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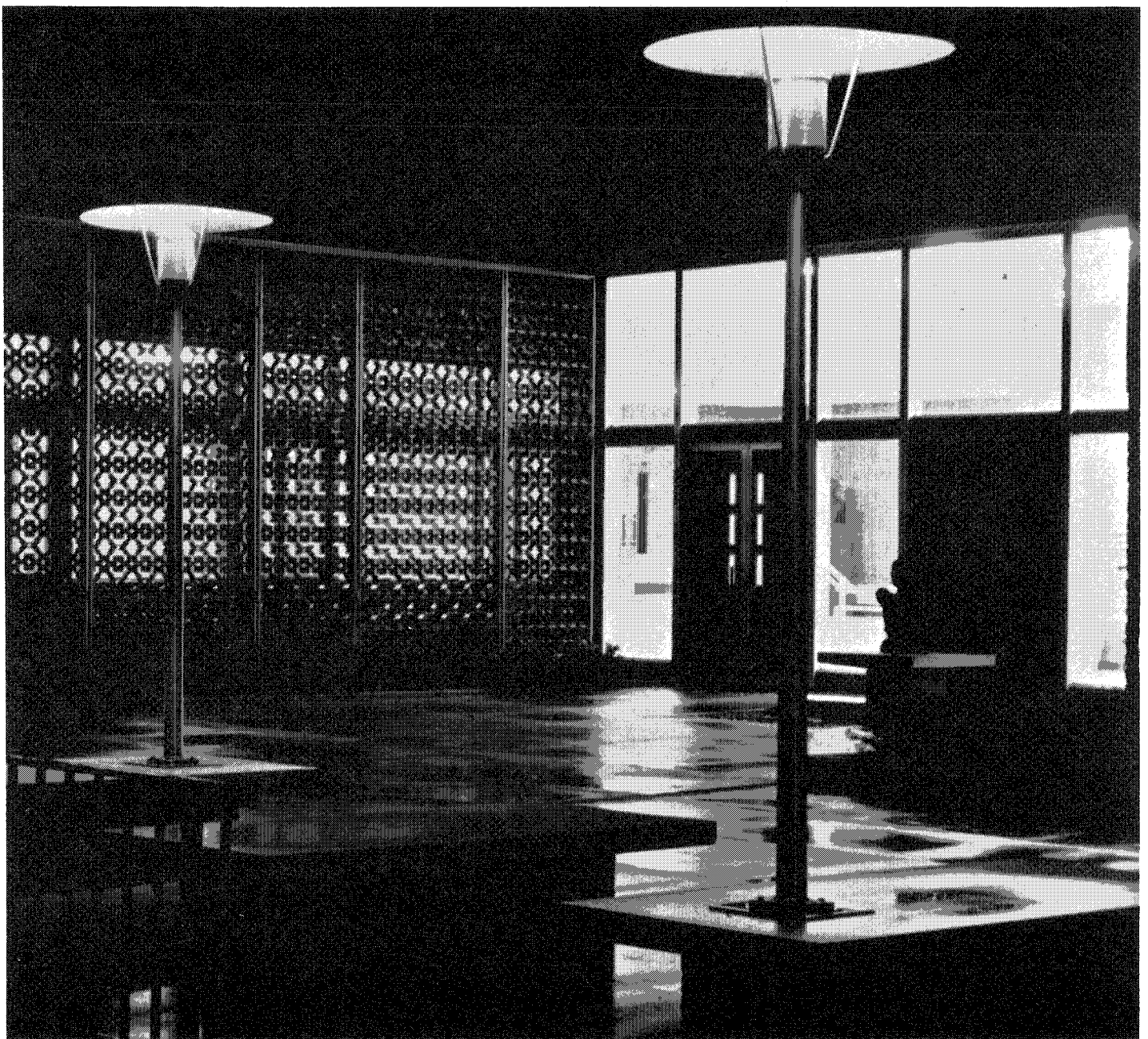
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# THE GAROYLE

