Law Quadrangle Notes

THE UNIVERSITY OF MICHIGAN LAW SCHOOL VOLUME 29, NUMBER 2, WINTER 1985

Joseph L. Sax: Managing National Parks A Case History

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The Chinese Connection
Placing the Best and the Brightest

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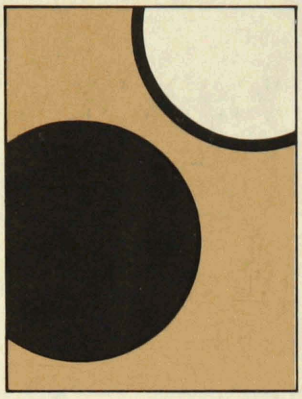

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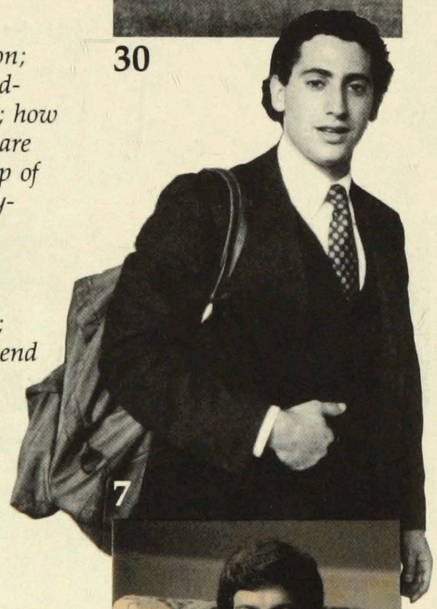

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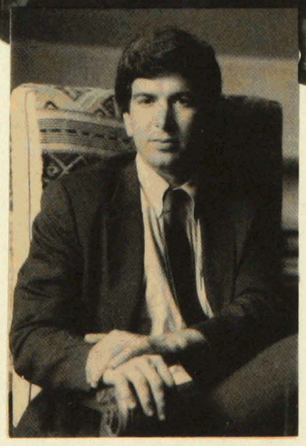

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Open door

China invites foreign investment and foreign faculty

Of Law School faculty who have visited China—Whitmore Gray, Wade McCree, Sallyanne Payton, Terrance Sandalow, Allan Smith, Eric Stein, James J. White, and Christina Whitman—it is Professor Gray who has been the most frequent visitor to the Middle Kingdom.

Two years ago, on the occasion of China's first comprehensive law dealing with commercial contracts, Gray was invited to give introductory lectures on contract law in Peking, Xian, and Shanghai. Since then he has returned to China several times, lecturing on contracts in international trade, on contract disputes, and on product liability. He made his most recent trip in January, with Professor James J. White, to participate in a seminar on American legal education in Guangzhou (Canton).

This summer, he will be one of the first American legal scholars to teach for an extended time period in China. Under the auspices of the United States Committee on Legal Education Exchanges with China (CLEEC), Gray will join Walter Gelhorn (Columbia), Paul Carrington (Duke), Wade McCree, Jr. (Michigan), and Robert Hudec (Minnesota) in a month-long teaching program at Jilin University that includes instruction in American legal methods, civil procedure, and the American court system, and specialized courses in administrative law, contract law, and commercial arbitration.

The reasons behind China's interest in Gray, a specialist in contract law who is fluent in Chinese, are hardly inscrutable: Since 1972, trade between China and the U.S. has increased fiftyfold. According to a recent *Time Magazine* report, it totaled $5.5 billion in 1984, and some 128 American firms now boast Peking divisions. In China's "special economic zones," coastal enclaves set up to encourage foreign investment and ruled by the slogan "Time is money! Efficiency is life!" Americans out-invest the Japanese 50 to 1, notes Gray. "American law firms with offices in Hong Kong have been pleasantly surprised by the level of Chinese business activity they're enjoying," he adds.

Jilin University, where Gray will spend his summer, is one of several centers in China for the study of comparative law. It is located in northeast China, in Changchun, a city whose age—100 years—allows Gray to call it "new." Jilin province is also home to China's largest movie studios. But for old-fashioned Hollywood magic—the kind that transforms back lots into instant cities—one must look further south, to special economic zones like Shenzhen, a once sleepy fishing village that in two years' time has become a prosperous metropolis of one million a short hydrofoil-ride away from Hong Kong. When Gray visited Shenzhen last summer to conduct a series of seminars for legal personnel and high-level factory managers, he found a thriving city whose assets included a solid industrial base; modern residences, restaurants, and stores; and beachfront resorts that draw a Hong Kong clientele, as does the zone's new university.

Indeed, China's motives for establishing the Shenzhen zone,

Professor Gray's fluency in Chinese and his expertise in contract law have made him a sought-after guest in China.

notes Gray, were political as well as economic, designed to demonstrate that capitalist Hong Kong could find happiness in "courtship" with socialist China (the "marriage" is now slated for 1997, when the British relinquish control of the island). To date, joint Hong Kong-Chinese projects in Shenzhen include a nuclear power plant and a telephone company. Direct dial service between Canton and Hong Kong is but one indicator of the relaxed relations China and Hong Kong now enjoy. "Companies in Hong Kong," Gray observes, "seem optimistic now about the transition arrangements. The general framework looks good to them. There may be problems for the individuals who live in Hong Kong, but I don't think there will be many for the businesses."

Since its establishment, Shenzhen has lured foreign capital and joint ventures aplenty. Ac-

Professor Whitmore Gray, right, is a frequent visitor at Chinese universities. At his left, Professor Zhang.

cording to the English-language *Beijing Review*, Shenzhen had signed 3,018 contracts with foreign companies as of last June. Not surprisingly, both foreign investors and Chinese officials have looked increasingly to China's two-year-old commercial contract law to secure their respective interests. "The foreign investment area," Gray says, "is now the most challenging area of application."

Part of that challenge is applying to the international sphere a contract law intended for domestic use. Before the law's 1982 passage, Gray explains, there were no contract statutes to which the Chinese could refer in their dealings with foreign investors or trade representatives. "They were always at a disadvantage," he notes. "It was obvious to business people that a better framework was needed." The contract law was passed with the idea that a general civil code—which would regulate private contracts—would be enacted in the near future. None has yet been promulgated, nor have the special supplementary rules that were to have covered international contracts been forthcoming.

The result is that many questions persist. Most basic, perhaps, is whether China's joint ventures are subject to the domestic contract law or to the yet-to-be-developed international law. Gray attributes the surprising lack of resolution on this issue both to the domestic statute's technical complexities and to its interpreters' relative lack of formal legal training.

Lack of resolution on other issues hinges on regional differences. Is approval from a higher-level organization needed for the contract of an economic organization to be valid? Practices in north and south China diverged so widely that framers of the current law could not come to an agreement and omitted all mention of the problem.

It is also an open question whether Chinese businesses, operating in a legal vacuum for so many years, will alter longstanding practices to bring them into conformity with the current law. The law, for example, requires contract negotiators to secure written power of attorney before signing on the dotted line for their firms. Whether negotiators will observe the provision is still an open matter, Gray says.

Another area of Chinese concern is product liability. "They are interested in the long-arm jurisdiction that American courts might assert on manufacturers in China," Gray explains. "They want to know what contractual arrangements with importers might protect them, and what governmental and manufacturing-association standards they might be expected to meet."

During Gray's early visits to China, he found lawyers, judges, and legal researchers more eager to discuss theory than concrete cases. "It was difficult then," he comments, "to assess how the Chinese were applying the contract law." That climate has now changed. "The last few times," he reports, "discussions have been solidly business-oriented. It's become possible to gain some real insight into developing Chinese practices of drafting contracts and dealing with contract disputes." ⊠

The Waukesha Chronicler

Brown studies legal history at the courthouse level

Last spring, after 37 years of service to the Law School, first as an assistant in research and finally as a research associate in law, Elizabeth Gaspar Brown retired.

Her actual retirement, determined by traditional methods, lasted about two hours, the duration of the Law School luncheon given in her honor. Then it was time for Brown, a diminutive 70 year old with the will and energy to spare, to get back to work in her ninth-floor Legal Research Building office.

Author of *Legal Education at Michigan: 1859-1959*, Brown has long served as the Law School's unofficial historian. For nearly four decades, "Ask Mrs. Brown," has been the automatic response to questions about the school's history—the years served by the first dean, the name of the first black law student, the cost of the buildings, the names of the men sculptured as gargoyles. "I've known every dean since Henry Bates," Brown observes, "and I knew Sunderland who knew Cooley."

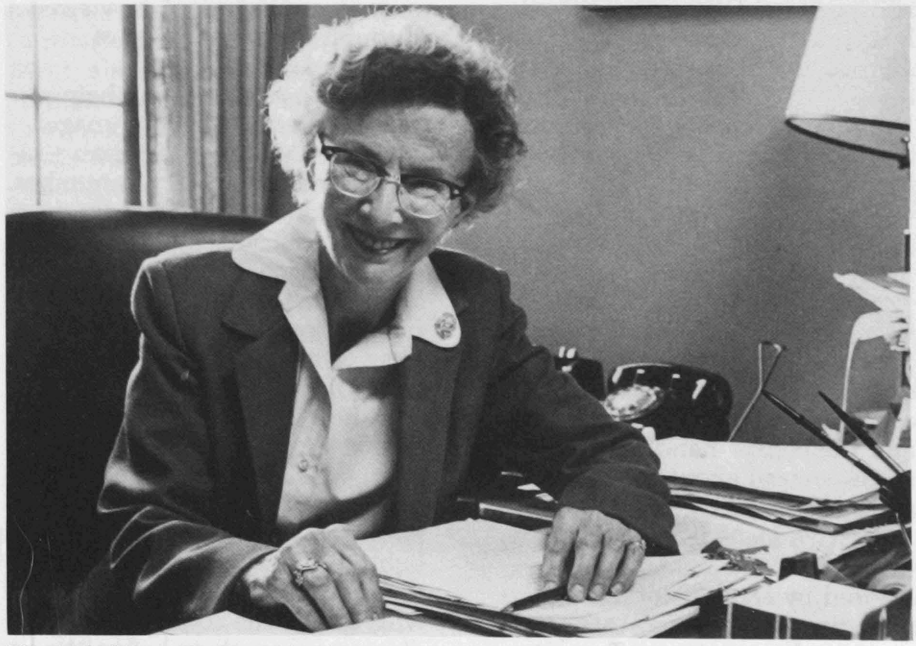
A graduate of Rockford College and the University of Wisconsin Law School, where she was the only woman in her class, Brown worked first at Michigan with William W. Blume, in connection with his monumental six-volume *Transactions of the Supreme Court of the Territory of Michigan: 1805-1836*, and their later investigations into the territorial history of the United States. "He made me realize the importance of American legal history," Brown remarks. "I like to think I am following in his footsteps."

After Blume's retirement, Brown worked briefly with Hessel Yntema and William B. Harvey before joining the late L. Hart Wright, with whom she worked for over 20 years. As a by-product of her research with these scholars, Brown produced three books and a series of publications dealing with air law, American legal history, and federal taxation. Concurrently, she became—and remains—responsible for selecting materials for the Law Library's Carleton Fox Collection pertaining to the federal taxation of income, estates, and gifts.

She also found time to compile faculty bibliographies, explore unexplored corners in the school's rich history, chronicle the background and accomplishments of law faculty holding named professorships, and write four brief articles on the University's history.

Stimulated by her early work with Blume, Brown used her vacations to pursue her growing interest in the legal history of the Middle West, specifically that of Waukesha County, Wisconsin. Like her grandmother who traveled to Pike's Peak in a covered wagon, Brown was a pioneer: one of the first of that small group of legal historians to mine the vaults containing America's county records—treasure troves of dusty source materials about the actual functioning of institutions like the county poor house, jail, or board of supervisors.

This type of record, housed in the complex of buildings that constitute the Waukesha County Courthouse, regularly draws Brown home to the Wisconsin county to which her ancestors emigrated in the 1830s. Working with these documents—often in a minimally heated and poorly ventilated building with an upended file cabinet as her chair—



Elizabeth Gaspar Brown

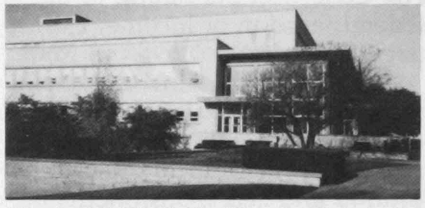
Brown has produced a series of lively *American Journal of Legal History* studies dealing with poor relief, the operation of the county jail house, and the history of Waukesha's two nineteeth-century courthouses. Her present research and writing—cause of the brevity of her retirement—focus on the administration of justice in the county during the last century. Legal historian Thomas Green hails her nearly completed book on the subject as a "significant undertaking." Its sources lie in her background.

Brown grew up in Waukesha, the county seat, in the years after World War I. The summer resort period, when the town was known as the "Saratoga of the West," had ended, but architectural survivors and tales of earlier inhabitants brought that past close. As the county chairman's daughter, Brown received an early, informal education in county history and lore. Now, using the knowledge, instincts, and personal connections of a native daughter, Brown has successfully gained access to county and personal records that show how this particular county implemented the obligations laid on it by the Wisconsin Organic Act of 1836, the Wisconsin Constitution of 1848, and territorial and state statutes.

"I want," she declares, "to know as far as possible what actually went on in the county's institutions—not what is *said* to have gone on." Brown is particularly interested in the types of cases that came before the county courts, and what these cases—and the courts' handling of them—reveal about prevailing socio-economic conditions.

Brown's focus is the period between 1840 and 1890, largely ignored by legal historians but formative for the Midwest's governmental institutions. Too often,

The first Waukesha County Courthouse was erected in 1849.



The "new" Waukesha County Courthouse was built in 1959.

she says, those years are dismissed as "Victorian" or viewed through the perspective of Godey's *Lady's Book*.

Brown's research may help revise the period's stodgy image. "Despite the value Victorian society placed on stability, a number of individuals led decidedly unstable lives," she comments.

Many of the latter ended up in Waukesha's courts, and their tales offer a peep-hole into the past, a view of existing mores and patterns of life.

Although the bulk of the civil business before the county's courts dealt with land and commercial transactions, two particular groups of cases throw light on the personal affairs of some of its residents: probate of wills before the county court and divorce proceedings before the circuit court.

The wills presented for probate show a predictable and steady increase in the amount and diversity of property accumulated. They also show a pronounced shift in the choice of executor. In the county's early years, a widow had no part in the handling of her husband's property; by the 1860s, however, she was, if not sole executor, at least one of several.

The divorce cases reveal behavior patterns that clearly fall outside Victorian norms. Wives as well as husbands deserted spouse and family. Women as well as men were charged with cruel and inhuman treatment. In one case, a young dentist complained that his wife's insistence on being present when he ministered to "lady patients" had ruined his business. In another, cruel and inhuman treatment afflicted both woman and beast: a wife accused her husband of assaulting her with a sack of baby pigs.

From her county chairman father, Brown inherited two convictions: the importance of the Midwest in the nation's history, and the county's status as the most misunderstood and underappreciated unit of American government. Brown's Midwestern roots, proclaimed with the quiet pride of a Boston Brahmin, nourish her county-based legal research and lend savor and realism to her findings.

"I know the contours of the hills that surround Waukesha like a cup," she says quietly. "I know how the light falls on our Richardsonian court house, how our Victorian forebears furnished their living rooms and bedrooms and kitchens and how they thought and reacted and behaved. I have a sense of belonging to the Midwest that the next generation just doesn't have." ⊠

Whose idea is it anyway?

New faculty ponder complex intellectual property issues

In this high-technology era, intellectual property is fast becoming a high-interest legal topic. But like current copyright laws and patent casebooks, law school curricula have lagged behind in their treatment of bits, bytes, and chips and their real-world (pardon the pun) RAMifications.

