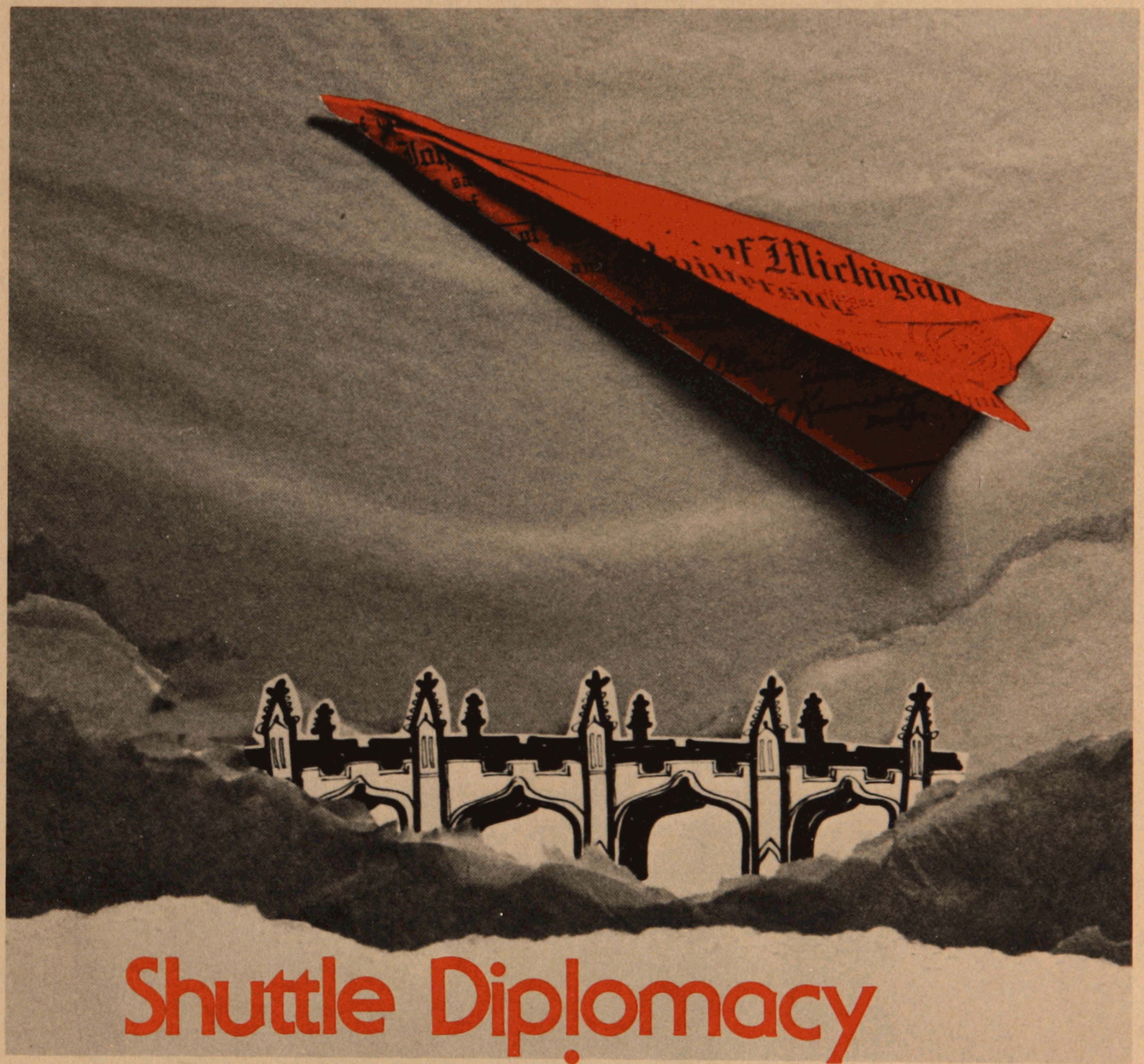
Law Quadrangle Notes

The University of Michigan Law School

Volume 24, Number 1, Fall 1979



Shuttle Diplomacy in Social Revolution

Law Quadrangle Notes

Vol. 24, No. 1 Fall 1979

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Law Quadrangle Notes (USPS 893-460), issued quarterly by the University of Michigan Law School. Second-class postage paid at Ann Arbor, Michigan. Office of publication, 409 E. Jefferson, Ann Arbor, Michigan 48109. **SEND FORM 3579 TO:** Law Quadrangle Notes, Law School, The University of Michigan, Ann Arbor, 48109.

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Photo Credits: John Elam, 2, 4, 5, 7, 8, 23, 24, 29; Bob Kalmbach, U-M Information Services, 1, 6, 9, 12, 18, 22; World Wide Photo, 10 (Kearse).

briefs

First Annual Alumni Reunion And Law Forum May 29 To 31

May 29, 30, and 31 are the dates selected for the first annual U-M Law Alumni Reunion and Law Forum.

This completely new event will be sponsored by The Lawyers Club, and the planners are promising a weekend that will be, as the name suggests, "both an exciting and valuable learning experience and a warm and rewarding social event," according to Prof. Roy Proffitt, director of Law School relations.

"Returning alumni will have the opportunity to socialize with their friends, former classmates, and the faculty, and to attend a series of informal lectures and discussions by faculty, alumni, and distinguished outside speakers on national issues relating to the law," says Proffitt.

Proffitt emphasizes that the program is being planned as a reunion for all classes, and that the entire body of 12,500 alumni and their families are invited.

"However, in this and in subsequent years, class leaders and those who have been involved with previous reunions for the several classes having a five-year anniversary of their graduation will be invited to use the annual reunion as the occasion for their individual class reunions. Law School and Michigan Alumni Association personnel will be available to assist those classes in arranging any separate receptions, dinners, dances, or other events that are desired," according to Proffitt.

Because this will be the first annual program of this type, final decisions about some details must wait until the planning committee has some idea of the turnout that can be expected. To help the committee, alumni are asked to indicate their interest in attending the reunion on the card inserted in this issue of "Law Quad Notes" and to return it to the Law School.

Among events tentatively planned:

On Thursday, May 29, an informal open house for alumni and faculty will be held in the Lawyers Club lounge, where participants can socialize, have cocktails, and make plans for dinner or shopping; on Friday, May 30, there will be daytime forums featuring faculty and alumni speakers, and a group luncheon with a keynote speaker; on the evening of May 30 a number of separate class dinners will be held, as well as a dinner party for those not attending separate class functions; on Saturday morning, May 31, U-M Law Dean Terrance Sandalow will preside at a forum dealing with changes in the legal profession. This will be followed by a final luncheon in the Quad or the dining room of the Lawyers Club.

"The planning committee is confident that the content and scope of the forums will clearly qualify for tax deductibility for the attorneys who attend," says Proffitt.

Golf, tennis, the several University museums, and other U-M facilities will be available to alumni. Families with children who are considering attending the U-M are encouraged to bring them. Representatives of the University Admissions Office will be available. Proffitt notes, too, that "the end of May is a beautiful time of the year in Ann Arbor." Accommodations are being reserved at area hotels.

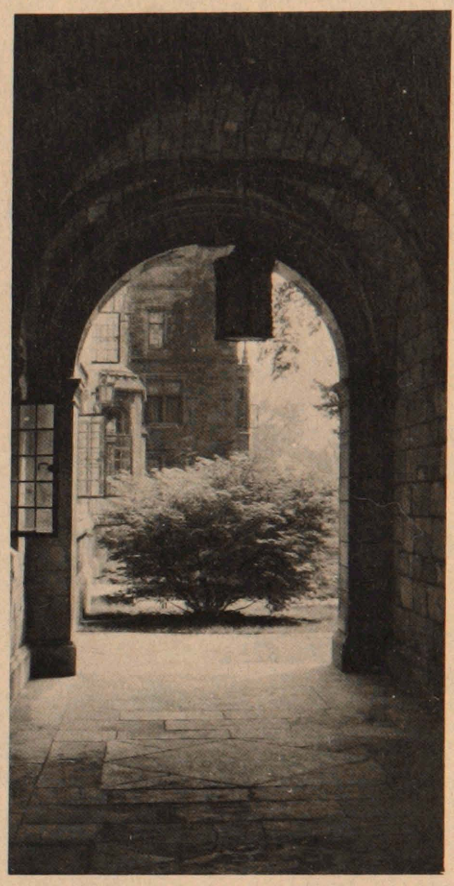
Additional details, such as speakers and their subjects, the cost of meals, information about room reservations, etc., will be announced as soon as possible, says Proffitt.

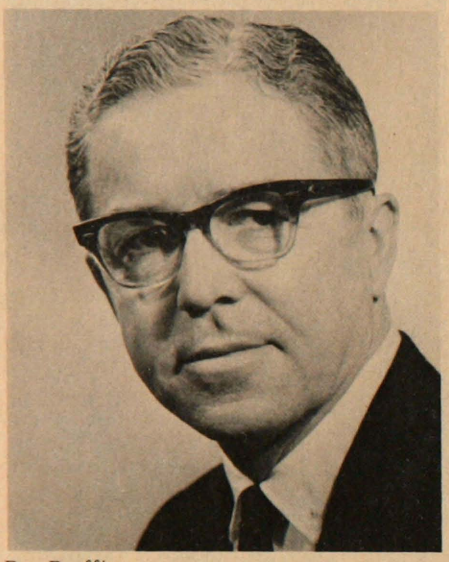
"The Lawyers Club" Is Name Of New Alumni Body

The University of Michigan Lawyers Club, since 1924 the on-campus residence for thousands of U-M law students, has taken on an added significance: it is the name chosen for a newly activated U-M law alumni body.

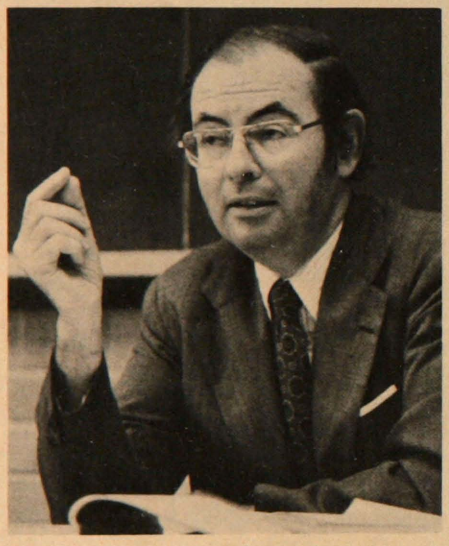
The Lawyers Club has now become an "affiliated group" with the University's main alumni body, the Michigan Alumni Association, notes Roy Proffitt, director of Law School relations. This is in keeping with policies of the Michigan Alumni Association, which in recent years has promoted the formation of separate school and college associations.

Explaining why the name "The

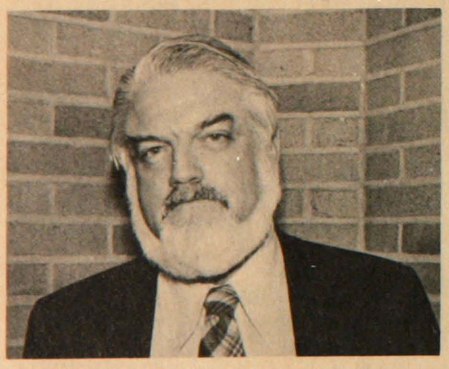




Roy Proffitt



Yale Kamisar



Andrew Watson

Lawyers Club" was chosen, Proffitt says that "during the early 1960's, in order to make sure that the students who did not live in the Lawyers Club would feel welcome at all of the activities that took place there, the organization of The Lawyers Club was changed so that every student in the school became a member, and upon graduation became a life member.

"At the same time, every alumnus was notified that he or she henceforth and forever more was a lifetime member of The Lawyers Club.

"When we started thinking of affiliating with the Michigan Alumni Association," says Proffitt, "we did at least have an existing organization to which every alumnus belonged, whether or not he or she knew it, and we had an organization with an established officer structure. And, of course, naming the organization 'The Lawyers Club' highlights a Law School facility familiar to all alumni."

In the past the principal responsibility of the board of governors of The Lawyers Club—which includes alumni, students, and faculty—has been supervision of the financial management of the club and other matters relating to student housing. But now, says Proffitt, "new and different undertakings are anticipated."

The board, through its president, Frank Jackson, '73, of Detroit, has announced that it would welcome "ideas, suggestions, and an indication of a willingness to be involved" from alumni. Letters may be sent to Jackson in care of the Law School, Hutchins Hall, Ann Arbor, Michigan 48109.

As an "affiliated group," The Lawyers Club is entitled to have one of its alumni serve as a director on the board of directors of the Michigan Alumni Association. Paul Campbell, '54, of Cleveland, served briefly as the club's first director nominee, but because of other commitments resigned. Starting in October, 1979, Prof. Roy Proffitt (J.D. '48, LL.M. '56) serves a three-year term as director.

Yale Kamisar Named To Henry King Ransom Professorship

Yale Kamisar, widely known constitutional and criminal law professor at U-M Law School, has been appointed to the school's Henry King Ransom Professorship of Law.

The appointment, beginning Sept. 1, was approved by U-M Regents in the spring. The newly established professorship carries an annual stipend and is supported by an endowment created by Henry K. Ransom, U-M professor emeritus of surgery.

"Prof. Kamisar is one of the nation's leading authorities in the fields of constitutional law and criminal procedure," said U-M law Dean Terrance Sandalow. "He has written important articles on search and seizure, wiretapping and electronic eavesdropping, and the right to counsel. His special interest, however, has been police interrogation and confessions, and he is widely regarded as the nation's pre-eminent authority on the subject."

Dean Sandalow noted that Kamisar "has also contributed significantly to the on-going public and scholarly debate about euthanasia (mercy killing). His definitive article on the subject, written more than 20 years ago, has become a classic. In the past three years alone, it has been reprinted in five different anthologies on death and dying, social ethics, and bioethics."

In 1977, *Time* magazine named Kamisar one of the nation's ten outstanding "mid-career" law professors who "shape the future." Recently, the John Jay College of Criminal Justice (CUNY) and the University of Puget Sound awarded him the honorary degrees of doctor of laws in recognition of his significant contributions to constitutional criminal procedure.

A member of the U-M law faculty since 1965, Kamisar is co-author of leading casebooks on constitutional law and criminal procedure. His newest work, *Police Interrogation and Confessions: Essays in Law and Policy*, which includes a selection of his writings on the subject since the early 1960's, is scheduled to be published next June by the University of Michigan Press.

From 1965 to 1974, Kamisar was an adviser to the American Law Institute's Model Code of Pre-Arraignment Procedure Project. From 1971-73 he was co-reporter for the Uniform Rules of Criminal Procedure Project of the National Conference of Commissioners on Uniform State Laws.

He has also served as an adviser to the National Commission on the Causes and Prevention of Violence and as a consultant to the National Advisory Commission on Civil Disorders.

A graduate of New York University

and Columbia University Law School, Kamisar served on the University of Minnesota law faculty for six years before coming to Michigan.

Dr. Watson Stresses Ethics, Emotions In Lecture Series

The doctor who possesses an old-fashioned "bedside manner" is a rare commodity today.

Equally rare are lawyers who deal with the emotional well-being of their clients, in addition to the cold, objective facts of a case.

So says a University of Michigan psychiatrist who points to deficiencies in education and professional group attitudes which fail to emphasize the humane, ethical, and interpersonal aspects of the law and medical professions.

"Both doctors and lawyers have great conflict about looking at information relating to emotions," says Dr. Andrew Watson, a practicing psychiatrist who holds professorships at both the U-M medical and law schools.