Alumni Bulletin of the University of Wisconsin Law School

Volume XII No. 1

Fall 1980

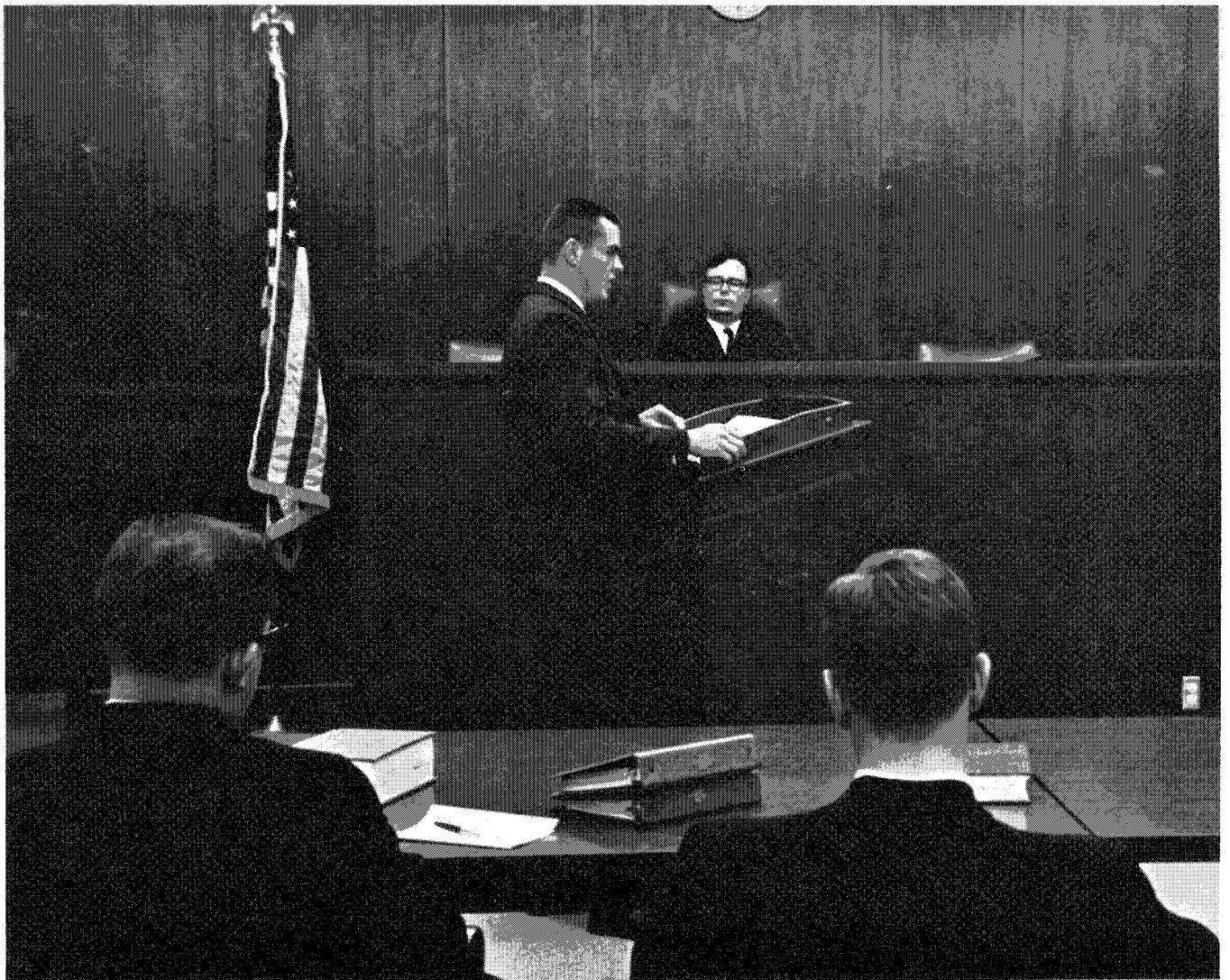


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## EDITOR'S NOTE

Last issue's "mystery" photo is a mystery no longer. A number of persons offered suggestions. Special thanks go to Phil Habermann, George Young, Larry Hall, Robert Johns, and to Ed Conrad and George Alderson who took leading roles in the event pictured. On May 10-11, 1957, as part of that year's Spring Program, the Law School sponsored a seminar on "Evidence in Automobile Personal Injury Cases." The panel was a truly distinguished group of trial attorneys: (left to right) Ed Conrad, moderator; Dean George Young; Robert Johns; John Kluwin; Judge Andrew Parnell (although one person identified this person as Ray T. McCann); David Beckwith, Sr.; Carroll Heft; Dorothy Walker; and Dudley Emmert. George Anderson, then court reporter to Judge Alvin Reis, sat in front of the panel. The seminar was held in the famous Room 2 of the old Law Building, and was, according to Mr. Conrad, "packed" for both days.

On the back page of this issue is a picture obviously taken in the Courtroom of the new Law Building. Evidence places it about 1963-65, although there is no clue to the participants or the occasion. Once again I invite your reports.

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## THE GARGOYLE

Bulletin of the University of Wisconsin Law School, published quarterly.

Vol. 12 No. 1

Fall 1980

Edward J. Reisner, editor

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## COMMENTS BY THE DEAN

From time to time the Gargoyle has focused on rather discrete segments of the numerous activities we collectively call the Law School. An issue about our students a couple of years ago met with great interest among readers. Similarly, another issue focusing on teaching in the basic curriculum was favorably received.

In this issue we feature one important segment of our research activities, namely, interdisciplinary legal research. Prepared initially for the annual meeting of the Law and Society Association held in Madison last June, the materials on interdisciplinary legal research at Wisconsin seemed to us to be of sufficient general interest to warrant publication in the Gargoyle. I am confident you will agree.

Professor David Trubek, who for the past two years has served as Associate Dean for Research, deserves most of the credit for developing the materials in this issue. As he points out, the story is not about the Law School alone. By its very nature, interdisciplinary legal research involves in-

teraction with other departments in the University. Nevertheless, the principal focus of the activities is in the Law School, and at least a dozen of our professors are more or less consistently active in this area.

We take great pride in their achievements--achievements which have brought distinction to the school. The achievements perhaps have not been completely cost free from the standpoint of our instructional program, but I believe they have been substantially so. Funding for this research has come almost entirely from what we call outside funding, that is, funds other than state appropriations. In the early years, private foundations were the main source of support; in recent years, various federal agencies have played an increasingly important role. Modest sums from alumni funds have been important in helping to fund preparation of project proposals. Thus, if there is an adverse impact on the instructional program, it does not result from any diversion of funds from instruction to research but rather

from the fact that professors go on research leave from time to time, thereby making themselves temporarily unavailable as teachers. On the other hand, those professors presumably will be better equipped to teach when they do return to teaching after the research leave is over. Moreover, we attempt to compensate for the impact of research leaves by hiring more faculty than we would in the absence of a strong research program, the assumption being that a certain number of faculty members will be on leave in any given year.

Interdisciplinary legal research of course is not the only type of research which goes on at our Law School. Probably no more than one-third of our faculty have participated in this type of research; the others engage in the more traditional research and public service activities in addition to their teaching. Nevertheless, as Professor Trubek points out, the Wisconsin interdisciplinary legal studies community constitutes one of the oldest and largest such groups in the nation.

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## Interdisciplinary Legal Studies

### BACKGROUND

The legal studies community at the University of Wisconsin has its origin in the "Wisconsin idea" — that the university should contribute to the well-being of the people of the state. Building upon this tradition and upon the legal-economics groundwork laid by John R. Commons and Richard T. Ely, Lloyd Garrison, who was Dean of the Law School from 1932 to 1942, took the lead in emphasizing research about the interaction of law and society. Scholars with multi-disciplinary interests, such as Nathan Feinsinger and Jacob Buescher, joined the faculty. A graduate program in law, leading to an S.J.D. degree, was started, and a course in Law and Society (later called Legal Process) was established as a regular part of the Law School's curriculum.

Important pioneering efforts took place during the early years. Jacob Buescher, in his work with applied property and water rights laws, was one of the first to study law in action. Nathan Feinsinger was involved in developing the new field of labor law. Willard Hurst's seminal work focused on understanding the historic role of law in the American economy and the economy's influence on the evolution of law. The first of what were to become many interdisciplinary faculty seminars took place, with participants from the Law School and the Economics Department.

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The 1950's was a time when the existing core of people and activities concerned with the law and social sciences was expanded and began to coalesce into the organized community it is today. A group of law faculty members and agricultural economists, under the leadership of Jacob Beuscher, undertook a study of land tenure patterns in developing nations. Willard Hurst directed a long-term study of the historic relations of law to the growth of the American—and, specifically, the Wisconsin—economy, with funding from the Rockefeller Foundation. Marygold Melli, Orrin Helstad, and Frank Remington worked on revising the Wisconsin Criminal Code, and succeeded in making it the first modern substantive criminal code in the nation. Fellowships provided by the Carnegie Corporation were used to extend field research measuring formal public policy against its reality in administrative agencies, courts, and law offices. A number of law faculty members, under a grant from the Ford Foundation, explored linkages between law, sociology, and economics. Frank Remington directed a landmark study of criminal justice administration, sponsored by the American Bar Foundation, which resulted in five comprehensive works describing the process of criminal justice administration from the early police stages through the final correctional stage. Two summer seminars were held to encourage interdisciplinary approaches to the study of criminal law.

Rapid growth took place in the 1960's. A sociology of law program, which later became the Center for Law and Behavioral Science, was established in 1963. Funded by the Russell Sage Foundation, it supported law and social science faculty members in exploring each other's disciplines. A program of interdisciplinary seminars was begun and, indeed, continues to the present, long after expiration of the Russell Sage grant. A number of collaborative research efforts emerged, including studies of the role of contract law in the selling and financing of automobiles, of Wisconsin judicial elections, and of wage garnishments, bankruptcy and litigation in four Wisconsin cities. In 1968 the first of four Summer Institutes in Behavioral Science and Law was held, under the direction of Joel Grossman, Jack Ladinsky, and Stuart Scheingold. Funded by the National Science Foundation, the Institutes offered a program of courses and seminars for graduate students and law students. Many of the more than 100 alumni of those institutes are now in the forefront of law and social science research and teaching.

Grants from the Ford Foundation and the Russell Sage Foundation enabled the Law School to add a non-lawyer police expert and a sociologist to its faculty, with consequent strengthening of the research programs in the law enforcement and correctional fields. An expansion of law-in-action opportunities for law faculty and students during the summer was made possible by grants from the National Council on Legal Clinics and the Wisconsin Council on Criminal Justice.

The *Wisconsin Law Review* initiated a Law and Society Section, which was underwritten by Russell Sage. Additional Russell Sage money was later used to found the Law and Society Association and to begin publishing *Law & Society Review*. Harry V. Ball, while at Wisconsin, served as the first president of the Association. The current president, Lawrence Friedman, and president-elect, Herbert Jacob, also spent their formative years in Madison.

