth, there seems no reason to permit owners to reap the investment value of rising land prices over a period of years and then to condemn at the top of the market. In such a case, the society gets none of the benefit of the development and yet pays the highest possible price to the owner when he is condemned. This is what happened at Lassen. Certainly, no wrong, legal or moral, would have been done to the owners at Lassen if
they had been condemned in 1960 or even in 1916 when the park was first established. Nor is there any reason to think that the taxpayers save money by deferring acquisition until threats of development are imminent; indeed, insofar as it is possible to estimate the economic effects, it appears clear that the cost of deferral is enormous. And to the extent that some money is saved in some cases, by deterring development, it seems that the savings are made at the expense of the most sympathetically situated landowners—such as the small residential homeowner.

Neither does the deferral policy markedly reduce the use of condemnation by the government. It simply changes the time of its implementation. To the extent that it does affect the use of eminent domain, the deferral policy is self-defeating. By holding out the threat of condemnation, but leaving a good deal of uncertainty as to when (or whether) it will be implemented, it actually encourages the very development the government would like to discourage. At Jackson Hole, for example, many new purchasers have come into the community in recent years because it appeared to be a developing area. It has never been clear over the last ten years (and it is not clear today) when, or whether, or under what circumstances, the government will control development or acquire property in order to protect Grand Teton National Park.

The preceding observations suggest the desirability of a policy of early acquisition, at least during periods of rapidly rising land prices. But they do not suggest that the federal government should acquire and pay for all the needed restrictions, with no burden whatever on the local community. I have already indicated why local communities often will not zone themselves, but I have said nothing about the proper allocation of burden between the federal taxpayer and the local community, and how it might be effectuated. While the community will not, and should not, bear the entire burden of protecting the parks, in fact a peculiar problem arises when a National Park is a community’s neighbor. The very presence of potential federal acquisition distorts the evolution of ordinary local or state land use regulation.

Once the local community perceives the prospect of acquisition, with full compensation by the federal government, it may be deterred from imposing even the degree of zoning that its citizens would tolerate. Why should the community restrict itself, absorbing the economic loss of self-regulation, when it can wait for Congress, because of its concern for the park, to bail the community out? This is precisely the situation of the citizens in Jackson Hole. At the same time, Congress asks itself why taxpayers should pay for what the community should impose on itself by way of uncompensated zoning. This, surely, is one reason that Congress has so far hesitated to enact a Jackson Hole Scenic Area bill, under which the federal taxpayers would buy all the development rights in Jackson Hole.

In theory, the solution to the problem is obvious, but its practical application is far less evident. Congress should acquire and pay for all the development controls it needs,* minus the value of the controls that the local community would be willing to impose on itself in the absence of federal acquisition. It is easy to construct this value in theory, but not obvious how to measure it in fact, or how to effectuate it.

The question is how much the existing landowners value the maintenance of the community as it is. They ought to bear the cost of preserving that value. Congress should pay only for the additional amount of protection that represents the distinctive protective needs of the park. The situation can be illustrated in relation to Jackson Hole. Assume that the current market value of an acre of land is $5,000, of which $500 represents its value for grazing land (its present use), and $4,500 its development value. Let us assume further that the federal government has bought the full fee interest in that acre, paying $5,000 and removing the landowner. It has then imposed restrictions on the land to prevent all development that would be incompatible with the park. The next step would be to auction off that acre as restricted. It is possible that no one would bid more than $500 (the value solely as grazing land), but it is much more likely that a number of people would put a considerably higher value on the right to continue ranching on land at the foot of the Tetons, in a community protected against urbanizing influences. If, for example, the former owner would be willing to bid $1,500 an acre to stay on his land—with the restrictions—we would have an exact measure of the value to him of the right to live in such a restricted community, and we would also know the additional value ($3,500 per acre) that accrued solely to National Park protection. The $1,500 represents what people in the community are willing (absent the prospect of purchase by the federal government) to impose on themselves. It is the value to them of the land with restrictions. The federal taxpayer should only have to pay the differ-

*Excepting those cases where federal regulatory controls are appropriate. See Sax, "Helpless Giants," op. cit. supra.
ence between the $1,500 and the full value of $5,000. Such an arrangement would permit the landowner who puts no particular value on staying in a restricted community to take his full $5,000 an acre and leave. It would also permit him to stay, if he wishes, but only if he were willing to match or outbid others who also valued staying in such a community.

At first glance, such an arrangement might seem unfair to the landowner, who is forced to pay in order to stay on his own land. After the auction he would be in precisely the same situation that he was before it, but he would be (in this example) $1,500 poorer. Yet the situation is neither unfair nor unprecedented. Landowners in a community routinely "pay" to stay on their own land, to keep both it and surrounding land from development. This is exactly what happens when a local community zones its lands for anything less than the highest possible economic development. The justification for such self-imposed zoning is that the restrictions benefit landowners in the community as a whole. Indeed, that is the only reason why a community ever obtains majority support for zoning.

This scheme has an additional value: auctioning off the right to remain on the land encourages the entry into the community of those people who would like to live in a place like Jackson Hole and who are willing to have the community remain as ranch or residential land. If Congress believes that keeping Jackson Hole in its rural state is necessary to park protection, it should seek to encourage such people whose life-style is consistent with preservation of the park to enter the area. Such a policy would reverse the present undesirable policy, which mutely encourages developers and speculators into the community.

At the same time, the new policy would not force any existing resident out of the community. It would only require residents to decide how much they value remaining in such a community, and would force them—not the federal taxpayer—to bear that cost. The policy would also give them the alternative of leaving with the full market value of their land. It would make clear to them that speculating on future development is inconsistent with Congress' policy for the park.

One potential problem with this arrangement can easily be avoided. Wealthy nonresidents, who like Jackson Hole as it is, may be willing to bid a very high price, even above the $5,000 present market value of the land. A present resident should not have to compete with an outsider, paying $10,000 or more for the right to remain, and under the proposed scheme he need not. At the most, Congress need only demand that the present resident yield up all his future incompatible development rights to the federal government. Thus the present resident would have a choice: bid for the right to stay, paying the maximum amount bid up to, but not exceeding, $4,500 (the full present value of the fee, minus the present use value); or donate to the federal government a covenant restricting his development rights according to the government's plan. He would then take the course least costly to him. Of course, he would also have the choice of selling out the fee for $5,000.

There is, obviously, a serious practical and political problem with this proposal. It would be extremely costly and disruptive for an existing community to put all its land up for auction. It would also be difficult to sustain an active market for any large amounts of land all at once, or over a short period of time. It would also doubtlessly appear extremely intrusive to local landowners, generating increased hostility toward the federal government.

Therefore I suggest a modest alternative plan. Rather than forcing all land into an auction, the federal government could make an estimate of the value to the landowners of the right to remain where they are without development rights. Let us say that a panel of objective and knowledgeable appraisers estimated the fee value at $5,000, and the value to landowners of the right to remain with present uses in a nondeveloping community at $1,500. Congress would then offer to each landowner the alternative of accepting $5,000 in exchange for his fee interest or $3,500 for his development right (fee value of $5,000 reduced by $1,500).

If landowners think the estimate is too low, they can take their $5,000 and leave. Since the government obviously has an interest in encouraging them to stay (the alternative is for the government to manage a lot of land it really does not want or to find new purchasers) there will be a considerable incentive for the government to make an offer that the landowners will find attractive. And as long as the alternative of full condemnation is credible, landowners will have an incentive to accept a reasonable offer. To give even further assurances, the government could offer a third alternative at the option of the landowner. If a landowner is suspicious of the government's estimate, the government can offer him the choice of putting his land up to auction. If no one offers more than the $1,000 for the right to remain, for example, the landowner will be allowed to stay by matching the $1,000 bid. If, on the other hand, someone offers $2,000, he will have to pay
The problems of parkland acquisition and control, of course, cannot be resolved simply by fee acquisitions, expanding park boundaries, and adding new lands to existing parks. To a significant extent the problem centers on the existence of adjacent lands, and there will always be new lands adjacent to any new boundary. The goal should be to insulate parks with compatible private uses (such as ranching at Jackson Hole) through less-than-fee acquisitions, use of local zoning, or regulation or litigation of illegal conduct, leaving private owners to serve as buffers.