Thus, he says, it has been difficult to initiate programs at law and medical schools in which serious consideration is given to psychological aspects of professional ethics, or to create support for performance standards which provide feedback to professionals.

Dr. Watson discussed these questions in delivering the 1979 Isaac Ray Lectures at the University of California, Berkeley. He is recipient of the American Psychiatric Association's Isaac Ray Award which is given for "outstanding contributions to better understanding between psychiatry and law."

The U-M psychiatrist is involved in a program at U-M Law School in which mental health professionals teach law students, helping them focus on ethical and other professional problems which are likely to arise in their legal careers.

Noting the absence of peer "feedback" within the law and medical professions, Dr. Watson observes that even though performance standards and ethical values "are internalized over the long run of a person's professional career, they need to be constantly reinforced.

"Failure to do so risks the possibility of a person falling back to the less complex, more instantly satisfying activities of self interest and pleasure."

Dr. Watson says that in both professions, there are major loopholes in grievance procedures, largely due to the resistance of colleagues to report unprofessional behavior.

"The working assumption of ethics or grievance committees is that complaints will be filed by either the aggrieved or by fellow professionals. It is my impression that most of the complaints are filed by dissatisfied consumers. Unprofessional behavior must reach a very high level before it will be reported by colleagues.

"Both these sources of reporting are psychologically demanding upon the person who would file, and probably many people also begin with a presumption that the grievance committee will be defensively resistant toward them."

Dr. Watson suggests that a challenge for the professions is "to find a way to positively reinforce the reporting behavior. . . . Such persons must know the group not only approves of their behavior but actively solicits it."

Within professional schools, professors are reluctant to tackle questions of professional ethics, and courses on the subject are often not given serious attention by faculty, says Dr. Watson.

"I have long argued that failure to deal with these kinds of ethical conflicts when they arise in the classroom is to give the tacit message that the instructor does not think them important.

"Students are intensely concerned about these conflicts, especially in their early years of training. They know at least intuitively that such conflicts will be very difficult to deal with in practice and they wish almost desperately for guidance. They become anxious when these situations are encountered and if they do not learn to cope with them cognitively, their defensive resolution may well take the form of callous indifference."

Dr. Watson cites a number of trends in the legal and medical professions—such as increased specialization, advertising, and the practice of "defensive medicine"—reflecting a growing distance between the practitioner and the public, and contributing to a feeling of alienation on the part of many clients and patients.

For example, although "professional corporations" are supposedly established as a means of tax sheltering, Dr. Watson observes:

"It is tempting to speculate that other factors may foster this trend to identify profession as business, such as feeling at risk much of the time, and losing the kinds of emotional satisfactions which traditionally flowed from being a doctor or a lawyer."

Dr. Watson says that, in his view, efforts should be made by the professions themselves to repay consumers in the case of malpractice or negligence.

"One way that a profession can demonstrate its intention to safeguard its consumers is by establishing a fund to reimburse those who have suffered loss through malpractice or incompetence. Thus, the professional group indemnifies itself as a matter of group responsibility.

"This action says to the consumer population that, 'We care enough about you to see to it that your losses are compensated, and will take the initiative ourselves.' "

Harry Edwards Chairs Board Of Amtrak

U-M law Prof. Harry T. Edwards has been elected chairman of the board of Amtrak, the National Railroad Passenger Corp.

The appointment, announced in April, is for a term continuing through July, 1980. While assuming the post, Edwards will continue his teaching duties at U-M Law School.

Edwards succeeds Amtrak chairman Donald P. Jacobs, dean of the Graduate School of Management at Northwestern University.

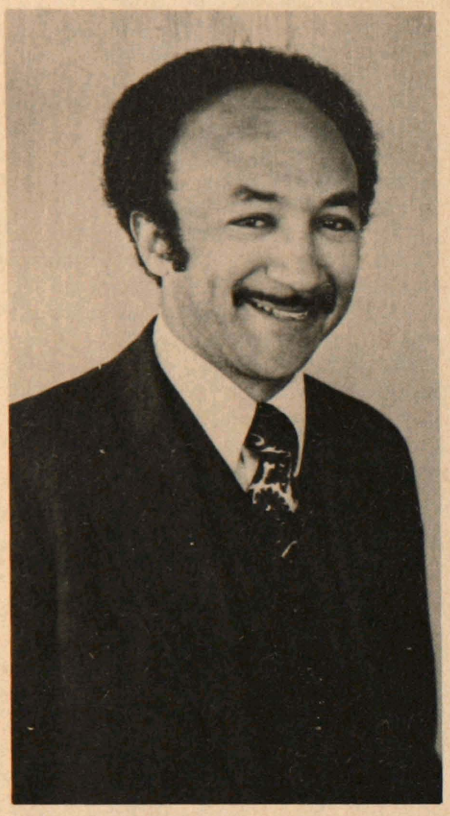
Since 1977 Edwards has served as one of seven members of Amtrak's board of directors who are appointed by the President. A total of thirteen serve on the board.

A member of the U-M law faculty since 1970, Edwards is a specialist in labor law with long experience in arbitration cases.

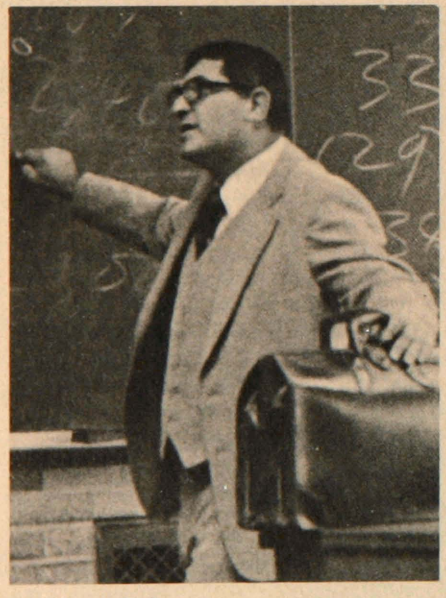
He has served as vice president of the National Academy of Arbitrators and as a member of the board of directors of the American Arbitration Association.

Edwards' books include *The Lawyer as Negotiator* and *Labor Relations in the Public Sector.*

Edwards graduated from Cornell University in 1962 and received his law degree from Michigan in 1965. He



Harry T. Edwards



Douglas A. Kahn

recently received Cornell's eighth annual Judge William B. Groat Alumni Award honoring his work as "teacher, lawyer, writer and labor arbitrator."

He worked for five years with the Chicago law firm of Seyfarth, Shaw, Fairweather & Geraldson before joining the Michigan law faculty.

"Three-Casebook" Barrier Broken

A very few law professors—probably fewer than a dozen—have authored or co-authored three different casebooks.

Since 1978, U-M law Prof. Harry Edwards has been a member of this elite "three-casebook club" (along with U-M Profs. Olin Browder, Lawrence Waggoner, and James White).

In the fall of 1979, Edwards broke the "three-casebook" barrier by publishing a fourth work: *Higher Education and the Law* (with Prof. Virginia Davis Nordin of the University of Wisconsin).

So far as is known, Edwards is the only law professor in the nation with four casebooks to his credit.

According to the preface, the new Edwards-Nordin book, published by Harvard's Institute for Educational Management, "is really about 'the law' as it affects the higher education community" and is designed to be useful to both students and practitioners. The book is divided into four parts: "The University and College as a Legal Entity"; "Faculty Rights"; "Student Rights"; and "Federal Regulation of Higher Education."

Edwards' other books are *Collective Bargaining and Labor Arbitration*, 1978 (with Leroy Merrifield and Donald Rothschild, both professors at the George Washington University National Law Center); *Labor Relations Law in the Public Sector*, 1974 (with U-M Prof. Emeritus Russell Smith and R. Theodore Clark, Jr. of the Chicago bar, a leading labor law practitioner); and *The Lawyer as a Negotiator*, 1977 (with U-M law Prof. James White).

Douglas Kahn Co-Authors Taxation Text

Corporate Taxation and Taxation of Partnerships and Partners, a newly published casebook by University of Michigan Prof. Douglas A. Kahn and Prof. Pamela B. Gann of Duke University School of Law, reflects a different pedagogical approach than that of other casebooks in the field.

The authors believe that "corporate taxation is best taught by requiring the student to apply relevant code and regulatory provisions to a given set of circumstances. Before requiring the student to perform that task, however, the student needs an overview of the structure of the tax provisions that bear on the problems in question. This need is especially great in the corporate taxation area where it is rarely feasible to examine only one code section at a time. Rather, it is necessary to consider a number of interrelated code provisions at the same time."

The authors have divided the corporate tax area into discreet subtopics. For each subtopic, the authors provide an extensive textual discussion, with extensive citations, and they have reproduced many edited cases and rulings. To lessen the burden on the students, the authors have provided their own brief statement of the facts for many of the reproduced cases, thereby eliminating much surplus verbiage from the students' assignment. The authors say that the "time and energy saved by the avoidance of reading long-winded statements of fact can be put to better use in a more intensive study of the statutory and regulatory language."

The Kahn-Gann book is not limited to the technical operation of the corporate tax law provisions. Many of the questions concern legal process and tax policy issues. Moreover, in many of the problems the student is required to plan transactions so as to achieve specified goals.

One chapter of the book is devoted to a discussion of economic and tax policies concerning such questions as whether corporate and personal income taxes should be integrated so as to eliminate (or minimize) the double tax incidence that is currently imposed. The final chapter of the book, comprising some 180 pages, deals with the taxation of partnerships and partners.

Allan Stillwagon Is Named Admissions Officer

Allan Stillwagon, who has been assistant to the director of the Honors Program at the U-M College of Literature, Science, and the Arts since 1972, has been appointed assistant dean and admissions officer at the U-M Law School.

"At the Law School, Mr. Stillwagon will be responsible for all aspects of the admissions operation," said U-M law Dean Terrance Sandalow.

"With the guidance of a faculty committee, he will select the incoming classes; he will supervise research into our admissions practices and will generally supervise the operations of the admissions office. In addition, he will have contact with admissions counselors on other campuses and visit those campuses in order to represent the Law School."

Stillwagon graduated with honors from the U-M in 1959. After receiving an M.A. with honors from Columbia University in 1961, he attended Michigan Law School in 1963-65 and has been a Ph.D. candidate in the U-M's Rackham Graduate School.

Stillwagon succeeds Roger Martindale who served as assistant dean and admissions officer since 1975. Martindale, a lawyer, recently accepted the post of assistant counsel at a life insurance company in Denver, Colo.

Westen Warns Of Medical Mistreatment In Prison

Imprisonment itself is often not the only form of punishment received by criminals.

"As a lawyer," notes U-M law Prof. Peter Westen, "I frequently see cases involving allegations of medical mistreatment in prison.

"Prisoners claim that they were denied pain killers on purpose because a prison official wanted them to suffer. Or that a prison physician amputated a limb unnecessarily—or refused to amputate a limb that was gangrenous. Or that a prison physician waited two hours before operating so that the patient would suffer a while."

Withholding of medical treatment in these circumstances may not be a product of sadism by prison physicians, but rather a product of the way society—including prison officials—view prisoners, observes Westen.

"Along with other prison officials, prison physicians may come to have low regard for a prisoner's humanity because the physician recognizes that the prisoner, by definition, is someone deserving of punishment," says the U-M constitutional law scholar.

One of the significant ethical questions facing prison officials, according to Westen, is whether the officials should intervene and force needed medical treatment on a prisoner who chooses to die.

Westen examined this question in a paper dealing with the following hypothetical situation: A woman prison inmate suffering from potentially fatal blood pressure refuses to allow the prison physician to administer life saving medical treatment. Should the physician intervene and force treatment?

This is an area not clearly covered by law, according to Westen, because existing laws often are not applied in the prison context.

"There are laws, both civil and criminal, that purport to regulate the responsibility of prison physicians for the life and health of inmates under their care. There are criminal laws, for example, against aiding persons to commit suicide and against punishing inmates by misusing (and withholding) medical treatment, and civil laws requiring physicians to take reasonable steps and precautions in ministering to the medical needs of inmates.

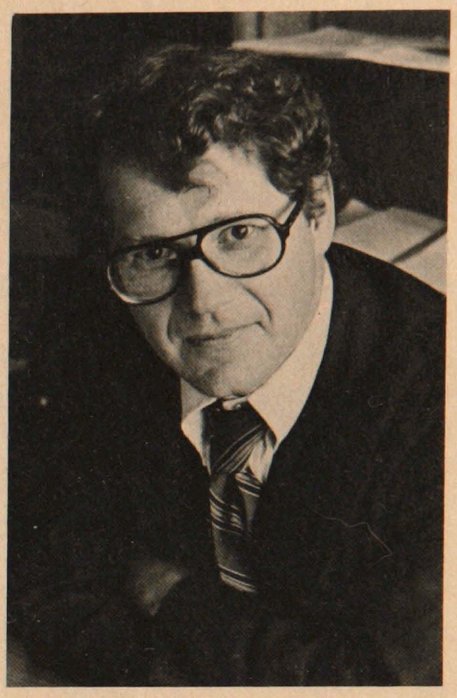
"But the brute fact," says Westen, "is that prosecutors rarely enforce these laws against prison physicians, and civil juries rarely impose civil liability."

Arguing in favor of intervention by the physician in the hypothetical case, Westen contends that inmates, placed in a childlike, dependent role in prisons, may not be ready to take "responsibility for life and death decisions."

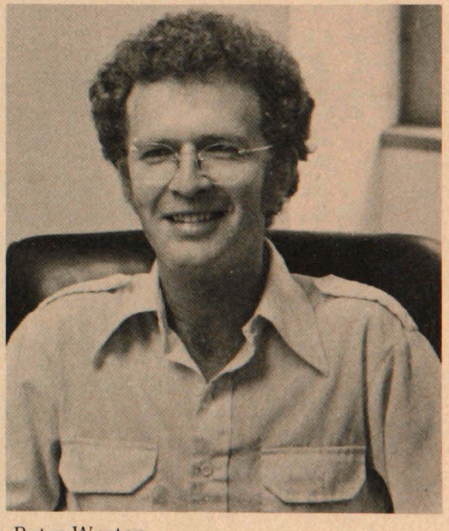
"I am prepared to assume," he says, that "if the woman in this hypothetical case were not in prison, the physician would have no obligation to intervene and force life-saving treatment on her, and would not be obliged to seek a court order authorizing him to save her life."

But incarceration presents a new dimension on the matter, says Westen:

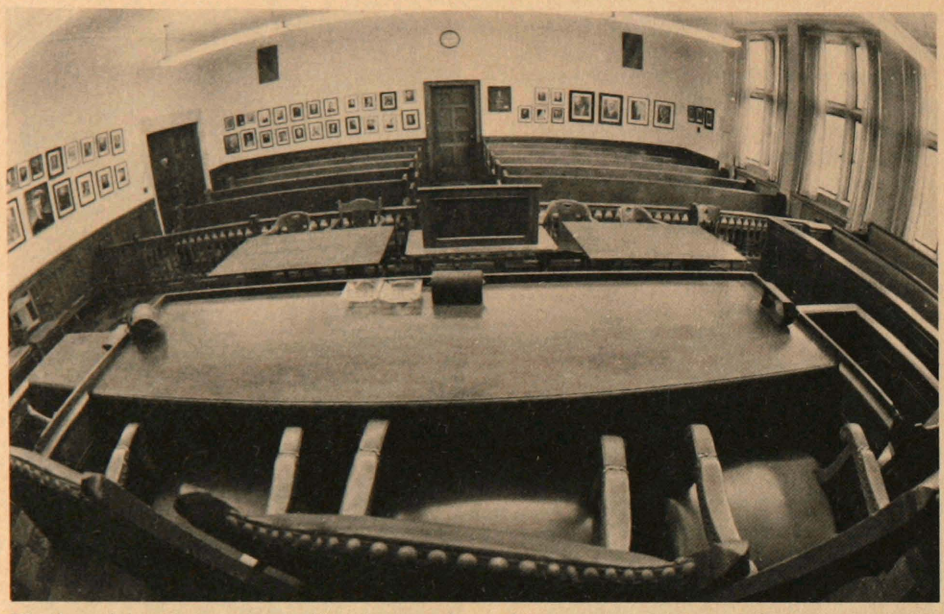
"Prisoners are persons who have been stripped of even the most elemental autonomy. They are not allowed to keep simple aspirin in their cell. If they want aspirin, they must seek it from a prison official; if the official decides to give it to them, they must swallow it in the official's



Allan Stillwagon



Peter Westen



The Law School's "moot court" room moved out of the "moot" status recently as an LEAA grant helped the 22nd Judicial Circuit move in—for real.

presence to ensure that they are not selling or misusing it. They are not allowed to keep thermometers in their cells because it is feared that they might use them as weapons.