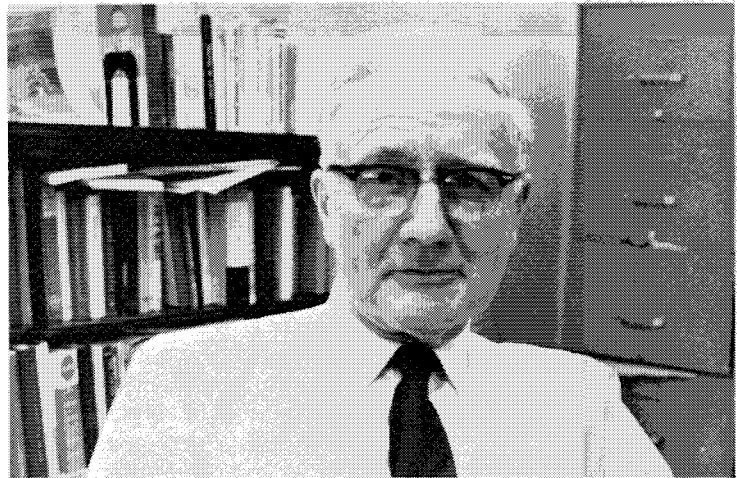
Today the University of Wisconsin's legal studies community employs many disciplines to study the law and draws support from many departments, institutes, centers, and schools. Held together through a series of informal mechanisms, this community produces a great deal of research in a variety of areas and uses the insights gained by this research in a wide range of graduate, undergraduate, and professional training. The effect of the interdisciplinary approach on teaching has taken three forms: first, degree programs, such as the Ph.D. in Development, which combine courses in law and other fields; second, cross-listed courses spanning more than one discipline and enrolling students from different schools or departments within the university, of which there are several examples in the field of deviant behavior alone and, finally, regular courses within the traditional Law School curriculum taught from an interdisciplinary perspective, such as Stewart Macaulay's contracts course.

Since its inception, the Wisconsin legal studies community has placed a high priority on maintaining and improving its national linkages. The University has made substantial contribution, both in terms of people and other resources, to the Law and Society Association and to the *Review*. In turn, the Wisconsin community has benefitted from these contacts. Mark Tushnet and other Wisconsin scholars have also been instrumental in organizing the Conferences on Critical Legal Studies, a series of conferences held annually since 1977 which have focused on bringing neo-Marxist perspectives to bear on current legal issues.

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**INTERVIEW:  
WILLARD HURST**

*J. Willard Hurst is Vilas Professor of Law at the University of Wisconsin-Madison and a pioneer in the area of legal-economic history. He responded to our questions about interdisciplinary legal studies.*



**Q. What would you consider the major intellectual achievements of the movement for interdisciplinary legal studies ("ILS")?**

A. First, the tendency to turn legal research and legal education away from what had been a quite abstract focus on rights, duties, privileges, and the like, into more of a concern for the factual bases of law and the factual impacts of law — particularly, to instill a good deal more skepticism than had existed about our knowledge of the cause-and-effect relations between law and the society at large. We have, over the years, tended to take too much for granted that law works in certain ways in its impact on society and that it is important in certain ways. And the more we begin to learn, in fact, about the interplay of law in the society, the more reason we have for being cautious about drawing cause-and-effect conclusions, but at the same time more insistent upon the necessity for thinking about law in terms of the way it does, in fact, work and not relying too much on merely verbal symbols or verbal formulae.

**Q. How would you assess the overall impact of "ILS"?**

In its origins in the late 1920's and early 1930's, the so-called realist movement in jurisprudence, which was essentially a desire to see law in terms of its factual operations—how it in fact worked and for what factually defined goals or objectives it worked—had a great impact on legal education, and not merely here at Wisconsin. I think, generally speaking, as I compare the approach to legal education when I was a law student, which was 1932-35, with the typical approach in most good American law schools today, there has been quite a revolutionary change in emphasis in the direction of probing for the purposes, the goals, the values which seem, in fact, to be embodied in what legal processes do.

I do think that since World War II—and here Wisconsin's experience, relatively speaking, has been somewhat different from that of many other places—the effort to use the social sciences and to seek out more knowledge of the actual social impact of law has had a more positive impact on the content of legal education than the realist movement had. The early realist jurisprudence was essentially negativistic or nihilistic. It was devoted to denying things or sweeping away old notions, and it did not pay a great deal of attention to what, if anything, it would put in place of what it got rid of. I think it is a fair statement that since roughly about 1950, those who have been interested in relating legal studies more to the knowledge of the society around and about the law have been concerned to find out more positively what is going on and to reach more affirmative conclusions as to the possible uses of law.

I don't think there was much impact on legal research, outside quite a narrow focus, in the law school world prior to about 1950. Up to that time, realist jurisprudence spent itself almost entirely in what today look like somewhat naive counting exercises. There was a great emphasis on getting quantitative data without, I think, sufficient attention to asking serious questions as to what you wanted the data for, and this collection was focused very largely on the courts. Again, we have in the last thirty years begun to see more of an effort to study the factual impacts of law as expressed through the legislative process, executive officers, and administrative agencies. And this has, I think, represented a very desirable maturing of interdisciplinary legal research. It still is, I think, a fair criticism that even as of 1980, interdisciplinary legal research tends to be unduly focused upon the courts. To some extent, of course, a division of labor has gone on. A good deal of research on the legislative-executive-administrative sides of law has been, in effect, committed to the political science departments. And I have no quarrel with that: I think it is largely a matter of accidents of academic history that we have a division

between law schools and political scientists as researchers. But even so, the law schools have been seriously lagging in making their own contributions to the research study of legislative-executive-administrative process. Although the political scientists and, to some extent, some of the people in political sociology have done very important work, I think they have not, since they have not themselves been legal professionals, gotten into the full range of questions that it would be desirable to get into in this area.

**Q. How have interdisciplinary legal studies had an impact on policymaking at the state and federal levels?**

A. There is much more sophisticated use of social science data when you get in the realm of the policy makers these days than there was prior to 1950. The kind of material that turns up in legislative hearings these days, or in documents filed in legislative hearings considering proposed public policy matters, represents a much more elaborate and sophisticated use of material, particularly from economics and sociology, than one would have found if you looked back at legislative hearings over a generation ago. And in the executive levels, of course, many administrative agencies today charged with rate-making responsibilities or environmental protection responsibilities, that sort of thing, by the very nature of their charges are drawn into very extensive use of this sort of material, and this involves their lawyers as well as their non-lawyer staff members.

**Q. Why has Wisconsin played such an important role in the "ILS" movement in the U.S.?**

A. Wisconsin played an important role in moving into a broader interdisciplinary interest in the law, in no small measure because of the creative period of the deanship here of Lloyd Garrison, who was dean of the school from the middle 1930's up to World War II. He wasn't here very many years, but Lloyd Garrison was a man of uncommon interest and an inquiring mind, whose instincts were to reach out to find out how law works in with the rest of society. He gave an initial impetus here, picking up some earlier threads — the Commons-Ely institutional economics tradition. One of the things, for example, that Garrison did here in the 1930's was to promote joint seminars between the Law School and the economics department, particularly in three fields: agricultural co-ops, anti-trust, and labor. These were very live, very vital seminars jointly conducted by faculty members from the Law School and from these other fields. They contributed a lot to the intellectual vitality of the university, not just the law school. And this very definitely did come out of the Commons-Ely tradition of institutional economics here, which, under the leadership of those men, had been strongly oriented toward concern with the legal order and how law and the economy meshed together. The special relation of the Law School to other departments was expressed in that early Garrison period primarily through this device of the joint seminars, which has continued today. We still have a number of joint seminars today, and this is relatively uncommon in the law school world.