In pursuing these plans, Congress should stand ready to recognize that parkland acquisitions are a capital cost, and that a dollar saved this year, but expended as six dollars ten years hence, is surely no saving at all. The policy of prompt acquisition should be implemented only as long as it is reasonably likely that land values will continue to rise more rapidly than the interest rate.

Finally, a word should be said about the political implications of the strategy proposed here. Deferring acquisitions until threats are imminent, and treating each problem individually when it arises, enhance the ability of influential landowners in each community, and of individual members of Congress in each district, to influence park policy. Obviously, certain individuals are greatly benefited if an exception is made in their case and they are allowed to go forward with incompatible developments, or if their lands are ultimately condemned at the highest possible price. But to recognize these political implications is hardly to suggest that they make sense as an element of National Park policy, or that they should be tolerated by federal taxpayers and park users.

The National Park Service also has an interest in maintaining friendly relations with neighboring landowners. Park superintendents do not readily argue that the investment opportunities of their private neighbors should be cut off, or that desired local development should be foreclosed. Only the Congress, by adopting policies of general application, can insulate the Park Service from the intense pressure it feels from private landowners. The Park Service has sometimes worsened the problem itself by indicating a desire to buy in fee more land than it actually needs, and by getting rid of even quite compatible private uses, when acquisition of the lesser interest of a development right would serve its needs effectively. It has thus helped to create an undesirable and unnecessary alliance between existing residents whose presence is frequently compatible with a park and mere investors. No such alliance is appropriate, and the policies proposed here would help sever it.

The real losers from the inadequacies of present policy are small landowners, park users, and federal taxpayers. The time is right for them to urge Congress to take a fresh, long, and hard look at current land acquisition practices.
A Message from the 1979 Fund for the Law School Chairman

So many of you gave time and effort to make 1979's Fund for the Law School one of record successes that it is a particular privilege for me to be able to thank each of you for your splendid assistance. Special recognition is due to the members of the National Steering Committee, whose efforts resulted in marked increases in the number and amount of substantial gifts to the Fund and who encouraged recent graduates to undertake support of the School.

The Law School, and all of us who share the reflected glory of that great institution, are fortunate to have persons such as Keith I. Parsons '37, Stuart Bernstein '41, S. Richard Fine '50, David C. Hilliard '62, Benson T. Caswell '74, and Joseph Deyo Mathewson '76, among us. They are people who can be counted on.

So too, the success of the 1979 Fund would have been impossible without the devoted efforts of Deans James T. Gibson, Jr., and Holly Davis. Their enthusiasm was unflagging and their accomplishments were all the more significant because this was the first year for each.
But, of course, regardless of efforts by Fundraisers, it is the donors who contribute their financial resources to perpetuate excellence in legal education. And the number and amount of contributions this year exceeded those in any other. The 1979 Fund set the following records: most dollars ever received, highest percentage of Law School graduates ever contributing, and largest number of contributions in Dean's Fund amounts. In other words, more Law School alumni contributed more money in larger average gift amounts than ever before.

Just as records should be set, they should—and, indeed, they must—be broken. Roger Weiler '52, the chairman of the 1980 Fund, has been working energetically since the spring. Under his leadership, the 1980 Fund for the Law School will move forward to new levels of support for our school.

The continuation of The University of Chicago Law School as a superlative institution requires an outstanding faculty, extraordinary students whose attendance at the School cannot be foreclosed by financial considerations, adequate physical facilities, and an exemplary library. The Fund helps to assure that these components of excellence will endure at our School. By your generosity, you have demonstrated your awareness that each of us who was fortunate enough to have been exposed to legal education at the University of Chicago has an obligation (to paraphrase Karl Llewellyn) to "they who come after. . . ." Your magnificent response to the 1979 Fund was true to the tradition of private endowment of education. Your support was vital; it continues to be so.

Many thanks for your help, for your contributions, and for your continuing support.

Bernard J. Nussbaum '55
A Message from the 1980 Fund for the Law School Chairman

The economic lessons of the 70's have taught us that inflation is an ever present reality. In such an environment, the need for a high standard of alumni participation and support becomes necessary if we are to exceed our past performances.

As we enter the 1980's, I suggest to you that your annual support goal should be 25% of the cost of the Law School's operating budget.

The personal standard for each alumnus should be an annual contribution equal to 1% of professional income. For many, this will be a starting point. For some, the ability and desire to exceed this standard is apparent. For all, financial support to maintain the quality of our school is a necessity.

Soon you will be approached to make your commitment to our Law School. Your support must be equal to the task.

Roger A. Weiler '52

Message from the Dean

The 1979 Fund for the Law School represents a record of great generosity. This support encourages and enables the School to perform its many tasks.

The Law School continues to flourish, as it has in the past, as part of one of the most distinguished universities in the world. Its preeminence in teaching and professional training, in research and clinical activities, has had a long tradition. The many graduates and friends who have helped us have, through their contributions and in innumerable other ways, participated in an important endeavor. The School is fortunate that it is has always been able to call on these graduates and friends.

We are extremely grateful to all who have helped us to meet this challenge.

Gerhard Casper

Comparative Unrestricted Contributions

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Five Classes with Highest Percent of Graduates Contributing to Fund for the Law School

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<th>Year</th>
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<td>44.2%</td>
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<td>1949</td>
<td>42.4%</td>
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<tr>
<td>1966</td>
<td>41.0%</td>
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<tr>
<td>1950</td>
<td>39.4%</td>
</tr>
<tr>
<td>1937</td>
<td>39.2%</td>
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</table>
1979 Volunteer Committees

The Law School gratefully acknowledges the time so generously contributed by the volunteers listed below:

National Steering Committee
Bernard J. Nussbaum '55, Chairman
Keith I. Parsons '37
Stuart Bernstein '47
S. Richard Fine '50
David C. Hilliard '62
Benson T. Caswell '74
Joseph Deyo Mathewson '76

Decade of the '70's Steering Committee
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Claire Pensyl '78, Co-chairman
Dodge Wells '72
Karen Tarrant '73
Leonard Shifflett '74
George Vernon '75
Roger Huff '76
Diantha McJilton '77
Randall Schmidt '79
The 1979 Dean's Fund

The Dean's Fund is an association of concerned graduates and friends of the Law School. The purposes of The Dean's Fund are:

1. To stimulate the active interest and to encourage participation of alumni and friends in the affairs of the Law School;
2. To establish an exemplary pattern of substantial giving of unrestricted funds to the Law School;
3. To enlarge the community of concerned alumni and friends of the Law School;
4. To provide due recognition to these alumni and friends.

Following is the Roster of Membership for 1979:

Dean's Fellows
($5,000 or more)

Anonymous (6)
Thomas H. Alcock '32
Baker & McKenzie
§ Mrs. Russell Baker
Walter J. Blum '41
Leo J. Carlin '19
Chicago Bar Foundation
#Chicago Community Trust
Jack Corinblit '49
#Council on Legal Education for Professional Responsibility
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#Exxon Educational Foundation
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#Raymond G. '45 and Nancy Goodman Feldman '46
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#Memphis-Plough Community Foundation

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* Restricted and Unrestricted Gift
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1934
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Jerome E. Wald
1937
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Edward D. Friedman
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#Benjamin Z. Gould
1938
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Henry O. Kavina
Stanford Miller
Richard F. Mullins
Myrle Warner Nichols
Jerome Richard
Homer E. Rosenberg
Maurice M. Rosenfeld
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Ralph J. Wehling
1939
Irving I. Axelrad
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Walter F. Berdal
Ernest A. Braun
John R. Cahr
Robert A. Crane
Zalmon Goldsmith
Henry L. Hill
Samuel S. Holmes, Jr.
Quentin Johnstone
Warren R. Kahn
Henry O. Kavina
Stanford Miller
Richard F. Mullins
Myrle Warner Nichols
Jerome Richard
Homer E. Rosenberg
Maurice M. Rosenfeld
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Ralph J. Wehling
1940
Fred C. Ash
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William Tucker Dean
John H. Gilbert, Jr.
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<td>Dow Chemical Company</td>
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<td>Dow Chemical Company</td>
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Editor's Note: Hans Zeisel was Professor of Law and Sociology at the Law School from 1953–1974; since 1974, he has been Professor Emeritus. In honor of his 75th birthday on December 1, 1980, the Law School is pleased to reprint the following article, originally published in the Student Lawyer.