"In short, we treat prisoners as we once treated slaves, and as we now treat children. We control everything they do—when they eat, what they eat, when they sleep, when the lights go on, what they see, what they read.

"Having denied this woman the autonomy to decide for herself whether to take aspirin, the prison cannot easily explain her present condition by saying she is free to do whatever she wishes with respect to life-saving treatment."

Medical intervention also seems justified, says Westen, in view of the possibility that prison conditions may have contributed to the woman's mental state prior to her refusing medical treatment.

"I am prepared to assume that she, alone, is responsible for her criminal conduct and for the necessary consequences of her criminal sentence, including any depression resulting from close confinement.

"But it is also possible that her state of depression is unnecessary and is caused by conditions for which society is responsible—such as improper diet, overcrowding, absence of opportunity for physical exercise, inadequate visiting privileges, lack of minimum levels of privacy, lack of medical staff, or lack of psychiatric care.

"If society is partly responsible for causing her predicament, it is also partly responsible for solving it."

Westen's paper was for a discussion on "Ethics, Humanism, and Medicine" presented by the U-M School of Public Health.

Moot Courtroom Loses Its "Moot" Status

One of the first jury trials conducted on the premises of a law school took place recently when visiting judge Roy J. Daniel of Berkley, Mich., presided over a breach of contract case at the University of Michigan Law School.

The trial, involving charges of breach of contract by two auto dealerships, took place in the Law School's "moot court" room on the second floor of Hutchins Hall—but the proceedings were far from "moot."

Since November, 1978, the Law School's moot court room officially has become an arm of the local circuit

court system, as part of a program involving a $280,000 grant from the federal Law Enforcement Assistance Administration (LEAA) to the state's 22nd Judicial Circuit in Washtenaw County.

The cooperative venture is designed to find a solution to the backlog of cases which has plagued the court system. Under the LEAA grant, the local judicial circuit can request visiting judges to try civil and criminal cases considered backlogged. Civil cases heard under the program are up to a year old, while criminal cases are considered backlogged after only 90 days.

Washtenaw Circuit Court administrator Terry T. Deinlein, who heads the new "crash" court delay elimination program, says the program requires the court to find extra space beyond the five courtrooms in the County Building. So far the circuit court had made use of the three district courtrooms in City Hall, the jury assembly room in the County Building, the district courtrooms outside Ann Arbor, in addition to the moot court at the Law School.

Because lockup areas and other facilities are not available at the Law School, the moot courtroom has been used only in civil cases.

Under the LEAA grant, $1,000 has been made available for refurbishing the school's moot courtroom, including such things as re-upholstering chairs, refinishing tables, and purchasing a new lectern for use by lawyers and an easel for visual displays.

Use of the courtroom is provided free of charge to the circuit court in exchange for the opportunity for law students to view the cases, which could be of educational value, notes Associate Dean James J. White of the Law School.

After one recent case, for example, visiting Judge Harry P. Newblatt of Flint provided a critique of the proceedings for the benefit of the students.

"Some of the visiting judges are very eager for the opportunity to try a case at the Law School," says court administrator Deinlein. "This is particularly true among judges who are graduates of the Law School. It offers them a chance to return to their alma mater and to interact with students in a quasi-teaching capacity."

The cases in the moot courtroom are not the first opportunity for law students to view court proceedings. Since the early 1960's, a closed circuit television hookup at the Law School allowed students to watch cases being held at the County Building. But unavailability of court dockets, unscheduled adjournments, and other problems led to waning student interest, says Associate Dean White.

By contrast, in the present program, the circuit court alerts the Law School whenever a case is to be heard in the moot courtroom.

White says he hopes use of the moot courtroom as an adjunct circuit court will continue in the future, provided that judges find the facility suitable and the shortage of automobile parking for jurors and other logistical problems do not present major obstacles.

Washtenaw County's program to reduce the case backlog appears to be working well, says Deinlein. For example, since June 1977, when the program was put into effect for criminal cases, 1,044 out of 1,061 pending criminal cases have now been closed.

The new program was begun largely through the efforts of Washtenaw Chief Circuit Judge William F. Ager, Jr. The steering committee for the program includes many people from the local community, including Associate Dean White of the Law School; Glynn Barnett, president of the Washtenaw County Bar Association; Herbert Spendlove, editor of the *Ann Arbor News;* Joe Matasich, editor of the *Ypsilanti Press;* the Rev. S. L. Roberson of the Metropolitan Memorial Baptist Church in Ypsilanti; Richard Walterhouse, chairman of the County Board of Commissioners; and Arthur Chettle, Michigan Supreme Court regional administrator in Flint.

Others who had been active were Meri Lou Murray, former chairwoman of the Washtenaw County Board of Commissioners; Melinda Morris, former president of the Washtenaw County Bar Association; and U-M law Prof. Theodore J. St. Antoine, former Law School dean.

Washtenaw County was one of four original recipients of the LEAA grants throughout the country. The other three areas were Middlesex County, Mass., Las Vegas, Nev., and Detroit.

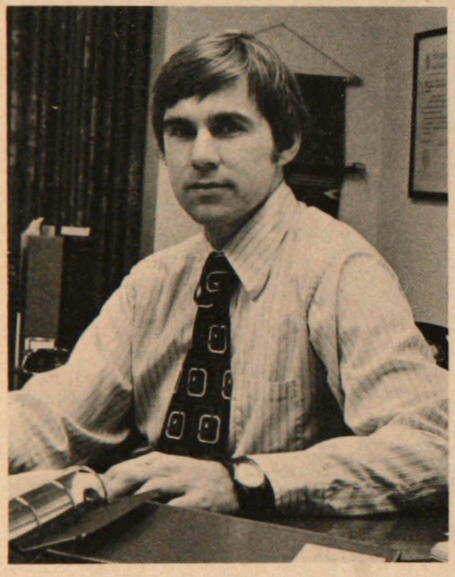
In addition, similar programs are now underway in Seattle, Wash., Washington, D.C., the Gulfport area of Mississippi, and Dupage County, Ill.

Choate Retires After 20 Years

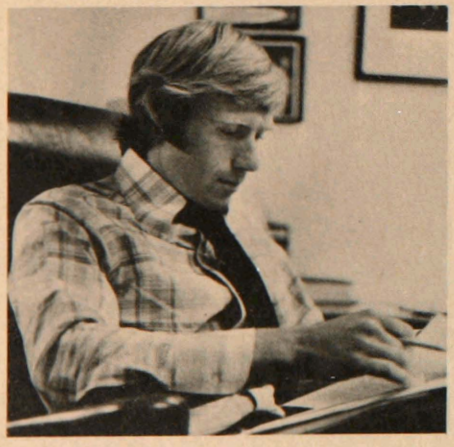
After 20 years of classes on patent law, Visiting Lecturer Robert A. Choate retired from active teaching this past spring and has assumed the title of lecturer emeritus of patent law.

Robert A. Choate

Henrietta Slote



Philip Soper



Lee C. Bollinger

A patent attorney in Detroit for more than 40 years, Choate said he would continue his full-time private practice with the firm of Barnes, Kisselle, Raisch and Choate. In addition, Choate said he plans to complete a supplement to his 1973 casebook on patent law.

"I just decided that 20 years was enough," Choate commented, noting that he stepped down to allow "a younger person to carry on." He added, "I was still having good classes and enjoying it."

Teaching has been rewarding, according to Choate. "The most pleasure is in seeing people get interested in patent law and take it up as a career. Quite a few of my students are in active practice," he remarked.

Accepting the emeritus position will allow Choate to have "a continuing status" at the Law School, enabling him to offer guest lectures, he said.

Choate graduated from U-M and U-M Law School in 1936 with joint B.S.E. (engineering) and J.D. degrees. He entered full-time private practice in Detroit that same year and added Law School teaching duties in 1960, when the late Arthur M. Smith accepted a judgeship at the Court of Customs and Patent Appeals.

U-M Law School has offered a patent law course on a regular basis since 1890, and the school will continue in winter term, 1980. U-M Law School alumnus Vincent Barker, himself a former student of Choate's, will be the instructor. Barker has previously taught patent law at the University of Toledo.

—*Mark Simonian*

Henrietta Slote In Administrative Manager's Post

Henrietta Slote is serving in the new post of administrative manager and assistant to the dean at the Law School, in charge of the physical plant and all non-instructional personnel.

She had served as editor in the Division of Research of the U-M School of Business Administration for 11 years before assuming the Law School post.

Among new projects under Slote's direction are refurbishing the student lounge in Hutchins Hall, improvement of the moot court room funded as part of a grant from the Law Enforcement Assistance Administration (LEAA), and the eventual establishment of expanded audio-visual instructional facilities at the Law School. She is also involved in planning for a new faculty lounge in existing Law School buildings pending completion of the new library addition.

The LEAA grant was recently made to the state's 22nd judicial circuit in Washtenaw County, which is using the Law School's second-floor moot court room as an adjunct courtroom for civil cases in an attempt to reduce the court's backlog of cases. Some $1,000 in grant money was allocated for refurbishing the moot court room, notes Slote.

A 1951 *summa cum laude* graduate of Mt. Holyoke College, Slote received a master's degree in English from the U-M in 1952 and studied comparative literature in France under a Fulbright scholarship.

Philip Soper Serves On Air Quality Committee

Philip Soper, a U-M law professor, has been appointed to a national committee that is to identify and study major issues in achieving objectives of the federal Clean Air Act amendments of 1977.

Soper was appointed to the Committee on Prevention of Significant Deterioration of Air Quality which will conduct the study under sponsorship of the U.S. Environmental Protection Agency.

Their report is expected to be completed and sent to Congress in the summer of 1980.

A member of the U-M law faculty since 1973, Soper previously served as staff attorney with the U.S. Council on Environmental Quality and as law clerk to U.S. Supreme Court Justice Byron R. White. He received the B.A., M.A., and Ph.D. degrees from Washington University in St. Louis, and a law degree from Harvard University.

Bollinger Gets Rockefeller Grant

Michigan law Prof. Lee C. Bollinger is the recipient of a Rockefeller Foundation Fellowship in the Humanities for the study of the concept of free speech in the U.S.

Bollinger will research the topic during a sabbatical leave from the U-M during 1980. He says he intends to produce a manuscript analyzing the rationale of constitutional free speech rights.

Bollinger was one of forty-one winners announced by the Rockefeller Foundation. A member of the U-M faculty since 1973, he specializes in the areas of first amendment rights and constitutional, contracts, and corporation law.

A graduate of the University of Oregon and Columbia University Law School, he was law clerk for Chief Justice Warren E. Burger of the U.S. Supreme Court and Judge Wilfred Feinberg of the U.S. Court of Appeals for the Second Circuit in New York City prior to joining the Michigan faculty.

Law Alumni Scholars Hold International Positions

Three University of Michigan Law School alumni hold important positions in international bodies charged with the enforcement of basic human rights.

Prof. Dr. Jochem Frowein, LL.M. '58, former dean of the University of Bielefeld, German Federal Republic, is a member of the European Commission on Human Rights in Strasbourg, France. Dr. Hans Christian Krüger, J.D. '59, is the secretary of the same commission in charge of a multinational staff of 16 attorneys. Charles Daniel Moyer, LL.B. '63, is deputy head of the Secretariat of the Inter-American Human Rights Commission in Washington, D.C.

As a result of a recent change of leadership in the Max-Planck-Institut for Foreign and Private International Law in Hamburg, Germany, three scholars closely connected with U-M Law School became co-directors of this leading German research center: Dr. Ulrich Drobnig, research scholar at the Law School in 1955-1956; Prof. Dr. Hein D. Kötz, M.C.L. '63; and Prof. Dr. E. J. Mestmäcker, who has taught several times at Michigan and most recently has participated in the American-European study on the judicial role in economic integration.

During his stay at Michigan, Dr. Drobnig prepared a second edition of two volumes of the Rabel's classic treatise on *The Conflict of Laws: A Comparative Study.*

"Law Revue" Skits Pack The House

Playing to a standing-room-only Lawyers Club lounge crowd in early spring, the second annual Law School talent show, affectionately known as the "Law Revue," scored raves from the audience and critics alike.

The review thoroughly entertained the boisterous, but appreciative student-faculty group with a wide range of musical and comedy presentations.

Included in the show were acoustic guitarists, a capella singers, comedy readings and monologues, solo vocalists, a four-hand piano duet, blues and country-western groups, an animated film, and even a choreographed disco entourage.

In an extemporaneous performance, Prof. Beverly Pooley sang a raucous vocal ode in honor of Prof. L. Hart Wright, entitled "Bad, Bad L. Hart Wright" (sung to the tune of "Bad, Bad Leroy Brown").

Musical director Gordon Klein (class of 1979) led the "Learned Band" of jazz musicians who provided accompaniment, instrumental breaks, and sing-alongs.

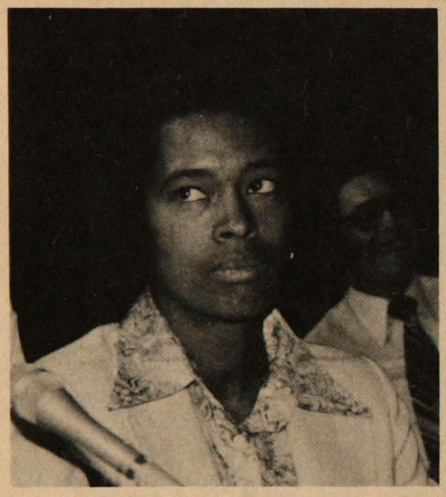
The tuxedoed master of ceremonies, Steve Selbst (class of 1980), provided amusing introductions for the acts and bore up well under the crowd's jocular ridicule.

"It's nice to get recognized for something other than your academic achievement and have so much fun in the process," commented the review's producer and director, Barbara Watkins (class of 1980).

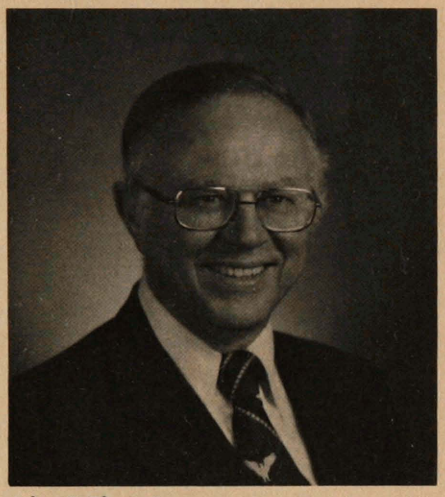
Funded by the Law School Student Senate social committee, the show took about four months to organize and one month to rehearse.

