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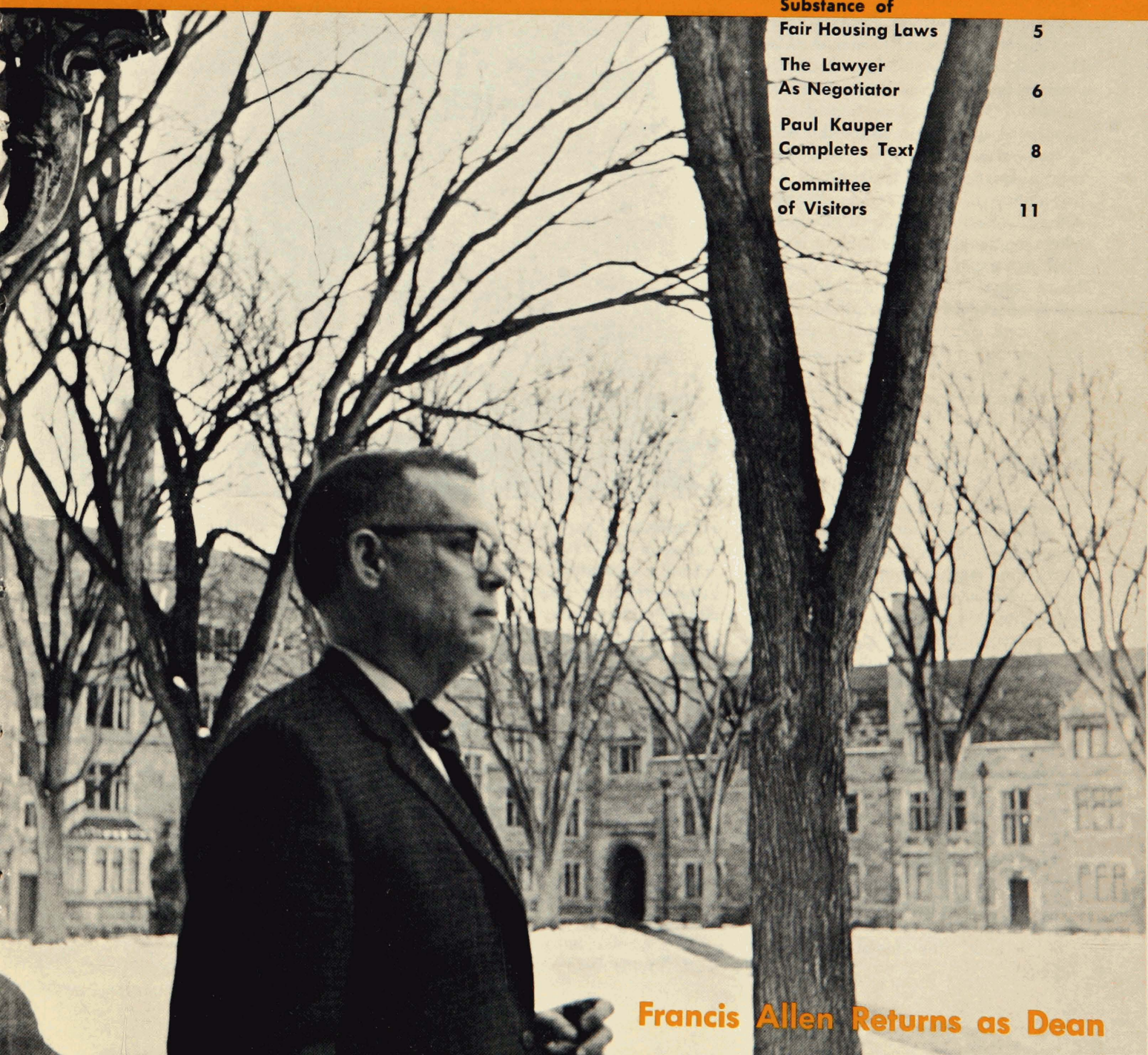

Francis Allen Returns as Dean

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Law School Faculty members remember the Dean-elect as a demanding instructor and distinguished colleague. Francis Allen comes to Michigan as a nationally recognized scholar and public servant in the administration of criminal justice.

The announcement on January 21 that the Regents had named Francis A. Allen, University Professor of Law at the University of Chicago, as Dean of the University of Michigan Law School ended months of speculation as to who would fill the vacancy created by the appointment of Dean Allan F. Smith to the Vice-Presidency of the University. Professor Allen's return as Dean of the school where he taught in 1962–63 brings to Michigan a man who, in the words of the Law School faculty committee which recommended him, is "a gifted teacher in his own right, [and] has a clear understanding of the scholarly and academic enterprise."

Perhaps the clearest portrait of Francis Allen is painted by those who have had occasion to meet and know him during his teaching years. Professor Joseph R. Julin, who was in one of Professor Allen's first classes when the new dean was an assistant professor at Northwestern, commented: "We students considered him a fine teacher, even so early in his career. He was demanding in the classroom, but this only encouraged us to be well-prepared, perhaps simply as a matter of self-defense. As I recall, his range of relevant inquiry seemed without limit. Frank Allen has developed what I would call a superbly educated reflex. Take a subject—any subject, whether law-related or not—put to him a thoughtful question and be prepared to receive, promptly, a well-considered response.

"The new dean has been well liked wherever he has been during his professional life. I firmly believe his tenure as dean will prove of immeasurable benefit to The University of Michigan—within and without this magnificent quadrangle."

