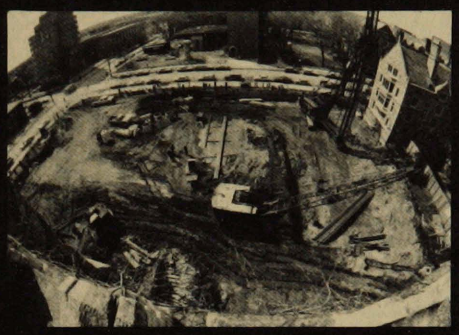
Law Quadrangle Notes

The University of Michigan Law School

Volume 24, Number 2, Winter 1980



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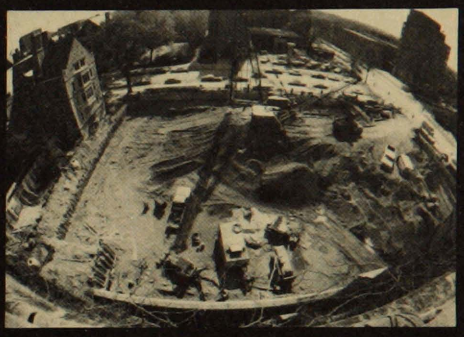

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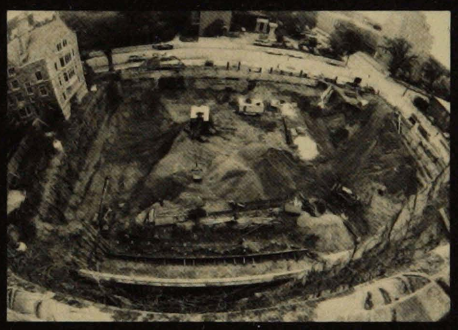

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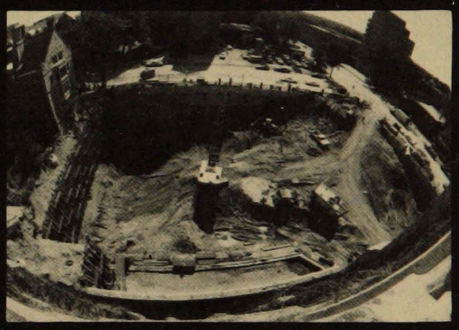

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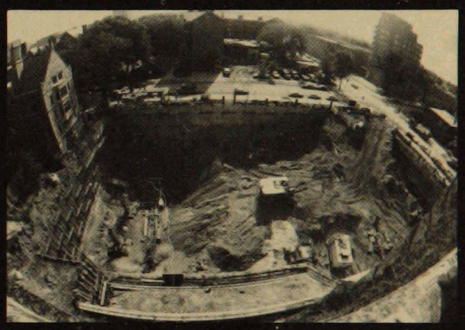

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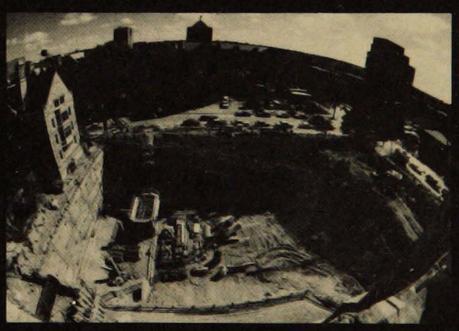

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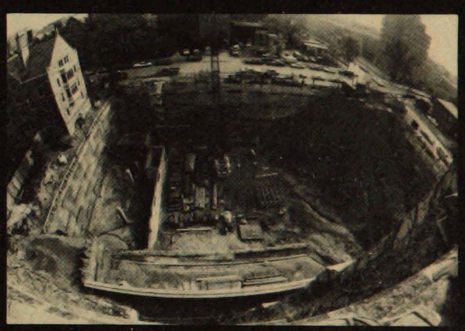

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THE UNIVERSITY OF MICHIGAN LAW SCHOOL CAPITAL CAMPAIGN

FINAL REPORT

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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, MI 48109. **SEND FORM 3579 TO:** Law Quadrangle Notes, Law School, The University of Michigan, Ann Arbor, MI 48109.

Publications Chairman: Professor Yale Kamisar, U-M Law School; **Managing Editor:** Harley Schwadron, U-M Information Services; **Graphic Designer:** Phoebe McGuire, U-M Publications Office; **Production Manager:** John R. Hamilton, U-M Publications Office; **Law Student Writer:** Mark Simonian; **Law Student Photographer:** John Elam; **Contributing Writer:** Anna Brylowski; **U-M Briefs, Events, Alumni Notes:** written and edited by Harley L. Schwadron; **Typesetting and Printing:** U-M Printing Services.

Photo Credits: John Elam: 1, 4, 5, 11, 12, 25, 32, 38 (Allen, Kamisar); Bob Kalmbach, U-M Information Services: 10, 34 (Smith, Sandalow), 36, 38 (Kennedy), 43, 44, 45, 46, and cover photo sequence; several of the scenic photos appearing throughout this issue by former Ann Arbor photographer Stuart Abbey.

briefs

Harry Edwards Appointed To U.S. Court Post

Harry T. Edwards, U-M law professor, has been appointed to fill a vacancy on the U.S. Court of Appeals for the District of Columbia Circuit. He had been nominated for the post in December by President Carter.

Edwards assumed the federal court post in March following confirmation by the U.S. Senate. At 39, he is one of the youngest judges sitting on a U.S. appeals court. The Washington court is generally considered one of the most influential in the nation, second only to the U.S. Supreme Court. It deals primarily with cases of national significance.

The court vacancy was created by the recent decision of Chief Judge David Bazelon to assume "senior status."

A member of the Michigan law faculty since 1970 and a specialist in labor law and arbitration, Edwards was elected chairman of the board of Amtrak, the National Railroad Passenger Corporation, in April, 1979. He had first been appointed by President Carter as an Amtrak board member in 1977.

Edwards, a 1962 graduate of Cornell University, received his law degree from the U-M in 1965 graduating with "high distinction." He served on the Michigan *Law Review* and was a member of the national legal honor society, the Order of the Coif.

Before joining the U-M law faculty, he spent five years with the firm of Seyfarth, Shaw, Fairweather & Geraldson in Chicago. He has also served on the Harvard Law School faculty from 1975-77 and holds a summer post with the Harvard Institute of Educational Management.

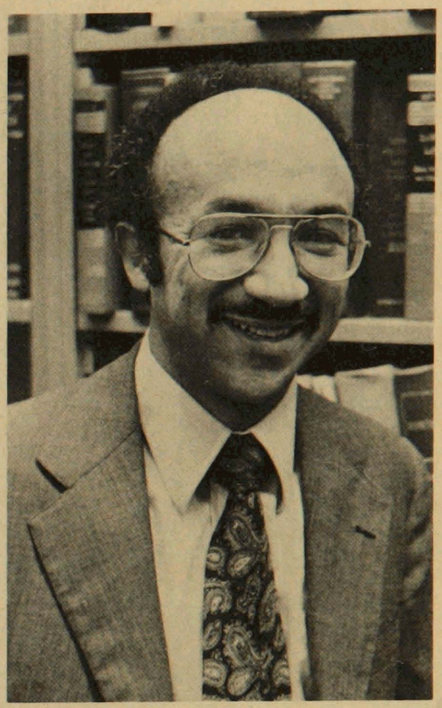
Edwards is the author of four textbooks, including *The Lawyer as a Negotiator, Collective Bargaining and Labor Arbitration, Higher Education and the Law*, and a legal casebook, *Labor Relations Law in the Public Sector*.

Edwards has served as vice president of the board of governors of the National Academy of Arbitrators, and has been a member of the nine-person executive committee of the Association of American Law Schools.

He was among a group of lawyers designated to serve on the American Bar Association Commission on Law and the Economy, which recently issued a widely-known report on "Federal Regulation: Roads to Reform."

Since 1976 he served as a member of the Administrative Conference of the United States. In 1977 he was appointed by the President as a member of the International Women's Year Commission.

Edwards is married to Ila Hayes Edwards and has two children, Brent, 11, and Michelle, 8.



Harry T. Edwards

Knauss, Morgan, And Schneider Named Supreme Court Clerks

Three recent graduates of the University of Michigan Law School have been named clerks for U.S. Supreme Court justices for the court term beginning fall, 1980.

The U-M Law School consistently has one or two graduates selected as Supreme Court clerks each year. This is the first time in recent history that three graduates have been named to the sought-after clerkships.

The graduates selected were Robert Knauss, who will clerk for Justice William H. Rehnquist; Richard Gregory Morgan, who will clerk for Justice Lewis F. Powell, Jr.; and Carl E. Schneider, who will serve under Justice Potter Stewart. The three clerks, all 1979 law graduates, will serve for one year.

Knauss, a graduate of Ann Arbor's Pioneer high school where he starred on the tennis team, is currently serving as law clerk for Judge Walter R. Mansfield of the U.S. Court of Appeals in New York City. At U-M Law School he was note editor of the *Michigan Law Review*. (His father, Robert L. Knauss, was a U-M law professor and vice-president for student services, and until recently dean of Vanderbilt University School of Law. Knauss' younger brother Charles is currently a U-M law student.)

Morgan is currently clerking for Senior Judge J. Edwards Lumbard of the U.S. Court of Appeals in New York City. He was article and book review editor on the *Michigan Law Review*.

Schneider is currently law clerk for Judge Carl McGowan of the U.S. Court of Appeals in Washington, D.C. He served as editor-in-chief of the *Michigan Law Review*.

Michigan Law School currently has one graduate serving as a Supreme Court clerk. He is Philip Frickey, who is clerking for Justice Thurgood Marshall.

St. Antoine Presents Pope John XXIII Lecture

Labor unionism today is losing much of its original fervor, largely due to its failure to win for workers a larger share of the economic pie, according to a U-M law professor.

Delivering the Pope John XXIII Lecture at Catholic University School of Law in Washington, D.C., Prof. Theodore J. St. Antoine said that labor unions in the United States are facing declining membership as well as a lack of support from the general public.

"Today, polls show that there is no major institution in our society that is less trusted by the general public," said St. Antoine, a specialist in labor law who served as the U-M law dean from 1971 to 1978. "Organized labor has lost ground with its academic supporters, and, more important, with the workers themselves."

St. Antoine noted that in a rapidly expanding labor force, union membership has fallen to only 21.8 percent of the total in the United States. "Unless the unions eventually crack the formidable bastions of white-collar workers in the office, clerical, technical, and retail trades, their numbers will continue to dwindle," according to the law professor.

A major factor in declining unionism, said St. Antoine, is that unions and collective bargaining have not achieved a major economic objective—they have not brought about a "redistribution of corporate income in favor of the wage-earning class."

Since 1900, employee compensation has usually fluctuated between 70 and 80 percent of corporate income, said St. Antoine, "with, at most, only a moderate increase in labor's share over the entire century.

"A leading labor economist, Albert Rees, estimates that unions may have succeeded in raising the wage rates of their members an average of 10 to 15 percent in recent years, but they have not succeeded similarly in increasing labor's share in the distribution of income at the expense of capital, even in their own industries.

"This seeming paradox is explained by a well-recognized reaction to unionization on the part of management. Over time, employers will substitute capital for labor, installing more efficient productive processes that require fewer workers.

"Under this analysis, any gains won by unionized workers are not secured at the expense of profits but at the expense of the employees or potential employees who are squeezed out of jobs that are eliminated in organized industries."

St. Antoine said that organized labor has probably made its greatest impact in the "furtherance of humane values"—such as giving employees a voice in determining working conditions and benefits, and creation of the grievance and arbitration process—rather than in "supposed economic triumphs.

"Collective bargaining gives the employee a voice in the workplace, an opportunity to participate in determining the conditions under which he shall perform his duties, and the form, at least, of the compensation he shall receive for his labors.

"By pressing for health and other insurance plans, pensions, supplemental unemployment benefits, and similar non-wage types of compensation, for example, unions have obviously had a significant and beneficial influence on the shape of the labor slice of the economic pie, even if they have not had much effect on its overall size."

Turning to the question of "affirmative action," St. Antoine said he believes that preferential treatment of minorities and women is necessary as a temporary measure to remedy past discrimination against groups of people.

Although affirmative action and preferential treatment raise "grave moral questions" and strike at American tradition of individual merit, "I justify this on the ground that we are dealing with no ordinary situation but with a national problem of staggering dimensions. A group wrong has been perpetrated for generation upon generation, and the wounds are deep, pervasive, and persistent. Heroic measures are called for in the treatment—specifically, a group remedy to cure this group wrong," said St. Antoine.

But the professor warned that "we must not allow the drug of race-conscious and sex-conscious behavior to become habit-forming. Affirmative action must cease when its goals have been substantially accomplished."

In all likelihood, he said, "the pride of the beneficiaries themselves will call for an end to favored treatment when it is no longer needed. Special admissions programs for Oriental students are already being phased out on the West Coast."

Prof. Allen's New Book: "Law, Intellect, And Education"

The traditional "moralistic" bent of the criminal law—which holds criminals as being fully responsible for their actions—often is in conflict with modern social science theories, which emphasize the many different circumstances influencing a person's choices, notes a U-M authority.

But, says law Prof. Francis A. Allen, the concept of moral "blameworthiness" is likely to persist in the criminal law because this is the most widely accepted public view of criminal behavior.

Allen, a criminal law authority, discusses some of these problems in an essay, "Criminal Law and the Modern Consciousness," that appears in his new book *Law, Intellect, and Education* ($5.95 paperback, $12 hardcover). This book has been released as part of the Michigan Faculty Series of the U-M Press.

Other of Allen's essays, dating from 1949 to present, deal with such questions as student attitudes, politics and universities in the 1960's, anti-intellectualism in legal education, "relevance" in law education, and the future of legal training. A former president of the Association of American Law Schools, Allen served as U-M law dean from 1966 to 1971.

Discussing the rift between social science and legal theory, Allen writes:

"Educated persons, especially those trained in the behavioral sciences, often experience shock when first exposed to a more comprehensive encounter with the substantive criminal law. The shock stems in the first instance from its highly moralistic vocabulary. The law speaks

of culpability and responsibility, of purpose, justification and excuse, of guilty minds and guilty acts.

"The vocabulary of the criminal law posits, or appears to posit, a model of mankind composed of individuals who are morally autonomous, capable of perceiving and selecting alternatives, free to choose and to act, and hence liable to characterization as praiseworthy or blameworthy."

This legal orientation runs counter to many assumptions of modern thought, notes Allen, particularly the "tendency to view the human actor as a party acted on by pre-existent events and circumstances which significantly influence, if not determine, his behavior."

But Allen explains why the "blameworthiness" principle is likely to persist:

"An operating system of law, even one in a totalitarian regime, demands high levels of voluntary compliance. This in turn requires the articulation and application of principles that are comprehensible to persons subject to the law . . . (and that appeal) to an almost instinctual feeling of fitness or propriety.

"The facts suggest that attempts to eliminate the element of blameworthiness from criminal law theory would render the penal law incoherent and threaten the law's capacity to inspire voluntary compliance."

The "blameworthiness" principle also serves as a limiting factor with regard to state power, Allen points out. "Thus it may be asserted that the state must not impose criminal sanctions on an accused unless his behavior is fairly subject to moral condemnation."

Further information on *Law, Intellect, and Education* is available from the University of Michigan Press, Ann Arbor, Mich. 48109.

Allen Delivers William L. Storrs Lecture Series

Desire for more uniform criminal sentencing, worries of increasing crime, and concerns about governmental expenditures are among the factors contributing to today's sharp decline in the acceptance of penal "rehabilitation" as a central goal of our criminal justice system, says a University of Michigan legal scholar.

Delivering the William L. Storrs lectures in the fall at Yale Law School, U-M law Prof. Francis A. Allen said the "rehabilitative ideal" has also been attacked for its alleged failure to "cure" criminals and prevent recidivism, and on grounds that prisoner rights may have been violated in some coercive therapy programs.

Justified as these critics might be, said Allen, penal rehabilitation is likely to play at least a "peripheral" role during the rest of the 20th century, reflecting the ethical concern of "avoiding deterioration of human beings on penal confinement."

The U-M professor warned that total abandonment of rehabilitative goals could have serious social consequences.

An authority on criminal law, Prof. Allen discussed "The Decline of the Rehabilitative Ideal: Penal Policy and Public Purpose" in the three-part Yale lecture series in October. The Storrs lectures are among the most prestigious of law school lectures.

Noting ethical concerns in rehabilitation, Allen said that "in dealing even with those who have seriously breached community norms of conduct, it is wrong for the state to strip from human beings all hope and opportunity for self development."

The decline of the rehabilitative ideal could also serve to undermine efforts at maintaining conditions of "fundamental decency" in prisons, Allen warned.

"It is an historical fact that the great reforms in the physical and moral conditions of institutional life have been accomplished largely by persons whose humanitarian impulses were joined with rehabilitative aspirations.

"The sober questions arise: who will perform these moderating functions, where will the impetus toward humane treatment come from, when such personnel are eliminated or drastically reduced in numbers?"

Allen predicted that prison rehabilitation is most likely to survive in voluntary programs, where participation is not a pre-condition for early release or special parole benefits.

"A strategy that would avoid conditioning prison release on inmate participation in rehabilitative programs may be defined as that most likely to achieve rehabilitative gains.

"Under coercive regimes the goal of rehabilitation is rarely one originated or accepted by the prisoner. His objective is early release, and when release is accelerated by appearances of rehabilitation, the prisoner will studiously concoct such appearances," said Allen.

There is also a strong movement today toward "community based treatment" of criminals, which implies opportunities for rehabilitation, according to the U-M professor.

One of the major factors contributing to the downfall of the rehabilitative ideal, according to Allen, has been concern over sentencing disparities and inequities in the administration of parole.

Proposals for fixed sentencing for specific crimes, designed to achieve a more even-handed treatment of criminals, are in part a reflection of our current sensitivity to possible abuses of power by governmental institutions, said Allen.

But, argued the professor, "some reformers have not fully calculated the costs of solutions that would substantially eliminate or radically truncate sentencing discretion.

"Ironically enough, limiting discretion in the interest of equality of treatment also limits the possibilities of justice in individual cases."

The U-M professor cited the example of youthful offenders:

"Vandalism of property by young offenders is a continuing occurrence in virtually all communities. Many judges respond to the phenomenon by imposing penalties much lower than those authorized by statute. Destructiveness of this kind is seen as a phase of growing up. With these considerations in mind, the court may accept informal arrangements of restitution and substitutes for fines or imprisonment.

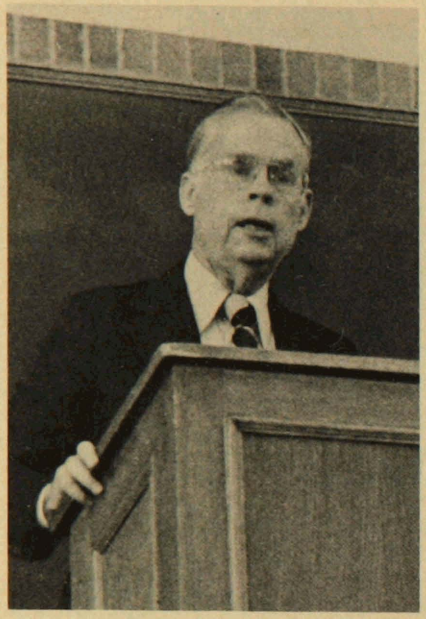
"Occasionally, however, vandalism escalates into an epidemic. In such a situation the court may determine that to stem the tide of destruction, exemplary sentences must now be imposed."

Likewise, large-scale withdrawal of support from prison rehabilitation efforts could create social and eventually political unrest, said Allen.

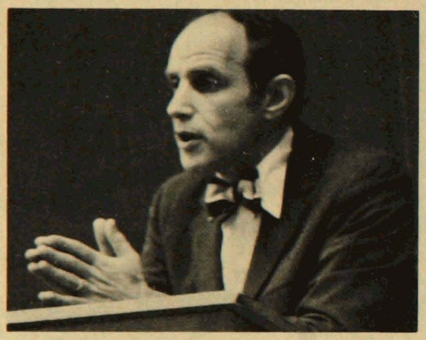
"Theories of rights which, if implemented, prevent or seriously obstruct the achievement of such social purposes are not likely to survive in the long pull," said Allen.

They "contain the danger of breeding revulsions that strip public support from proper efforts to protect individuals from tyrannical governmental interventions."

Examining some of the social factors influencing the decline of the "rehabilitative ideal," Allen noted that over the past decade, there have been "many indications of substantial losses of confidence in the capacities and motives underlying traditional programs of behavior alteration and guidance.



Francis A. Allen



Joseph L. Sax

"Part of the new skepticism is a product of political movements that arose in the 1960s attacking exercises of authority in almost all historical forms. One of the tendencies of the Vietnam war was to view the practice of psychiatry as a mode of social control."

In addition, the Watergate experience and the tendency of some black activists to equate criminal sanctions with political oppression have similarly struck at the root of rehabilitationism, said Allen.

A successful rehabilitation program requires acknowledgement of its legitimacy, suggested Allen. But today, he said, "matching the suspicions and skepticism of those subjected to rehabilitative efforts is a growing public pessimism about the capabilities of penal programs to achieve reform.

"There is reason to suspect that this pessimism, in part, is related to a widespread perception of the American crime problem as one principally of race," said Allen.

"It is hardly coincidental that the decline in public support for the rehabilitative ideal accompanies rising percentages of non-Caucasian inmates in prison, exceeding half of those populations in some northern states.

"Optimism about the possibilities of reform flourishes when strong bonds of identity are perceived between the reformers and those to be reformed. Conversely, confidence in rehabilitative effort dwindles when a sense of difference and social distance separates the promoters from the subjects of reform."

The Storrs lectures at Yale, dating to before World War I, are one of the oldest lecture series among the law schools. Prof. Allen holds the Edson R. Sunderland Professorship of Law at the U-M and was U-M law dean from 1966 to 1971.