"We knew there were a number of people running around, people who had studied piano for years or who had performed professionally, who were going unrecognized and unappreciated," Watkins said of the show's origins.—*Mark Simonian*

alumni notes



Amalya L. Kearse

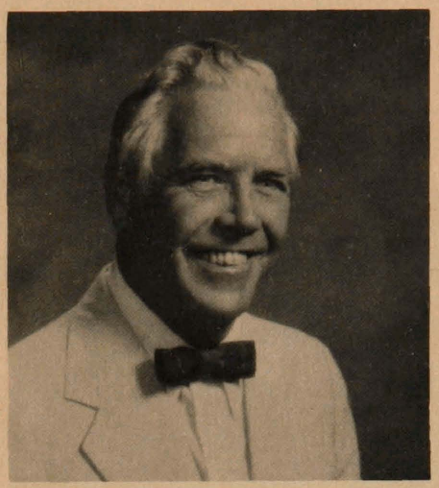


John C. Elam, Sr.

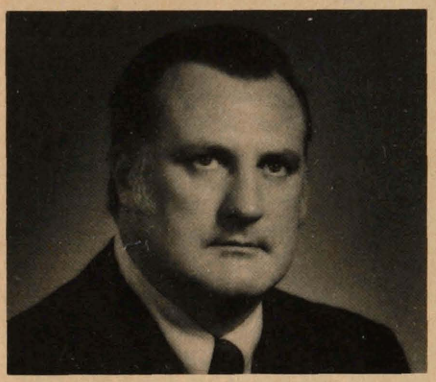
☐ **Amalya L. Kearse,** 1962 graduate of the Law School, was named by President Carter and sworn in earlier this year as judge on the U.S. Court of Appeals for the Second Circuit. She is the first woman to sit on the federal appeals court in New York City and only the second black in the court's history. (Thurgood Marshall, now on the U.S. Supreme Court, was the first.) At age 42, Kearse is also one of the youngest persons to sit on the court, considered to be among the most influential in the nation. The daughter of a postmaster and a doctor, Kearse attended Wellesley College, edited the law review at Michigan, and graduated near the top of her Law School class. Seven years after her Law School graduation she became only the second woman to be named a partner in a major Wall Street firm, Hughes, Hubbard & Reed. Praised by lawyers for her analytical abilities, Judge Kearse also excels outside the legal setting: she is considered among the most talented bridge players in the country and is the author of books and articles on the subject.

A number of other U-M law alumni have also been named to judicial posts, but their appointments were not officially confirmed as of the writing of this issue of *Law Quad Notes*.

☐ **John C. Elam,** Columbus, Ohio, lawyer and a member of the U-M law class of 1949, is president-elect of the American College of Trial Lawyers, the 29-year-old national honorary organization for leading trial lawyers. He was elected to the post at the organization's annual meeting in August in Dallas, Texas. Senior partner of the firm Vorys, Sater, Seymour & Pease, Elam has been active in Ohio civic groups and in national legal circles. For a number of years he has been a faculty member of the annual Advocacy Institute presented by the U-M's Institute of Continuing Legal Education. A fellow and regent of the American College of Trial Lawyers, Elam is also a member of the House of Delegates and the Council of Litigation Section of the American Bar Association, a life member of the Sixth Circuit Judicial Conference, and a member of the U-M Law School's Committee of Visitors. A 1976 issue of *Columbus Monthly* magazine named Elam as one of the ten most influential people in that city. Among other groups in which he has been active are the Columbus Area Chamber of Commerce, United Way Appeal, the Columbus Museum of Art, and the Columbus Bar Association. Prior to Law School, Elam



Clinton R. Ashford



Wallace D. Riley

William A. Groening, Jr.

received his undergraduate degree from U-M in 1948. His son John, Jr., is currently a law student here.

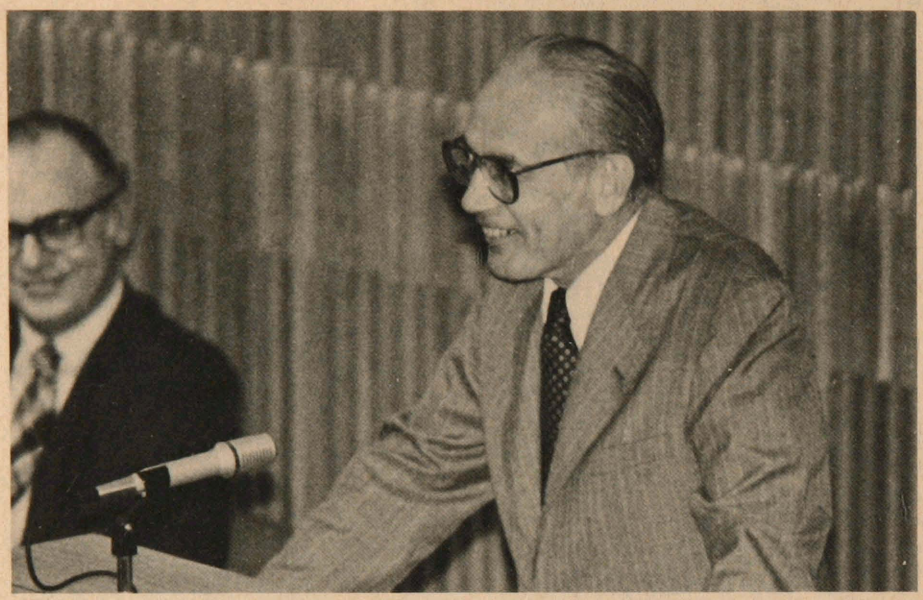
☐ Two U-M Law School alumni are serving on the 23-member Board of Governors of the American Bar Association.

Clinton R. Ashford, a member of the class of 1950 and a partner in the Honolulu law firm of Ashford and Wriston, was elected to the board this past August. He will serve for a three-year term, representing the ABA's district 14 which includes California, Hawaii, and Nevada. Ashford has served on the ABA's decision-making House of Delegates since 1972. His activities have included service as president of the Hawaii State Bar Association in 1972 and as vice president the previous year. He was a member of the state bar's executive board from 1958-1960, 1968-1972, and from 1974-1976. Before attending U-M Law School, Ashford was graduated from the University of California, Berkeley, in 1945. He and his wife Beverly have a daughter and three sons.

Ashford joins Detroit attorney **Wallace D. Riley,** 1952 Michigan law graduate, who has been serving on the ABA's Board of Governors since August, 1977, representing Michigan, Ohio, and West Virginia. An active member of the ABA for more than 20 years, Riley represented the state bar of Michigan in the ABA House of Delegates and has been a member of the ABA's Standing Committee on Judicial Selection, Tenure and Compensation, and the General Practice Section. A senior member of the Detroit firm of Riley and Roumell, Riley has also served as a special assistant attorney general for Michigan since 1969. In addition to his law degree, he holds a Ph.B. degree from the University of Chicago, an LL.M. from George Washington University, and the bachelor's and master's degrees from the U-M School of Business Administration.

☐ **William A. Groening, Jr.,** member of the Law School class of 1936, is the new chairman of the National Committee of the Law School Fund. Appointed in April, he will serve through 1980. Groening in 1977 retired as vice president and general counsel of the Dow Chemical Company of Midland, Mich., where he had been a member of the legal staff since 1937. He had also served, through 1977, as secretary and director of Dow Corning Corporation, the Kartridg Pak Company, and Dow Chemical Overseas Capital Corporation, and as president and director of Dow Chemical International. A 1934 graduate of the U-M, Groening was a Midland city councilman from 1946 to 1952 and mayor from 1950 to 1952. He was chairman of the board of Saginaw Valley State College for 10 years and has been active in the American Bar Association, State Bar of Michigan, and the Rotary Club. He is currently vice president, director, and executive committee member of the American Judicature Society. He is an "alumnus" member of the U-M Law School Committee of Visitors.

events



Allan F. Smith

Honors Convocation

University of Michigan Interim President **Allan F. Smith,** speaking April 22 at the U-M Law School's annual Honors Convocation, warned that federal bureaucracies, demanding adherence to narrow requirements, may be choking universities' mission of "independent scholarship."

(On July 27, the U-M vice-president for academic affairs, Harold T. Shapiro, an economist, was named 10th president of the University by the Board of Regents. Smith, a U-M law professor, will continue as interim president until Shapiro assumes office on January 1, 1980.)

Smith, in his Law School address, noted that universities rely heavily on federal funding, and the U-M administration agrees strongly with such federally enforced principles as equal employment opportunity, employee health and safety, and equal opportunity for women in athletics.

But, quoting one constitutional scholar, Smith warned that "we tend to create a new bureaucracy for every principle we wish to enforce.

"At some point, every principle becomes too expensive—in terms of other values—to be pushed farther. But most of us would recognize the stopping point much sooner than would an equally intelligent person whose career is defined by the single principle."

As a result, said Smith, university administrators are often forced to respond to federal requirements that "we are not against your program, but you have passed the point of balance, and we have other values which must catch up before we go further on your single principle."

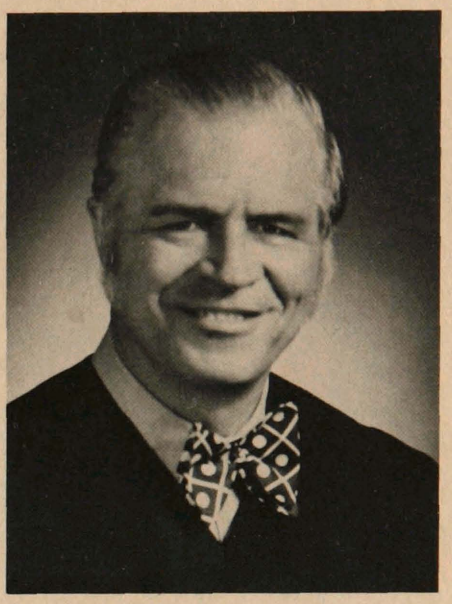
Before being named interim Michigan president, Smith served as the U-M's vice-president for academic affairs from 1965 until 1974, and was dean of the U-M Law School from 1960 to 1965. At the U-M Law School's Honors Convocation, some 300 law students received a variety of scholastic awards as well as honors for participating in Law School programs.

Smith stressed that it is important for colleges and universities not to be deterred from their roles as "the institutions created in our society which are given a prime responsibility for the discovery and dissemination of knowledge."

Free expression is a corollary to that role, said Smith. "I believe it follows that the nurturing of scholarship requires that we open our forums to all ideas, however obnoxious they may be to other members of our community.

"And it seems to follow that as an institution we should be very slow to take a position which would tend to work against the idea of a forum open to all individuals," said Smith.

Martha W. Griffiths



G. Mennen Williams

Senior Day

Scrutinizing our laws to determine their "intent" may not always yield results, said former U.S. Congresswoman **Martha W. Griffiths,** speaking at the Law School's "Senior Day" ceremonies in the spring.

Rarely does a law reflect a "collective intent," said Griffiths, because laws are usually a conglomeration of specific interests of each legislator.

"As much as judges argue about the intention of the law, in reality there is no collective intent. Each legislator—along with the lobbyists—brings to the system his or her own prejudices and other shortcomings in terms of information and imagination. Each person involved in the making of a law has a specific problem . . . to address," Griffiths told the graduating law students.

A U-M law alumna, Mrs. Griffiths represented Michigan's 17th district in the U.S. House of Representatives from 1955 to 1975. Among other accomplishments, she sponsored the Equal Rights Amendment to the Constitution, and presented arguments on the floor of the House that added "sex" as a category for enforcement under the 1964 Civil Rights Act.

Mrs. Griffiths, who now practices law with her husband Hicks G. Griffiths in Romeo, Mich., also said women represent the last category to be granted equal treatment under the law. If sex were not added as a category to 1964 civil rights legislation, the course of history and Supreme Court cases might have been greatly altered, she said.

"Looking back at American constitutional history, in case after case before the Supreme Court it had been assumed that the constitution did not apply to women.

"For example, since the 15th Amendment gave every citizen the right to vote, why was the 19th Amendment needed to extend that right to women?

"The Civil Rights Act of 1964 extended to black minorities the right to be treated like everyone else, but as originally worded, the act might not have applied to black women. In effect, the law would have extended to minorities rights which women never had," said Griffiths.

Entering Summer Class

Michigan Supreme Court Justice **G. Mennen Williams,** addressing the entering summer U-M Law School class in May, spoke about the benefits and career possibilities stemming from a law school education.

Williams, former Michigan governor and a 1936 U-M law graduate, cited four major attributes of a legal education: logical reasoning; an overall sense of justice; an ability to understand the law; and an ability to "find the law" in books, periodicals, or from first-hand personal information.

The justice said "persuasiveness" and "imagination and innovation" are also attributes which can be developed in a law school setting.

"Success often comes to those who know how to look around the corner or come up with a new idea," he said. "My experience is that you often end up between a rock and a hard place, neither alternative being satisfactory. The successful person is the one who can discover the *tertium quid,* Latin for 'third thing.' "

At Law School, for example, "we had a Prof. Durfee in 'equity' who opened up our minds to further and different possibilities," said Williams. "We had another professor we irreverently called 'Hypo Hessel' because he always answered a question with another question. You just couldn't write down the gospel; you had to speculate what the law was or might be. It drove you nuts, but it made you think and use your imagination."

Williams said a well-trained legal mind is a valuable asset in wide areas of endeavors.

"I found it useful in such a wide variety of careers as a Department of Justice attorney, a Department of State diplomat, a governor, and, believe it or not, a liquor control commissioner, as well as my present position as judge. From close observation, I can also say a legal background is no mean asset in business these days."

Shuttle Diplomacy in Social Revolution

by Judge Shirley M. Hufstedler
U.S. Court of Appeals for the Ninth Circuit

[Based on an address at The University of Michigan spring commencement on April 28, 1979. As part of the ceremony, Judge Hufstedler received an honorary doctor of laws degree from the University.]

. . . I hoped that [the title for my remarks] would at least vaguely convey the impression that I am going to have something to say about social and cultural upheavals in our society because that is what I intend to do before we get to the more important business of the day.

The mild to explosive furors over the Equal Rights Amendment, which are part of the contemporary scene, are simply commas or exclamation points in a social revolution that began very quietly in 1776 when Abigail Adams urged her husband John to "remember the ladies."

Until about 1830, the dictates of custom and the dicta of St. Paul combined to exclude women from any public speaking. The sole exception was found in the Society of Friends. The peaceful Quakers can be charged with unleashing the fiery Grimke sisters on an unprepared world. These ladies broke the silence barrier to speak against slavery. From Quaker meetings, the ladies branched out to parlors, and finally into public halls. The public notoriety of their unseemly conduct detonated a storm of protest. The Grimkes broke the platform trail for a long list of famous women orators, white and black, including Lucy Stone, Lucretia Mott, Elizabeth Stanton, Sojourner Truth, and Susan Anthony.

The women's rights movement was formally initiated at the Seneca Falls Convention in 1848. The Declaration adopted at Seneca Falls was a vigorous indictment of the plight of American women in 1848. Among the charges was that man had "monopolized nearly all of the profitable employments, and from those she is permitted to follow she receives but a scanty remuneration. He closes against her all the avenues of wealth and distinction which he considers most honorable to himself. As a teacher of theology, medicine, or law, she is not known. He has denied her the facilities for obtaining a thorough education, all colleges being closed against her."

The charges were accurate. The doors to opportunity were firmly closed against all women. But married women were legally worse off than their single sisters. Under the common law, the personalities of the husband and wife merged upon marriage, and the wife's disappeared.

Female education beyond grammar school was almost entirely confined to private seminaries, the curricula of which went little beyond china painting and elementary French. Any stronger intellectual fare was assumed to overtax the frail and simple minds of the sex. In 1833, Oberlin was established, and became the first college to admit women. The academic menu was pallid. Sturdier curricula for women were a rare commodity for another 30 years.