After the war, Jake Beuscher of our faculty was a very creative figure in moving us toward a more active interest in fact-based research, and to the relations of the law and the economy, in particular. Beuscher was very interested in the relations of law to agriculture in Wisconsin and published extensively in that field. His research was based, not simply on doctrinal law, but on getting out and finding out how law was or was not serving the going business of agriculture. In addition to that, he was a real pioneer in the effort to bring legal studies into relation to problems with the environment — the physical and biological, as well as the social, environment. I think that Jake Beuscher probably was a generation ahead of his time, literally, in that respect, and deserves a great deal of credit, not only in his teaching, but also in his published work, for having led us in that direction. He was particularly vital in relating the law school to public policy making at the other end of State Street. Over the many years he was here, Beuscher was always deeply involved with legislative committees, and a good deal of the statute law which is on Wisconsin books today about land use controls has Jake Beuscher's drafting hand in the background.

**Q. What has been your personal attitude towards and role in "ILS" at U.W. and in general?**

A. Out of accidents of personal bias and interests, I became interested early in studying the history of law in relation to economic development in the United States. With the help initially of grants from the Social Science Research Council and the Vilas Trust, then later from the Rockefeller Foundation, I was able to keep myself on a limited teaching basis and use this free time for plowing intensively into legal-economic-historical studies, centered in large part around an industry study: the relations of law to the life course of the lumber industry in Wisconsin, which between about 1836 and 1910 ran the whole scale from very small beginnings to major position—at one stage, it was the principal industry of the state—and then to a decline into a very subordinate status. So it provided a complete life-cycle history to follow. I undertook to trace as far as I could all of the complex ways in which Wisconsin law related to the life history of that particular industry, from a functional standpoint.

The grant from the Rockefeller Foundation, which ran for nearly a decade provided me with fellowship money to bring here young law faculty members from other schools. Each one of them pursued a monograph of his own in Wisconsin legal-economic history, with my presence in the background as consultant and advisor. We eventually turned out about eight or nine published monographs dealing with such matters as railroads, the insurance industry in the state, problems with water purity, corporation law in Wisconsin—a fair range of legal-economics studies. My own books plus the Rockefeller monographs were, I think it is fair to say, the first major published effort made in legal-economic history in the United States. And I'm glad to see that we seem to have sown some fruitful seed, because within the last ten to fifteen years, particularly, one sees quite a tremendous increase in published work of this sort.



**Q. What are the major problems and challenges facing the “ILS” movement in the 1980’s?**

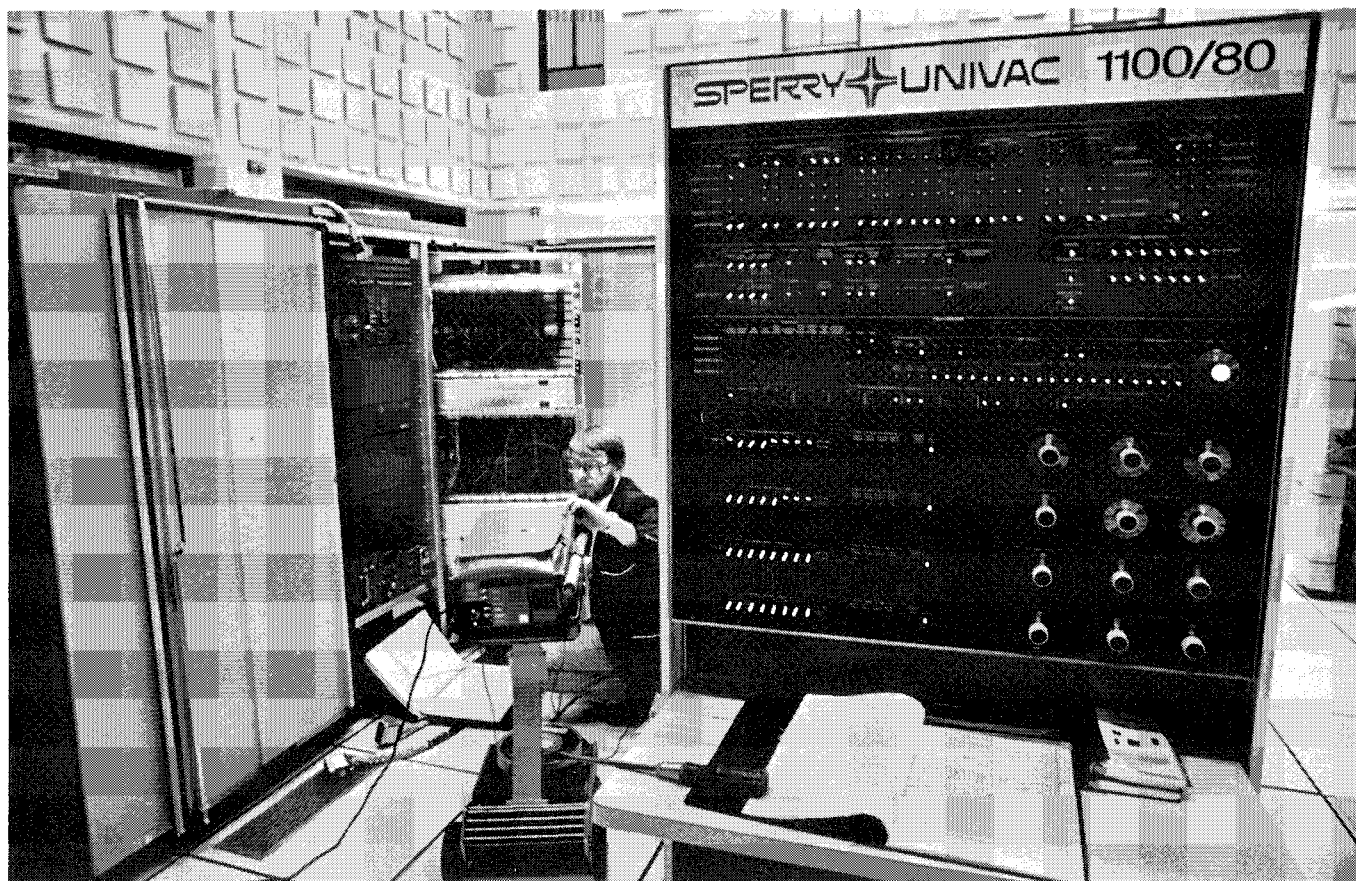
A. I don’t want to unduly exalt the role of money, but I think that the problem of funds is basically critical, because one cannot move very far into empirical study of the relations of law in modern society without getting into very costly effort almost always, today, likely to involve the need to assemble a research team. No longer is it just a matter of the individual scholar in the garret. You need team projects. So I would put at the very basis the problem of funding, which is less difficult now than when Jake Beuscher and I first went around looking for money in the early 1950’s. We did succeed pretty well, with Rockefeller, Russell Sage, Carnegie, and Ford. But foundations tend to change their ideas of what they want to spend money on, and one thing that has, I think, changed for the worse, is that foundations today are much more specific-project oriented. It is very difficult to get them to give you anything you can really call free funds, to allow people to adventure according to their own blueprints. You almost have to come in today with a very highly specific project and typically with some sort of promise of highly specific results, which I can understand—foundation executives need to show their own boards of directors some tangible signs of accomplishment—but it still is a very restricting factor to work with. One of the great advantages of those early funds we got was that they were so wide open. Rockefeller, for example, gave me the money simply to promote a series of studies in the relations of law to the Wisconsin economy, and that’s the only direction they gave me. I’m afraid today one simply cannot persuade foundations to give that kind of money, although it is, by some demonstrated results, one of the most fruitful kinds of money to give. Today, with Uncle Sam in charge, the focus is, if anything, even tighter. And, again, while very understandable, the fact remains that this is not, in the long run, the best way to promote major advances.