Things are changing, though, at least at Michigan. This fall, the Law School hired two new faculty members, Rebecca S. Eisenberg and Jessica D. Litman, who specialize in intellectual property. Student interest in their specialties runs high: Their winter-term courses in copyright, protection of technology, and legal issues in scientific research filled up faster than a blank mini-disk. Eisenberg and Litman plan to team-teach a fall-semester survey course in intellectual property and are devising a four-course sequence that will do justice to this burgeoning area of law and expanding legal employment.

Eisenberg is a graduate of Stanford University, which awarded her the B.A. in economics, and of the University of California at Berkeley School of Law, where she was associate editor and articles editor of the *California Law Review*. After receiving her J.D. in 1979, she was clerk to the Honorable Robert F. Peckam, Chief Judge of the United States District Court for the Northern District of California. She then practiced with the San Francisco law firms of Heller, Ehrman, White & McAuliffe and Petty, Andrews, Tufts & Jackson.

Eisenberg's principal areas of interest within intellectual property are the protection of technology, trade secrets, and the copyright protection of computer software, areas in which she specialized during her four years in practice. During those years, other types of commercial litigation were also within her purview. "In practice," she notes, "you don't set your own agenda. You can't ask a client's employees to leave and form a new company using the firm's trade secrets!"

The ability to set her own agenda and to study intellectual property issues in depth, without the pressures and time constraints inherent in practice, were the chief factors motivating Eisenberg's return to academe. She also allows that universities seem like home to her. She recalls how her post-college desire to "be out in the real world" gave way, after one year as an economist and investment counselor, to a desire to return to school. Once back there, she was that rarity: a law student who actually *enjoyed* the first year. Fascinating clients and issues made real-world practice exciting and satisfying the second time around. "But when I reached the point when I had to choose my path," Eisenberg explains, "I thought I'd give academics a try."

So far, she has not been sorry. "I can't think of anything I could do to earn a living that I'd enjoy more than teaching," she says. She finds particular satisfaction in giving students the tools necessary for tackling high-technology legal issues. Although technology is an important industrial asset, Eisenberg notes that high-tech law is still an underconceptualized field. "The law has evolved to handle less complex problems," she offers. "Good lawyering can really make a difference here."

Rebecca S. Eisenberg

Jessica D. Litman

Barring a total aversion to tech-

nology, computer skills are not necessary to such lawyering. "You learn technology as needed for a specific problem," Eisenberg says. "But with clients in this area, you have to push to get an understanding that you know enough to make a decision. And clients often have a moral notion of the rights and wrongs of a case that doesn't necessarily coincide with what the law says. Legal rights have become more important quite suddenly in this area. Maybe in time clients will internalize legal rules, and their sense of right and wrong will coincide more with the way the law operates. And the law may change, too, to conform to their notions. The disparity is bigger now than it will be in the future, I suspect."

Jessica D. Litman is a 1983 graduate of the Columbia University Law School, where she served as notes and comments editor of the *Columbia Law Review*. After receiving her J.D., she clerked for the Honorable Betty B. Fletcher of the United States Court of Appeals for the Ninth Circuit. She holds an undergraduate degree in theatre from Reed College and an M.F.A. degree in directing from Southern Methodist University.

Unlike Eisenberg, whose intellectual property interests relate to her contact with high-technology clients, Litman acquired her taste for the area through years in the theatre. (The theatre—or rather, the paralegal jobs she held off-season—is also the source of her interest in mental health law.) As a former theatre director, stage manager, and occasional playwright, Litman brings a unique perspective to questions of copyright as they relate to artistic creation.

As for Eisenberg, law is a second career for Litman. "When I started directing," Litman explains, "I decided that if I was self-supporting and successful by a certain age, I would keep it up. Well, I reached that age, and I had a stable job, I was making a living and doing work that I found satisfying. I didn't *have* to leave directing. But I began to question whether it was really what I wanted to do. Over the years, a number of young people had come to me and asked advice about going into the theatre. I always said, 'Don't do it if there's anything else that would make you happy.' I decided to take my own advice."

The variety of legal career paths offering the autonomy and intellectual challenges of the theatre—without its tremendous highs and lows—persuaded Litman that law school was the ticket to change. Her interest in copyright began as a practical matter: Shortly before she enrolled at Columbia Law School, she became embroiled in a copyright dispute with a theatre company for which she had worked. "Here I was," she recalls, "an impecunious student who didn't know any approachable lawyers in the copyright area. I learned a great deal of copyright law to deal with the problem—and ultimately prevailed. In the process, I discovered that the whole legal area was absolutely fascinating."

Later, as a second-year law student, Litman read virtually the entire 26-year history of the Trademark Act in connection with a law review note she was writing. The result was a solid foundation in a closely allied legal area.

The advent of photocopying, disk copiers, printers, and cable and satellite technology have created questions of ownership of rights, copyright infringement, and fair use never contemplated by statute makers. "Technological developments," Litman notes, "have made many statutes obsolete even before their enactment. One is constantly dealing with omitted cases." ◘

Law School students made over 1.1 million photocopies on nine coin-operated copy machines in the Law Library last year.

To market, to market

How students clinch the deal in Room 200

The place where it all begins.

It is a time when law students shed their chrysalis of corduroy and casebooks to emerge in the full, brilliant panoply of lawyerly colors: navy, charcoal—and, for the very daring—muted brown.

It is a time that demands confidence-inspiring flannel, a time of flybacks and crawlbacks, of anxiety and exhilaration, of pondering the future (work) while coping with the present (school).

It is placement season, the ritual fall job hunt that occupies the minds and bodies of second- and third-year Michigan law students and their compatriots at peer institutions across the nation.

For Michigan students, the hunt nets an unusually fine bag: by graduation, nearly 85 percent have jobs. Within the months following graduation, the figure quickly climbs to 95 percent.

Equally impressive, the figure is almost recession-proof. "The market for Michigan grads weathers the bad years very nicely," says Placement Office Director Nancy Krieger. "In '83, for example, the market felt tight, and there was a lot of student anxiety. But 82 percent of our students had jobs by graduation. They simply had to look a little harder."

The Law School's placement figures have steered a steady course through the tough economic straits of the recent past. But there is much about the placement process itself that has changed over the last ten years.

When Krieger first arrived in her job 12 years ago, only one of the interviewers was a woman; today women abound among the interviewers, many of them alumnae, who visit the campus. Moreover, it was not so very long ago, Krieger notes, that only the top half of Michigan's classes passed through the portals of Room 200, home-on-the-road for law-firm interviewers scouting for the best and brightest associates and summer law clerks. And not so long before that, it was the students—rather than the employers—who hit the road. But "today, almost all of our students participate in on-campus placement," Krieger observes.

Krieger bolsters her assertion by consulting a thick black looseleaf binder that is the office's statistical repository. "In 1974," she says, skimming the pages, "55 percent of our students reporting jobs secured them through on-campus interviews. In 1984, the figure was 75 percent. Last year, there were 14,000 interviews in Room 200, and nearly 700 firms scheduled a stop in Ann Arbor." (See accompanying chart for additional 10-year comparisons.)

The "marriages" arranged in Room 200 are largely corporate and private practice affairs. For most students, the courtship begins in the second year, a date the faculty often consider too early and the students too late. Despite the fact that no first-years may interview in the fall—a custom also observed at other top law schools—nearly three-quarters of them do obtain summer clerkships, up from 50 percent a few years back. "I've started distributing a list of firms willing to hire first-years," says Krieger. "This way, at least, the students don't spend hours poring through Martindale-Hubbell."

For second-years, as for the law firms that recruit them, placement season is serious business. For students, the summer clerkships offer legal experience, salaries (as much as $500 to $900 per week) to help defray the high cost of law school, and the possibility of "permanent" employment as an associate. For the law firms, who woo their clerks with summer programs that are a mix of hard work and hard, all-expenses-paid play, the stakes are equally high: a chance to secure the postgraduate loyalties of their first-choice candidates. In the *American Lawyer's* 1984 Summer Associate Survey, published as a special supplement last October, most interns indicated that they were eager to return to the firms where they had clerked.

Well before October 1, when the six-week placement season begins in earnest, Krieger and her staff commence their preparations. Four identical sets of notebooks, containing the interviewing firms' résumés, are assembled; interviewing fees are collected (a $200 charge per firm was instituted this year); and schedules are arranged. In early September, Krieger and staff member Carla Sally begin counseling students on the wisest use of their 25 "option cards," the chits they turn in to indicate their interview preferences.

"I point out to the students," says Krieger, "that some firms

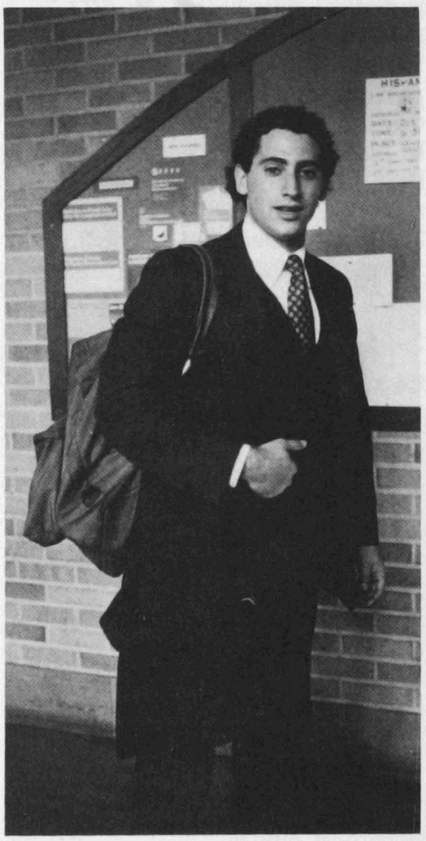
care about grades; others don't. Hopefully, I can help them to use their time better. It's devastating to interview with 12 firms who won't take you. Better to have the heart-to-heart and say, 'Look at *these* firms.'"

Krieger sees her role as steering students to the proper range of firms rather than promoting any one firm. "I try not to pinpoint particular firms," she insists. "My opinions are often based on a just a few people. A student could go to a firm and never see any of them."

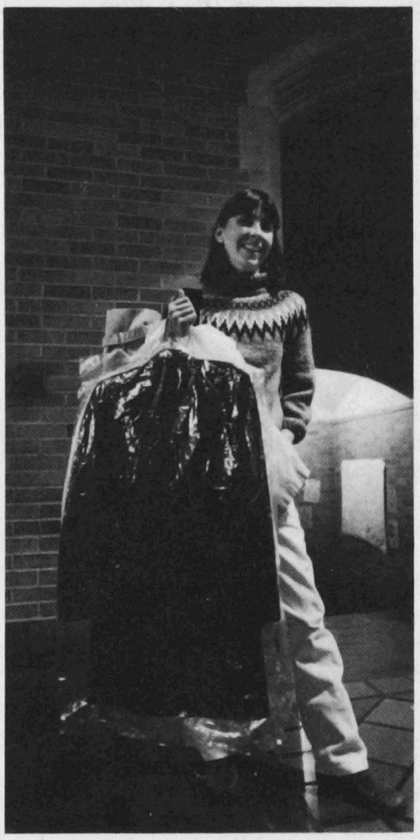
She also encourages students to take a realistic look at cities other than Washington, D.C., Seattle, and Minneapolis—three of the toughest, and most popular, markets. "Students need to have second-city choices," she says realistically. "If they're too narrow in their thinking, they can find themselves without jobs. They often come in with myths that are difficult to break, such as: 'New York is the only place to practice exciting law.' There are wonderful opportunities in Cleveland."

As interview season gathers steam, student "uniforms" undergo a radical transformation. To the traditional law-student backpack another burden is added: the plastic garment bag, slung casually over the shoulder, and containing what we shall hereinafter refer to as "the interview suit," garments cut so well, so conservatively, and so identically that Krieger has just cause for claiming of Room 200: "It looks like flight attendants' school in there." Throughout the day, mild-mannered law students enter Hutchins's basement locker rooms to kick off jogging shoes, whip off crew necks and deposit Levi's. Then, with a final tug at discreetly patterned paisley ties, they exit—like Clark Kent from his phone booth—totally trans-

At placement time, Room 200 is abuzz with activity.



The backpack and the Hutchins Hall backdrop reveal this young lawyer's student status.



It's in the bag. Interview suit at the ready, a student prepares to dress for success.

formed, the picture of lawyerly Yuppiedom.

Meanwhile, two floors up in Room 200, prospective interviewees keep close watch on the light board, waiting, as it were, for their number to come up. The light board was installed in 1981, when 16 interviewing carrels were added to Room 200's 14 original interview rooms; lack of doors on the new carrels made the previous "hang-around-outside-the-door" system both indiscreet and obsolete. Now, with the flick of a tableside switch, interviewers signal students that, ready or not, it's time to head for the appointed place.

Functional (except when interviewers forget to flick the switch), the light board is also a source of levity. Like Director Krieger, more than one student has chuckled over the system's unintentional kinship to those that alert delicatessen waiters that their orders are ready. Among the more popular suggestions for the system's enhancement was one in which the interviewer, by pressing a companion "Y/N" button, could trigger an acceptance or rejection letter, to be spewed out by a printer conveniently located at the exit. Indeed, Krieger's sole regret about the remodeling is that the designer refused to have a room or carrel numbered "13." "I thought the best interview stories would come out of Room 13," she laments.

Each trial-by-interview has as a possible and much-desired sequel, the "flyback." Time-consuming affairs in which students are wined, dined, and introduced at company headquarters—all at company expense, naturally—flybacks take students out of Ann Arbor—and out of Law School classes—with a frequency that troubles many faculty.

Krieger freely concedes that flybacks take students away from their work. "Some students *are* out of class a lot," she agrees. "If you interview with 12 firms from San Francisco and you get, say, four flybacks, that can mean three or four days—which may translate into one one-week trip or four separate trips. It can take a lot of time, but I think that the vast majority of our students do not abuse the process. As glamourous as it sounds, it quickly gets stale. It's *grueling*! Most students recognize that they can't miss that much class, and they do try to combine trips."

Dean Terrance Sandalow sees other problems with flybacks. "Some of the firms entertain the students much too lavishly," he contends. "They develop a false sense of values, the idea that this is what the rewards of practice are. It conveys a subtle message about the values of the profession."

Professor James J. White disagrees. "I think the students understand that flybacks present an unreal world," he says. "Like fraternity and sorority rushing, flybacks are a symbolic way of saying, 'We love you.'"

But for both Sandalow and White, placement's extraordinary incursions on student time go far beyond flybacks. "What is far more significant, in my opinion," says Sandalow, "is the emotional cost associated with going in for interviews—the anxiety before going in, the time needed to react and review afterwards. That's the diversion from the educational program, in my view."

Faculties at the dozen or so schools with large on-campus placement programs share the Michigan faculty's concern over the amount of time students spend in the placement process. But students at midsize regional law schools that lack on-campus programs simply exchange on-campus interview time for the endless hours they must spend writing letters, Krieger points out. With on-campus interviews, James J. White observes, students have a better opportunity to use their "force of personality" to convince interviewers of their

It's easy to tell which of these three students is interviewing today.

Placement Office Director Nancy Krieger

On-Campus Placement: Then and Now

	1974	*1984*
Number of interviewers	419	697
Schedules arranged for firms	581	990
Individual interviews	7,000	14,000
Alumni returning to interview	410	553
"Alternative" jobs posted	633	1,450
Percent of jobs secured through on-campus interviews	55%	75%
Percent of students reporting jobs at graduation	75%	85%
Salaries reported	$9,600-18,500	$20,000-50,000

merits. With letters as the sole medium of contact, grades too often become everything.

One possibility Sandalow finds attractive is to compress interviewing season into a one-week job fair, to take place the week before the fall semester. Columbia Law School has instituted such a system with success, he notes; it might be less workable at Michigan, however, because of the Law School's more geographically diverse student body.

"Any way you look at it," Krieger sums up, "placement takes a lot of time—if you do it right."

Even the student who has "done it right" may have difficulty making a final decision, however. Despite all the information gleaned and carefully sorted, despite the differences in company style reflected in increasingly glossy firm résumés and experienced first-hand during flybacks, the final result may be puzzlement.

