

# THE GARBOYLE

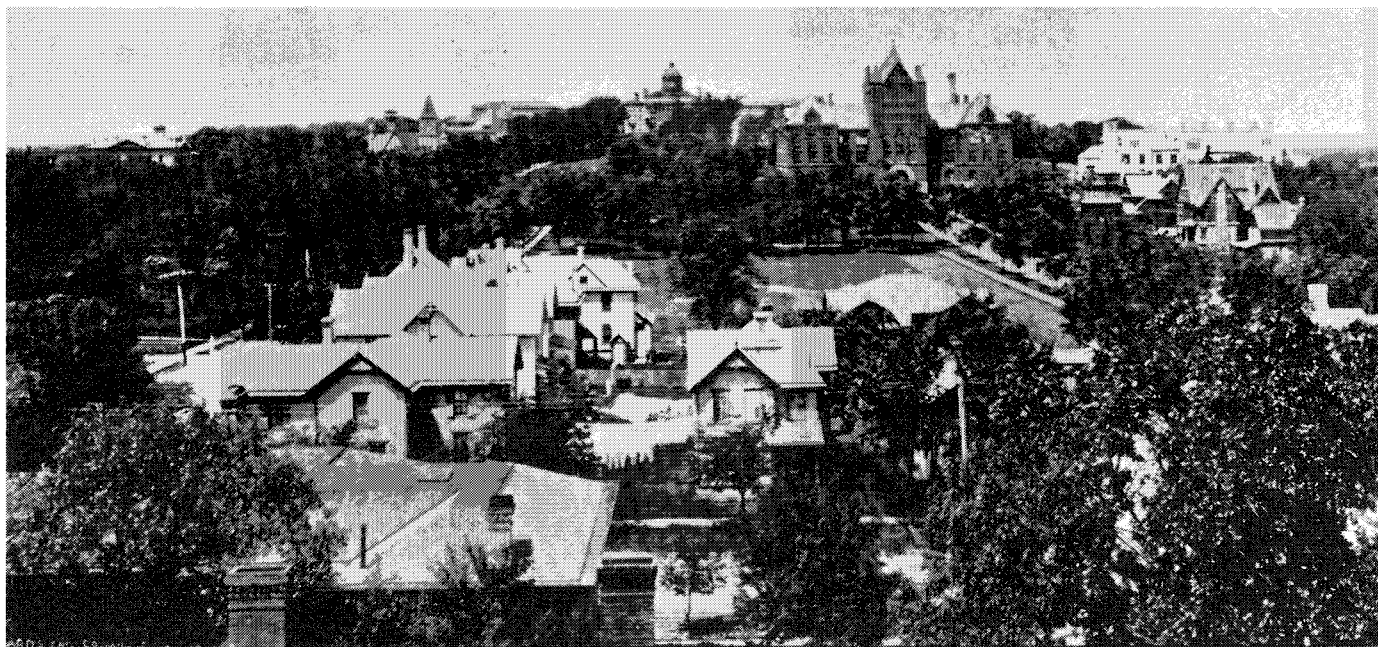
Alumni Bulletin of the University of Wisconsin Law School

Volume XIV No. 1

Fall 1982

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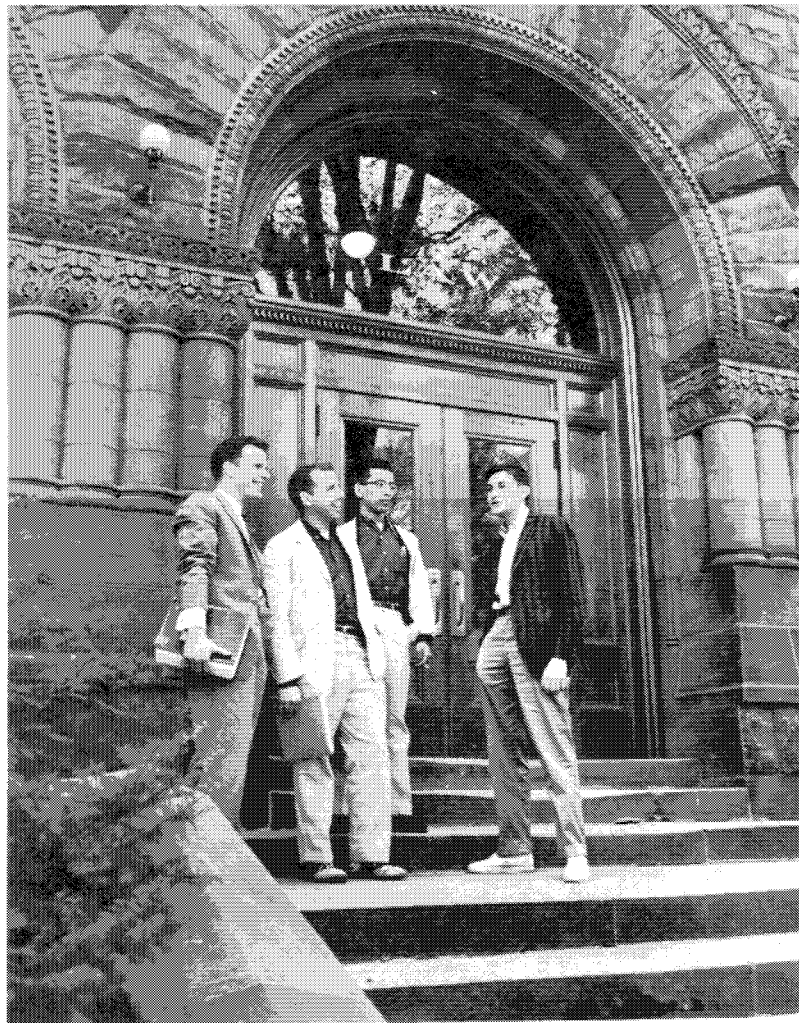
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# *The Gargoyle*