Professor Allan Polasky, a colleague of Professor Allen at Northwestern Law School, commented, "I can well attest to Frank's reputation as a teacher and faculty colleague. I joined the Northwestern law faculty when Frank accepted an appointment to Harvard, and I inherited his course in Real Estate Transactions.

"Frank was already a legend as an outstanding teacher and the depth of the warm regard which a distinguished faculty held for him amply testified to his stature as a person and broad-gauge professional colleague. Suffice it to say that trying to follow him in the property field was every bit as challenging as handling the course in Evidence under the portrait of Dean Wigmore who once taught the course there."

As a scholar and writer, Dean Allen's work in the field of criminal law has been outstanding, as exemplified by his well-known book *The Borderland of Criminal Justice*, published in 1964. Stated Associate Professor Carl S. Hawkins who, like Professor Allen, clerked for Chief Justice Fred M. Vinson: "It's only been in relatively recent years that good scholarship has been attracted to the area of the administration of criminal justice. Allen stands among those capable of top flight analysis. It may well be that the time he clerked for the Court provoked his interest. The clerks handle many of the requests for judicial action from the indigents. You can't work with these materials without developing a sense of the problems involved." Professor Hawkins, incidentally, was also a student of Professor Allen's at Northwestern.

In the 1964 best seller, *Gideon's Trum-*

pet, author Anthony Lewis made prominent mention of the role which Professor Allen's probing examination of criminal justice in the states played in the *Gideon v. Wainwright* decision, terming Dean Allen's analysis of the old *Betts v. Brady* rule "devastating." In "The Supreme Court, Federalism and State Systems of Criminal Justice" (*De Paul Law Review,* 1959), Dean Allen wrote, in part:

"The cases decided by the Court under the *Betts-Bute* formula are distinguished neither by the consistency of their results nor by the cogency of their argument. . . . The distinction between the capital and non-capital felony cases is difficult to defend. If the rights of counsel are deemed an inherent part of the concept of 'fair hearing,' as has been consistently asserted by the Court since the *Powell* case, the crucial inquiry would seem to be, not so much the penalties imposed on the defendant upon conviction, but the *need* for skilled representation in the proceedings directed to the establishment of guilt. There is little basis for the belief that trials of capital cases, in general, produce greater need than trials of several other categories of serious, non-capital felonies. Most experienced defense lawyers would probably testify that a murder prosecution, which may result in imposition of the death penalty, is not by any means ordinarily the case most difficult to defend."

Two years before the *Gideon* decision, Attorney General Kennedy appointed a committee of scholars, practicing lawyers, and state and federal judges to review the adequacy of provisions for the indigent in federal courts. The chairman was Professor Allen, then at the University of Michigan Law School. The two-year study of the Allen Committee and its subsequent report, according to U-M Vice President Smith, "stands as a landmark in effective professional work, and it led directly to the enactment in 1964 of the federal Criminal Justice Act."

For his "notable contribution" to the program of the National Legal Aid and Defender Association (NLADA) for his work on "the Allen Committee" and for his testimony before the Senate Judiciary Committee during the hearings on the Criminal Justice Act, Professor Allen was awarded the Arthur V. Briesen Award by the NLADA in 1963.

Dean Allen's work presaged still another notable Supreme Court decision. In 1950, he published in the *Illinois Law Review* an article entitled "The Wolf Case: Search and Seizure, Federalism and Civil Liberties," in which he urged that the federal exclusionary rule in search and seizure cases be extended to the states. The Court did just that in the 1961 case of *Mapp v. Ohio.* As one student commentator observed in analyzing *Mapp:* "Allen anticipated virtually every argument advanced by the Court."

Concluded Professor Yale Kamisar: "It can safely be said that Dean Allen's writings in the early fifties served as a model for much of the subsequent literature in the area of constitutional-criminal procedure." When pressed as to how he would rank Dean Allen in the fields of criminal law and criminal procedure, Professor Kamisar responded: "I wish this question were posed to me six months ago, before there was any thought of his becoming dean. I think so highly of him that my answer would run the risk of looking like apple-polishing."

Dean Allen has made his mark as a person, as well. Said Professor Roger Cramton, a member of the University of Chicago faculty during four years of Professor Allen's tenure there: "One of his major qualities is he's tremendously reflective; he expresses himself with great wit and pithiness."

Professor Polasky observed: "Frank Allen brings to the deanship a remarkable combination of distinguished accomplishments in scholarship, public service and teaching. Others will appropriately mention his writing in the constitutional and criminal law areas, particularly his landmark articles on the constitutional aspects of criminal procedure. These, combined with a wide range of public service, including the chairmanship of the Attorney-General's Committee on Poverty and the Administration of Criminal Justice [the Allen Committee], have earned him a well-deserved reputation as one of the outstanding men in the field.

"But his career reflects the far broader range of his interests and accomplish ments—appropriately recognized when he was accorded the relatively rare honor of a University Professorship at the University of Chicago and an honorary degree by Cornell College (Iowa), his alma mater, in recognition of his services to that excellent liberal arts school."

This, then, is the way those who have known and worked with him remember the man who returns to Michigan as dean.

The End

QUAD BRIEFS

Placement Activity Mushrooms

Job Choices Outnumber Graduates

The competition among law firms each year produces a whirl of interviewing activity at the Law School. And for the students, it spells opportunity. A record 209 representatives of legal, governmental and financial firms conducted nearly 3,000 interviews last fall. Job placement activity has blossomed into a full-scale operation that prompts third year students to set their sights early on a choice of legal careers.