It would be wrong to assume that the bleak picture for women was primarily a by-product of enacted law. To be sure, the Colonists brought to the new land the common law, heavily barnacled with the remnants of feudalism. The foundation of the feudal edifice was land and the family. The family was the basic production unit, and women were the essential producers. Women were required to bear large numbers of children, for the surviving children became both the labor force and the armies. The subjugation of women had been popular with men for centuries for other reasons, but we should not forget that the whole system would have collapsed if women had not been bound to childbearing and women and children had not been tied to the land. Dependence upon unpaid hard labor of women and children was a fact of economic life in the feudal system and in Colonial America, as was unpaid hard slave labor a fact of economic life on the plantations of the South.

The law did not create these conditions. The conditions created the law. The law was a reflection, and in most respects a laggard and pale reflection, of these conditions. Law was not then, and only sporadically since then, a catalyst for social change. Rather, the law has always been a brake upon rapid change; both for good and ill, the law has welded society together and to the past.

The upheaval of the Civil War forced women out of their homes and into the fields, factories, shops, and offices. They took over almost all the functions that had been exclusively masculine preserves. When the war ended, women dutifully yielded the "men's" jobs, and the majority trooped home, responding to the traditional social dictates, to exhaustion from the demands of running a home and a job, and to the demands of men for gainful employment after their soldiering. But the world would never be the same. Bella Mansfield, the first woman lawyer, was admitted to practice law in Iowa in 1869. Married women's property acts, sporadically passed in earlier years, swept the country, removing many of the most egregious disabilities of married women. The Fourteenth and Fifteenth Amendments were ratified in 1868 and 1870, respectively.

Ms. Mansfield's successful admission to the bar was almost aberrational. More typical was the experience of Myra Bradwell. Myra had all of the qualifications to practice law in Illinois, but she was denied admission to the bar because she was female. The Illinois Supreme Court upheld the statute limiting admission to men and rejected her constitutional arguments. The United States Supreme Court dispatched her for want of a federal question. Mr. Justice Bradley, a very able Justice, wrote a revealing and famous specially concurring opinion, in which he said: "It certainly cannot be affirmed, as a historical fact, that [the right of females to pursue any lawful occupation for a livelihood] has ever been established as one of the fundamental privileges and immunities of the sex. On the contrary, the civil law, as well as nature herself has always recognized a wide difference in the respective spheres and destinies of man and woman. . . . The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . .

". . . The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases."

From our present perspective, Mr. Justice Bradley's comments appear amusing, if not downright absurd. Even in his own day, Mr. Justice Bradley knew that there were more than 325,000 women factory hands who were working under conditions anything but dainty. He knew that tens of thousands of women performed hard physical labor during the Civil War and that frontier women worked side by side with their husbands under grueling and often perilous circumstances.

He wrote that way because he genuinely believed that God, not man, had prescribed women's roles and that natural law dictated that women were born timid, delicate, and intellectually inferior to men. His views were widely shared by both men and women who were members of the upper classes. Acceptable manners, mores, and attitudes were set by the elite for the elite. He accurately described the expectations of these men toward their mothers, wives, and daughters. Those nice women were supposed to be pedestal ornaments. Millions of black and white women who did the grubby work for the well-to-do were not parties

to this social contract. Theirs was an essential, but invisible presence.

Mr. Justice Bradley and his social contemporaries confused the signs of a dominant culture with the signs of the Creator, and he mistook man's laws for the laws of nature. They were caught in the thralldom of mythology, by which I mean a series of assumptions that are not objectively true, but which are treated as if they were.

Mankind has always clung to its myths with greater tenacity than it has to anything else. No myths have been more pervasive and enduring than those that assure the dominant members of a society that their positions are secure, and even just, and which tell servient members why it is not only their destiny, but their duty to remain where they are. Into this category fall the relatively mild myth of the divine right of kings and the powerful and persistent myths of sexual and racial superiorities and inferiorities.

Really enduring myths are always supported by elements of plausibility. No one would have believed that the earth was flat if it did not so appear to the earthbound. No one would have believed that women were innately men's intellectual inferiors if women had consistently excelled in the intellectual community.

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What Mr. Justice Bradley and his contemporaries actually saw was the result of the power of myths to generate their own kind of reality. If one believes that a human being is inferior and acting on that belief tells a child early enough and often enough about his or her inferiority, the belief will be fulfilled regardless of the treasures with which he or she was born. If a society implements the same belief by closing off all resources from which he or she could obtain intellectual nourishment, the person's intellectual yield will be as barren as society expected.

In the ensuing decades, despite the dominant social dictates, women continued to press for suffrage, for admission to colleges and universities, and for entrance into the learned professions. It is nevertheless doubtful that all that energy and zeal would have had any significant effect upon the status of women without the massive industrialization of the country and without the impetus of developing technology during the period from 1890 to 1920. For example, the inventions of the telephone and the typewriter had much more to do with women's entry into the white collar labor market than all of the picketing, pamphleteering, and marching combined.

The crowning glory for the suffragettes and for the men who supported that cause was the adoption of the Nineteenth Amendment in 1920. The suffragettes had hoped that women would vote as a bloc, and that the old walls of gender discrimination would tumble down when women exerted their new power. The anti-suffrage forces were terrified that the suffragettes were right. Both were wrong. Women voters, like men voters, were liberal, conservative, independent, and no-opinioned. Nevertheless, suffrage was a real achievement for the whole country. The nation could not indefinitely endure being half-franchised and half-disenfranchised, any more than we could have long endured being half-slave and half-free.

After suffrage was gained, the steam of the women's movement was largely dissipated. This was true not only because the dominant objective had been achieved, but also because the nation's attention was captured by the more dramatic events of the great depression and the second world war.

The inventions of the telephone and the typewriter had much more to do with women's entry into the white collar labor market than all of the picketing, pamphleteering, and marching combined.

Neither the 19th-century views of women's place nor the technicolor version of domesticity of the 50s could last when the conditions that had engendered them had radically changed. The country had long ceased being primarily agrarian. Frontier life was gone. The economic unit was no longer the family. The urbanized housewife was not primarily a producer, she was a consumer. Children were not economic assets; they, too, were consumers. The home was no longer the center of the family's activities: father left home to go to work. The children left home to go to school. Only the housewife lingered until economic need, separation, divorce, or desperation drove her out as well.

Science and technology had profoundly altered our lives. We moved out of our carriages and our flivvers and into supersonic aircraft and outerspace vehicles. We abandoned our crystal sets and acquired stereo and television. We junked our adding machines and plunged into computers of remarkable capability. Medical knowledge changed at an equally dizzying pace. Diseases that used to kill infants, children, and young adults were controlled and virtually eradicated. Women no longer had to bear a dozen children to see two or three live to maturity. The bearing and rearing of two or three children occupied only a brief period of women's long lifespan. In 1900, a woman's life expectancy was 47 years, 28 of which were childbearing years. In 1977, a woman's life expectancy was 77 years, with only 10 childbearing years. In 1906, the standard urban family was the father as breadwinner, the mother as the housewife with some children. In 1979, that earlier family standard represents only 13 percent of American families.

At least by 1955, it should have been clear that these changes and many others over the period of the prior 50 years had drastically transformed the nation and had also profoundly affected the roles that society had earlier assigned to women, to men, and to the family. Instead, the impact of all of these convulsive changes upon women and the family was scarcely noted. Rather, all kinds of social ills were frequently attributed to the failure of women properly to perform their traditional domestic roles. The targets of this criticism were middle-class women. Rich women were not rushing into the labor market. Poor women had never had any choice; motherhood notwithstanding, they had always worked, in the fields, factories, offices, and homes of others. Despite all of the prophecies about the dire effects on the family of paid employment of women, middle-class women continued to stream into the labor market. In 1950, a little over 18 million women were working outside their homes. By 1977, however, 40 million women were in the labor force; 60 percent of all new jobs since 1950 have gone to women.

In the late 50s, the somnolent women's movement began to stir. Dramatic events in the South revealed to the nation the festering and flagrant injustices that were being inflicted on black Americans. The discovery of injustice to blacks aroused some women to observe that invidious

discrimination was not confined to black Americans but extended to women of every color. The civil rights movement spilled over to college campuses. Young women joined the movement, marched in demonstrations, and came to know first-hand the indignities to which civil rights workers were subjected. Like their long-forgotten predecessors—the abolitionists and the suffragettes—these young women learned how to organize, petition, demonstrate, fight, and go to jail.

Women who had massively shunned law school as unfeminine began to apply for admission. By the 60s their numbers began burgeoning and by the 70s the freshet became a flood.

Entry of large numbers of women into the legal profession created a mild vocabulary crisis, long before "Madam Chairman" was overcome by the ungainly "Chairperson." "Lawyer" was masculine. When females took their places at the bar, they became known as "women lawyers," a designation with all the intrinsic charm of "male nurses." "Lawyerette" connoted marching bands, or perhaps laundry emporia; "lawyeress" sounded silly and faintly indecent. "Bar maids" might have caught on if the term had not been earlier pre-empted. In the near future, we may at last see the day when "lawyer," as "teacher," becomes both masculine and feminine.

We were much too concerned with the Viet Nam war, assassinations, and riots in the 1960s to fret very much about the intractabilities of language. The turbulence of those years tended to obscure the quieter social revolution in the roles of men and women. Both men and women were becoming discontented with gender stereotypes. Many men, especially young men, discovered that not all men were or wanted to be fierce hunters bringing home the bison or even a steady paycheck to their timid wives and their hungry brood. Women could not ignore the reality that a trip to the altar was an inadequate plan for a lifetime.

Indeed, by the late 60s and early 70s, thousands of young people decided that altar trips were irrelevant. Parents, who found it difficult to accept the reality of coed dorms, were even more jolted to learn that their children's roommates were likely to be members of the opposite sex. Social introductions became perilous exercises in verbal circumlocution. The older generation had a hard time remembering that "Ms." was not pronounced "Manuscript." The word "friend" became an all-purpose term used to refer to persons who had known one another as casual acquaintances as well as a person who had been a live-in roommate for two years. "Fiancee" began to seem quaint, and meetings and conventions abounded with "meaningful associates" and "significant others."

When females took their places at the bar, they became known as "women lawyers," a designation with all the intrinsic charm of "male nurses." "Lawyerette" connoted marching bands . . . "lawyeress" sounded . . . faintly indecent. "Bar maids" might have caught on . . . .

We have not succeeded as yet in creating any new pronouns to avoid the awkwardness of calling women "he's" or overcoming the tediousness of referring to any mixed group as "he or she." The break-up of many meaningful associations, without benefit of divorce because the pair were without benefit of matrimony, has generated all kinds of social and legal confusions. It is hard enough for judges to apply traditional domestic relations law; now the courts are asked to award severance pay or palimony to disenchanted couples.

What happened to the exuberant undergraduates of the 60s is that they got older. The assumption that both mind and body atrophied at age 30 crumbled when 30th birthdays came and went with remarkable regularity. Undergraduates who could barely conceal their contempt for the money-grubbing of their parents discovered that their parents were relevant after all when the money from home stopped and the search for gainful employment in a tight job market struck them. Enthusiasm for back-to-the-land communes dimmed when communal members learned that farming was terribly hard work. Fervent resolves by young men and women to share the housework rapidly dissolved when both of them confronted the reality of the aphorism: The trouble with dishes is that they are so daily.

My purpose in reciting these few illustrations of disillusion with the tenets of the youth movement of the 60s and early 70s is not to sing along with the oldsters' chorus of "We told you so." After all, older generations had as much to do with prolonging dependence and adolescence as our children ever did. The purpose, rather, is to remind us that maturation is a relatively slow process and it is never painless. There have always been gaps in understanding between generations, but the gaps are chasms when the pace of social change accelerates more rapidly than any of the generations can readily absorb.

We are a society in multiple transitions. Social revolutions are always marked by very high levels of anxiety because the members of the society do not know what to expect from others or of themselves. Our cultural codes, primarily learned in earliest childhood, cause us to respond automatically to cues that we are largely unaware we have ever had. Unfortunately, the response may be completely inappropriate to the changed conditions.

A simple illustration may clarify the point. When the parents in this audience were children, girls wore dresses and had long hair. Boys wore pants and had short hair. Boys and girls could identify each other and themselves by the simple cues of hairstyle and dress. When girls began wearing pants and boys let their hair grow, parental response ranged from bewilderment to outrage. The youngsters did not understand the mechanisms of the change in gender symbols, but were in no doubt about the discomfiture their styles caused their elders.

Neither our exasperations nor our amusement about changing styles, alterations in national mores, or the adoption of non-traditional relationships between young adults should blind us to the very real and dramatic alterations in the expectations of maturing men and women in this country. Young people, with few exceptions, cannot replicate their parents' experiences even if they wanted to because the world is a very different place from that in which their parents grew up. Rigidly assigned gender roles to members of the urbanized middle class cannot survive when two family paychecks have become necessary to keep pace with double digit inflation and when the legitimacy of the dictation of the rules of the social order by the elite for the elite has been destroyed.

These phenomena, particularly the assaults on gender roles, are not simply incidents of contemporary American life. With variations based upon different history, different religions, and different cultures, these transitions are going on all over the world.

Men and women of every race, creed, color, and age group are now seeking a place in the sun. All of these people are demanding that their basic human needs be fulfilled by the societies in which they live, that each shall be treated with dignity, that each shall have access to the material, intellectual, and spiritual riches of the world, and that each shall be treated justly. None of them believes that small is beautiful if that designation is to be applied to their very own aspirations.

The dramatic upheavals in the social order are not confined to the United States or to Western Europe. Extraordinary changes in manners and mores by the respective societies are also taking place in Asia, the Middle East, and Africa. These, in turn, have generated increasingly fierce competition for land, food, jobs, and energy. Political instabilities are endemnic. We cannot doubt that the by-product of all of these changes will be a lot of human suffering. But the turmoil should not be the cause of either malaise or despair. Dramatic social change also can be the occasion for releasing creative thought.

It is easy to characterize the controversies between the developed and developing countries or between rich and poor persons and men and women in our own country as power struggles. Historically, power has generally meant the ability to advance oneself and, at the same time, to control, limit, and even destroy the power of others. However, there is a much brighter and more affirmative concept of power that is striving for recognition. In an increasingly interdependent world, power can be used cooperatively and creatively to help each individual develop personal resources without either limiting or destroying others.

The constructive concept of power is beginning to assert itself in the treaty negotiations being conducted in the age-old battle of the sexes. Men have begun to realize that they have missed a great deal of joy and emotional sustenance in leaving all of the nurturing of young children to their wives and insisting upon the rejection of their own vulnerabilities. Women have wearied of dependency and have increasingly rejected prescribed inferiority.

Opponents of the Equal Rights Amendment have charged that the Amendment is an evil device to destroy marriage and the family. The charge is preposterous, unless one is willing to assume that marriage and family life depends upon the relationship of dominance and subservience. Men and women, both here and abroad, have refused to sign up for either course. The assaults on marriage and the family are not the product of either weak men or uppity women, but rather the enormous pressures from both within and without the society caused by all of the demographic, industrial, economic, medical, and technological changes upon which I have earlier lightly touched.

We are moving toward concepts of true equality in the opportunities for men and women. We are not there yet. The inequities will not disappear either with or without the passage of the Equal Rights Amendment. Enactment of the Amendment is primarily symbolic; symbols, however, are important. A veil is more than a piece of cloth to a woman who had been commanded to wear it, the Star of David was more than a sign of religious adherence in Hitler's Germany, and the black armbands worn during the Cambodian invasion were more than protests against dress codes. Each of those symbols is a dramatic presentation of what the wearers thought about or of what others thought about them. The caps and gowns, the hoods and mortarboards are symbols, too, as is every word we speak to one another today.