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University of Wisconsin  
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## EDITOR'S NOTE

As I write this we are in semester break. When I was a student here semester break was two weeks interrupted by a day of registration, the very day on which the year's record low temperature was usually set. This year the minimum break between the last exam and the first day of registration is twenty-seven days. With early exams and proxy registration, the clever student could easily spend five weeks in Aruba, Europe, or at home eating Mom's food. Normally the building is really deserted in mid-break. You can put a shot down the main hallway without committing a tort. This year, however, there are a few more bodies around, perhaps reflecting more incomplete grades from last semester or an ever tightening job market.

At the end of the last semester the faculty went through more than nine painful hours of meetings, attempting to cut a few dollars here and there to come up with funding for current projects or reforms suggested during our self study. Sitting for nine hours is painful in itself, but the pain involved in cutting back is excruciating. All of this went on as the Annual Fund drive for 1982-3 got under way. The necessity of outside funds could not more vividly be demonstrated.

Identification of the last mystery picture is slowly being made. About one-third of the persons pictured have now been named, but with fifty-three faces it may take a long time to get all of them. In this issue we go back to pre-1961, to the steps of the old Law Building, and a group of four currently anonymous students. As always, your suggestions are encouraged.

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## THE GARGOYLE

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

**Vol. 14 No. 1      Fall 1982**

**Edward J. Reisner, editor**

Publication office, Law School, University of Wisconsin, Madison, Wis. Second class postage paid at Madison, Wis. and Waterloo, Wis.

**Postmaster's Note: Please send form 3579 to "Gargoyle", University of Wisconsin Law School, Madison, Wisconsin.**

Subscription Price: 50¢ per year for members. \$1.00 per year for non-members.

ISSN 0148-9623

USPS 768-300

**COVER PHOTO:** Another view of Bascom Hill, this one taken in 1894. The view is from lower State Street-Langdon Street. The large building just right of center is Science Hall, and on the horizon is the dome of Bascom Hall. The spire of Music Hall and the top of the old Law Building are visible on the south side of the Hill. Absent are the Historical Society, the Memorial Library, the Memorial Union and the Old Red Gym.

## LAW 940: LITIGOTIATION

*(The following article is excerpted from an address presented by Prof. Marc Galanter, who teaches a Law School course on Negotiations. Prof. Galanter spoke to the AALS Workshop on Negotiation/Alternative Dispute Resolution in Cambridge last October.)*

On the contemporary American legal scene the negotiation of disputes is not an alternative to litigation, it is litigation. There are not two distinct processes, negotiation and litigation; there is a single process of disputing in the vicinity of official tribunals that we might call LITIGOTIATION — that is, the strategic pursuit of a settlement through mobilizing the court process. Full-blown adjudication of the dispute — running the whole course — is one infrequently pursued alternative, the cost and risk of which are compelling presences throughout.

The settlement process is not some marginal, peripheral aspect of legal disputing in America; it is the central core. Over 90% of civil cases are settled (and of course many more disputes are settled before reaching the stage of filing.) Lawyers spend more time on settlement discussions than on research or on trials and appeals. Much of the other activity that lawyers engage in is articulated to the settlement process. Even in the case that departs from the standardized routines of settlement, negotiation and litigation are not separate processes, but are inseparably entwined.

Negotiation is not the law's soft penumbra, but the hard heart of the process. The so-called hard law turns out to be only one (often malleable) set of counters for playing the litigotiation game.

How come, then, negotiation is put on the "alternative" team? Observing the litigotiation process from the command posts of our

courts one sees a tremendous flood of would-be adjudication decomposing into mediated settlements and negotiated ones. If the distinctive work of courts is full-blown adjudication, these cases don't require it and should go somewhere else! But from the point of view of the customers, things look different: it is the coercive, menacing character of the court process that is valued — it is the anvil against which the hammer of negotiation strikes; it is the second hand clapping.