Prof. Joseph Sax Receives Faculty Achievement Award

Prof. Joseph L. Sax of the U-M Law School was one of five Michigan faculty members receiving the Distinguished Faculty Achievement Award this past fall.

The award, carrying a $1,000 stipend, honors "distinguished achievement in teaching, research, publication, creative work in the arts, public service, and other activities which bring distinction to the University." Funds are provided by the Michigan Annual Giving Fund of the U-M Development Office.

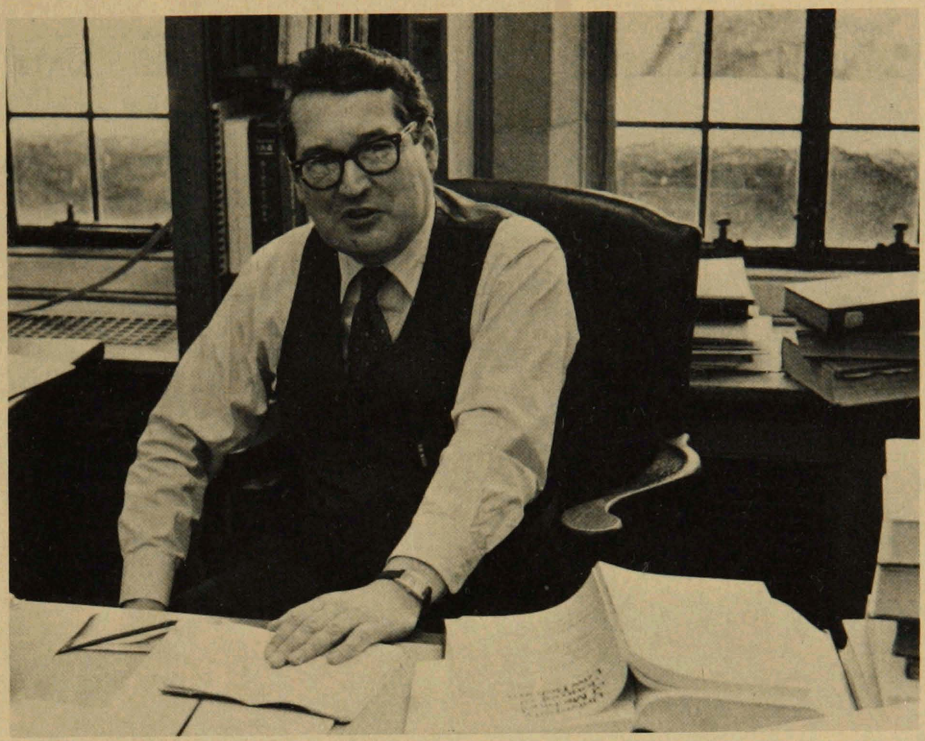
Sax's award citation said, in part:

"Among the most challenging issues confronting the legal system are those arising from man's heightened awareness of his dependence upon the natural environment. For nearly two decades, you have addressed those issues with an uncommon clarity of vision. In doing so, you have demonstrated that the goals of scholarship, teaching, and service to which the University is dedicated can be mutually enhancing.

"Through penetrating and imaginative scholarship you have earned a reputation as the nation's leading authority on environmental law. Your seminal writings on the judicial role in environmental protection, on the definition of property rights, and on the foundations of governmental responsibility for the environment have come to be regarded as classics in the field. They are recurrently relied upon by courts and considered by other scholars to be the starting point for further work.

"Your scholarship has both contributed to and been enriched by your innumerable public service activities. Countless governmental agencies, legislative committees, and private organizations have sought and benefited from your counsel. The Michigan Environmental Protection Act, which you authored nearly a decade ago, has become a model for similar legislation in other states, providing a means by which citizens may defend their interests in the environment.

"As a teacher, you have successfully engaged many students in your research and your public service activities, and guided many more to an increased understanding of the uses of law."



Theodore J. St. Antoine

Of Running a Solid Ship And Other Legal Matters: A Former Dean Reflects

Prof. Theodore J. St. Antoine has returned to teaching at the Law School. He says it is, after all, what he enjoys doing best. While acknowledging that his years as a dean (1971-78) were not without rewards and that he is "very, very honored to have been dean at Michigan," for him administration is rather one of the necessary evils associated with the academic experience; teaching and research are his preferred choices. He is glad to be back.

Refreshed by a summer abroad and a sabbatical year at Duke University, St. Antoine is now settled in a ninth-floor office in the Legal Research Building, graciously and amiably sharing impressions of his recent experiences and looking to the future.

Duke University was "a delightful place to spend a year and sort of 'recharge the batteries' and slowly get readjusted to the life of teaching and research full time." As a smaller school it provided a more relaxed atmosphere, and, he adds, "I'm afraid the climate has a substantial edge over Michigan's."

Then came the opportunity to teach for three weeks at the Salzburg Seminar in American Studies. Sandwiched between two two-week "very hurried American tourist rambles" of London, Paris, and Bavaria, and then Venice, Florence, and Rome, the three-week stay in Salzburg provided a chance to know "the life of one particular area reasonably well." Living in Schloss Leopoldskron, where some of the scenes of "The Sound of Music" were shot, "we were constantly being overrun by tourists taking pictures of us peasants. We always kept saying we ought to yodel at them to provide a little atmosphere."

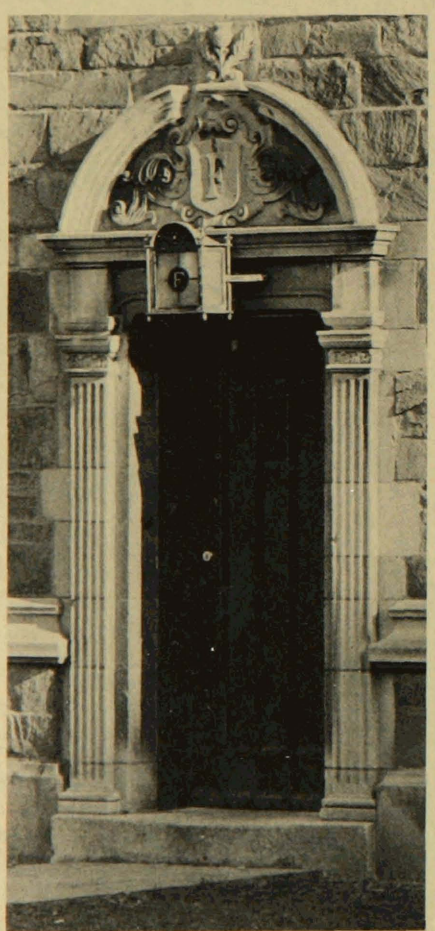
As for the seminar itself, St. Antoine calls it "one of the most satisfying experiences I've had in my lifetime." It was structured as a group of 50 fellows drawn from all over Europe (persons usually five to ten years out of law school—practitioners, judges, academic people, government officials), with four American academics serving as faculty and with U.S. Supreme Court Justice William H. Rehnquist as the chairman of the faculty. Because of the intense contact during the three weeks, the seminar allowed for many heart-warming relationships to be established, a number of which, St. Antoine believes, will be maintained for a lifetime. He found the intellectual caliber of the participants impressive, "with a real growth in the spirit of Europeanism among them—there was a mix that seemed to cut across national lines, even extending behind the Iron Curtain."

And now St. Antoine looks back on his years as dean and to the future. The deanship, he admits, offered "several unexpected bonuses." In the first place, he feels that the deanship of a major institution provides a platform for offering one's views to the public. If used wisely, it "can enhance both the institution and the profession and, hopefully, society." Next, an unexpectedly pleasant part of the dean's task had been the frequent travels around the country: meeting alumni and other professional groups, receiving "the warmest of welcomes and most cordial personal treatment" at all times. Thus, what he had feared would be a burden actually became a delight; so much so that at times he looked upon these travels as a welcome escape from the routine of the dean's office. But it is still the contact with the students, the opportunity to say something to them that is not "merely light and witty," but "has some substance and weight" that provides one with a "more lasting sense of satisfaction."

Besides these general observations that many a dean might share, St. Antoine points out some achievements that will be thought of as his particular contribution to the Michigan Law School. Saying he does not take that much personal pride in it, he believes he will be remembered primarily as the dean whose successful fund-raising provided the Law School with the new library addition now under construction. The fund-raising had been a time-consuming effort, but, as U-M President Robben Fleming wrote in a letter to St. Antoine at the end of his tenure as a dean, ". . . the new library will be largely a monument to your efforts."

As for shaping the curriculum of the Law School, the former dean does not think he has had a great deal to do with that. He feels he expanded rather than initiated programs that his predecessor Francis Allen had undertaken, especially in clinical and interdisciplinary teaching. On the whole, he believes it difficult if not impossible for one man to restructure the curriculum of a "large and self-assured institution of the quality of [Michigan]," or to use his metaphor: "You know, when you are running a ship that is as big and solid as this one, you can't change its direction very rapidly. The principal function, I think, is to make sure that it stays on course and keeps a steady pace."

The most important thing a dean can do, he believes, is to put together a truly first-rate faculty: "I do think that we continued during my deanship to bring to the Law School an extraordinary group of able young



people, both men and women. And that was most rewarding." The excellence of this well orchestrated youthful ensemble had not escaped notice of a fellow dean of another great law school ("a very knowledgeable person" about faculty recruitment) who had remarked how well this young faculty "worked together, taught together, and enjoyed each other's company," forming what he considered "the best such group in the country." "I took enormous satisfaction in [this remark]," adds St. Antoine.

U-M law Prof. Harry Edwards, a friend and a fellow labor law specialist, calls St. Antoine "a tremendous inspiration" to Michigan's young faculty. "The result has been," according to Edwards, "that a lot of young people on this faculty have done many, many things in their areas of expertise that they might not have done if they were in another institution—a different setting, a different dean." Edwards attributes his own return to Michigan from Harvard partly to the opportunity to continue working with St. Antoine in their shared field of interest. "On balance," he says, St. Antoine "has been a model of an outstanding teacher and scholar, and he has contributed to the profession immensely. He is well recognized in the labor field, and his views are constantly sought, because he is a very thoughtful, imaginative person. . . . I think the fact that he was a dean as early as he was in itself was the highest tribute that could be paid him."

From his rich experience in academic policy making, teaching, and law practice, St. Antoine has perceptive comments to offer on the law as a discipline of study and as a profession of public value and personal satisfaction.

As on several occasions before, he stresses the importance of teaching larger intellectual concepts in preference to narrowly practical legal training. He is convinced that contrary to what students might think of as "very lofty theory," the former approach does not mean "simply spinning academic abstractions" while dealing with "underlying principles of the law," but actually provides them with the kind of knowledge and capacity to think for themselves that they will need most in their professional endeavors. The latter approach, by concentrating too much on the narrowly practical aspects of any legal concern of today, really is preparing students to practice the law of yesterday: "Yesterday's world in tomorrow is not what they are actually going to encounter. So I think that the main thrust should be toward giving them a framework and even beyond that a sense of how to go about teaching themselves and how to go about thinking through totally unprecedented problems. That to me is the major mission of a great law school."

At the same time he acknowledges that the majority of today's students think they need much more highly practical offerings in such disciplines as trial techniques, legal writing, and procedure than they receive. Thinking it unwise to resist these persistent demands totally, St. Antoine advocates a compromise: with the "how to" content of a practical course, a sense of the subtler, more complex problems should also be given. He cites as an example a civil rights course offered at the Law School that outlines the "how to" techniques of a civil rights case but that also strives to provide a "good sense of broad litigation strategy, the meaning of the concept of discrimination, which is a very subtle and often shifting standard."

When asked about the professional opportunities of the law school graduate of today, St. Antoine is hopeful about the immediate prospects of Michigan graduates: 90 percent or more of them have been able to secure work as practicing lawyers immediately upon graduation, the nationwide figure being only 50 percent. He admits, however, that the present popularity of law studies (a trend that started in the early 1960s because of the shortage of lawyers at the time) may pose some problems as the nationwide percentage of placement indicates, but he also sees new possibilities for law school graduates opening up.

In the 1960s, idealistic and intellectually well equipped people were drawn to the law schools by two major factors: social activism that pointed up problems of civil rights, criminal justice, poverty; and the surplus of Ph.D.'s in other disciplines that attracted people to the law schools who otherwise might have become English or philosophy professors or nuclear physicists. The latter, looking for a different field to make a living, saw in the law a profession that "does have some exciting intellectual challenges which increasingly provide the opportunity to bridge different disciplines."

For people of this quality the above mentioned problems should still provide interest and occupations. In addition, all kinds of public questions become legal questions in the United States. What other societies might treat as political issues or issues to be resolved by a particular discipline or

profession, in our society, says St. Antoine, "wind up in the courts to be resolved within the legal framework." In the future, there are going to be "some extraordinary, difficult, important, deeply disturbing questions that the law will have to wrestle with." There will be "problems of humanity" and "problems of the natural world" that will ask for new rules to be worked out "much more rapidly than we had to do it in the more leisurely days of the past."

In this respect St. Antoine mentions the new developments in human genetics: "We are going to start, I suspect, to make human beings to order some time over the next century." We will have the power of "restructuring human psyches" and this might be hopeful in terms of "reforming habitual criminals," but we may lose individual freedom and integrity of human beings in the process. The "law will have to decide what is allowable in terms of how you can manipulate genes and the development of human beings in artificial forms."

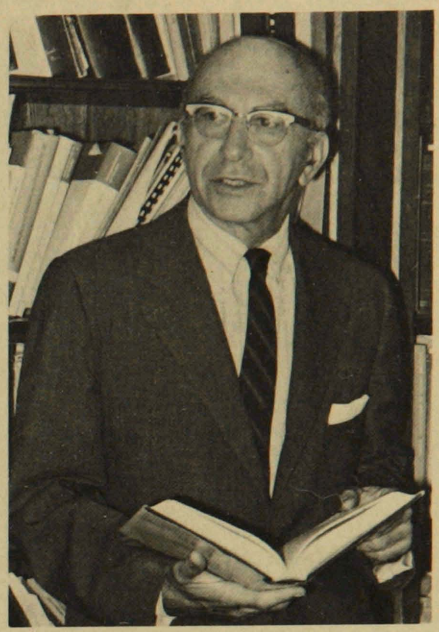
There will also be a considerable legal involvement "in determining the allocation of natural resources as the world becomes far less able to sustain exploration." And St. Antoine predicts we are "going to have problems of developing an entirely new system of property" in order to deal "with this very different world we confront."

Another new field for the lawyer is "the formation of what are called prepaid group legal service plans." These are patterned on the principle of group insurance programs and will allow for legal assistance to greater masses of the public. Seventy percent is the standard figure of middle class Americans who do not get proper legal services because of the expense; the ten percent who are rich can afford to pay and the twenty percent who are poor are helped through legal aid societies and legal defender offices. Whether Americans value legal services enough to enroll in these programs on a large scale remains to be seen.

Talking about his own future plans, St. Antoine remarks: "I certainly can't dismiss out of hand anything that might come along." As he wryly adds: "I suspect there can't be more than 10 law professors in the United States under 65 who would turn down a position on the United States Supreme Court." Calling such ambitions "daydreams," however, he admits he has not been tempted to take up offers of such governmental posts that so far have come his way. He is happy in teaching and research. He feels that labor law is "a wonderful specialty to be involved in because it provides the opportunity to do a number of outside things that are really central to both your teaching mission and your research mission," as, for example, his chairmanship of the Governor's Commission on Worker's Compensation, chairmanship of the State Bar's Labor Relations Law Section, and his activities as an arbitrator.

As St. Antoine sees it, "with the academic world as a base," one has all kinds of opportunities to do things that are useful to society, including full-time governmental service while on a leave of absence. And the academic world in itself is to him the greatest challenge of all: what can be greater "than the challenge of producing something truly significant of an intellectual nature?" There "the sky is the limit." "No matter how well you do," he concludes, "you are constantly competing against an impossible potential. I don't see how anyone can find that less than the most fascinating sort of challenge. And it does not leave me restless to try to conquer other worlds. I don't think anybody can totally conquer this one."

—Anna Brylowski



Eric Stein

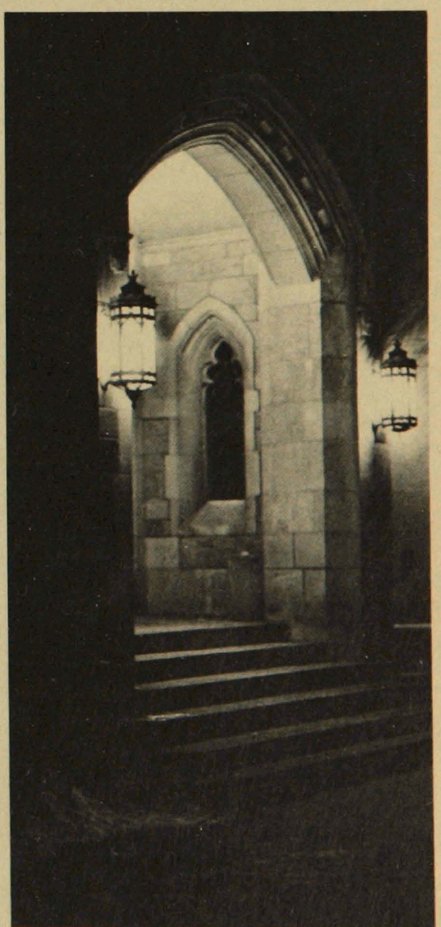
Stein Appointed To International Group

Eric Stein, professor of international law at U-M, has been elected an associate member of the International Academy of Comparative Law, headquartered in Paris.

Considered one of the leading scholarly groups in the international legal field, the academy offers specialized educational programs throughout the world. Its membership includes leading comparative law teachers from eastern, western, and "third world" nations.

Prof. Stein, who holds the Hessel E. Yntema Professorship at the Law School, is a specialist in disarmament and weapons control law and comparative law. He has authored or co-authored a number of books on European Community law, test ban negotiations, and harmonization of international business law.

Stein has been a member of the U-M law faculty since 1955.



Broad Spectrum of Events Held At Law School

As part of their legal education, U-M law students can participate in a wide range of extra-curricular activities.

Among these are a varied array of lectures, meetings, and conferences held at the Law School throughout the school year.

To illustrate the diversity of such events, U-M law Dean Terrance Sandalow has suggested presenting a listing in *Law Quadrangle Notes* of some typical Law School activities.

The following were among events scheduled in the period from mid-October through mid-November, 1979, a particularly active time at the Law School:

Talk by Fred Krupp of the Connecticut Fund for the Environment on "Founding Public Interest Law Firms."

Christian Law Students meeting.

International Law Society presents a panel discussion on Multinational corporate concentration.

Presentation by the co-directors of the Peace Corps in the Philippines.

La Raza and National Lawyers Guild present speakers from the Farm Labor Organizing Committee.

Law School Student Senate meeting.

William Delhey, Washtenaw County prosecutor, offers "An Overview of a Working Prosecutor."

Scottish country dancing at local fraternity house.

Women Law Students Association presents Cathy Fotjik, a Washtenaw County commissioner and chairperson of the NOW Committee on Violence Against Women, who speaks on "Pornography: A Feminist Issue."

International Law Society sponsors a talk by Prof. Steven Meyers of M.I.T. on "Nuclear Non-proliferation."

Meeting of Environmental Law Society on toxic wastes project.

Phi Alpha Delta discussion on job placement interviews, titled "Interviewing from the Other Side of the Table."

Zygmunt Plater, leader in the fight against the Tellico Dam in Tennessee, speaks on "The Rôle of the Lawyer in Administrative Agency Politics."

Committee of Visitors meeting.

Guido Calabresi, Yale University law professor, delivers the 1979 Thomas M. Cooley lecture on "The New Law and Economics 20 Years Later."

U-M law Prof. Francis A. Allen repeats his William L. Storrs Lectures, first delivered at Yale Law School in early October. The topic: "The Decline of the Rehabilitative Ideal."

U-M Law School hosts the 1979 Midwest Regional Conference on Women and the Law.

Presentation on "The Lawyer-Client Relationship" by Eugenia Boffi Harju of Michigan State University, sponsored by Women Law Students Association.

Meeting of Law School Democrats.

John O'Meara, Detroit labor lawyer, speaks on "Working with the United Auto Workers," presented by Phi Alpha Delta legal society.

Fred Boncher, Grand Rapids lawyer, speaks on "Practical Aspects of Environmental Litigation," presented by the Environmental Law Society.

William Durland, legal counsel to the Center on Law and Pacifism, speaks on the relationship of law and civil disobedience, under sponsorship of the Law School Speakers Committee.

Demonstration by Feminist Legal Services, Women Law Students Association, and the National Lawyers Guild against the showing of the film "Misty Beethoven."

Jean King, Ann Arbor attorney, speaks on Title IX implications.

Open meeting of the Law School's Curriculum Study Group.

Lawyers Club Discussion Series presents U-M law Profs. Olin Browder, Christina Whitman, and James Martin discussing "Law School Exams—What to Expect and How to Prepare for Them."

Ambassador Yehuda Blum of Israel speaks on "Israel and the Palestinian Arabs."

Dr. Andrew Watson, professor of psychiatry and of law at U-M, speaks on the "Stress of Becoming a Lawyer" as part of the Lawyers Club Discussion Series.

Law School forum on "Can Protest be Censorship," featuring law Dean Terrance Sandalow and Prof. Milton Herimann of the Department of Political Science.

Prof. Peter Westen speaks on appellate advocacy, under sponsorship of Phi Alpha Delta.

Prof. Charles Donahue Leaves Law School

After 11 years here, Prof. Charles Donahue, Jr., has left U-M Law School and accepted a professorship at Harvard Law School, effective Jan. 1, 1980.

Donahue said he plans to continue teaching basic and advanced property courses at Harvard, as well as English legal history and a Roman law course. Donahue's work (with N. Adams) for the Selden Society, a volume containing cases from the ecclesiastical courts of Canterbury in the 13th century, is due out shortly, as is a *Michigan Law Review* article on the historical roots of the distinction between separate and community property.