It could be argued that puzzlement is a welcome state of affairs; to have a choice may be the norm for Michigan students, but it is a luxury nonetheless. For the student eager to make a reasoned, well-thought-out decision, however, the lack of certainty can be unsettling.

"The work," notes Krieger, "is frequently similar from place to place. The differences will come from the personnel, from how the work is assigned and evaluated, from the feedback that's given. Often it's frustrating because the students simply can't get enough information about these things. I remember one student who decided between two 'twin' firms on the basis of the art work on the walls. In a way that's not so bad. I'm convinced that students must take into account how they feel. Law students like to be very logical about everything."

For students at the decision point, as well as those just beginning the placement process, Law School alumni are a critical resource, Krieger says. They are especially important in helping students who seek alternatives to private or corporate practice, students with whom Krieger and her staff work diligently and closely. Krieger cites as an example of alumni assistance the recent case of a second-year student interested in family law. "One of the first things I did," says Krieger, "was to locate alumni in the cities she was considering. They helped scout out the right firms for her to consider."

Alumni have also been extraordinarily active in the alternative career conferences that have become annual events at the Law School. The conferences, like the Public Interest Law Conference reported on in *Law Quadrangle Notes*, Vol. 28, No. 3, offer students first-hand information about alternative job markets and the not unimportant chance to link up with other like-minded students. "Even those who don't want a corporate career may flock to Room 200," Krieger notes. "There's a sort of lemming effect. When everyone is talking about flybacks and offers, there's a real sense of isolation for those who are not involved." ◘

Kudos all around

A bumper crop of awards for our faculty

This academic year, our faculty members have garnered an impressive range of honors saluting their professional accomplishments. In this article, we share their successes with you:

☐ Next to the menagerie of awards Distinguished University Professor **Joseph L. Sax** has received for his defense of the environment, Oscars and Emmys seem rather tame. On a table near his desk, a whooping crane statuette perches; it is the National Wildlife Association's Resource Defense Award, awarded to Sax in 1981. A pace north, a lone carved example of Michigan's extinct passenger pigeon roosts; the bird is a tribute to Sax's indefatigable work to prevent oil drilling in Michigan's Pigeon River State Forest, home to the state's last remaining elk herd.

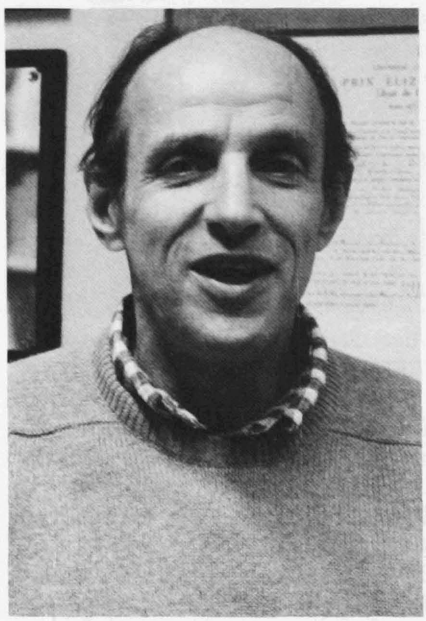
Last May, the Sierra Club added its paeans to those of the many other organizations that have honored Sax—among them the Environmental Protection Agency, the Free University of Brussels, the American Motors Corporation, and the Detroit Audubon Society. At its annual meeting, it conferred on him the William O. Douglas Award, the club's highest honor for legal achievement. The award, in the form of a plaque rather than a statue, allowed its donors to catalog Sax's accomplishments in the environmental sphere:

- Leading legal theorist for the environmental movement.
- Author of Michigan's pioneering laws to protect the environment.
- Forceful advocate for the sanctity of the national park ideal.
- Continuing counselor to the country's environmental community.

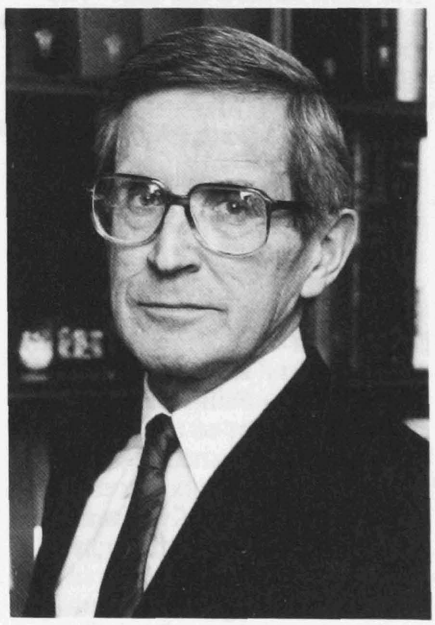
☐ **John W. Reed**, the Thomas M. Cooley Professor of Law, has been amassing honors at a rate rivaled only by Michigan's annual January snowfall. Last winter, *Law Quadrangle Notes* reported his receipt of the Association of Continuing Legal Education's prestigious Harrison Tweed Award. This year, two other organizations saluted Reed's benchmark achievements in continuing legal education and the improvement of the litigation process.

In October, the Western Michigan Chapter of the Federal Bar Association named Reed the first recipient of its Service to the Profession Award for his "lifetime of service as a teacher of courtroom skills to the legal profession." In January, he was the recipient of the American College of Trial Lawyer's Samuel E. Gates Litigation Award for 1985. Former recipients of the Gates award, which honors "a lawyer who has made a significant contribution to the improvement of the litigation process in the United States," include the Honorable Edward Weinfeld, U.S. District Court for the Southern District of New York; the Honorable Erwin N. Griswold, former dean of the Harvard Law School and former solicitor general of the United States; Joseph A. Ball, Esq.; and the Honorable Robert E. Keeton, U.S. District Court for Massachusetts.

☐ In January, Law School Professor **Robben W. Fleming**, president of the University from 1968 to 1979 and former head of the Corporation for Public Broadcasting, was named the 1985 recipient of the National Colle-



Joseph L. Sax



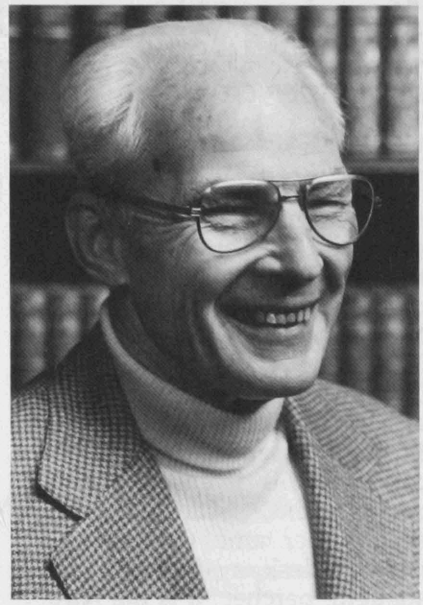
John W. Reed

giate Athletic Association's highest honor, the Theodore Roosevelt Award.

The "Teddy," named for the United States' 26th president, a great supporter of intercollegiate athletics, is presented annually to "a prominent American for whom competitive athletics in college and attention to physical well-being thereafter have been important factors in a distinguished career of national significance and achievement."

Of the award, Fleming said: "I receive it more as a tribute to the men and women of The University of Michigan than as a personal honor, for it is they who have demonstrated that one can have a first-class academic program alongside a first-class athletic program." Nonetheless, it should be noted that Fleming left his alma mater, Beloit College, with letters in basketball and track in addition to a bachelor's degree.

Robben W. Fleming



Alfred F. Conard

☐ **Allan F. Smith**, former Law School dean, University vice president and acting president, has been named the first recipient of the Wallace S. Fujiyama Distinguished Visiting Professorship at the University of Hawaii's Richardson School of Law.

Allan Smith

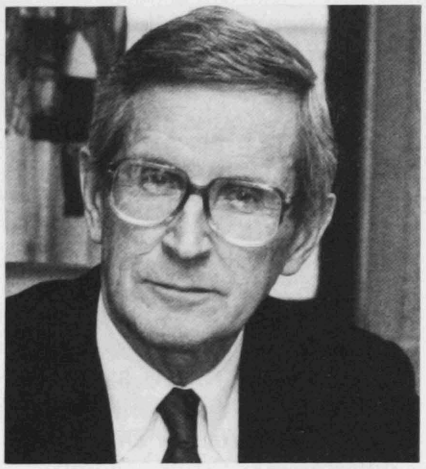
Wade H. McCree, Jr.

☐ In September, Butzel Professor of Law Emeritus **Alfred F. Conard** added the Rotary Foundation's highest award to his lengthy string of credits. A member of Rotary since 1955, Conard was named a Paul Harris Fellow "in appreciation of tangible and significant assistance given for the furtherance of better understanding and friendly relations between peoples of the world." The award was presented, in a surprise ceremony, by fellow Rotarian and Professor Emeritus Frank R. Kennedy, himself a former recipient of the honor.

☐ The Honorable **Wade H. McCree, Jr.**, Lewis M. Simes Professor of Law and former solicitor general of the United States, was re-elected to the Board of Directors of the American Judicature Society. Three years ago the AJS, founded in 1913 to improve the workings and public understanding of the judicial system, conferred its highest honor, the Justice Award, upon Judge McCree. ⊠

Distinguished faculty named to chairs

Two law school faculty members were honored with named chairs this September. John W. Reed now holds the Thomas M. Cooley Professorship of Law and Lawrence W. Waggoner holds the James V. Campbell Professorship. Established in 1978, the Cooley and Campbell chairs are named for two of the initial three professors in the Michigan Law Department; they were held previously by Frank R. Kennedy and Olin L. Browder, both of whom retired last year.



John W. Reed

Lawrence W. Waggoner

For over three decades, **John W. Reed** has served the University and the legal profession with distinction. A widely recognized and respected national leader in continuing education and a former head of Michigan's Institute for Continuing Legal Education, Reed has been a significant force in strengthening the quality of CLE programs throughout the United States. Last year, the Association of Continuing Legal Education Administrators recognized his achievements in the field by conferring upon him its prestigious Harrison Tweed Award.

Reed's major academic interests center upon litigation. He has twice served as Reporter for the Committee on Rules of Evidence of the Michigan Supreme Court and has written frequently for professional audiences on topics in civil procedure and evidence. The esteem in which he is held by members of the litigation bar is demonstrated by his election to the Council of the Litigation Section of the American Bar Association.

"The record of Professor Reed's achievements," says Dean Terrance Sandalow, "would be seriously incomplete without mention of his extraordinary gifts as a teacher. Students' regard for him is so high that enrollments in his elective classes are regularly limited only by the seating capacity of the rooms within the School."

Reed's popularity with students is echoed by the popularity and esteem he enjoys among colleagues. Notes Sandalow: "It exaggerates not at all to say that without faculty members such as John Reed faculty governance would not be possible." Reed has chaired or served on many of the most important University and Law School committees, bringing to them, among his other assets, unusual conscientiousness, sound judgment, patience, and good humor.

A graduate of William Jewell College and the Cornell Law School, Reed practiced in Kansas City before receiving graduate law degrees from Columbia University and teaching in Oklahoma. With the exception of four years as dean of the University of Colorado Law School and visiting terms at Chicago, Yale, and Harvard, he has taught at the University of Michigan since 1949. His many services to the profession include the editorship of the *International Society of Barristers Quarterly*.

Lawrence W. Waggoner, the new Campbell Professor of Law, is one of the nation's leading scholars in the area of trusts and estates.

Waggoner's writing has been in the fields of wills, trusts, and future interests and the taxation of gifts, trusts, and estates. In numerous important articles, books, and proposals for legislative reform, Waggoner has examined most of the major themes of these highly technical areas. "His scholarship," notes Dean Terrance Sandalow, "reflects mastery of intricate subject matter, a deep understanding of the practical problems with which the law of trusts and estates must contend, and the high degree of inventiveness necessary to reconceptualize areas of law that are encrusted with history. The same qualities that have led to Waggoner's reputation as a scholar have, not surprisingly, also led to his becoming one of the School's most highly regarded teachers."

Waggoner holds a B.B.A. from the University of Cincinnati and a J.D. from the University of Michigan. Following graduation from

law school, he studied at Oxford University as a Fulbright scholar, earning the D.Phil. degree. In 1968, he began his teaching career at the University of Illinois, where he remained for several years before joining the University of Virginia law faculty. He returned to Michigan as a visiting professor of law in 1973 and was appointed to a permanent position on the faculty in 1974.

An Academic Fellow of the American College of Probate Counsel and a Fellow of the Michigan State Bar Foundation, Waggoner has also been elected to the American Law Institute. ◘

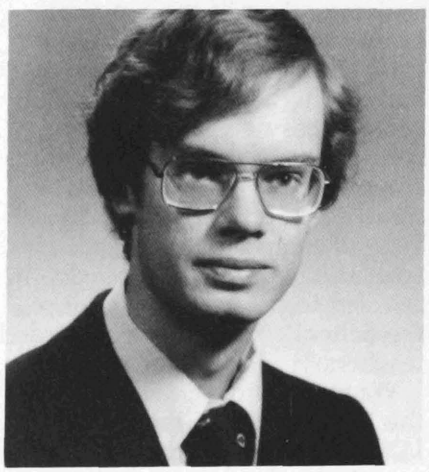
Alumnus serves as Supreme Court clerk

Kent Douglas Syverud, J.D. '81, has been serving as clerk to Supreme Court Justice Sandra Day O'Connor during the Court's 1984-1985 term.

A native of Rochester, New York, Syverud received his undergraduate degree from the Georgetown University School of Foreign Service. At Michigan, he was awarded the Henry M. Bates Memorial Scholarship, the Abram W. Sempliner Memorial Award, the Joel D. and Shelby Tauber Scholarship Award, and the Clifton M. Kolb Law Scholarship. He received his degree magna cum laude, and was elected to the Order of the Coif.

Upon graduation, he remained at Michigan to pursue graduate studies in economics, receiving his master's degree in 1983. In the fall of 1981, he taught the course "Introduction to American Law" to foreign graduate students enrolled at the Law School.

During 1983-1984, Syverud clerked for the Honorable Louis F. Oberdorfer of the United States District Court for the District of Columbia.