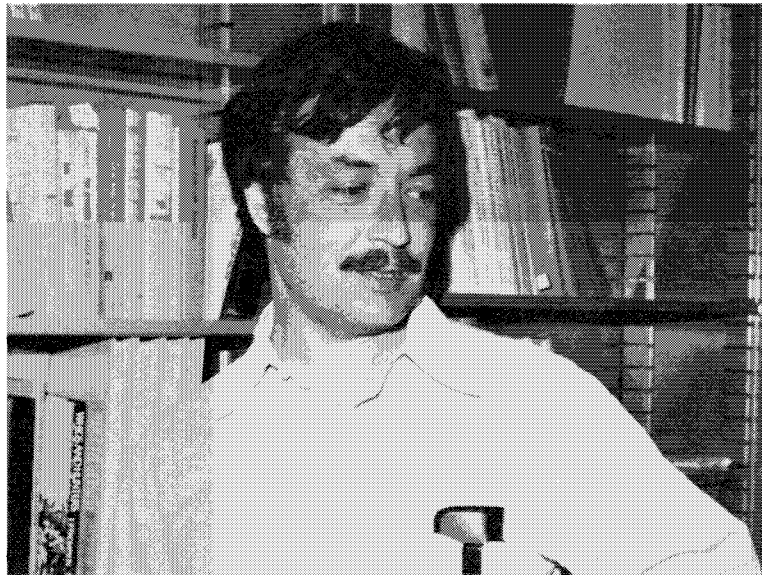
The courts are central to the litigotiation game not because of what they do but because of the "bargaining endowments" that they bestow on the parties. That is, what might be done by or in or near a court gives the parties bargaining chips or counters. Bargaining chips derive from the substantive entitlements conferred by legal rules and from the procedural rules that enable these entitlements to be vindicated. But rules are only part of the endowment conferred by the law — the delay, cost and uncertainty of eliciting a favorable determination also confer bargaining counters on the disputants. Everything that might affect outcome counts — all the outcome for the party, not just that encompassed by the rules. The ability to impose delay, costs, embarrassment, publicity come into play along with the rules. Rules are important but they interact with a host of other factors in ways that do not correspond to the neatly separated foreground and background of the law school classroom.

If negotiation is the largely unexamined heart of the legal process, a negotiation course is, for me, first of all a place to examine it. And by examining it to challenge students to reorganize the intellectual picture of the law implanted by legal education,

based on the reading of appellate cases. Students know that the picture of hierarchies of courts is a very partial and unrepresentative picture of the legal world. But law school tends to present the other components of the system in fragments and asides; it does not supply the analytic tools to hold these other aspects in mind and incorporate them into a coherent picture.

I confine the course to the negotiation of disputes. That is, I leave out the negotiation of deals per se and stick to negotiation of disputes of the sorts that make up the grist of legal practice. This is a matter of priority and inclination rather than principle. I don't confine the course to pure two-party bargaining because I think much of the most important legal negotiation involves the participation of third parties (mediators of various sorts, including judges) and I am interested in bringing out how the process is affected by their participation.

We move through a progression of units organized around particular kinds of disputes — personal injury, criminal, family, etc. We begin with automobile accident claims, then move on to look at big time personal injury litigotiation — the world of large claims, specialist lawyers, extensive expert testimony, pioneering theories of recovery — found in some medical malpractice, products liability, or disaster cases. We move on to units on the negotiation of criminal charges and family disputes. I cover these by a mix of readings, videotapes and presentations by visitors, and intersperse several simulations in which students take turns negotiating and observing. These simulations are not exclusively or even primarily intended to inculcate skills, but to cultivate understanding — to bring into the



**Prof. Marc Galanter**

foreground otherwise neglected aspects of the legal process. They provide the occasion for internalizing of some of the basic elements of negotiation theory — including such helpful analytic tools as notions of resistance point, settlement range, commitments, rationalizations, etc. This doesn't presume to make students expert negotiators any more than the torts course aims to make them personal injury specialists — it is there to give them a sense of the elements, the parameters, the possibilities.

Learning to negotiate is not only a question of acquiring skills, but of learning to read the landscape, dope out the features of the bargaining arena — whether you are dealing with people who are concerned to deal with you again, whether deals are standardized here or custom made, what are the shared expectations about the process and outcome.

In a curious reversal of the classical legalist view, a benign and cheerful view of bargaining has become the received view of important segments of the legal establishment. Thus a draft of the proposed new Model Rules of Professional Conduct simply observed that “a fairly negotiated settlement generally yields a better

conclusion [than litigation]”. Others have been more impressed by infirmities of the negotiation process as it is institutionalized in American litigation. Thus Earl Warren worried about the injustice and suffering caused by “inadequate settlements which individuals are frequently forced to accept on . . . account [of delay].”