At Harvard, Donahue said he plans to begin work on a book on the interaction of legal rules and social practice with regard to marriage in the Middle Ages, and continue work on an edition of records from the 14th-century ecclesiastical courts of York.

Donahue joined the U-M faculty in 1968 and was promoted to full professor in 1973. Earlier he had served as assistant general counsel to the President's Commission on Postal Organization and as an attorney-adviser on the office of the general counsel to the Secretary of the Air Force.

A 1962 graduate of Harvard College in classics and English, Donahue received a law degree in 1965 from Yale Law School, where he was articles and book review editor of the *Yale Law Journal*.

"My debt to The University of Michigan is enormous," said the professor. "My family and my wife's family are both deeply rooted in the New York-New England area."

Donahue's published work includes his 1974 casebook on property law (with U-M law Prof. Thomas E. Kauper and Cornell law Prof. P. W. Martin), a 1975 course outline on basic property (with Martin), articles on Medieval ecclesiastical law and Roman law, and on comparative family law. He is also director of the American Society for Legal History.

—Mark Simonian

An international conference dealing with the role of the courts in European economic integration, held in July in Bellagio, Italy, will result in a forthcoming book to be published by Oxford University Press and edited by U-M law Dean Terrance Sandalow and Prof. Eric Stein. The book will contain articles by 13 conference participants, along with an introductory article by Sandalow and Stein, offering a comparative analysis of judicial approaches in maintaining open market conditions in the Common Market and in the United States. The conference at the Bellagio Study and Conference Center, part of a study headed by the two U-M law faculty members, received financial support from the Ford Foundation, while facilities were provided by the Rockefeller Foundation. Among responses from conference participants, Prof. Stein received a note from Sir Otto Kahn-Freund, professor emeritus at Oxford University, stating that "I learned an enormous lot in those few days, and I thought that this learning process was pretty general. Not many Europeans understand the fantastic complexities of the American constitution, and, it seems to me, not many Americans understand the true obstacles to 'the unification' of Europe. In both respects, this colloquium helped blow away a lot of the fog of ignorance and misunderstanding." Judge Pierre Pescatore of the Court of Justice of the European Communities wrote: "May I once again tell you how much I appreciated the unforgettable days I was allowed to spend at Bellagio? I think that very seldom in my life have I learned so much in so few days."

The photo shows the conference participants:

Sitting, from left: Professor Gerald Rosberg, U-M Law School; Professor Michel Waelbroeck, Free University of Brussels, Faculty of Law; Professor Walter Hellerstein, University of Chicago and Georgia Law Schools; The Hon. Pierre Pescatore, Judge, European Court of Justice; Dean Terrance Sandalow and Professor Eric Stein, organizers of the conference; The Honorable Hans Linde, Justice of the Supreme Court of the State of Oregon; Mr. Hjalte Rasmussen, Graduate School of Business, Copenhagen, Denmark; Professor Dr. Ernst Mestmäcker, Co-director of the Max-Planck Institute in Hamburg, Germany; Professor Francis Jacobs, Director of European Studies, University of London.

Standing, from left: Jean-Michel Galabert, Member of the Conseil d'Etat of the French Republic; Professor Donald Regan, U-M Law School; Dr. Rolf Wägenbaur, Legal Advisor, Commission of the European Communities; Professor Alfred F. Conard, U-M Law School; Professor Sir Otto Kahn-Freund, Q.C., F.B.A., Oxford; Professor Henry Schermers, Director of the European Institute, University of Leiden, Holland; Professor A. M. Donner, former president and member of the European Court of Justice; Professor Francesco Capotorti, Advocate General of the European Court of Justice; The Honorable Potter Stewart, Associate Justice of the United States Supreme Court; Professor Mauro Cappelletti, University of Florence and European University Institute; Dr. Hans J. Glaesner, Legal Counsel, Director General, Council of Ministers of the European Communities; Mr. Paul Leleux, Senior Legal Advisor, Commission of the European Communities; Professor Martin Shapiro, Department of Political Science, University of California at Berkeley; Professor William Cohen, Stanford University Law School; Professor Vincent Blasi, U-M Law School; Dr. Claus-Dieter Ehlermann, Director General, Legal Service of the European Communities.

Participants in one session of the Law School's symposium on "Transnational Corporate Concentration," from left: Lisa Chiles, legal adviser, U.S. Agency for International Development; David Boies, New York attorney; Thomas E. Kauper, U-M law professor; Douglas E. Rosenthal, chief, Foreign Commerce Section, Antitrust Division, U.S. Justice Department; W. James Adams, U-M economist; and Stuart E. Benson, legal adviser, U.S. State Department.

events

International Symposium

The lack of consensus—both within the U.S. and among trading nations—about whether or not to crack down on multinational corporate concentration was underlined in a November conference at the Law School.

Douglas E. Rosenthal, who heads the foreign commerce section of the antitrust division of the U.S. Justice Department, noted that lawyers are frequently caught in the middle of the debate between differing factions.

"On the one hand, many people feel that more concentration is going to become necessary in our own society and for U.S. companies to effectively carry on trade abroad. U.S. courts are already moving in this direction," said Rosenthal.

"On the other hand, Congress is calling for drastic measures to de-concentrate industry. There is increasing polarization between the legislature and the courts, and between business and consumer interests. Lawyers are under attack from both sides."

Rosenthal was one of the speakers in the symposium "Transnational Corporate Concentration" presented by the Law School's International Law Society and the Michigan *Yearbook of International Legal Studies*. Papers presented at the conference will be published in a future edition of the yearbook.

Stuart E. Benson, a legal adviser in the U.S. State Department, said one of the most difficult antitrust questions is whether the U.S. government should attempt to block mergers of non-U.S. controlled firms which are engaged in U.S. commerce.

Because such questions have foreign policy implications and present no clear-cut answers, government authorities have taken a case-by-case approach, said Benson.

"A major concern to the State Department is that antitrust enforcement should not affect our political relations with other countries. Some have suggested that these questions should be entirely political decisions, or that the State Department should at least make its views on individual cases known through *amicus curiae* briefs," according to Benson.

New York attorney **David Boies** noted that "corporate concentration" has a wider connotation today than firms operating in a single market.

In 1977, more than 80 percent of mining and manufacturing in the U.S. was controlled by the top 500 corporations, according to Boies. And recently proposed U.S. legislation would attempt to offset such concentration by placing "threshold size limits" on companies seeking to merge.

A separate panel of speakers considered alternative approaches to transnational business regulation from the supranational and corporate perspectives.

Kurt Stockmann, chief of the International Section of the Bundeskartellamt of the Federal Republic of Germany, examined the Guidelines on Multinational Corporate Behavior of the Organization for Economic Cooperation and Development (OECD), an alliance of western developed nations.

Stockmann suggested that the OECD had adopted "behavioral rather than structural" guidelines against transnational concentration for its member countries, because the body is based on "the principle of unanimity." Even the few member countries which have adopted structural merger controls have not vigorously enforced them, he indicated.

However radical structure-oriented controls may be, "the political climate in a number of OECD member countries is changing to a more critical attitude towards concentration," Stockmann said. This increasing criticism has led to consideration of merger controls in countries such as Ireland, Sweden, and Finland, and to strengthened antitrust laws in other countries, such as Switzerland.

As the deputy director for policy analysis at the United Nations Centre for Transnational Corporations, **Sotiris Mousouris** explained the continuing development of the Centre's "Code of Conduct" for multinational corporations.

The code seeks to provide general principles regarding the development objectives of host countries, social objectives, respect of sovereignty, respect of human rights, non-interference with internal political and intergovernmental affairs, and an abstention from graft, Mousouris said. The code will also contain guidelines on balance of payments, transfer payments, and respective business practices, he said.

A special U.N. body of 48 members representing 150 countries has already worked two years on the code, and there is hope that the group will finish by May, 1980, Mousouris noted.

Regardless of the code's form of implementation, voluntary or binding, it will serve an educational purpose to developed countries and multinational corporations and may inspire national legislation from developing countries, Mousouris observed.

"I think the U.N. in this field is quite ambitious and probably a little more effective than other semi-international organizations, for example, which are more susceptible to the influence of major developed countries," he concluded.

In contrast, **John Scriven,** legal counsel to Dow Chemical Company, sharply criticized current attempts to regulate multinational corporate activities as giving "the impression of being motivated by an antipathy to the free enterprise system."

Scriven echoed the American Bar Association's position that the "repeated singling out of transnational corporations is indicative of the pre-judgment that multinational enterprises are inherently suspect and their activities are harmful."

Given the complex character of international trade, the U.N. cannot hope to regulate multinational corporate activities in "a satisfactory or successful manner," he explained, suggesting that compulsory guidelines such as the Code of Conduct may lead to stagnation of multinationals' interest in developing countries.

Scriven praised voluntary guidelines, particularly the OECD standards, as being more flexible to accommodate the wide range of international commercial transactions.

The panel commentator, **Edward Hayward,** a partner in the Minnesota law firm of Oppenheimer, Wolff, Foster, Shepard and Connelly, noted that multinational corporations fear that with the implementation of some of these international codes (particularly ones developed by the U.N. Conferences on Trade and Development, UNCTAD), corporations are "being called upon to perform a role which goes beyond the normal role of the profit-making enterprise."

Hayward explained that while these supranational regulations are "served up under the cloak of simple competition law," they are actually "a form of development law requirement that multinationals participate more clearly in the development process [of emerging nations], sacrificing some of their own profits, perhaps."

Nevertheless, transnational corporations favor at least the discussion of these guidelines on an international level, he said, because the guidelines are frequently utilized by nations in framing their own competition laws.

"And from the view of the practicing lawyer . . . I think it has become fairly difficult to advise [clients] with respect to certain aspects of transnational transactions now, partly because of these varying attitudes of national competition law authorities," Hayward commented.

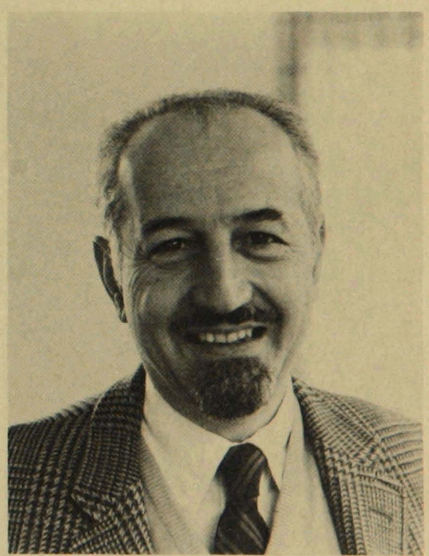
Cooley Lectures

Yale Law Prof. **Guido Calabresi** concludes that the "new law and economics," after 20 years as an analytical tool, is still helpful to scholars in evaluating traditional legal principles and outcomes.

Calabresi addressed U-M law faculty and students in the Law School's 29th Thomas M. Cooley lecture series in the fall. The title of his lectures: "Nonsense on Stilts? The New Law and Economics Twenty Years Later."

One of a small band of scholars who first employed modern economic analysis to study legal institutions and doctrines, Calabresi argued that the new law and economics "raises precisely the questions we should be facing. Are the traditional sources of law giving us time-worn, history-of-injustice results or instead have we reason to re-examine their validity in this context of the empirical bases, guesses, of both our distributional and efficiency analyses?

"The object of a new law and economics was to find an Archimedean place to stand on from which to make relevant criticism of results acclaimed either by legal tradition or revolutionary justice," Calabresi noted.



Guido Calabresi

Harry T. Edwards with well-wishers after his "Senior Day" presentation in December.

But insofar as the new law and economics concerns itself "solely with efficiency in the sense of wealth maximization, it fails in giving us this point because wealth maximization is meaningless without starting points," Calabresi said.

Calabresi pointed to a need for a distributional theory in analyzing the beneficial qualities of a law. "Even with starting points, wealth maximization cannot tell us that a law or rule is better or worse than another, because the 'better' in this wealth maximization sense, in all meaningful cases, entails some individuals being worse off in a wealth sense," he said.

The old law and economics avoided this problem because the distributional issue was settled either by a legislature or the common law, Calabresi explained.

Calabresi suggested several sources for a distributional theory on which to base legal criticism, but he rejected ad hoc distributional decisions made by courts and legislatures as impractical and potentially unprincipled. He also suggested that the traditional sources of law and legal precedent are inappropriate because they speak in "the language of rights" and not in "the language of distribution any more than they speak in the language of efficiency.

"I think economists should work at this distributional theory because they're better at it, essentially, than lawyers are. If they [economists] don't, lawyers will have to do it and do a bad job of it," Calabresi said.

The new law and economics analysis is not without its critics, however, Calabresi noted. Both "right and left criticize it because it gives change that is not necessarily either evolutionary or revolutionary," he said.

A frequent contributor to legal and other periodicals, Calabresi is author of two books, *The Cost of Accidents* and *Tragic Choices*. He is the Sterling Professor of Law at Yale and has taught there since 1959. A graduate of Yale College, Calabresi attended Oxford University as a Rhodes Scholar and returned to Yale for his legal education.

—Mark Simonian

Winter "Senior Day"

Addressing a "Senior Day" audience of graduating U-M law seniors in December, U-M law Prof. **Harry Edwards** urged the new graduates to consider the social implications of their legal work and to strive to lessen public mistrust of the legal profession still lingering from Watergate.

A 1965 U-M law graduate and a member of the Michigan law faculty since 1970, Edwards has been nominated by President Carter to fill a vacancy on the U.S. Court of Appeals for the Washington, D.C. Circuit (see story elsewhere in *Law Quadrangle Notes*).

"You will find, as I did when I graduated from here 15 years ago, that Michigan has prepared you well to serve in the legal community," said the U-M labor law specialist.

"You will soon recognize, as you go out into practice, that you will have an almost blind faith in your ability to tackle most any legal problem. . . . You have been exposed to a brilliant collage of teachers and fellow students at Michigan.

"As you leave here, most of you will be comforted by the fact that at last your formal schooling is done. You have a good job. You have potential for good earnings and lifetime

security. You may even feel the prestige that sometimes comes from working in an esteemed profession. Do not savor these feelings for too long," he warned.

The legal profession faces serious problems, Edwards continued, because "so far as public image is concerned, the tarnish has yet to be polished off." He referred to the "stench of Watergate" and to important questions facing the legal community about "which ethics should be taught—the ethics of the marketplace and client loyalty, or the ethics of equal justice."

A practitioner for several years in Chicago before coming to U-M, Edwards advised that graduates confer with clients, taking time and using imagination to find acceptable alternatives to litigation.

"A lawyer need not be blind to a client's purpose, and he or she may always question that purpose if it appears to be unfair or unjust. Everyone in a society is entitled to legal representation, but this does not mean that the legal process should be clogged with bad cases," he cautioned.

The education students receive at Michigan is wide, yet incomplete, Edwards said. "You have not been trained how to draft a motion or to file a pleading or to prepare a lawyer's bill. Although lawyers do these things on a regular basis, such tasks require skills that can easily be acquired with a minimum of experience in law practice.

"Rather you have been asked to think about important questions dealing with right and wrong, with issues pertaining to legislative and judicial reform, with questions having to do with equal access to the judicial process and equal rights under the law, and with issues affecting the current and future status of the law and legal process."

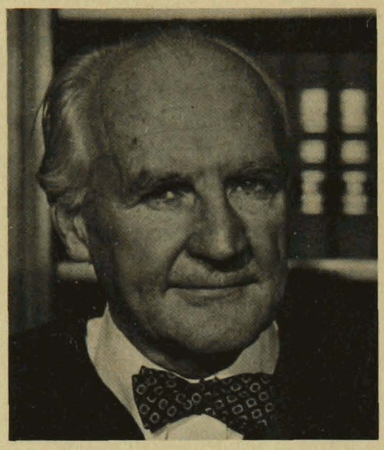
Edwards urged the students to continue pondering these important issues once in practice, and he also advocated that the graduates "stay in touch with life and with the people around you other than just lawyers. The one thing that my 15 years as a lawyer has taught me is that we lawyers are often too in-bred, too self-involved."

He advised the graduating seniors to treasure their relationships with spouse, children, friends, and parents and to keep up with their personal interests and hobbies, "to keep a balanced perspective."

A total of 73 U-M law students were candidates this winter for Juris Doctor degrees, seven for Master of Laws degrees, two for Master of Comparative Laws degrees, and one for Doctor of the Science of Law. This is the largest number of December graduates at the Law School.

—Mark Simonian

alumni notes

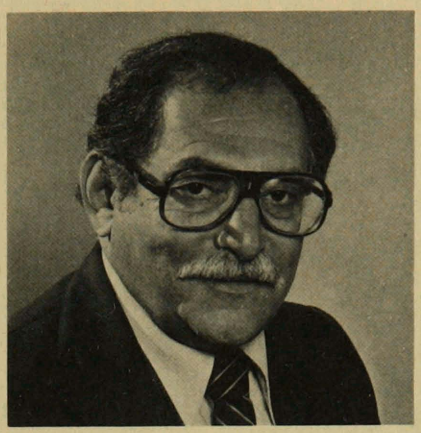


John Feikens

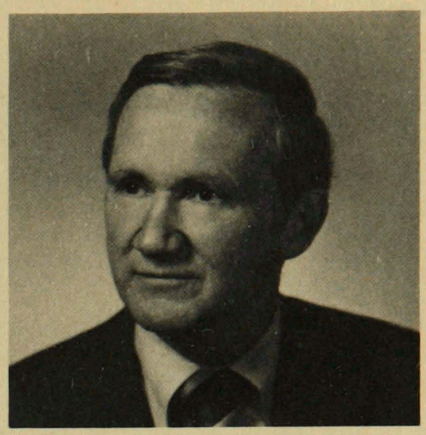
Judge Cornelia G. Kennedy (center) U.S. District Judge Margaret G. Schaeffer (left). Michigan Supreme Court Chief Justice Mary S. Coleman (right)

☐ **Cornelia G. Kennedy,** 1945 U-M alumna and a 1947 graduate of the Law School, was sworn in in October as Judge on the U.S. Court of Appeals for the Sixth Circuit (headquartered in Cincinnati). Administering the oath of office in a ceremony in Detroit was Judge Kennedy's sister, U.S. District Judge **Margaret G. Schaeffer** of Farmington, Mich., a 1945 U-M law alumna. Judges Kennedy and Schaeffer are the only sisters concurrently serving as judges in the U.S. Judge Kennedy had served on the U.S. District Court for the eastern district of Michigan since 1970, and was appointed chief judge of that court in 1978, making her the first woman in the U.S. to head a federal court. Among other firsts achieved by the U-M law alumna, Judge Kennedy was the first woman federal judge in Michigan history, the first woman to chair the Negligence Law Section of the State Bar of Michigan, and the first woman elected a director of the Detroit Bar Association. Prior to her appointment to the federal bench, she served on the Wayne County Circuit Court. Her father, Elmer Groefsema, graduated from the Law School in 1917 and became a distinguished trial lawyer in Detroit, and her mother, Mary, attended U-M Law School in the early 1930s. Along with her sister, Judge Kennedy practiced law with her father until his death in 1952, and then joined the Detroit law firm of Merkle and Merkle. Two recent U-M law alumnae have been serving as Judge Kennedy's law clerks: **Ellen Jean Dannin,** class of 1978, and **Marguerite Munson Lentz,** class of 1979.

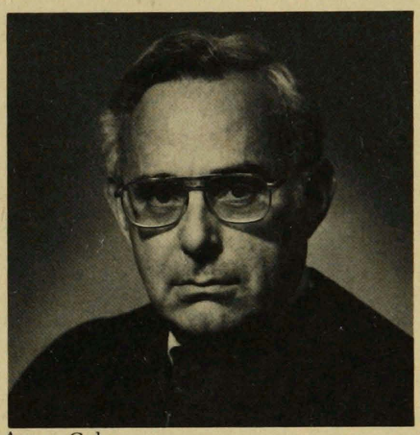
☐ Judge Kennedy has been succeeded by another U-M law alumnus as chief judge of the U.S. District Court for the eastern district of Michigan. He is Judge **John Feikens,** a 1941 U-M law graduate, who has served on that court on an interim basis during 1960-61 and on a permanent basis since 1970. A graduate of Calvin College, Judge Feikens has served as Republican state chairman for Michigan, co-chairman of the Michigan Civil Rights Commission, and a member of the board of trustees of New Detroit, Inc. Among other affiliations, he is a member and past president of the Detroit Bar Association, member and former commissioner of the Michigan State Bar, life member of the Judicial Conference of the Sixth Circuit Court of Appeals, member of the American Bar Association, and fellow of the American College of Trial Lawyers and the International Society of



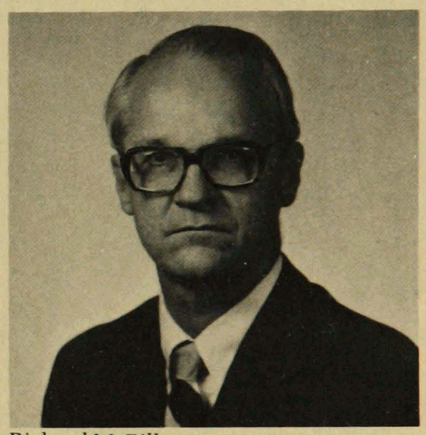
Stewart A. Newblatt



Douglas W. Hillman



Avern Cohn



Richard M. Bilby

Barristers. His son, Jon, also a U-M law graduate, is currently a partner of Judge Feikens' former law firm, now known as Dice, Sweeney, Sullivan & Feikens.

☐ Newly appointed to the U.S. District Court for the eastern district of Michigan are two U-M law alumni: **Avern Cohn** of Detroit (class of 1949) and **Stewart A. Newblatt** of Flint (class of 1952).