The increased activity in job interviews "is a healthy situation," says Professor Richard V. Wellman, faculty placement counselor. "Among other things, it suggests that the legal profession approves the kind of legal training offered at Michigan. It also reflects the high quality of the persons who come to Michigan for their degrees," he points out.

The job placement activity reveals that:

1) More opportunity for students exists in the larger cities.

2) Job choices far outnumber graduates.

3) Student interest is increasing in government work, public law.

4) Grades are not all-important, employers agree.

5) Employers look for students with broad legal education rather than for specialists.

6) More employers are now recruiting in the fall than in the spring.

The number of employers seeking U–M students during the fall recruiting season has climbed from less than 50 in 1955–56, to just over 100 in 1961–62 to 160 last year and 209 this year. Of the latter, 172 represented law firms. Others were: corporations, 8; government, 13; banks, 5; CPA firms, 5; miscellaneous, 6.

Although there are many opportunities in the smaller communities, law firms in larger cities recruit more actively because, among other reasons, such firms tend to be large organizations. Of the 1965 graduates placed, 46 per cent went

Quad Briefs, cont.

to large firms (11 or more); 26 per cent to small firms (10 or less); government, 11 per cent; judicial clerkships, 7 per cent; banking, corporate and CPA firms, each 2 per cent; and others 4 per cent.

Students get many chances to be interviewed. One third year student had 40 interviews. Of his classmates 34 were interviewed by 15 or more employers. Last fall, 359 second and third year students were involved in 2,725 interviews.

In an effort to get interviewers to consider all U–M law students as prospective employees, since test scores showed a steady increase in quality of students admitted, the Law School discontinued the practice of ranking students on the basis of first and second year grades. Most law firm employers have accepted the discontinuance of class ranking without protest. "It also has contributed to higher morale on the part of the students," points out Professor Wellman.

University Offers Conference in Managing Law Office

The rewards accruing to the attorney who runs his own office are many. Time, unfortunately, is not one of them. An attorney, unlike a corporate executive, is not surrounded by a staff of technical and managerial experts to tend to the daily needs of his office. An attorney must be his own director of employee relations, accountant, financial wizard and production chief. These tasks demand time already thinly stretched between treating clients, enjoying one's family and keeping abreast of the latest professional developments. The application of efficient management techniques, however, can increase the leisure time available to an attorney by eliminating the wasted motion accompanying an intuitive approach to office management.

The Bureau of Industrial Relations is offering a one-day conference on Saturday, March 26, 1966 for the purpose of instructing professionals, such as attorneys, in some tested techniques for improving the management of their offices. The conference will be conducted by Dr. Nathaniel Stewart, management consultant, Dr. Lee H. Brummet, professor of accounting, The University of Michigan and Dr. William E. Brown, D.D.S., moderator. These gentlemen will direct their comments toward answering questions such as: How much time should be devoted to managing law practice? What should be the function of staff assistants and how should one evaluate their performance? How should one plan for the expansion of his practice? When should one hire new personnel and purchase new equipment?

The fee for this conference is fifty dollars per participant. One may register by writing to Ronald M. Harwith, Conference Director, Bureau of Industrial Relations, Graduate School of Business Administration, The University of Michigan, Ann Arbor, Michigan or call 313 764-9454.

Moot Court Teams Finish Fourth and Fifth in Competition

The six top finalists of last year's Campbell Competition once again represented the Law School at the regional moot court competition held in Detroit on November 19 and 20. The Michigan entry, which comprised two three-man teams, took fourth and fifth places among the 20 teams which competed.

Team one, which captured fifth place, was composed of Duane Ilvedson, John Provine, and John Schmidt. Team two, which nailed down fourth place, included Jesse Lasken, Sanford Passer, and Richard Smith. Team two also won the award for submitting the best brief in the competition.

The competition concentrated on the following two issues: 1) Can a state's bonding statute be considered constitutional in a federal district court without depriving a defendant of due process of law? 2) Is a foreign direct action statute applicable in a U. S. district court? The answers to these questions were judged by lawyers and judges from the Detroit area.

Professors Carl S. Hawkins and Roger Cramton were the advisers to the teams. Special assistance was also provided by Tim Wittlinger.

Moot Court representatives (left to right) John T. Schmidt, Sanford H. Passer, Duane H. Ilvedson, Jesse E. Lasken. Not pictured: John C. Provine and Richard J. Smith.

Shadow and Substance Of Fair Housing Laws

Robert Harris addresses faculty dinner.

"Fair housing laws, despite the furor that attended their passage, have done little to change patterns of housing segregation," Professor Robert J. Harris told a faculty audience at dinner in the Lawyers Club, late last month. Together with Professor Eugene N. Feingold of the University of Michigan Political Science Department, Professor Harris has been engaged in a two-year study of five selected fair housing commissions, including the biggest (New York State), the most aggressive (New York City), and the most unlucky (California).

"Complainants tended to be young Negroes with small families, holding white collar jobs and seeking to move from a neighborhood that was already overwhelmingly white to another substantially all-white neighborhood. Everywhere the number of complaints received was small and the proof problems exceptionally difficult. But the chief trouble is that the agencies, dogged by all the usual problems inherent in state and local government bureaucracy, have weak support from the legislature and governor because fair housing legislation lacks popular support."

Professor Harris selected a case before the New York City Commission on Human Rights to illustrate. The complainant was a young, unmarried Negro male school teacher teaching at a private school in Greenwich Village. He saw an apartment near the school with a sign "For Rent" in the window and applied to the Negro superintendent in the building, who phoned the owner and then informed the complainant that the apartment had already been taken by someone else who had contacted the owner. Later a white teacher, a friend of the complainant, applied for the apartment and was told by the superintendent it was available.