I am comfortable with the “mixed” view that justice does not reside entirely in the realm of formal legal processes nor is it entirely absent from the world of bargaining. The question — both for research and practice — is how to locate it and to augment it.

One way to pursue it is through better negotiating. Lurking in many discussions of negotiating style is a sort of negotiation utopia, a method of transcending the “strategic” world of intractably opposed interests to produce an optimal outcome.

Our question has two levels. First, in what ways (and how much) does this kind of “good” negotiation depend upon the qualities of the individual negotiators — their skills, preferences, temperament, etc.? Second how much does it depend on the way that the institutions of negotiation are constructed?

I think it is important not to be

so captured by the dispute perspective that we see the world of negotiation as a series of discrete cases. It is important to step back and examine our negotiation institutions. Law students will not only be players in these bargaining arenas, they will also (as legislator, judge, member of bar committee, etc.) have a hand in designing and reforming them. Therefore I spend the final sessions considering the systemic problems that attend the litigation game — e.g., the expense of remedies, the problem of disparities of skill/experience/bargaining power; etc., for different kinds of cases. We examine some proposed solutions and consider the variety of devices that might be used to address these problems: certification, judicial supervision, disciplinary enforcement, malpractice, peer review (audits), etc.

Although I am skeptical about the negotiation utopia, the questions it raises for both action and research are the right questions, for they ask about the big world of litigation rather than the small world of formal adjudication. These are the questions.

## **Report of the Wisconsin Law Alumni Association Board of Visitors**

On October 24-25, 1982, the Board of Visitors of the Wisconsin Law Alumni Association conducted its annual inspection of the Law School. The Board's responsibilities include review of the School's "... facilities, curriculum, placement, admissions and public relations..." As always we visited classes and met with students, staff and faculty to gather information concerning the operation of the School. We recommend that next year's visit reinstate the open forum session to insure that everyone with something to say has the opportunity to say it.

**General Comments:** Once again, overall we are impressed with the quality of the education being offered. Despite an ever-tightening budget, morale is good. Budget cuts have resulted in some reduction in course offerings because money is not available to hire lecturers. The faculty who are teaching continue to impress us. While we viewed only a portion of all courses being offered we feel that the quality of instruction overall is well above average. Based on our limited opportunity to observe, we wish to particularly commend Professors Clauss, Davis and Irish. Issues raised by students during our visit do merit our consideration, but they do not include the critical concerns that have troubled past visitors. We would also like to commend the administration for the improvements it has already made in advanced course scheduling. Since our suggestions on this subject last year, a system of scheduling a semester in advance has been instituted. We understand that an advanced registration plan is also being developed. These two developments should resolve complaints lodged during earlier visits.

### **Minority Students**

Law School's recruitment of minority students and the problems faced by those students while in school provoked perhaps the most discussion. Students were critical of insufficient minority recruitment. It was their feeling that the best qualified minority students were not being recruited by our Law School, and that many of the problems minority law students faced could be traced to this failure. We learned, however, that a new Assistant Dean has joined the staff this fall. This Dean has minority recruitment as one of his principal duties, and has already begun to improve our system.

Students also voiced concern that lower grades for minority students may, in some part, reflect perhaps unconscious discrimination. It was suggested that even in a "blind" grading system the writing styles of minority students may be recognizable and different enough from the norm to result in unequal consideration.

Obviously these are serious concerns and must be seriously treated. We feel, however, that after our brief exposure we are insufficiently informed to render either an opinion or suggestions for correction of faults that may exist. We therefore ask that all parties report back to us next year. We want to know what problems do exist, if any, what actions the School has already taken and their results; and suggestions for other improvements the School can make.

### **Class Attendance**

Our observations cause concern in the area of class attendance. We suspect that not only is there great variation from class to class, depending on the subject matter, size and teacher; but also from day to day, and year to year and that some absence is unavoidable and probably should not be of great concern. But our discussion with some professors causes us to wonder if a regular pattern of absence is not a matter of concern deserving remedy. Consistently poor attendance creates at least an impression of superficial education and lack of professional dedication. While we recognize that law students are adults and are responsible for their own actions we believe that graduates of this Law School must possess legal qualifications beyond minimal competency.

We are unsure of what sanctions to suggest for students with poor attendance records. Our individual opinions range from prohibiting graduation to some drop in class grades to some symbolic wrist slap. We would like to hear the faculty's opinions on this matter.

In a related area, we have observed that student participation in class discussion seems to be enhanced when the professor can call on individuals by name. We understand that some professors use seating charts, and we encourage the rest of the faculty to consider doing so, at least in the larger classrooms.