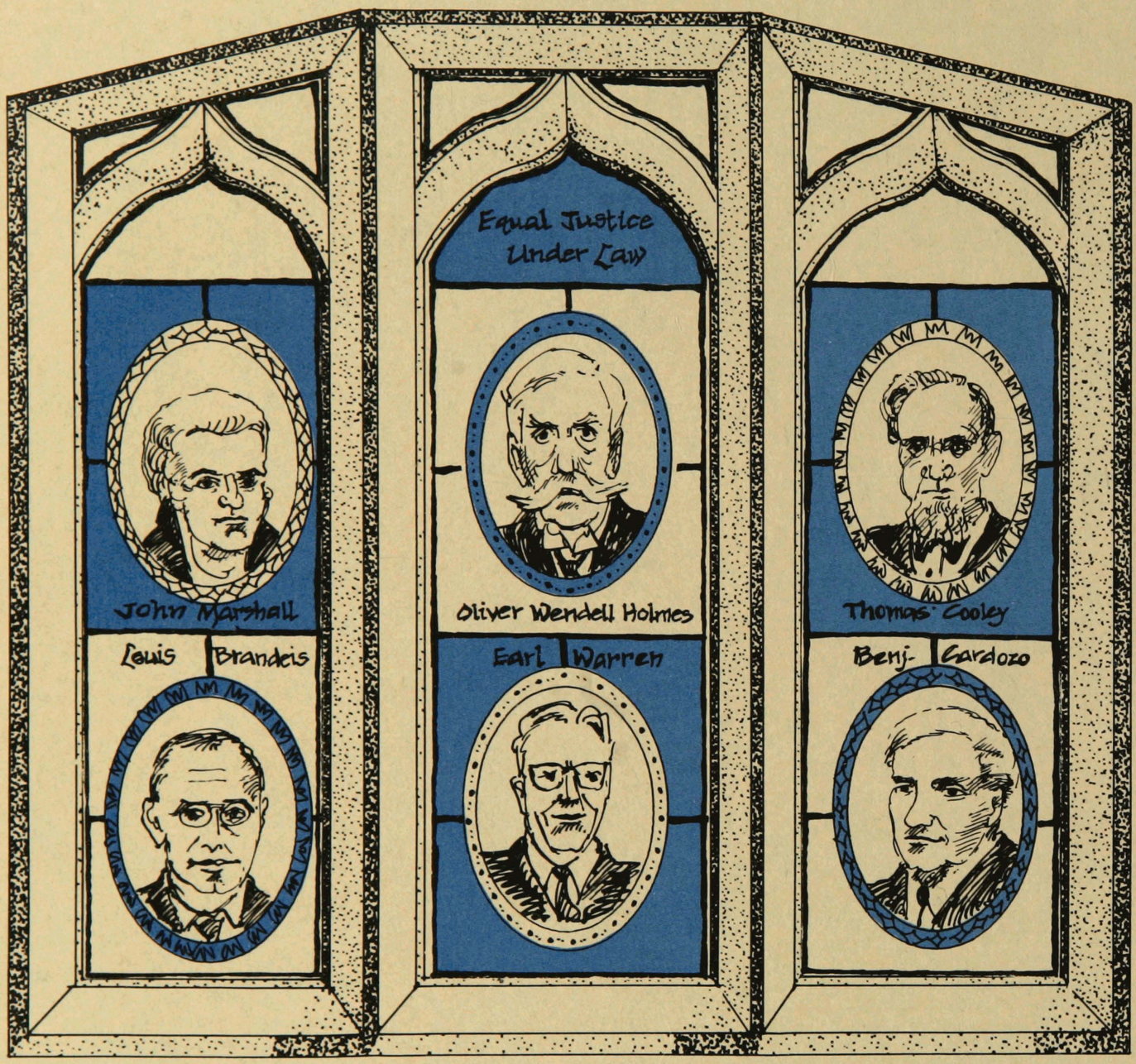
Judge Cohn was associated with the Detroit law firm of Honigman, Miller, Schwartz and Cohn from 1961 to 1979, and had practiced law in Detroit with his father Irwin I. Cohn (a member of the U-M law class of 1917) from 1949 to 1961. Cohn served on the Detroit Board of Police Commissioners from 1975 to 1979 (chairman, 1979), the Michigan Civil Rights Commission from 1972 to 1975 (chairman, 1974-75), and the Michigan Social Services Commission in 1963. His affiliations include the Detroit Bar Association (past director), State Bar of Michigan, and American Bar Association. He served as chairman of a special committee of the Michigan bar dealing with the problem of court congestion, and as a member of the representative assembly of the Michigan bar. He has also served as treasurer of the Jewish Welfare Federation of Detroit and as vice president of the American Jewish Committee.

Judge Newblatt, before becoming U.S. district judge, had been in private law practice in Flint since 1953 and has also served as judge for Michigan Seventh Judicial Circuit in Genessee County. Recipient of an undergraduate degree from the U-M, he served in the U.S. Army in the Philippines as an agent of the criminal investigation division. Among public service activities, he has served as chairman of the rules committee of the Michigan Judges Association, member of the special commission on court congestion, secretary of the Genesee County Bar Association, secretary, treasurer, and vice president of the Michigan Judges Association, and member of the International Bridge Authority serving the U.S. and Canada. He is a member of the Genesee County Bar Association and the Michigan State Bar, among other groups. His wife Flora became an attorney in 1976 and is currently in private practice.

☐ **Douglas W. Hillman,** 1946 U-M graduate and a 1948 law graduate, has been appointed judge on the U.S. District Court for the western district of Michigan in Grand Rapids. He has been in private law practice in Grand Rapids since 1948, most recently as partner in the firm of Hillman, Baxter & Hammond.

Judge Hillman has served as chairman of the state bar's Client Security Fund, and as member of the state bar's Negligence Law Section and Committee on Juvenile Problems. He served as president of the Grand Rapids Bar Association from 1963-64. Among other groups, he is a member of the American Bar Association, the American College of Trial Lawyers, International Academy of Trial Lawyers, International Society of Barristers (president, 1977-78), the Sixth Circuit Judicial Conference (life member), the U-M Law School's Committee of Visitors, and has taught at advocacy institutes in Ann Arbor and Colorado. Among other awards, he received the Distinguished Flying Cross for his service as a U.S. Air Force pilot in World War II and in 1970 received the Annual Civil Liberties Award from the American Civil Liberties Union.

☐ In Arizona, U-M law alumnus **Richard M. Bilby** has been appointed to the U.S. District Court in Tucson. Since 1959 he has served with the law firm Bilby, Shoenhair, Warnock & Dolph in Tucson. A 1955 graduate of the University of Arizona, Bilby received his law degree from the U-M in 1958, and served as law clerk to Judge Richard H. Chambers of the U.S. Court of Appeals for the Ninth Circuit in San Francisco, before entering private law practice in Arizona. Among other affiliations, he is a fellow of the American College of Trial Lawyers, and a member of the American Bar Association, the state Bar of Arizona (past chairman of the Committee on Contingent Fee Contracts and Committee on Inter-Professional Relations), and the Pima County Bar Association. He has been a lawyer delegate to the Ninth Judicial Circuit Conference, and an instructor at the National Institute of Trial Advocacy and similar centers. He served in the U.S. armed forces from 1952-54. Judge Bilby has been active in Arizona community affairs, particularly those relating to health care services.



. . . young professionals [need] . . . heroes from whom to model themselves. . . . Regrettably . . . a substantial impact of law school education is to cut down the attractiveness of many hero models.

The Current Status of Lawyer Professionals: Some Implications for Legal Education

by Andrew S. Watson
Professor Psychiatry and Professor of Law
The University of Michigan

[Based on the third lecture of Prof. Watson's three-part Isaac Ray Awards Lectures, "Some Psychological Forces in the Ebb and Flow of Professional Status: Implications for Training and Regulation," delivered at Boalt Hall, the University of California (Berkeley), February 13-15, 1979.]

In this lecture I will take some of the problems and processes of legal education and law practice which were described earlier and explore some suggestions for change. I have organized my comments in relation to the locale where the issues arise, although in fact many of them may occur in several sectors. My friends will recognize some of the proposals to be reiterative and others will be new. Hopefully all of them will engage your consideration or your re-consideration as the case may be.

The Law School Situation Regarding Professionalism

Student Motivation Issues

In discussing legal education and the processes for selecting law students, the part which is most difficult to ascertain, complex to deal with, and most frequently overlooked in discussions of the subject, are the motivational and emotional issues that are so important to the shaping of professional behavior. Since this is the area of my principal interest and expertise, I will focus my attention on this aspect of the educational process.

Any training or education program, whether it wishes to or not, must cope with the motivational factors which brought the person to the program in the first place. A medieval knight among other things, took arms to demonstrate bravery and any mission he undertook would be bent to demonstrate that fact, whether it was militarily wise or not. With law students, if their psychological motivations are not dealt with, they, like all frustrated beings, will have to develop some kind of psychological armorplate if they are to remain in the field and function. I mention in my first lecture the special concerns which law students have about orderliness, aggression, and social altruism, and how these relate to career selection.

Because professional and ethical issues involving these emotional motivations are so painful to deal with, it is crucial that students be confronted with the necessity of considering them in their learning processes consistently and persistently. They should infrequently or never encounter situations in which these matters are ignored. Students who express unethical views or behaviors should draw criticism and not be permitted to go forward with the notion that ethical standards are purely a matter of personal preference. If the latter course is followed, it removes one of the primary sources of motivation for

professionally responsible and ethical behavior; that of group standard setting and group reinforcement. This is to say, that the intention to behave ethically is a highly personal matter, and to note that the standards of ethical performance always come from the group, and must not be ignored. A well-integrated and psychologically effective training institution will challenge deviants and apply great pressure for them to conform. Such a group should feel a duty to withhold certification of those who do not.

Law School Curriculum Issues

Here again, I shall limit my observations to matters relating to professional responsibility and ethical behavior. In regard to these, each student needs a personal "terrain map" that accurately reflects his own psychological territory, that he can recognize fully, and through which he can move freely with the comfort that comes with familiarity. Psychological territories like others can only be clearly marked and labeled after all landmarks have been thoroughly reconnoitered and recognized. Although lawyers do this skillfully in relation to substitutive law and procedure, they are substantially deficient when it comes to emotional matters. By the time a law student completes his professional education, he should have a well evolved and well articulated "moral sense" about law practice. This should be invested with considerable passion which can allow him as a working lawyer to press vigorously for appropriate performance in the difficult circumstances of his life. Frankfurter once stated, "It is not, I hope, professional vain glory that makes me regard duly equipped lawyers as experts in relevance" (Kurland/Reflections on Ames). It is unlikely that he was speaking of emotional matters, but in fact psychological knowledge is so relevant to lawyer work, that I would move this kind of learning into a place of high curricular importance and make it a duty for lawyers to possess such knowledge.

There have been many discussions in the past about where and how material about professional responsibility should be introduced. Its relevance has been reluctantly conceded but now the issue is where can we put it in our busy schedule? For many reasons, the only fully logical strategy is what has been called "the pervasive approach." Failing to deal with these matters wherever and whenever they arise, models the image that they are not important. A special course tacked onto the third year, seems to express precisely what faculties think of the subject.

Very obviously, not all teachers are well equipped to deal with matters involving professional responsibility and ethics. Many have little or no personal experience at the bar and so may deal with these subjects only abstractly at best.

Because this kind of proposal nearly always stirs discomfort and challenge, the question must be, "How do you deal with a reluctant faculty?" Fortunately, on most law school faculties there are several usually younger members who, with a little support from their colleagues and the dean, would be willing to develop a faculty seminar to explore the problems of teaching this kind of material. It is probably desirable to have some external consultant for the behavioral aspects of this kind of teaching, since their "magical authority" can help carry the burden of persuasion during the early phases and before the product can stand on its own merits. It is an ideal place for an interdisciplinary team, and I will speak more of this matter later.

Issues of Teaching Technique

Most law schools have at least a great teacher or two who leave indelible traces in their students' memories, and many lawyers will allude to the inspirational experiences with them. Among other things, these men seem to have had native qualities which made students want to emulate them in their lawyerliness. Sadly however, there are not nearly enough of these models to generate the personal investment in professionalism, needed to develop a highly ethical bar. This means that one of our pedagogic concerns must be to remedy this deficiency and find new ways to help law students have some guided experience in coping with the stresses of professional life. This kind of learning must be "experiential" if it is to be effective. By this I mean that students must encounter intellectual concepts like "professionalism" in a context that will stimulate the emotional reactions and conflicts that are the real concomitants of that activity in practice. This learning can take place in actual practice, or to varying degrees, in simulated situations. I have long believed that the law school Socratic classroom is a perfect place to carry out professional simulations, in fact, simulation may not even be the correct word since the emotions generated there are real enough and are closely analogous to those stirred up in law practice. For example, the relationship between teacher and student has a precise parallel to the relationship between a lawyer and his client. In the classroom, the student seeks help with the mysteries of the law from his teacher and the way the help is offered generates feelings of fear, doubt, and awe, as well as a multitude of other sensations. In the law office, the client comes mostly in ignorance to obtain the technical assistance of the lawyer in solving his problems, and the atmosphere of the office, whatever its style, raises many complicated questions and feelings. If the student can be helped to understand some of the substantive knowledge needed to understand and deal with the sense of helplessness and vulnerability that clients will bring to him later. There are many other classroom examples of professional tensions such as, competitive conflicts, concerns over "How do I look?" "Do I care enough about clients?" or "Am I a fool for caring?"

When a student has difficulty reciting in the Socratic classroom, most teachers tend to start with the assumption that he is unprepared and his behavior is a reflection of that fact. A more likely probability is that they are having some internal conflict which inhibits their ability to respond. It might even be a very creative thought, not yet fully formed which they are fearful to express! Law schools like this one, have students with very high intellectual capability, and no answer they come up with should be taken as intellectually ridiculous even if it seems so at first glance. More often than not, the responses reflect some highly complex thought processes, possibly accompanied by some conflicted feeling or attitude which has momentarily inhibited their expressiveness. This kind of response difficulty has high relevance to law practice since only rarely does a client come in and say explicitly what he wants to say. When teachers deal with answers as if they are foolish, intellectually inadequate, or the function of ill preparation, this models a kind of intellectual arrogance which if carried over into practice, will certainly do the practitioner little good and may well contribute to his inadequate performance there. In other words, there is a great tendency for law teachers to dismiss classroom communications too swiftly if they do not come straight down onto the target. To do that loses an important opportunity to teach students about the nature of human

communications something of great professional importance and concern.

Alternatively, one can press the student socratically for how he is relating his answer to the original question: "That's interesting Mr. Jones, but I'm not sure how you got there from my question. Could you tell me more about the connection *you* see?" Of course if inflected sarcastically, it defeats the purpose and is best left undone. However, when the question is seriously put, the answers illicited are sometimes quite creative and usually are at least interesting demonstrations of the way the human communication process works.

Many teachers will instantly argue that they do not know how to do this kind of teaching. I would argue that the only new tools needed to carry out this method are a few intellectual concepts about how the mind works. Then most law teachers would have at hand all they need to proceed.

Most law professors have at least as many capabilities for learning how to teach this way as they do for dealing with the more conventional law teacher's approach. Both modalities require practice and learning.

Young Teachers Workshop

Of course being taught how to teach is virtually an unknown process at the university level. We make the interesting presumption that a person who has demonstrated capacity in research and who has himself excelled academically, will just naturally know how to teach. Experience in Academe (outside of the law school of course) suggests quite the contrary. About twelve years ago, under the leadership of Professor Frank Strong, one-time dean of the Ohio State Law School, a most unusual project was initiated. He had long been concerned with teaching methods and got a substantial grant from the Federal Department of Education to set up a "Young Law Teachers Workshop." The first of these workshops was held in Chapel Hill, North Carolina and the central focus of its curriculum was to sensitize young teachers to the emotional factors which operate in the classroom. Although there were many problems that first year, it went well enough to be repeated. Plans were immediately instituted for the second workshop which was held at Madison, Wisconsin. This was very successful and there have been two more workshops since then, with about eighty "students" in each.

. . . both [the psychiatrist and the lawyer] come very close to being paranoid. It is only as these fantasies are cleared away that effective interdisciplinary teaching can take place.

The program of those workshops consisted of plenary sessions which dealt with a demonstration of Socratic classroom tensions, demonstrations of a variety of other teaching methods, discussions of examination techniques, law school administrative problems, and other subjects germaine to a new law teacher.

Of central importance to the workshop were the small group sessions in which 12-15 participants met regularly and intensively with a leader, chosen for their skill in dealing with the emotional processes of teaching. In the context of these groups, each student did a demonstration class-session which was critiqued by the group and the leader. These were also video-taped so they could be studied intensively, by the students alone and/or with behavior experts. Most of the workshop participants were enthusiastic about their experience and many wished to find means for taking this technique back to their home campus for further exploration. Plans are progressing to continue this project under the aegis of the Association of American Law Schools, although the details of its management are not yet settled.

Another activity which must take place in law schools if they are to teach professional responsibility with effectiveness (in my opinion), is the development of interdisciplinary teams. This should be possible in nearly any university setting. The first impulse of many when confronting a need like this, is to figure out some way to get a financial grant to develop such a program. Although such a grant is fine, it is not easy to bring off in these days of limited resources. Fortunately, there are other ways to start these programs simply using the *quid pro quo* which flows from such interlocking teaching efforts. For example, I work in a child psychiatry hospital, where there is enormous advantage in involving lawyers in our work. We have many cases involving decisions about child custody, civil commitment, juvenile court activities, criminal law matters, and the now ubiquitous problems of child abuse and child neglect. These are all intertwined with a multitude of technical problems, involving privacy, confidentiality, and privileged communication. Most of us are woefully ignorant about the legal processes involved in these kinds of cases and we may easily waste years of our time and the patients', as we helplessly flop around. We *need* legal consultation.

On the law school side, the utilization of psychiatric or psychological input could be extremely fruitful in such courses as criminal law, family law, negotiation, clinical law, wills and trusts, some aspects of tort law, evidence and no doubt others. Those who teach in these areas of law could all use expert information of the kind that good psychiatrists and good clinical psychologists can provide. In the best of all possible worlds, there would be cross-departmental appointments.

In setting up these interdisciplinary teams, the inevitable tensions should be dealt with before hand, as members of both professions learn to work together. Whenever the psychiatrist is present, there is the presumption that he is busy psychoanalyzing his lawyer colleague and discovering all of the terrible things hidden within. Similarly for us, we know that lawyers are going to use their Machiavellian skills to see to it that we are prevented from carrying out our professional purposes effectively. By definition, both of us come very close to being paranoid. It is only as these fantasies are cleared away that effective interdisciplinary teaching can take place.

In many law school situations, the tendency is to bring behavioral scientists in merely to present substitutive information. This is to make less than the best use of them. If the person is well chosen whether he be psychiatrist, psychologist, or social worker, he can offer extremely valuable commentary upon the educational processes themselves. In fact, this may be the most valuable way for a law school to use their skills and it is shortsighted not to do so.

The Need for Professional Heroes

Now I would like to deal more explicitly with the need young professionals have for heroes from whom to model themselves. Let me begin by describing what a hero is. The original one was the mythological figure hero, a priestess of Aphrodite who drowned herself after her lover, Leander, foundered while trying to swim the Hellespont to visit her. The dictionary states that a hero is "a man of distinguished

courage or ability, admired for his brave deeds and noble qualities." Or, "is a man who is regarded as having heroic qualities and is considered a model or ideal." (We may note in passing, that the original model for a hero was female, but that quality has been pre-empted by males in what seems to be clear sexism! Heroes *can* be either female or male.)

Complex and difficult behaviors like "being professional" or "acting ethical" are mostly learned by modeling. Regrettably, as I have described elsewhere, a substantial impact of law school education is to cut down the attractiveness of many hero models. For example, when the classroom analysis of a Holmes opinion is opened with a derisive comment like "This is lovely poetry, but just what exactly does it mean?", the struggling and anxious neophyte may easily believe that the teacher thinks the Holmes' arguments are not very good ones. Similarly, if Brandeis is characterized as being "idealistic," it implies that there is something wrong with that! Since nearly any student can readily discern that he would have great difficulty in doing even as well as either of these stellar figures, he begins to wonder just what will become of him here in law school.

It seems clear to me that one alteration in legal education that could be made readily would be for law teachers to be open and vigorous in their support for concepts of ethicalness. Even while they rigorously analyze what it means to be ethical and to turn that into a rational concept, they should consciously avoid creating even the slightest intimation that they think it a meaningless concept. (As I remarked in my last lecture, the British in teaching their bar neophytes, do not hesitate at all to exhort them actively toward becoming professional.) Thus if a heroic figure like Holmes is intellectually challenged as to his concepts, his zeal and concern about law and society must always be noted and perhaps, even admired by the teacher. In fact, some teaching materials might well be devoted to the question of where his passion came from. When one reads some of his letters to his parents while he was an army officer during the Civil War, his concerns become much more comprehensible. He clearly came out of that experience with deep inner resolve about the importance of certain values and one can feel them in his judicial opinions. Regardless of how one seels Holmes' position, he had the moral courage to carry out his professional role regularly, even from his sometimes lonely position as "The Great Dissenter."

Since most contemporary law students avoid the few offerings in "jurisprudence" like the plague, perhaps each teacher should usher into their own courses the highly visible presence of at least one hero. For example, in Commercial Law the dedication of Karl Llewellyn would do much to demonstrate what professional integrity looks like there. Criminal Law could profit from the presence of a Clarence Darrow or an Edward Bennet Williams. Constitutional Law could have a vignette of the passionate Holmes while Antitrust could show the background and the modus operandi of Louis Brandeis. Some understanding of why these men functioned as they did might help students figure out how they might develop in similar directions.

To underscore the importance of developing a professional self-image, each student in some first year course would be required to write a paper on their favorite lawyer hero, describing why they admired that person. No opportunity should be lost to emphasize the importance the faculty feels about having each student think hard about what they want to look like in their lawyer future.

