Law Quadrangle Notes

The University of Michigan Law School

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The New Anti-Intellectualism in American Legal Education

"The new anti-intellectualism . . . is impatient with any educational activity that does not promise an immediate and discernible pay-off in private law practice." p. 8

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Michigan Environmentalists Rescue "Snail Darter"

A small fish made a big splash in halting a major Tennessee Valley Authority (TVA) dam project, due to the efforts of two University of Michigan environmentalists.

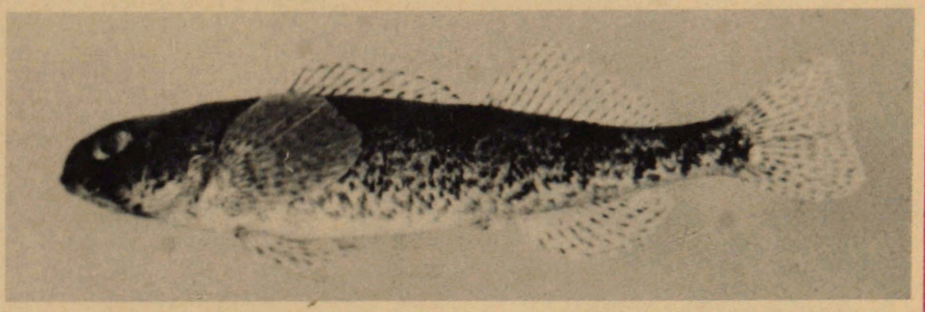
The U.S. Court of Appeals for the Sixth Circuit (Cincinnati) in January ordered the TVA to cease construction of the Tellico Dam Project on the Little Tennessee River in east Tennessee in order to save an unique fish species in the river. The court action resulted from a lawsuit filed by Donald S. Cohen, assistant dean at the Law School, and Zygmunt Plater, a member of the Wayne State University Law faculty who is working toward the S.J.D. degree at U-M Law School. Cohen and Plater first became involved in the Tellico controversy two and a half years ago while teaching at the University of Tennessee College of Law.

The environmentalists' attempts to halt the $116-million dam project focused not only on the unique fish species but on the claim that the Tellico project was conducted without adequate public review and would destroy one of the few remaining free-flowing river areas in Tennessee.

As Cohen recalls:

"In late 1973, a University of Tennessee ichthyologist had discovered a perch-like species of fish in the Little Tennessee River which he believed had not previously been identified by aquatic biologists. Further research indicated that the fish, the 'snail darter,' required the swiftly moving water and clean, shallow gravel shoals of the river for reproduction. He concluded that although the fish probably existed throughout the Tennessee Valley at one time, because of successive impoundments by TVA, it has disappeared from all parts of the Valley except a 16-mile section of the last remaining 33 miles of free-flowing water in the Little Tennessee.

"Based upon the scientific conclusion that the species would be rendered extinct by the closure of the dam, which would destroy the free-flowing nature of the river, we sought to apply the provisions of the federal Rare and Endangered Species Act of 1973 to preserve the snail darter. Section seven of that enactment prohibits



any federal agency from taking action which would jeopardize the continued existence of an endangered species or modify or destroy the habitat of such a species critical to its survival.

"In February of 1975, a petition was filed with the U.S. Department of the Interior requesting that the fish be listed as an endangered species. In spite of TVA opposition to the listing, Interior's independent review accepted all of the scientific data presented by the petitioners, and the snail darter was designated an endangered species effective November of 1975."

When repeated attempts to obtain TVA's voluntary compliance with the act failed, says Cohen, a lawsuit was filed in February, 1976, in Federal District Court for the Eastern District of Tennessee by Plater, Cohen, and a University of Tennessee law student. The Tennessee Audubon Council and the Association of Southeastern Biologists were added as plaintiffs prior to the trial.

"In April," recalls Cohen, "the trial judge found that although the fish would certainly be rendered extinct by the closure of the dam, an injunction would not be proper because of the amount of money spent on the project and the finding that earlier Congressional appropriations had impliedly exempted the project from the operation of the act."

Plater and Cohen argued in the Sixth Circuit that the trial court "had abused its discretion in finding all elements of a violation but refusing to enjoin TVA's actions." "We contended that where the terms of a federal statute are violated, an injunction should issue, and it is for Congress to make the political decision concerning a specific exemption of a federal project from the restrictions of the act," noted Cohen. In its ruling last January, the Court of Appeals rendered a unanimous decision enjoining any further activity on the project until such time as Congress legislates an exemption for the project or the Department of the Interior removes the fish from the endangered species list.

The Tellico project has been subject to considerable public opposition in east Tennessee for a number of years because of allegedly minimal benefits of the project, according to Cohen.

"The actual benefits and costs of the project, including the destruction of valuable farm land, recreation areas, prime fishing grounds and historical sites, have never before received full public scrutiny. TVA has indicated it will seek a review by the Supreme Court and a Congressional exemption. It seems likely, therefore, that because of the lawsuit, a public airing of the facts surrounding the project will occur in the near future, and basic questions of federal agency accountability will be addressed," says Cohen.

At a news conference in Ann Arbor at the time of the Court of Appeals ruling, David Etnier, the Tennessee scientist who discovered the snail darter in 1973, emphasized that there would be no power generation or irrigation benefits from the Tellico Dam and only limited flood control advantages.

He said it would take five to 15 years to determine if the TVA's plan to transfer the snail darter to Tennessee's Hiwassee River farther south would be successful. "Even if such a transplant were successful," said Etnier, "it would involve only about two or three per cent of the fish, because there is only a very small area of the Hiwassee that contains the habitat necessary for the snail darter to reproduce."

1976 Graduates Named Supreme Court Clerks

Two 1976 graduates of U-M Law School, Charlotte Crane and Ellen Borgersen, have been selected as law clerks for U.S. Supreme Court Justices.

Crane will clerk for Justice Harry A. Blackmun, while Borgersen will work under Justice Potter Stewart. The appointments are for the 1977-78 court term.

Since graduation from law school, Crane had been law clerk for Judge Wade H. McCree of the U.S. Court of Appeals for the Sixth Circuit, who is now the U.S. Solicitor General.

Charlotte Crane

Crane was a *magna cum laude* graduate of the law school and served as associate editor and later administrative editor of the *Michigan Law Review*. A member of Order of the Coif, she received a number of other law school honors.

Crane graduated *magna cum laude* from Radcliffe College of Harvard University, where she served as captain of the Radcliffe varsity crew for three years.

Borgersen for the past year served as law clerk to Judge Frank M. Coffin of the U.S. Court of Appeals for the First Circuit.

Ellen Borgersen

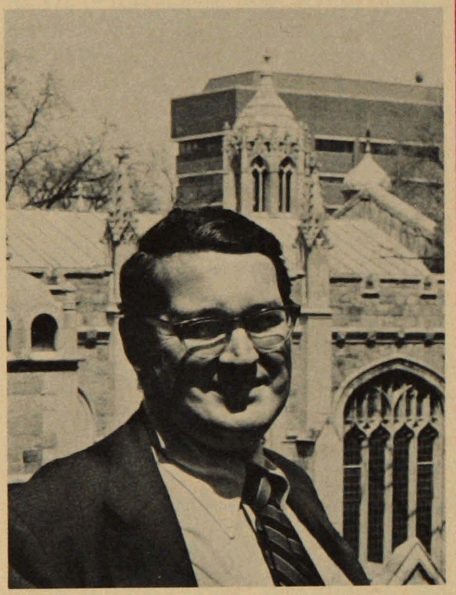
At law school she was project editor of the *Michigan Law Review* and won several scholastic awards. She is a 1972 graduate of Antioch College of Ohio.

The appointments of Crane and Borgersen continue the U-M's representation among Supreme Court clerks. During the past year U-M graduate Susan Low Bloch clerked for Justice Thurgood Marshall, while her classmate Mark F. Pomerantz clerked for Justice Potter Stewart.

St. Antoine Named Section Program Chairman

Dean Theodore J. St. Antoine of U-M Law School is the new program chairman for the American Bar Association's (ABA) Section on Legal Education and Admission to the Bar for 1977.

As program chairman, St. Antoine completed arrangements for a "deans' workshop" at the midwinter meeting of the ABA in Seattle.



Theodore J. St. Antoine

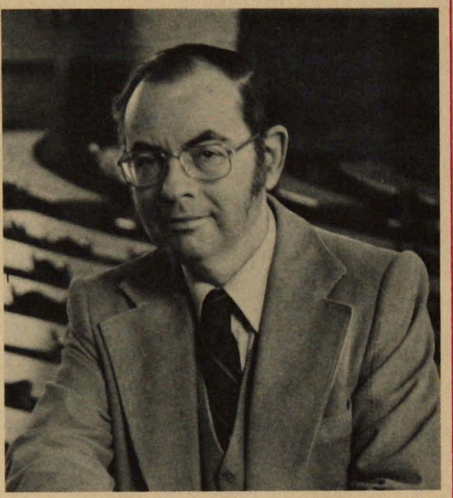
The workshop, attended by some 100 deans from the nation's law schools, included discussion of such subjects as financing of legal education; assessing the quality of teaching for tenure and promotion decisions; admissions practices including minority admissions; and expanded instructional roles of law schools, including continuing legal education programs and courses at the undergraduate level.

St. Antoine will also be responsible for arranging a program for the section at the annual meeting of the ABA in Chicago in August. The ABA's Section on Legal Education and Admission to the Bar includes both legal educators and practitioners.

Kamisar Collects Campus Kudos

U-M law Prof. Yale Kamisar recently received two separate awards honoring his contributions as law teacher.

Kamisar was named as recipient of the 1977 Susan B. Anthony Award by the U-M Women Law Students Association, in recognition of his contributions furthering the status of women in the Law School.



Yale Kamisar

The association noted that Kamisar headed the Law School's faculty hiring committee at the time two women, Sallyanne Payton and Christina Brooks Whitman, were named as law faculty members. Both Prof. Whitman and Prof. Payton joined the U-M faculty last year.

The award is named for the 19th century women's rights activist who is considered a pioneer in the women's suffrage movement.

Another honor was Kamisar's being named by *Time* Magazine as one of the "10 law teachers who shape the future."

Time noted that "among the generation now in mid-career, there are a remarkable number of gifted law professors: brilliant scholars, provocative teachers, concerned public servants, ardent advocates—often all combined in one impressive individual. *Time* said it selected the "10 outstanding ones" with the counsel of judges, lawyers, students, and teachers.

The other law professors cited by the magazine: Bruce A. Ackerman of Yale, Anthony G. Amsterdam of Stanford, Guido Calabresi of Yale, Ruth Bader Ginsburg of Columbia, William Kenneth Jones of Columbia, Herma Hill Kay of University of California-Berkeley, Robert Pitofsky of Georgetown University, Laurence H. Tribe of Harvard, and Franklin E. Zimring of the University of Chicago.

Law Prof. Campaigns Against Legal Ambiguity

For the purpose of writing laws clearly and accurately, the English language—or any other existing "natural" language, for that matter—has distinct limitations, according to a University of Michigan law professor.

Prof. Layman Allen would like to see, for example, the word "iff"—meaning "if and only if"—added to the English language in order to make our laws "serve their authors' purposes more fully and become less susceptible to differing legal interpretations."

He also believes that, in the writing of most of our laws, regular prose should be supplemented by an outline form "that clearly indicates the relationships between conditions and results." The reason, he says, is that "clarity of structure is difficult to achieve with ordinary prose and punctuation alone."

Prof. Allen, who teaches seminars in symbolic logic and legal drafting at U-M Law School, has been waging a campaign against "inadvertently ambiguous" statutes and other legal documents since 1958. He claims the problem of "disorderly syntax" in legal writing is a "contemporary disgrace."

Syntax, Prof. Allen notes, refers to the "way the relationships of words and phrases of a sentence affect the meaning of the sentence."

Prof. Allen was recently awarded a grant from the National Science Foundation to investigate the prevalence of "syntactic ambiguity" in our laws and to explore methods of dealing with the problem.

With the aid of research assistants, he plans to comb through our statutes and, wherever appropriate, "normalize" them (put them into simpler outline form with more logical syntax). He will then conduct experiments to see if judges, practicing attorneys, and others can work faster and more accurately with the rewritten statutes than with the originals.