### **Placement**

In contrast to past years when complaints about the sign up procedure were common, the total absence of such complaints this year suggests that the "bid" system adopted two years ago is a great success.

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nine-hour career planning seminar this semester, and that the focus of this offering was consideration of alternatives and methods of reaching those choices. We hope that those students unsure of their goals or definitely interested in careers outside large firms will take advantage of this seminar.

Some of us raised a question concerning on-campus interviews. Why, we wonder, can't employers restrict interviews to those persons most likely to be hired? We were told that the Law School will not, for instance, restrict interviews to students in the top 10%. We would be interested in learning whether others share our concerns in this area.

#### **Legal Writing**

This seems to be an area of perennial concern. We are pleased to note that progress seems to have been made but urge even greater efforts. We understand that a writing sample will now be provided with each admission packet. These will be reviewed, and may be used to recommend remedial writing exercises. Problems which still exist include legal writing case problems that surpass the substantive knowledge of second year instructors, and problems which are out of synchronization with students in the part-time program. We trust that the School will seek to correct these problems.

#### **Judicial Clinical Placements**

Several students told us that judicial clinical placements were hard to obtain. They felt that the experience gained in these programs was substantial, and that more openings should be created. On the other hand, the School notes that all clinical programs are very cost intensive and require the commitment of large amounts of supervisory time. In light of our current budget, a solution here may be unobtainable, but we hope that this area will be considered in the future if funding becomes more available.

#### **Dean Search**

We voiced our concern that alumni seemed to have no role in the upcoming Dean search. However, the chair of the search committee has already secured approval of the Chancellor for consultation with alumni leaders.

We also offer some advice on advisable criteria for selection of a new Dean. In our view, the Dean of a major law school must be a master of public relations and image building. We think this carries over into many aspects of the Law School, including recruitment of students and faculty, placement and fund raising. We would hope that the new Dean will be selected with this in mind.

#### **Environmental Law Courses**

We learned during our visit that there presently are fewer course offerings in the environmental area than in the past. Particularly, we note that no courses are offered in air pollution or solid waste management. We believe that such courses should be added if there is sufficient student interest. Membership in the Environmental Law Society, totaling forty students, seems to indicate that there would be sufficient demand. Faculty members should be encouraged to develop offerings in these fields.

#### **The Costs of Education**

We are generally and genuinely concerned over the rising costs of legal education. While it obviously presses current students, we are more worried about how this problem may influence future classes. This school has consistently endeavored to avoid "elitist" classes, but this commitment may be undermined if only the rich will be able to afford legal education. We recognize that the costs at other schools, particularly private schools, may be far greater than here. This does not, however, alter our concern. Instead, we worry that legal education generally may be restricted to the rich.

#### **Other Suggestions**

We observe that law office economics and management are becoming more and more important. We wonder whether it may eventually be desirable to create a course in this area.

We are encouraged that progress has been made toward a joint JD/MBA offering. This should be a beneficial and attractive offering.

We learned the status of building addition plans and encourage their fulfillment. We see the need for more office space, particularly since this will free up library space, and more courtroom teaching facilities. While no concrete will be poured tomorrow, we hope the Law School will move ahead on the state and campus priority lists so that construction will take place in the reasonably near future.

#### **Conclusion**

We have a good school, one in which we can take justifiable pride. That does not mean that there is no room for improvement. We hope that our comments and suggestions are taken in this manner: to improve a very good program.

We also take modest pride in the fact that all members of the Board of Visitors participated in the inspection. We were also joined by members of WLAA's board of directors and other alumni equally motivated by the continued excellence of this school.

Submitted by:

Thomas E. Anderson,  
Chairman  
Glenn R. Coates,  
Vice-Chairman  
Lloyd A. Barbee  
Kirby O. Bouthilet  
Peter C. Christianson  
David Y. Collins  
William E. Dye  
Susan W. Hawley  
Howard A. Pollack  
John W. Reynolds  
William Rosenbaum  
Patricia M. Thimmig

## LABOR LAW STUDIES — A WISCONSIN TRADITION

When the history of the University Law School is written — as it should be — the accomplishments of its programs in labor law will deserve special recognition. Professor Jim Jones refers to the current program as probably the “finest labor studies program in any law school in the country.” How it came to be so is an interesting story, one with a stellar cast.

The story begins sometime before 1922. In those days the Law School did not quite fill the brownstone building constructed for it in 1893. Occupying some of the extra space were offices of the Economics Department where the eminent Prof. John R. Commons taught. Commons, Selig Perlman, a student of Commons and a brilliant labor historian, and Edwin Witte, one of the authors of the social security system, had created an unsurpassed center for research in the history of American labor and related movements. From this group would come scores of noted economists, including Paul and Elizabeth Raushenbush, who were instrumental in

the creation of Wisconsin's pioneer unemployment compensation system.