At 9 A.M. the next day, a field representative went out to visit the apartment and the apartment owner, but he gleaned no new information. Meanwhile, the complainant phoned the Commission indicating his desire to have them move quickly lest the apartment be gone before they acted; it was a rent-controlled unit and highly desirable. That day, the CCHR employee who supervises investigation sent a telegram to the owner of the apartment to the effect that an investigation conference would be held at CCHR offices 36 hours hence and that if the owner failed to appear for the conference, probable cause probably would be found against him. This quickly produced an enraged telephone call from the owner's attorney, who was also his brother-in-law, and an offer from CCHR to postpone the conference to whatever date was convenient for the owner on condition that the apartment remain vacant in the interval. The attorney hung up. Thus ended the second day of the case.

On the day when the conference was scheduled, the owner and his attorney did appear, quite belligerent; the complainant was absent, teaching school. The owner's story was that he was willing to show the apartment to the complainant but that the complainant must take his turn like everyone else since the owner had a list of people—all prior in time to the complainant—who had indicated an interest in the next available apartment in this building. The list consisted of scraps of paper, undated, with the names of various people on them. The owner denied that the white checker had been offered the apartment. "She's a liar and the complainant, too, is just applying as part of an NAACP test." The owner, who had won a previous case at agency hearing, predicted that he would win this case similarly.

In the course of the angry exchange between the owner's attorney and the agency officer conducting the investigation conference, the owner threatened to fire the Negro superintendent who had handled things so badly, and the agency officer in turn threatened to invoke the state employment law which forbids retaliation in such circumstances. As tempers cooled, the CCHR officer announced that he would postpone his decision as to whether or not probable cause existed and suggested that the owner and his attorney confer with the other agency officer, who handled conciliation conferences. The conciliation officer offered to settle the case on these terms: there would be no finding of probable cause or its converse; the respondent would offer the unit in question to the complainant; the respondent would promise in writing (but not in the form of an enforceable order or agreement) that he would obey the fair housing law; and the respondent would put up a poster to the effect that his apartment was covered by the fair housing law.The third day of this case ended with respondent's attorney's announcement that he would like to think the proposal over for a day.

On the fourth day, the agency had difficulty reaching the complainant and difficulty trying to get the white checker to come in and make an affidavit. The respondent phoned to say that he would offer the unit in question to the complainant, but only with the maximum permitted rent increase—a term which, according to the white checker, he did not ask of her. The agency urged the complainant to accept this offer, despite

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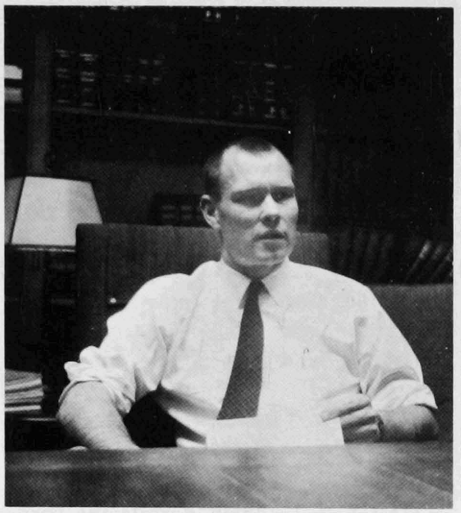
The Lawyer As Negotiator

A unique seminar introduces law students to the pressures, ploys, and policy considerations of the negotiation table. Law and psychiatry merge in the classroom to help settle personal injury claims and mock divorces, while students test their skills and negotiate for their grades.



Professor James White (top) and Dr. Carl Malmquist

"If there's one thing lawyers do, it's a lot of negotiating. What better reason than that can there be for teaching any course in law school?" Upon this premise, Assistant Professor James J. White requested the introduction of a seminar entitled "The Lawyer as Negotiator," which made its initial appearance during the Fall term. Two years of private practice in Los Angeles had convinced Professor White that the ability to negotiate played a significant role in a lawyer's success. Student interviews with lawyers in Ann Arbor and surrounding Washtenaw County tended to confirm Professor White: Over sixty per cent of the fifty-five lawyers contacted indicated that more than one quarter of their time was spent in negotiating in one form or another.

Professor White described the seminar's purpose as one of introducing students to the art of negotiation and acquainting them with the various forces at work in the process of reconciling conflicting interests—outside of court.

How does one go about teaching the experiential side of the practice of law? Professor White began with student study and discussion of selected psychological material, assisted by Dr. Carl P. Malmquist, staff member of the Department of Psychiatry at the U–M Medical School. This part of the course centered on the basic reactions of, and interactions among people, with Dr. Malmquist present to relate these matters to the problems of negotiating successfully.

Receiving particular emphasis was the unconscious aspect of negotiation—the transference of attitude. "We react at times to other people," points out Dr. Malmquist, "in a positive or negative manner because of some past experience; many such processes operate unconsciously. Thus, as applied to negotiation, an enormous amount of irrational feelings arise because the parties are reacting to each other rather than the issues. In effect, a reaction like transference distorts our ability to separate myth from reality. The class material and discussions," concluded Dr. Malmquist, "hopefully made the students more aware of nuances of interpersonal elements in negotiation."

Three basic concerns of the lawyer as negotiator evolved from the class study: first, that of anticipating and finding the opponent's settling point as early as possible; second, that of concealing one's own settling point; and third, that of persuading the opponent to alter his position.