Second, but still important, I would put problems of philosophy, by which I simply mean conceptions or ideas about what you ought to be researching and what the important questions are to ask about the relations of law and society. There my criticism continues to be that modern interdisciplinary research still tends to be unduly focused upon the judicial process. True, it has broadened in some respects; particularly, attention has extended from appellate courts to trial courts, which is where most of the action is, so far as the judicial process is concerned. But the fact remains that as one looks through the annual volumes, for example, of the *Law & Society Review*, it would probably be a conservative guess that 70 to 80 percent of the published material has to do with courts. And yet the bulk of the law that touches the lives of most people today is administrative law. At the most mundane level, the public school system, which is essentially an important area of administrative law, enters intimately into the lives of every household in the United States and has gotten almost no study from legal scholars of the modern interdisciplinary bent. The IRS: we have scads of material on all of the enormous technicalities of modern federal tax law, but we have remarkably little study on how tax law works in terms of the human impacts of it. This, I think, is the main philosophical problem: we simply have to break out of this exaggerated preoccupation with the judicial process.

**Q. How do you see the future of "ILS"?**

A. It simply has to continue and grow, because it is, I think, more and more obvious that the major realities of legal order and the place of law in the society rest in these domains of studying law in terms of how it in fact operates and what values or goals are being pursued through law, as defined by facts. All of this is related through a theme which Roscoe Pound stated years ago: "the limits of effective legal action." We know remarkably little about the ways in which we can effectively use law and for what purposes. There is plenty of ideological statement on this, but in terms of ordered, empirically based knowledge, the question is still as wide open as when Pound stated it. This is not putting a negative emphasis on it, I should add, because in order to make constructive, positive use of law, you need to know what law is good for and what it is not good for.

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## INTERDISCIPLINARY RESEARCH PROGRAMS



### Disputes Processing Research Program

Disputes Processing Research Program, established in 1977, coordinates interdisciplinary studies of dispute resolution and the disputing process. The program supports basic research and specific policy studies. Its goals are to improve our understanding of the role of civil courts and other dispute processing mechanisms, illuminate policy choices, and identify needed reforms.

The Civil Litigation Research Project (CLRP) is a nationwide study conducted as a joint venture of DPRP and the University of Southern California's Program for Dispute Systems Research, with David Trubek of the Law School as principal investigator and funding provided by the U.S. Department of Justice. The project seeks to place civil litigation in the context of the entire network of institutions and processes through which civil conflict is defined and channeled. Research will include courts and other dispute processing institutions, cover all activities from the inception to the termination of a dispute, and generate data on investments of time and money by individuals, organizations, and government to achieve dispute resolution. Using social science theory and survey research techniques, the project will construct a data base containing information on: the incidence of civil disputes; the availability of alternatives; the costs, in dollars and time, of litigation and other approaches to dispute resolution; factors influencing disputant choices, especially the choice between litigation and other approaches; and the responsiveness and effectiveness of courts and other dispute processing institutions. The project is funded through June, 1981, and a final report of its findings will be issued at that time.

The Milwaukee Mapping Project is an intensive study of disputes over consumer products and services in Milwaukee, Wisconsin, with Jack Ladinsky of Sociology as principal investigator. The project, which began in August, 1978, seeks to understand how complaints are transformed into disputes, how disputes are perceived as claims, and how claims are or are not resolved. The research will attempt to identify the general principles by which dispute processing operates to sort disputes and channel them into various fora. Data collection will be by structural and open-ended interviews with consumers, opinion leaders, and representatives of product and service provider organizations.

Public Sector Labor Disputes are the target of a study designed to determine perceptions of fairness of the new system under which the Wisconsin legislature has extended final offer arbitration to all municipal employees. The study will attempt to isolate factors, such as the respondent's role (i.e., labor or management) or experience with the process, which might affect perceptions.

Other research projects, some empirically based and some theoretically oriented, are in the planning stages. They include a panel study to examine dispute transformation over time, as well as studies of the microeconomic theory of the dispute decision and the social psychology of disputing. Activities of DPRP, in addition to the research projects, include a seminar, colloquia, a working papers series, a reprint series, and conferences dealing with aspects of dispute processing.

### Institute for Research on Poverty

The federally funded Institute for Research on Poverty was established in 1966 as a national, university-based center for the study of poverty and policies aimed at its elimination. A portion of the Institute's research program has dealt with the legal, political, and administrative dimensions of poverty-related issues. The work of Joel Handler and Ellen Jane Hollingsworth on administration of welfare programs, Murray Edelman's seminal studies of political symbols, work on the legal profession and public interest law by Handler, Hollingsworth, Howard Erlanger, and Jack Ladinsky, and more recently, studies of poor people and consumer issues merely highlight the Institute's contribution to law-related research.

The Institute has, over the past few years, sponsored much research dealing with Wisconsin consumer protection legislation as it affects the automobile buyer. The latest products of this work are a follow-up study to determine whether restrictions on automobile repossession imposed by recent legislation have made auto financing more difficult to obtain, and an analysis focused on the used-car industry which challenges the idea that market discrimination against the poor can be alleviated by consumer disclosure laws. Other current research includes studies of the deterrence effect of capital punishment and a series of juvenile court studies that assess the impact of Supreme Court decisions guaranteeing due process, the effect of organizational factors on the rate of commitment to institutions, and the influence of the *parens patriae* orientation on juvenile court dispositions.

## **Industrial Relations Research Institute**

The Industrial Relations Research Institute, established in 1947, addresses a wide range of economic, social, and institutional issues as they relate to the worker in an employment relationship. Legal research is one component of IRRI's continuing study of collective bargaining. Equal employment and affirmative action issues have also been a major focus of the Institute. One current project in this area is a study of teaching at graduate and professional levels in the equal employment and affirmative action law fields, carried out by James E. Jones, Jr. The study will form part of an effort to improve teaching in these areas. Another study, conducted jointly by W. Lee Hansen of IRRI and Karin Holden of the Demography Center, with funding from the U.S. Department of Labor, deals with the impact of the 1978 amendments exempting college faculty hiring from the Age Discrimination in Employment Act of 1967. It seeks to determine effects of either continuing or ending the present exemption, in terms of costs, productivity, and availability of replacement personnel. Herbert Hill, formerly National Labor Director of the NAACP, is studying the efficacy of the legal prohibitions against employment discrimination. Volume II of *Black Labor and the American Legal System* will be published in 1981. He is also conducting a research project in Jefferson County, Mississippi concerned with the relationship of black political power to economic development in the rural South.

## **Institute for Environmental Studies**

The Institute for Environmental Studies, now in its eleventh year as part of the University of Wisconsin-Madison, focuses upon the physical, biological, legal, and social components of environmental systems. For example, professors of zoology, meteorology, economics, law, and engineering cooperate in study of a power plant's overall impact. In all of the IES research projects, students participate actively with faculty.

An important part of the Institute's research program are the Leonardo Seminars, intensive interdisciplinary studies by selected faculty members and nonuniversity experts. Past Leonardo Seminars have studied national natural resource policies and the development of oil and other natural resources in Arab countries. Plans are underway for a third Leonardo Seminar which will study the short-term and long-term energy future of the United States and the Western world, considering energy development and use as it affects and is affected by the economy and the environment.