Prof. Allen also hopes to fully develop what he calls the "query method" of teaching legal drafting. Under this system, students learn to logically relate ideas by asking appropriate questions about a given statute, and then using this information to reconstruct the statute in "normalized" form.

Prof. Allen is quick to point out that, although many of our laws are unnecessarily open to different interpretations, many are meant to be that way.

"Legislators," he says, "often intentionally use vague or general words in our laws, either to achieve political compromises, or to incorporate flexibility in the statutes, allowing them to remain appropriate through time."

The professor says he has no argument with laws that have been made intentionally vague. The due process clauses in the fifth and fourteenth amendments to the U.S. Constitution are good examples of general terms which have stood the test of time, says Prof. Allen.

His argument is with documents whose language is uncertain as a result of the carelessness—or lack of awareness—of the draftsmen.

"Most law schools, to the extent that they teach their students legal drafting, tend to focus on semantics (or the significance of the meanings of words)," says Prof. Allen. "Relatively few teach the syntax or logic of drafting. As a result, the legal profession, to a considerable extent, has a blind spot in this area."

This failing, he says, is evident in such laws as the Internal Revenue Code, one of our most complex and carefully drafted legal documents. Although portions of the code are itemized in the outline form which Prof. Allen endorses, he says this is not done "systematically or comprehensively."

"I used to bet a steak dinner with anyone," he says, "that I could find a syntactic ambiguity on any randomly chosen page of the code. And I have never lost that bet."

The professor notes that poorly drafted statutes and other legal documents create confusion for judges, lawyers, and clients and can increase or prolong litigation. In the long run, he says, "inadvertently uncertain statutes can inappropriately tilt the balance of political power away from the legislature and toward the judiciary, since judges are called upon to interpret uncertain statutes written by legislators."

One reason for ambiguity in the syntax of statutes, says Prof. Allen, is that legal draftsmen "rely on punctuation to serve the function that parentheses do in mathematical notation"—setting off one phrase from another, and denoting relationships between phrases.

In Connecticut, among other states, tradition calls for laws to be written in prose, uninterrupted by the "subsectionry" or an outline format. But Prof. Allen predicts a growing trend toward "normalization," now already practiced to some extent as a means of offsetting the shortcomings of punctuation in clearly expressing complex relationships.

The professor would also like to see his "query method" of training law students used by other law schools.

With this method, the students gain familiarity with a certain statute—including underlying policy and which policies are to be emphasized at the expense of others—by asking questions and gaining information from a pamphlet, another student or a computer terminal.

Based on this information, the students must reconstruct the statute in "normalized" form by expressing the relationships between conditions and result with such "logic words" as "and," "or," "not," and "if . . . then." This normalized statement, when completed, must "correspond to the actual statute in the sense that it says all the statute says and no more," according to Prof. Allen.

Student Winners Named In Moot Court Contest

U-M law students Franklyn and George Kimball, Douglas A. Zingale, and Kelvin L. Keith were declared winners of the 1977 Henry M. Campbell Moot Court Competition at the Law School.

This year's hypothetical case was similar to a case to be heard this fall by the U.S. Supreme Court. In the hypothetical case, a white applicant is placed on the waiting list for medical school admissions, while 16 minority students are admitted under special criteria. The white applicant brings suit against the medical school, claiming he was denied "equal protection" under the 14th Amendment.

The winning team represented the university in the case. The Campbell Competition is decided on the basis of the persuasiveness of the arguments and briefs prepared by the students, not on the actual merits of the case.

Student finalists representing the plaintiff were Edd-Richard C. Watson, Thomas J. Friel, and Kenneth J. Laino.

The judges were former U.S. Supreme Court Justice Arthur J. Goldberg; Judge Charles W. Joiner, U.S. District Court for Eastern Michigan; Michigan Supreme Court Justice Charles L. Levin; and Dean Theodore J. St. Antoine and Prof. Peter K. Westen of the U-M Law School.

The U-M competition is named for Henry M. Campbell, an 1878 U-M law graduate, and was initiated through a gift from his law firm, Dickenson, Wright, McKean, Cudlip & Moon of Detroit.

Judges in the 1977 Henry M. Campbell Moot Court Competition at U-M Law School were (seated from left): U-M Law Dean **Theodore J. St. Antoine**; Michigan Supreme Court Justice **Charles L. Levin**; former U.S. Supreme Court Justice and United Nations Ambassador **Arthur J. Goldberg**; Judge **Charles W. Joiner** of the U.S. District Court for Eastern Michigan in Detroit; and U-M law Prof. **Peter K. Westen**. The student finalists (standing from left): **Thomas J. Friel, Edd-Richard C. Watson** and **Kenneth J. Laino** on one team; and **Franklyn Kimball, George Kimball, Douglas A. Zingale** and **Kelvin L. Keith** on the opposing team.

alumni notes

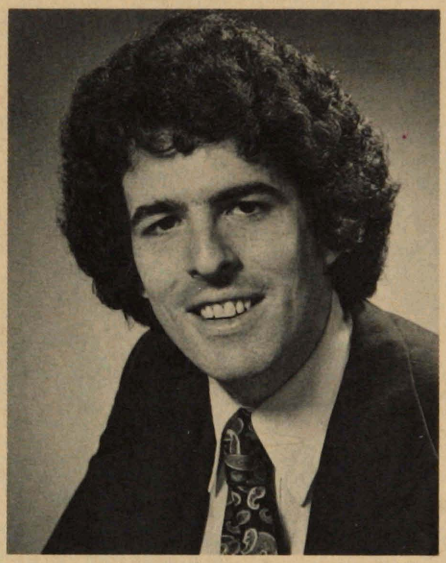
Judge **Blair Moody, Jr.**, a member of the U-M law class of 1952, has been elected a Justice of the Michigan Supreme Court. Formerly he had been a member of the Wayne County Circuit bench for more than 10 years and

Blair Moody, Jr.

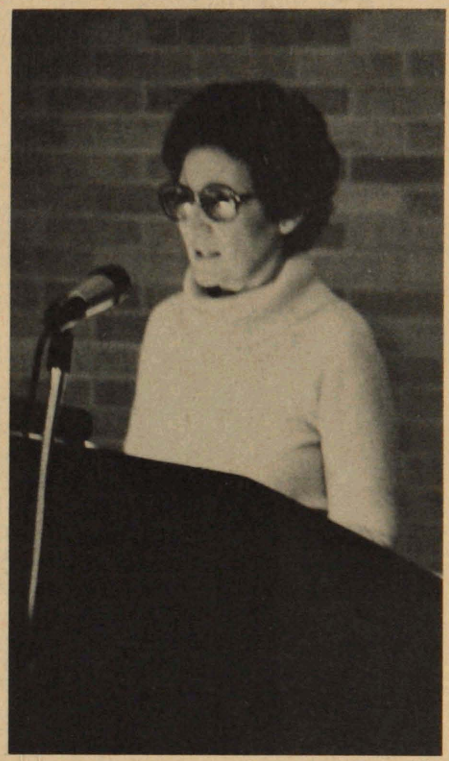
was a trial lawyer for 13 years with the firm of Sullivan, Eames, Moody and Petrillo. Before launching his legal career, Justice Moody worked as a reporter for the *Detroit News* and the *Washington Post* and served in the Air Force during the Korean War. He narrowly missed being elected to the state Supreme Court in his first attempt in 1974. Among other associations, Justice Moody was vice president of the Michigan Judges Association and past chairman of the Special Corrections Committee of the Law Enforcement and Criminal Justice Planning Agency. He is a contributing author of the "State Trial Judges Book," which is used nationwide. Prior to receiving his law degree, Justice Moody was awarded a B.A. degree in economics from the U-M in 1949.

recent events

Nik B. Edes, who received his law degree from the U-M in 1968, has been appointed deputy undersecretary of labor for legislation in the Carter administration. Named to the post by Secretary of Labor Ray Marshall, Edes is responsible for all legislative matters in the U.S. Department of Labor, including liaison with Congress. Edes has been special counsel to the Senate Labor and Public Welfare Committee since 1971. During 1968-69 Edes was a staff attorney in the Labor Department's Office of the Solicitor, concentrating on enforcement of equal employment opportunity relating to federal contract work. He worked as a summer intern with the Solicitor's office in 1963, 1966 and 1967. A Chicago native, Edes received his B.A. degree from the University of Pennsylvania before attending Michigan Law School.



Nik B. Edes

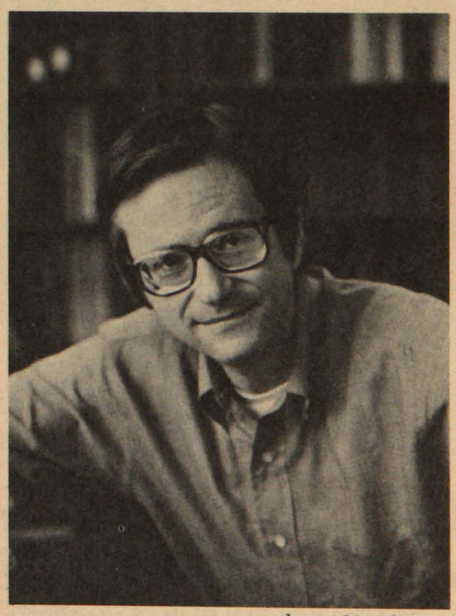


Ada Louise Huxtable

Ada Louise Huxtable, architecture critic at the *New York Times*, discussed modern architecture in the recent William W. Cook Lectures on American Institutions, presented by the Law School. Huxtable criticized the "early modernist" era of architecture of the 1920's and 1930's, whose proponents, she said, were too eager to bulldoze remnants of the past to clear the way for a modern utopia. "Architects today are pre-occupied with periods that were most vehemently denied by the modernist theorists, particularly the beaux-arts, art deco, baroque and high Victorian styles," said Huxtable. The interest today, she said, is not in mere reproduction of older styles. "We are seeing the source enlarged, elaborated upon, and transmuted into something else."

Prof. **Jesse H. Choper** of the University of California, Berkeley, Law School discussed "Judicial Review and the National Political Process" in this year's Thomas M. Cooley Lectures at U-M Law School. Choper advocated five propositions for "a principled, functional and desirable role for judicial review in our system":

1. "Neither in theory nor practice is the Supreme Court as democratic as the political branches (that is, Congress and the President), and judicial review is the most anti-majoritarian of all exercises of national government power.
2. "The essential role of judicial review in our system is to prevent violations of that category of constitutional provisions that secure individual liberties.
3. "In employing the power of judicial review, thus thwarting popular will by rejecting judgments of electorally responsible political institutions, the court expends its limited capital, prejudicing its ability to gain compliance with decisions it renders and with those it may seek to render in the future.
4. "The court should not decide constitutional questions respecting the power of the national government vis-a-vis the states.
5. "The court should not decide constitutional questions concerning the respective powers of Congress and the President."



Jesse H. Choper

THE NEW ANTI-INTELLECTUALISM IN AMERICAN LEGAL EDUCATION

by Francis A. Allen
Edson R. Sunderland Professor of Law, UM Law School
President, Association of American Law Schools, 1976-77

Legal education in the United States is passing through its winter of discontent. Those who are new to the law schools—students and young instructors—are likely to be unaware of how recently and precipitously the present mood developed. Even those who have known the law schools longer may by now have forgotten the confidence and euphoria that were characteristic attributes of the schools until no more than a decade ago. Legal education, of course, has never lacked criticism, and the most searching and pointed complaints were those generated within the schools themselves. The "explosion" of interest in interdisciplinary studies at Columbia in the 1920's, narrated by Brainerd Currie in his well-known study; the realist movement; efforts to enlarge the scope of law school curricula, such as the foundation-nurtured movement to institutionalize international legal studies after World War II—each reflected significant dissatisfactions with the law schools at various intervals in this century. The dissatisfactions so expressed, however, rarely implied a loss of confidence in the capacity of legal education to make large and indispensible contributions to our public life. On the contrary, these movements of reform affirmed the importance and potential of law teaching and research; and the frustrations experienced stemmed largely from a conviction that the capacities of legal education were being underutilized. It need not be asserted that today this confidence has been wholly destroyed or is incapable of reinvigoration; but it has surely been weakened.