On a warm August night two years ago, Richard Duggar was cruising his van down Highway 33 near Elkhart, Indiana, when he dropped a cigarette on to the floor. He may have been doing 50 miles an hour, maybe 55; no one is sure. The car in front of him may have stopped, or it may have been dawdling along; no one who lived through the accident really knows. What everyone does know is that while Duggar leaned down to fish around on the floor for his cigarette, he took his eyes off the road just one moment too long. By the time he sat back up, it was too late. His car crashed into the car ahead of him and three local girls in the 1972 Pinto in front of him died.

When a grand jury convened, it found Duggar innocent of any criminal responsibility for the accident. But the grand jury felt the Ford Motor Company was guilty of negligent homicide for building and marketing an automobile prone to gasoline leakage in rear-end collisions. It was the first time an American corporation had ever been brought up on criminal charges and Ford officials, naturally enough, were worried. They wanted the trial moved out of Elkhart to what they considered a safer venue. The move was crucial; any testimony they could present to help build their case had to be called. So at the end of 1979, Hans Zeisel, Professor

Emeritus in Law and Sociology from the University of Chicago, was on a witness stand in Elkhart testifying for the defense.

"The accident with the Pinto took place in Elkhart and it was there that Ford was indicted," Zeisel explains. "They had a public opinion poll taken which showed enormous public prejudice against them. In Indiana, you cannot waive a jury trial unless the prosecuting attorney consents. The prosecuting attorney would not consent. So, there was going to be a jury trial in a county that was up in arms because three nice girls had been killed in a horrible accident. Ford came to me—well, how should I say?" He smiles, shrugs, shakes his head; smiles again, figures what-the-hell, and says, "They came to me because I was the most eminent person in my field."
No one who knows Hans Zeisel would have even hesitated before delivering that explanation. At 75, the lawyer turned most-eminent-person-in-his-field has hit his stride, his prime. A slightly smaller, somewhat whiter-haired Jacob Bronowski, Zeisel knows more about juries and jurors than anyone else today. His recent bibliography is eight pages long: six published books, 52 papers, 31 articles, and 17 reviews. *Say It With Figures*, a treatise on research methodology which he wrote in 1947, is currently in its fifth edition, having been published in seven different languages. Written in collaboration with the late Harry Kalven, Jr., *The American Jury* has become the definitive text on the human motivations and mechanisms of jury deliberations. Along with articles on statistics and sociology, his bibliography includes essays on the efficacy of the death penalty and radio broadcasting, a review of *The Kinsey Report*, and scholarly treatise on *Romeo and Juliet*.

In Elkhart, Ford sensed that local animosity could easily translate into precedent-setting verdicts and cash compensation to the victims’ families and brought Zeisel in to testify as an expert in public opinion. Zeisel studied Ford’s polls and talked to people in Elkhart. He testified that feelings in Elkhart were indeed running high against Ford. But even more to the point, feelings were running high partly from all the pretrial publicity—publicity originating, to a large extent, from the office of the public prosecutor. In his capacity as an expert in public opinion, Zeisel was able to diagram for the court the progression of public opinion, a progression that correlated neatly with television appearances by the public prosecutor, the publication of press releases by his office, or television appearances by grand jury witnesses. Zeisel didn’t draw any conclusions or make any recommendations. He didn’t have to. The picture he painted was strong and solid. For his part, the prosecutor tried to show that Zeisel’s $1,000-a-day fee had tainted the witness’s testimony. (“An old and shabby trick,” Zeisel says, waving his hand with disdain. “An old shyster trick.”) In the end, the court was convinced by Zeisel. The atmosphere in Elkhart was found to be unconvincing to a fair trial, and the case was moved 75 miles south, to Winamac.

“It is not unusual at all to apply the methods of statistical analysis to a courtroom situation,” Zeisel explains. Zeisel, a native of Czechoslovakia, still speaks with an Eastern European accent and rhythms; typically, his sentences end with the rising intonation that suggests a question, as in an example he gives of his statistical approach: “You are a writer, yes? All right, then, I tell you something. There was a case in Europe, oh, I don’t know when, in which a man parked his car next to the curb in an area that was posted for one-hour parking. A policeman came by and marked the two outside tires with chalk, next to the pavement, like so—whatever. When the policeman came back, what, a few hours later? The chalk marks were in the same position, next to the pavement. So he gave the driver a ticket. But in court, the driver told the judge he had moved the car before the hour was up, but had come back to exactly the same spot. And the court agreed that this was possible—that odds of one hundred forty-four to one—there are only twelve positions to mark on each tire, so twelve times twelve, yes?—were not high enough to rule out the possibility.” Zeisel smiles, the old professor finishing his lesson. “You see? In fact, if one assumes that both tires rotate at the same rate—you know, they are the same size, what have you—then the odds are probably only twelve to one. But the court found that the odds of one hundred forty-four to one were not sufficient to convict, and the man was let go.”

In 1938, Zeisel, ten years out of law school with degrees in law and economics, was living in Vienna with his wife. It was not a hospitable time for Jews in Austria: to the south lay Italy, Fascist since 1922; to the east was Hungary, Fascist since 1919; and to the north and west over Austria’s right shoulder, sat Germany, the largest Fascist power in the world since 1933. This is how Zeisel describes it:

“The problem was not leaving Europe. Hitler wanted you to leave, if you were a Jew. As long as you left everything behind, the Nazis were only too glad to see you go. But one has to have someplace to go. In Vienna in 1938 the New York phone book was worth its weight in gold,” he explains, holding an imaginary phone book in his hands, weighing it silently. “People would go through the directory. If your name was Wolf you would write to every Wolf in the directory, asking them to sign an affidavit of sponsorship—if something happened and you couldn’t support yourself, whoever signed the affidavit had to agree to support you, it was that kind of thing. People were begging, ’Mr. Wolf, please, save my life.’” In March of 1938 the Nazis marched into Vienna. Zeisel’s wife had a cousin in Iowa and left the next day for America; Zeisel followed three months later. “My wife and I lost thirty-eight relatives between us. Just my wife and I—thirty-eight.” He stops, leans forward—who could understand such a thing? He says simply, “We ran for our lives.”

In 1961, when Adolf Eichmann was on trial in Israel, Zeisel argued against the trial and, especially,
against the execution. “I find myself attracted to the wisdom of the grim joke the Vienna Jews told each other during the Hitler days,” Zeisel wrote in an issue of Saturday Review. “If I could ever get my hands on Hitler I don’t know what I would do to him,” says one man. ‘I know what I would do,’ says another. ‘When it is all over, Hitler will sit at the table next to mine in the coffeehouse while I read the newspapers. He will then ask me, “May I please borrow your newspapers?” And I shall look straight at him and say, “No, not you, Herr Hitler!” ’ It has always seemed to me that such punishment would do just as well. After all, it was Cain’s.”

Arriving in this country, Zeisel, 33 years old and too poor to earn a new law degree, turned his economics degree to good advantage and worked as a market researcher in New York. Then in 1953, the University of Chicago received a grant from the Ford Foundation to begin a new program, a hybrid of law and sociology. Edward Levi, Dean of the Law School, needed a lawyer who also had experience as a sociologist. No American lawyers fit the description. Hans Zeisel did. One phone call later, Zeisel and his wife were on their way to Chicago. They have been there ever since.