Kent D. Syverud

In addition to Syverud, thirty-nine alumni who graduated in August and December 1983 and May 1984 hold state- and federal-court clerkships this year:

Mariam Arfin (Hon. Robert Krupansky, U.S. Court of Appeals for the Sixth Circuit, Cleveland, Ohio); **Manuel Arrieta** (Hon. William Bivens, Court of Appeals for New Mexico, Santa Fe, N. Mex.); **Frank Ballantine** (Hon. Nathaniel Jones, U.S. Court of Appeals for the Sixth Circuit, Cincinnati, Ohio); **James Black** (Hon. John Feikens, U.S. District Court for the Eastern District of Michigan, Detroit, Mich.); **Bruce Brakel** (Michigan Court of Appeals, Lansing, Mich.); **John Bulgozdy** (Hon. John Holschuh, U.S. District Court for the Southern District of Ohio, Columbus, Ohio); **Stephen Bushong** (U.S. Magistrate Marc Goldman, U.S. District Court for the Eastern District of Michigan, Flint, Mich.); **Margaret Chutich** (Hon. Diana Murphy, U.S. District Court, Minneapolis, Minn.); **Marie Deveney** (Hon. Harry Edwards, U.S. Court of Appeals for the District of Columbia, Washington, D.C.); **Gregory Frizzell** (Hon. Thomas Brett, U.S. District Court for the Northern District of Oklahoma, Tulsa, Okla.); **Linda Glaza** (Hon. Paul O'Connell, 21st Judicial Circuit Court, Mt. Pleasant, Mich.); **Kyle Gray** (Hon. Clarence Brimmer, U.S. District Court, Cheyenne, Wyo.); **William Holmes** (Hon. Louis Oberdorfer, U.S. District Court for the District of Columbia, Washington, D.C.); **William Howard** (Hon. Harrison L. Winter, U.S. Court of Appeals for the Fourth Circuit, Baltimore, Md.); **Nelson Hubbell** (Hon. H. Russel Holland, U.S. District Court, Anchorage, Alas.); **Robert Jackson** (Hon. Donald Rusell, U.S. Court of Appeals for the Fourth Circuit, Spartanburg, S.C.); **James Jacobson** (Hon. William Thomas, U.S. District Court for the Northern District of Ohio, Cleveland, Ohio); **Steven Kaufmann** (Hon. John Kane, Jr., U.S. District Court, Denver, Colo.); **Lori Ketcham** (U.S. Magistrate Steven Rhodes, U.S. District Court for the Eastern District of Michigan, Detroit, Mich.); **Elisabeth Long** (Hon. Charles Joiner, U.S. District Court for the Eastern District of Michigan, Ann Arbor, Mich.); **Gretchen Miller** (Hon. G. Mennen Williams, Supreme Court of Michigan, Detroit, Mich.); **Ned Miltenberg** (U.S. District Court for the District of Columbia, Washington, D.C.); **Kathryn Montgomery** (Michigan Court of Appeals, Detroit, Mich.); **Grant Parsons** (Hon. Richard Enslen, U.S. District Court for the Western District of Michigan, Kalamazoo, Mich.); **Bradley Pickard** (Hon. Charles Blackmar, Missouri Supreme Court, Jefferson City, Mo.); **Glenda Pittman** (Hon. Richard Enslen, U.S. District Court for the Western District of Michigan, Kalamazoo, Mich.); **Mark Pollack** (Hon. Stephen Reinbardt, U.S. District Court of Appeals for the Ninth Circuit, Los Angeles, Calif.); **Gary Rosen** (Hon. Leon Higginbotham, U.S. Court of Appeals for the Third Circuit, Philadelphia, Pa.); **Kevin Saunders** (Hon. Kenneth Starr, U.S. Court of Appeals for the District of Columbia, Washington, D.C.); **Megan Scott-Kakures** (Hon. Ralph Guy, U.S. District Court for the Eastern District of Michigan, Detroit, Mich.); **Eric Sinrod** (Hon. Samuel Conti, U.S. District Court for the Northern District of California, San Francisco, Calif.); **Joan Snyder** (Hon. Benjamin Gibson, U.S. District Court for the Western District of Michigan, Grand Rapids, Mich.); **Walter Spiegel** (Hon. Richard Freeman, U.S. District Court for the Northern District of Georgia, Atlanta, Ga.); **Russell Stewart** (Hon. Richard Matsch, U.S. District Court, Denver, Colo.); **Robert Stoddart** (Hon. Lawrence Margolis, U.S. Court of Claims, Washington, D.C.); **Elissa Tonkin** (Superior Court of Massachusetts, Boston, Mass.); **James Weygandt** (Hon. J. Edward Lumbard, U.S. Court of Appeals for the Second Circuit, New York, N.Y.); **Charles Wolfson** (Hon. Cornelia Kennedy, U.S. Court of Appeals for the Sixth Circuit, Detroit, Mich.); **Jamie Zimmerman** (U.S. Courthouse, New York, N.Y.). ◘

Krupp to the Defense

Alumnus takes over at Environmental Defense Fund

By David McKay Wilson

In 1974 a Yale University junior, Frederic Krupp, was searching for a way to combine his love of politics and of biology when he read Joseph Sax's *Defending the Environment*. The book changed Mr. Krupp's life, inspiring him to pursue a career in environmental law.

Four years later, in 1978, after completing law school, he founded the Connecticut Fund for the Environment, a public-interest group that presses environmental litigation in the state.

Ten years after reading Mr. Sax, Mr. Krupp, 30 years old, has left the Connecticut Fund, where he was general counsel, to become the executive director of the Environmental Defense Fund, based in New York City. The Defense Fund is a partnership of scientists, lawyers, economists and computer programmers working toward new solutions to environmental dilemmas.

The Defense Fund's concerns include energy, water resources, wildlife preservation and toxic chemicals. It was the moving force behind the banning of DDT in 1972 and has played a leading role in pushing energy conservation as an alternative to nuclear power.

Mr. Krupp began work on September 24 when leaders of the nation's 10 largest environmental organizations, called the Group of 10, met for their quarterly planning session in western New York.

"I hope to build E.D.F. to be an even stronger force, and I think my experience working on the state level in Connecticut will help," he said. "E.D.F. is on the cutting edge of environmental policymaking because its staff cannot only prevent the pollution, it can also help solve problems with alternative solutions that make sense."

While in Connecticut, Mr. Krupp was an outspoken advocate for a clean environment. He is also a diplomat able to work well with other organizations, colleagues say. Mr. Krupp seems to thrive on challenges, even on the occasion of the Connecticut Fund's staff outing in July, when he led a trip down the Housatonic River rapids in Cornwall in northwest Connecticut. His canoe capsized, and he had to dive into the rapids to rescue Suzanne Langille, a staff lawyer.

Mr. Krupp said he welcomes the challenge of heading the Defense Fund, which has a $3 million budget, 45,000 members and five offices across the nation. He leaves the Connecticut Fund with a $205,000 budget, 3,000 members and offices in Hartford and New Haven.

While at the University of Michigan Law School, Mr. Krupp worked as an intern at the Natural Resources Defense Council and at the Defense Fund, where he assisted on a project that led to the banning of the pesticides chlordane and heptachlor.

He was aware of disenchantment among Connecticut conservationists then, who contended that the administration of Gov. Ella T. Grasso had eased enforcement of environmental regulations. Some environmental lawyers wanted to found a state public-interest group, but their idea never got off the ground. Mr. Krupp had a similar idea, and had the determination to pull it off.

Frederic Krupp

He returned to Yale in the fall of 1978 to get things rolling. Thirty students showed up at the first meeting, including Adam Stern, now a science associate at the Defense Fund and a Connecticut fund board member.

"Fred had this abundant confidence that threw me off," he said. "We needed to develop a brochure, contact potential board members, write a press release, and have it all done before

Christmas. I told Fred we couldn't do it because we didn't know who we were. So we sat down and worked up an outline of our goals, and sent out a mailing just before Thanksgiving."

The mailing and a fund-raiser brought in $8,000, and by February 1, 1979, the Connecticut Fund opened an office.

The Connecticut Fund has played an increasingly large role in forming coalitions with other conservation groups in the state. It has also claimed significant victories in court while representing citizens groups in need of free legal assistance. The Connecticut Fund has three full-time lawyers and many other private lawyers who do volunteer work.

In 1982 its Federal suit led to a settlement with Solvents Recovery Services of New England that required the company to spend $1 million to clean up the town of Southington's groundwater.

In 1983, the Connecticut Fund and a citizens group in North Haven joined to halt the noxious odors emitted by an Upjohn Corporation chemical plant. Instead of filing suit, the Connecticut Fund went to the Upjohn stockholders meeting and convinced owners holding $60 million worth of Upjohn stock to support their proposal for improved abatement technology. They won the installation of a $4 million abatement system and the state's strictest water discharge permit.

The Connecticut Fund is in the midst of negotiations with several industrial polluters who are not complying with the state water-discharge permits. It has filed suit against 18 companies. It has also won settlements with five manufacturers, who have agreed to install new technology and make contributions—in lieu of fines—to the Open Space Institute to protect the Connecticut countryside. Mr. Krupp said it is the most extensive water-permit enforcement program being conducted in the country by a private group.

"I think the Connecticut Fund will continue the rapid growth it has experienced over the last six years," he said, "because there will continue to be a need for the sound reasonable approach that we have taken in Connecticut." ◘

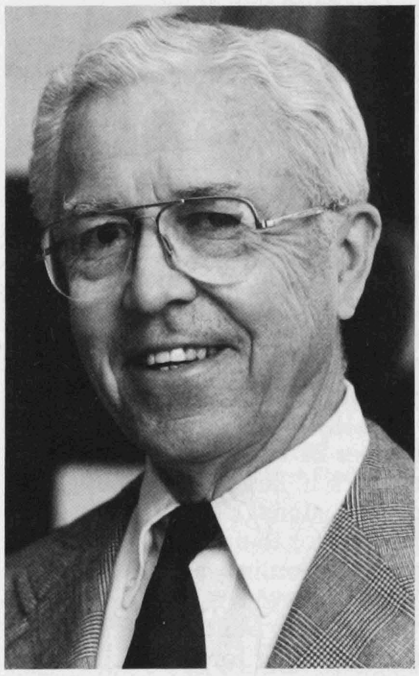
Editor's note: *This article appeared in the* New York Times *last September. Copyright (c) 1984 by The New York Times Company. Reprinted by permission.*•

"Proffitting" students

Professor Roy F. Proffitt came to the Law School and undertook the duties of an assistant dean in 1956, the same year the Class of '59 entered the Law School as freshmen. When the "fifty-niners" met, last October, to celebrate the 25th anniversary of their Law School graduation, they raised more than their glasses in toast to Proffitt and their alma mater. To serve the School and to honor the man who helped them find ways to finance their law educations, they established the Roy F. Proffitt Student Loan Fund. Spurred on by a $100,000 challenge grant offered at the reunion by Frederick P. Furth, Jr., the class has succeeded in raising over $200,000 in cash and pledges, sending the fund over the $300,000 mark.

"We all felt that our 25th year was the year to make a significant gift to the Law School," explained Ronald St. Onge, who spearheaded the fund drive along with classmates Gerald Bader, Jr., William K. Tell, Jr., Malcolm Fromberg, and Law Professor John Jackson. "Since Roy came to the Law School when we did, we adopted him as a class member and felt that it was appropriate to honor him in this way."

The newly established Proffitt Loan Fund is now one of the School's largest endowed revolving loan funds. Additional contributions from members of all classes are welcome. They should be directed to Jonathan D. Lowe, Director of Law School Relations, University of Michigan Law School, Hutchins Hall, Ann Arbor, Mich., 48109-1215. ◘



Roy F. Proffitt is honored by the establishment of a new loan fund.

Sitting in judgment

In the summer and fall of 1984, three Law School alumni were nominated and confirmed as district court judges, swelling the ranks of alumni currently holding district court positions around the country.

☐ In Anchorage, Alas., alumnus **H. Russel Holland** now serves as United States district judge for the District of Alaska. Prior to ascending the bench in July, Holland was a partner in the Anchorage firm of Trefry & Brecht, formerly Holland & Trefry. Holland received his B.B.A. degree from the University of Michigan in 1958 and his J.D. from the Law School in 1961. After graduating from law school, he relocated to Alaska, where he began his career as an employee first of the Alaska Court System and then of the Alaska United States Attorney's Office. In addition to membership in the Anchorage, Alaska, and American bar associations, he is a member of Commonwealth North, a nonprofit, nonpartisan organization dedicated to bringing wider perspectives to public policy issues affecting Alaska.

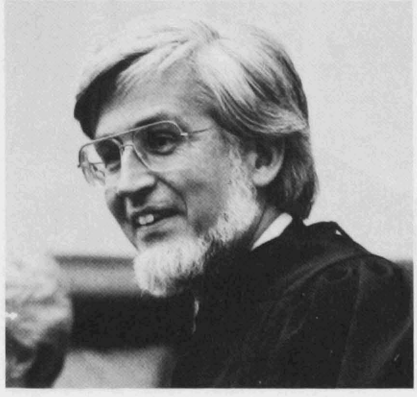
☐ **Howard Dee McKibben**, J.D. '67, was confirmed in October as a federal district court judge for the District of Nevada. From 1977 to 1984, he served as district court judge on the Ninth Judicial District Court of the State of Nevada. In the ten years following his graduation from the Law School, he served as deputy district attorney and then as district attorney of Douglas County, Nev.

Judge McKibben is a former president of both the Nevada District Judges Association and the Nevada District Attorneys Association. He has served as chairman of the Administrative and Legislative Council of the Nevada Judicial Council and the Nevada Young Republicans. He received his bachelor's degree from Bradley University in Illinois in 1962 and, in addition to his law degree, holds a master's degree in public affairs from the University of Pittsburgh.

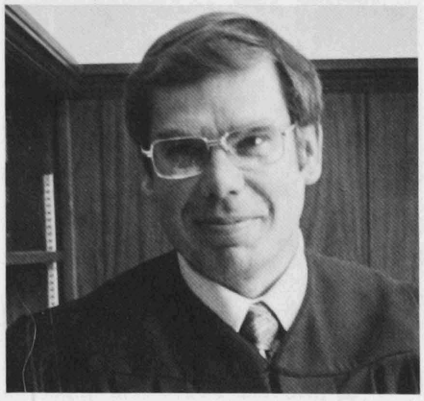
☐ **Anthony J. Scirica**, J.D. '65, formerly judge of the Montgomery County Court of Common Pleas, is now sitting on the bench of the United States District Court for the Eastern District of Pennsylvania. From 1971 to 1979, he served as a member of the Pennsylvania House of Representatives, chairing the Judiciary Subcommittee on Crime and Correction and sponsoring the Divorce Reform Act and the Sentencing Commission Act. Judge Scirica has also spent two years as assistant district attorney of Montgomery County. He is chairman of the Pennsylvania Sentencing Commission and is a trustee of Temple University. He has been a partner in the Norristown, Pa., law firm of McGrory, Scirica, Wentz, Fernandez and Albright.

Judge Scirica received his bachelor's degree from Wesleyan University. After completing law school, he spent a year as a Fulbright scholar in Venezuela. Upon his confirmation as district court judge, *The Philadelphia Inquirer* used its editorial space to praise his appointment:

"He is an all-too-rare breed of public servant who believes that lawmakers have social responsibilites going beyond the enactment of legislation and that judges must be concerned about the workings of the justice system, or its failure to work, not only in trials and sentencing but in the full range of procedures affecting civil rights of the accused and the incarcerated. . . . Judge Scirica brings to the federal judiciary exemplary qualities of professionalism, integrity and intellect."



H. Russel Holland



Howard Dee McKibben

Anthony J. Scirica

Alumni news

☐ In September, **Travis H. D. Lewin**, LL.B. '67, was the first recipient of the Richard S. Jacobson Award for excellence in trial advocacy. The Roscoe Pound Foundation of the American Trial Lawyers Association conferred the award on Lewin for his role in establishing one of the most successful trial advocacy programs in the country at Syracuse University, where he is a professor of law, as well as for his scholarship and his work with the New York State legislature.

Lewin received his J.D. from the University of South Dakota in 1958, and after a year's clerkship in federal district court, practiced law in Sioux Falls until 1961. He was assistant United States attorney for the district of South Dakota from 1961 to 1965. He joined the Syracuse University law faculty after receiving his doctorate in law from the U-M. From 1969 to 1975, he served as a director of the Psychiatric Defense Center in Syracuse. He has held appointments as visiting professor of law at Loyola University Law School in Los Angeles and at the New York School of Psychiatry.

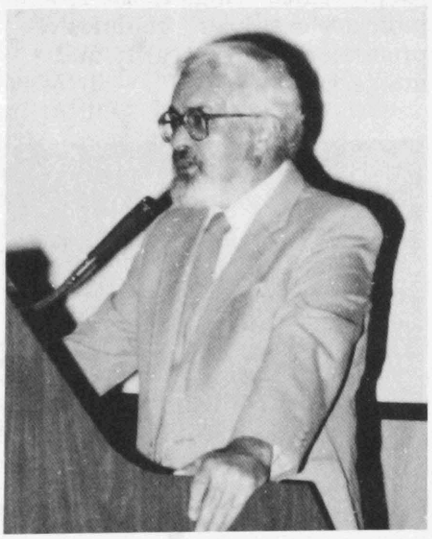
☐ Professor **Shinichiro Michida**, '65, a distinguished member of the Kyoto University Faculty of Law, was elected president (Rijicho) of the Japan Society of Comparative Law (hikakuhogakukai) last June. Michida is the first member of the Kyoto University faculty to head this prestigious society, which has a membership of 816 scholars and lawyers. The organization's activities include publication of the Comparative Law Journal (Hikakuho-kenkyu) and an annual two-day convention.

☐ **N. Michael Plaut**, J.D. '41, has been elected to the American Bar Association Board of Governors for the district comprising Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island.