Brainerd Currie, who among his other distinctions became a leading commentator on American legal education, left a body of writings that provides a convenient bench mark to measure how far the present *malaise* has proceeded. In a sprightly essay published just twenty years ago, Professor Currie predicted that there would be no dramatic changes in law school training in the half-century following 1956. The changes, he thought, would be "molecular" rather than "molar"; they would be the cumulative product of individual efforts, not the results of institutional upheaval. Professor Currie could contemplate his prognostication "without dismay," not because this most critical of men was complacent about the achievements of law schools in the 1950's, but because he believed that the essential conditions and assumptions of American legal education were sound and sufficient to sustain a process of constructive development. Such was also the conviction of most other thoughtful persons in the law schools at the time.

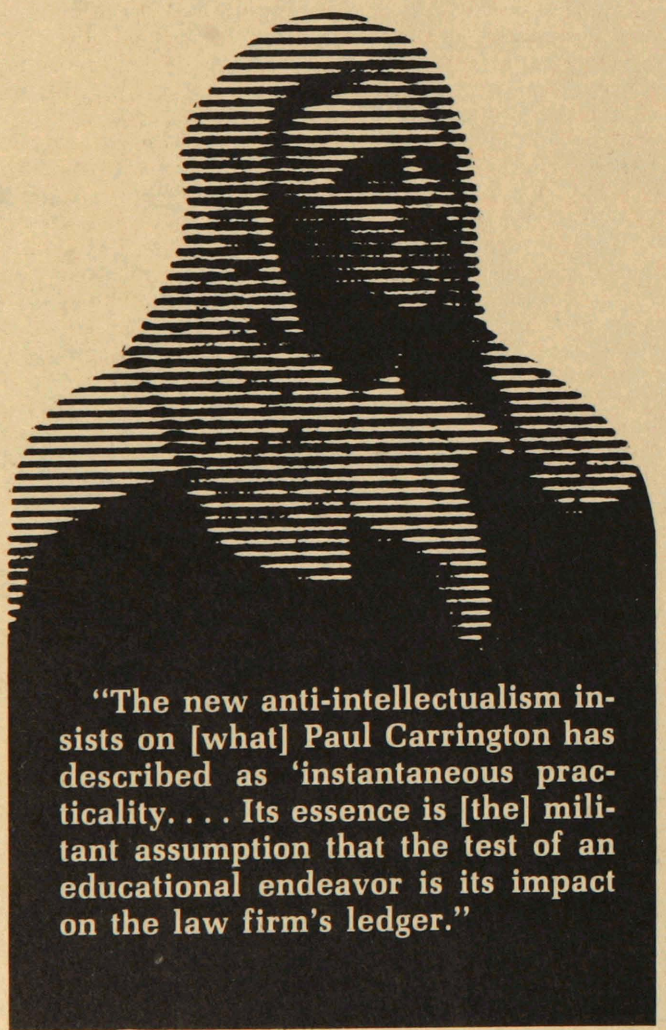
The modern discontents with legal education differ from those of even the recent past, both in degree and in kind. It is well to identify the sources of contemporary dissatisfactions and to be aware of dangers implicit in them. Although it requires some hardihood to say so in the present climate of opinion, nothing in the historical record justifies the assumption of abject failure that is today frequently brought to discussions of legal education. On the contrary, the record includes remarkable successes. During this century legal scholarship, first through the compilation of great treatises and the production of a law review literature, and later, through efforts at legislative codification and restatement, went far to rationalize and systematize disorderly common law doctrine in the private law fields. It would be difficult to identify any other university department concerned with the social disciplines that achieved a more palpable and far-reaching social impact than that of the law schools in this particular. At least equally important and even more surprising was the influence of the law schools on our public law. It is not easy to name an important development in these areas during the past two generations that was not first advanced or cultivated in a law school classroom or a law review article. During this period a steady stream of young people fresh from the law schools entered the legal profession. If it is true, as is frequently asserted, that lawyers create problems as well as solve them, it is also true that in the succession of crises that have shaken American society in the twentieth century, lawyers of intelligence, flexibility, technical skill, and wisdom came forward to serve and advance the public interest. If failures of professional responsibility are to be laid at the door of the law schools, the qualities of mind and character revealed in these more inspiring performances ought also to be seen, in part, as the fruits of the law school experience.

These observations are not advanced in a spirit of complacent satisfaction. Failures have abounded. Each observer will frame his own indictment. The law schools have contributed all too little to the avoidance of an impending breakdown of American judicial administration and have, indeed, sometimes revealed little awareness that such a crisis exists. Until recently legal scholarship has been insufficiently concerned with improving the delivery of legal services, not only to the impoverished, but also to the great bulk of the population. Some believe that not enough is being done in the schools to develop that educated compassion necessary, at least in some areas of practice, for the lawyer to serve fully the interests of his clients. This and much more may be entered on the debit side of the ledger. Nevertheless, the achievements of American legal education are real and substantial. This patent fact gives rise to the suspicion that the precipitous loss of confidence, already mentioned, may be the product of something more than failures in educational performance. Social facts can alter rapidly in these times, but moods and ideology may alter even more rapidly. If the present deflated views of American legal education are in significant degree the product of factors other than the actual performance of the law schools, it is well that we know it. Knowing it we may be able to evaluate more intelligently proposals brought forward in these times for the future of legal education.

It is important to note that contemporary attitudes toward American legal education are expressed at a time of endemic loss of confidence in our social and political institutions. This loss of security extends to virtually all aspects of our collective life. In the opening lines of a recent book, Robert Nesbit has written: "Periodically in Western history twilight ages make their appearance. Processes of decline and erosion of institutions are more evident than those of genesis and development." Shadows become exaggerated at twilight, and appraisals made at such a time may be distorted by a *malaise* that has deeper causes than the performance of the particular institution under scrutiny.

Perhaps the primary danger for legal education in this twilight interval is that we may be induced to abandon our higher purposes and accept aspirations that are too modest, whether viewed from the perspective of student capacities and commitments, the more effective practice of the profession, the acquiring of socially useful knowledge, or the more effective criticism and reconstruction of institutional practices. The loss of confidence in intellectually and humanistically motivated law training prepared the way for the rise of a new anti-intellectualism in legal education, new not in kind or quality, but in the breadth and intensity of its expression both in and out of the law schools. The new anti-

intellectualism insists on what my colleague, Paul Carrington, has described as "instantaneous practicality"; it is impatient with any educational activity that does not promise an immediate and discernable pay-off in private law practice. It is concerned primarily with the "how," not the "why." It displays small interest in the substantive issues that confront this society. It reveals a narcissistic fixation on the techniques of the law office and the courts. It views askance the role of the law schools as critics of the law and as sources of new law. It gives short shrift to the obligation of the law school, as an integral part of the university, to discover and communicate new knowledge. It scoffs at "philosophy" as wasting students' time or as incapacitating m for practical affairs. It is not an interest in improved "skills" training in legal education that identifies the new anti-intellectualism; nor is it the desire to equip students for a more humane and effective career at the bar. Its essence is, rather, the narrowing of interests, the rejection of intellectual and humanistic concerns, the militant assumption that the test of an educational endeavor is its impact on the law firm's ledger. It is characterized by confident but wholly unsubstantiated judgments about the contributions of particular educational experiences to professional proficiency.



"The new anti-intellectualism insists on [what] Paul Carrington has described as 'instantaneous practicality. . . . Its essence is [the] militant assumption that the test of an educational endeavor is its impact on the law firm's ledger."

The attack on intellect is in no way confined to the law schools in these times. Indeed, a weakening of faith in the power of intellect might well be regarded as one of the distinguishing characteristics of the modern era. The rise of sciences of human behavior has attacked the primacy of reason as a determinant of human activity, and has given precedence to feeling, habit, social structure, unconscious drives, and manifold other non-cognitive factors in human existence. In the political arena intellect is required to bear a heavy burden of condemnation. Reason, it is said, has produced a science that threatens humanity and an industrialism that erodes the physical bases of human survival. It has stunted human development by neglecting those aspects of personality that require the cultivation of emotion and aesthetic enjoyment. So thorough-going has been the assault on "the life of the mind" that those who value it have sought such comfort as can be derived from Justice Holmes' rather plaintive observations: ". . . to know is not less than to feel."

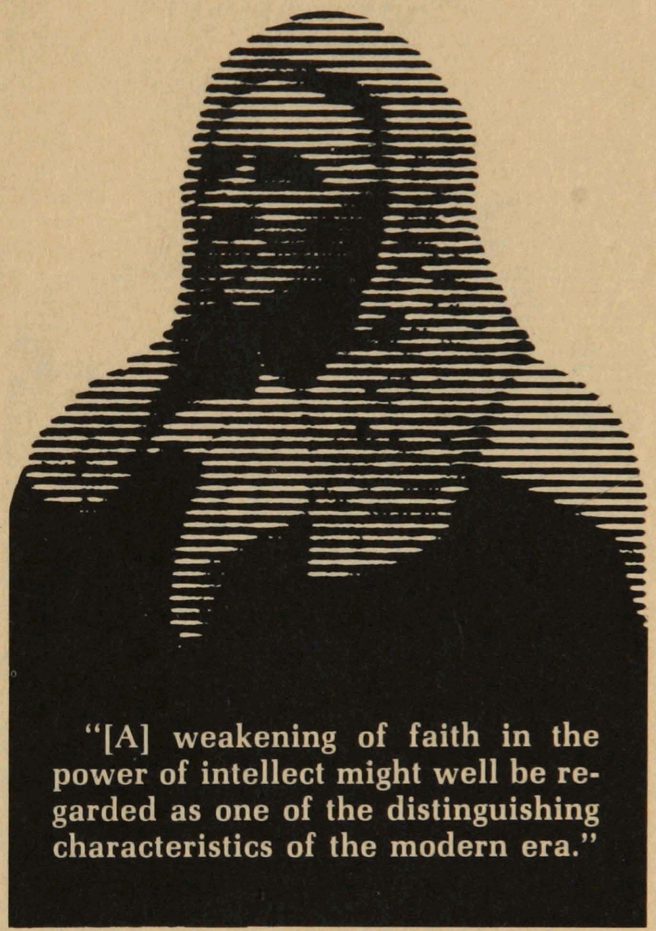
One of the more remarkable aspects of the current assault on intellect is that it perhaps derives more significantly from within the universities than from without. Certainly the most eloquent denunciations have been launched from college campuses. In the confusions of the late 1960's a group of younger faculty members and students at a middlewestern university came together under the proud banner, Brains Distrust. Similar movements rose and flourished for a season on other campuses. The phenomenon had its hilarious aspects. Rarely has there been launched such a syllogistic attack on reason. Some of the adherents were seriously engaged in scholarly undertakings, and presumably were dedicated to the devices of rationality in their scientific and professional lives. Their hostility to disciplined intelligence was confined largely to their public statements (the more public the better). The effort to have one's cake and eat it too, has not been restricted, of course, to such groups; and one cannot positively assert that this dalliance with schizophrenia resulted in lasting harm to those who indulged in it. The effects on their students are more problematic, however. The students heard the uncompromising attacks on the life of the mind, but their teachers did not disclose, certainly they did not defend, the values that they routinely embraced and employed in the library and the laboratory.

The point being made is that, in significant part, the origins of the *malaise* now being experienced in the law schools are to be found, not in legal education's sins of omission and commission, but in events and cultural movements that typify our entire social life. This perception is necessary if one is to make realistic appraisal of the present status and needs of legal education, and it in no way challenges the necessity for intelligent innovation in the circumstances of the late twentieth-century world. Further analysis of the broad social influences affecting the rise of the new anti-intellectualism in legal education will be left to those better equipped to identify and evaluate them. Not all of the origins of this phenomenon, however, require such analysis; some are to be found closer home. Origins of the new anti-intellectualism also reside in the legal profession, the law faculties, and among law students.

II

In 1886 Christopher Columbus Langdell proclaimed: "If law be not a science, a university will best consult its own dignity in declining to teach it. If it be not a science, it is a species of handicraft, and may best be learned by serving an apprenticeship to one who practices." Thirty-five years later, Thorsten Veblen, apparently unimpressed by the Langdellean claim to scientific status for the law, observed that "law schools belong in the modern university no more than a school of fencing or dancing."

From the time that responsibility for professional law training in the United States became predominantly that of the universities, a state of tension has characterized the relations between the law schools and the practicing bar. There is nothing surprising or necessarily alarming about this fact. What is surprising is that, for the most part, this inevitable tension has proved creative and one that has beneficially served the interests of both the law schools and the profession.