Zeisel’s wife, Eva, a noted industrial designer, is now doing research on an 18th-century episode in the history of New York City. Their daughter, Jean, is an actress, and their son, John, is a sociologist of architecture.

“My life now has three parts,” Zeisel says. “One-third of my life now is devoted to researching and writing scientific works. I am working on The Limits of Law Enforcement, a study of how felonies in New York City are disposed of. What we have found is that it is a terrible mistake to think that law enforcement can solve the problem of crime. Yes, there would be more crime right now without law enforcement, but to think you can ever control crime that way is—well, it is very naive. Look,” he says. “In New York today, one-half of all serious crimes are committed by teenagers. One-half! We found that the crime rate among blacks is twice that of Hispanics, and among Hispanics twice that of whites. Now, you ask yourself why is this? The answer comes from an interesting statistic. Take a Harlem school, which you would want to say is what, the heart of the ghetto? In this school the truancy rate is forty-five percent—after you remove the permanent dropouts, the children who have never enrolled, all right? Forty-five percent. What is happening to these students? Well, it is fairly obvious they are not going to the Metropolitan Museum during the day.

“What I am saying is that you have to make the schools more attractive to the students. No matter how difficult or costly, one has to take care of these children. Children! These are really children! You have to begin in nursery school; you have to create a place that is so attractive that it becomes the best part of that child’s life. Let’s say that Johnny is out with his friends, and there is a car on the street. One of his friends wants Johnny to help him steal something from the car—whatever. You must somehow make Johnny the kind of person who will say, ‘No, I don’t do those things.’

“This is a remarkable country—my God, it had people walking on the moon! Do you think it could solve this problem if it wanted to? Come on, now, if someone gave you unlimited money and unlimited talent, don’t you think you could design a school that would be attractive to children? When I see three-year-old children, I don’t see criminals, I see innocent children. Something happens to them in their lives after they’re three to make them become criminals. What if you convinced a player from the Pittsburgh Steelers to be a principal at each black school in Chicago? Don’t you think these children would want to attend school, to be at the place their heroes were? I’m just speculating, I’m not offering this as a real solution, but you have to do something, you have to start in the nursery schools and make the schools the one shining place in a child’s life. So that instead of leaving school in the middle of the day you have children rushing to get there five minutes early. You have to have teachers the children will fall in love with, the way I fell in love with mine. Because, what can I say? I believe that if you treat children right, you produce good people.”

Fifteen years ago, when Zeisel was writing The American Jury with Harry Kalven, the two lawyers gathered data from 3,800 jury trials. In each case they knew in advance what the verdict had been. In each case, they talked to the jurors; and in each case, they asked the presiding judge how he or she would have voted. No one had ever done that before. The book is now considered the standard reference for lawyers selecting juries in a criminal trial, and Zeisel, not surprisingly, is considered the leading authority in the field. So secure is his reputation that after his testimony had helped move the Pinto case from Elkhart to Winamac, Ford hired Zeisel to help their lawyers select the jury for the trial. Every trial lawyer knows that a case can turn on this one key aspect. The Ford case is guaranteed to set precedent, starting reverberations that will rattle through the legal and corporate systems in this country for generations. Each juror was a link in the
decision. In their study of juries, Zeisel and Kalven found that the jury and the presiding judge disagreed on the question of guilt in one case out of five. The reasons appear to have more to do with basic human psychology than with law. It was for his understanding in this mysterious gray zone that Ford hired Zeisel to sit in a back row of a courthouse in Winamac this past winter watching, weighing, thinking, and mind reading.

“Another third of my life is for people who are fighting the death penalty,” Zeisel explains. In a 1976 Supreme Court Review article, “The Deterrent Effect of the Death Penalty,” Zeisel plotted on a graph the incidence of homicides in states that have abolished or never instituted the death penalty. He then gathered similar statistics from states that have an active death penalty in the same ten-year period, and compared the two graphs.

In states without the death penalty, the incidence of capital crime rose steeply during the studied years. In the states with the death penalty, the incidence of capital crime rose just as steeply. Side by side the two graphs are indistinguishable. “It is impossible for anyone to look at these graphs and argue that the death penalty has a deterrent effect,” he argues. “Look at them, there is no significant difference one way or the other. You can argue for the death penalty for revenge, or because you want to see someone permanently removed from society; this is possible, but you cannot argue that the death penalty has any effect on crime. This is simply not true.”

In 1953, Zeisel went through the courts in Chicago and Brooklyn, interviewing jurors who had served in cases where the first ballot had been split. “In two-thirds of all cases, the first ballot is split,” he explains. “Did you know that?”

“When you ask these people if they are in favor of the death penalty, you find an interesting thing. If they answer yes, they are in favor of the death penalty, and then you ask them how they voted in the trial, you find that in almost every case the ones who are in favor of the death penalty are inclined to find the defendant guilty. It is a very close correlation. I don’t mean, are they in favor of the death penalty in every case, or are there special circumstances for which they would accept the death penalty. If they are in favor of the death penalty, simply asked that way, in a general sense, then they are more inclined to look at the evidence in any criminal case and find the defendant guilty.” He shrugs, “I don’t know why this is. White men are most in favor of the death penalty, then white women, then black men, and finally black women. I don’t know why this is—there are people who are more punitive than others; these people tend to favor the death penalty.”

The last third of his life, the part that is not absorbed by matters of sociology and jurisprudence, includes his Shakespeare studies, his teaching, the life he and his wife have built at the University of Chicago. Like Faust, Hans Zeisel wants to know everything. In his 75 years, he has gotten a pretty good start on it. His immense curiosity about the way people think and act was evident in his early observations of the ways of the business world.

“In 1934, when I was twenty-nine years old, I wanted to go to America. But I couldn’t; no one had any money then, so I went to Czechoslovakia instead, to the Bata Shoe Company because it was the closest thing to America I could find. They did everything there like an American company; they produced something like thirty-five thousand pairs of shoes a day. It was the most amazing thing in the world. They could produce a pair of children’s sneakers for, I don’t know, fifty cents, something truly remarkable. But their shoes were not selling in Prague, and no one knew why. So they came to me, a Mr. Lata, and Mr. Lata asked me to study this matter and make a report to him.

“So I went to Prague and found that the reason was that the women in Prague had a little more money than other people and didn’t want to buy the same shoes that everyone else bought. I came back to Mr. Lata with my report. I had three copies, and my report said that Bata shoes should open a branch on Prague’s “Michigan Avenue,” and sell their shoes there. But they would advertise them as the special export line of shoes, the same line that is sold in Paris, and London—and then charge twice as much for the shoes. So, I handed my report to Mr. Lata,” he recounts, holding out an imaginary report.

“The next day Mr. Lata told me, ‘Yes, this is a very excellent report, but I’d like to show it to Mr. Chiepwa. Could you have another copy of the report for Mr. Chiepwa? So I said yes and handed over another copy.

“Two days later, Mr. Lata came to me. He was very impressed, Mr. Chiepwa was very impressed, but now he would like to give a copy to the big man, Mr. Bata himself, to read. And I said, ‘Well, I don’t know. I only have one more copy.’ And Mr. Lata said, ‘Oh, that’s too bad; Mr. Bata is leaving for America tonight, he’s flying over and likes to read things on the plane, we wanted to give him your report to read.’ And I said, ‘All right, here, yes; I’d like Mr. Bata to read the report,’ and handed the third and final copy across.
“Six weeks later—six weeks because that was the kind of company they were, they did things very fast—a branch of Bata Shoes opened on “Michigan Avenue,” advertising their special export line, the same line one saw in Paris or London. They charged twice as much for the shoes, and they sold a tremendous number of shoes, exactly as I had predicted they would. But then, you see, I had no more copies of my report, they had taken them all. I never heard from the Bata Shoe Company again.”