Colleges and universities have a key part to play in times of social transition. They are both stabilizing and catalytic institutions. They are stabilizing because the faculty and the administration transmit to each generation of students the history and cultures of humankind and thus provide us with the vital links to our own heritage as they teach us from the pages of human experience.

Colleges and universities provide us with a community that can help us negotiate for peace and cooperation rather than combat during our multiple social revolutions. Although the term "shuttle diplomacy" was coined to describe the jet-age conduct of peace negotiations between the Israelis and the Egyptians, I have borrowed the term to illustrate the role of education in building the bridges between the elements of our society affected by social resolution. The classroom and the playing fields, the libraries and the dormitories provide numerous opportunities for learning how to get along with one another. It is difficult, if not altogether impossible, to view other human beings as objects or as inferiors because they are different from ourselves when we study together, work together, and play together. Of course, it is not only the physical setting of a college or university campus that permits us to value human beings as individuals, it is also the knowledge conveyed by teachers and by books that assists us to see for ourselves the enduring qualities of life and thus permits us to separate the gold from the dross of human experience.

Finally, colleges and universities give us the opportunity to see into the future, albeit very dimly. From that breadth and scope of human learning, we can together try to weld power with justice, reason with faith, and hope with determination that we shall find the way to live together in harmony on our beautiful planet.

Shirley M. Hufstedler

by Joseph L. Sax
Professor of Law, University of Michigan

In May and June of this year I made my third trip to Japan to lecture on environmental law. On each previous occasion I had been struck by the contrasts between that country and our own, but I had never put my impressions in writing. As the years passed, my memories faded. This time I determined to keep a journal during the entire four weeks of my visit. Because Japan is still quite unfamiliar to many Americans, and because I had the advantage of getting outside the paths of the conventional organized tour, I thought readers of *Law Quadrangle Notes* might enjoy sharing some of my experiences. What follows are edited extracts from the diary I kept between May 22 and June 18, 1979.

Though my wife and I had been invited to spend four weeks in Japan, my formal responsibilities were quite limited. I would lecture in Tokyo at an environmental forum. The forum was financed by Japanese plaintiffs' lawyers, who had successfully represented pollution victims in damage cases. They were ploughing back some of their "profits" into public meetings on environmental issues at a time when it was feared that the government's commitment to pollution control was waning. I also had to lecture one evening in Osaka, and to meet with some people in Kyoto and Tokyo for informal discussions; but most of my time was free to see areas of the country that I had not previously explored. Because I have been working on some problems of the national parks, and because I like to spend my leisure time in the mountains, I asked our host to arrange for us to spend our first days in the Japan Alps National Park, some 150 miles west and north of Tokyo.

. . . our hosts could never quite suppress the fear that I would fall off the mountains sometime before I was to deliver my lectures.

I was both relieved and disconcerted to find that he had arranged for an interpreter to accompany us: relieved because our Japanese conversation hardly extends beyond an ability to ask for the way to the bathroom and the railway station; but uneasy because an official interpreter can make life more formal in the process of making it smoother, and in the past we had rather enjoyed the attention the Japanese bestow on seemingly helpless foreigners who come to out-of-the-way places. It was therefore a pleasant surprise to learn that our guide was the 20-year-old son of an Osaka lawyer whom I knew. Shigeki turned out to be the perfect companion. He was a college student who loved the

mountains, an expert skier and semi-professional musician, and utterly charming. When I asked him what he was studying, he told me (to my surprise) that he was very interested in the women's issue. The reason, he explained slyly, was that he had a serious woman problem: three ladies had proposed to him during the last year.

Shigeki was a marvelous exemplar of the openness and exuberance of youth combined with the conscientiousness to which the Japanese are trained. I soon discovered, for example, that he called his father every evening to give assurances that we had survived the day without untoward incidents (our hosts could never quite suppress the fear that I would fall off the mountains sometime before I was to deliver my lectures).

When I told him, during our hikes in the mountains, that we might use the opportunity for me to learn a little more Japanese, he rose to the challenge far beyond my expectations. Not only did we carry on rudimentary Japanese conversations on our walks every day, but thereafter each night he insisted that we spend an hour in the hotel lobby going over the vocabulary and grammar of the day. I am certain his father had asked him what we were doing; that Shigeki had told him about my request to learn some Japanese; and that the son was now committed to preparing me well enough so he could report back success in the task he had undertaken.

While to most foreigners the most exotic feature of Japanese hotels is the public bath, for me it is the Japanese towel phenomenon. On first entering our bathroom, I discovered no towels. Hanging over the sink was a piece of cloth resembling a handkerchief or a small dishrag. When I called for a towel, I received yet another dishrag. This was as disconcerting as the American tourists' initial discovery of a bidet in a European hotel. It must be functional, but how? It wasn't until the next evening, on accompanying Shigeki to the public bath, that I learned the answer. Though I had been in traditional Japanese inns before, I had never had the courage to go to the communal bath. But Shigeki emboldened me; and late one night we went together. The solution is dazzlingly obvious. The Japanese simply believe in air drying; the dishrag is waved up and down, fan fashion, and soon the bather is refreshingly cool and dry.

As always, Shigeki's moves were calculated. He was very eager to go to the bath with me because he had a question to ask, and he could not find another setting in which to ask it without seeming intrusive. How often do Americans bathe? He had apparently heard of the "Saturday night bath" and was extremely eager to know if that was the practice I followed. He was plainly relieved to learn that I routinely bathed on a daily basis.

The Japan Alps are really quite lovely. There are no peaks as high or as rugged as the Rockies or the Sierra Nevada. The highest point is slightly above 9,000 feet elevation, but the cone-like, snow-covered volcanic mountains are extremely attractive. And there are some marvelous birds. One morning I saw a narcissus flycatcher, with his bright orange throat and pale yellow breast enclosed in a frame of black. Neither do the parks (at least those few that I visited) have anything like the wilderness quality of our Western areas. The Japanese are far more ready to permit commercial developments within park boundaries than we are. At Nikko, the most famous park, the town of Chuzenji—right in the middle of the park—is depressingly commercialized, though the setting is spectacular: mountain-enclosed lakes are perched one above the other, with cascading water drooping down, down, and finally into the river at the bottom. Yet the area is full of tour buses, stores, and vendors, with a commercially run elevator that takes mobs of tourists down the length of the falls. A reminder of Niagara at its worst.

The commercialism is less obtrusive for the Japanese than for us, I think, because they see nature more as art than as a biological system. They look beyond the human intrusions to the fundamental shapes and sights of the setting, and what they see pleases them. A day spent in the National Museum at Kyoto—a splendid place, full of Japanese nature painting—reveals quite clearly the Japanese vision of nature.

It was . . . a floating Japanese hotdog stand, aggressively vending light lunches to those who had just made the . . . trip down the river.

Even for me, the entrepreneur's appearance in a natural setting was not always offensive. One day I decided to take a boat trip down a fast running river that coursed between high cliffs. At the end of the trip, as we entered a broad and calm area of the river, I was astonished to see another boat pull up alongside and fasten itself to our boat. It was—to no one's surprise but mine—a snack ship, a floating Japanese hotdog stand, aggressively vending light lunches to those who had just made the not-very-perilous trip down the river.

After leaving the Japan Alps, we visited the city of Kanazawa. The place itself was less notable than one of the wonderful sights seen on the train that took us there. A meticulously dressed Japanese businessman, dark suited with white shirt and banker's tie, sat down next to me, took off his shoes *and* socks, put up his feet and began to read the newspaper. Well, why not?

While I am thinking of experiences on the train, I recall a fantasy moment on the trip from Kyoto to Tokyo via the famous bullet train. I must explain that for some days previously I had been searching the stores to buy a necktie as a gift for a friend. But ties, like almost everything else in Japan, are terribly expensive. I could hardly believe what I saw: Almost no nice tie cost less than $25, and prices of $40 and $65 were not at all uncommon. I was feeling mildly discouraged by all this when the day came to take the Kyoto-Tokyo bullet train, which is frequented largely by businessmen. As I made my way to the dining car, passing through several others, it suddenly occurred to me that virtually everyone was wearing one of those $40 and up ties. A veritable fortune. In a flash, it all appeared in my mind's eye: a great train robbery; we enter, show our guns, tell the passengers to keep their wallets and their watches, and hand over their ties.

Ties are not the only appallingly expensive things. A friend brought us one day a box of grapes that we found extraordinarily delicious. On checking at the grocery store, we saw them priced at $20 a pound. We also saw a $20 melon, and ate in a restaurant where beefsteak (admittedly one of the most expensive items in Japan) was priced at $40 per serving, a la carte. An item in the paper remarked that living in Japan is not really all that expensive so long as you don't need (1) to live in an apartment, (2) see a dentist, or (3) eat a melon.

For a change of scene, we decided to spend a few days at a seaside resort, Matsushima. Matsushima is a rather less elegant place than most we had visited. There dinner was served communally in a huge dining room on the top floor.

We were without an interpreter at this point and pretty much had to feel our way around in the local customs. Most Japanese hotels provide a lightweight kimono in the room for each guest. We routinely wore them while eating meals in our room. We thought about our attire as we got ready to go to the dining room, and decided to wear our street clothes. A mistake; among the several hundred guests, we alone were not wearing the hotel-provided kimono. Two conspicuous foreigners immersed in a bathrobe army.

The food was superb. If one likes seafood, there is no place like Japan. After dinner, which included all-you-could-drink beer, sake, and whiskey, the entertainment was presented. A semi-exotic dancer, which is to say, a lady who wiggled demurely in a low cut costume performing a sort of danse du ventre that was slightly more decorous than erotic, accompanied by a male accordian player and another man who—at what seemed to me quite irregular intervals—thumped a large hanging drum. But everyone had a splendid time, including us. Foreigners so often see the Japanese in either formal or (for them) unfamiliar settings, that it is easy to be unaware of how relaxed and fun-loving they can be when the business day is done. I spent a number of evenings in little clubs with Japanese colleagues, where hostesses keep the drinks and conversation flowing, and where the professor or businessman, after hours, is capable of considerable spirited and spiritous merriment.

"The only things in this house 'made in Japan' are the children."

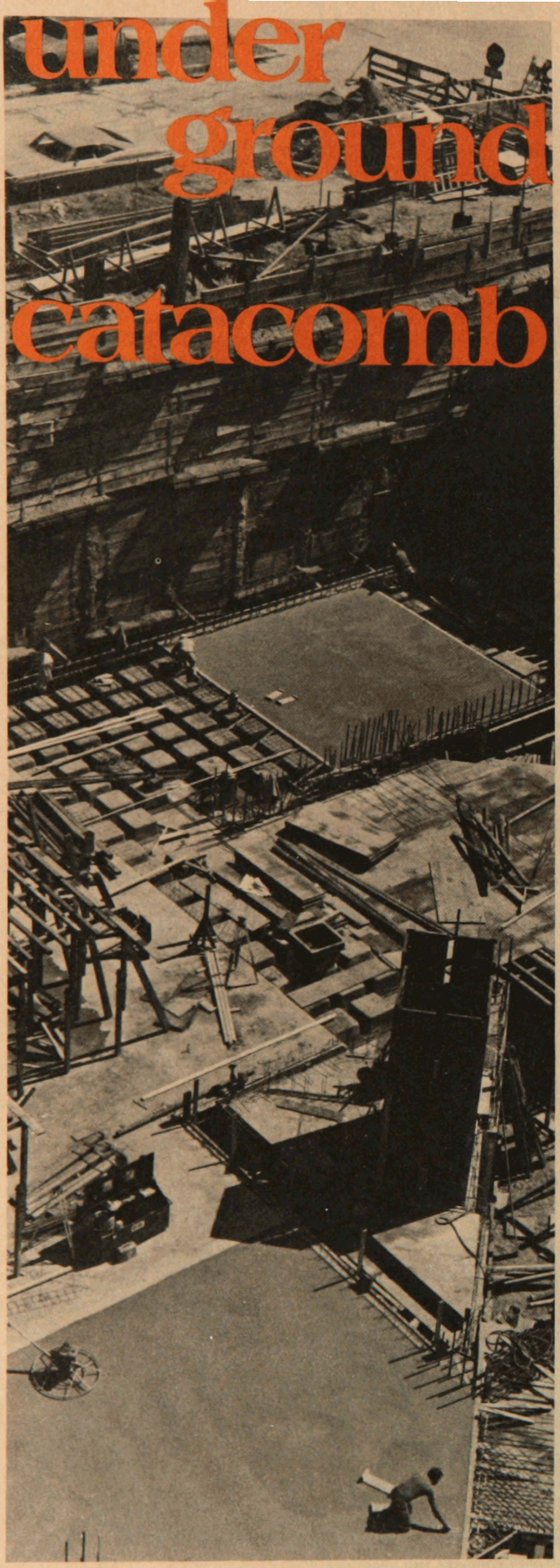
At least to an American, Japan is still very much a man's world. I was—as in the past—routinely invited out both to dinners and for the evening without my wife. On this issue I decided I would take my stand, hoping it would be considered the eccentricity of a stranger rather than downright rudeness. I made clear that for any dinner invitations, it would simply have to be both my wife and myself, or neither. Our hosts were extremely gracious. Not only was my wife invited, but everyone else was invited to bring his wife (I encountered very few women professors or lawyers who would have been invited "on their own"). In fact, however, only a small minority of wives came. Some, doubtless, stayed home because they did not speak English or a European language. But we were told later by a friend (the wife of a Japanese professor we have known for some years) that at least a few of the men had told their wives they could not come. The status of Japanese women is still very different from that of their American counterparts, and despite the extreme courtesy and graciousness of the Japanese, it was the only issue on which we felt periodically uncomfortable.

The same lady who told us about the invitations of wives to the dinner parties had us to dinner at her home one evening along with several other mutual Japanese friends. She and her husband have travelled very widely around the world, and they were showing the guests some of the interesting things they had acquired on trips to the United States, Germany, Norway, and a number of other places, leading one of the Japanese guests to remark: "The only things in this house 'made in Japan' are the children."

Perhaps one of the best known facts about the Japanese is that they find it very difficult to learn to speak English. In fact, however, it is quite easy for an American to understand Japanese people speaking English if one only listens carefully, attentive to such common problems as the difficulty in pronouncing the letter "r." At times, nonetheless communication reaches an impasse. I was sitting one afternoon in Tokyo's Hibiya Park, taking in the sunshine, when a man approached and asked if I minded conversing with him. Of course not. He was studying English, and was eager for opportunities to talk to native speakers of the language. His English was quite good. He told me that he read the English language paper every day for practice, and understood it easily, but that occasionally certain idiomatic expressions baffled him. There was one in that very day's paper, he noted. It was just before the Tokyo summit meeting and President Carter was coming to Japan. Carter had created quite a stir by indicating that he might like to take his daily run along the top of the wall of the Imperial Palace. The Japanese police were quite disconcerted by this proposal, and the headline in the Japan Times read: "Jogging Carter Keeps Japanese Security Men On The Run." Obvious as it is to us, no amount of explaining could convey to my new-found conversational partner the sense of this mild play on words.

Sometimes one is simply beyond the realm of translation. One day just before we left, an elegant reception was given for me. As is customary at such gatherings in Japan, I was called upon to say a few words of greeting and appreciation. I did so, in English of course. But, somewhat to my surprise, no translation was forthcoming. It took me only a moment to realize why. If I had said what I should have said on such an occasion, the essence of my comments would be obvious even to those who knew no English. In such a case no translation would be necessary. If, conversely, I did not say the appropriate words for such an occasion, no translation would be desirable. Very clever people, these Japanese.