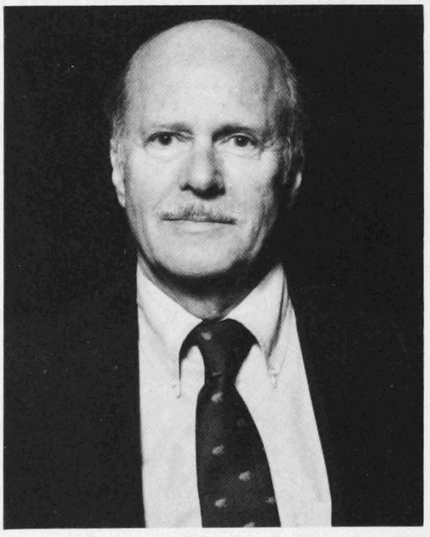
Prior to his election to the Board, Plaut served in the ABA's policy-making House of Delegates, as a representative of the New Hampshire Bar Association, and as state delegate. He was also a member of the ABA's House Committee on Rules and Calendar and of the Drafting Committee.

State Chairman of the American Bar Foundation since 1979, Plaut has also served as president of the New Hampshire Bar Association and as secretary and director of the New Hampshire Bar Foundation. He is a member of the Association of Insurance Attorneys and the International Association of Insurance Counsel, and a fellow of the American College of Probate Counsel. Plaut received his bachelor's degree in economics and government from Harvard University. He is of counsel to the Keene, N.H., law firm of Faulkner, Plaut, Hanna, Zimmerman & Freund.

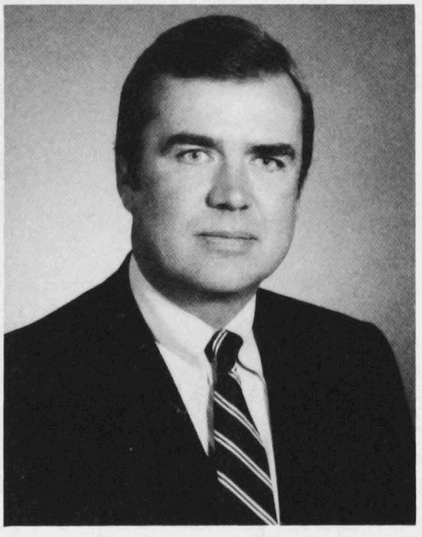
☐ **Grant J. Gruel** has been elected president of the International Academy of Trial Lawyers. Gruel received his A.B. from Dartmouth College in 1956 and his L.L.B. from the Law School in 1958. He is a partner in the Grand Rapids, Mich., firm of Cholette, Perkins & Buchanan, where he has practiced since



Travis H. D. Lewin



N. Michael Plaut



Grant J. Gruel

graduating from law school.

Gruel has been a fellow of the IATL since 1971, and previously served as its secretary-treasurer. He is a fellow of the International Society of Barristers and of the American College of Trial Laywers. He has lectured for a number of continuing legal education organizations, including Michigan's, and has served on the Michigan Products Liability Task Force and the Michigan Supreme Court Committee to Revise Court Rules. ◘

Class notes

'40 **Martha Griffiths** of Romeo, Mich., has received the Israel Bond Organization's Eleanor Roosevelt Centennial Award for her distinguished achievement in the field of humanitarian endeavor and government.

John H. Pickering, a partner in the Washington, D.C. law firm of Wilmer, Cutler & Pickering, has been elected to a three-year term as District of Columbia Delegate to the American Bar Association House of Delegates.

'52 **Robert B. Krueger**, partner in the Los Angeles law firm of Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey and head of the firm's Energy and Natural Resources Group, recently was appointed chairman of the American Bar Association Coordinating Group on Energy Law.

'53 **Herbert L. Meschke** has been appointed to the North Dakota Supreme Court.

'55 Superior Court Judge **Ira Brown** of San Francisco, Calif., is president of the California Judges Association.

'58 **Richard M. Bilby** of Phoenix, Ariz., has been elevated to Chief Judge of the United States District Court for Arizona.

'59 **Nicholas A. Longo** of Putnam, Conn., has been appointed as a trial referee for the Superior Court.

'60 **Bert Sugar**, former editor of *Ring Magazine*, had his 34th book published this fall. His latest effort is *The 100 Greatest Boxers of All Time.*

'61 **Francis C. Marsano** of Belfast, Maine, is serving as third vice president of the Maine State Bar Association.

'63 **Harold M. Fong** of Honolulu, Hawaii, has been elevated to the position of Chief Judge of the United States District Court for Hawaii.

Sandor M. Gelman of Troy, Mich., is president of the Oakland County Bar Association.

John A. Krsul Jr., former president of the Michigan and Detroit bar associations and a Detroit lawyer, has been reappointed chairman of the American Bar Association Standing Committee on Membership.

'65 **Faris A. Howrani** has been awarded the Chartered Financial Consultant professional designation by the American College in Bryn Mawr, Pa.

Jack F. Smith of Littleton, Colo., has been appointed as judge in the Arapahoe County Court.

'66 **Robert E. Epstein** of West Bloomfield, Mich., has been named general counsel at Borman's, Inc.

William K. Hoffman of Summit, N.J., has been promoted to vice president at Warner Amex Cable Communications.

Jack A. Siebers has become a partner in the Grand Rapids regional office of Dykema, Gossett, Spencer, Goodnow & Trigg, Michigan's largest law firm.

'67 **Leonard A. Chinitz** has been elected worldwide managing partner of the international law firm Kaplan, Russin & Vecchi. He is now resident in the firm's Bangkok office.

George M. Humphrey, II, is now executive director of the Cleveland, Ohio, office of Russell Reynolds Associates, Inc.

Steven H. Thal has joined Kaplan, Russin & Vecchi as counsel, resident in the firm's New York office.

'68 **David L. Callies**, professor of law at the University of Hawaii, has written a new book, *Regulating Paradise: Land Use Controls in Hawaii.*

Bassey U. Eka, LL.M., has been appointed as a judge of the High Court of Justice of the Cross River State of Nigeria.

'69 **Louis J. Leo** is vice chancellor for student services at the University of California, Riverside, and management consultant.

John McGonagle, Jr., vice president of the Helicon Group, a think-tank style management consulting firm, is co-author of a new book for small business owners, *Incorporating: A Guide for Small-Business Owners.* The book was published by Amacom in October, 1984.

'71 **Frank D. Eaman** has been named chairperson of the Defender Systems and Services Committee of the State Bar of Michigan. In 1983, Eaman received the Arthur von Briesen Award from the National Legal Aid and Defender Association for his outstanding volunteer contributions to legal assistance for poor persons.

Richard N. Feferman of Albuquerque, N.M., has established a consulting firm that specializes in the training and supervision of attorneys.

Noel Anketell Kramer has become an associate judge of the Superior Court of the District of Columbia.

'73 Robert E. Hirshon of Portland, Maine, is president elect of the Maine State Bar Association.

Edward F. Kickam, a Detroit attorney, has been appointed to the board of directors for the Guaranty Federal Savings and Loan Association.

Kristena A. LaMar has been appointed to the bench of the Multnomah County Circuit Court in Portland, Ore.

'75 Joseph A. DeCampo of New York City has been made a partner in the New York law firm of Rosenman Colin Freund Lewis & Cohen.

Nickolas Kyser has been named associate dean of the University of Detroit Law School.

D. John McKay has become a partner in the firm of Middleton, Timme & McKay in Anchorage, Alas.

'76 Richard A. Kopek has become one of the 40 partners in the Syracuse, N.Y., law firm of Hiscock & Barclay.

'78 Andrea Sachs has joined the staff of *Time* as a reporter-researcher in New York City.

'81 J. Marc Abrams is co-author of the recently published book *Law of the Student Press*, the first book ever to offer an examination of the legal issues confronting America's student journalists, advisers and education administrators on both the high school and college levels.

'81, '82 Gary C. Robb ('81) and **Anita Porte Robb** ('82) have opened their new law offices, Robb & Robb, in Kansas City, Mo. The firm limits its practice to plaintiffs' personal injury trial work, with emphasis on hazardous products liability and medical negligence.

'82 Lawrence Savell, an associate in the New York office of Chadbourne, Parke, Whiteside & Wolff, was the author of the lead article in Volume 48 of the *Albany Law Review*. The article, "Right of Privacy—Appropriation of a Person's Name, Portrait, or Picture for Advertising or Trade Purposes Without Prior Written Consent: History and Scope in New York," was favorably cited in a recent Second Circuit decision, *Lerman* v. *Flynt Distributing Co., Inc.*

All in the family department

On June 2, 1984, the Honorable **Harry T. Edwards**, United States Court of Appeals for the District of Columbia, J.D. '65, presided at the marriage ceremony of **Kit George Pierson** ('83) and **Rachel Adelman** ('85). Writes Judge Edwards: "This may be one of the very few occasions when a U-M Law School graduate has married two other U-M law graduates."

Where are they now?

Although the Law School Fund Office does everything possible to keep alumni addresses current, occasionally some alumni are "lost" and we cannot locate them. We have listed those alumni by year of graduation below. If you know of any of their addresses, please notify Jonathan D. Lowe, Director, Law School Relations, 411 Hutchins Hall, Ann Arbor, MI 48109-1215. Thank you!

'14 Guillermo M. Katigbak

'17 Irwin S. Olson

'21 Ramon Capistrano, Vincente Del Rosario

'23 Paul S. Brady

'25 Herbert C. T. Lee, Rufino Luna, Antonio M. Martinez

'26 Victor M. Villasenor

'27 Amando B. Boland

'28 Antonio Curri

'29 Honorato B. Masakayan, Melvin A. Oll, Hawley E. Stark

'31 Joseph W. Solomon

'32 Alfred H. Golden

'33 Frederic E. Van Dorn

'34 John W. Steen

'36 Charles P. Chapman, Jr.

'38 Daniel S. Morrison, Thomas O. Moxcey

'39 Richard J. Blanchard, Alvin L. Cassel, Edward L. Grampp, James S. Hall, Reece Hatchitt, Jack F. Smith

'40 Emanuel W. Sklar, Hiram Todd, Jr.

'45 Juan O. Diaz-Lewis, Fernando Guerra, Enrique Testa

'46 David W. Edmunds, Eudoro R. Vargas-Pena

'47 David B. Cooper

'48 Malcolm Monroe, Roland Nagle

'49 Emanuel Rose, Teh-Ying Wong

'50 Wayne A. Anderson, Ingrid A. Bohne, Horst Gerlach, Robert Clyde Mitchell, Williams M. Meyers, Prem L. Sarup, Henry S. Willard

'51 Robert L. Dessecker, Norah Levy, Werner H. Schramm

'52 Ivan Brod, Hermann Ernst, Thomas M. Evans, Willi G. Graeter, Hermann F. J. Holzheimer, William G. Kerr, Hannelore Koenig, Josef K. Pfaffelhuber, Clair W. Pike, Arthur E. Sherman, Jr.

'53 Jean Marie Pascall Gilbert, Ki Suk Han, Kurt H. Keilholz, John Gordon Lees

'54 Gurth C. Hoyer-Millar, Muneo Kondo, Frank M. Long, Aune H. Nuutilainen, Pablo S. Singer

'55 Khalid A. Al-Shawi, David Barker, Richard B. Globus, Donald Steinberg

'56 Geoffrey I. De Deney, Ralph E. Griffith, Jr., A. Eduardo V. Jardim, Adalbert Schlitt, Thomas F. Wilson

'57 Galal El-Adawi, Mary Jean Hartung, Emanuel G. Perdix, Rudolf M. Planert, Tadao Senda

'58 Jean-Pierre Comoy, Ahmen Husain, Mimica Janez, Andreas F. Jerusalem, Patricia A. Stoddard, Harding D. Williams, Jr., Adnan Hassan Zein

'59 Husuch-Rong Cheng, Dieter H. Conrad, Isagani P. Jose, Walter Koerber, Bernard W. Levine, Joseph A. Miller, Christian M. Moulaert, David John Titman

'60 Yu-Kun An, William L. Ginsburg, David N. Hurwitz, Krasin Nandhakij, Herman G. Roos, William Sze

'61 Kamil M. A. Attar, Peter P. W. Boehm, Virginia M. Diaz, Sabahat Minarecioglu

'62 David L. Bynum, Amelia G. De Castro, Allen C. Kaplan, Lydia F. Veloso

'63 Shakir Nasir Haider, Rigoberto E. Jara, Wolfgang Kenneweg, Richard W. Mason, Jr., Reiner Schattenfroh, W. Ronald Toth

'64 E. Alan Brumberger, John M. Cohen, Franco Cossu, Herwig A. Desmedt, Richard Fredrick Gerber, Crispino P. Reyes, Anneliese Smith

'65 Omar Hassan Ads, Samkhet Boonyanate, Raymond Stults, Alfred Winterstetter

'66 Judy Body, Roderick Mac L. Bryden, John L. Chamberlain, Angelina G. Gonzalez, Stephen B. Graves, Berge Gregian, Takakazu Hiyane, Asuncion B. Kalalo, Ronald P. Kaufman, Paul Taylor

'67 Hope K. Blucher, Robert L. Cohrs, Som Intarapayoong, Charles W. Stage, III, Carmen E. Temprosa, Thomas B. Temprosa, Jr.

'68 Rudolph Halberstadt, Paul Leleux

'69 Lance S. Grode, Hughes Jacquin, David L. Jamison, Michael H. Schaeffer, Willis W. Snyder, Paolo Vampa

'70 Leonidas Ananiades, David Alan Goldstein, Raghunath V. Kelkar, Herbert Franz Koeck, Frans Jozef Lavrysen, Philip M. Suarez

'71 Ali Kanouni, Jack R. Marker, Merton A. Shill

'72 Edward A. Botchwey, Constant Butijn, Pensak Chalarak, Yuki Furuta, Renadly Gutierrez, Bong Ho Lee, Urs C. Nef

'73 Jesus N. Borrillo, Jr., Geoffrey Caine, Jean-Claude De Haller, Ferd Ray Hall, Fritz Hippe, Gail T. Powell, Tzu-Ping Shad

'74 Estelle Chandler Busch, Arturo C. Corona, Robert J. Salstrom

'75 Song Yook Hong, Masahiro Kuwabara, Christoph Praeli

'76 Christian E. Kuse, Didier F. Nedjar, James Daryl White

'77 David R. Barrett, Michelle Denise Jordan, Setsu Kobayashi,

Santiago Peregrino, Bernhard Pfister, Denis E. H. Rouast, Irving Paul Seldin, Keiichi Tadaki

'78 Amil Barav, Steven L. Belton, Carlos Roberto De Sequeria Castro, Wen-Jen Chang, Marc Luc De Pauw, Thaddeus Rall Harrison, Bienvenido A. Medrano, Jr., Keith Randall Tokerud, Timm Allen Ver Duin, Franklin Eastwood Wright

'79 Birna Hreidarsdottir, Michael Earl Jackson, Isabelle M. Lang

'80 Chull Kim

'81 Peter G. Cawthorn, Alan A. Pemberton, Alisa A. Sparkia

'82 Dennis Gonzalez, Aaron Z. Gordon, Jr., Richard B. Uris, Craig E. Willis

Deaths

'12 **Ralph B. Le Cocq**
Erston L. Marshall, January 10, 1983, in Atlanta, Ga.

'17 **Irwin I. Cohn**, November 10, 1984, in Pontiac, Mich.

'21 **Lester E. Waterbury**, December 23, 1984, in St. Augustine, Fla.

'23 **George W. Rochester**, September 17, 1984

'24 **George D. Haller**, March 31, 1984
Walter S. McEachern, February 6, 1984

'25 **Paul Watzel**, October 15, 1984

'26 **Benjamin F. Watson**

'27 **William J. Eggenberger**, September 16, 1984, in Bloomfield Hills, Mich.
George H. Stalker, December 12, 1984

'28 **Morton W. Newman**, November 26, 1984

'29 **John K. Worley**, November 26, 1984, in Sun City Center, Fla.