He smiles, shakes his head, shrugs. “That was my first introduction to the corporate world.”
The Law and Economics Program
Edmund W. Kitch*

Students and alumni of the Law School appreciate the impact which economics has had on the intellectual teaching and research life of the school. The Law and Economics Program also undertakes to reach beyond the Law School and support research and teaching in applied political economy at other universities.

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The Journal of Law and Economics, founded in 1958, publishes material on industrial organization, property antitrust rights, and economic regulation, and related areas. It is edited by Ronald Coase, Clifton R. Musser Professor Emeritus in the Law School; William Landes, Professor of Economics in the Law School; and Dennis Carleton, newly appointed Professor of Economics in the Law School.

The Journal of Legal Studies, founded in 1972, is edited by Richard A. Posner, Lee and Brenan Freeman Professor in the Law School. It is concerned with the application of social science research techniques and theory to the legal system—to the organization and behavior of courts, legislatures, and administrative agencies, to judicial procedures, and to areas of legal concern as diverse as family law, criminal law, and legal history.

Publication of these journals involves considerably more than simply accepting suitable manuscripts for printing. After initial review by an editor, manuscripts are sent to experts in the field for review and comment. These referees' comments, along with those of the editor, are then provided to the authors for consideration in revision of the article. Only articles that are ultimately judged to make a significant contribution to the literature in the field are accepted for publication.

The nature of the work supported and furthered by the journals can be illustrated by reference to articles appearing in recent issues. The spring, 1980 issue of the Journal of Law and Economics (Vol. 23, No. 1) contains articles on primitive law, the economic function of medical schools, the regulation of hospitals, water law, usury laws, a method for estimating the value of a legally suppressed market, the politics of the minimum wage, the politics of city-county consolidation, enterprise liability, and the theory of patents. These articles were written by authors from institutions as diverse as the University of Hawaii, California Institute of Technology, the University of Florida, and Carleton University in Ottawa, Canada.

The January, 1980 issue of the Journal of Legal Studies contains articles on a comparison of strict liability and negligence as rules of tort liability, contemporary tort theory, diversity jurisdiction, private

*Professor of Law and Director of the Law and Economics Program.
versus public enforcement of fines, judicial discretion, the impact of litigation on legal rules, the use of taxes to control externalities, and the ability of economics to explain and illuminate nonmarket social behavior. The authors' institutions include Harvard Law School, Stanford Law School, Hebrew University, and New York University.

This year, the Journal of Legal Studies is also publishing two special symposia issues. One, a symposium sponsored by the Institute for Humane Studies and the Liberty Fund, is on “Change in the Common Law: Legal and Economic Perspectives.” A second, sponsored by the Center for the Study of the Economy and the State, the University of Chicago, is on the law and economics of privacy.

The Law and Economics Workshop
The Law and Economics Workshop, organized and directed by Professors Landes and Posner, brings scholars to the Law School to present work in progress. Members of the Law School’s faculty and that of the University of Chicago Department of Economics and Graduate School of Business participate in the Workshop, which enables an author to receive a wide range of views and criticism prior to publication of his work. Many papers presented at the Workshop eventually appear in the journals published by the Law School.

During the past academic year, representative Workshop papers included: “An Economic Analysis of Blackmail,” by Douglas H. Ginsburg, Assistant Professor of Law at Harvard University; “Marketing Arrangements to Induce Efficient Quality Search: the Paramount and Loews Block Booking Cases,” by Benjamin Klein, Professor of Economics at the University of California at Los Angeles; “Causal Apportionment in Tort Law: An Economic Theory,” by Mario Rizzo, Professor of Economics at New York University; “Rationalizing the Basic Framework for Nonprofit Enterprise: An Economic Approach,” by Henry Hansmann, Assistant Professor of Law at the University of Pennsylvania; “Enforcing Promises: An Examination of the Basis of Contract,” by Charles Goetz and Robert Scott, Professors at the University of Virginia Law School; and “Opportunistic Behavior and the Law of Contracts,” by Timothy Muris, Assistant Professor of Law at the University of Miami Law School and Law and Economics Center.

Law and Economics Fellowships
Finally, the Law and Economics Fellowships make it possible for younger scholars to study the field and pursue advanced research through supported leave at the University of Chicago. During the past
year, Professors Klein and Muris were Law and Economics Fellows. Professor Klein spent the fall quarter pursuing research on the antitrust cases involving block booking. The workshop paper was a first result of his work, which continues the program's long-standing interest in analysis of major antitrust cases. Professor Muris spent the year studying advanced economics and pursuing his research on the economic foundations of contract doctrine. Professor Stephen Littlechild, of the University of Birmingham, England, visited during the spring quarter to pursue research on the impact of different ownership and administrative structures on the quality of telephone service and to learn about the American work on law and economics.

Interdependent with the activities described here is the program of research supported at the Law School itself by the Law and Economics Program. The journals and workshops assist in the dissemination of the research done at the school to others with an interest in the field.

Through these activities, the Law and Economics Program has made the special resources of the Law School available to a large number of teachers and scholars. The combination of institutional knowledge and sophistication found only in a professional law school combined with the rigor of the analytic tradition in economics at The University of Chicago and the long-standing tradition of applied research within the Program has helped to develop an influential and still growing field of scholarship in American and foreign universities.
Gary Palm: Ten Years of Success with the Mandel Legal Aid Clinic

John M. Kimpel*

In the relative quiet of the Law School this past summer, Gary Palm, Associate Professor of Law, celebrated his tenth anniversary as Director of the Edwin F. Mandel Legal Aid Clinic. Under Mr. Palm's guidance, the Clinic has become a nationally known and respected leader in the field of clinical legal education while at the same time providing sorely needed legal services in Chicago's Woodlawn community. As Mr. Robert B. McKay, Chairman of the Clinical Committee of the A.B.A. Council of the Section on Legal Education and Admissions to the Bar, stated in a recent interview, the Mandel Clinic is "considered one of the strongest in terms both of teaching quality and community service." Others obviously agree, as many of Mr. Palm's former students and staff attorneys have gone on to direct clinical programs at other law schools.

The Clinic's outstanding reputation is also reflected by the fact that it recently received a Challenge Grant from the Council on Legal Education for Professional Responsibility (CLEPR), which is the recipient of Ford Foundation funds for the support of clinical legal education. Under the terms of this grant, the Law School will receive $50,000 for the Clinic if the Clinic raises $150,000 by October 1, 1980, a goal which the Law School hopes to reach by early in September. Through its alumni fundraising campaign, which is primarily aimed at recent graduates who participated in the Clinic while at the Law School, the Clinic hopes to attract and maintain a core of donors who can be counted on to provide regular annual support after the matching campaign is concluded.

Although CLEPR has advised Mr. Palm that no other law school has undertaken an alumni fundraising campaign for clinical education, he is confident of its success and the long-range financial stability of the Clinic, even in the face of increased expenses and possible cutbacks in other sources of funding.

The Clinic continues to be extremely popular with the students at the Law School. Of the approximately 160 students in the Class of '82, 116 have applied to participate in the Clinic this year. Unfortunately, the Clinic will only be able to accommodate 40 of them, as well as 40 third-year students, although Mr. Palm expects that normal attrition will allow more to participate eventually. Professor Palm's success in developing a popular clinical legal education program is best demonstrated by the fact that, except for a separate trial practice which he conducts for 36 students each year, students receive no academic credit for the 10 to 20 hours they are expected to devote to the Clinic each week.

Under Mr. Palm's direction, the Clinic has changed greatly in the last few years. The Law School has provided more space for Mr. Palm and his staff, which includes four other attorneys and a social worker. From its originally experimental and uncertain role, the Clinic now occupies an accepted and important place within the Law School community. All of Gary Palm's present and former students join with the Law School in saluting him for his accomplishments over the past ten years.

*Mr. Kimpel, JD'74, is an attorney with the Chicago law firm of Greenberg, Keele, Lunn & Aronberg and an alumnus of the Law School.
In Memory of Malcolm P. Sharp (1897–1980)

Malcolm P. Sharp, a faculty member of the Law School for over thirty years and Professor Emeritus since 1965, died on August 12, 1980 at the age of 83.