"[A] weakening of faith in the power of intellect might well be regarded as one of the distinguishing characteristics of the modern era."

The advantages of the division of functions between the law schools and the profession, characteristic of American legal education, have been apparent both to the parties involved and also to foreign observers of American law training. For the profession, the schools have provided battalions of graduates adept in at least certain professional skills, young persons of sufficient attractiveness to have induced vigorous competition among lawyers and law firms to retain their services. However lacking the graduates may have been in technical proficiency, they, for the most part, have shown considerable facility in acquiring the necessary skills when placed in the arena of private practice. Many lawyers left their schools imbued with motivations for public service, and much of the constructive achievement of the profession can fairly be attributed to the interests and examples of great law teachers as perceived by embryo lawyers. However dubious some lawyers may at times have felt about certain interests of law faculties, legal research emanating from the schools has served the profession well.

This symbiotic relationship between the schools and the profession has also served the interests of legal education. However constricting the influence of bar examinations and of alumni scrutiny, the schools have enjoyed a significant freedom in curriculum planning, experimentation with teaching methods, and research objectives. This freedom is the envy of many who teach law in other countries that adhere to the Anglo-American legal system, and it is the condition indispensable to the continued health and vigor of the relationship between university and profession. There are other contributions that the relationship has made to the schools. Contacts with a functioning profession, the testing of ideas (however unsystematically) against the actuality of an ongoing system, provide the law schools with a kind of "reality principle," an advantage apparently lacking at times in some other departments of the university involved in the study of social processes.

Yet it would be unrealistic and unwise to ignore the fact of tension. Stress is an inherent feature of university-based professional training. This is true, in part, because being an integral segment of a university, the law school assumes obligations and commitments that go beyond the pragmatic interests of the practicing profession and that at times may conflict with them. The university law school inherits a knowlege-finding function and a critical function. The objects of criticism will on occasion be the law and lawyers. The focus of concern must encompass areas of social interest of great importance but sometimes far removed from the practical concerns of the practicing bar. These facts are well understood by many lawyers, and this conception of legal education has received not only the tolerance, but also the aggressive support, of enlightened members of the bar. This support has been based both on an appreciation of the social importance of having law schools perform these broad functions and on the calculation that such schools are most likely to produce the best qualified lawyers.

There is evidence that the tolerance upon which this enlarged conception of legal education depends is eroding in some segments of the bar and the bench. The evidence to which reference is made does not consist of the fact that traditional educational methods are being criticized and that reforms are being urged. Many lawyers, like many law teachers, favor a more clinically oriented training and are persuaded that movement by the schools in that direction will contribute to an enhanced professional competence and responsibility. Such dialogue is indispensable to the processes of evolution and adaptation essential to the survival of any social institution. What is being referred to is the note of acrid hostility toward the law schools being sounded today in some aggregations of lawyers, a rejection of dialogue, and a view of legal education largely confined to the narrowest of professional interests. It is not clear what fraction of the bar and bench share these attitudes, but the attitudes appear to be gaining at least the respectability of increasing adherents.

There has always been, of course, a current of feeling within the bar similar to that just described. Not for many years, however, has it been so widely and uninhibitedly expressed as in the period since the late 1960's. This is not the place for a complete canvass of the causes of this development, but a brief glance can be given at a few of the precipitating factors. The last decade has been a period of discontent for the bar as well as for the schools. It has felt the lash of public criticism, and there has been a typically American tendency on the part of some of its members to attribute its difficulties to educational failures. The apparent revolution in the attitudes of the younger generation caused deep disquiet, and some lawyers associated this anxiety-producing behavior of the young with the in-

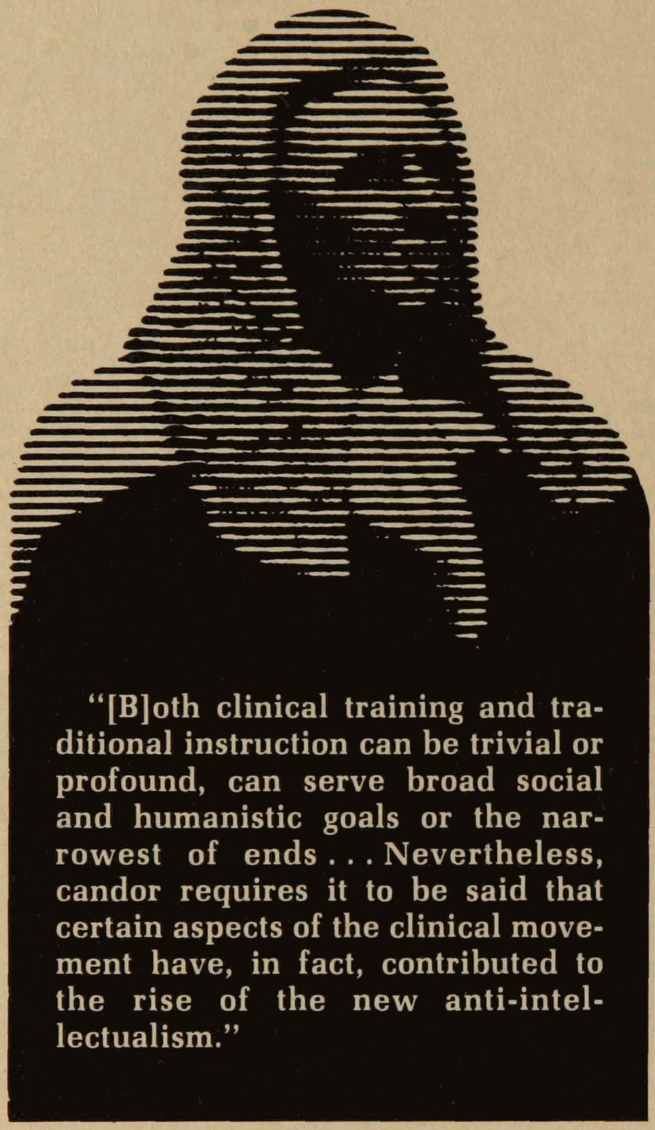
fluence of the universities and university law schools. The staggering burdens imposed on the courts raised concerns about the courtroom competence of many lawyers. The assumption that the problems faced by the courts are created primarily by the incompetence of young lawyers, however, has never been validated. Some lawyers believe that an increasing distance is developing between the interests and sympathies of some law professors and the practicing bar. A few deeply resent the leadership of legal scholars in the movements that produced "no-fault" legislation in the fields of personal injury and domestic relations and the reform of probate procedures.

Whatever the causes, the largely dormant dissatisfactions with university-based law training have been animated and given new and caustic expression. The thrust of these expressions is toward a legal education of constricted scope and lowered aspirations.

III.

Sources of the new anti-intellectualism in legal education are also to be found in the law schools, themselves, and among law faculties. Law teachers, like members of other university faculties, are sensitive to those characteristics of Professor Nesbit's "twilight age" that produce uncertainty and tentativeness in the pursuit of intellectual goals. Some have had their confidence shaken in the traditional methodologies of legal education, but have as yet been unable to devise alternative techniques that are comparably successful in achieving the intellectual and humanistic ends of law teaching. It is, however, student attitudes, soon to be discussed, that have most profoundly affected the practices and assumptions of their teachers. At no time will a teacher worthy of the name be indifferent to the expectations of his students; and in an age of consumerism student demands and dissatisfactions are likely to be given even greater attention. Law teachers have reacted in different ways to the anti-intellectualism that pervades many students' attitudes. Some have found the student demands to be consistent with their own vision of law school training. Others have succumbed after token resistance, while still others continue to resist. Some of these latter, while adhering to the values of intellectually rigorous and humanistically oriented law teaching, have encountered exceptional difficulties in achieving effective communication with their students, difficulties that leave both them and their students bemused and dissatisfied.

However these dynamics are to be weighed, certain consequences are clear. One of these is that lesser intellectual demands are being made on students in some law school classrooms today than a decade ago. This is not because of a decline in the intellectual quality of American law faculties. On the contrary, there has never been another time in which so many persons of exceptional ability occupied positions in the law schools. Nor is the issue precisely that of the decline of the "case method" or of "socratic" dialogue. Whatever the teaching method, however, there must be intellectual dialogue of some sort if intellectual skills are to be honed. Moreover, the dialogue must be sustained and intense. Few will mourn the passing of the savagery that sometimes defaced the teaching of the past. Nevertheless, little can be said for a pedagogical exercise that permits a student to leave the classroom believing that a slovenly effort at analysis or generalization satisfies acceptable professional and intellectual standards. Involved in the question of intellectual rigor is the problem of value analysis. Such analysis is the essence of humanistic education in any discipline, but a discussion of values in the classroom unaccompanied by demands for clear and responsible thought may quickly degenerate into a kind of propaganda or sentimentalism.



"[B]oth clinical training and traditional instruction can be trivial or profound, can serve broad social and humanistic goals or the narrowest of ends . . . Nevertheless, candor requires it to be said that certain aspects of the clinical movement have, in fact, contributed to the rise of the new anti-intellectualism."

Consideration needs to be given, also, to the relations, if any, between the movement for enlarged clinical and "skills" training and the rise of anti-intellectualism in American legal education. As Dean Roger C. Cramton has rightly pointed out, the impact of the clinical movement on the law schools is not adequately reflected by the numbers of students enrolled at any one time in courses designated as "clinical." The fractions of graduating students who have had some substantial contact with courtroom litigation, for example, whether in courses, extracurricular activities, or part-time employment, has grown enormously in the course of the last generation. No doubt, the clinical perspective has also influenced the teaching of traditional classroom courses. It seems clear that the issues raised by the new anti-intellectualism cannot be epitomized as a conflict between clinical and classroom instruction. The incontestable fact is that both clinical training and traditional instruction can be trivial or profound, can serve broad social and humanistic goals or the narrowest of ends. Indeed, properly conceived and executed, clinical programs advance the higher educational aspirations and support the objectives of classroom instruction. The student, among

other things, is given an opportunity under field conditions to test his command of analytical skills, and is provided a broader basis of experience for evaluation of the legal norms and the values expressed in the administration of justice.

Nevertheless, candor requires it to be said that certain aspects of the clinical movement have, in fact, contributed to the rise of the new anti-intellectualism. Not surprisingly the movement to introduce clinical experiences into legal education has encountered opposition and inertia; and, understandably, the clinicians have felt frustration and disappointment. It is probably true that the greatest obstacle to a more complete success of the clinical movement has not been the opposition of the law teachers who object to it on basic intellectual or pedagogical grounds. More important have been the doubts of other established faculty members, who are by no means unsympathetic to the asserted ends of clinical training, but who are bewildered about how to evaluate the quality of clinical programs and instructors, how to determine what features of traditional education should be sacrificed to make way for it, and how to pay for it.

The resistances to clinical proposals encountered by their supporters and the difficulties of law faculties in fitting these programs within prevailing assumptions about the measures of academic quality, tenure, promotion of clinical personnel, and the like, have produced a spate of unhappy consequences. Many clinical instructors, naturally enough, resent these attitudes, and some have felt themselves to be pariahs in the law school environment. Some clinical instructors, believing that clinical education in the law schools does not afford a promising career line, have left these programs, and often their leaving has reduced the quality of the clinical training. Others have respon occasion, with strident public statements that not only proclaim the virtues of clinical training, but also appear to attack the values of an intellectually and humanistically based legal education. Some of these statements reinforce the less thoughtful attacks emanating from the bar in recent years, and, indeed, often can hardly be distinguished in content from them. This is doubly unfortunate because it tends to give academic respectability to the least defensible criticisms of the law schools, and also because the kind, quality, and motivation of clinical training espoused by the academic clinicians are likely to be very different from that contemplated by the less responsible critics in the profession.

And then there is the problem of money. Among the most attractive features of clinical education is the promise of close personal contact between instructor and student; but it is this characteristic that, because of costs, seriously limits the availability and growth of these programs. In the last decade more than one American law school, caught up in the enthusiam for clinical training, but unable or unwilling to allocate resources sufficient to support it, have nevertheless placed programs in operation. In a few cases academic credit was given for "field experiences," not only unsupervised by the schools, but also about which the faculties were in almost total ignorance. Ironically, such abdications of responsibility have been publicly represented as giant steps forward in the training of young lawyers.