'30 **Thomas V. Koykka**, February 3, 1985, in Cleveland Heights, Ohio. His wife, Frederica, died four days later, on February 7, 1985.
Marshall E. Smith, December 18, 1984, in Seattle, Wash.

'31 **W. Michael Carland**, July 30, 1984

'32 **Leroy A. Mote**, October 8, 1984

'33 **James O. Kelly**, December 16, 1984, in Ann Arbor, Mich.

'34 **Dean A. Esling**, December 2, 1984, in Kenilworth, Ill.

'35 **W. Lester Irons**, April 26, 1984
Edna Peach (Mrs. Glenn), December 16, 1984

'36 **George B. Kline**, September 11, 1984

'37 **Duane D. Freese**, January 11, 1985, in Tarpon Springs, Fla.

'38 **Leon Diamond**, July 9, 1984

'39 **Robert W. Ward**

'40 **Paul E. Jackson**, October 18, 1984
Marcus O. Shivers, Jr., September 11, 1984

'41 **Thomas S. Ogata**

'43 **Duane S. Van Benschoten**

'46 **William L. Matthews**, September 2, 1984

'47 **Roy De Gesero**
Howard J. Luxan, November 24, 1984, in Helena, Mont.

'48 **Percival S. Black**, November 22, 1984

'49 **William W. Wumkes**, September 14, 1984

'50 **John F. Shafroth**, October 28, 1984, in Denver, Colo.

'52 **Glenn I. Carbaugh**, November 28, 1984

'55 **Donald E. Paquette**, November 24, 1983
Cedric A. Richner, Jr., January 28, 1985

'63 **Conrad R. Courtney**, December 14, 1984

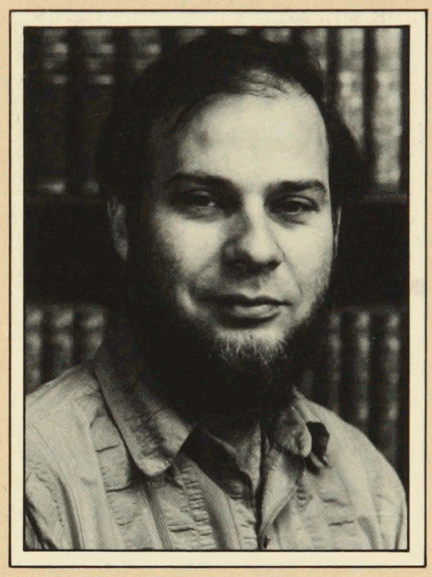
'64 **William T. Rutherford**, October 14, 1984, in Atlanta, Ga.

'66 **Edward C. Thompson**, March 17, 1984

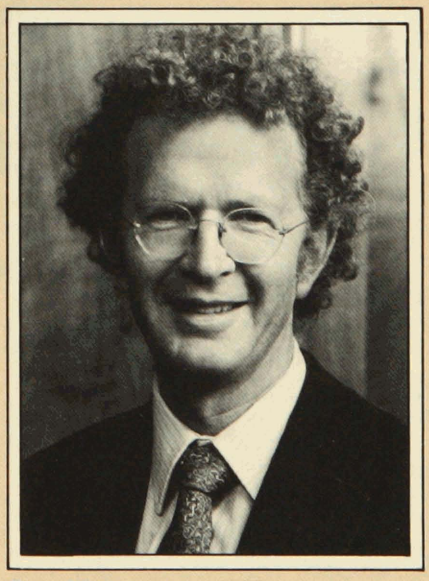
'82 **Sherryl Jean Swanson Rhee**, December 27, 1984

POINT/COUNTER POINT

A DEBATE ON IRONY AND INTERPRETATION



Richard Lempert



Peter Westen

Can irony play a role in the construction of statutes? In the following articles, legal scholars Richard Lempert and Peter Westen debate the point, taking, as their context, the Supreme Court decision in *United Steelworkers* v. *Weber*, a 1979 affirmative action case that brings to the fore the moral dilemmas posed by such programs.

Professor Lempert's initial article originally appeared in *Ethics* 95 (October 1984), published by the University of Chicago Press. Professor Westen's response, and Lempert's rejoinder to it, were written especially for *Law Quadrangle Notes*.

Richard Lempert is a graduate of Oberlin College and the University of Michigan Law School; he also holds a Ph.D. in sociology from the University of Michigan. He is particularly concerned with the problem of applying social science research to legal issues. He is editor of the *Law & Society Review*.

Peter Westen received his B.A. from Harvard College and his J.D. from the University of California, Berkeley, where he was editor in chief of the *California Law Review*. After serving as law clerk to Supreme Court Justice William O. Douglas, he worked abroad and in Washington, D.C. He joined the Law School faculty in 1973. His principal scholarly interests are in the fields of judicial procedure and legal theory.

POINT

The Force of Irony: On the Morality of Affirmative Action and *United Steelworkers v. Weber*

by Richard O. Lempert

In recent years, affirmative action has posed difficult problems not only for courts and legislatures but also for individuals who puzzle over what is just. The claims made both by the proponents of programs that establish preferences on the basis of race and by their staunch opponents have an intuitive appeal. The slave society that preceded the Civil War and the Jim Crow era that endured for a century afterward are a shameful legacy for a nation that seeks to define itself in terms of justice and freedom. The proportionate underrepresentation of black people in positions of power and privilege may plausibly be traced to this legacy, giving moral force to the claim that unique arrangements must be made to redress this imbalance. But the intuitive case against special preferences for blacks is also powerful. Demanding unequal treatment in the name of equality has an Orwellian cast to it, and those whites whose opportunities are diminished by affirmative action have typically played no role in creating the social conditions that arguably justify it.[1]

The Supreme Court has confronted the affirmative action problem on several occasions but has, to my mind, made only one statement that is truly helpful to those who are more concerned with the morality of such programs than with what the Constitution will be interpreted to permit. This case, *United Steelworkers of America v. Weber*,[2] arose out of a voluntary agreement between the United Steelworkers and the Kaiser Aluminum and Chemical Corporation, which reserved for blacks 50 percent of the openings in in-plant craft-training programs until such time as the percentage of black craftworkers in a plant was commensurate with the percentage of blacks in the local labor force. Before this agreement was signed and the programs in question established, Kaiser had hired as craftworkers only persons with prior craft experience. These hirees were almost invariably white because craft experience was usually available only through craft unions, and these unions had historically excluded blacks.

Brian Weber was a white production worker who wanted to enter his plant's craft-training program and would, by virtue of his seniority, have been admitted had not blacks with lower seniority had a preference. He brought suit alleging that his rights under Title VII of the Civil Rights Act of 1964, which prohibits racial discrimination in employment, had been violated.[3] The District Court and the Court of Appeals for the Fifth Circuit upheld Weber's complaint. A majority of the Supreme Court reversed the decisions below and upheld the program, taking pains to point out that the case involved statutory rather than constitutional interpretation. In reversing, the majority relied on two of the traditional guides to statutory interpretation, the plain language of the Civil Rights Act and the debate surrounding its enactment. They also relied on a less traditional resource, their sense of irony. Indeed, reading the opinion, it appears that it was irony which was ultimately controlling. The language of the statute offers little comfort to supporters of affirmative action, and Justice Rehnquist, in dissent, has the better of the argument from legislative history. Without their sense of the ironic, the majority would have had little from which they could legitimately discern a congressional intent to allow institutions subject to Title VII to agree voluntarily to affirmative action quotas.

Irony is not a usual guide to statutory interpretation, and so it is understandably slighted by both majority and dissent. The argument from irony is spelled out in a statement by Justice Brennan which, if not essential to a principled decision, might be dismissed as a rhetorical flourish. The rebuttal is confined to one of Justice Rehnquist's thirty footnotes. Searching for the spirit behind the Civil Rights Act, Brennan writes, "It would be ironic indeed if a law triggered by a Nation's concern over centuries of racial injustice and intended to improve the lot of those who have 'been excluded from the American dream for so long' . . . constituted the first legislative prohibition of all voluntary, private, race conscious efforts to abolish traditional patterns of racial segregation and hierarchy."[4] Rehnquist responds, "I see no irony in a law that prohibits *all* voluntary racial discrimination, even discrimination directed at whites in favor of blacks. The evil inherent in discrimination against Negroes is that it is based on an immutable characteristic, utterly irrelevant to employment decisions. The char-

acteristic becomes no less immutable and irrelevant, and discrimination based thereon becomes no less evil, simply because the person excluded is a member of one race rather than another. Far from ironic, I find the prohibition on all preferential treatment based on race as elementary and fundamental as the principle that 'two wrongs do not make a right.'"[5]

Rehnquist's rebuttal strikes a sound and familiar note. These are words that even those who approve of affirmative action programs want to agree with, and for this reason they constitute the single most useful statement the Court has produced for those who seek to understand the moral dilemma of affirmative action. To appreciate their powerful appeal is to understand why large numbers of decent people, including many supporters of the civil rights movement, have opposed affirmative action. To perceive Justice Rehnquist's error is to understand the moral fervor of those who support affirmative action and to recognize the underlying irony which makes the majority argument from irony in *Weber* essentially correct.

Rehnquist tells us that it is evil to base employment decisions (and by implication any decision that allocates important rewards) on characteristics that are utterly irrelevant to those decisions. We nod our heads in agreement, but, even while doing so, we are aware that employment and other decisions are often affected by characteristics that have no relationship to the advantage sought. These include styles of speech, height, family connections, hair length, and nervous tics, to name a few. The best among us are properly troubled by decisions which separate people (i.e., discriminate) on the basis of such irrelevancies, but as a society we do little to eradicate such discrimination. This may be in part because we think the task impossible (or not worth the cost), but it is also because, however much we deplore such irrational decision making, we do not think the discrimination involved creates an *intolerably* evil world.

Intolerable evil is not something that is defined for us but is, instead, the product of collective agreement. From time to time our views change as to what bases for discrimination are intolerable, emphasizing the subjective nature of our definitions. We can best appreciate this when our consensus as to what is tolerable breaks down, as has recently been the case with women and the handicapped.

Thus, the question posed by *Weber* is not that which Rehnquist implicitly answers, that is, Is discrimination on the basis of factors unrelated to the job in question evil? The fact that race is the basis on which Kaiser discriminated is as important as the fact that race is unrelated to job skills. The crucial question is whether such racial discrimination is intolerably evil, or whether, evil or not, it is to be tolerated like, for example, discrimination on the basis of obesity.

The question does not appear difficult. Most of us have been taught a correct answer. Race is special, and discrimination on the basis of race is intolerable. But why is this so? Why does racial discrimination excite us when so many other kinds of discrimination do not? It is because of the way we interpret history, associating racial discrimination with practices that now appear self-evidently evil: forcing blacks from their homeland, enslaving blacks, lynching blacks for actions that among whites would not be criminal, intimidating blacks who sought to exercise their rights—in sum, systematically disadvantaging a people in almost every way that mattered because of the color of their skin. Blacks are not the only Americans who have suffered the evils of discrimination, but no other group has been disadvantaged simultaneously in so many spheres, over such a long period of time, and in such a peculiarly American way. Before we were conscious of this, "to be discriminating" meant to have good taste. It is the suffering of black people that has given discrimination its bad name.

In this lies the deeper irony of *Weber*.[6] A claim made by a white person as a member of the dominant majority draws its moral force largely from our collective horror at centuries of oppressing black people. It would be ironic indeed if evils visited on blacks had lent enough force to the moral claims of whites to prevent what appears to many at this point to be the most effective means of eliminating the legacy of those evils. Legislatures do not usually intend to act ironically. The majority in *Weber* understood that Congress in 1964 was attacking the evil of discrimination and not the word. Sensitive to the irony that Rehnquist could not see, they decided the case correctly.

1. For purposes of this essay I shall perceive the world as black and white. One implication of the argument that follows is that affirmative action programs for groups such as women or Chicanos are more difficult to justify than affirmative action programs for blacks.
2. United Steelworkers of America v. Weber, 443 U.S. 193 (1979).
3. Title VII provides in part: "It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling . . . on-the-job training programs to discriminate against any individual because of his race . . . in admission to any program" (Civil Rights Act, 1964, sec. 703[d], 78 Stat. 256, 42 U.S.C. Section 2000e–2002[d]).
4. United Steelworkers v. Weber, 204.
5. Ibid., 228–29 at n. 10.
6. There is a "shallower" irony as well. The in-plant training program in *United Steelworkers* was begun in an effort to redress the racial imbalance in Kaiser's craft work force. But for this need, which existed because of the legacy of discrimination against blacks, there would have been no in-plant training program for Brian Weber to be excluded from, or, if he simply waited a bit longer, to enter.

COUNTERPOINT

The Role of Irony in the Construction of Statutes

by Peter Westen

L'ironie est le fond du charactère de la Providence.
—Honoré de Balzac

My friend and colleague Richard Lempert makes important and interesting observations about the history of racial discrimination in this country, about the difference between discriminating for blacks and discriminating against them, about the dilemmas of affirmative action, and about the meaning of the 1964 Civil Rights Act. I have no quarrel with him on any of those issues. I do have misgivings, however, about what I regard as the most original of the things he has to say—namely, that lawyers can usefully advert to the existence of *irony* in determining the meaning of statutes. I do not believe that true instances of irony are, or ever can be, useful to lawyers in construing statutes. Nor do I believe that potential instances of irony are illuminating. But even if potential irony is illuminating in some cases, I do not believe by Lempert's own description of the *Weber* case that it can lend any support to the *Weber* Court's construction of the Civil Rights Act of 1964. Lempert's argument about irony in *Weber* consists of four steps:

(1) The question in *Weber* was whether a private employer who voluntarily adopts a racial preference for blacks in a job-training program thereby unlawfully "discriminate[s]" against white applicants "because of [their] race" within the meaning of the Civil Rights Act of 1964;

(2) Justice Rehnquist, writing for the dissent in *Weber*, "has the better of the argument from legislative history" in arguing that racial preferences as described in (1) do violate the Civil Rights Act of 1964;

(3) Given that Congress adopted the Civil Rights Act of 1964 in large part to give blacks the rightful place in American society that they have for so long been wrongfully denied, it would be ironic if the Civil Rights Act were construed to invalidate a mechanism that many people (and most blacks) believe to be the most effective means of giving blacks their rightful place in American society;

(4) The potential irony described in (3) adds sufficient force to the majority's position in *Weber* to override the reading of legislative history by Justice Rehnquist described in (2).

I am prepared to agree with Lempert on steps (1), (2), and (3). But I do not agree with his conclusion in step (4), because I do not believe that the potential irony of Justice Rehnquist's position overrides what Lempert concedes to be a persuasive reading of legislative history. Moreover, I do not believe that potential irony is ever likely to carry weight in construing a statute, because when irony occurs in the construction of a statute, irony is likely to be inevitable however one construes the statute.

To understand the uses and nonuses of irony in law, it is important to know what "irony" means. We ordinarily use the word "irony" in two quite different senses. We sometimes use it to refer to the figure of speech of explicitly saying one thing while implicitly saying the opposite. Thus, when Stalin asked of the Pope, "How many divisions does he have?" Stalin was being ironic. What Stalin explicitly said ("I do not know how many divisions the Pope has") was the opposite of what he really meant ("I know how many divisions the Pope has—none!"). As the dictionary puts it, irony is

> A figure of speech in which the intended meaning is the opposite of that expressed by the words used, usually taking the form of sarcasm or ridicule in which laudatory expressions are used to imply condemnation or contempt (Oxford English Dictionary, Vol. 5, p. 484).

Sometimes, on the other hand, we use "irony" to refer not to a figure of speech, but to a state of affairs that has turned out to be the opposite of what one expected. It is the latter meaning of irony to which the dictionary refers when it defines irony as

> A condition of affairs or events of a character opposite to what was, or might be, expected (Oxford English Dictionary, Vol. 5, p. 484).