When Mr. Sharp first came to the Law School in 1933 as a Visiting Associate Professor, he taught courses in Commercial Law and Trade Regulation; in 1937, he began to teach Contracts, a course for which he became well known. Mr. Sharp was made an Associate Professor in 1935 and a full Professor in 1940.

Harry Kalven, Jr., former Law School Professor, once wrote about Malcolm Sharp that "His personal style [was] marked by many things—courage, charm, kindliness, wit, love of paradox, but the most distinctive quality . . . [was] the pure youthful play of his intellectual curiosity."

In honor of Malcolm Sharp and in celebration of those many qualities, we reprint excerpts from tributes to him originally published in the Winter, 1966 issue of The University of Chicago Law Review on the occasion of Mr. Sharp's retirement from the Law School.

—The Editor.

Malcolm Sharp's biography is not without interest. He had his years as a Wall Street lawyer practicing with Lowenthal, Zold and with Root, Clark, Buckner, and Ballantine after his graduation from Harvard Law School; in his time he has taught Greek and economics as well as law, and during World War I he taught flying; he was with Alexander Meiklejohn during the fiery years of the Experimental College at Wisconsin; he worked on the steel code for the NRA during the Depression and on contract renegotiation during World War II; he was a counsel for the defense on the appeal in the hated Rosenberg case; he was president of the National Lawyers Guild during the years of its battle with the Attorney General's List; and for thirty years he was a member of the faculty of law at the University of Chicago.

But this is a case where the biography cannot catch the quality of the man. His thirty years at Chicago perplexed, delighted, and enriched a full generation of students and left their indelible mark on the traditions of the school. He has always been incurably, indefatigably, enthusiastically, lovingly, a teacher. He is fond of quoting a teacher of his to the effect that a man who would not teach without pay for the sheer fun of it does not belong in teaching. It is a right story for him to tell.

Harry Kalven, Jr.*

Most rewarding of all my associations with Malcolm were the sometimes dizzying explorations of ideas which accompanied our exploration of mountain trails. I learned on one occasion the secret of his capacity to follow trails of both kinds. We had carefully mapped out an unfamiliar hike and had followed our plan perhaps less carefully as we discussed equitable liens—or was it Admiral Mahan or the mystery of responsible freedom? In the afternoon we were surprised to find ourselves in the same spot where we had been an hour or two earlier. I was somewhat dismayed, but Malcolm strode ahead explaining, "It’s always good to keep a flexible sense of objective."

To all of his colleagues Malcolm Sharp has presented the disturbing and heartening example of a man determined to find an integral pattern for his

*Harry Kalven, Jr., was the Harry A. Bigelow Professor of Law at the Law School until his death in 1974.
knowledge and concerns and activities. He has end­
lessly sought in philosophy and history and eco­
nomics and psychology. He has discarded nothing
which experience has brought him, drawing peren­
nially on accretions from his brush with corporate
practice in New York, his steeping in Greek culture
at Meiklejohn's Experimental College, his aston­
ishing venture in Thomist prelegal education with
Mortimer Adler, his battles on the NRA steel
code—even from his study of the common law
forms of action. Sometimes he sketched the connec­
tions with darting allusions which we found difficult
to follow. But with Malcolm operating in our midst,
we could never be quite complacent with frag­
mented patterns and limited concerns.

Wilber G. Katz†

In spite of Malcolm's love of paradox, he is never
superficial, and his paradoxes actually spring from
the paradox inherent in his whole point of view—a
point of view which I have never encountered on
the part of anyone else. Malcolm Sharp is not
assignable to any familiar category and does not
lend himself to any known label. He cannot be
called a radical or a liberal or a conservative or a
middle-of-the-roader. The paradox of his position is
that he wants to combine uncompromising vigilance
for American civil rights with an almost unshakable
confidence in the workings of American business.
Both these tendencies have carried him to lengths
which must appear outrageous or fantastic to the
people who, in dealing with political, social and eco­
nomic matters, insist upon two mutually hostile
camps, to one or other of which everybody must
belong.

He loves nothing, in fact, so much as a legal case
for which nothing or little can be hoped. He always
has several files full of these, which he will nurse
along, like pets, for years, for he will never abandon
a stand once he thinks he has been justified in mak­
ing it. On the other side, the pro-business side, he
is also unyieldingly logical. Though he worked for a
time with the administration in the days of the New
Deal, he now disapproves of social security and, so
far as I can see, of any of the government subsidies
by means of which Franklin Roosevelt oiled the
stalled machinery of the great Depression and thus,
for his successors in the presidency, set a precedent

†Wilber Katz, Dean of the Law School from 1939–1950 and a
for further measures of the same kind. Malcolm is impervious, in this connection, to humanitarian arguments because he is able to produce counter-arguments to demonstrate that these measures do not really help. His sympathy with the sufferings of human beings has made him a hater of war, but here, too, his line is quite unorthodox, and, it seems even to me, rather eccentric. In trying to detach his judgments from the beneficial professions of political claptrap, liberal as well as partisan, to estimate strictly from the point of view of its actual or probable results any step of our foreign policy, he was led to the conclusion that Eisenhower had exercised sound statesmanship in this department whereas Kennedy had been rather dangerous.

*Edmund Wilson*

Sharp taught contract to first year law students at Chicago; I had been one of his students in 1947. I had anticipated that a course in contract would be as dull as dishwater. I had not reckoned with Malcolm Sharp. Who among those who studied under him will ever forget the exquisite subtlety with which he probed the old problems of offer and acceptance, consideration, and mutual mistake? Sharp did not view the law of contract as a sterile set of black letter propositions. The life of the law to him is not logic; it is psychology, economics, semantics, history, and philosophy; the life of the law is the bustle of the marketplace and the need for fair, commonsense accommodations. Sharp’s students were exposed to the workings of a highly cultivated mind, sensitive, precise and provocative.

What led Malcolm Sharp to become involved—without compensation it should be noted—in a great cause célèbre for two of the most despised defendants [Julius and Ethel Rosenberg] in our history? Several years after the case was over, Sharp offered an explanation in his book *Was Justice Done?*. “What moved me,” he wrote, “apart from a growing fear of serious injustice in a capital case of peculiar public concern, was a sense of the relationship of the case to public policy, both domestic and foreign. A calm estimate of spy scares seems to me a part of a calm estimate of foreign quarrels, the resolution of which might help us to preserve our liberties, promote prosperity, save taxes, and keep the peace.” To this somewhat impersonal account, I would add that, in my view, Sharp was moved by a sense of compassion for individuals confronting great odds and the overwhelming power of the state. This same compassion—the same largeness of spirit and the same respect for the underdog—had led Malcolm Sharp to fight in the 1940’s for the admission of Negro students into the law school at the University of Oklahoma and later to champion the right of one of his students, George Anastaplo, to refuse to state whether he was a member of the Communist Party as a precondition to admission to the bar. The Populist tradition of respect for dissenters and mavericks is rooted deep in Sharp.

*Abe Krash*

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*Edmund Wilson, a noted author and critic, died in 1972.

1Abe Krash (JD ’49) is a partner in the Washington, D.C. law firm of Arnold and Porter.
Memoranda

New Appointments to Faculty and Staff

The following new appointments are in addition to those already noted in the Spring, 1980 issue of the Record.

Dennis Carlton, formerly a member of the faculty of the Economics Department at the University of Chicago and a visiting faculty member and Law and Economics Fellow last fall and winter at the Law School, has been appointed Professor of Economics in the Law School. Mr Carlton will also join Professor William Landes as an editor of the Journal of Law and Economics.

Mr. Carlton received his M.S. and Ph.D. from M.I.T. where he taught in the Economics Department before coming to the University of Chicago. His areas of special interest are industrial organization, especially market behavior under uncertainty, and incentives for and consequences of the use of long-term contracts.