Techniques of reaching accord were presented and discussed, as for example the "first offer ploy."

"Anytime you're dealing with a commodity without a fixed market value," explained Professor White, "whether it be a lawsuit or a mule, it is desirable to have your opponent make the first price offer. This reduces the likelihood of your miscalculating the commodity's value. Of course, an experienced negotiator will deprive his opponent of this satisfaction by making an excessive first demand."

The effect of various "ploys" was also examined, such as feigned anger, aggressiveness and the stand-pat-one-offer-only technique.

Ethical problems were also given consideration, since part and parcel of the negotiation process are techniques of persuasion that involve one's personal code of conduct and its limits. "In a sense, this was a Machiavellian course," Professor White pointed out. "Within the student's own ethical limits," said White, "the course's ultimate aim was to make him a more effective manipulator of other people. We asked the students to respond to a wide range of situations, from playing golf with your opponent to the extreme arm-bending technique of threatening to expose a skeleton in the closet.

"A very few felt that absolutely anything goes, even outright bribery. Most, however, found some point at which they drew the line, some shade of pressure or persuasion beyond which their conscience would not permit them to go."

All of the class discussion would of course assume its prime significance only in the context of actual use, i.e., in the process of actual negotiation. It was here that the most distinctive part of the course came into play: two-man negotiation teams were pitted against each other in as close an approximation of the real thing as possible. The teams were given

"Allowing personalities rather than issues to dominate the bargaining often prevented students from reaching any settlement at all."

identical information as to the general factual situation. Then each team was told such confidential information as a lawyer would acquire before bargaining in his client's behalf. Each team knew the outside limits their "clients" would consider acceptable in settlement of the issue. "Realism was added to the divorce negotiation," said Professor White, "by giving the students facts through six male and female clients drawn from the undergraduate student body. In this case, as in actual legal practice, each negotiation team had to reach a settlement not only with the opposite side but also with its own client."

There were four problems assigned for negotiation: a lease, a divorce settlement, a personal injury settlement and a labor management agreement. In order to relate the course material and induce its application, Professor White structured a settlement continuum of the possible outcomes of negotiation on each issue, with each team's respective "outer limit" marking the ends of the continuum. Each team's success at negotiation was evaluated in terms of where the settlement came on the continuum. One-third of the student's grade was determined directly by use of this settlement scale. There were six negotiations of the same problem going on at once. "This was the basis," explained Professor White, "for comparison among the students. The team on each side which got the most favorable settlement for its client received the highest grade for the negotiations."

"In effect," Professor White pointed out, "the students were actually negotiating for their grade; the better the settlement, the better the grade." This incentive device proved remarkably effective in inducing real bargaining and compromise, especially since the students were unaware of where the mean point was on the scale. The personal injury settlement was conducted for the additional motivation of one hundred dollars, divided up according to the results of the settlements.

Commenting on the taped negotiations, Dr. Malmquist noted, "the students became extremely involved emotionally, far more so than I thought the motivation of a grade could engender. Even real anger was apparent in some instances." For many of the students, one of the cardinal points of negotiating was driven home with particular force. "Allowing personalities rather than issues to dominate the bargaining often prevented students from reaching any settlement at all, even though they were fully aware that such emotional intransigence would cost them points on their grade."

Was the seminar a success in terms of what it tried to do? According to the students' anonymously written critiques, the answer is an overwhelming yes. The students were exposed to the negotiation process and its practice. Like any subject that is particularly a function of experience, negotiation does not lend itself easily to "teaching" in the usual sense.

Ninety Per Cent Now in Curriculum

Yet the students, through a procedure of incentives designed to remove their work from the laboratory to the "real thing," have come face to face with many of the problems inherent in negotiating on any subject. The awareness thus fostered will be significant for them when they must negotiate for a client, with more than a grade at stake.

Dr. Malmquist doubted that many of them any longer nursed the thought that there was any simple formula for the successful negotiator. "What the seminar could accomplish in this regard was to point up the need not only for awareness of, and greater sensitivity to, the personal element in negotiating, but also for more flexibility in dealing with different groups."

"This course has a definite place in the curriculum," commented one student. "We know that ninety per cent of cases are settled out of court; why leave this ninety percent out of the curriculum?" Probably the best indicator of the seminar's success lies in the twenty-four out of twenty-five students who thought the seminar one they would take again, knowing what they know now. That is ninety-six percent favorable — a figure any negotiator would be pleased with.

But Professor White still has reservations. "For all the enthusiasm, I'm not certain what we accomplished. I am certain, however, that it is impossible with our present knowledge to 'teach,' in the ordinary sense, an art as complex as that of negotiation. I am hopeful that the course offered the student sufficient insights into his own personality and into the dynamics and psychology of the negotiation process to merit the time involved."

The End

FACULTY NEWS

William W. Bishop Is Named Dickinson Professor of Law

Delivers Hague Academy Lectures

In special recognition of his international pre-eminence and dedicated service to the Law School, William W. Bishop, Jr., has been named a "distinguished" professor by the University Regents at their January 21 meeting. A native of Princeton, N. J., Professor Bishop was graduated from Ann Arbor High School in 1924 and received an A.B. from the U–M in 1928 and a J.D. here in 1931. His new title will be Edwin Dewitt Dickinson University Professor of Law, in honor of the late Professor Dickinson, who died in 1961, and who was considered the nation's leading international law teacher.