Joseph L. Sax



underground but not a catacomb

by Anna Brylowski

An Interview with the Law School Librarians

Since early spring, daily sounds of construction and the bustle of workers on the site of the new addition to the University of Michigan Law Library have signaled that construction work has been in full swing. January marked completion of a 50-foot-deep hole fortified with retaining walls and measured out to house the 77,500-square-foot underground structure. The last truckloads of the troublesomely dry granular soil (one reason for the specially designed supportive pilings) were being scooped up from the bottom of the pit and carted away. By summer, work on the structural components of the new underground building was well under way.

The underground design of the library addition was intended to serve two purposes: to make most efficient use of the space available within the compound of the Law Quadrangle; and to preserve the English Gothic style of the existing buildings that could not be duplicated today. Fund raising and final planning for the structure began in 1977. At that time Dean Theodore St. Antoine announced that $8 million was to be raised for the construction of a two-level, below-grade addition designed by Birmingham architect Gunnar Birkerts.

When ground breaking for the project took place in late January, 1978, the estimated cost of the structure had reached $9 million, and the addition was now planned to extend three levels below grade.

With the construction of the addition now under way, there has been considerable interest on campus about the finished product. How much longer until the building is completed? Are the building costs still rising? Exactly what advantages will be gained for book users?

The best source for answers to these questions is, of course, those most closely associated with the project—the librarians of the Law Library. The following is a summary of an interview conducted last spring with law Prof. Beverley J. Pooley, director of the Law Library, and Margaret A. Leary, assistant director.

The librarians do not foresee that the envisioned completion date of the project, spring, 1980, will be met. The summer of 1981 appears to be more realistic, they say, provided additional problems do not arise. The chief cause for the delay so far has been an 11-month period necessary for a subcontracted job originally scheduled to be finished in three months.

The total budget for everything associated with the project is $9.2 million.

Expansion of storage space for library materials has been one of the chief aims for the new building. The librarians stress, however, that the whole expansion project should not be seen as the Law School having two library buildings—an old building and a new building—or as an exodus of books and services from the old building into a new building. "All our plans envisage the total utilization of

all the resources we now have," says Pooley. "Some usable space had to be destroyed in order to make the new building blend coherently with the present building. This is not a great loss, though, and the sacrifice will be well worth it in terms of the aesthetic integrity of the whole Law Quadrangle, which will be preserved."

The new addition will provide storage space for library materials now overcrowded in the old building; that means "thinning out," not moving everything over into the new building, the librarians say. The old library facilities have been overcrowded for at least 15 years, and the problem is increasing. Since 1971, when planning for the new building began in earnest, the library has acquired 100,000 volumes.

Of the approximately 77,500 square feet to be provided by the new building, 20,000 square feet have been planned for book storage, but this space might not be sufficient. At the rate books have been accumulating, the space provided in open stacks in the new structure will be used up swiftly. Therefore, 15,000 extra square feet of partially finished space has been included in the new building to accommodate expansion. "That will give us some extra growth space at the time we can find the money to finish it and make it habitable and useful," Pooley points out. At the moment, this "raw space" is planned for book storage, possibly on an open stack basis at first and later on an intensive storage basis. Pooley believes it will be feasible to store about 600,000 volumes in that 15,000-square-foot area.

The old library facilities have been overcrowded for at least 15 years, and the problem is increasing.

"The architect has designed the building so that the space designed for book storage is not immutably committed to that purpose, as in the old building," Pooley emphasizes. Thus room originally set aside either for book storage or for carrels can easily be changed. Some of this space could even be used for teaching purposes, should the need arise.

The basic question concerning the expanded library, as Pooley sees it, will be this: should it be stabilized or should yet another building be planned at some time in the future? The librarians feel that stabilization of the collection is the preferable choice. To achieve this, much would have to be stored in microfiche, but a certain amount of stabilization could be achieved by storing books intensively.

Among the library materials that have been accumulating fastest are the document collections. The Law Library now is a depository for United States government documents, for the European Economic Community, and for some other supra-national organizations, which means the library receives all these materials free of charge. Should the library acquire second copies of documents which exist elsewhere on campus? The faculty will have to decide how much of this kind of acquisition will be necessary, say the librarians. Documents lend themselves well to acquisition in microfilm or microfiche; readers do not always like to use them in this form, but students, says Pooley, are learning to adapt to the new technology. Microform storage is here to stay, and it is an excellent space-saving device, observes Pooley.

Once the reading room and stacks in the existing library and space in the new structure are full, the library plans to stabilize the number of hard copy volumes. And the way to do this is to take off the shelves and replace in microform as many volumes as are being added each year. Another remedy is to subscribe to materials on first order in microform where it is possible to do so, and where users find this a reasonable method of using them.

At present, the library does not have microfilming facilities and does not plan to establish them in the new building. Instead, there will be a substantial amount of equipment for storing microfilm or microfiche and for producing, on demand, copies of microfiche and also for making hard copies for users from either microfilm or microfiche.

With all the projected advantages of the new addition, there is yet one unfilled need. Pooley notes there will be no special facilities to house the rare book collection. He conceded, however, that badly as such a facility is needed, "the original, rather ambitious goals for the library addition had to be pared down," and in this process the need for carrel space was given priority over that for a rare book room. But one of the most important devices for rare book storage—humidity control—will be easy to maintain in the new, completely air-conditioned building. The smoke detectors and greater security potential of the new structure should also be of help.

As for the total utilization of the available space in both buildings, the new addition will provide not only a means of storing books more efficiently but also a way of reducing what now are operating as "satellite" libraries. There are now, for example, three separate spots on different levels of the old building that compose the faculty library. Pooley believes this arrangement is costly and wasteful, and maintains that the faculty would be best served "by having one faculty library plus some study space." Through consolidating the faculty library "satellites," one could maintain a collection for the exclusive use of the faculty.

For students who now have only the resources of the reading room and the first and second levels of the stacks, the total library experience ought to be greatly improved when the new building opens. They will gain open access to most of the stacks and there will be more reading stations—chairs as well as carrels. The spacious, lovely main reading room in the old building will still be available to students, and some people, especially those who do not like to work in air-conditioned rooms, may choose to use it as much as they always have. But some students do not like the noise and bustle of the old reading room, since it is a sort of thoroughfare for people entering the Legal Research Building. The less formal setting of the new reading areas might appeal to others. Should some suffer from the heat in the old reading room at various times of the year, the new air-conditioned building will provide relief.

As for book storage space, the present reading room—large as it seems when compared to the rest of the library—stores relatively few books, some 25,000 volumes at the moment. It was designed to hold no more than 20,000 volumes. Opening new reading areas in the new building might mean some duplication in reference works, but for current American material, multiple copies should be on hand anyhow to satisfy the needs of a large number of students.

Commenting on the 10,000 square feet allotted to library staff space in the new building, Pooley characterized this figure as somewhat misleading. The 10,000 square feet include the total space reserved for the circulation desk, cataloging, and microfilm storage and duplication areas. The actual staff space will be fewer than 5,000 square feet. Since a little more than 3,600 square feet of library office space in the old building will be vacated, the actual gain in office space will be rather small. Some increase in library staff with the increase of the collection is also to be expected. What will happen to the vacated office space in the old building is for the faculty to decide.

The new structure, Pooley stresses, will help the Michigan Law Library to live up to its reputation as one of

the largest and best law libraries in the world. He says its principal defect in the past has been that its wealth of material was not readily available to the students. They were not allowed in the stacks, and books generally were very difficult to find: "This great collection suffered from underuse." With the new construction, the entire collection will be available to students on an open stack basis.

"The students will be able to roam in most of the present stack areas. And they will be able to roam throughout the new construction, so we have done more than provide extra storage space. That could have been done much, much more cheaply. The expense has gone into what was felt to be a very necessary thing and that is to make the whole of this great collection available to the students, because it was getting to the point where it was almost unusable," says Pooley.

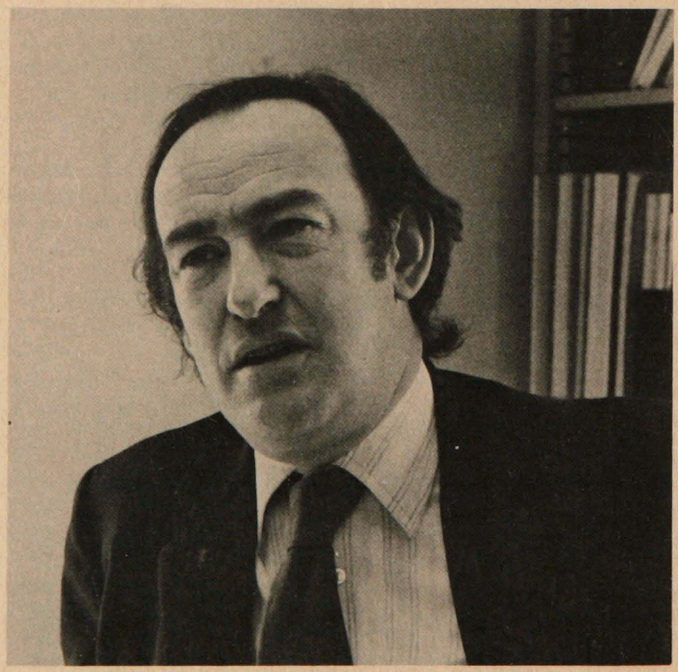
The second advantage will be providing the most efficient storage of the future acquisitions. Finally, the law library has to be prepared for changes in the nature of legal education. Students are doing more individual research than ever before. The clinical law and legal defender programs involve students in individual research, and so do student organizations such as the International Law Society and the Environmental Law Society. In order to carry out increased individual research, the students need study space. With an increase in the number of carrels and table seats in the new building, a substantial part of the student body will have space in which to do research. The greatest emphasis, says Pooley, is to make the entire collection available to students, and to provide places for them to use books that they can find themselves. "As far as students are concerned," Pooley observes, "we will move from having been what was essentially an undergraduate library to being a graduate library."

Citing the subterranean location of the library addition, Pooley notes that a significant number of large libraries have recently moved into underground facilities. Harvard and Yale, in particular, because of lack of space above ground have been building very extensive underground additions. The response from the underground users has been favorable there. If the space is well designed, if some outside light is available, if some interior landscaping is provided, the users of the underground library seem to be well satisfied. To compensate for the loss of the external views, there are some advantages: these underground structures are extremely quiet; they are economical consumers of power and energy, being much easier to heat and to cool and lending themselves to easy maintenance at uniform levels of heat and light. As noted in an article on the Michigan Law Library addition in the magazine *Michigan Contractor & Builder* (Feb. 24, 1979), "A subterranean structure . . . brings with it energy savings due to the leveling effect of the nearly constant ambient temperature of the surrounding earth. According to studies by Loring and Associates, the new library addition should conserve 20 percent more energy compared to a similar structure built above grade. . . ."

Leary stresss that the structure "will not feel like an underground building." Large sloping skylights will provide natural light and the high ceilings will offer a spacious atmosphere. "And there will be vines growing through the limestone-faced side of the lightwell," she adds. Outside greenery is planned too: "When completed, the roof of the underground library addition [the former site of a parking lot] will be covered with from two to five feet of earth. Landscaping, including some small trees and shrubs, will be added to develop the area into a student mall," according to *Michigan Contractor & Builder*.

The selection of an architect for the project had been a matter of concern to the faculty and alumni and, recalls Pooley, was "a very drawn out and difficult process." Finally Gunnar Birkerts was selected and, after several other alternatives were reviewed, the decision was made to build an underground structure. Birkerts has been described as an architect who believes that "when you go underground you cannot create catacombs. For people to be willing to circulate there, natural light and a sensation of space become very important considerations." Pooley is also enthusiastic about the architect's attention to the interior of the structure. The inside of the building is expected to be aesthetically pleasing in terms of materials used, space, and light. The architect has his own interior designing staff to carry out what he initially conceived in the way of interior design. Birkerts has played imaginatively with space, notes Pooley. The structure was designed to avoid the "warehouse look" of so many other libraries. The design offers a view of the outside, exterior light, and pleasing shapes and materials. People at the Law School are looking forward to seeing and using the end product of Gunnar Birkerts' imagination.

Margaret A. Leary



Beverley J. Pooley

The Constitutional Problems of the International Economic System and the Multilateral Trade Negotiation Results

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[Adapted from a paper delivered at the annual meeting of the American Society of International Law, Washington, D.C., April 26, 1979.]

The Tokyo round is now completed. Even discounting the hyperbole of the government negotiators, it is an impressive accomplishment. As the seventh major trade negotiating round in the context of GATT, the General Agreement on Tariffs and Trade, this multilateral trade negotiation, or "MTN" as it is often called, may well live up to the claim that it is the most far-reaching of any of the trade negotiating rounds, except perhaps the first when the GATT itself was drafted. It is particularly impressive coming as it did during a time of trauma for the international economic system, as well as a time of economic "stagflation" coupled with narrow parliamentary majorities for the governments of virtually all of the major participants in the negotiation. Considerable commentary has been published about the "protectionist trends" in the world during the last half decade. It has not been a time of farsighted leadership. The negotiation results bear the scars and blemishes of the gauntlet which it had to run. But for the first time since the original GATT, there has been a major extension of international discipline for non-tariff barriers. Previous rounds have tried and failed to achieve this, and to some extent this round also failed; but when one considers the extent and scope of what has been accomplished, particularly as compared to what seemed possible even one year ago, it is hard not to be impressed.

Yet there are criticisms which can be made. It can be reasonably argued that the overall economic impact of the negotiation results will be minimal. The tauted advantages of trade liberalization may not be great in this case, because there is not that much trade *liberalization*. As usual at the end of a trade negotiation, claims are being made on both sides of this issue, but it appears that this has been a "hold the line" negotiation more than anything else, and in some cases the line has not been held. For example, the failure to complete a "safeguards agreement" and thus bring discipline to the safeguards or escape clause area is ominous, particularly in the face of signs that some major trading countries seem determined to go their own way on safeguards, regardless of even those weak international obligations which may now exist. Some of the extraordinary ambiguity in the Subsidies-Countervailing Duty Code, designed to paper over the lack of real agreement, could be the refuge of some future safeguards or escape clause-type actions by governments, damaging to the principles of economic cooperation and interdependence. Some of these provisions will be extended to the anti-dumping subject where they could be even more risky. In this regard a careful formulation of the injury test, such as utilizing the phrase "material injury" in the U.S. implementing legislation, is an important improvement.

Some of the "side deals," such as on cheese, as well as certain provisions of some of the codes, suggest "organized free trade" ideas, designed to let governments manage trade and in some cases to manage it in a way to minimize domestic political opposition rather than to promote broader objectives of world well-being or even national well-being. Likewise the price of obtaining domestic support for the implementation of the negotiation results may have been high, and one cannot escape the feeling that the public is not yet privy to the private bargains that have been made. Finally, a major deficiency of this negotiation may be the failure once again to draw the less developed countries into a constructive and progressive relationship to the world trading system.

For all this, however, it is true that we now have international rules and at least some skeleton procedures for important areas of potential international conflict arising out of non-tariff measures, such as standards, government procurement, and many subtle government subsidy practices. Some salve has been put on old festering sores, such as customs valuation. The American Selling Price question may finally be resolved.

My purpose in this paper, however, is not to try to appraise the overall economic results of the negotiation, but rather to look at one particular aspect of the negotiation results which is peculiarly appropriate for examination by lawyers. By this I refer to the "institutional" or "constitutional" implications of the Tokyo round. I have on other occasions expressed my views about the constitutional problems of GATT, meaning the problems of its basic legal structure and problems of its procedures and methods of operation. I would like only to briefly review some of those viewpoints here, and then to examine the MTN results in the light of those weaknesses and of the other needs of a stable and progressively improving international economic system.