## **Land Tenure Center**

The Land Tenure Center is the present-day international extension of Jacob Beuscher's early work on law in relation to agriculture and other land use. A unit of the College of Agricultural and Life Sciences, the Center draws its faculty from many departments. Some recent activities of the Center include work with Philippine agencies to help evaluate land reform efforts there, involvement in a systematic effort to appraise the role of cooperative organizations in rural development, and maintaining a program of legal services to the poor in Latin America to help small land-holders establish formal titles to their land and deal with other legal problems.

At present, the LTC is exploring the feasibility of a program of activities in Nicaragua that would include studies of the legal and institutional aspects of production cooperatives and state farms, rural workers' participation in agrarian policies, and large farm production.

## **Center for Public Representation**

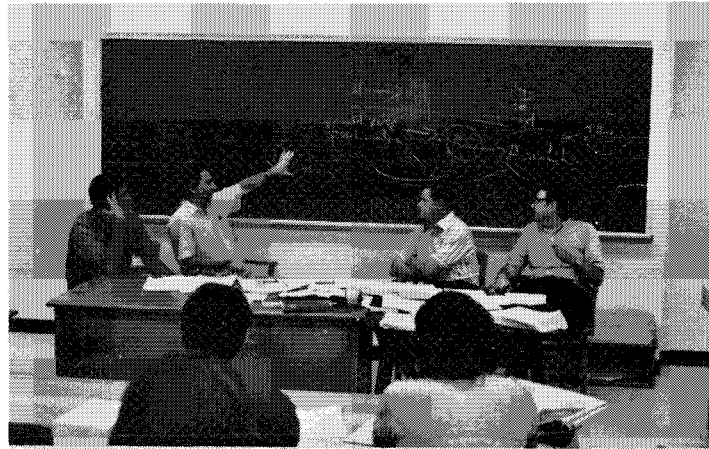
Much research in the area of public interest law has been done in conjunction with the Center for Public Representation, a Madison organization devoted to giving the public an advocate in judicial, legislative, and administrative processes. A major joint project which recently reached completion was a study of school discipline which surveyed 1,500 students and over 200 teachers in a mid-sized Wisconsin city to determine compliance with due process principles. This study, which was carried out by Ellen Jane Hollingsworth of the CPR and Henry Lufner of the School of Education, resulted in some interesting observations about the ways in which discipline is interwoven with the social processes of the school.

Other recent efforts have included an exploration of the idea of community dispute centers for juveniles, with an emphasis on feasibility; an assessment of the impact of state regulation of health insurance for the elderly in terms of the types of policies available in the five different states studied and the level of consumer information on the part of elderly policy-holders; an evaluation of the effectiveness of an experimental program to compensate crime victims; and a study of landlord-tenant cases in small claims court based on a sample in five Wisconsin counties to determine how much of small claims court business was taken up with landlord-tenant matters, whether these cases were taken care of quickly or encountered delay, and whether such cases were more often brought to court by the landlord or the tenant.

A current project, being carried out by Arlen Christenson of the Law School, is a study of public advocacy and policy formulation that will expand upon previous work assessing the role of the Public Intervenor in Wisconsin in formulating policy. The Public Intervenor is an Assistant Attorney General who represents the public in water rights cases and other cases involving natural resources.

## Center for Law and Behavioral Science

The Center for Law and Behavioral Science is the inheritor of the Russell Sage program in sociology of law. Besides maintaining close ties with the other law-related programs on campus, the Center offers an undergraduate major in behavioral science and law. The major is a response to a growing interest in law-related studies among undergraduate students at the university. It is not designed as a pre-law program, but does serve as an appropriate major for some who plan to attend law school. The Center is affiliated with the Ph.D. program in the sociology of deviance, law and social control, in the Sociology Department. The program is broadly concerned with conflict and the maintenance of order in society.



## ADDITIONAL AREAS OF INTERDISCIPLINARY SPECIALIZATION



### Criminal Justice

The Law School's criminal justice research program has, over the past three decades, carried out its commitment to understanding law in terms of its impact through the legislative process and the actions of judges, elected officials, and administrative agencies. The early efforts involved in revising the Wisconsin Criminal Code and conducting the American Bar Foundation survey of criminal justice administration drew attention to the critical need for judges, legislators, and others committed to effecting change in the criminal justice system to understand how the system is actually administered and how decision making is carried out in each part of the system. This interest resulted in a broadening of seminar participation and Law faculty appointments to include non-lawyers and the establishment of a "police officer in residence" on an experimental basis. The Legal Assistance to Institutionalized Persons Program was also created to afford law students the opportunity to learn first hand about the institutional setting of correctional decisions and its impact upon persons convicted of criminal offenses. In connection with this program, Walter Dickey is codifying the administrative practices of the state's Division of Corrections, an enterprise which offers an unusual opportunity to learn in detail important correctional practices and their effects within the correctional system. While the Legal Assistance Program is viewed as a teaching program, it has research implications which are evident in Leslie Abramson's recently published study, *Detainers*.

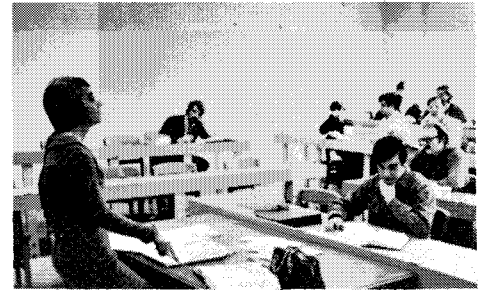
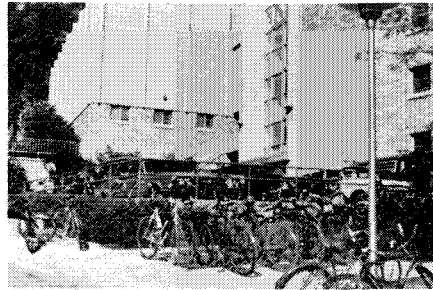
Continuing interest in police discretion has led to research into the administrative rule-making process in police agencies and its application to policy decisions. Law faculty have, in recent years, contributed their findings to the President's Commission on Law Enforcement and Administration of Justice, the National Commission on Civil Disorder, and the American Bar Association's volume, *The Urban Police Function*.

Currently, a proposal is being developed by Herman Goldstein to construct and test a problem-oriented approach to improving police services. The objective is to direct attention away from the police as an institution and toward the specific problems the police are expected to handle in the community. The project calls for designing methods by which police agencies can collect data on the behavioral problems with which they must deal, define these problems more accurately, evaluate the effectiveness of their response and the adequacy of existing authority, and explore alternatives to the use of the criminal process.

While there has been interdisciplinary concentration upon the police and correctional phases of the criminal justice system, there has also been a law-in-action commitment to the trial court stage of the process. For two

decades, monthly meetings have been held between law faculty and a group of Wisconsin trial judges. This has allowed faculty to enrich their understanding of trial court operations while making important contributions to the practices of the trial courts.

Scholars in other departments of the university have also been concerned with issues in criminal justice. Steven Penrod of the Psychology Department, in a forthcoming book titled *Inside the Jury*, reports on an experimental field study of the effects of jury decision rules on the quality of jury deliberations. A recently completed study by Malcolm Feeley of Political Science observed pleading practices in the New Haven Court of Common Pleas. Noting that of all the cases examined, not one went to trial, the author explored the role of plea bargaining and other factors in the decline of the adversarial process. Wisconsin scholars also helped to organize, and participated in, the 1978 Conference on Plea Bargaining held under the auspices of the Law and Society Association.