Finally, there are certain features of the clinical education movement as it has evolved that give rise to serious, if more problematic, concerns. One of these is the lack of hospitality shown by some clinicians to the systematic use of empirical inquiry in efforts to place the policy of the law on a more informed basis of fact. To be sure, leaders of the clinical movement have displayed interest in utilizing those trained in the psychological disciplines to assist in defining and measuring the various aspects of lawyer "competence." One misses, however, a comparable concern for the substantive issues that our civilization, and hence the law, must encounter in the years immediately ahead. The clinical movement grew out of a reformist tradition, and that tradition encompassed concerns that go beyond the methodologies of legal education or the techniques of private law practice, important as these latter matters are. The apparent isolation of many in clinical education from interdisciplinary inquiry directed to great issues soon to challenge the law may contribute to one of two possible postures. To the extent that reformist zeal in the movement encompasses more than the problems of law practice narrowly conceived, it may be founded on an ideology and policy imperatives that are fallible and that remain unexamined or, indeed, undisclosed. A second possibility is that concern with substantive social problems may decline further or disappear, and the movement may be largely confined to the niceties of lawyer techniques. Either consummation would represent a loss of educational opportunity and quality.

IV.

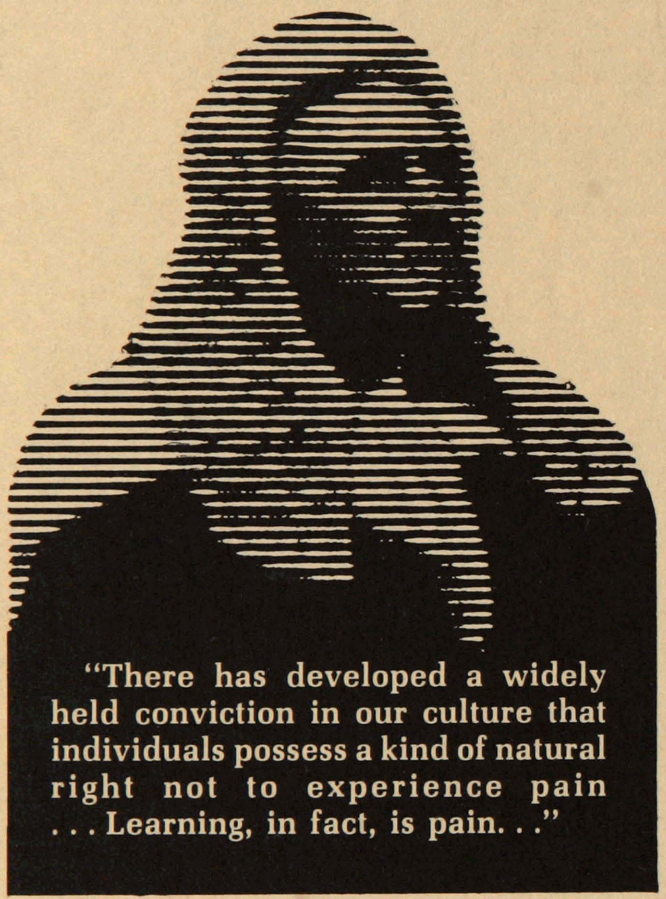
In his remarkably prescient lectures entitled *The Law in Quest of Itself*, Lon Fuller wrote over a generation ago:

> The problem addresses itself finally to the law student. . . . Shall he search out the professor who can expound "the existing law". . .? Or shall his preference lie for the man who can impart an insight into the shifting ethical background of the law, a background against which "the law as it is" appears as an accidental configuration without lasting importance? A similar problem of choice confronts him in directing his own studies. The way in which the law student decides these questions transcends in importance its effects on his own career, for, through the subtle pressures he exerts on his instructors to teach him what he thinks he ought to be taught, he exercises an influence on legal education—and indirectly on the law—much greater than he has any conception of."

Consideration of the contribution of modern student attitudes and tendencies of thought to the new anti-intellectualism in American legal education requires that several preliminary observations be made. First, none of the tendencies to be noted are unique to students. Without exception, the origins of these attitudes are to be found in the larger society, and constitute evidences of broad cultural trends. When expressed by students, however, they acquire a particular importance in the educational process; for they condition the communication between teachers and students, and effectively influence the goals and achievements of legal education. Next, it is by no means true that these tendencies were unheard of in previous student generations. What is distinctive about the present situation is the intensity of their widespread expression in recent years. Finally, it needs always to be borne in mind that many of these attitudes are closely related to other student characteristics which often reveal a generosity of spirit and humanitarian concern, characteristics that are both attractive and of great social value. Nevertheless, as Professor Fuller's comment would suggest, the expectations and proclivities of the students require candid consideration, for they constitute a major dimension in any appraisal of the modern status of American legal education and its likely future evolution.

In the early 1960's a motion picture entitled *Morgan* enjoyed a vogue with American young people, for it appeared to capture a sense of the predicament in which they found themselves. At one point in the film an exchange occurred, which according to best recollection, went something as follows: "Morgan, you'd better watch

it!" "I would, but I can't find it." The plight of young people growing to maturity in that era was one that involved just such insecurity. Whatever "it" was that could provide a secure basis upon which to construct lives or that could even advance understanding of the terrible perils that lurked on all sides, "it" could not be found. Nor, since older persons were experiencing similar uncertainties, was it possible to condemn the young for their confusion. They had grown to maturity in the cold war with the possibility of atomic holocaust never far from consciousness, and the rapidly intensifying struggle in Viet Nam was raising somber premonitions.



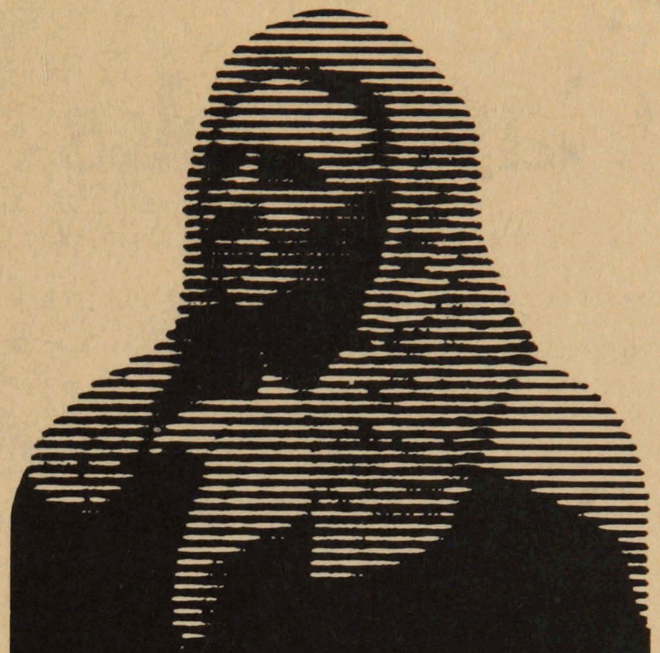
"There has developed a widely held conviction in our culture that individuals possess a kind of natural right not to experience pain . . . Learning, in fact, is pain. . ."

Confused uncertainty experienced at such a pitch, however, breeds tensions that cannot be endured for long; and so as the 1960's progressed, it was perhaps inevitable that the youthful style should alter and become characterized by the militant assertion of certitudes. Many persons in a position to observe the student generations in the closing years of the decade were able to detect an unfulfilled "quest for certainty" going forward under the cloak of rhetoric and dogmatism. One observer asserted that the students were expressing "panic disguised as moral superiority." It is not necessary, of course, to assert that, for these reasons, the student critique of American institutions and of adult leadership wholly lacked point and validity. What can be said is that the student attitudes were antithetical to an intellectually and humanistically based legal education; for these attitudes, or many of them, involved the closing of minds.

The quest for certainty at the height of the student activism most frequently expressed itself in the insistence that teaching should proceed from certain given political premises, assumptions completely understood in advance and admitting of no challenge. The purpose, if any, of university education was to acquire the practical techniques necessary to implement those premises. As the sixties made way for the new decade, this insistence on political orthodoxy considerably abated, and a new openness became evident in the classroom. Yet the demands for certainty continue to be expressed in other ways. There is, of course, nothing new about the appetite of many students for propositions in black-letter print. Nor can it be intimated that students' demands for a more practice-oriented training represent nothing more than the lack of intellectual fortitude. Nevertheless, the insistence of many students on "instantaneous practicality" often seems more strident today than at many times in the past. Conversations with students frequently reveal acute discomfort with the notion that practice itself is a learning experience and that some things can be better learned in the period following graduation than in the law school. These insecurities have provided and continue to provide resistance to a conception of legal education sufficiently broad to satisfy the manifold obligations of a university law school.

A second set of student attitudes, springing from the hedonism of modern life, has had perhaps an even clearer impact on university education. There has developed a widely held conviction in our culture that individuals possess a kind of natural right not to experience pain. When pain is felt, the reactions are often ones of indignation and bewilderment. These assumptions manifest themselves in student reactions to the phenomenon of tension in law school education. That tensions can be painful cannot be controverted, and that they abound in professional training is equally clear. Many modern students, having been denied the knowledge that tensions may be normal and inevitable incidents of the educational experience, conclude that the pain they feel is essentially abnormal. Pain creates self-doubts because it is seen as evidence of personal deficiency or of illness. It also produces resentment against the institution and the educational process that engender it.

Closely related is the invincible conviction of many students that learning under pressure is not simply inefficient and difficult, but that it is literally impossible. Perhaps it is this that underlies the feeling of some students that being called on in class and subjected to challenge by the instructor and classmates, is somehow undignified and demeaning. If it is assumed that the tensions of classroom interrogation disqualify the exchange from serving as a learning experience, it may well be seen simply as aggression against personality and comfort. These beliefs are so deeply entrenched that they withstand convincing demonstration to the contrary. Surely not only history but contemporary experience reveal that profound learning is possible in conditions of considerable pressure, that this is so much the normal mode that pressures at some level, whether engendered internally or externally, may be seen as indispensable conditions of the learning process. When Dr. Samuel Johnson was asked how he came to acquire his command of Latin, he replied: "My master whipped me very well. Without that, Sir, I should have done nothing." One scarcely needs to espouse the revival of corporal punishment as a teaching device to protest the educational ideology that has pervaded the lives of many university students. The "learning is fun" ideologues have slain their tens of thousands. Learning, in fact, is pain, at least in those aspects of it concerned with the indispensable discipline of basic drill. Paradoxically, learning confers profound satisfactions, and the intellectual life involves a kind of play. The pleasures, however, cannot be achieved without experiencing the pains. Modern technology has not discovered a short-cut to Parnassus.



"[N]othing in the historical record justifies the assumption of abject failure that is today frequently brought to discussions of legal education."

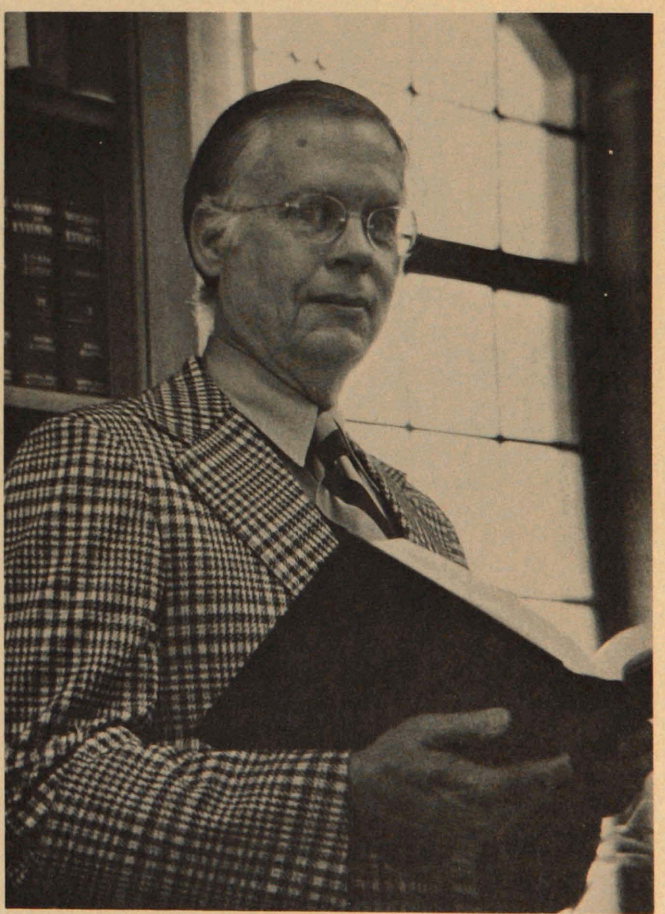
Like many other tendencies that do not withstand analysis, the student attitudes just described nevertheless point to problems that are real. It is true that since the inundation of law schools with applications for admission, competitive pressures have escalated, and student insecurities produced by an apparently declining job market have added further to their intensity. That these pressures have reached levels in some institutions that are seriously counterproductive seems evident. The situation is one that challenges the ingenuity and compassion of law faculties. Given the difficulty of the challenge, it is not surprising that the ingenuity of faculties has sometimes proved insufficient and that measures have been adopted that compromise the essentials of sound education.