Professor Bishop, who joined the U–M faculty in 1948 after service with U. S. State Department, is a leader and scholar in international law. His casebook, *International Law Cases and Materials*, now in its second edition, is, by large margin, the most widely used book in its field. His other publications include more than a score of articles and papers in various law reviews and journals. He has served as editor-in-chief of the *American Journal of International Law* since 1962 and as a member of the board of directors of the journal since 1947.

William W. Bishop

Commenting on his teaching, the Regents noted that Professor Bishop "has a reputation for a careful, comprehensive, and stimulating classroom development of difficult areas. The Law School's program in international law is, in a real sense, his creation. It is one of the most extensive in the nation and due to his initiative and foresight, the total international law curriculum encompasses 11 courses and seminars. This wealth attracts a goodly number of students each year. Professor Bishop counsels these exceptional students in their research which, in published form, has enriched international law literature throughout the world."

Indicative of the type of work which has led to his latest recognition, the university professorship, were Professor Bishop's activities abroad in 1965. He spent the period from January to June of 1965 in Rome, engaging in research and writing in the international law field, particularly in preparation for his Hague Academy lectures. During his stay he made use of the library of the International Institute for the Unification of Private Law, and had the opportunity to meet various European lawyers, including some former Michigan students.

During July and August he gave the principal course of lectures on Public International Law at the Hague Academy of International Law, conducted seminars there, and had many discussions with the advanced students, lawyers, teachers and government officials working in international law attending from many parts of the world. Established in 1923, the Hague Academy has conducted lecture courses and other educational programs on public and private international law every summer with the exception of the World War II years. Both the Carnegie Endowment for International Peace and the Ford Foundation have aided the Academy financially.

Law Students Participate

The recent pattern has been to have each summer one principal series of lectures in public international law and one series in private international law, together with ten to fourteen shorter series of lectures held during the same summer term. Professor Bishop had given one of these shorter series, on "Reservations to Treaties", in 1961; while the late Professor Edwin D. Dickinson of the Law School had lectured at the Academy in 1932.

Although the Academy meets in the Peace Palace in The Hague, donated by Andrew Carnegie and used by the "World Court" since 1921, relatively few of its students are from The Netherlands. Both faculty and students come from all over the world, including a number from behind the "Iron Curtain". Of the approximately 260 students during the public international law sessions, the United States and Germany had the largest numbers, but Africa, Asia, Latin-America, and the European countries were well represented. Two members of the current senior class at the Law School, Michael Harrison and David Porteous, were among those taking part this year, while a number of American and foreign graduates of Michigan attended. French and English (the latter only since World War II) are the languages of instruction and discussion.

The lectures are published in the *Recueil des Cours* of the Hague Academy, several volumes of which appear each year. Despite inevitable publication delays, it is hoped that Professor Bishop's lectures will become available by the end of 1966.

Paul Kauper Completes Text On Constitutional Law

The third edition of Professor Paul G. Kauper's leading casebook, *Constitutional Law—Cases and Materials*, is scheduled for publication in March. The book was first published in 1954, then revised in 1960.

Professor Kauper holds the title Henry M. Butzel Professor of Law, the first named to the chair established in honor of the late Mr. Butzel, a graduate of the Law School and former Justice of the Michigan Supreme Court.

Regarding the developments in Constitutional Law since the last revision, Professor Kauper noted that "there have been no significant changes in the areas of Congress' power or the general residual powers of the states to regulate and tax commerce. The exception, of course, is the use of the federal commerce power to uphold the Public Accommodations Section of the Civil Rights Act of 1964." Important new civil rights legislation has

Paul G. Kauper

been included in the Appendix of the third edition.

"The really major developments have come in the areas of the rights and freedoms of the person, freedom of speech and the press, criminal procedure, separation of church and state and freedom from discrimination under the Equal Protection Clause." Elaborating on these areas, Professor Kauper pointed out, "The decision in *Griswold*—the Connecticut birth control case—may open up a whole new area of the right of privacy. The case has broad interest in so far as the history of constitutional theory is concerned because of the continued vitality of the "fundamental rights" controversy.

"*Griswold*, upholding the fundamental right of privacy, adds yet another chapter to the discussion of whether the Due Process Clause of the Fourteenth Amendment furnishes a basis for the recognition of rights not included among the specific enumerations of the Bill of Rights.

"In the areas of freedom of speech and press, there have been major new pronouncements with respect to libel, obscenity and protest. In state criminal procedure, we see a more extensive use of the Due Process Clause as a basis for review by the Supreme Court. Freedom from discrimination and the right to equal protection of the law have reached new dimensions in the racial discrimination and legislative reapportionment cases. Then we also have the Bible reading cases (*Engel v. Vitale* and *School District v. Schempp*) containing new pronouncements on the separation of church and state."

The general arrangement and structure of the casebook have been retained to "furnish material that will give students an awareness of the historical development as well as the contemporary status of basic theories of constitutional interpretation." About forty-five cases have been added to the third edition, either in whole or in part, and a number have been dropped. "The revision of a casebook begins almost as soon as one edition is completed," commented Professor Kauper.

"One of the problems an editor must confront is the number of cases and the number and length of the opinions. For example, Mr. Justice Brennan's opinion in *Schempp* ran about seventy pages in the original reports." The legislative reapportionment cases also involved lengthy opinions that required extensive editing and presented the need for digesting parts of the opinion (or opinions) omitted from the casebook.

B. J. George, Jr. Speaks on Courts and Lawyers In Japan

Although sweeping changes have taken place in Japan's criminal law procedure since 1945, efforts to upgrade the legal profession will be successful only after tradition gives way to social change.