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*Commons and Law School Dean Harry Richards shared a vision of education reaching out to help society, this School's concept of “law in action”.*

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Perhaps it was the physical proximity that promoted the cooperative and productive approach to the study of law and society for which the Law School has become known. In any event, Commons and Law School Dean Harry Richards shared a vision of education reaching out to help society, this School's concept of “law in action.” It may have been this concept that helped attract William G. Rice, fresh out of Harvard Law School, to our faculty in 1922. The approach of Commons and Richards must have appealed to him because the next year Rice began offering a Collective Bargaining Seminar with Commons. By 1924-5 Rice was teach-

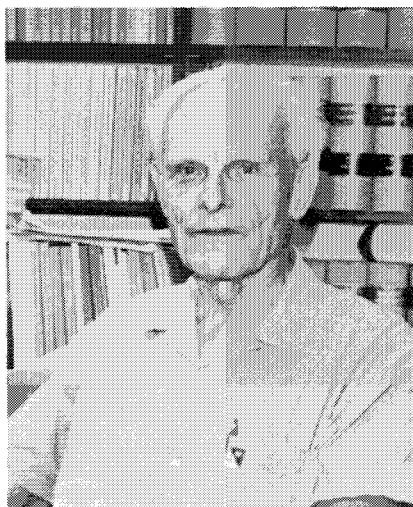
ing the first Labor Law course here, one of the first such courses in the nation.

Rice continued to teach Labor Law until 1934 when he left temporarily to become assistant general counsel to the National Labor Board, where Law Dean Lloyd Garrison was then serving as the Board's first chairman. In 1935 Rice was chosen by the State Department to represent the US at the Geneva meetings of the International Labor Organization. Between 1939 and 1941 Rice served as a consultant to the Wage and Hours division of the Department of Labor. Public service was a way of life for Rice, as it would be for many other faculty members.

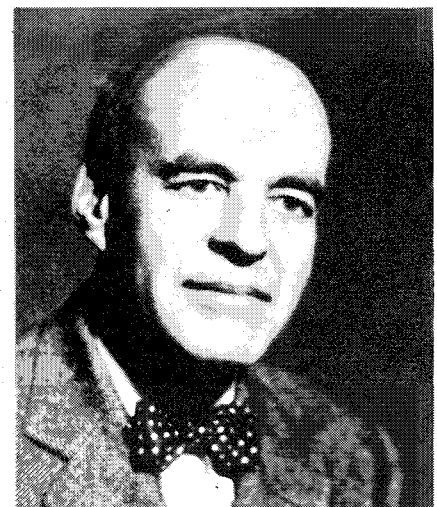
With Rice temporarily away, it appeared that Wisconsin's labor law program might languish. Then, however, a man appeared who would come to symbolize labor studies at Wisconsin. When he first joined the law faculty in 1929, Nathan P. Feinsinger taught Domestic Relations and Insurance law. He had little or no



Dean Harry Richards



Prof. William Rice



Dean Lloyd Garrison

background in labor law, nor, apparently, any particular interest in the subject. But this was to change quickly as people and events pushed him into a new and fruitful career. Feinsinger was undoubtedly influenced by Lloyd Garrison, himself a noted arbitrator, but Madison attorney Gordon Sinykin, then counsel to Gov. Philip LaFollette, also claims some of the credit for Feinsinger's national reputation as a labor scholar and practitioner. In the mid-1930's Wisconsin and the nation suffered a pandemic of labor

*... Then, however, a man appeared who would come to symbolize labor studies at Wisconsin.*

problems. Gov. LaFollette sought mediators under Wisconsin's "little Wagner Act" to settle some of these disputes. As Sinykin and LaFollette looked for help, Sinykin suggested Feinsinger. Although Feinsinger was lacking

in labor experience, Sinykin recognized his outstanding legal abilities. Feinsinger became General Counsel to the State Labor Board and thereby began a career as a labor mediator which was to bring fame and distinction to himself and to our Law School. He learned his labor law quickly, and began teaching the course with Rice in 1935-36. Winning fame in the mediation of numerous strikes, Feinsinger became permanent umpire for disputes between General Motors and the United Auto Workers in the 1950's. His files overflow with the records left from hundreds of successful settlements he helped engineer, including the Hawaiian pineapple strike of 1946-47 and the Detroit newspaper strike of 1967-68.

Feinsinger was an early believer that mediation techniques need not be confined to labor disputes. This belief led, in his retirement from teaching, to the

creation of the Dispute Resolution Center at the Law School, where techniques were studied for application to all kinds of disputes.