Gayle Edelman began her duties as Head of Technical Services of the Law Library on July 1, 1980. Prior to joining the staff of the Law School, Ms. Edelman was the Associate Law Librarian for Technical Services at De Paul University Law Library. During 1976 and part of 1979, she was also the Acting Director of De Paul's Law Library and recently received a Master's Degree in Public Administration from that institution.

Technical Services is one of two major new divisions of the library; the other is Public Services, which is headed by Judith Gecas, former Reference Librarian at the Law Library from 1977-79. Ms. Gecas recently returned to the Law School after receiving her J.D. from DePaul University. As Head of Public Services, Ms. Gecas supervises the reference and circulation departments of the law library.

William R. Jentes, a senior trial attorney with the Chicago and Washington-based law firm of Kirkland and Ellis, has been appointed Lecturer in Law. Mr. Jentes has been engaged for over twenty years in major antitrust, securities, commercial, and corporate litigation. Drawing on this experience, Mr. Jentes is conducting a seminar this year in the tactical and strategic considerations involved in the preparation and trial of such actions.
Visiting Professor Gareth H. Jones, Charles J. Merriam Scholar

Gareth Jones, Visiting Professor of Law from Trinity College, Cambridge, has been appointed the Charles J. Merriam Scholar for Spring quarter, 1980.

Mr. Jones is no stranger to this country, having been a Visiting Professor at the Law School for the last five years as well as having taught at Harvard, Berkeley, and Indiana Universities.

His main interests are contracts, restitution, and trusts, about which he has written numerous articles.

Walter Wilhelm, Visiting Professor of Law and Thyssen Fellow, will be teaching at the Law School Autumn quarter. Mr. Wilhelm is Director of the Max-Planck-Institut für europäische Rechtsgeschichte in Frankfurt am Main Germany, and Professor of Law at the University of Frankfurt am Main. He received his law degrees from the University of Frankfurt and, in addition, studied comparative legal history and comparative law in Paris, Madrid, and the Hague Academy of International Law.

Mr. Wilhelm's publications and teaching have been primarily in the fields of legal methodology, theory of the sources and forms of law, and comparative and social history of modern law, particularly of private law in Europe since the French Revolution.

Bigelow Teaching Fellows

Six new Bigelow Teaching Fellows have been appointed to design and conduct the legal writing and research program for first-year students. Assistant Professor Lea Brilmayer will coordinate the 1980-81 program.

The Fellows are:

Mr. G. Blaine Baker received his B.A. degree from Huron College and his LL.B. in 1978 from the University of Western Ontario. While in law school, he served as a research assistant and, in his final year, as teaching assistant to the Dean of Law in legal writing instruction and the moot court program. In 1979, after completing the LL.M. program at Columbia University School of Law, Mr. Baker returned to the University of Western Ontario as a special graduate student concentrating in sociological jurisprudence, at the same time serving as a Lecturer in the Department of Philosophy and Tutor in the Faculty of Law.

Ms. Mary B. Cook graduated from Brown University in 1969 and from the University of Michigan in 1971, receiving an A.B. degree in sociology from Brown, and an A.M. in education and A.M.L.S. in library science from Michigan. Before attending law school, she worked for several years as Learning Center Director and School Media Specialist at Elm Place Middle School in Highland Park, Illinois. In 1977, she received the J.D. degree from Indiana University School of Law in Bloomington, where she was elected to Order of the Coif. Since graduation, she has served as law clerk to The Honorable William E. Steckler, Chief Judge, U.S. District Court (S.D. Ind.) and as trial attorney in the Indianapolis District Office of EEOC.

Ms. Patricia N. Fetzer received a B.A. in history from the University of Iowa in 1971. She went on to study law at Iowa, where she was Notes & Comments Editor of the Iowa Law Review. After receiv-
ing the J.D. degree in 1974, she practiced law in Cedar Rapids for several years with the firm of Simmons, Perrine, Albright & Ellwood, opening her own law office in Cedar Rapids in 1978. Ms. Fetzer has also served as Instructor in Estates and Trusts since 1976 in the Kirkwood Community College Legal Assistant Program. She is a member of Phi Beta Kappa and Order of the Coif.

A graduate of the University of Pennsylvania, where he received his B.A. degree in sociology in 1974, Mr. Richard Karr received his J.D. degree from IIT, Chicago-Kent College of Law. He has been active in moot court and law review and his extracurricular activities have included work with youth organizations. Mr. Karr also served as Teaching Assistant in Legal Writing at Chicago-Kent and participated in the legal services program.

Faculty Notes

Gerhard Casper, the Max Pam Professor and Dean of the Law School, is one of five faculty members of the University of Chicago who were elected to membership in the American Academy of Arts and Sciences last May. Mr. Casper was also elected to membership in the Council of the American Law Institute.


David Currie, Harry N. Wyatt Professor of Law, is the author of “Direct Federal Regulation of Stationary Source Under the Clear Air Act, published in volume 128 of the University of Pennsylvania Law Review.

Kenneth Dam, Harold J. and Marion F. Green Professor in International Legal Studies and Provost of the University of Chicago, wrote “The Economics of Due Process” included in Directions in Energy Policy: A Comprehensive Approach to Energy Resource Decision Making (Kursunoglu and Perlmutter, editors). The book was published by Ballinger in 1979.

During the Spring, Assistant Professor Frank Easterbrook discussed “The Due Process Clause and Parole Decision Making” at the Third National Parole Symposium in Washington, D.C. In June, he participated in a Federal Trade Commission symposium on strategic models of competitive behavior.

Mr. Easterbrook is also a co-author (with Richard Posner, Lee and Brena Freeman Professor of Law) of Antitrust: Cases, Economic Notes, and Other Materials.

Mr. Joseph A. LaVela is a 1979 graduate of this law school. Prior to coming here, he attended Illinois State University, where he majored in political science and worked as an advisor in the Student Counseling Center. Mr. LaVela is presently law clerk to Justice Charles L. Levin of the Michigan Supreme Court.

A graduate of both the College of Northwestern University and its School of Law, Mr. Sidney I. Schenker received his B.A. in journalism in 1976 and his J.D. degree in 1979. While in law school, he was Notes & Comments Editor of the Northwestern University Law Review and a semifinalist in the Miner Moot Court Competition. This past year, Mr. Schenker has been clerking for Judge Marvin E. Aspen of the U.S. District Court (N.D.Ill.).
(2nd Edition). A fall issue of the *Journal of Law and Economics* will include the article, “Contribution Among Antitrust Defendants: A Legal and Economic Analysis,” written by Mr. Easterbrook, Mr. Posner, and Professor William Landes.

Professor John Langbein addressed the American Bar Association meeting in Sydney, Australia, on August 12, 1980. He spoke on the topic of “Defects in Form in the Execution of Wills: Australian and Other Experience with the Substantial Compliance Doctrine.” Professor Langbein took the occasion to investigate with Australian judges and legal academics the continuing spread in several of the Australian states of the remedial system he proposed some years ago.

Visiting the Scene of the Wagon Mound. Three members of the faculty who attended the American Bar Association convention in Sydney, Australia, in mid-August took time out to visit the scene of one of the most celebrated torts cases of modern times, popularly known as *The Wagon Mound.* Shown from left to right are Professors John H. Langbein, Spencer Kimball, and Norval Morris. Behind them is the Caltex Wharf from which the ship *Wagon Mound* was loading bunkering oil, which spilled into the harbor and caused damage at a remote wharf ([1961] A.C.338 (Privy Council 1961)). Professor Langbein attended the conference on behalf of the ABA’s Section on Real Property, Probate, and Trust Law; Professor Kimball represented the American Bar Foundation; and Professor Morris attended as reporter to the ABA Special Committee for the Australia Meeting.

Professor Douglas Laycock served as a commentator on the Herbert L. Seams Lecture and the D.R. Sharpe Lecture in the University of Chicago Divinity School last April. The combined lectures were given by Harold J. Berman, the James Barr Ames Professor of Law at Harvard University, who spoke on “The Moral Crisis of the Western Legal Tradition.”