Professor B. J. George, Jr., of the University of Michigan Law School, described the impact of the past upon the rights of the accused in Japan in a December 30th address before a joint session of the American Historical Association and the Conference on Asian History, in San Francisco.

"The private practice of law has traditionally carried low public status in comparison to the judiciary. Japanese people do not view the attorney as a trusted counselor and intermediary," Professor George said. "However, there is a tendency for promising young men to enter private practice, with a corresponding decline in the quality of those who enter a public service career." Professor George, who teaches Criminal Law, told of cases where "the public prosecutor was actually ill-prepared and in which a younger defense attorney bore relentlessly in on the weaknesses of the prosecution's case."

If the tendency continues—and metropolitan growth favors it—in another decade or so the Japanese trial may resemble in substance as well as form the Anglo-American trial. Professor George told the historians that the experience in Okinawa, which supports a lawyer population in excess of its counterpart homeland, indicates that changes in Japan's social structure may see an upgrading of the legal profession. In Okinawa the Civil Administration uses litigative processes in matters of war damage claims, eminent domain and governmental tort liability.

"Enlightened sentencing and penological policies in Okinawa are encouraged by traditional beliefs in which confession and repentance, if not actual change in conduct, are the keys to reacceptance by the community. If these values depreciate as Japan becomes more and more a modern urban country, then changes will have to come in the sentencing structure," Professor George pointed out, "especially in problem areas like negligent driving and careless operation of business enterprises. No effective sanctions in these are imposed today to protect the public."

Citing traditional influences in Japan, Professor George said Japanese are indoctrinated with reverence for authority, so that refusal to cooperate with officials is in itself an anti-social act. In addition, confession of wrong-doing is deemed highly necessary, both from a religious and a social point of view.

"The person who refuses to acknowledge fault is setting himself against the culture. Confessions and expressions of willingness to reform may determine whether prosecution is suspended, at least so long as there is a family or community willing to receive the man. Acknowledgement of guilt and expressions of repentance and sorrow are also likely to produce leniency in sentence, whereas refusal to acknowledge fault makes prosecution and imprisonment probable. With these strong traditions, changes in details of pretrial practice will not produce any major change in the pattern of charging and trying criminals."

Defeat Brings Reforms

The defeat of Japan in the Pacific war led to a "revision of the legal system which will perhaps in history prove to be

B. J. George

as sweeping as that which occurred in its creation from 1868 on," he said.

Important aspects of the revision are:

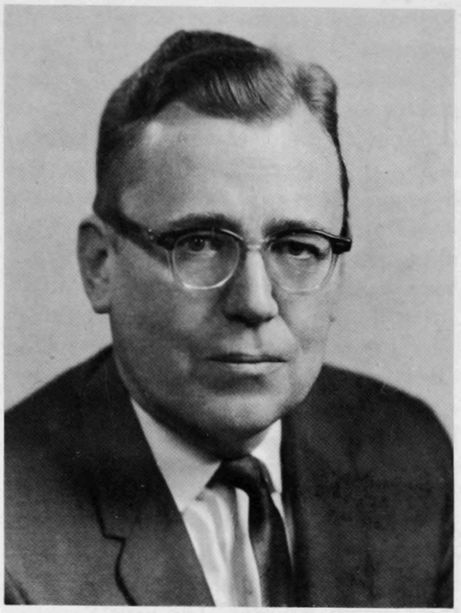
1) The creation of an independent judiciary.

2) The creation of certain procedural guarantees to the citizen in the Constitution itself.

3) The substantial revision of the Code of Criminal Procedure. The net effect is to create more of a parity in position and power between public prosecutor and defense attorney than existed under the older law.

Professor Plant Completes Exposure Course in Workmen's Compensation

Video tape and screen will soon join the casebook and law volume as study materials for University of Michigan law students. Called an "exposure" course, a seven-lecture series on Workman's Compensation has been completed by the U–M Television Center and Law School. Professor Joseph R. Julin, veteran of educational TV productions in the legal field, said the exposure course provides law students with an easier way to become acquainted with background study material, as a "change of pace" from case-book reading.



Marcus L. Plant

The audio visual course, produced on video tape and kinescope for ultimate distribution, is the forerunner of what is hoped to be a Law School library of exposure courses that will provide ready information in specific areas of law. "This technique not only provides an individual study approach, but also is a first-step motivational tool, interesting the student in further study," Professor Julin said. The Workmen's Compensation course will be available to other law schools. In this way, specific subject material can be provided to students of schools which do not have the staff for personalized instruction in various areas of the law.

Professor Marcus L. Plant of the Law School is the lecturer in the first series. It has been produced with the basic outline of each lecture appearing step-by-step in the background, utilizing a rear projection screen. As he refers to specific cases and statutes, they are shown at the bottom of the picture through an overlay production process. The lectures include the common law background, economic and legal theory, the required employment relationship, accidents and relationship to business, social activities, the course of employment, the concept of occupational disease and "accident", the several types of benefits, and methods and problems of administration in the various states.

A second resource course will be produced on oil and gas legislation. This series will be related to courses in contract and property law.

The End

Fair Housing Laws

Continued from page 5

the rent increase; and the complainant, vague and distracted over the phone, agreed to meet the respondent that night to see the apartment. The weekend intervened, and when the agency personnel returned to the matter again the next Monday morning, it turned out that the deal had never been consummated, the complainant not having gone back to see the apartment. The agency closed the file as "satisfactorily adjusted, unit offered to complainant"; and sent off copies of this closing to complainant and respondent with instructions to them that they had an administrative appeal if they were dissatisfied with the disposition of the matter. Neither responded.