This second sense of irony can arise in two settings. It can arise *descriptively*, when what a person actually does (or is) turns out to be the opposite

of what he expected to do (or be). Thus, it is ironic that John Alden eventually married Priscilla himself, because John Alden expected to be courting her for Miles Standish. Alternatively, irony in the second sense can occur prescriptively, where what a person feels morally obliged to do turns out to be the opposite of what he expected to feel obliged to do. Thus, it is ironic that Thomas Jefferson as President felt he ought to acquire the Louisiana Purchase for the United States, because he had always believed that the national government lacked the authority to make such acquisitions without constitutional amendment.

Prescriptive irony, in turn, can arise for a variety of reasons. It can occur because a person simply changes his mind about what he believes he ought to do. Thus, the irony that Richard Nixon felt that he ought to be the first President to reopen relations with the People's Republic of China after he had personally led the opposition to such relations for so long can be explained by the fact that Richard Nixon changed his mind. Alternatively, prescriptive irony can also arise when circumstances force one to choose between values that one had always expected to be able to embrace simultaneously. Thus, when Thomas Jefferson acquired the Louisiana Territory, it was not because he had changed his political views, but because circumstances forced him to choose between two political views that he had always expected to be able to harmonize. He had always believed *both* that the United States ought to keep the Mississippi free for American navigation and commerce, *and* that the national government ought not to acquire vast territory without constitutional amendment. He had been able to adhere to both beliefs simultaneously, because circumstances had not forced him to choose one over the other. When Spain sold Louisiana to Napoleon, and Napoleon threatened to close the port of New Orleans to American navigation unless the United States purchased the entire Louisiana Territory, Jefferson was forced to decide which of the two beliefs was stronger. It is ironic that he chose to purchase Louisiana, just as it would have been ironic if he had chosen to let Napoleon close the port of New Orleans; but the ironies are nothing more or less than a spelling out of the value judgments he made when he was unexpectedly forced to trade one value for another.

What, then, does this taxonomy of irony have to do with the construction of statutes? It means, I think, that when we speak of irony in connection with statutes, we are referring to the kind of irony that obtained when Jefferson acquired the Louisiana Purchase. By calling the construction of a statute "ironic," we do not mean that the legislature used a figure of speech by which it sarcastically said the opposite of what it really meant. Nor do we mean to be referring to a descriptive state of affairs that is the opposite of what the legislature expected (or, at least, we are not referring *only* to such a descriptive state of affairs). We are referring to a prescriptive irony that consists in a legislature's now being construed to have prescribed something that it did not expect to be prescribing. Moreover, when the latter irony obtains, it is not because the legislature (or court construing the legislature) changed its mind, or because the legislature (or the court construing the legislature) is hypocritical. It is because the world has turned out to be so different from what the legislature originally expected that the legislature cannot be deemed to have prescribed all the things that it once expected to be prescribing.

To illustrate, assume that Justice Rehnquist had rightly prevailed in *Weber* and that the Supreme Court had construed the Civil Rights Act as prohibiting private employers from adopting voluntary affirmative action programs for job training. I assume, with Lempert, that we would all regard such a decision as ironic. But why? What do we mean by calling it "ironic"? In what does the irony consist? Presumably it would consist in the Court now ascribing to Congress a desire to prescribe something (i.e., to prohibit private employers from voluntarily adopting racial preferences for blacks) that is very different from what Congress expected to be prescribing (i.e., to permit private employers to take whatever voluntary action was necessary to redress racial imbalance in the workplace). Why, then, would a court ever construe a statute in such a way as to create irony? For the same reason that Jefferson ended up acting ironically. For the same reason that Balzac called irony "the basis of the character of Providence." Because the world has so changed from what Congress originally expected in 1964 that the Court must ascribe to Congress a desire to do something Congress never expected to have to do if the Court is to give effect to something it believed Congress desired to do even more—that is, to prohibit private employers from voluntarily classifying people, white or black, on the basis of race. Congress presumably intended in 1964 to prescribe two things: to permit private employers to take whatever voluntary action appears to be necessary to eliminate racial imbalance in the workplace; and to prohibit private employers from classifying employees on the basis of race. Congress believed at the time that it could simultaneously give effect to both prescriptions. It now appears that the world is different from what Congress expected—that one must choose between allowing employers to do what now appears to be necessary to eliminate racial imbalance in the workplace, on the one hand, and prohibiting them from classifying employees on

the basis of race, on the other hand. If the Court had followed Rehnquist and prohibited affirmative action plans, thereby creating irony, it would have done so only because it believed that irony was the consequence of giving effect to what Congress really desired to do under circumstances that were so different from what Congress originally expected.

If I am right about the relation between irony and statutes, it follows that true instances of irony can never be a guide to the construction of statutes. True irony cannot be a guide to statutory construction because true instances of irony arise only after a court has already gone through the process of determining what the legislature really meant to prescribe under changed circumstances. The irony does not precede the construing of the statute. It is a consequence of construing the statute. It is simply a spelling out of legislative desire in the face of fate's having upset the legislature's plans.

Now it might be argued that while true instances of irony cannot play a role in the construction of statutes, that potential irony can play a useful role. Thus, Lempert might argue that while irony can play no role in the construction of the Civil Rights Act once one has already determined what Congress would have intended under present circumstances, the potential irony of Rehnquist's construction can play a role in determining what the Civil Rights Act means when one is *uncertain* as to what Congress would have intended under present circumstances. I see two problems, however, with the latter argument. First, it ignores the fact that where one plausible construction of a statute creates irony in one respect, the alternative construction will often (if not always) create counter-irony in another respect. It is no accident that this should be so. It is a consequence of the situation that must obtain if construction is to create irony in the first place. Irony is only possible if the situation has so changed that the legislature must now be deemed to have chosen one or the other of two values that it once expected to prescribe jointly. If it would create irony to now construe a statute in such a way as to prefer one value (say, A) over the other (say, B), it would also create irony to opt for the alternative construction of selecting B over A.

Take the *Weber* case. Lempert is right that Rehnquist's construction would be ironic, because it would attribute to Congress a view that Congress in 1964 did not think it would have to take. But by the same token, the majority's construction of the Civil Rights Act is also ironic, because it attributes to Congress, in adopting one of the great antidiscrimination statutes in history, a desire to permit employers to discriminate against employees on the basis of race.

Second, even if potential irony were an argument against a given construction of a statute in an ambiguous case, it is not an argument against a given construction that has already been determined to be supported by a legislative history, because the irony then is nothing but a spelling out of what legislative intent has turned out to portend. Yet Lempert seems to assume that Rehnquist was persuasive in his analysis of legislative history. If Rehnquist was indeed right in his analysis of legislative history, then irony can do nothing but spell out the consequences of that history.

I would like to conclude by emphasizing what I am *not* saying. I am not saying that voluntary affirmative action programs by private employers should be deemed illegal under the Civil Rights Act; or that Rehnquist was right in his analysis of legislative intent; or that the alternative constructions of the Civil Rights Act are equally strong. I am suggesting, rather, that even if Rehnquist has at most a plausible argument in support of his construction of the statute in *Weber*, irony can play no role in deciding who was right in *Weber*, because irony arises whichever way the case is decided.

REJOINDER

by Richard O. Lempert

Peter Westen, in accepting an invitation to comment on my article, has properly focused not on the substantive merits of affirmative action but on the more interesting and general issue of the role of irony in statutory construction. I respond briefly to clarify one important particular in which Peter misconstrues my remarks, and to comment on what this implies for our respective positions.

I write that Justice Rehnquist "has the better of the argument from legislative history." Peter takes this to mean that I concede Justice Rehnquist's position "to be a persuasive reading of legislative history." To say that someone has the better of the argument is not to be persuaded. There is in *Weber*, as there often is when difficult questions of statutory interpretation arise, legislative history pointing in different directions. Moreover, the task is not to determine what side can find more comfort in the floor debates, but rather how Congress, most of whose members were silent, intended the statute to apply in the case that arose or how Congress would have intended it to apply had they contemplated the case in question.

In these circumstances, I do not think that any aid to interpretation should be discarded *a priori*, as Peter would apparently have us do with irony. Nor do I think irony is necessarily indeterminate in its implications. While competing meanings may have different ironical aspects, this does not mean that irony cannot be an aid in choosing between them. Just as not all plausible interpretations of language are equally persuasive, not all ironical implications are equally bothersome. In the instant case and in other cases where a court must apply a statute to an issue that was not anticipated when the statute was enacted, a court is, it seems to me, proceeding correctly when it identifies the basic purpose of the statute and from this perspective evaluates competing interpretations sensitive to the ironies they produce. Thus, had Peter stopped after writing, "while irony can play no role in the construction of the Civil Rights Act once one has already determined what Congress would have intended under present circumstances, [it] can play a role when one is *uncertain* as to what Congress would have intended . . .," I would have agreed with him entirely. Indeed, if there is an irony in our interchange, it is that Peter more than I begins to spell out the basis for this position. This is an important contribution. ⊠

Tale of Boxley Valley

a case history in the management of the national parks

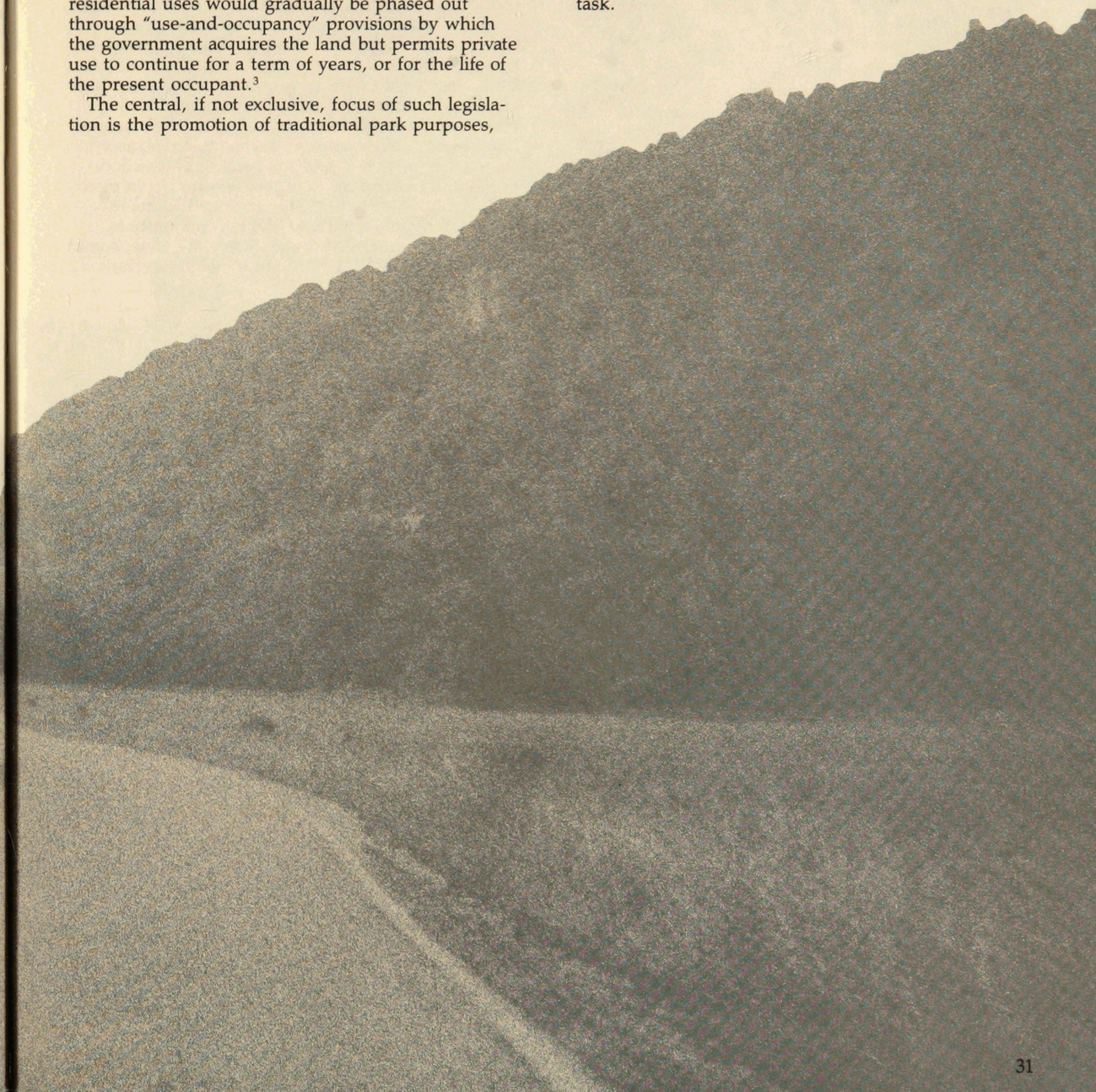
by Joseph L. Sax

Though everyone thinks communities are important, they—unlike individuals and property—have never attained the formal protection of the law.[1] So long as there is a public purpose, a town or a neighborhood can simply be extinguished to make way for a dam or an industrial park.[2] I do not propose here to put forward a theory of rights for communities, or even to attempt a legally acceptable definition for that ambiguous and elastic word. Instead, this is a brief report about a little-known corner of public activity that has demonstrated sensitivity to preserving community life. My illustrative case suggests that it is possible for government to articulate and pursue policies that give content and importance to the idea of community. What larger conclusions might be drawn from this little story I do not, for the moment, suggest.

In recent years a number of new units in the national park system have been established in places where there already are human settlements, rather than, as was traditionally the case, in those parts of the public domain that were essentially uninhabited wilderness. Since parks are created to preserve natural resources and to facilitate public recreation, the question inevitably arose of how the park service should deal with existing settlements whose presence advanced neither resource preservation nor public use.

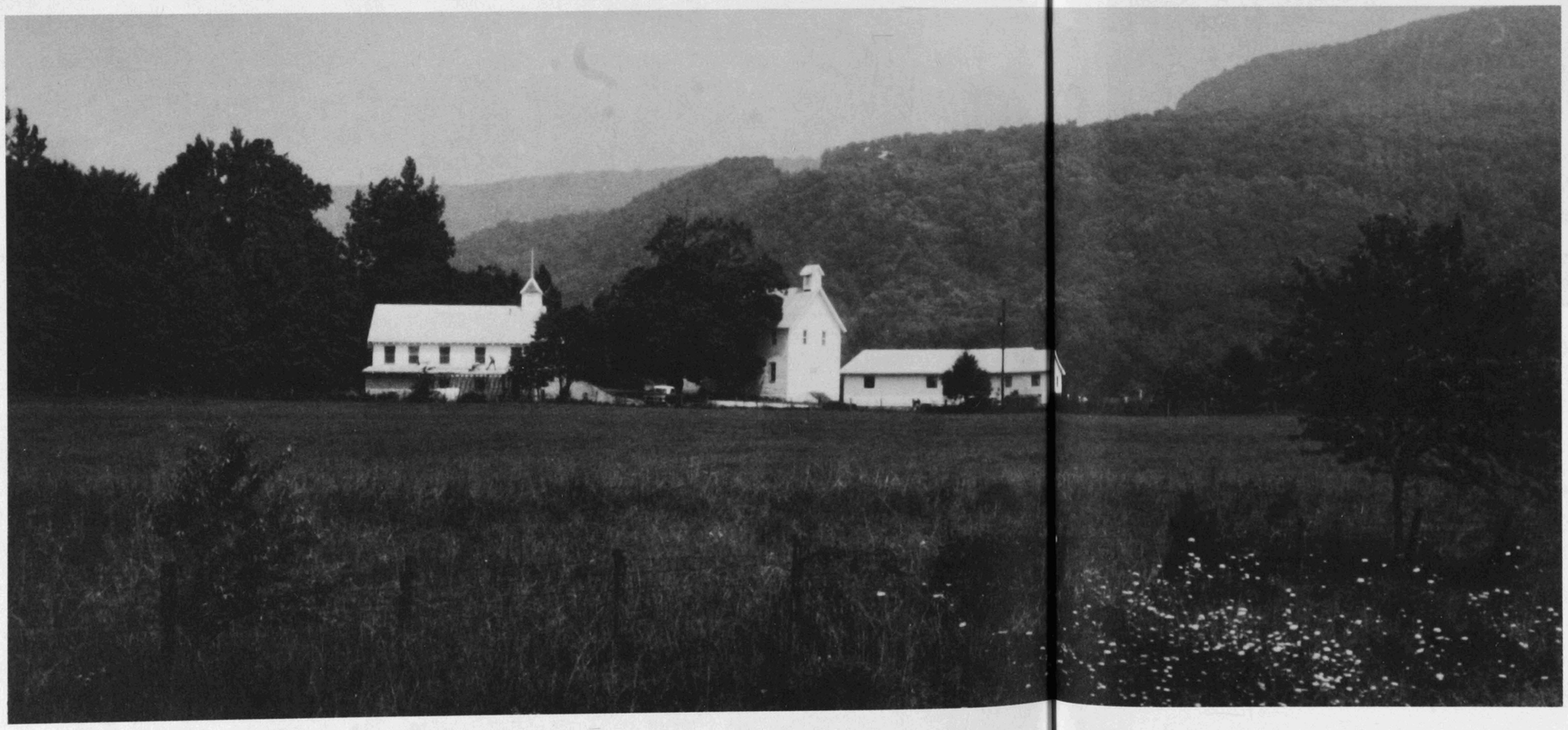
The legislation governing such places reveals that Congress has been aware of the problem, but that neither Congress nor the Park Service had thought through a strategy for dealing with it. In general, the idea was that undeveloped land would be left as it was, that existing residential uses would temporarily be left intact when they didn't intrude upon other purposes for establishing the park, that commercial activities would be removed, and that incompatible residential uses would gradually be phased out through "use-and-occupancy" provisions by which the government acquires the land but permits private use to continue for a term of years, or for the life of the present occupant.[3]

The central, if not exclusive, focus of such legislation is the promotion of traditional park purposes, mitigated only by compassionate concern for the sudden removal of residents. The Park Service, as the administrator of these laws, has had a strong inclination to minimize the presence of people living within park boundaries. In light of its experience, focused principally on the great Western nature parks, it is not surprising that it is more comfortable managing natural resources than people, or that it has viewed returning land to its natural condition as its primary task.