As World War II ended, large numbers of law students returned to campus and the uneasy war-time truce between labor and management ended. Our Law School needed help in its labor law program. Turning, as it often would, to an experienced practitioner, Abner Brodie was asked to join the law faculty. A former litigator with the Dept. of Labor, in Fair Labor Standards, Brodie brought with him a wealth of practical experience. He joined Feinsinger as associate GM-UAW umpire in 1964, and later succeeded Feinsinger as umpire. Brodie's teaching was not confined to the traditional labor/management issues but also included matters of protective labor legislation and the rights of workers, rights pioneered on this campus by Paul and Elizabeth



**Prof. Nathan Feinsinger (right) meets with Pres. Truman, George Taylor and Fred Bullen on appointment as Chairman of the National Wage Stabilization Board in 1952.**

Raushenbush, Harold Groves and Lloyd Garrison.

By the mid-1950's the campus boasted a new Industrial Relations Institute and a doctoral program in labor economics. These attractions helped bring Jim Jones back to his alma mater, where he joined the law faculty in 1969. Nate Feinsinger and Abner Brodie were nearing mandatory retirement, and, after they left, Jones became the senior professor in our labor studies program. (His story is told in another part of this issue).

The program continued to grow and, in 1974, June Weisberger joined our Law School faculty. Jim Jones was first attracted to her work while Weisberger was a visiting professor in the Industrial and Labor Relations School at Cornell University. Before that she had served as an assistant city attorney for Rochester, New York, and Legal Counsel to the Rochester Board of Education. It was in this latter capacity that she developed her expertise in the labor area. In January, 1981 the out-going US Solicitor of Labor, Carin Clauss, also joined the faculty. Her presidential appointment to the Solicitor's position capped a fourteen year career in

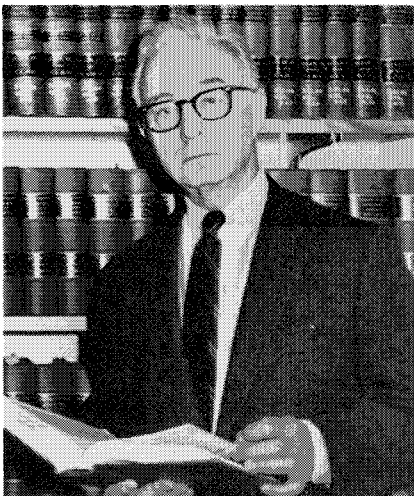
the Department of Labor. As Solicitor she was personally involved in the settlement of several recent landmark labor law cases.

*... labor studies here are not confined to traditional labor law courses.*

It is worth pointing out that labor studies at this Law School are not confined to traditional labor law courses. When Arlen Christenson came to the Law School from private practice in Minneapolis, he quickly integrated labor arbitration techniques into his Local Government course. With the rise of public sector labor issues in local governments, his decision was prophetic.

Jones, Weisberger and Clauss share responsibility for teaching current offerings in the labor area, although each has additional teaching responsibilities in other substantive fields. Labor related courses currently offered include: Labor Relations Law; Protective Labor Legislation; seminars in Collective Bargaining, Negotiations and Arbitration; Equal Employment Law; Public Sector Collective Bargaining; an advanced seminar in NLRB Practices and Procedures; Sex Based Discrimination; up to 10 credits in

clinical placements with seven different agencies; and up to 6 credits in law related courses offered outside the Law School but credited toward our graduation requirements. This wide selection, probably the most complete offering of any law school, allows our students to accumulate as many as 37 credits in labor studies. Nevertheless the labor faculty admits gaps remain in the curriculum in the areas of OSHA, ERISA, labor statistics, and the internal regulation of unions. The advanced seminar in NLRB Practices had to be deleted this year because of budget cuts, and money problems have created problems in scheduling basic courses as well as clinical offerings in the labor area. No flexibility now exists which would permit faculty research on such important issues as plant closings and employee takeovers. These problems, which if not addressed, may jeopardize our recognition as the top law school labor program, point out the need to secure additional support over and above the tax supported Law School base budget. These additional monies would be used to support and improve our excellent labor program.



**Prof. Abner Brodie**



**Prof. June Weisberger**



**Prof. Carin Clauss**

## JAMES E. JONES, JR. "DEAN" OF WISCONSIN LABOR LAW STUDIES

When James E. Jones Jr. was a teenager in Little Rock, Arkansas, in the late 1930's and early 1940's, he wanted to be a research chemist.

His friends, however, scoffed at the idea, pointing out that black people simply did not become scientists in the segregated society of the era.

"If you were half-bright and black, you prepared to be a professional, because you were going to work in the segregated system whether you were a lawyer, doctor, preacher or teacher," Jones says. "If you wanted to be a chemist, forget it. The only way you could be a chemist was to teach chemistry at the local high school or at the black college."

But Jones — now one of the nation's best-known labor law professors — was not about to let his future be limited by the color of his skin.