The relations of law faculties to their students in these times cannot be characterized in a word. The student attitudes described above do not characterize all of the students and probably not any of the students all of the time. Most persons who have taught in the present decade will testify to the presence of many students of the highest capacities and the most attractive personal characteristics. Yet there are periods, and the present appears to be one, in which the cultural climate is not propitious for the cultivation of intellectual and humanistic values. When this is true, these tendencies will be expressed by the students coming to the universities. At such a time, teachers, if they are to serve their important function, are placed under the uncomfortable obligation of resisting, in some measure, the main tendencies of the age. This involves a dissonance in their relations with some students, particularly distressing to conscientious teachers who have always relied on the establishment of a sympathetic bond with their students as an avenue of communication and as a means for mutual learning. Happily, there are indications that the dissonance is at present lessening. In any event, the only alternative available to the instructor is default and capitulation.

V.

The preservation and extension of an intellectually based and humanistically motivated legal education is the greatest challenge facing the American law schools. Although attaining this objective will involve the resolving of a host of subsidiary issues—methods of instruction, the length of law school training, new systems of funding the research and educational programs—we should not permit debate of these issues to distract attention from the primary concern. In seeking this objective it would be highly imprudent and irresponsible to ignore the felt needs now being given vigorous expression by students and practicing lawyers. It seems inevitable that more systematic attention will be given to skills training in the future than in the past. It appears equally clear that the evolution of legal specialties and the demand for continuing postgraduate education will add to the scope and complexity of the American system of professional legal training.

These new demands involve questions of method and allocation of functions between school and profession. They will not constitute a threat to the mission of university-based legal education unless they lead to the sacrifice of other vital functions and lower aspirations for intellectual quality and for service to the larger society. What we have to fear is a narrowing of minds and concerns. With only slight emendation we can accept the proposition formulated by John Stuart Mill over a century ago. In 1865 he wrote: "As often as a study is cultivated by narrow minds, they will draw narrow conclusions. . . . The only security against narrowness is a liberal mental cultivation, and all it proves is that a person is not likely to be a good political economist who is nothing else." For the phrase "good political economist" let the sentence read "good lawyer."

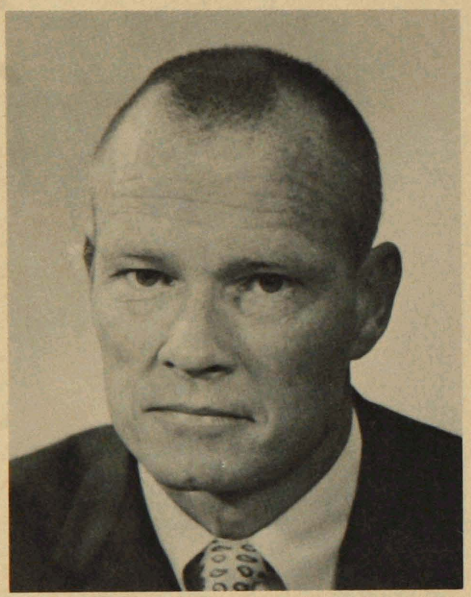


Francis A. Allen

Law School Casebooks

A number of recent legal casebooks have been among the publications of U-M law faculty members. The ones reviewed here are:

- *Banking Law Teaching Materials*, by U-M law Prof. James J. White.
- *The Lawyer as a Negotiator*, by Prof. James J. White and Prof. Harry T. Edwards of Harvard Law School.
- *A Modern Approach to Evidence*, by U-M law Prof. Richard Lempert and Prof. Stephen Saltzburg of the University of Virginia Law School.
- *Basic Uniform Commercial Code Teaching Materials*, by U-M law Prof. James A. Martin and Prof. David G. Epstein of the University of Texas Law School.
- *Conflicts of Law and Other Interstate Problems*, by Prof. James A. Martin.



James J. White

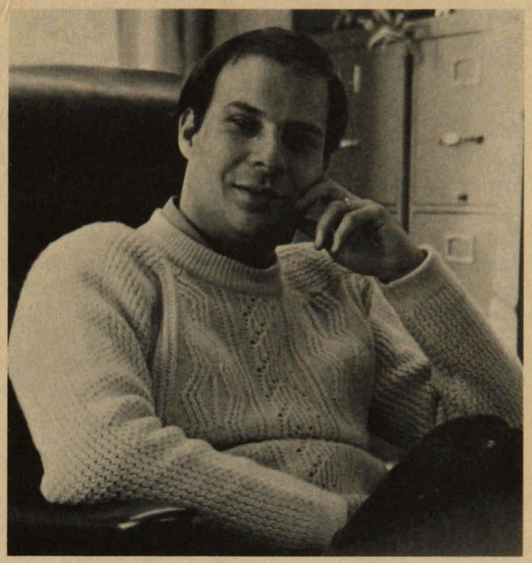
• In *Banking Law*, U-M law Prof. James J. White has designed a text for an eclectic banking law course, drawing together in one forum some materials that might be touched upon in courses on enterprise organization, corporations, commercial transactions, antitrust, administrative procedure, or bankruptcy. Such a course, while perhaps not being well suited to the needs of every lawyer, should nevertheless perform the integrating function for the commercial law curriculum that estate planning performs for the property and tax law curriculum. Topics dealt with in the casebook include the general regulation of banking, bank holding companies, the formation of branches and banks, the failure of banks, commercial paper and electronic funds transfer, and the Federal Deposit Insurance Corporation.

A particular aim of the book is to acquaint the student or practitioner with the structure and location of federal banking statutes and regulations, and the powers and functions of federal agencies. The book also raises and considers broader questions of financial policy and law, highlighting testimony about Congressional control over the Federal Reserve, the development of the NOW account in Massachusetts, the Patman Report on large bank trusts and their influence, and material on the appropriate role of insurance and regulation.

• *The Lawyer as a Negotiator*, by U-M law Prof. James J. White and Prof. Harry T. Edwards of Harvard Law School, devoted to the skills a lawyer must use outside the courtroom, is not typically filled with case law. Rather, the 484-page book is a collection of readings which can be of intellectual and practical use not only to law students but also to lawyers who wish to add to their negotiating skills without the assistance of a formal course. Topics covered by the chapters include theoretical models of negotiation, techniques and their effective use, verbal and psychological communication, lawsuit settlement, collective bargaining, and cultural aspects (such as race, sex, and nationality) of whose subtle impact a negotiator must be aware. The authors in their preface call special attention to the chapter on ethical considerations and raise the difficulty of "drawing the line between permissible puffing and impermissible lying in negotiating contexts." Prof. Edwards, formerly of the U-M and now at Harvard, and Prof. White, have attempted to collect and comment upon some of the most significant works thus far produced in this field of study without offering a major theoretical or empirical study dealing with the art of negotiation. They write: "We hope to stimulate lawyers, law teachers and law students' interest in the art of negotiation and we look forward to the day when our understanding of the negotiation process will be much more comprehensive than it is today."

• *A Modern Approach to Evidence*, written by Prof. Richard Lempert of the U-M Law School and Prof. Stephen Saltzburg of the University of Virginia Law School, represents a new approach to the teaching and learning of evidence. The most striking feature of the book is the almost total absence of cases. Instead one finds problems, transcripts, and an extended textual treatment of the basic rules of evidence. The strength of this approach lies in the responsibility that it places on students. They are expected to learn the basic principles of both the common law of evidence and the Federal Rules of Evidence from the text. Class time is reserved for clarifying matters not fully understood, for testing students on their ability to apply evidence rules in specific factual situations, for exploring the subtle nuances of the rules presented, and for discussing those important ethical and policy questions that are necessarily raised in any serious study of the rules of evidence. Such wide-ranging class discussion is possible because no time is wasted analyzing cases to extract basic principles.

While the text necessarily tracks many of the standard works on the law of evidence, there is also a good deal that is original. The basic principle of relevance is presented first in a typical textual statement and then with the aid of two mathematical models drawn from decision theory. The rules regarding the offering and exclusion of evidence, the competency of witnesses, and forms of testimony are presented as annotations to an introduc-



Richard Lempert

tory chapter consisting almost entirely of a trial transcript.

The second chapter of the book discusses methods of generating evidence, such as interviews, investigation, and discovery. This is a topic rarely covered in evidence courses, but the authors believe that it is a fundamental starting point for any discussion of how rules of evidence relate to the quality of justice that the legal system delivers. It also alerts students to important differences between criminal and civil litigation that are rarely reflected in the formal rules of evidence.

The hearsay chapter includes a spirited defense of the hearsay rule, a position which puts the authors in a clear minority among academics and judges who have written on the subject. The authors follow this defense with two articles suggesting that the hearsay rule be abolished or substantially changed. Thus students are exposed to both sides of an important contemporary debate.

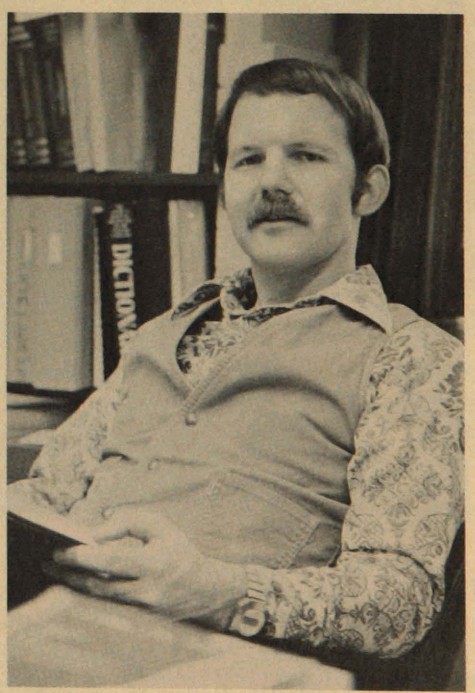
Other chapters contain essays on the psychology of eyewitness testimony, the history of the criminal jury, the jurisprudence of the confrontation clause, and the art of confrontation. Where the authors rely on the work of others, they prefer to present complete articles or lengthy extracts from articles rather than mere snippets.

• *Basic Uniform Commercial Code Teaching Materials*, by U-M Prof. James. A. Martin and Prof. David G. Epstein of the University of Texas School of Law, was deliberately designed to be brief, clear, and most important, self-teaching. Apart from the traditional cases, notes, and law review quotations, the book contains extensive textual materials written by the editors, and problems, some of which are answered in the text. The purpose was to produce a book which will allow students to grasp the basics of the subject on their own. The effect is to free class time for a variety of purposes, ranging from emphasis on particularly difficult materials (like the interrelation of Article Nine of the UCC and the Bankruptcy Act) to discussion of points suggested by the text but more suitable to the traditional give-and-take of the classroom.

An important goal of the book has been to minimize student resistance to a subject which is not traditionally a favorite on the law school curriculum. General comprehensibility, plus a few light touches—in the form of an occasional cartoon or pun—have been used to achieve that result. Student reaction to the mimeographed form of the materials was satisfying in this respect. Many commented that they *knew* they weren't going to like the subject or learn very much about it—and had had to change their minds.

• U-M law Professor James A. Martin's *Conflicts of Law and Other Interstate Problems*, will be published in the fall of 1977. The book devotes an appropriate amount of emphasis to the traditional, territorial approach to conflicts questions, and considers the various new approaches in a manner suited to their content—that is, not with the traditional division into sections on contracts, torts, real property, etc., but a unified look at the purpose and methods of the new approach.

The book also attempts to give particularly rigorous scrutiny to the difficult areas of constitutional limitations on choice of law and on the jurisdiction of courts. Other traditional topics, such as recognition of judgments and decrees and the *Erie* doctrine as a conflicts problem, are also given extensive coverage. Finally, the book looks more briefly at a series of problems usually omitted from conflicts casebooks: among them the conflicts problems arising from the status of native Americans, interstate compacts, interstate controversies over mobile resources (such as water and moisture-laden air) and interstate controversies over mobile "negative resources" (such as polluted water and air).