This brings me to another unused and omnipresent resource of law schools: the personality of the professor himself. Personally, I have never met a more dedicated group of teachers than are law professors. They are constantly in the vanguard with their concerns about a multitude of social issues, and conversations in the faculty lounge, vividly demonstrate their dedication to these matters. Regrettably, this rarely gets into the classroom, which is to lose an enormous modelling potential. I would like to urge that after the vigor of the Socratic analysis has been completed in class, that any time an element involving professionalism is present in the material (like every day!), that the teacher should reveal his own position on the matter in a way that makes it very clear he cares about it. Then more students than the Harts in the class would be able to appreciate Kingsfield's professional passion. I have often suggested this to my colleagues and others. After their initial argument that they "don't want to influence the students" has been dealt with, we get down to their self-conscious concern that students already know all about them or in fact they aren't even very interesting. And we talk about student shyness!

"Clinical" Legal Education

In the best of all possible worlds, clinical education would be closely integrated with other curricular presentation. This of course, is the perfect place to engage the complex tensions generated by professional work. When I first joined a law faculty in 1955, this kind of opportunity was very rare indeed. This demonstrated virtues of the Langdellian case method had swept out nearly all "practical" training from the law school setting, and unfortunately, accompanied by an ambiance of "well done." Hopefully, this attitude will now be rigorously and even objectively re-examined.

I have already commented about what a true dedication to clinical education would do to a law school faculty. It would force the recruitment of some different kinds of persons with different kinds of skills than those now favored in faculty choices. It would require the recognition that there is more to practicing law than merely to have a powerful intellect. Many law school graduates hold the belief that law faculties simply do not care about their needs and concerns for practicing law, and while I do not think this is totally true, I certainly agree with them that on the surface it looks as it if is. I have the impression that this grievance may be at its highest intensity in the great law schools. I have encountered literally scores of highly competent and very successful graduates of The Harvards in the land who, twenty years later, still feel almost vitriolic in their anger about this matter. It is obvious that their self-evaluation is not precisely accurate, because in fact they clearly demonstrate success: they have either shipped up their skill out of whole cloth, or else they learned many things which they either do not know about or do not care to acknowledge. At least we must see these feelings as symptomatic and a reflection of the fact that they did not *feel* prepared to practice law when they graduated.

Of course I can hear all of the law school deans raising the chorus that, "Yes, if we had an enormous amount of money available we might then be able to remedy the situation." It is certainly true that developing good clinical programs increases the financial burden on a law school. However, I am not aware that there has been any zealous request for funds to meet this purpose and it is hard for me to believe that with the advocacy skills of law professors have, they could not carry this argument with at least some success if they wished to do so. Neither can I fail to note that good law schools have a plethora of small seminars which explore a multitude of esoteric subjects which have at least as an important function, the satisfaction of some intellectual curiosity of the teacher. I know full well that this is the birthing place of many new and important ideas

for the law teacher and the law. But in terms of value to students, it is highly unlikely that they can hold a candle to the importance of developing professional skills and the appropriate professional images that will be needed by the vast majority of graduates.

. . . we can no longer greatly doubt that our elegant teaching procedure causes marked student distress. We should use every means possible to correct this source of personal difficulty and professional incapacitation.

I also believe that vigorous institutional financial support for clinical law programs would inevitably generate the kind of powerful intellectual investment in exploring practice problems and practice issues, which characterized the pre-judicial work of Brandeis. I have never heard anyone demean his pragmatic explorations and without doubt, many of the issues of practice, if examined with the intellectual zeal that law professors can mobilize, would produce similar results in clinical work. When wedded with interdisciplinary knowledge from sociology, psychology, psychiatry, economics, and no doubt many other collateral fields, there would be a gold mine of material that could simultaneously help law students better understand and develop their self images as working professionals.

One of the most important aspects of incorporating this kind of material into effective utilization by legal educators, relates to the status of the clinical faculty. In many law schools they are assigned the status of second-class citizen and are not even on the tenure track. In fact they are hardly known by their colleagues on the "regular" faculty, and they do not have any of the kinds of security needed to plunge freely into the hectic chores of teaching law students how to be lawyers. It takes a very stalwart individual to persist under these circumstances, and I have seen superb clinical teachers slip away from academic settings because of these deep personal frustrations.

Now that much of the seed money which came from CLEPR is beginning to disappear, we will swiftly see what kind of dedication law schools have to this deep student concern. I hope that this struggling new sector of the law school curriculum will not die of malnutrition and then have to reincarnated later. If that were to happen, of course, it would be nothing new on the historical scene. It is a pity however, that once in awhile we can not learn from the past and avoid such waste.

On Ameliorating the Impact of Law School and Lawyer Professionalism

First of all let me reiterate that I am under no illusion about the enormous contribution that contemporary legal education makes to lawyers' skills. Much of this is a product of the intellectual honing effected by the Socratic method. *But* I suspect that few would argue that there are not some glaring and serious deficiencies in an enormous number of practicing members of the bar. It seems to me that Frankfurter captured one of these deficiencies in noting in the way lawyers advise their clients about, "a wise course of action." When they follow only the law, their advice is inadequate, "because legal right and legal wrong, after all, on the whole, are the minima of morality, and minima of social duties, and not the maxima of wisdom." Because we wish law students first of all to care strongly about helping their clients wisely, we must do something about the apparent loss of access to their motivation for social altruism from which they suffer. I believe it is possible to perform a kind of psychological innoculation on students at the beginning of their law school experience so that they do not feel quite so much need for developing a defensive armor of callousness. If they can be helped to recognize that the powerful feelings they experience are not strange, aberrant, nor even signals of forthcoming doom, they can probably resist some of the common-place changes which seem to happen in law school. This kind of process-intervention can either be in lieu of, or in addition to, the pervasive approach. It relates simply to the concept that prevention is more effective and less costly than remedy. Also it could help students avoid a great deal of the human discomfort and misery which befalls so many of them now.

It would seem to me that we can no longer greatly doubt that our elegant teaching procedure causes marked student distress. We should use every means possible to correct this source of personal difficulty and professional incapacitation.

The Professional Roles of Lawyer: Some Types of Tensions

The word *role*, which comes from sociology, defines the things a person does which are imposed upon him from without. For example, a physician may carry out a treatment process on a patient because the patient permits as well as expects it. Such role activities of course, may be reinforced by law as well as expectation. Some of them will be by implicit expectation such as the lawyer as counselore. Whether or not a lawyer wished to become concerned with the personal problems his client believes are related to law, they will be imposed upon him because the client expects it and Counsel will have to deal with that anticipation one way or another.

In this section I will take a few of the many role expectations which impinge upon lawyers at the present time, and look at some of the ways in which they may produce performance conflict. In all of them, if counsel is to function effectively, he must "know himself." This self-knowledge is a crucial part of the diagnostic process of understanding and knowing what clients are doing and wanting as they relate to counsel.

The Tension Between Being an Ethical Member of the Bar Vs. Functioning as The Zealous Advocate of a Client

Whatever lawyers do within the legal system, they must be viewed as "trustworthy" if the system is to work. Much of the effectiveness of a legal system, and much of society's willingness to accept the legal system, depends on whether or not they can perceive a true rule of law, administered and implemented by lawyers who can be trusted to adhere to the system. This concept is of course contained in canon I of the code of professional responsibility. Although lawyers will zealously press their clients' interests (canon 7), they must do so within the limitations imposed by law and ethical practices.

This may generate problems between client and counsel. Clients will start off with the anticipation that their lawyer will do the things they want to have done on their behalf and they do not readily comprehend why certain wishes are refused. In British litigation, there is a buffer between the advocate-barrister and the office-work solicitor which

functions to protect barristers from pressures by clients, as well as to provide the client with an interpreter for the system.

When a lawyer appears to be or is too zealous on behalf of his client, he raises questions in the minds of many members of society in regard to the trustworthiness of the system. The recently published article in *Esquire* about Roy Cohn demonstrates this point dramatically: Cohn makes no bones about the fact that he's going to do anything he can to win the case for his client (whatever that means). Lieberman suggests that a lawyer like Cohn is only doing what he has been taught to do by the system. He also suggests that the way this difficult matter should be handled is to have counsel articulate vigorously to his client, all of the pros and cons of a particular course of action including the conflicts between their wishes, the law, and the canons of ethics. Then he should urge his client to behave lawfully! He views this as a means for counsel to deal with these two contradictory principles.

Another serious problem for a lawyer arises when he encounters an opponent who, by disregarding the canons, gains an advantage. What should he do? Should he behave the same way in order to even the balance? Do you report the other lawyer's behavior to the bar grievance committee and seek redress that way? What does this do for your client? These are terribly difficult questions but to beg them is to ignore the realities of professional responsibility and ethical behavior. No wonder a lawyer's life is difficult.

Hired Gun Vs. Wise Advisor

One of the easiest ways a lawyer "escapes" some of the difficult and painful decisions he makes about what to do for his client, is simply to state that he is a hired gun who does what his client asks. This would be easier to accept as an explanation if one saw its uniform practice in all areas of legal work, but obviously this is not the case. Often in business law practice, if counsel sees his client embarking on an unwise course of action, he will vigorously try to dissuade him. In family and criminal law areas, however, counsel seems more willing to posture himself as hired gun. I interpret this to reflect the intrinsic difficulties of family law practice that relate to its highly emotional ambiance. It is a taxing area of practice especially if one has no technical tools with which to cope. No wonder a lawyer would be drawn to the solution of doing "what my client wants me to do." Unfortunately, this strategy fosters unwise behavior of precisely the kind Justice Frankfurter talks about. He says, "Again and again during my twenty-one years or so on the court, I have been appalled at the lack of wisdom of lawyers giving advice, on which they might get vindication in the highest courts in the land, but the upshot of which would be, and often is, great damage to their clients." If a lawyer is to be a wise advisor and avoid being merely a hired gun, it is necessary for him to develop emotional and intellectual freedom in order that he can perceive wise choices. This relates back to some of my earlier comments about how lawyers need to be educated.

Independent Counsel Vs. Those Permanently Retained ("Kept")

I noted earlier that a lawyer's work carries a built-in conflict of interest stemming from the fact that the help he gives his client is also the source of his livelihood. The simple fact that lawyer income may bear some relationship not only to "billable hours" but also to "pleasing the client," may greatly influence the decisions lawyers make in the office as well as in private life. (Abel-Stevens) Even when counsel works at poverty law (a decision surely motivated by powerful emotional as well as intellectual concerns), there is a temptation to use the case to gain personal goals (like making new law with a class action) rather than merely to solve the client's problem in the easiest way possible. This conflict of interest cannot be eliminated but it requires a lawyer to invest a great deal of conscious concern in order to minimize this ubiquitous risk.

Louis Brandeis planned a deliberate life strategy to enable himself to keep as free as possible from the kind of attachments that would limit his decision making, and be sure that his identification with a particular legal position did not become fixed. He provides us with the interesting demonstration that he could serve brilliantly on the union side in one case, and then in the next, argue for a corporation. Because of this freedom, he was extraordinarily important in the early shaping of labor law, and several other legal areas vital to our national interests. Justice Jackson's father apparently pressed this same point home to his son. It is described as follows: "It was a man's *spirit* or independence that was important. To make his point clear, he often put it this way to his growing boy: 'Keep always in the position where you have a right to, and can tell any man to go to hell.' "

It is this sense of independence which is so vital to the decisional freedom of professionals. Without it they cannot possibly fulfill their role which is so difficult even under the best of circumstances.

Adequacy of Counsel (Specialization) Vs. Lawyer Incompetence/Malpractice ("I can do anything")

Recently the legal profession has been experiencing a great deal of pressure to become specialized. One source of this has been the ongoing commentary by Chief Justice Burger and others about the adequacy of trial counsel. They have urged that trial advocacy become a specialty, and that there should be sufficient training for certification to insure adequate representation of clients in the courtroom. While it can be argued easily that the same end could be met without formalized specialization, such a position requires that every lawyer have at least enough self-awareness that he would refer his clients to other counsel when their needs exceeded his own professional capacities. Such emotionally-laden questions as, "What do *I* need help with?"; "Does asking for help blight my self-esteem?" and many other such emotionally-laden questions inevitably arise. It seems to me that present methods of legal education do not develop this skill and in fact may even blunt it.

Any competence standards for lawyers must surely include the development of interpersonal skills. If a lawyer does not know how to conduct a skillful interview, there is certainly no way that he can routinely elicit from his clients the information he needs to carry out his legal tasks. It is not even possible any longer for the bar to argue that this is a skill which can not be measured. As an example, Professor Louis Brown at the University of Southern California has developed several quite objective ways to ascertain a lawyer's interviewing skill, which could be used easily in any kind of specialty examination.

The three examples I have described of conflict and tension relating to a lawyer's work, are but a sampling of the kinds of things that must be mastered if one is to be an effective and responsible professional. Most lawyers have no trouble at all in seeing these problems in others. This suggests to me that they have the perceptual capacity to learn to recognize them in themselves if they would wish to do so. To make this kind of self-awareness a goal of professional training does stir up all sorts of personal and group discomfort, and such learning will not come easily. If

we try, however, we may not only improve the level of professionalism, we may also slowly develop the means to greatly increase the personal satisfactions of being a lawyer.

Postgraduate Education of The Bar in Relation to Professional Behavior

Conscientious professionals have always engaged in a kind of continuing education process. Their work stimulates it, their sense of concern requires it, and in a multitude of formal and informal ways, their professional associations foster it. However, in recent years there has been a large development of more formalized continuing education programs. Many states have Institutes to carry it out, usually formed by a consortium of law schools and bar organizations, and they offer a multitude of different offerings. When planning such programs, there are many complicated matters to take into consideration.

Issues of Timing

We can assume that lawyers who have just graduated from law school are so close to their training that they do not need refresher courses on substantive law. On the other hand, they feel desperately ignorant about law practice and are highly motivated to learn about its myriad problems. They evaluate postgraduate courses strictly according to whether or not they will have practice utility and if they do, registration will be high. Also, at the beginning of practice, although young lawyers will be eagerly seeking work, in fact they will have more free time available than at any subsequent time. They may also be quite open-minded about how to practice law, and this can facilitate learning. One of the crucial challenges to program planners is how to engage the interest of young practitioners in issues about professionalism. What will make a young lawyer want to learn how to "argue" with clients to behave lawfully, as Lieberman suggests they should, even as they desperately seek to obtain such clients? How can a young lawyer make visible professional integrity into a saleable service skill? Can the consumer of legal services be taught to value the evidences of professional integrity?

One of the things I believe young lawyers must be taught is that their self-survival concerns must also embrace the development of what Sir William Osler, one of the great medical teachers of the last century, called *Aequinimitas*. (Osler was one of the founders of the modern form of clinical teaching in medicine at Johns Hopkins University in 1888.) In other words, in addition to serving the client and his interests, it is vital that a lawyer realize that he must also satisfy *himself* about the way he conducts his work. Even if unprofessional behavior escapes notice by peers, there is no fooling one's inner self. I should modify this by saying that there is no fooling of self without invoking drastic interpsychic processes which cause serious disequilibrium, such as alcoholism or a multitude of other psychological difficulties. These personal disabilities are as much a part of practice economics as failure to get clients in the first place. These are tough problems and a real challenge to postgraduate educators.

The Third Year of Law School

If professional education were to be organized along completely logical lines, it might well constitute grounds for altering the third year law school following such suggestions as those of Deans Carrington and Cramton. In their suggested curricula, the third year of law school would be heavily involved with professional skills training and would utilize a kind of teacher who is capable of bringing these matters before the young student in solid, "practical" forms. One of the things which academic teachers often critize about the educational efforts of practitioners is their proclivity for telling war stories. However, if these practitioners were to join forces with traditional law teachers (i.e., team teach), together they could evolve materials and techniques which would readily embrace the skills of both. Needless to say, this would require some substantial psychological harmonizing for them to move toward mutual respect. We are all familiar with the aggressively derisive remarks that go back and forth between the academic and the practice sides of the bar.

Matters For the Organized Bar

In the years since Watergate, there has been much discussion about the question of what, if anything, can be done by the bar to foster improved professionalism and ethical behavior. Some clearly feel that in the first place there is little that needs remedy, or second, there will always be scalawags among us so there is no changing that. However, there are some things that could be done that might bring improvement.

Size of Bar Organizations

Justice Brandeis made a great issue of the fact that when an organization becomes so large that its head can no longer personally encompass its activities, it begins to function in ways which are self-defeating. Presumably, the same thing might be said about the bar. You recall, that one of the factors which seems to make the British bar function so well is its small size. In that bar, it is possible to know a large percentage of one's colleagues. One sees them in the dining room, at the Inns of Court, and in the highly centralized courtrooms. This is made possible partially through the division of the bar into the solicitor and barrister branches.

Lawyers who practice in small communities enjoy similar advantages. They know each other well, seem to care about what their colleagues think about them, and can hide very little about the way they practice. This substantially reinforces their ethical attitudes about lawyering and fosters the solidification of group standards. When we look at the huge bars in our major metropolitan centers, all of these intrinsic advantages of smallness disappear. Could anything be done about this? Might it be possible to subdivide the large metropolitan bars into relatively small groups so that more collegial relationships could evolve? What might motivate such smaller bars to develop a group identity? Perhaps such a bar could take on the task of providing some apprenticeship experience to law students. Could they find ways to have a student trail them about during vacation time? Could they gain some personal pride and satisfaction over knowing that they were helping young law students learn about the ways of a professional? Could such a process be the vehicle for renewed exploration by students, lawyers, and law faculty of some of the very difficult problems of being a professional? These kinds of experiments might be carried out by bar groups that were small enough so they could be involved as committees of the whole to deal with this kind of project.

I have described earlier the social power of the dynamics of "shaming." Is there any way this force could be utilized effectively by a bar? Could this be linked in some way to economic advantage? Conversely, when an individual functions in a way that is professionally desirable, is there some way it could lead to social or economic advantage?

What Can the ABA Do to Promote Professionalism?

For some time the American Bar Foundation has carried out a substantial amount of excellent research on behalf of the ABA. Perhaps they might devote some of their interest and economic resources to studying the forces related to professionalism, such as the effects of various kinds of law firm organization on professional behavior. For example, how do large firms manage their extensive orientation programs with their young firm associates and what are their effects? Do they make the right value choices so far as the bar is concerned? Is there anything in those training programs that could be organized in relation to the solo practitioners of the bar? Perhaps some of this information would be seen to relate to "trade secrets," but if that should be the case, it would tell us something about the relative values of profesional behavior versus lawyer advantage.

Would it be possible for the ABA to help put together "road shows" made up of some of the great lawyers of the day to speak to law students and young lawyers?

I have emphasized the importance of models in shaping behavior. Would it be possible for the ABA to help put together "road shows" made up of some of the great lawyers of the day to speak to law students and young lawyers? The late Mr. Justice Clark in the latter years of his life, spent a great deal of time visiting different law schools and bar groups, talking about matters of law practice. Presumably one might argue about what it was he was modeling, but having heard him do this several times, it seemed to me that at least he showed law students and young lawyers something of the excitement he felt in being a good lawyer and being dedicated to issues of public importance. There have also been a few lawyers recently like Archibald Cox, who stood conspicuously against authority as a matter of principle. Of course it is easy to imagine all of the fears about politicizing this kind of activity; who will choose the representative for what value? One can readily concede such a risk, but in my opinion, it is not nearly so serious a danger as that of failing to present *any* models of the values and behaviors that we seek to foster.

Another project which the ABA is in an ideal position to carry out is to see that good video tapes of the great lawyers and judges of the day are archived. Would it not be wonderful is we had some well conducted interviews with Justices Holmes, Cardozo, Brandeis, and Frankfurter? Would it not be exciting for law students to listen and watch the judicial thought processes of the brothers Hand, or better still, to see them at work? If we cannot decide now who is great because of our fears of political implications, we could easily overcollect for these archives, letting our successors make the historical choices. At least we should be sure that we capture this kind of information for subsequent generations of law students and lawyers.

The Effects of Judicial Behavior

Perhaps one of the more powerful pressures that can be brought to bear against the professional behavior of lawyers lies in the hands of the judiciary. At least they are in a position to deal vigorously with the public professional behavior of lawyers as it relates to the trial process. It is my impression that American trial judges are rather loathe to control aggressively the unethical behavior of counsel before them. For example, when trial counsel asks questions which have the instrumental function of bringing inadmissable information before the jury, while they will be objected to and the jury will be told to ignore the question, everyone knows that they will have succeeded in their intentionally unethical and unlawful communication. Although admonitions are pro forma, disciplinary action seems to be extremely rare.

The judges' role is a very difficult one, filled with many of the same kind of emotional conflicts which lie at the heart of effective professional behavior both on and off the bench. The British judiciary, seem to be much more active and effective in dealing with the courtroom behavior of counsel. There is little question that if counsel oversteps the bounds of ethical propriety, they are stopped cold, and they will suffer some penalty for having done so. This probability is so clear that counsel themselves seem to have thoroughly adopted the attitude of constraint and propriety, and this is as it should be.

Because of the central importance of judges, they are an important group upon whom to focus training of professionalism. There is no question that they could be given a kind of training to enable them to perform this function more effectively and with more personal comfort, but neither is there any doubt that such a presentation would be initially unpopular. Only as they came to grasp its ultimate utility would the purpose and value of such experience become apparent. Some few judicial training programs have made tentative steps in this direction.

Issues About the Canons of Ethics

For any canon of ethics or code or professional behavior to work, practitioners must first of all accept the standards and then they must adopt the full intention to try to implement them. Therefore, the teaching/training approach to professionalism must focus heavily upon how to instill and reinforce such an ethical intention. Although there will be some breaches which are the product of total ignorance, hopefully these will be rare. The vast majority will come from either deliberate, conscious decisions to breach or more commonly, in my opinion, actions in which the lawyer has succumbed to internal psychological conflicts about which he is not fully cognizant. This suggests then that for a lawyer to perform ethically he must be willing to engage in some very intensive self-scrutiny in order to gain a substantial knowledge about his own motivational patterns as they relate to professional behavior and the code of ethics.