During 1979–80, Mr. Laycock served on the Advisory Board of Consumer Services Organization, a not-for-profit corporation which offers a pre-paid legal services plan. He is also serving as Faculty Coordinator for the 1980 program of the Public Interest Law Internship, an affiliate of the Chicago Bar Foundation, that sponsors law student internships at public interest agencies.

Stanley A. Kaplan, Professor Emeritus of Law, has been appointed Chief Reporter for the American Law Institute’s Corporate Governance Project. Mr. Kaplan was Professor of Law at the Law School from 1960 to 1978 and is presently a partner with the firm of Reuben and Proctor in Chicago.

Professor Edmund W. Kitch participated in a panel discussion on “Public Interest Litigation: The Court’s Role in a Dynamic Age,” at the meetings of the ABA’s Judicial Administration Division in Honolulu, August 5, 1980.

Last April, Mr. Kitch delivered a lecture to the policy seminar of the University of Chicago’s Committee on Public Policy Studies on the history, effects, and prospects of American energy price regulation.

He also presented the principal discussion paper at the Liberty Fund Seminar on Regulation, Federalism and Interstate Commerce. The seminar was held at the Law and Economics Center, University of Miami.

Norval Morris, the Julius Kreeger Professor in the Law School, was one of eight members of the University of Chicago faculty who have recently accepted appointments to the Committee on Public Policy Studies. The Committee, which was established at the University in 1976, grants an M.A. degree in Public Policy Studies. The academic program is directed to the analysis of public problems.

Bernard Meltzer Honored

Bernard D. Meltzer, the James Parker Hall Professor of Law from 1971 to 1980, has been named Distinguished Service Professor of Law. Mr. Meltzer has been on the Law School faculty since 1946. Law School Dean Gerhard Casper said that it was with “the greatest feeling of admiration and gratitude for distinguished service” that he was able to make the announcement and he called Meltzer a “warm-hearted and immensely dedicated citizen of the University.”

Bernard Meltzer, Distinguished Service Professor of Law in the forthcoming issue of The University of Chicago Law Review. In addition, Mr. Meltzer co-authored with W.G. Katz Cases and Materials on Business Corporations, 1949.

Many government entities have called upon Mr. Meltzer's expertise in the field of labor law. Among other activities, he served on the Presidential Task Force on National Emergency Strikes, was a member of the Illinois Civil Service Commission, and a consultant to the U.S. Department of Labor.

Mr. Meltzer is a member of the American Academy of Arts and Sciences, the American Law Institute, the National Academy of Arbitrators, and the Chicago, Illinois, and American Bar Associations.

Edward Levi on the Faculty of Salzburg Seminar

During July, Edward H. Levi, President Emeritus and Glen A. Lloyd Distinguished Service Professor, taught at the Salzburg Seminar in American Studies. The purpose of the law session is to provide European Fellows (usually five to ten years out of law school—practitioners, judges, academicians, and government officials) with an introduction to American law and legal institutions.

Established in 1947, the internationally respected Seminar is held at Schloss Leopoldskron, Salzburg, Austria.

This year at the Seminar, Mr. Levi lectured on the subject of jurisprudence and gave a seminar in antitrust. Chief Justice Warren Burger was also a faculty member at Salzburg during the same period.

Over the years, several Law School professors have been invited to be part of the Salzburg faculty. In 1979, Dean Gerhard Casper was a faculty member, and before that, Professors Phil Neal, Kenneth Dam, and Richard Posner taught at Salzburg.

Deans Request Support from Law Firms

In an unusual effort, the deans of six private law schools—the University of Chicago, Columbia, Harvard, the University of Pennsylvania, Stanford, and Yale—have written a joint letter to law firms encouraging the establishment of matching gifts programs. The letter explains that, “the cost of running a great private law school is growing faster than the income it can raise from normal sources. We believe that this state of affairs has dangerous implications for the legal profession.”

An appendix to this letter describes several law firms around the country which have already adopted matching gifts programs for law schools. For example, a Washington, D.C. firm will match associates' gifts on a five-to-one ratio and partners' gifts on a one-to-one ratio up to a maximum of $500 per person; a Chicago firm matches all contributions made by associates and partners on a one-to-one basis up to a maximum of $1,000. Thus, far, the response from the “six deans’ letter” has been encouraging. The letter has prompted 20 law firms to establish matching gifts programs, doubling the number of programs which had existed previously.

Prizes Awarded to Students

The following prizes were awarded to Law School Students during the 1979–80 academic year:

To Marion B. Adler ’82, Charles G. Curtis, Jr., ’82, Catherine M. Epstein ’82, Michael P. Lackner ’82, Scott J. Lederman ’82, and Gail P. Rubin ’82, the Joseph Henry Beal Prize for outstanding work in the first-year legal research and writing program.

To Eric Buether ’81 and Robert M. Brill ’81, the Hinton Moot Court Competition Awards in brief writing and oral argument in the Law School.

To Jay Cohen ’80, the Casper Platt Award for the outstanding paper written by a student in the Law School.

To Andrea M. Kikzornik ’81, the George Gleason Bogert Trust Prize given to the student with the
best academic performance in the course in which
Trusts is taught.
To Eric P. Koetting '80, the United States Law
Week Award to the graduating student who has
made the most satisfactory scholastic progress in the
final year of law school.
To Steven G. Schulman '80, the Isaiah S. Dorfman
Prize for outstanding work in Labor Law.

Conference on Intelligence Legislation
The ABA Standing Committee on Law and Nation­
al Security, chaired by Morris Leibman '33,
together with the Law School sponsored a two-day
Law School Professor Antonin Scalia, a consultant
to the ABA Standing Committee and former Assis­
tant Attorney General, Office of Legal Counsel,
shared responsibility for the conference with Mr.
Leibman. The purpose of the conference was to dis­
cuss present efforts to develop charter legislation for
the intelligence activities of the United States.
In his welcoming remarks, Dean Gerhard Casper
discussed what he terms “framework legislation.”
He stated that, “Framework legislation attempts to
insure that the collective judgment, especially of
Congress and the President, will apply to important
areas of public policy. It interprets the Constitution
by providing a legal framework for the government­
tal decision-making process . . . . Charter legislation
which sets up a framework for the intelligence
activities of the United States is obviously of the
same family, formally as well as substantively.”

Other speakers at the conference included such
experts in intelligence activities and legislation as
William Webster, Director of the F.B.I.; Frank Car­
lucci, Deputy Director of the C.I.A.; Edward Levi,
former U.S. Attorney General and Glen A. Lloyd
Distinguished Service Professor; Philip Kurland,
Professor of Law and William R. Kenan, Jr., Dis­
tinguished Service Professor; William G. Miller,
Staff Director, Senate Select Committee on Intel­
ligence; Ernest Gelhorn, Professor of Law, Uni­
versity of Virginia Law School; and Floyd B.
Abrams, Counsel to The New York Times.
The conference discussions suggested that rep­
resentatives of the legislative and executive branches
as well as other participants agreed about some of
the principles underlying the charter effort.
Class Notes Section – REDACTED

for issues of privacy
1980 Alumni Directory

The 1980 Alumni Directory is now available to alumi only. Anyone who wishes to purchase a directory, but did not indicate as such on the questionnaire that was received in May, should write or call: Karen Gardner, Publications Editor, University of Chicago Law School, 1111 E. 60th St., Chicago, IL 60637 (312/753-2378). The cost of a directory is $18.00.

The Law Women’s Caucus is setting up an “old-girl” alumnae network to function as an information source for career planning, employer policies (including maternity leave), and law school speakers. We want this network to work for alumnae as well as students.

In the near future, we will send out a questionnaire to alumnae about the network. If you would prefer not to receive this or other mailings, please contact:

Vicki Sleeper
5700 South Drexel Avenue
Chicago, Illinois 60637
(312) 363-5528

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