James A. Martin

To: The Faculty
From: Alan N. Polasky

For many years until his death last July, Prof. Alan N. Polasky provoked, stimulated, and delighted his colleagues by pouring forth mock memoranda from the "Committee on Grading Standards," the "Committee on Reappraisal for Advancement and Promotion," and other imaginary committees. A representative sample of these memoranda follows:

MEMORANDUM

To: The Faculty

From: Committee on Uniform Revision Affecting Gradient Evaluation [cable address—COURAGE] (formerly the Ad Hoc Subcommittee on Grades and Incentives—known as the Ad Hoc GAI group; our name has been changed to prevent confusing us with the Gay Liberation Front).

Re: A Proposal to Avoid Student Degradation

November 7, 1972 (revised)

. . . The recent discussions at the faculty meetings concerning the proposed grading system, including the proposed substitutes, as well as the committee proposal, utterly fail to satisfy the seven basic requirements of any adequate grading system. Discussion brought out the following seven basic requirements:

1) We should recognize that all of our students have achieved basically an A average in their undergraduate careers (with an aberrational occasional B) or they wouldn't be here under our present admissions standards. Therefore, it is somewhat traumatic for any of these students to receive a grade below A. The proposed grading system should therefore take this into account and insure that no student will be "degraded" by receiving less than an A grade.
2) Many students have indicated a feeling that the grading process is basically demeaning in forcing them to compete over a three year career for grades without the opportunity of achieving a level of performance which would obviate the necessity for grade-grubbing and unbecoming competition.
3) Students would also like the opportunity to "learn for learning's sake," and to choose courses without the pressures of being concerned by the difficulty of the course or the reputed stinginess of the professor with respect to grades.
4) Students do however seek recognition for a job well done and would like a grade feedback which would recognize this.
5) Many students feel that grades will be necessary (particularly high grades) in seeking jobs and other employment and quite naturally will seek to have grades which will enable them to compete successfully with the grades of other leading law schools.
6) Students feel that they should have an option for an "entry-no entry" system. We would add that law-trained professionals make decisions only after the facts are ascertained. The entry-no entry decision should be made only after grades are made known *to the student* (and no one else).
7) The faculty itself feels a need for grades in order to promote the following hallowed and time tested goals and standards:
   a) Grades are necessary in order to select students for the *Law Review* and *Journal of Law Reform*.

b) Grades will be necessary in order to identify those students who deserve recognition in the form of book awards from the West Publishing Company and other indicia of high performance.
c) A positive incentive is deemed necessary in order to insure high performance.
d) And some feel it is necessary to have some indication that the student meets the standards of performance and ability which will mark him as one who has those requisite qualities exemplifying those standards of excellence which are the hallmark of a University of Michigan Law School degree.

None of the proposals set forth by the Grades and Incentives Committee, or by way of substitute motion, fully meets all of the criteria set forth above.

The Proposal—The Asterisk Symbol System

The proposed system affirmatively modifies the old "Five A-Reserve Eagle" proposal of our committee in 1968 and more important, the proposed "Asterisk Symbol System" *does* meet *each* of the requisite criteria. In addition, it supplies certain desirable attributes of a preferred permanent grading format.

The proposal is for a five grade system using a 4.0 system similar to that which we used at Michigan before. The only difference is that we will now use the following five grades: An A**** equivalent to the old A, an A***, an A** and an A* plus an A (the latter being a failing grade). For those professors who prefer to use the present A+, B+, C+ and D+ we will add an A****1/2*, A***1/2*, A**1/2* and A*1/2*. We also propose to add what is the equivalent of a D− or E+ grade which will be known as a 1/2* and the person who receives it will receive a 1/2* grade and will be known as a 1/2* student.

The A4-1/2* is not essential to our system but is quite helpful. We will have a firm rule that only 5% of the students in any class (adjusted for obvious multiples of 20) may achieve the 4-1/2* grade. We will also provide that any student may enter or not enter his grade *after* he has learned what the grade is in the course. The rationale of this latter proposal is that lawyers should not shoot from the hip but should have the full facts before they make a decision. This poses some problems for the student who in the first semester finds that his highest grade in a course is a 3* grade. If the student enters the 3* grade, it is quite apparent that he will never be a student who can say that he has a straight 4-1/2* average. However, this is not as bad as it seems. Let us assume that under the Curriculum Committee's new proposal, grades will be given each semester and that a student in his first semester will take five courses and receive a grade in five courses at the end of the first semester. It is apparent that each student will have to concentrate his efforts in one course (in view of the rather equal quality of our students) in order to shoot for a 4-1/2* grade in a given course. (This should insure, at least, a very high quality of performance on the part of at least a portion of the class). Even granting some overlap, it is apparent that we may predict that approximately 20% of our students will achieve a 4-1/2* grade in one course during the first semester. Obviously having achieved a 4-1/2*, the student will enter that grade and will no longer feel that he needs to grub for grades or shoot for a high average—since he now has the highest accolade which the school can confer, namely, a 4-1/2* average. As a result, that student may now "learn for learning's sake" (without grubbing for grades.) This means that only the remaining 80% will still feel the need to try for grades during the second semester. Following our analytical probability calculations, it is apparent that by the end of the fifth semester all students should have achieved a 4-1/2* average. It is of course possible that some students will still be striving in their sixth or seventh semesters. Nevertheless, by the end of the fifth semester (and, indeed by the end of the fourth semester approximately 80% of our students will have achieved the A4-1/2* accolade), most students will be able to tell a prospective employer that while grade averages are not recorded and while class standings are not released "only 5% of any given class received an A****1/2* in that class and that I have an A****1/2* average." For that student who has (perhaps foolishly) had a 3-1/2* grade entered for him at an earlier term, that student can tell the interviewing prospective employer that he has received nothing but A's at Michigan and, assuming he enters a higher grade later, that his recorded grade has improved subsequently. You'll note also that this system satisfies all of the criteria which I set forth at the beginning of this memorandum. It provides an incentive for the student to work hard and achieve the highest possible commendation in a course. It rewards those who do well by permitting them, based upon their relative class standing, to achieve at an early date the A****1/2* accolade and thereafter "learn for learning's sake" without the demeaning requirement that they grub for grades. It still permits the selection for *Law Review*, Book awards and the like. Further, it makes it incumbent upon a student to continue to work hard until he receives the A****1/2* grade and thus we can be sure that students will be working hard in every course until, perhaps, at least the fifth semester. Thereafter, since all of our students will have jobs lined up, the students should be permitted in their senior year to "learn for learning's sake" and this ties in with the criteria set forth in the Curriculum Committee memorandum. A bit of reflection will indicate that each criterion of an optimum grading system as earlier delineated has been met.

We realize that the recent Faculty action (1972) took a major step toward the system we recommend but . . .

The moral: It takes "COURAGE" to make a complete "ASS" of the grading system!

A.N.P.

MEMORANDUM

To: The Faculty
From: Alan N. Polasky
Re: Ad Hoc Committee on Grading Standards et al.—Report of December 9
December 13, 1968

The Committee, and its supporting memoranda, once again raised the question of the desirability of further raising our grade norms, pointing out that at Harvard at least 80 percent of the students will, under revised grading procedures, achieve a B average or better. The suggestion once again (as it has been in prior years) is that our grading norms be raised so that our students may compete on at least an equal basis with their peers at Harvard and perhaps other law schools. Our response in the past has been to rather significantly increase the percentage of A's and B's in each class and, in addition, we have added the B+ and A+ grades which also tend to increase class averages. It should not take a great deal of study to ascertain that, in the light of the experience of the past five years or so, the "grade point race" has escalated. Rather than revise the numbers of A's, B's and C's as we seem to do periodically, I would suggest (and this is simply a renewal of a suggestion made a number of years ago) that we avoid the periodic and traumatic experience of attempting to "change the grading system" by doing the job effectively once and for all.

The solution, it seems to me, is perfectly clear. At the present time, prospective employers are not given the student's class rank and the student himself may appropriately plead that he does not know where he stands in the class. If we would simply institute a system of grades as follows:

A++
A+
A
A−
A−−

we would have the uniquely happy situation that any of our students could interview a prospective employer and say, in all candor, that he did not know his present rank in the class but that he could assure the employer that he had received nothing but A's during his time at the University of Michigan Law School. Assuming that we give no grades higher than gradations of "A" (and you will recall that this faculty rejected the proposal for the "eagle" and "double eagle" several years ago), then we have certainly gone as far as is reasonably possible in assuring the student of top competitive position in seeking employment. This system should make it unnecessary for us at two or three year intervals to revise our grade systems upward in order to match the "Harvard scale."

Roger Cramton's memorandum pointed out that some students would like to see fewer grades and others make an argument for finer gradations in the grading process. You will note that the present proposal adapts itself admirably to either of these alternatives. For example, if fewer grades are desired, it would be possible to drop either the A+ or the A− grade, or, indeed, both. If, subsequently the A−− grade proved to be a source of embarrassment and psychologically disturbing to the student who received one, this grade too could be dropped. Of course, this might result, as is easily foreseeable, in the "A" grade becoming a source of distress to the student who had hoped for the other (and higher) grade of "A++" and it may be that ultimately we will pass to that most perfect of all worlds where all of our students achieve the A++ grade. Naturally, some instructors will want to reward the "superior" paper and it may be necessary to add an A+++ grade for those purposes, but clearly that problem can be met in the future if necessary. At the very least, the present proposal has the merit of anticipating future developments by several years and, consequently, curtailing the amount of faculty time, effort and turmoil to be expended in debating "creeping grade-ualism" (as we might term more frequent revisions of the grading system).

Obviously, any suggestion that the Berkeley system be considered is inappropriate at this time because (a) it was originated at another school and not here, (b) it has not been sufficiently tested even at Berkeley, and (c) it has not been tested here and obviously should not be tried even as an experiment until some means has been devised of testing it as an experiment first.

A.N.P.

MEMORANDUM

To: The Faculty
From: Committee on Reappraisal for Advancement and Promotion
Re: Point System Borrowing Procedures
April 22, 1966

Your committee recognizes that a given professor, who has had a disappointing year (little ESP production) may wish to put forth increased effort in the succeeding year. The system as originally proposed does, however, erect substantial barriers to effective recovery efforts; a man desirous of increased production may find himself badly handicapped by an inadequate office, little or no secretarial service and curtailed research funds through his inability to utilize prior point accumulations. Since it is in the best American Tradition to encourage the downtrodden, the drop-out, the handicapped and the like to improve their positions through their own efforts and since we have recognized that even criminals are entitled to rehabilitation and bankrupts to a second opportunity free of the taints of prior failure of effort, your committee proposes the following three (3) point program.

1. Point Loan Proposal:

In any given year, prior to May 1 "Auction Day," any member of the faculty may apply for the "loan" of up to 100 points or 65% of the average points earned in his three most productive years, or the average points earned in the immediately preceding ten year period (adjusted under paragraph (b) for leave and released time), whichever shall be lower, but provided that in no event shall the loan be less than 15 points for assistant professors, 12 points for associate professors and 10 points for full professors. Award of 15 points or less shall be automatic and award of amounts in excess shall be

made by the Loan Committee upon concurrence of a majority of the committee. Loan points shall bear 6% point interest—e.g. 50 points borrowed shall be repaid in 53 points at the end of the year on a one year loan, provided, however, that points in excess of 30 points may be amortized over a three year period (with privilege of earlier repayment on any annual point day, without penalty but requiring full payment of 6% point interest per year—simple interest).

Recognizing that the loan privilege is susceptible to possible abuse (though it seems somewhat unlikely), borrowed points may not be used for faculty salary increment bids but are strictly limited to bids re offices, secretarial service units and research funds. Further, no bids may be made for faculty salary increment until all loans, including accrued point loan interest have been repaid in full.

2. Voluntary and Involuntary Intellectual Bankruptcy:

Further, since a situation may arise in which outstanding point loans prevent further application for point loans under the above procedures due to unforeseen circumstances, but not including intellectual dishonesty (fraud or fraudulent transfer of point service utilization), each faculty member may apply on IB Form 73 for Voluntary Intellectual Bankruptcy (see procedure outlined in Kennedy supplemental memorandum).