With this process in mind, the form and content of the "preamble" to a code of professional behavior which is admonitory and aspirational becomes very important. Its purpose is hopefully to potentiate lawyers' awareness and willingness to deal with these complex and conflictual issues. It is not remiss or inappropriate to note there, that the practitioner's own satisfaction with his work might have a close relationship to his wish or even his "need" to be ethical. This obviously turns on the assumption that there will be strong group reinforcement of the standards which in turn will foster the psychological desire to be a

part of the group. The preamble might also describe and concede the painful dilemmas and temptations which exist for counsel, that lead him to behave in a self-serving way. This acknowledges where the psychological pressure will be coming from and it alerts him to the fact that to behave ethically requires constant attention.

I have already commented on the central importance of lawyers being willing to report the ethical breach of another, and the current inclination to nullify this requirement.

Because the actual implementation of a code of professional responsibility is so fraught with pain and trepidation, it would seem to me that a bar might develop a kind of stepped procedure which it could teach to its members about how to handle breaches. A first step might be that the observing lawyer would communicate directly and solely to the one who seemed to offend the code. If this communication were effective, the "offender" would evidence that fact by making some kind of response of acknowledgement and be appreciative of the fact that he had received a private warning (although no doubt he would have and should have some inner turmoil).

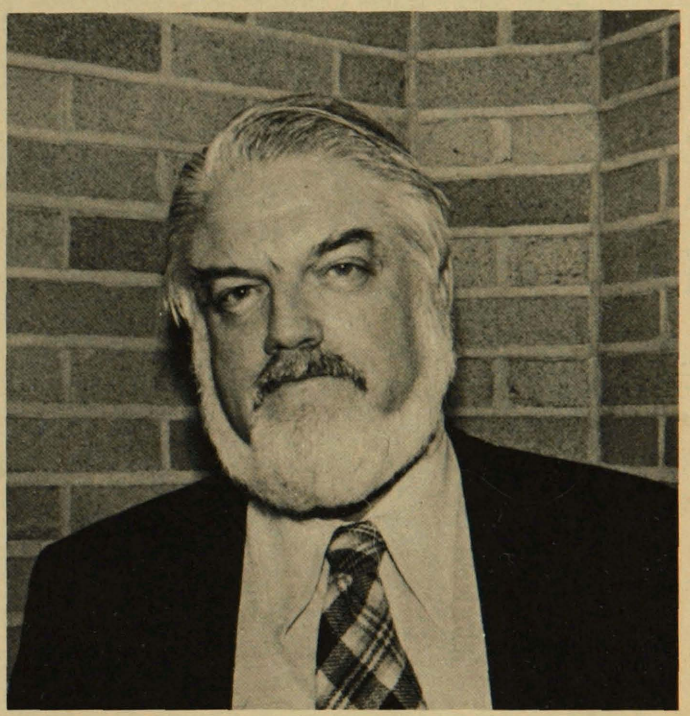
The second stage of intervention might be additionally to report the observed behavior to a member of the lawyer's firm if the first step was thought to have been ineffective. A letter to the senior partner or associate would no doubt mobilize a certain amount of anxiety in the firm about its public image and probably bring internal pressure against the individual who committed the questionable act. It would put them all on notice that this behavior will have to be stopped or obviously there might be some future difficulty.

Finally, if there is no alteration of behavior and another similar occurrence is seen, then the observer would report the matter to the bar's grievance committee. They already appear to have a stepped intervention process. I would merely repeat what I described earlier, that it is important in process terms, to make sure that the person who reported the grievance knows that his report was fairly evaluated and something of why the matter was dismissed. Otherwise, there would be strong inclinations to avoid making these psychologically discomforting moves in the future.

The final thing I would like to say about the code is that it seems mostly to stay on the book shelf. A very large challenge to the bar is to find ways to raise each lawyer's concern about its implementation. I suspect that a few bar meetings with titles like, "Lawyers' Unethical Behavior: Should We Be Licensed By the State?" would not only draw a crowd, but would stimulate a lively and useful discussion. Much attention to self help is needed here.

In these lectures I have attempted to describe some of the social and psychological factors that appear to impinge presently upon the effective functioning of professionals. Although many of them were invoked to improve and protect society, some of their effect has been to gnaw away at the very core of the professional identity, without which no physician nor lawyer can effectively fulfill his difficult functions. I hope I have persuaded you to the belief that it is only a well trained, deeply conscientious professional concern which can ultimately protect people from the risks attendant upon receiving help from a doctor or a lawyer. That kind of ethical concern can only be developed by a very special kind of educational experience joined to continuing professional group reinforcement. I have also tried to set forth some of the problems I see in contemporary professional education as well as to lay out some suggestions for re-tuning this training so that it may better fulfill its purposes.

Because most of these questions involve ethical issues and because we lack the luxury of having much hard, scientific data on the subject, I suspect I have sounded somewhat like a preacher with all of my shoulds and shouldn'ts. If that be true, I can then only say something like *Pax Vobiscum*.



Andrew S. Watson

AFTER DIVORCE:

Alternatives to Child Support Payments

by David L. Chambers
Professor of Law
The University of Michigan

[A couple with children separate and divorce. A court orders one parent, typically the father, to pay child support to the other, but the father fails to pay. This pattern repeats itself thousands of times each year in nearly every American state.

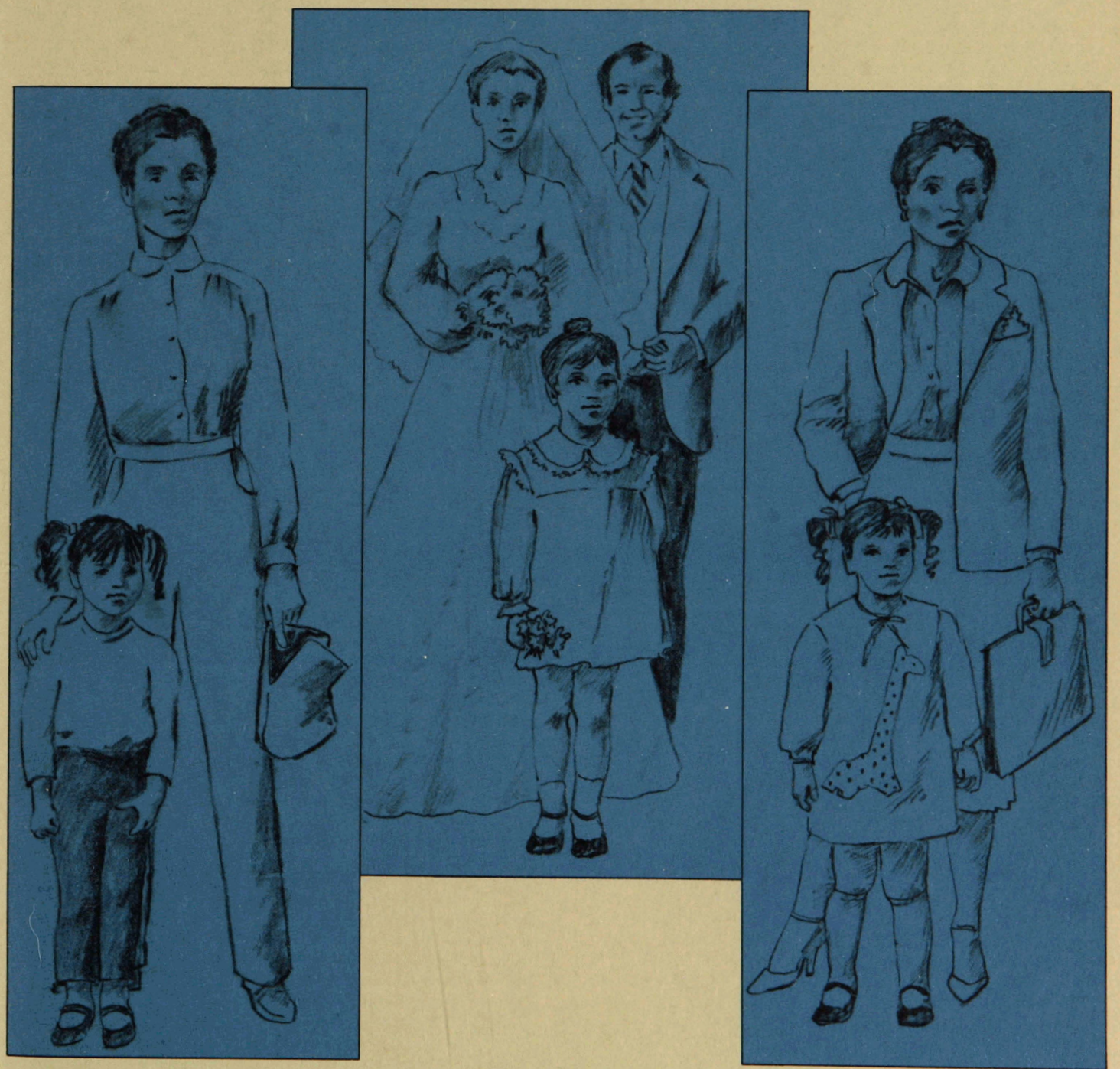
The state of Michigan is unusual. It collects more child support per case from its divorced parents than any other state. Much of this success is due to the fact that every Michigan county has long had an agency, the Friend of the Court, that receives all payments and oversees the entire enforcement process, sending warnings to fathers who fall behind. David L. Chambers, a member of the U-M Law School faculty, undertook a study of Michigan's collection systems to learn, among other things, why, even within Michigan, some counties had vastly greater collections than others.

After examining collections in 28 counties, Chambers found that those counties that jailed large numbers of defaulting men for contempt of court collected more than other counties, if (but only if) they also had a well-organized system of warnings to men who were falling behind. Michigan's counties jail men at an awesome rate. In some Michigan counties, one divorced father with children in every six ends up in jail at least once for failing to pay during the life of his court order.

Chambers also found, however, that the enforcement process systematically led to the jailing of the men about whom there was the greatest doubts of their capacity to pay. Believing further that American's general propensity to jail everyone we consider immoral is a dangerous one, Chambers explored whether governments could create alternatives to the current system that would produce higher levels of payments for children without the undesirable effects of a system that relies heavily on jailing.

Chambers' findings and conclusions are reported in a new book *Making Fathers Pay*, published by the University of Chicago Press. In the book, Chambers illustrates many of his points through examples from one family, the Neals, whose members he interviewed. Here is an excerpt* from the chapter in which he explored new ways of assuring adequate income to the children of divorced parents.]

. . . regardless of the system devised, custodians of small children must either adjust to a significant decline in income or . . . find either high-paying work or a new spouse.



Every Friday afternoon, Jerry Neal collects his paycheck at the manager's office in the apartment complex where he works. He cashes the check and joins others from the maintenance crew for two or three beers at Marble Lucy's. As the weekend passes, he may or may not remember the thirty dollars he promised to send the Genesee Friend of the Court. Even if he does remember, he may or may not actually buy and mail a money order. On those Saturdays when he does send it, there is little doubt that his action will have been prompted in part by the desire to avoid another jailing. Our findings suggest strongly that, if Michigan were to abandon jailing as a collection tool while retaining the current system that depends on payments by fathers after they have cashed their paychecks, the state would collect less not only from Jerry but also from many other men under orders. Smaller collections would leave thousands of Michigan children who live with one parent worse off financially than they already are.

In this chapter, we consider various schemes for obtaining money from parents before each week's paycheck reaches their pockets. Under some schemes, money would be collected even before the couple separates. Each scheme has some advantages and drawbacks in relation to the present system. Among the plans discussed, a system of universal wage deductions seems most promising. The others, various sorts of insurance schemes with payments before separation, are enticing but unworkable.

Two New Approaches: I. Mandatory Wage Deductions

The biggest money-collecting enterprise of governments is, of course, the collection of taxes. How do they do it? In this country, prior to World War II, the federal government simply required all persons owing taxes to pay whatever they owed at the end of each tax year, relying on a sense of duty and the fear of civil suit or criminal prosecution as the principal motivations to pay.

During World War II, the government shifted to a new system for most individual taxpayers, requiring employers to withhold an estimate of the taxes that would be due. The employed taxpayer no longer made a choice about paying. The pay-as-you-earn system has continued to the present and all states with income taxes have followed suit.

Today, the collection of child support largely resembles prewar tax collections. The payments men are to make are due weekly, not annually, but the expected motivations of duty and fear are essentially the same. Although many states authorize the use of wage assignments to collect support, and such assignments operate like a tax withholding system, assignments are rarely used in more than a small portion of cases. Moreover, in most states, including Michigan, courts may not impose a wage assignment except on a person already in default, and in all states a wage assignment ends when a person ceases to work for the employer against whom it was ordered.

Could child support collections be increased and fewer men end up singled out for penal treatment if governments instituted a system of mandatory deductions from wages that followed an employee wherever he went?

If a federal system were established under which withholding occurred from the first moment of an order and traveled with a person wherever he took work within the country, the need for much of the current enforcement system would largely disappear. To make such a system work, the federal government would need to create a national computerized system probably tied to the man's Social Security number. Employers would be required to make a check on a new employee through the Social Security office to learn whether support payments were to be withheld from his wages. Under such a system, payments would be nearly perfect except by the unemployed, the self-employed, and those able to evade the floating wage assignment by falsifying their Social Security numbers or by colluding with the employer. Jerry Neal, for all his problems, has nearly always held a job. He started on the line at General Motors. Over the years since, he has painted houses, installed mufflers at an auto-repair shop, and, in recent years, performed maintenance work at apartment houses. At least in theory, under a wage assignment scheme, Jerry would have been nearly current in his payments instead of $18,000 in arrears. He would also have avoided the pain, and Genesee County the expense of three long terms in jail.

An additional advantage of the assignment system is that it could be set up to allow judges to fix orders in terms of a percentage of the individual's earnings. Employers in turn would deduct the fixed percentage of the worker's earnings, the dollar amount varying over time, just as they do with Social Security. Today, in nearly all places, courts set a fixed *dollar* amount as the order size. Although courts currently have the power to modify an order to reflect changes in earnings, the procedure is cumbersome and in many places infrequently used. The consequence is that, as men's earnings and their children's living costs rise, the order remains the same.

The federal legislation could also be set up to protect workers under orders of support from such large deductions that they are forced to live in poverty. This protection can be achieved in part through the shift suggested above from orders fixed in dollars to orders fixed in percentages of earnings. It could be achieved more fully by excluding a certain amount per hour from the wages subject to the wage deduction, before applying the wage-deduction percentage to the remainder. (The percentage taken of the remainder would than have to be higher than it would be if the percentage were applied to the whole.) In any event, the federal government should *not* set up a system that routinely recoups money for itself by taking money from noncustodial parents living in poverty. Especially is this so when the United States has no great system of income support for nondisabled single individuals such as the low-income parent who is not living with his minor children.

A national compulsory deduction system would, however, have many troublesome aspects. It would be cumbersome to administer, a fountain of details inviting errors. Unlike income-tax withholding, deductions for child support would be required only for certain employees. Also, unlike income taxes, support payments would generally have to be funneled to a recipient other than the federal government, a process likely to take several weeks, even months. At varying intervals, as children reached majority, the amount to be withheld would change.

Some of these problems are not insuperable. The federal government could speed the process of passing payments through to the custodial parent (and to state welfare departments) simply by starting payments to recipients upon receiving notice that withholding had begun but without waiting until payments were actually received. Withholding from the noncustodial parent could continue

beyond the children's majority, if that were necessary to recoup the money advanced.

Some other troubling aspects of a compulsory wage-assignment system would not be so fully remediable. Many people feel strongly about their right to decide for themselves what to do with their earnings. They would resent involuntary wage assignments for child support as much as they would resent involuntary deductions for their Master Charge bill, even though they could agree that it was reprehensible not to pay. Whether seeing it as a right or an obligation, many noncustodial parents attach importance to their weekly act of writing a support check, viewing it as an occasion to demonstrate their love for their children.

A wage-assignment system would also involve another sort of federal instrusion on matters many consider private and personal. We can appropriately worry about a federal computer system carrying detailed information about the failed marriages of millions of citizens. Indeed, the employer would invariably learn through the system if his employee was divorced or was the parent of an illegitimate child. Today, some Friends of the Court hesitate to impose wage assignments in cases in which they fear that the father is likely to be fired by an employer who either does not want the bother of making an additional deduction or thinks ill of persons who are divorced or the parents of a "bastard." In Genesse County, General Motors cooperated in full with the Friend of the Court with regard to wage assignments for its blue-collar workers but regarded a wage assignment as a blot on the record for its white-collar workers. (The Friends of the Court were not badly hobbled by this odd bit of class bias. They simply informed the defaulting white-collar worker at General Motors that if he didn't begin regular payments they had a wage assignment ready to mail in.) The problem of employer resistance could well continue under the system proposed here.

For all these reasons, it is easily understandable why only a bare majority of the Friends of the Court indicated in a mailed survey that they would favor a change in Michigan law to permit the imposition of a wage assignment at the moment the support order first takes effect and before any arrearage develops. There was no uniform enthusiasm despite the fact that nearly all the Friends of the Court are strongly committed to improving collections of support. All, I believe, favored wage assignments for men substantially in arrears, for these men had lost their just claim to control the disposition of their earnings.

In the end, however, the issue when contemplating a mandatory deduction system is not the drawbacks of such a system in the abstract. Rather, it is whether a system of automatic wage assignments would be worse than the sin-based system that we have now—the system in which we dangle before men the opportunity not to pay and, then, when men respond to the opportunity, clap them into jail.

If state and federal governments remain committed to compelling long-absent parents to support their children and remain determined to enforce the obligation aggressively, I for one would choose the compulsory-deduction system over the system now found in Michigan. It would be my preference not so much because it would almost certainly lead to even higher collections than Michigan obtains today but because of the doubts I have expressed about the justness of a jail-based system and about the atmosphere that system creates. The choice may seem easier because the new system does not exist. It is, however, hard to believe that a new system, however intrusive, could be as distasteful as one that depends heavily on imprisonment and the fear of imprisonment. Readers who have doubts in this regard should turn themselves in for a weekend at the nearest county jail.

II. Insurance Schemes

Choosing between child support squeezed out under pain of imprisonment and child support removed from wages through an all-knowing federal system may seem like a choice between death by fire and death by ice. Neither has much appeal. Are there other workable alternatives? The opposite pole of our current individualized system of support would be a purely public system of welfare benefits. Noncustodial parents would not be compelled to support their children at all (except through their payment of income taxes, as for any other taxpayers). The custodial parent, if in need, would turn to the public assistance system for support. No reimbursement would be sought from the other parent.

Such an alternative would have little appeal in this country. It would be acceptable only if Americans came to view all children as everyone's children, with parents no more responsible than anyone else for the support of their own children. It is hardly likely that Americans will ever see the children of a divorced bank president as everybody's children.

The private system and the welfare system do not, however, represent the full range of possibilities. In between there are some well-developed alternatives that may be loosely grouped under the heading "insurance," for dealing with events such as death or automobile accidents that, like divorce, are both predictable in their incidence and catastrophic in their financial consequences. Under such schemes, a pool of funds is created in advance of an event so that it is available when the event occurs. Let us consider briefly three forms of "divorce" or "marriage" insurance, each with familiar analogues, to see whether they offer promise as substitutes for, or supplements to, the current system.

Private Voluntary Insurance

People buy life insurance to provide for their families upon their deaths. Couples might similarly buy marriage insurance to provide for their children in the event of their separation. Insurance companies would offer policies to couples who wanted them, set premiums, and then if a couple separated, pay a benefit, perhaps in periodic form, to the custodial spouse. How much would be paid and for how long could all be matters of choice for individuals (or the insurers) and would affect the size of the premium. Just as is the case with term life insurance, if a sufficient number of couples bought the policy and the insured event befell only a small portion of the participating couples, premiums could be kept small in relation to the benefits paid to those families with claims.

As a scheme for dealing with the problem of inadequate income for single parents, a system of private voluntary insurance may sound appealing but it is wholly unworkable. As long as it is voluntary, how many American couples, most of whom consider themselves living at the margin, would choose to participate? Very few, and those who would participate would be likely to be those who felt their marriages in greatest risk. If the latter problem, known as "adverse selection" in the insurance business, occurred, it would mean that within the pool participating the ratio of divorcing couples to other couples would be higher than in

the population as a whole and thus that premiums would have to be higher than if the pool contained a random representation of couples. The premium cost is a serious problem, but even if the premium were quite small—which it could not be—the problem with voluntary insurance would be that it is almost certain that those parents in greatest need would not be participants.

Private insurance carriers are unlikely to be interested in carrying divorce insurance even for well-heeled couples. They have indeed already shown little interest in suggestions by women's groups that they carry it. Apart from the fact that some carriers may regard divorce as a nasty business, they are likely to be greatly bothered by the problem of adverse selection. The problem is aggravated by the fact that the insured event is within the control of the insured couple. In some ways, such insurance would be like a property insurance policy that explicitly permitted the owner to collect even when he intentionally burned down his own plant. The very existence of marriage insurance might cause some couples to separate who would otherwise stay together. The financial security promised by such insurance would be an attractive feature for women who feel trapped in unhappy marriages, but it would be a most unattractive feature to insurers.

For all these reasons, the only place voluntary insurance would seem to have would be as self-insurance for a few farsighted, well-off people. This would hardly be insurance at all; it would be like a savings account in which a couple would simply salt away money. If they separated, the fund, grown over time, would be available to them. If they did not separate, the money would still be there for their middle years or for their retirement. Many couples have something slightly comparable to such a plan today without thinking of it in those terms, for in most states savings during a marriage will, of course, be divided between the spouses at divorce.

Compulsory Insurance Plans

Today, in nearly all states, the continued validity of a person's license to drive an automobile is conditioned on his carrying liability insurance to protect those who may be injured in an accident. Could a somewhat comparable form of child support insurance be devised as a condition to marriage? Each couple as a condition of marriage would be required to produce proof of insurance, just as they are required to provide proof of a blood test. They would then be required to continue the insurance throughout their marriage or for some fixed period of years. The premiums would be set forth in such a way as to provide adequate income after divorce for those who become single parents.