When the case was over, the agency personnel debated whether complainant was or was not a tester. It was plausible, since NAACP had a group that was doing some testing in Greenwich Village and respondent would be a logical person to test. On the other hand, it is not uncommon for a Negro complainant to cool to the idea of a particular apartment after the landlord has been quite obstreperous in the proceedings before the anti-discrimination agency. Professor Harris also observed that the ambiguity of the proof reflects, at least in part, the agency's political weaknesses; it is not in a position to require landlords to keep records, nor does it exercise its subpoena powers very often. Indeed, court enforcement of the subpoena power requires the agency to invoke the help of the office of the Corporation Counsel, which, for all practical purposes, is an alien agency busy with its own affairs and not particularly sympathetic to the CCHR. While the agency has the technical authority to seek temporary injunctions to freeze the status quo during investigation and conciliation, it is rare that a case is sent to Corporation Counsel to seek provisional relief and even more rare that Corporation Counsel concurs in the agency's judgment and goes to court for a temporary restraining order.

The full report of the study, which should be published in book form near the end of the year, will make recommendations for more effective procedures and discuss non-regulatory approaches to reduce residential segregation, the authors concluding that the conventional regulatory approach has only limited utility in this context.

The End

Excerpts from the Report of the Committee of Visitors

Admissions Standards. Professor Roy L. Steinheimer, Jr., spoke highly of the qualifications with which the present-day student comes to the Law School. The first-year class numbers 380—out of 2,018 who applied—and 25% of them placed in the upper 5% in nation-wide law school aptitude tests; half of the class ranked in the upper 10%.

Building Rehabilitation. This is a critical need. The residence halls of the Lawyers Club, although built to endure, now, after four decades of use, need $1,000,000 of rehabilitation. For this there is no provision in the funds available to the Law School. Much study has been given to methods of meeting this problem, Professor Joseph R. Julin reported, but a solution is yet to be found. Improved lighting is needed in classrooms and in the Library of the Cook Quadrangle; a suitable meeting room for the faculty, which now numbers 40 on the full-time staff, augmented by visiting professors, would ease problems in the day-to-day operation of the school.

A National Law School. The Visitors strongly endorsed the Administration's determination to keep Michigan a national law school. Not only do alumni who live far beyond the borders of the state contribute substantial financial support to the Law School and to the University, but the presence of students drawn from distant points itself enhances the quality of the educational process. The present student body comes from 45 states (plus the District of Columbia) and 14 foreign lands. The undergraduate institutions represented number 203. The five states from which no students are presently enrolled in the Law School are Alaska, Arkansas, Mississippi, Nevada and South Carolina. The foreign lands represented in the student body are Australia, England, Egypt, Germany, Haiti, Italy, Japan, Norway, Okinawa, Pakistan, Philippines, Sudan, Switzerland and Thailand.

THOMAS V. KOYKKA,
Secretary.

The Committee of Visitors made its fourth Annual visit to the Law School October 28–30. Attending were: (standing, back row, left to right) Jerry Belknap, Indianapolis; Allen C. Holmes, Cleveland; Stanley Thayer, Ann Arbor; Hazen Hatch, Marshall; Assistant Dean Roy F. Proffitt; Senator Farrell Roberts, Pontiac; Fedele Fauri, Ann Arbor; Hugh Colopy, Akron; Donald Quaife, Dearborn; John Pickering, Washington, D.C.; Henry Bergstrom, Pittsburgh; and Jack L. White, Cleveland. (standing, middle row, left to right) Herbert E. Wilson, Indianapolis; Thomas L. Croft, St. Louis; Carl E. Enggas, Kansas City, Mo.; N. Michael Plaut, Keene, N.H.; Robert E. Walsh, New York City; William F. Kenney, New York City; J. Don Lawrence, Ypsilanti; David R. Macdonald, Chicago; Alan R. Kidston, Chicago; William A. Groening, Midland; Edward C. McCobb, Grand Rapids; John C. Elam, Columbus; A. H. Aymond, Jackson; Judge Norman O. Tietjens, Washington, D.C.; Judge Lester L. Cecil, Dayton; Benjamin M. Quigg, Jr., Philadelphia; G. B. Christensen, Chicago; Ira M. Price, II, Los Angeles; (seated, left to right) Edgar M. Morsman, Omaha; Theodore Sachs, Detroit; Judge Horace W. Gilmore, Detroit; Thomas V. Koykka, Cleveland; Ray L. Potter, Detroit; Dean Charles W. Joiner; Norman Bowersox, New York City; Martin R. Browning, Milwaukee; Glenn M. Coulter, Detroit; Samuel G. Wellman, Cleveland; Those attending the meeting but not in the picture: Oscar W. Baker, Bay City; Emmett E. Eagan, Detroit; Siegel Judd, Grand Rapids; and Senator Philip A. Hart of Washington, D.C.

"Quad" Sponsorships Close March 15

Law school students are completing publication of a 100-page yearbook, *The Quad*, for 1966.

The yearbook annually reports on all facets of life within the school, including extra-curricular and postgraduate activities, with a major portion devoted to profiles and pictures of the faculty. In addition to the listings and pictures of present students, there will be a section of special interest to alumni, including a history of the development of the law school with many anecdotes from previous years.

Alumni are offered the opportunity to become sponsors of the yearbook and, at the same time, to receive copies of the book for their libraries. All sponsorships will be recognized in the book, to be published in May. The cost is $7.50, covering both sponsorship and one copy of the book. Checks should be made payable to *The Quad*. Sponsorships close March 15th.

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