When loans shall be in arrears for the specified period and the individual is in default on the point loan repayment schedule and the points owed shall exceed the estimated points accumulated in the year to date and there shall be no Point Bank Credits (see next paragraph) to the individuals credit, the Intellectual Bankruptcy Committee of the Faculty (composed of those members of the faculty with special talents in the intellectual bankruptcy area) shall, upon motion of any member of the faculty (upon clearance with the Personnel Committee and the Curriculum Committee) file a motion for declaration of involuntary intellectual bankruptcy. If such petition shall be sustained by the findings of a special three man committee appointed to audit the situation, the individual involved shall be:

(1) censured
(2) barred from leave for a period of 14 years
(3) given a double load of committee assignments
(4) work out his sentence—in point deficit units through additional counseling hours and committee assignment hours and in such further manner as the Dean shall designate.

3. Point Bank—Establishment and Interest Rate Policy:

Further recognizing the need for a more refined procedure to accommodate the gap between production and needs in a given academic period, your committee recommends creation of a Point Bank. Any individual may, instead of utilizing accumulated points in the ensuing academic year, deposit all or any part of such points in the Point Bank. Quite apart from its compatibility with values in the best American Tradition, the utilization of the Point Bank will encourage INSURANCE against the possibiilty of seven bad years following seven good (wise provision against a rainy day) and will further furnish some relief against the pressures on available resources in times of strain. To facilitate this Point Bank utilization to regulate the intellectual economy, in a manner similar to that employed by the Federal Reserve Board in fiscal matters, the Point Bank deposits shall bear interest at a rate to be set, from time to time, but not subject to reduction during any academic year but only on May 1 by two weeks prior notice by the Dean in consultation with the Research Committee. Interest rates may thus be regulated to encourage saving of points when fiscal and service resources appear in danger of strain due to over-heating of the intellectual climate, or to spur efforts when the intellectual level appears in need of a boost. Further thought is being given to adoption of an Intellectual Investment Credit (a spur to investment of points when needed), but this proposal is still being worked out.

Respectfully submitted,

Committee on Reappraisal for
Advancement and Promotion

MEMORANDUM

To: Committee on Space Requirements
From: Committee on Reappraisal for Advancement and Promotion
Re: Relationship of space program to the previously outlined Extended System of Points (ESP) proposed by the Committee on Reappraisal for Advancement and Promotion.
April 20, 1966

You will recall that the "point system," to use its common name, provided a method for objective evaluation of faculty performance to be used as the basic criteria for advancement in rank. You will also recall that, in response to a desire on the part of some faculty members for greater participation in the decision making processes, the proposal was amplified with a view toward accommodating the greatest possible participation by the individual faculty member in selected policy determinations affecting him.

Briefly, the "point system" would serve as a basis for the allocation of available funds for salary increment, available secretarial services, research funds available under the Cook Fund and office space. To refresh your recollection, consider the illustration used of a man who had 97 points accumulated during the fiscal year 1966-1967 (the fiscal year being from May 1st to April 30th for purposes of point accumulation). The individual will make his own thoughtful decision as to the appropriate allocation of points in view of his particular scale of values and needs. For example, he may decide that he would like office no. 973. Since all faculty members are free to bid all or any part of their available points on any single office at the annual "auction," our professor may decide that he would like to bid 18 points on office 973. All professors are required to submit sealed bids, following the usual governmental bid procedures, to the Dean prior to May 1st. At a ceremony duly supervised, similar to safeguard procedures followed in a Chicago City election, the bids will be opened by the Dean and grouped according to offices bid upon. The man bidding the greatest number of points for any given office will be en-

titled to that office. Of course, if a man has a favorite office, he must also consider the possibility that others may bid for his present quarters and accordingly he must submit the highest bid on that office if he is to retain it.

In similar manner, you will recall, a man may allocate all or a portion of his points to the area of "salary increment." Again, on May 1st, the Dean will open all bids for salary increment and will, when the total salary increment available for the year becomes known, divide the total number of compensation increment points into the number available dollars, thus determining the salary increase of each individual for the coming year. Similar procedures will be followed with respect to points bid for research funds and for secretarial time. (In the latter case, of course, the total number of points bid for secretarial services during the coming year will be divided into the total number of estimated Secretarial Service Units and each individual, having been allocated his assigned number of Secretarial Service Units may then apply them in an appropriate manner. (See Supplemental Memorandum on Utilization of Secretarial Service Units.)

As you will observe, this system is designed to avoid problems arising from subjective judgments made by deans, administrators, or even faculty committees. It maximizes the best of our American Tradition by leaving strictly to the individual the achievement of his own goals (in terms of the four categories) on a strict merit basis. It should make it unnecessary for the Dean to engage in subjective evaluations or the painful task of individual consultation with unproductive faculty members; indeed, while accommodating itself within the system of tenure, it nevertheless constitutes a valuable rein on abuse of tenure. For example, a man who is relatively unproductive in a given year may find that, through his own dereliction, he will not fare happily in the allocation of salary increment, office space, secretarial help, and research funds. (Victims of Temporary Adversity will be afforded relief through operation of the Point Bank and the Point Loan Bank—see supplemental memorandum.) Conversely, the "productive scholar" will reap the reward of his efforts. In an age when both status and inflation bulk large, even the most callous of TA's (Tenure-Abusers) will have to consider the effects of continuation of their past policies.

With this in mind, you can understand our Committee's reluctance to endorse the recent proposal of your ad hoc Committee. I'm sure that a bit of reflection will indicate that it is not in accord with that of our Committee on Reappraisal for Advancement and Promotion and we would suggest that you might withdraw your proposal or, perhaps, modify it to bring it into accord with the proposal which we have outlined above.

Respectfully submitted,

Committee on Reappraisal for
Advancement and Promotion

MEMORANDUM

To: The Building Committee and The Faculty

From: ACCORD (Advisory Committee Concerning Our Redesigned Domain)

Re: Building design to accommodate equality concepts.

October 2, 1973

Historical Note: You will recall that various law school committees struggled personfully to resolve the difficult issues posed in developing an appropriate, fair method of assigning office space. This culminated in the memorandum of April 20, 1966 from the Committee on Reappraisal for Advancement and Promotion, proposing utilization of the "Point System" for assignment of office space (among other things). While the intrinsic merit of that latter proposal, and the tremendous amount of time and serious consideration that went into its formulation, has never been formally recognized by this faculty, recent proposals by other faculty members on this and other campuses suggest that it may indeed rise to confront this faculty again in the not nearly enough distant future. Meanwhile, a makeshift policy of assigning office space has failed to totally eradicate the unseemly scramble for desirable office space, to say nothing of the confusion engendered. It seems essential, therefore, that any new building be designed to avoid such problems.

Proposal

Your committee has given earnest thought to the problem, and has even journeyed at personal expense to campuses such as Illinois and Florida where new law school buildings have incorporated the principle that all faculty offices should be of the same size and design. The Florida plan, however, suffers from the fact that some offices are on the North and some on the South side of the building—thereby creating obvious differences and degrees of desirability, and the easily envisoned resultant problems. While Illinois, wisely, built all offices facing South, it nevertheless has problems created by the fact that views over trees (or lack of trees) offer differing vistas and desirability, *plus* the fact that certain offices have, collectively or separately, greater propinquity to *the water cooler, or the restroom, or the Dean's office or* the elevator.

To avoid this problem, your Committee proposes that the new building shall be built around a central core structure which will house the water cooler, the "johns," the Dean's office (as well as other administrative offices), the elevator and the Faculty Library. Built to revolve around this central core will be a rotating circle containing equal (pie-shaped) faculty offices. This "outer circle" of faculty offices will revolve (approximately once every 80 minutes for the full circle) around the "Central Administrative Structural Edifice—commonly known as the "Case" and the "case method" will thus be effectively confined to the administrative and library functions (as distinguished from teaching personnel). Equality (to the extent achievable *in an imperfect world*) will be attained by assigning each faculty member equal office space, with equal access to the water-cooler, 'johns" (or "janes"), "Deans office" and elevator (and perhaps the Committee might give consideration to the question of whether the sequence should permit access to the Dean's Office before the "john" thus permitting a somewhat more logical progression).

The proposal is not entirely free of difficulties which can be suggested by any law faculty—but it is suggested that at least it represents an innovative turn for the better. Recognizing that the needs of the various faculty members may vary, space may, perhaps, be assigned (or the turns programmed) to recognize priority needs in various areas. Further recognizing that the present

system does have the one advantage of frequently shuffling faculty and thus preventing formation of cliques among those dwelling in close proximity, our architectural consultants tell us that it would be possible to construct the "pie-shaped office wedges" so that they could be randomly shuffled and reassembled overnight with no loss of faculty time and at relatively little cost. Certainly the cost would be far less (in view of personalized Wolfson expenditures on an office) than under the present "shuttle" system.

We are not unaware of the possibility that our proposal will result in the accusation that we are suggesting "shafting" the Dean—but so it goes.

Respectfully submitted,

Committee (etc).

Resolution of the U-M Law School Faculty on the Death of Alan N. Polasky

Alan Norman Polasky, Professor at the University of Michigan Law School, died suddenly on July 22, 1976 at age 52. Having come to Ann Arbor in 1957 after training in accounting and in law at Iowa and teaching experience at Northwestern and Yale, he had been a dynamic member of the Michigan faculty for nineteen years.

More than most, the life of Alan Polasky is hard to capture in words. The variety of his interests and skills and the many facets of his personality gave his life memorable impact on his school and on his profession.

Blessed with a quick mind, Alan brought to his work a concern for exactness and detail. Given this bent, it is not surprising that his service in World War II was that of a B-24 navigator, that his collegiate training and first professional experience should be that of an accountant, and that his specialties in the law included taxation, estate planning, and accounting. Highly skilled in all his fields, his principal eminence was in estate planning. As his colleagues, we all benefited by the distinction he brought to himself and to his school.

In the pursuit of his professional interests, Alan was a driven man. Few law teachers have been more diligent in the discharge of their academic duties. But his great activity extended beyond the law school environment. A nationally known lecturer, he addressed meetings and conferences from coast to coast. No group was too small, no location too remote for him to agree, gladly, to make a speech on pour-over wills or on some labyrinthine provision of the Internal Revenue Code. And if a moderator failed to keep a program on schedule, leaving Alan, the climactic speaker, with an abbreviated time, Alan simply used his rapid-fire delivery to present the hour-long speech in the fifteen minutes granted him. However work-burdened he was, he came alive on his speaking trips.

Alan had an enormously active and inventive sense of humor. Many among us, even after twenty years with him, were still uncertain as to whether a particular proposal or piece of news was offered seriously or in jest. A collector of anecdotes and inveterate punster, Alan created intricate spoofs that were classics, such as his proposal of, and elaborate justification for a regressive tax system.

In keeping with the popular image of creative people, Alan kept a disorderly office. A collector of books, journals, reprints, and advance sheets that might—somehow, someday—be of some use in his work in evidence, or in estate planning, or in income taxation, or in accounting for lawyers, he created pile after mountainous pile of papers. As legendary as was the disorder, equally legendary was his ability to retrieve a desired item when a colleague asked for it.

An important measure of a man's life is the extent to which he has served others. In addition to Alan's training of thousands of students, he was active in professional organizations (for example, having served as Chairman of the American Bar Association's Section on Real Property, Probate and Trust Law), in the cause of law reform (he was consultant to the American Law Institute's estate and gift tax project which led to the major revisions of that area in the Tax Reform Act of 1976, and he testified before Congress on numerous statutory proposals), and in continuing legal education (he was a frequent faculty member of the National Trust School, Practising Law Institute, and Michigan's Institute of Continuing Legal Education, to name a few).

Alan gave of himself unstintingly. He cared about his students, whether they were undergraduate law students or experienced practitioners at a conference. After formal sessions, he liked to gather with small groups over coffee and continue a wide-ranging discussion.

Generous and good-hearted, he was also vulnerable. The student disaffection in the 1960's troubled him greatly. Indeed, the sense of rejection that he felt explained the frequency with which he refreshed himself with practitioners, whose language he spoke and whose problems he understood as well as any American law teacher.

This humane man, this brilliant man, this superbly professional man, this complex and useful man enriched our lives and served our school with high distinction. We are poorer without him. But we are rich in his memory and grateful for his life and his influence on us all.

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