If such a system could work, consider the virtues it would have: it would reach all married couples with children, not just the few who would choose to participate in a voluntary plan; it would provide income to a custodial parent after divorce in a form (unlike welfare) that would clearly be seen as a contractual or legal right. Payments would come without the unpredictability and unreliability of periodic post-separation payments by the father. Even if some periodic payments by fathers were required after divorce, the insurance scheme would provide a valuable supplement—if it worked. But it won't.

In the first place, it would not reach the illegitimate child at all. Unless every young person had to purchase intercourse insurance or a high-priced intercourse license, there would be no period of premium payment before the insured event (a child living with a single parent) would have occurred.

Even assuming that every married couple participated, with benefits paid only to custodial parents after divorce, the premiums would have to be very high. There are simply a lot of minor children of divorced persons, in an era in which one out of every four or five couples with minor ldren divorce before the children reach their majority. To be able to pay three thousand dollars a year to each divorced parent with two children, and six thousand dollars to each parent with three or more, all married couples in the country would have to pay premiums of at least $450 a year throughout their marriage, even after they reached their fifties. To most American families, $450 will seem a lot of money. And forty-eight hundred dollars for a woman with two children would still leave her living in poverty.

Considerations of fairness might well force the premiums even higher. Legislatures might consider it inequitable to require insurance to be carried by couples who had no children, couples in which the woman was beyond childbearing age, and couples whose children had all reached their majority. Requiring older couples to pay for insurance would be like requiring a person to continue to pay automobile insurance after he had given up driving. If the pool of required contributors were limited to younger married couples who had a minor child, premiums for those included in the plan would have to be raised substantially higher—doubled or tripled perhaps.

The problem with compulsory insurance lies not only in the size of premiums but also in their collection. What do we do to the couple who cannot or will not pay the premium? Denying the right to marry to those who cannot afford to pay would surely violate the Constitution. Jailing after marriage those later refusing to pay would pose many of the same problems of jailing for nonpayment after divorce. Indeed jailing during marriage may seem even more dubious, if the couple is happily united, living with children, confident in their capacity to hold the marriage together. Collections could, of course, be made through payroll deductions in the manner of the mandatory wage assignment system discussed above. If they were, the system would closely resemble an expansion of the Social Security system, an idea to which we now turn.

Expanding the Social Security System

Yet another form of insurance that is familar to all of us is the public insurance known as Social Security. Today, for the overwhelming majority of workers in this country and their dependents, the Social Security system provides benefits to those who reach a certain age or become disabled, as well as to the survivors of those who die. The benefit scheme, evolving since its creation forty years ago, is extremely complex. The benefits paid depend upon the length of time a worker has made payments prior to the occurrence of the insured event and upon his earnings during the period he was making payments. Funds for the benefits are obtained by wage deductions from employees matched by an equal contribution from employers. Today, in 1978, the rate is 6.05 percent of the employee's wages, with an additional 6.05 percent paid by the employer.

It would be possible to add the event of becoming a single parent to the list of covered incidents. Since "single-parentness" is not an event likely to befall workers over a certain age, contributions might not be required from workers over, say, the age of fifty.

If the contribution rate for both employers and employees were to be substantially raised, a sufficient amount of money could be obtained to pay benefits

approximately equal to those obtained through the compulsory insurance scheme discussed above, although pegged in some way to the parents' actual level of contributions.

Such a scheme would have several attractive attributes. For those covered, the problem of collecting premiums is largely cured: if a person works, he or she makes payments. The current scheme of individual collections after divorce could be largely scrapped, depending on the level of support one wished to assure. Moreover, the current welfare system could be dramatically cut back. Workers whose children today receive payments through the AFDC system would support their children instead through Social Security benefits. In turn, payments through the Social Security system would be largely free of the stigma attached to the receipt of welfare. They would be free for what most Americans would consider the right reason: that is, the children would be supported in a manner that bore a relation to actual contribution from the parents.

Such a scheme, however, would not reach all children living with single parents. At the psychological heart of the current Social Security system is the notion that it provides benefits only to those who have made contributions over a certain period. Most illegitimate children whose parents do not live together and a significant portion of children of divorce have young parents neither of whom has long participated in the labor force and neither of whom would today be eligible for full benefits on becoming disabled. Indeed many illegitimate children have parents who have never participated in the labor force at all. While a very short period of contributions might be justified on the ground that, with this form of covered event (unlike death, disability, or old age), the probability is high that one or both parents will have many more years as contributors to the fund, it would do violence to the central concept of Social Security that many people have by providing benefits in some cases in which neither parent has made any contribution.

Much more fundamental objections can be raised to the scheme than that it does not reach everyone. Many feel the Social Security system is already overburdened. Congress has recently increased both the rate of the tax and the income levels up to which the taxes are paid. Workers feel the cost of the system when it reduces their take-home pay. They would be likely to acknowledge that the additional deduction was worth it to them only if they perceived themselves as one of those significantly at risk of needing the benefits. Many workers would readily admit the risk of death, disability, and old age but would not consider themselves at all likely to become a parent of a child living with a single parent. They would object to such an alteration of the Social Security system just as they would object to the mandatory "divorce insurance" scheme we discussed earlier. The objectors would include not merely older couples but also the millions of young single people who either abstain altogether from sexual intercourse or, if they engage in it, invariably use reliable contraceptive devices.

In addition, death, old age, and disability are seen by most Americans as largely free of fault. Though there are exceptions, people do not generally die or cripple themselves either on purpose or in ways that make us think ill of them. Divorce is different. To many, it has the flavor of sin or at least of insufficient resolve to live up to a solemn commitment. Even more frequently viewed as sinful is the conception of a child out of wedlock by a woman not living with the father of the child. The compulsory system I suggest would require some people to support others they view as irresponsible. Indeed they would see the system as encouraging people to act irresponsibly.

If the Social Security system were expanded to insure against the event of single parenthood, the entire system might thus become tainted, whereas one of its signal features in this country has been that its recipients have always been permitted to feel that they were receiving payments that they deserved for reasons that they need not feel badly about. This feature is one about which we may justly feel ambivalence—it is related to the tendency to distinguish between the "worthy" and the "unworthy" poor—but it is nonetheless a feature of American civilization that policy-makers and citizens accept. And for these reasons, and the costs, it is probable that Congress would refuse to expand the Social Security system to include single parents.

Conclusion

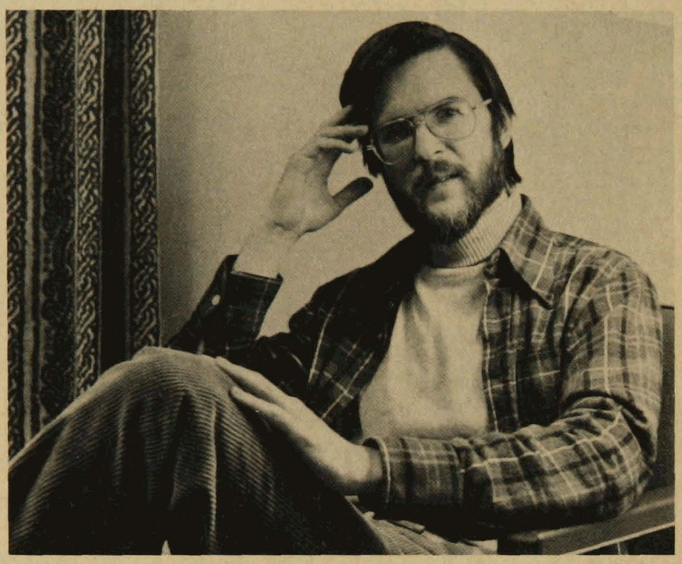
We have looked at many different schemes to assure adequate support for children living with a single parent. Some are appealing but all have problems. If we try to collect from the noncustodial parent after separation, we find that we must either use distasteful means, such as the threat of jail, or cumbersome ones, such as universal and mandatory wage assignments. Insurance schemes to collect from parents before the insured event have no fewer administrative problems and suffer from the additional difficulty of forcing us to define the persons who are going to be compelled to make payments into a fund whether or not they receive any return. I personally am drawn to the mandatory wage-assignment idea because it spares us the politically touchy task of defining who, besides already separated parents, shall contribute while at the same time offering an opportunity largely to eliminate the need to rely on jail as an instrument of enforcement. Moreover, unlike the various pay-in-advance insurance schemes, the wage-assignment system retains whatever psychological benefit may accrue to the parents and to the child from knowing that the absent parent is making current and substantial financial contributions for the child.

There is another alternative to the heavy use of jail or to mandatory wage assignments. Weaker than either, but politically feasible, it is simply for states to create efficient full-time collection and enforcement offices, comparable to Friends of the Court, with courts empowered to use sentences to jail but rarely actually doing so. To those to whom jail is repugnant or at least distasteful, this is a possible middle ground that would almost certainly lead to much higher collections in the many places where mothers not receiving welfare are now left to inadequate private remedies.

Even if one of the more audacious schemes were adopted, however, one fundamental limit needs to be kept in mind. Like the current system, neither mandatory wage assignments nor any of the insurance schemes alone will provide an income that will permit custodial parents and children to survive at anywhere near the standard of living they maintained when the family was intact. Recall that

child support for a parent taking care of two children is typically set at 33 percent of the noncustodial parent's net earnings, but that the custodial parent needs around 80 percent of the family's former total income to maintain the prior standard of living. We have also seen that it is not feasible to demand dramatically higher percentages of earnings to be paid by the noncustodial parent. While insurance schemes could be tailored to provide higher benefits simply by raising the premiums, premiums high enough to assure a parent of young children a standard of living equal to what he or she had before would be considered prohibitively expensive. Even under the Social Security system today, the goal for the disabled or the aged is to meet 60 percent, not 100 percent, of their prior level of earnings.

Thus, regardless of the system devised, custodians of small children must either adjust to a significant decline in income or, as we have discussed much earlier, find either high-paying work or a new spouse. None of these choices may seem palatable, but they will continue to be the ones that have to be made. Public officials worried about the financial plight of parents, especially the plight of mothers with young children, will need to devote as much attention to improving employment opportunities for women—and for the population generally—as they do to finding new ways to collect child support. And even if they succeed, they will not cure the dilemma for many single parents of choosing between full-time work and full-time parenting.

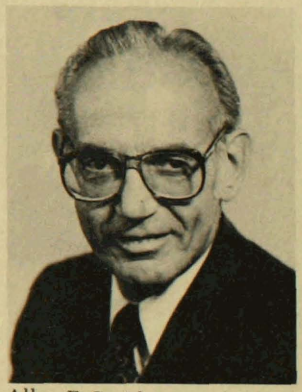


David L. Chambers

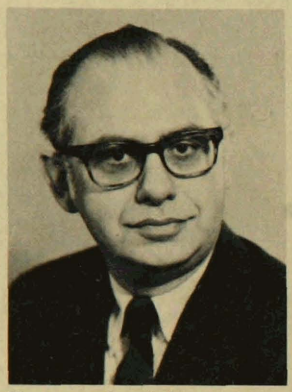
THE UNIVERSITY OF MICHIGAN LAW SCHOOL

CAPITAL CAMPAIGN

FINAL REPORT



Allan F. Smith



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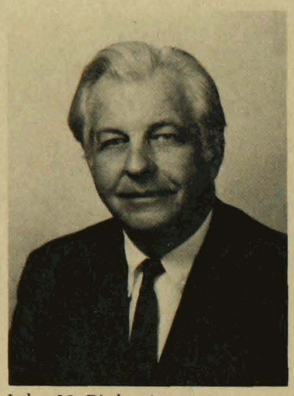


John H. Pickering

From Interim U-M President Allan F. Smith

On behalf of the Regents and executive officers of The University of Michigan, I am delighted to acknowledge successful completion of the first major fund-raising campaign in the Law School's 120-year history, and I offer my congratlations to everyone involved.

The Law School's blend of private support and public funding has been one of the unique characteristics of the school since it first opened its doors in 1859. This partnership has provided the resources which have enabled Michigan to offer outstanding educational and research opportunities for students, faculty, and the bench and bar. As a result of private and public assistance, Michigan has been able to serve as a major resource for its alumni, for the state of Michigan, and for the nation. The Law School's preeminence is recognized not only in America, but throughout the world.

From the time the campaign was planned, I have never doubted that Michigan's tradition of alumni volunteer assistance and generous private giving would permit us to achieve and exceed an ambitious goal. The University is deeply grateful to everyone who helped make the Law School Capital Campaign a success. Thanks to you, our Law School has the facilities to sustain and enhance a rich and rewarding program in legal education and research.

From Dean Terrance Sandalow

The faculty joins me in expressing warm thanks to the many persons whose effort and generosity contributed to the success of the Capital Campaign.

The response of alumni to the campaign is as gratifying expression of their affection for the Law School. It is also a notable demonstration of their commitment to the ideal of excellence in legal education, a commitment shared by the many other friends of the school whose names are recorded in the honor roll of contributors. In launching the campaign just over three years ago, Ted St. Antoine wrote of the school's need for additional resources to "enable a great law school to be even more effective in the service of students and alumni, bench and bar, state and nation." The extraordinarily generous response to that appeal will benefit the school for generations to come.

Special thanks are due the men and women who labored to ensure the success of the campaign—the members of the Campaign Committee who wisely guided the planning for it and the regional chairmen and local solicitors who bore major responsibility for the personal contacts that contributed so greatly to its success. Ted St. Antoine joins with me in a very personal word of thanks to all these individuals, and especially to John Pickering, the chairman of the Campaign Committee. By his sage advice, patience, unfailing enthusiasm, and good humor, John contributed not only to the success of the campaign but to making a potentially burdensome responsibility a rich and rewarding experience.

From U-M Law Alumni Campaign Chairman John H. Pickering

The Capital Campaign is a resounding success. Our $10 million goal has been exceeded by nearly $4 million. We have the funds to complete the library addition, despite the ravages of inflation. We have also raised more for needed faculty support than we expected. Indeed, we are even in sight of the $15 million goal originally considered but rejected as unrealistic and over-optimistic. Wouldn't it be wonderful to reach that "impossible" goal? There is still time. So, if you have not contributed, or wish to increase your contribution to the Capital Campaign, I urge you to do so.

This outstanding success is not accidental. It is a remarkable tribute to the Law School, its alumni, and its friends. It is particularly impressive since annual giving to the Law School Fund has increased during each of the years of the Capital Campaign. It is the result of hours of dedicated work by many people—the members of the Campaign Committee which I have the privilege to chair, our regional chairmen, and our local solicitors. They did an outstanding job and we are all in their debt.

Very special recognition is due to the people who actually planned and ran the campaign, who made the trips and contacts that produced major gifts—Ted St. Antoine who devoted his seven years as dean to making the campaign a reality and a success, Terry Sandalow who took over the deanship in the final stages of the campaign and saw it through, Bill Pierce whose patience and imagination as Building Committee Chairman have created a truly exciting addition to the library, Rob Jones who unfailingly handled the myriad details ranging from the major to the nitty-gritty, and Allan Smith whose wise counsel and devotion to the Law School and the University at large inspired us all. They and all the others who worked on the campaign made my job as chairman a happy and easy one; the credit is theirs, not mine.

Finally, the success of the campaign assures that Michigan will enter the 21st century as a continuing national resource for outstanding legal education and research. Thanks to all for a job well done!

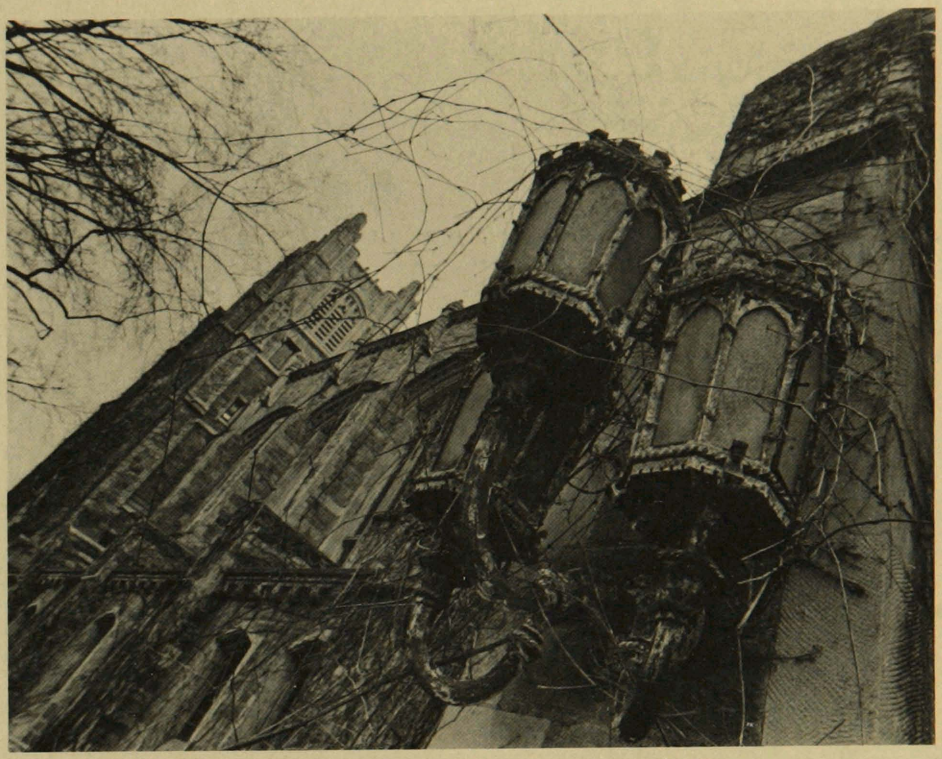
Campaign Succeeds

The Law School's Capital Campaign is a resounding success. During the three-year drive, which began with a goal of $10 million, the school received in excess of $13.9 million in cash, pledges, and deferred gifts.

This extraordinary achievement is a tribute to the skill of those who gave freely of their time and energy to plan the campaign, to the dedication of the additional numbers who played an active and important role soliciting contributions, and, of course, to the generosity of more than 2,000 individuals and organizations whose gifts enabled the campaign to meet and exceed each of its original goals. The Law School is deeply grateful to each of these persons and organizations.

The remarkable effort by all those who contributed to the success of the campaign is in keeping with the long Michigan tradition through which private support has combined with public funding to maintain the Law School as one of the world's leading centers of legal education and scholarship. Most notable among previous gifts were, of course, the several magnificent contributions from W. W. Cook whose foresight and generosity permitted the building of the Law Quadrangle and establishment of the unique research fund bearing his name. In addition, many others such as Frederick L. Leckie, Marguerite and Julian Wolfson, George M. Humphrey, Henry M. Butzel, Henrietta E. Rosenthal, James Shearer, Edwin C. Goddard, Clyde A. DeWitt, and Harry Helfman, to name but a few, provided the school with substantial funds for student aid, faculty support, an interdisciplinary program in law and economics, additional library resources, and other important activities.

The decision, made nearly six years ago, to undertake the Law School's first Capital Campaign was rooted in the belief that the school's current alumni were as deeply committed as those of an earlier time to maintaining its distinction. A major need, and the primary purpose of the campaign, was to secure funds for construction of an addition to the law library. Among the school's other important needs were the establishment of additional endowed professorships, increased resources for student aid, funds to support a



Campaign Results

Source of Support

Alumni and Friends	$ 9,450,000
Foundations	4,000,000
Corporations	350,000
Faculty and Staff	100,000
Total Received in Cash, Pledges, and Deferred Gifts	$13,900,000

Designation

Law Library	$ 6,200,000
Faculty Support	2,900,000
Unrestricted	2,550,000
Student Aid	1,200,000
Programs	1,000,000
Lawyers Club	50,000
	$13,900,000

number of innovative programs, and money to complete the renovation of the Lawyers Club, the residence hall for students. The energy and generosity with which alumni responded to these needs is a remarkable demonstration of their commitment to the School and, even more important, to the ideal of excellence in legal education.

Although this is a report about the success of the Capital Campaign, a word or two about the annual Law School Fund is in order. Contrary to expectations, and contrary to the experience at most other schools, the U-M Law School Fund continued its steady growth, both in dollars received and in the number of contributors, during 1973 to 1979—the three-year planning period and the three years of active solicitation for the Capital Campaign. That so many alumni and other friends of the school recognized its continuing need for support of the activities that depend on the Law School Fund, while also responding so generously to the Capital Campaign, anqurs well for the future of the Law School.

Campaign Dollars Already Hard at Work

Library Addition

The new library addition should be ready for occupancy in mid-1981. It will ease critically overcrowded conditions in the present building, which was built in 1931. The new structure is an L-shaped, completely underground facility in space adjacent to the south and east sides of the present Legal Research Building. It will extend three levels below grade and will be covered by a landscaped area that will blend with the existing ground-level planting and layout of the Law Quadrangle. A moat-like skylight separating the new building from the Legal Research Building will permit natural light to reach all three levels of the structure.

Although the underground addition is an admirable solution to our need for additional space, it was not an early or obvious choice. High on everyone's list was another building, or an addition to the Legal Research Building, in the English Gothic style of the quadrangle, but it was soon apparent that such a structure could not be built today at any reasonable cost. The below-grade structure was approved by the law faculty, the Alumni Campaign Committee, and the University only after careful review and consideration of several alternative plans. The final design was chosen because it is functional and because it will not interfere with the architectural integrity of the Law Quadrangle.

Although the addition is not in the style of the Law Quadrangle, it is being built and equipped with the same concern for aesthetics that distinguishes the Quad. In addition, great care has been taken to meet not only immediate needs, but to plan, as imaginatively as possible, for the needs and technology of the future. Gunnar Birkerts, a Birmingham, Michigan, architect of international reputation, was chosen to design the new facility. Among the award-winning buildings throughout the country that he has designed are the Federal Reserve Bank in Minneapolis, the south addition to the Detroit Institute of Arts, IBM's Corporate Computer Center in New York City, and the Ford Motor Company's Visitor Reception Center in Dearborn. Birkerts is also a leading exponent of subterranean architecture.