If one thinks only of the rights of individuals, the conventional use-and-occupancy, gradual removal technique I have just described is not a bad one. As soon as one begins to consider the aggregate of the people affected as a "community," however, the traditional practice is clearly revealed as unsatisfying—as the Park Service itself discovered when it was put into effect, against considerable resistance, in such places as the Upper Delaware River in Pennsylvania and the Cuyahoga National Recreation Area in Ohio.[4]

To understand why, one need only imagine a situation in which a functioning village is located in the midst of a newly authorized park. Some of the land is acquired by the government, commercial uses are removed, some owners sell out immediately, others remain under use-and-occupancy agreements ranging from a few years to several decades, and some other owners—perhaps because of their location, influence or very long tenure—are left in place with the hope that eventually they will voluntarily sell out. The result is that a viable community is gradually programmed to die: Stores are gone, some houses are boarded up and empty while the Park Service decides what to do with them, others are demolished, and, as time passes, more and more of the residents must leave as the terms of their occupancy agreements end.



The Park Service, having followed this pattern in several places, was apparently surprised to discover just how much opposition and controversy it had generated.[5] Its view in general, and until quite recently, was that the people in such situations had little to complain about. From its perspective, fair or even over-generous compensation was paid when land was purchased or condemned. Occupancy agreements allowed ample time for other living arrangements to be worked out. Even where owners were swiftly removed, nothing more seemed to be at stake than the long-accepted right of government to exercise its power of eminent domain. And, since parks are established around natural features of national importance, it was believed that no individual should be able to assert a private right to capture the value of those resources for their personal benefit. The removal of private users was seen, at worst, as a fully compensated redistribution from the few to the citizenry as a whole. And there were some cases in which the policy seemed to work successfully, as at Shenandoah National Park, where the removal policy permitted the land to return to its essentially natural state. The area is now highly prized and much used by people from Washington, D.C., and the nearby Virginia area.[6]

Certainly nothing in this traditional approach is, taken on its own terms, wrong. The difficulty was rather that the Park Service took a highly disaggregated view of the situation. Piece by piece, taking each family and each item of property as a separate entity, every right attaching to those interests was amply vindicated. What was missing, of course, was the question of whether there was something consisting of all the pieces together—a community.

In 1972, Congress established the Buffalo National River in Arkansas as a unit of the national park system.[7] Though there were several viable villages within the boundaries of the new park, no special attention was paid to them in the statute creating the Buffalo National River. The law simply provided that the park was established to conserve and interpret an area containing unique scenic and scientific features, and to preserve an important segment of the River. The secretary of the interior was authorized to acquire privately owned land within the park boundaries. Immediate acquisition was permitted for those places determined to be necessary for administration, development, access and public use; other noncommercial, residential or agricultural use was to be acquired on condition that the owners be permitted to retain use and occupancy for a period of time.

Within the Buffalo National River is a small village known as the Boxley Valley. It consists of some forty dwellings with attached small farms, a church, a school, a community building, and a store—some hundred plus structures in all. Boxley is not a very prepossessing place, but it presents a highly attractive and increasingly rare example of a traditional Ozark Valley farming community. Some of its buildings, houses and barns are considered fine representatives of vernacular country architecture.

Park Service policy for the Boxley Valley went through several interesting stages. At first, as you would suspect from what I have already said, the policy was to acquire properties and gradually move the residents out, thus permitting the land to revert to a more natural condition and making it available for recreational use by park visitors. The store was acquired, as were a number of homes and farms. Some owners took their compensation and moved out; others took use-and-occupancy agreements for a term of years. A number of buildings owned in fee by the government are now boarded up and stand empty. Somewhat more than half the houses in the Valley are unoccupied.

In a later modification of policy, the Park Service permitted some owners to remain permanently, negotiating scenic easements designed to control

development and assure the continued rural character of the scene. Plans for recreational visitor use were largely abandoned. The historical value of the Valley began to receive attention, both as a traditional landscape and as a setting for several architecturally and historically significant structures. Finally, in the autumn of 1984, the Park Service began the process of developing a new plan for Boxley Valley--in part because of local resistence and also because the removal policy at places like the Cuyahoga and Delaware Valleys had become publicly controversial. It is this new plan, an unexpectedly forward-looking step in confronting the problem of community, that I now want to describe.[8]

It is proposed that the village not be returned to its natural, presettlement condition. Indeed, the plan leans in precisely the opposite direction. It proposes

that the entire Valley be listed on the National Register of Historic Properties so that the small farms, with their aesthetically pleasing fence lines, will be preserved and worked. Historically valuable houses and barns would be occupied, maintained and, where necessary, restored.

The plan proposes "to protect the natural and historic character of the valley while allowing and encouraging a relatively natural evolution of the rural landscape." The hope is to return structures to private ownership and use, with stipulations designed solely to protect natural and cultural resources, and to turn the land back to the people who live there, while maintaining federal control of the river corridor itself. The scheme will encourage exterior preservation and restoration, preferring rehabilitation over new construction. The plan aspires to maintain density essentially as of the park's creation in order to maintain the rural character of the landscape. It will allow new construction with modern materials, but seek compatibility in size, scale and character. It will let nonviable land revert to forest for use by local residents as woodlots. Grazing and agriculture will be controlled only to protect water quality in the river. Reestablishment of the store will be encouraged in order to sustain a sense of community within the Valley. Residents will be encouraged to develop bed-and-breakfast facilities to meet tourist demand, rather than awaiting the arrival of commercial motels and their attendant facilities. The hope is thereby to preserve both the physical character of Boxley and its economic viability. Finally, there will be technical assistance to residents on matters such as structural preservation; the assistance will take the form of incentives rather than coercion.[9]

While the inclination under the current plan is to save rather than to destroy, a preservation strategy raises some problems of its own. If the Valley is to be maintained for its historic and aesthetic values, rigorous controls may seem to be needed. The kind of problem that arises seems trivial, but is revealing of the complexity of any program focused on community as a value. Should an owner be allowed to tear down a traditional barn and replace it with a cheaper and more useful aluminum structure? What if residents want to install the sort of obtrusive "saucers" necessary to bring television to remote areas? What if they want to bring in mobile homes or add to their houses in untraditional styles? May they take down fences and enlarge fields, cutting away at one of the most striking visual features of the Valley? The Park Service realizes that in the Boxley Valley it faces unusual problems for which there are no con-

ventional answers. But it recognizes that in facing the sum of all these details, it is plumbing the largely uncharted depths of an important new area.

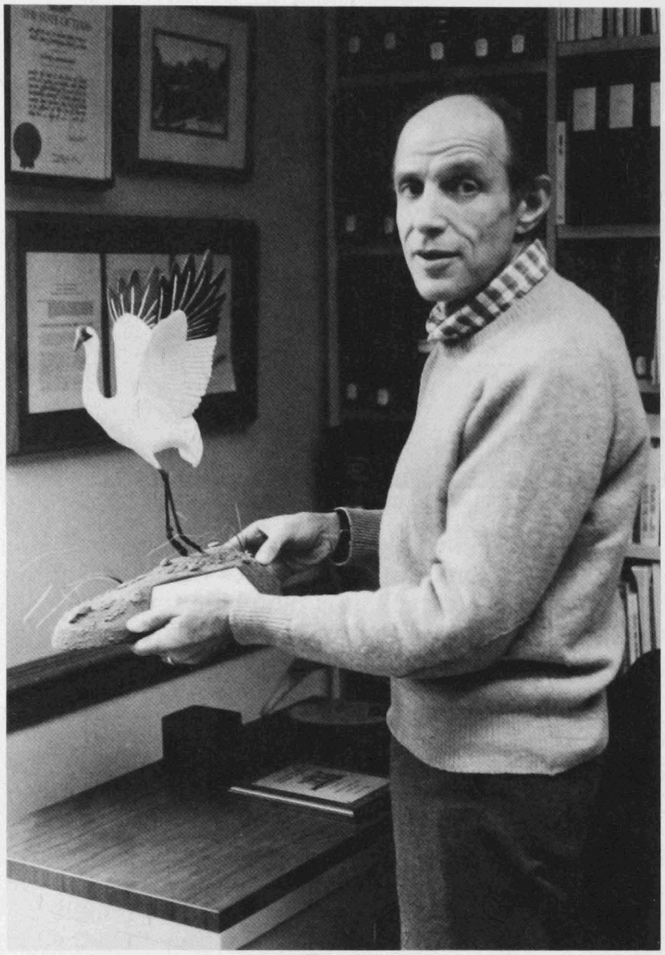
Insofar as one can elicit a policy from the Boxley Valley Plan as developed to date, the strategy looks something like this:

1. One should be reluctant to require of people that they arrange their lives to serve the demands of a larger external community, including the national community. Just as we hesitate to conscript people into public service in other settings, we should balk at demanding of people that they turn their village, or neighborhood, into a museum for our benefit, or that they abandon it to serve a larger public.
2. Diversity is a good thing in human settlements as well as in nature. Eclecticism is not a bad thing. There is a strong inclination in the parks, as elsewhere, to be intolerant of facilities and practices that do not conform to some preconceived plan or are not tidily consistent with it.[10] We should be reluctant to treat communities as if they were human bonsai trees. There is nothing incongruous in having a few human settlements remain within a national park facility such as the Buffalo National River, even though such parks are primarily devoted to maintaining natural systems.[11]
3. Diversity, which is to be encouraged, is not necessarily achieved simply by deferring to the smallest, or most local, unit. Diversity is interesting precisely because it reveals differences, variety, and the range of the human spirit. A policy calculated to promote and maintain community values should search out distinctiveness, not simply bow to local demands for hegemony. Such questions as whether there is a local lifestyle, an indigenous architecture, unusual local traditions or a special community flavor should be at the center of the community policy of national government. Is there a population that has generated some distinctive ties to the land, through continuity or by some special relationships that bind them to each other and to the place? Are local interests internally rather than externally generated? Is there authenticity in both the human and physical structure of the sort that Rene Dubois once called "the genius of a place"?
4. Where such distinctiveness exists, there should be a national policy to encourage, but not to coerce, its continuance. Only where there is a collision with national values of primary importance should the policy depart from that stand. Devices such as grants, tax credits, and professional assistance in restoring indigenous structures and maintaining the atmosphere of rural family farms are important elements of such an incentive policy. Where there are constituencies who want to retain the distinctiveness of their community, they deserve help, on the theory that the nation as a whole benefits by maintaining elements of its history and culture, no less in living communities like Boxley Valley than in museums and in the wilderness. In this way, it is possible to promote significant local autonomy and individuality consistent with the recognition that important

national values must, in the last analysis, prevail. Indeed, encouraging diversity and authenticity for those who are prepared to maintain it is itself an important national value. Such a strategy makes it possible to accept what might be called the triumph of the national community without either effacing respect for localism or, conversely, treating localism as independently self-justifying without regard to its content or its relationship to the values of the larger community.

The Boxley Valley story is modest and small in scale, but it is an encouraging sign that the question of community is beginning to get some attention in public land management. It deserves our attention as an experiment from which bigger things may grow. ⊠

1. Where community claims are assimilated to individual rights, as in the Amish school case, legal rights have been recognized. See generally, Symposium, "Tensions Between Religious or Ethnic Communities and the Larger Society," 41 Wash. & Lee L. Rev. 31 (1984). There have also been a number of specific protections given, such as protection of areas of origin in large scale water transfers. See, e.g., Weatherford, "Legal Aspects of Inter-regional Water Transfers," 15 U.C.L.A. L. Rev. 1299 (1968).
2. E.g., *Poletown Neighborhood Council v. City of Detroit*, 410 Mich. 616, 304 N.W.2d 455 (1981); *Brown v. United States*, 263 U.S. 78 (1923).
3. The policy originated in the law establishing the Cape Cod National Seashore, 16 U.S.C. sec. 459b-3 (1973), where it is recognized that most established facilities will remain permanently. For a discussion of federal techniques, see Sax, "Helpless Giants: The National Parks and the Regulation of Private Land," 75 Mich. L. Rev. 239 (1976).
4. See, e.g., Pontier, "Impasse on the Upper Delaware," Planning (Aug., 1984), at 14; "Public TV's Frontline Attack on the National Park Service," National Parks (Sept./Oct., 1984), at 7; "AFT Comes to Aid of Pt. Reyes Dairymen," American Farm Land Trust Newsletter (Dec., 1984), at 1.
5. An important public airing of the issue, which the Park Service found a bitter pill to swallow, was the Comptroller General's (unduly harsh, and not entirely accurate, but nonetheless revealing) report, *The Federal Drive to Acquire Private Lands Should Be Reassessed* (G.A.O., Dec. 14, 1979).
6. Perdue and Martin-Perdue, "Appalachian Fables and Facts: A Case Study of the Shenandoah National Park Removals," 7 Appalach. J., nos. 1 &2 (Autumn, Winter, 1979-80). On a similar situation in the Great Smoky Mountains, see Campbell, *Birth of a National Park in the Great Smoky Mountains* (1960), at 98-9.
7. 16 U.S.C. sec. 460m-8 (1972).
8. Draft Land Use Plan, Cultural Landscape Report, Environmental Assessment, Buffalo National River, Boxley Valley (U.S. Dept. of the Interior, National Park Service, Sept., 1984).
9. The potential for making a virtue of such mixtures of nature and man in the setting of the French regional parks has been noted in Sax, "In Search of Past Harmony," 91 Natural History (Aug., 1982), at 42.
10. One source of irritation to residents at Cuyahoga National Recreation Area was the statement of a former superintendent that houses should be acquired and removed whenever they were visible to recreationists on the river below, because they were 'intrusions' on the visual experience.
11. I emphasize that this is a policy for recreational type parks, not old style wilderness parks, and for *preexisting* communities.



Joseph L. Sax, the Philip A. Hart Distinguished University Professor, is an eminent authority in the field of environmental law. This article is adapted from an essay published in the University of Pittsburgh Law Review *(Vol. 45, No. 3), which reflected remarks delivered by Professor Sax at the University of Pittsburgh Law School as part of the Mellon Lecture Series.*

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