### Legal History

A remarkably vigorous nationwide revival of legal historical studies has been in progress since about 1971, and this renewed interest has been apparent at Wisconsin. With an eye to past achievements in this area, a group of Wisconsin scholars including Stanley Kutler of the History Department and Robert Gordon, Mark Tushnet, and Willard Hurst of the Law School, are seeking to establish a Program in Modern American Legal History. This program will make use of the unique personal and physical resources at the University of Wisconsin-Madison in promoting the publication of books, monographs, and a new journal in legal history. It will focus on the period of 1870-1970, a crucial, but not well understood epoch in the formation of major institutions and ideas in American law. Plans call for a collaborative legal history workshop, a program of fellowships for outside scholars to use the rich collections of the State Historical Society and the Legislative Reference Bureau, and a series of summer conferences.

Work is also being pursued in the area of ancient legal history. Warren Lehman of the Law faculty is studying the laws of the earliest kingdoms established after the 5th-century migrations of Germans into what had been the Roman Empire. From this undertaking have come a conference on the formation of states in history and theory, the edited papers of that conference, a translation of Euric's Code, and a continuing seminar in jurisprudence and legal history.

### International and Comparative Legal Studies

In perhaps no other law school in the United States does so large a portion of the faculty have intensive comparative law experience. Research and training missions in recent years have taken members of the faculty to, among other places, England, Germany, Italy, Spain, Finland, the Soviet Union, Kenya, Tanzania, Zambia, Ghana, Brazil, Chile, Colombia, Peru, Nicaragua, Japan, India, Sri Lanka, Afghanistan, Iran, Israel, and Egypt.

Wisconsin has been a major center for studying the contribution of law to social, political, and economic development. Two summer institutes in law and development were held for policy makers from Third World countries. An extensive program for updating legal teaching methods was conducted by Zigurds Zile and others in conjunction with the Catholic University of Peru. A continuing tradition of work on the role of law in agrarian reform and other land tenure issues was begun by Jacob Beuscher and has in recent years been carried on by Joseph Thome through the Land Tenure Center. David Trubek serves as advisor to the Ford Foundation's Program on Law and Social Justice in Brazil, and he and Thome have worked closely with the Interamerican Legal Services Association.

Wisconsin scholars have contributed to the worldwide Access to Justice project based at the European University Institute in Florence. The general editor of the massive six-volume Access to Justice project, which finalizes and evaluates schemes to enhance access to justice throughout the world, credits the "Wisconsin school" as "especially important" in showing the need to rethink conventional notions about courts and evolve a comprehensive approach to problems of access to law.

Numerous studies have been conducted on the legal systems of specific countries. Zigurds Zile is engaged in a major study of the legal system and culture of pre-revolutionary Latvia; Mark Galanter has recently completed a study of the laws governing untouchability in India; and Joseph Thome has conducted research on agrarian law in Chile, Spain, and Nicaragua.

## Law and Economics

We have already noted the tradition of interaction between the Economics Department and the Law School, as well as the substantial interest in the application of economic analysis to law within the Law School. Two major projects have grown out of this interaction in recent years. First, the Public Interest Law Project, which was funded by the Ford Foundation and directed by Burton Weisbrod in Economics and Joel Handler and Neil Komesar in the Law School, involved both law and economics faculty in defining public interest law, assessing its effectiveness in advocating underrepresented interests, and exploring the limits of legal instruments as devices for social change. Its work was published as a monograph, *Public Interest Law: An Economic and Institutional Analysis*, and has given rise to several follow-up studies, such as a recently completed examination of earnings differentials between private and public interest lawyers. The second recent joint endeavor has been the Civil Litigation Research Project, which uses economic analysis as one of the main components in producing the conceptual framework.

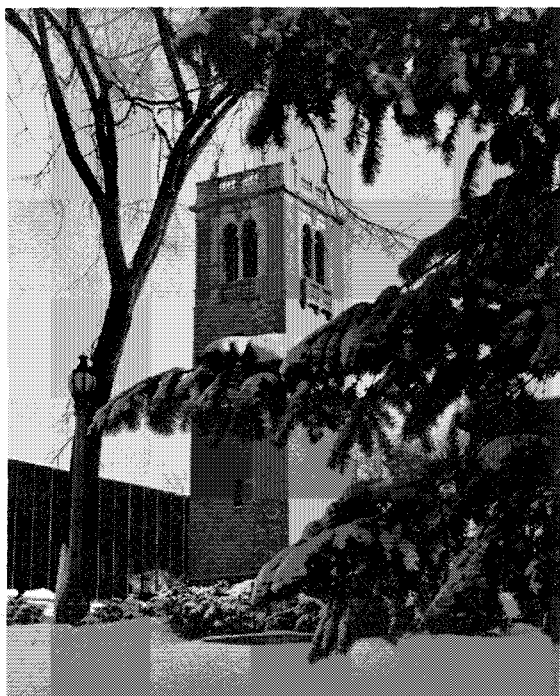
Wisconsin faculty have also brought an interdisciplinary approach to the study of international law and economics. Richard Bilder has just completed a study of risk management in international agreements, surveying various techniques to cope with the problems of risk which obstruct international agreements and other cooperative arrangements. Charles Irish has carried out an extensive program of research on the role of international tax treaties in economic development.

Law and economics endeavors have produced a broad range of other outputs by a variety of people, including a study of medical malpractice published in the *New England Journal of Medicine*, and subsequent reports for the Department of Justice; legal and economic analyses of criminal victimization, building code enforcement, and judicial decision making; work on informed consent and legal malpractice; and economic analysis of host country policies toward foreign investment. Common interests brought members of the Economics Department together with faculty members from law and agricultural economics in an informal faculty workshop which met on a regular basis for several years.

## Implementation

The increasing interest in developing generalized theory about problems in the implementation of new programs or legislation is reflected in work at Wisconsin. Much has been done to assess the implementation of consumer protection law in Wisconsin, particularly in the automobile industry. Another such project is in the planning stages; it will test compliance with consumer legislation, with special attention to the effectiveness of sanctions for noncompliance. This project will be directed by William Whitford.

The Legal Implementation Research Project, directed by William Clune and Robert Lindquist under a grant from the National Institute of Education, is just getting underway. It will focus on the process of implementation research, using affirmative action in higher education faculty hiring as an illustrative case history. The project is aimed at producing a general theoretical explanation of the implementation process and a guide to the research methodologies used in studying implementation. It will culminate in a report to education researchers.



## Education

In the School of Education, several faculty members are engaged in work which bridges the gap between educational practitioners and the legal system. Richard Rossmiller, of Educational Administration, specializes in the legal aspects of school finance. He is the co-author of *The Law and Public School Operation* and author of the finance chapter in the annual *Yearbook of School Law*. He has also prepared reports for several state departments of education and served as a consultant for numerous local school systems. Virginia Davis Nordin specializes in higher education and the law. Co-author of *Higher Education and the Law*, she is currently working on a study of the legal foundations for university autonomy. She is also concerned with improving the teaching of educational law in law schools and schools of education. Other cross-disciplinary research in the School of Education includes studies of the use of expert witness testimony in Denver school desegregation cases and the relationship between school discipline and the decision to drop out of school in a Wisconsin school district.

## Law and Political Science

Ties between the Law School and the political science department are very strong, and go back many years. David Fellman, who retired from the political science department in 1979 after 32 years of service, authored a number of books on the criminal justice system and on aspects of First Amendment law. In the 1960's a new generation of public law scholars joined the department — Herbert Jacob, Joel Grossman, Kenneth Dolbeare, Stuart Scheingold and John Gardiner. Out of that group came studies of wage garnishment and bankruptcy, the role of trial courts in urban politics, the role of the ABA in selecting federal judges, the sit-in cases, traffic enforcement practices and political corruption, political justice, the high court of the European Common Market, and in a book co-authored by Dolbeare and Philip Hammond of the Sociology department, an important study of the school prayer cases. David Adamany, Malcolm Feeley and Bert Kritzer joined the Department in the 1970's. Besides Feeley's book on plea bargaining, already mentioned, the political science group produced a number of studies on law and conflict resolution, trends in civil litigation, the Supreme Court and "realigning" elections, sentencing policies in trial courts, court reform movements, and, still in progress, a study of changing public attitudes toward the Supreme Court. Not to be forgotten are the students who earned their Ph.D.'s at Wisconsin during this period and who have become visible scholars in their own right at other universities.