Architect Gunnar Birkerts and a model of the library addition.

The space that will be added and completed now—62,500 square feet—will provide adequate storage for at least 200,000 volumes, and will permit the library, for the first time, to use open stack shelving so that students and other users can browse through the collection and avoid the delays that are inevitable with a "call desk" system. Comfortable reading areas, sufficient to accommodate more than 400 users, are to be placed among the stacks. In addition to this finished space, 15,000 square feet of unfinished floor space (5,000 square feet on each level) has been included in the original excavation and building contract. Heat, air conditioning, etc. have been roughed in, but the area is uncluttered by walls, and will permit maximum flexibility when this space is needed and finished in future years.

As every lawyer is by now aware, we are entering a period of technological development that will revolutionize law libraries. Although books will not soon go out of style, it is clear that increased use will be made of microform materials. The library addition will be fully equipped for use of these materials, providing not only suitable reader stations but also equipment for preparing "hard copy" from microfiche and microfilm. Computerized legal research is already a part of life, and far greater use of computers in the law offices of the future is expected. Equipment for access to the Lexis system, which is now in use in the present building, will be moved to the new addition where facilities for additional terminals for either Lexis or other systems are being built in. These computer terminals in the library serve the dual purpose of training tomorrow's lawyers and facilitating high speed and accurate research by both students and faculty.

The beautiful reading room in the present library has served us well for half a century and will continue to be an integral part of the combined libraries, but its function will be modified. Approximately 300 new carrels where students can collect research materials temporarily and enjoy a degree of privacy will be

provided in the new facility, and virtually a complete collection of Anglo-American materials will be available for student use. As consequence it is expected that most student research and writing will take place in the new areas, and the present reading room will become the primary study area for students when research materials are not needed. An important by-product of moving a substantial part of the Anglo-American collection into the new addition is that sufficient pressure on the present stack areas will be removed so that all of the stacks—old and new—can be used as open stacks.

When the Law School library first moved into the Legal Research Building in 1931, the collection numbered 104,000 volumes. It now contains more than five times that number. It is not surprising that in those years the library staff has increased dramatically, too. It long ago outgrew its original quarters in the Legal Research Building, and for years has had to work in scattered and makeshift offices on several levels of the present stacks, with resulting inefficiencies and other problems that were hard to overcome. Happily, this undesirable situation will be corrected in the new addition, where a well-planned series of offices and workspaces will bring the entire staff together. The new building will also contain office space and carrels for the officers and the staffs of the three student publications—the *Michigan Law Review*, the *Journal of Law Reform*, and the *Michigan Yearbook of International Studies*. The spaces now occupied in the Legal Research Building and in Hutchins Hall will be vacated and, of course, recaptured for a variety of other uses.

Last, but not necessarily least, the aesthetic qualities of the new building and of its necessary connections with the Legal Research Building, have received careful attention. Every effort has been made to maintain the standard of excellence set by the existing buildings. The principal entry from the Legal Research Building into the addition will be a broad sweeping stairway from the main floor of the present reading room, which will provide easy movement between the two facilities. The imaginative use of a huge skylight on two sides of the building, and floors that stand free from those walls, not only permits natural light to reach each floor, but will permit a person on even the lowest level to have an exterior view. "Green areas" with an interesting variety of plants will be placed around the interior of the building. The entire structure will, of course, be air conditioned and well lighted. Because the building is completely below ground level it will be an extremely energy-efficient building to heat and cool. The interior decorations, as well as the structure, have been planned and coordinated by architect Birkerts.

The Lawyers Club

The buildings comprising the Lawyers Club were first occupied in 1924, and were the first buildings built on what was to become the Law Quadrangle. Since then they have been a home away from home for more than 5,000 law students who

have attended The University of Michigan. Many who are reading these lines will have fond memories (and perhaps an occasional less than fond memory) of their years there. In agreement with the laws of nature, but contrary to the expectations of William W. Cook who built the club as a gift to the University, some parts of the buildings began to wear out. Because management has complied with his wishes, fees were adequate to cover current expenses and to set a good table, but not large enough to build a fund for any of the major repairs that were urgently needed when some of the water and steam heating pipes rusted through, when parts of the imported plumbing fixtures failed and could not be replaced, when the roof leaked, and when the electrical circuits could not cope with modern appliances. In addition, in the student rooms, much of the furniture, in use since 1924, began to show its age.

Thanks to the success of the Capital Campaign most of these needed renovations of the Lawyers Club have been completed. New plumbing and kitchen facilities have been installed, the pipes for the steam heating system have been replaced, and the entire club has been rewired. The guest rooms above the lounge have been completely refurbished, and a section of the lounge ceiling that had deteriorated because of roof and plumbing leaks has been repaired. And new furnishings have been purchased for the student rooms.

Professorships

A law school can be no better than its faculty. The University of Michigan Law School is fortunate to have had an outstanding faculty from the day that it first opened its doors. Among the original faculty were James V. Campbell and Thomas M. Cooley, two of the leading scholars and jurists of their time. The history of the school in subsequent years is studded with the names of other distinguished scholars and teachers. Men such as Ralph Aigler, Edgar Durfee, Paul Kauper, Lewis Simes, Edson Sunderland, and Hessel Yntema, to mention only a few from among the many who will be remembered by the Law School's living alumni, influenced the lives of generations of students and participated in shaping the law and legal scholarship of their time.

The present faculty is equally distinguished, but inadequate financial support could quickly sap its strength. Competition for outstanding faculty members, from other law schools and from private practice, has been and continues to be extremely keen throughout the country. It is imperative that the school be able to attract and retain the finest faculty available. To do so, it must have not only adequate financial resources, but the ability to recognize faculty members for distinguished teaching, scholarly

achievement, and public service. Because state support does not provide for such recognition and is insufficient in many instances to match competitive salary offers from other quarters, private support is indispensable. It is, therefore, especially gratifying to report that funds received by the school for faculty support substantially exceeded the original goal. As a result of the Capital Campaign, four new chairs have been established and the support for another has been increased. At least two additional professorships will be established at a later date.

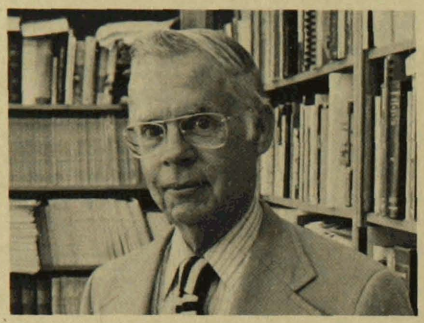
Newly-endowed professorships include the James V. Campbell and the Thomas M. Cooley Professorships, named for two members of the original Law School faculty in 1859; the Paul G. Kauper Professorship, named for the late U-M Law professor (1936-1974); and the Henry King Ransom Professorship, named for a U-M professor emeritus of surgery whose gift supports the professorship. In addition, the fund supporting the previously established Edson R. Sunderland Professorship, named for Prof. Sunderland who taught in the Law School from 1901 to 1944, was substantially increased during the campaign.

The Campbell and Cooley Professorships were made possible by a gift from U-M Regent Robert E. Nederlander, J.D. '58. The Kauper Professorship is supported by contributions from alumni, faculty, and friends to the Paul G. Kauper Memorial Fund. The Ransom Professorship is supported by an endowment created by Prof. Ransom, an Ann Arbor resident who retired from the U-M Medical School faculty in 1968. Professor Sunderland's son, Thomas E. Sunderland, who attended the Law School from 1927 to 1929 before transferring to the University of California at Berkeley, established the Sunderland Professorship.

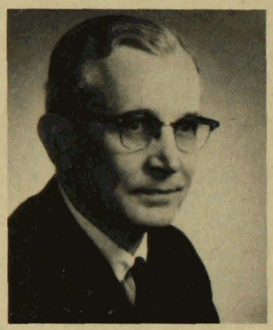
The present holders of these chairs are:

Edson R. Sunderland Professorship—Francis A. Allen, who came to the Law School in 1966, and served as the dean of the school from 1966 to 1971. He is a noted scholar in the fields of criminal law and juvenile delinquency.

James V. Campbell Professorship—Olin L. Browder, a member of the faculty since 1953, and a respected authority on the law of property. He is a co-author of the encyclopedic *American Law of Property*.

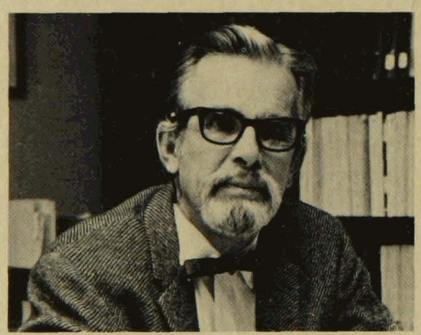


Francis A. Allen



Olin L. Browder

Frank R. Kennedy



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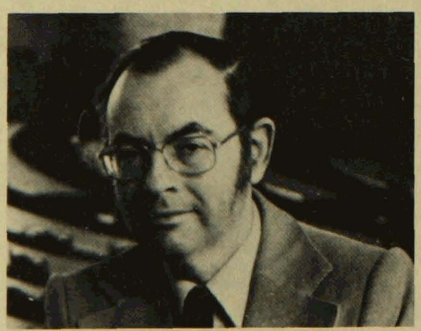

Yale Kamisar

Thomas M. Cooley Professorship—Frank R. Kennedy, an expert on bankruptcy, who served as executive director of the U.S. Commission of Bankruptcy Laws from 1970 to 1973, and as such was a principal draftsman of the recently enacted Bankruptcy Act. He joined the faculty in 1961.

Paul G. Kauper Professorship—L. Hart Wright, a U-M faculty member since 1947, and an authority on U.S. Federal and European tax law and procedures. He has served as a consultant to the Internal Revenue Service for many years.

Henry King Ransom Professorship—Yale Kamisar, a member of the U-M faculty since 1964, is one of the nation's leading authorities on constitutional law and criminal procedure.

Two other U-M law professors hold distinguished chairs whose establishment was unrelated to the Capital Campaign. These are Prof. Eric Stein who holds the Hessel E. Yntema Professorship, and Prof. Alfred Conard who holds the Henry M. Butzel Professorship.

Student Financial Aid

The steadily rising cost of both undergraduate and legal education has greatly increased the need for student financial assistance. Many students, from both low- and middle-income families, have incurred substantial debts by the time they begin law school. Even those who have not often require financial aid and could not attend law school without it. The Law School believes that no person should be denied the opportunity to study law at Michigan merely because he or she (or his or her family) lacks the financial resources.

Ensuring that Michigan remains open to all, without regard to wealth, is also vitally important in maintaining the quality of the student body. If Michigan is to continue to graduate highly qualified lawyers, it must be able to attract its share of the most promising applicants—many of whom require financial assistance. Although the Law School has over the years accumulated substantial resources for providing financial assistance to students, in-

flation and the increasing number of students requiring financial aid have put a considerable strain on the available funds. The increase in our financial aid endowments during the Capital Campaign was, thus, both important and welcome.

Currently, about one-third of the school's student body receive some financial aid directly from Law School funds. An additional 40 percent receive some form of external aid, usually low-interest federally guaranteed loans through commercial banks or state agencies. The total sum disbursed each year from Law School accounts is now approximately $1.2 million.

Program Support

Nearly $1,000,000 was received during the Capital Campaign to support curricular and extracurricular programs that will significantly enrich the educational opportunities offered by the Law School and enhance its research and service activities.

Child Advocacy Project

The child advocacy project, officially known as the Interdisciplinary Program for the Prevention of Child Abuse and Neglect, is a pioneering effort that involves not only the Law Shool, but the University's Medical School and School of Social Work. Under an initial grant of $659,000 from the Harry A. and Margaret D. Towsley Foundation of Ann Arbor, the three schools have concentrated on special training for the professionals who are called upon to deal with this serious nationwide problem. Additional grants have been received from the Department of Health, Education and Welfare, the Michigan Department of Social Services, and from Dr. Towsley.

Because few lawyers or judges are familiar with the psychological implications and family dynamics of child abuse cases, and most psychiatrists, pediatricians, and social workers are equally limited in their legal perspectives, collaboration among the practitioners in the several fields is both an important goal and the operating technique for the program. Law students are directly involved through a special clinical law program in child advocacy directed by Prof. Donald N. Duquette.

Over the course of a term, each student participating in the clinic represents, in turn, each of the parties in interest in child abuse and neglect cases. Students are also required to enroll in a seminar on Child Abuse and Neglect. The clinic thus serves the dual educational purposes of providing students with a rich background of practical knowledge and theoretical foundations in an important area of the law and of helping them to develop skills—e.g., interviewing techniques, the ability to communicate with professionals in other disciplines, and trial advocacy—that are important to lawyers, whatever their specialty.

Others from the Law School active in the child advocacy project are Dr. Andrew Watson, professor of psychiatry and law; Prof. Steven Pepe, who heads another clinical law program at the Law School; Prof. David Chambers, who teaches family law courses; and Prof. James Wilson, a supervising attorney at the clinic.

Helen DeRoy Fellowships

Contact with lawyers, public officials, and other public figures is an important element in a legal education. Students benefit from such contact in many ways—for example, by acquiring an understanding of the diversity of persons with whom they will shortly have professional relationships and, perhaps, role models for their own careers. Individuals from outside the academic community may also enrich the students' education by sharing with them experience and knowledge that not only are important in their own right but that demonstrate the relationship between the students' academic programs and the careers upon which they are embarking.

A generous gift by the Helen DeRoy Testamentary Foundation will significantly increase the Law School's ability to offer students opportunities to become acquainted with such persons. The foundation has established an endowment to support a program that each year will bring a number of distinguished lawyers, government officials, and other public figures to the Law School for periods ranging from several days to several weeks. The duration of their visits will permit the DeRoy Fellows to enter into the life of the Law School, enabling students to have more extensive contact with them than is feasible with most visitors to the Law School. Over the course of a week, for example, a fellow might lecture to one or more classes, speak informally to groups of faculty and students, and dine with students at the Lawyers Club. Similar visits in the past have been enthusiastically welcomed by students. By making such visits a recurring feature of the Law School program, the DeRoy Fellowships will significantly enrich the intellectual life of the school and the education of students.

Law and Economics

Since 1971 the Law School has had a unique program that permits a small number of highly qualified students to earn both a J.D. degree from the Law School and a Ph.D. in Economics. Peter O. Steiner, who holds a joint appointment in the Law School and the Department of Economics, has directed the program since its inception. A gift from the late George M. Humphrey, J.D. 1912, and a development grant from the Horace H. Rackham School of Graduate Studies of the University have, until now, supported the program. Unfortunately, these sources of funding are nonrenewable and were fully expended or committed.

Happily, as a part of the Capital Campaign, this important program has a new lease on life as a result of a gift of $100,000 from the IBM Corporation. The school hopes through contributions by a number of corporations and individuals to establish a $1.5 million endowment for the permanent support of the program.

Others from the Law School faculty who are actively involved with this program are Profs. Richard O. Lempert and Donald H. Regan, who serve on a five-person joint administrative committee, and Profs. William J. Adams and Daniel L. Rubinfeld, who, like Steiner, hold joint appointments in law and economics.

Campaign Organization

Leadership Gifts

Among the individuals and foundations who played important roles in the success of the Law School Capital Campaign were those who made significant contributions to the campaign in advance of its formal opening. These gifts were most welcome and extremely important in their own right, but they also gave the campaign the momentum it needed at a critical time so that approval could be given by the Regents to the Law School to launch its first public, multi-million dollar fund-raising project.

Among major foundation grants made in support of the new Law Library addition was a $1.5 million challenge grant from the Kresge Foundation of Troy, Michigan, and a $1 million grant from the Herbert and Grace A. Dow Foundation of Midland, Michigan. Shortly after the Capital Campaign was announced, the Benedum Foundation of Pittsburgh, Pennsylvania, made a grant of $500,000 toward construction of the Law Library building. An early gift from the Harry A. and Margaret D. Towsley Foundation has been described earlier.

Among major leadership contributions from individuals was a gift valued at $1 million from Calvin N. Souther of Portland, Oregon, and a gift of approximately $600,000 from the Estate of Thomas G. Long of Detroit, Michigan.

At the time the Capital Campaign was announced, the faculty and staff of the Law School had pledged more than $87,000 to the campaign. Additional faculty contributions to the campaign produced a total of more than $100,000.

Law Alumni Leaders

John H. Pickering '40, of Washington, D.C., served as national chairman for the Capital Campaign. Pickering headed a committee of 30 alumni which met regularly in Ann Arbor during the three-year pre-campaign planning period to help decide campaign priorities, review alternative proposals for the library addition, and prepare for the formal campaign. The committee included:

Henry A. Bergstrom—Pittsburgh, Pennsylvania
Roy H. Callahan—Weston, Connecticut
Ralph M. Carson*—Pawling, New York
Donald M. Cohn—Rochester, New York
Malcolm L. Denise—Detroit, Michigan
George E. Diethelm—Delray Beach, Florida
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William J. Schrenk, Jr.—New York, New York
Duane Stranahan, Jr.—Toledo, Ohio
Thomas E. Sunderland—Phoenix, Arizona
Hobart Taylor, Jr.—Washington, D.C.
John S. Tennant—New York, New York

*Deceased

Volunteer Chairpersons

Essential to any successful campaign is an effective volunteer force of alumni leaders throughout the country who are responsible for general alumni solicitation in their respective areas. The country was divided into regions with chairpersons and co-chairpersons responsible for handling direct mail, telephone, and personal solicitation on behalf of the Law School. These key volunteers included:

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Frederick P. Furth—Northern California and Nevada
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Roy E. Mattern, Jr.—Washington and Montana
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John H. Pickering—Washington, D.C.
Richard W. Pogue—Cleveland
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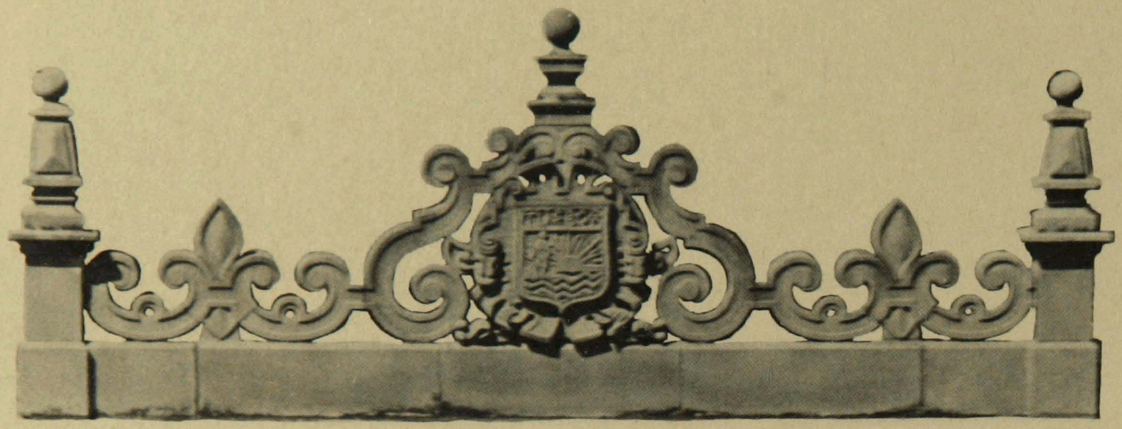
Russell H. Riggs—Kentucky
E. David Rollert—Traverse City
Robert W. Shadd—Rhode Island
L. Vastine Stabler, Jr.—Louisiana, Arkansas, Alabama and Mississippi
Duane Stranahan, Jr.—Toldeo
Robert A. Stuart—Illinois (except Chicago)
William Y. Webb—Western Pennsylvania, Virginia and West Virginia
Jane Shaw Whitman*—Chicago
Richard E. Young—Colorado, Utah and Wyoming

*Co-chairperson
†Deceased



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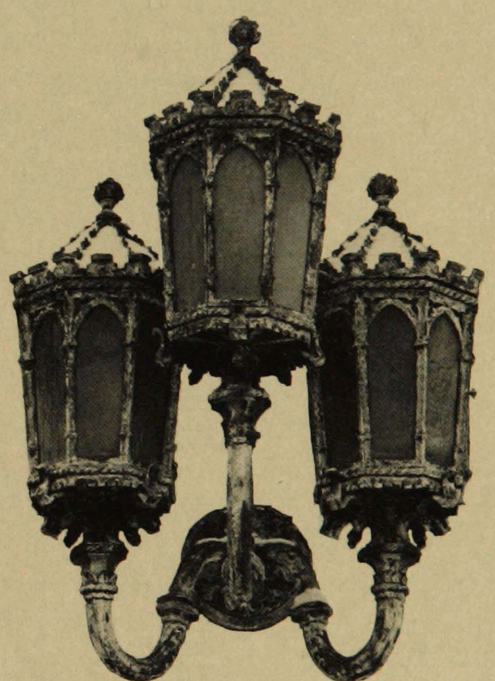

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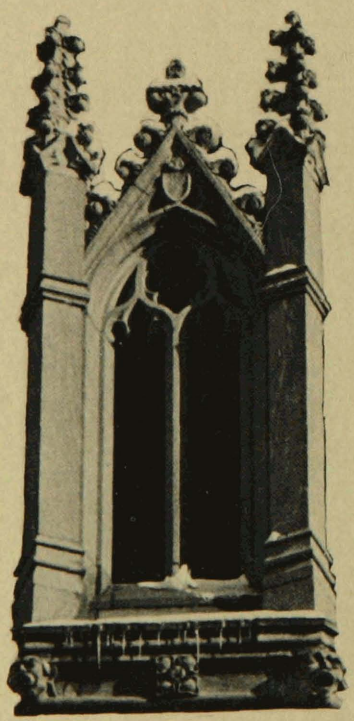

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