II

At the time of its origin, the GATT was never intended to play the role it has been forced to play. It was conceived as a reciprocal tariff reduction agreement, to be appended as a subsidary to the International Trade Organization, which never came into being. When the ITO failed to materialize in the late 1940s, the GATT became the only viable international institution for assisting nations to resolve their international trade policy differences, and thus the GATT began to evolve into the central international institution for trade as we know it today. This uncertain beginning explains many of the defects and difficulties of GATT. In fact, the GATT has served world trade and economic well-being far better than anyone had a right to expect. But in the last decade or so, a number of its constitutional infirmities have begun to catch up with it, as international economic interdependence, the quadrupling of GATT membership, the inclusion in that membership of countries with greatly divergent stages and theories of economics, and the crises of energy and unemployment, have all buffeted the GATT, the international economic system generally, and national governments.

We now find a series of weaknesses in the existing institution of the GATT. For example:

1) It is difficult if not impossible to amend the GATT for a variety of reasons. Thus it has not been possible to keep GATT's specific rules relating to trade, up-to-date.

2) Partly because of that fact, but also for a number of other reasons including the trauma of economic developments, compliance with GATT rules has been faltering. Some GATT rules are virtually ignored, in some cases because the rules have been found illsuited to current problems. But the tendency for governments to ignore existing obligations can be said to be spreading, as testified to by more eminent authorities than myself. Rule non-compliance becomes habit forming.

3) The dispute settlement procedures of GATT have not been working well. Indeed, on certain subjects, and at certain times, these procedures have virtually broken down, engendering increased ill will between nations, and evoking some remarkably poignant criticisms from, among others, members of the United States Congress.

4) The GATT decision-making structure has always been awkward and not well designed to reconcile widely divergent viewpoints or to create new rules which would likely be effective. There has been a tendency at certain periods of the GATT history to view the GATT merely as a forum for discussion and comparison of views on international economic policy. The question is: will such loose structure adequately cope with the kinds of problems we have now or can reasonably expect in the structure?

5) The uneasy relationship of developing country economic and trade policy to the GATT rules has always been the subject of dispute and some acrimony. The growing industrial capacity of some developing countries promises to put additional strain on the adjustment capabilities of the older more mature industrial countries, and this also poses problems for the traditional GATT rules which probably cannot be resolved under the existing GATT legal structure.

6) There are of course, other particular criticisms that can be made of the GATT, some of them focusing more on the substance than on its procedures or "constitution." For example, trade in agricultural goods has never really followed the GATT rules. Likewise, there seems to be a trend away from compliance with at least the spirit, if not the letter, of the most-favored-nation principle imbedded in GATT. Finally, the habit of GATT-sponsored significant but infrequent major trade negotiating rounds has often delayed the development of needed reforms or rule changes between those rounds.

III

How, then, do the results of the MTN affect the institutional infirmities of GATT? Time does not permit a detailed analysis of this question, but I can present a few subjects to stimulate your imagination and thoughts.

First, with respect to the basic constitutional structure of the international trading system, the MTN results have not at all improved that structure. The GATT will not be amended as such, which is not surprising in light of the difficulty of amending it as well as the risks of attempting to amend it. In addition, not only will the GATT itself not be amended, but the technique of creating a series of "side agreements" or separate "codes" has been indulged in to the fullest. This was perhaps inevitable, and indeed desirable from a number of points of view, but we must recognize the effect it can have on the overall institutional structure of the international trade system. Under the MTN codes as negotiated, we are creating a series of new stand-alone treaties, many of which also create supervisory committees utilizing various names such as "Committee of Signatories." Each of these committees apparently will be, in effect, a new "mini" international organization, a separate legal entity from that of GATT. Under each of these codes, while there is reference to GATT, nevertheless, there will be separate decision-making processes, separate dispute settlement processes, and in some cases rules about subjects which are also covered in the GATT agreement. Whether explicitly stated or not, the clear implication is that the code rules will take precedence over the previous GATT rules, at least as to the code signatories.

The result is a sort of "Balkanization" of the GATT structure. The centrifugal forces have been carried further, and a certain amount of subject jurisdiction will effectively be withdrawn from the general GATT consultative processes, weak as they are, and placed in limited membership side agreement or code "committees." Thus, although the total system when viewed overall has been expended to encompass additional subject matter, particularly of non-tariff measures, the core institution, the GATT itself, has probably been weakened. In any event, I think it is impossible to seriously argue that the overall institutional structure of the international trading system has been strengthened. Few if any of the specific weaknesses of that system have been redressed. From a longer range point of view, a view that would extend even a decade or two ahead, it is clear that the MTN can only be characterized as a superb exercise in ad hoc-ery. Much important works remains to be done.

IV

Now let me turn to some specifics.

The "legal context" of a set of rules includes at least two important institutions: an institution or set of institutions for creating new rules or changing old rules, i.e., "rule-making" procedures; and an institution or set of procedures for applying the rules and resolving disputes about them. I think a strong argument can be made that rules without these two institutions will become ineffective, and that weaknesses in either of these procedures will affect the stability of compliance with the rules. Let me first take up the question of rule-making procedures.

The GATT decision-making structure is not elaborate, to say the least. There is provision for joint action by the "contracting parties" under Article 25 of GATT, and this provision is remarkably broad and ambiguous although it has been cautiously used. The GATT, like many international organizations, provides that each member nation shall have one vote, and that on most issues a majority of votes shall prevail. This one-nation-one-vote system has many significant weaknesses in the context of international law today, but I cannot dwell upon those weaknesses here.

In general, the GATT does not use a voting system for "rule-making." Instead, the tradition of GATT is that new obligations or changes in the text of old obligations are binding only on those who accept them as part of a newly negotiated treaty instrument. Under the GATT, to amend the text of the GATT rules themselves requires a two-thirds majority of GATT and in some cases unanimity. The process is cumbersome enough such that it is now deemed almost impossible to use, except for certain situations which have a strong appeal to the large developing nation majority which now exists in GATT.

Although attempts have been made in GATT to improve the decision-making process, they have been largely unsuccessful. The negotiation procedure, on the other hand, while giving considerable emphasis to the real power relationship of the member nations may in fact result in less participation by the less powerful members of the international trading system than would a system which departed from a strict one-nation-one-vote procedure.

The MTN largely ignored these institutional questions. Indeed, while setting up a series of committees in connection with each of the major codes, voting was left astonishingly ambiguous in those codes. For example, the wording found in the Subsidies-Countervailing-Measure Code, similar to those of several other agreements, establishes a Committee of Signatories composed of representatives from each of the signatories to the code agreement. But nothing is said about voting—an almost incredible omission.

One answer that is commonly made by apologists of the agreements and the present GATT voting structure is that voting is not the usual technique of resolving differences. That answer is often true as far as it goes, but if consensus on procedure as well as substance breaks down, it is possible that the resort in a controversy may be to a vote. Since nations which are trying to form a consensus know that this is the final procedural step after a failure to arrive at consensus, the potential voting or decision structure will necessarily influence the earlier processes of negotiating towards a consensus on various issues. Any member of a parliamentary body can easily verify this observation. Any lawyer who negotiates a settlement for his client can also verify that the negotiation will be greatly if not decisively influenced by the predictions of the negotiators as to what result would occur if the matter in fact went to litigation. Counting Supreme Court noses is one of the favorite past times of our profession.

It is thus all the more disconcerting to further analyze the ambiguity of the MTN codes on this matter. Since voting is not mentioned, it is at least within the realm of possibility that if "push comes to shove" interpretative activity will conclude that the voting will be by the familiar one-member-one-vote process, with a majority prevailing. You will recall that the code language established that each signatory can be represented in the committee. Another clause in these codes typically reads that the code agreement is "open for acceptance by signature or otherwise; by governments contracting parties to the GATT and by the European Economic Community." Thus the EC and its members together could assert the right to have 10 signatories—9 member states plus the EC itself—on the committee. It is possible therefore for the EC to assert a right to 10 votes, as compared to one for the United States or Canada or Japan, although there may be an informal understanding to the contrary, or the EC may refrain from asserting these voting rights. If, as it appears likely at the beginning, the codes generally have only between 20 to 30 members, one can see at least potential risks for United States international trade policy which the new Balkanized system will pose.

It is true that in many cases the committees are formally given little or no power. That fact in itself underscores the lack of institutional reform which will occur under the MTN agreement. But in some cases the relevant committee does have potentially ultimate and decisive power in the dispute settlement procedures. The combination of these institutional weaknesses and ambiguities could fatally weaken those procedures. It could also put certain code members, such as the EC, effectively above the law. Or, less dramatically, it could result in the United States and other nations finding it necessary to summon exceedingly skillful diplomatic techniques to avoid being a supplicant in practical negotiations under the operation of the code concerned.

Even in cases where the relevant committee has no formal decision-making authority as the only official international agency to oversee the operation of a new code, it is likely to have considerable influence, particularly in early years, over the process of interpreting that code. Thus again, those nations which can play a dominating role in a committee at these early stages will have important opportunities to shape the operation of a code to their own liking.

I do not mean to imply that these defects are fatal, or that they should lead one to oppose the MTN results. Quite the contrary. The advantages of the MTN still appear to outweigh the disadvantages. I present this analysis,

however, to demonstrate, first how little priority seems to have been given in the MTN to basic institutional problems, and second to point out that the work is not finished, either for the international community or for the United States government itself. For the United States government to successfully manage its economic interests in the difficult diplomatic milieau which it has helped create will call for considerable improvement in its internal organization and marshalling of diplomatic skills. Thus, the MTN does not address central and important structural issues of the international trading system. And in addition, the MTN has added to the complexity of that system by setting up a series of new international legal entities.

V

Let me now turn to the dispute settlement procedures.

Rule application is increasingly being recognized as an important aspect of international diplomacy. A good part of the controversy about the potential SALT agreement is on the question of verifiability and thus effectiveness of the obligations incurred. The provisional drafts resulting from the law of the sea conferences include elaborate dispute-settlement procedures, also indicating a high degree of interest in the question of whether rules, which are agonizingly arrived at, will in fact be effective in guiding conduct, providing stability, and allowing reliance. A dispute settlement mechanism is often the chief technique for rule application, and once again it is important to examine the results of the MTN in connection with the infirmities of the GATT dispute settlement mechanism to which I have alluded earlier.

The MTN negotiators did attempt, very late in the negotiation, to improve the dispute settlement mechanisms now contained in GATT. One small portion of the negotiations tried to address the GATT dispute settlement mechanisms themselves and to improve them. However, the results I think were largely a failure. It appears that some trading countries, particularly the European Economic Community, were adamantly opposed to improvement of the dispute settlement procedures of GATT. This fact alone could be taken as a danger signal with respect to the viability and potential effectiveness of the very elaborate rules resulting from the MTN.

In each of the various codes there is a separate dispute settlement mechanism. I have argued elsewhere that to have a fragmented or "Balkanized" dispute settlement mechanisms is itself a mistake, but I won't repeat those arguments here. Some of the procedures in the non-tariff measure codes regarding disputes settlements do make some modest improvements on the GATT dispute settlement system.

What is it that one should look for in an improved dispute settlement procedure? I suggest the following:

1) An improved dispute settlement mechanism should be built on modest expectations, at least at the start. It should not be expected that all rules will be immediately complied with, or that all judgments of the dispute settlement mechanism will be immediately followed. However, the mechanism should be designed so that as time goes on, greater and greater confidence will likely be placed in the system so that gradually greater responsibilities can be added to it.

2) In order to establish that the dispute settlement mechanism relies primarily on reference to rules and their application, as opposed to the political and diplomatic processes of compromise which inevitably reduces the effectiveness and reliability of rules and can progressively weaken a dispute settlement process, the fulcrum of a dispute settlement mechanism should be the establishment of an opportunity to obtain an impartial and trusted decision or finding as to the interpretation or application of a previously agreed rule. Mixing that fulcrum with more political-like processes of conciliation, or policy formulation, can easily breed distrust in the procedure.

3) A consultation and a conciliation process can be an effective part of a dispute settlement mechanism, but should be reasonably separated from the third-party impartial findings.

4) The procedure should prevent foot dragging and delay, and force reasonably prompt resolution of disputes.

5) The agencies or *personnel* of the dispute settlement mechanism should have reasonably unambiguous direction as to their authorities and their objectives. Language such as that found in GATT article XXIII, "Nullification or Impairment," which is inherently ambiguous and creates disputes about the dispute settlement process, should be avoided.

How then do the various dispute settlement mechanisms resulting from the MTN negotiations stack up to some of these criteria? Unfortunately, not too well. A number of the procedures offer the hope of helping to avoid some of the foot-dragging and delay problems which have occurred in the past under the GATT procedures. Likewise, some of these procedures do offer the opportunity of expanding the list of available persons to act as impartial third party panel members, to help resolve one problem that has plagued the GATT process.

However, all too often the procedures explicitly mention the ambiguous "nullification or impairment" criteria. Likewise, the dispute settlement procedure often charges a third party panel with the conflicting duties of conciliation and objective determination of compliance with a rule.

The dispute settlement mechanism contained in the all important Subsidy-Countervailing Duty code perhaps goes the farthest in improving upon the more traditional GATT processes. There is at least some attempt in the wording of the agreement to separate the conciliation process from the third-party panel process, and the panel is charged with setting forth a finding as to "questions of fact in the application of the relevant provisions. . . ."

A basic problem in this code, which also exists to a somewhat lesser extent in some of the other codes, is the extraordinary ambiguity of some of the substantive rules of the code.

VI

Finally, let me turn to another dimension of the institutional problems we have been discussing.

There is one institutional or constitutional aspect of the trade negotiations which may hold considerable promise for the future. For many years in the U.S. the constitutionally imposed tension between the executive branch and the Congress has been particularly felt in connection with the conduct of United States foreign economic relations. I am sure most are familiar with the decades of Congressional hostility to the GATT, or to the sorry story regarding the anti-dumping code after the last trade negotiation round. The U.S. constitutional system, for

what I believe to be wise and proper reasons, stimulates this tension between the branches of our government, but this constitutional structure has its price and the price may be rather high in the context of international relations in a contemporary interdependent world. Thus it is extremely interesting to trace the development of the new procedure for approving the MTN agreement which was established in the 1974 Trade Act, and has only recently been worked out in a series of practical accommodations between the Executive Branch and the relevant Congressional committees. There are problems with the process, of course. The "up or down" vote with no amendments, coupled with the elaborate Congressional-executive consultation process prior to the drafting of the bill to be tabled, has, I believe, worked reasonably well; it is interesting to note that there was agreement between the executive branch and Congressional committees to extend this procedure, which would otherwise expire January 1980.

Beyond this, however, the United States government needs to give considerably more attention to its own internal structure for representing U.S. longer range international economic interests. It would be dangerous indeed to view the MTN process as a job finished, to see the dispersal of experienced talent, and to hope that the new complex, intricate, and ambiguous tangle of international rules which has come out of the MTN could now be put on the shelf, like a wound up clock, to operate by itself. It will take great skill and resources, both within the U.S. government and at the international level, to keep these MTN results from becoming merely another addition to the useless debris left strewn on the international landscape, such as the unfortunate 1948 ITO charter, the stillborn 1955 Organization for Trade Cooperation, the Kennedy Round Grains agreement, and the Kennedy Round American Selling Price agreement.

In short, we have the possibility of a new beginning. Let us hope that the plethora of ad hoc MTN results can become structural bricks to be given some foundation and some longer range stability.

John H. Jackson