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## THE WISCONSIN LAW ALUMNI ASSOCIATION

1980 - 81  
Alumni Fund Drive

### OUR \$1 MILLION YEAR

Since the 1969-70 Law Alumni Fund Drive, a total of more than \$920,000 has been contributed to our Law School by its alumni. An average year for the 1980-81 Fund Drive will put us over the \$1 million mark.

Average is a quality we do not want attached to this Law School. Help us celebrate the first million dollars in alumni support. Help us with a record year and a good start on the second!

## DEAN ORRIN L. HELSTAD ('50) COMMENTS ON THE ANNUAL FUND DRIVE

Once again, we are gearing up for our annual fund drive. Deans of publicly supported law schools are fond of pointing out that while the basic support is provided by public funds, the "margin of excellence" must come mainly from financial support provided by alumni. Let me try to illustrate some of the ways in which I believe alumni support can help maintain the margin of excellence at Wisconsin.

*Faculty development.* To some extent alumni support already has helped in faculty development in the sense that alumni funds have been used to pay some of our faculty recruitment expenses. However, much more could be done. A few public law schools have developed sizeable funds through their alumni associations which provide a sum of money from which faculty members can draw for such important incidental expenses as book purchases, expense of travel to professional meetings, extra research and secretarial support, and the like.

This type of support is essentially what the University of Wisconsin Foundation has started to provide through the establishment of "Bascom professorships" in the name of the donor. These professorships are endowed by sums ranging from \$40,000 to \$100,000 and provide through income from the endowment a sum each year which the recipients of the professorships can draw upon for the type of incidental expenditures I have indicated.

As the gap between what top law school graduates can earn in practice compared with what they can earn as law teachers becomes greater and greater, it is important to provide these extra incentives to attract top quality people into teaching and to attract them to and retain them at this Law School.

Endowments for named professorships, such as the Bascom professorships, of course involve quite large sums of money and are most likely to be established through bequests. I certainly encourage interested individuals to work with the University of Wisconsin Foundation to set up Bascom professorships for the benefit of the Law School. For the immediate future, however, we may need to try to fund some such professorships through current gifts rather than endowments.

*Research development.* I mentioned in my introductory comments to this issue of the Gargoyle the use of the alumni funds to enable researchers to prepare proposals which attract outside funding. Another way in which alumni support can be helpful in this area is through providing matching funds for some outside grants. For example, we currently have a sizeable grant from the National Endowment for the Humanities for a research program in legal history, an area in which this Law School as well as U.W. Madison in general has great strength. In addition to the basic grant, the NEH will match dollar for dollar, up to a certain point, extra funds which we raise on our own for the project.

*Support of special law school programs.* I am thinking here of programs like trial advocacy, general practice and client counseling. These are practice oriented courses which we believe constitute a very important segment of our total curriculum, but because they are taught for the most part by practitioners who teach on a part-time and short-term basis, they may be vulnerable if we face a difficult budget crunch in a particular year. It is always easier to refrain from hiring part-time help for a particular semester or year than to lay off permanent staff. What we need, I believe, is a reserve fund we could draw upon in an emergency. Because of the nature of state budgeting, such a fund can be created only with alumni support.

*Student financial aid.* This item has long held high priority in our alumni fund raising. The cause

has been an appealing one over the years. During depression days, Dean Garrison could point out, no doubt accurately, that many law students were going hungry from time to time for lack of funds. During the late fifties and early sixties, it was thought important that we obtain more scholarship funds so as to enable us to compete successfully with other law schools for good students. That was a time when good students were hard to come by, a problem we do not face today, although it may be with us again some day.

In view of this history, it was with considerable thought and hesitation that I came to the conclusion that this item no longer deserves the almost exclusive claim to alumni funds which it has had in the past. The ready availability of loan funds compared with past years is one reason for my conclusion. Another is the fact that costs of education have become so high that it is unrealistic to think that alumni funds can supply more than a small fraction of the funding in any event. This does not mean that I view financial aid for students as unimportant, and we welcome anyone who wishes to give for this purpose. Endowed memorial funds for scholarship purposes seem to me to be particularly appropriate. We have a number of these already, and we certainly could use more.

*Speakers programs.* We presently have two rather small funds, the incomes from which are to be used to bring distinguished speakers to the Law School. The largest (about \$15,000) is a fund in memory of former Dean Oliver S. Rundell. The other is a fund in memory of Judge August C. Backus to be used for the purpose of bringing to the Law School lecturers in the area of criminal law or criminal justice administration. We would welcome contributions to either fund or to a new fund.

*Special teaching and research facilities.* Innovations in teaching and in equipment for teaching and research always seem to put a strain on the budget, and I believe these frontiers in education are especially in need of help from

outside funds. Eventually, if they prove themselves, they generally can be built into the budget. At the present we have advances in technology such as the use of computers for teaching and research and the use of video equipment in teaching. We are starting to build a small library of videotapes for instructional use, but these are very expensive acquisitions. Similarly, we probably could do more in the way of computer-assisted teaching if we had the money to buy the programs which are available. I believe the use of video equipment in teaching is of sufficient value so that it would be good if we could equip at least one or two classrooms. It would ease the strain on use of the courtroom where our present video equipment is located.

*Library improvements.* Our Law Library has been hard hit by inflation in recent years, not to mention the special budget cut we in-

curred this year because of the state revenue shortfall. We currently have a memorial gift which probably will be used to support our loose-leaf services in the employment security area. This is an example of the kind of gift which would be very helpful to us in maintaining a high quality library.

*Building improvement.* It has long been customary among private schools to ask for funds to equip a room or to enhance physical facilities in other ways. Wall plaques often are put up to show that a particular donor or donors are responsible for supplying the funds which were used to furnish a particular room. I think the time has come to do some of this in publicly supported schools as well. It may be true that high quality teaching can be done in a sparsely furnished room, but the quality of surroundings does seem to be of

some importance, perhaps because it tends to instill pride in the school. Last year, for example, funds from a donor who wished to remain anonymous were used to refurbish a seminar room. What many faculty had likened to a huge cell block was transformed, through some carpeting, wall covering and new furniture, into a pleasant place to teach and learn.

These are some of the things which help provide that margin of excellence, and for which we need your help. What can we offer in return? Perhaps not a great deal in the way of tangible benefits. Rather, I would hope that the sense of pride you feel in having graduated from a fine Law School, and the knowledge that you are helping it improve the quality of tomorrow's lawyers, would be sufficient reward for your contributions. We at the Law School will be grateful for your help.

## **YOUR GIFT -- MORE IMPORTANT THAN EVER!**

As the current school year opened, the Law School, as well as the rest of the University and all the other agencies, faced an unanticipated budget problem. Faced with declining tax revenues, the State has ordered an across-the-board 4.4% budget reduction. As we struggle to meet increasing costs with lower state-support, your Law School must look for even more support from its alumni.

Unrestricted alumni contributions will not only continue to assist today's students with financial aid, but also to fill in where state money has been subtracted. Some of our special needs and projects are explained in the Dean's message.