"I was damned if I was going to let segregation determine what I was going to do with myself," he recalls.

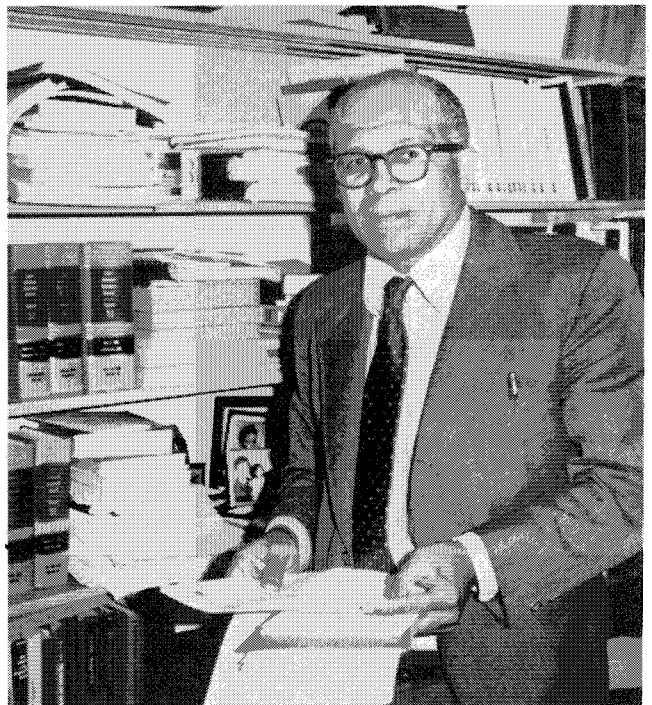
When Jones was 17, however, the United States entered World War II and the young man's study of chemistry in college was interrupted. After 3½ years in the Navy, Jones re-enrolled in Lincoln University, a black school in Missouri. But the war had soured him on the idea of being a scientist.

"We went to war and we blew up the world. The world needed another hard scientist like it needed a hole in the head. Instead, we needed some 'people people' who could deal with human conflict," Jones says.

Accordingly, after graduating magna cum laude from Lincoln in 1950, Jones entered a graduate program in industrial relations at the University of Illinois. After he got his master's degree in 1951, he landed what he calls "a white man's job" as an industrial relations analyst at the US Wage Stabilization Board's regional office in Chicago. He remembers how people reacted when they first met him.

"When clients would come in and I would be introduced to them they would virtually drop their teeth," Jones says. "They would stand stunned, because not only was I black, but at 26 I was young and looked even younger. I didn't shave but twice a week, I looked like a little boy."

While at the Wage Stabilization Board, Jones learned that what non-lawyers like himself thought did not carry much weight with lawyers.



Prof. James Jones

"I ran into lawyers who didn't listen to economists in matters that were not their 'business'," he says. Because lawyers were taken seriously, Jones decided to become a lawyer instead of pursuing a doctorate in industrial relations or labor economics.

He chose to come to the University of Wisconsin Law School because he thought it was the best labor law school in the country. And he thinks it still is.

After graduating from law school in 1956, Jones went to work as a civil-service lawyer in the US Department of Labor. He worked his way up through the ranks and in 1967 was named Associate Solicitor of Labor for Labor Relations and Civil Rights, a post he held until he joined the UW law faculty in the fall of 1969.

He was one of the highest ranking civil-service lawyers in the US Department of Labor when he changed careers at the age of 45. Why did he make the move? Jones says he could not resist the lure of Wisconsin's tradition.

"I came to this place because of its labor heritage," he says, ticking off the names of legendary scholars who preceded him. John Commons. William Rice. Nate Feinsinger. Abner Brodie.

The overall quality of the Law School was also a powerful attraction.

"We are a premier law school," Jones notes. "We're much better than our rankings, and our rankings are formidable."

Since 1969, the Law School has made its labor law program even stronger, according to Jones. The number of courses offered has doubled and the labor faculty has been expanded with the likes of June Weisberger and Carin Clauss, a former Solicitor of Labor who, Jones adds, "went farther as a woman than I went as a black."

All of the above has been accomplished with what Jones describes as a "penny pinching" budget. He

adds that the excellence of the Law School's labor program is a fragile property. "We need to encourage research in this area," Jones says, "the kind of research that our Capital Fund Drive can help finance."

"We encourage and seek diversity, but that's the hardest kind of thing to keep on an even keel," he points out. Nonetheless, "there is a critical mass (of professors) with a continuing interest in labor matters."

Despite countless offers of other jobs Jones has remained at Wisconsin.

President Carter appointed him to the Federal Service Impasse panel, which seeks to settle labor disputes in the Federal Service. His term ended in January 1982. The part-time position enabled him to perform a public service while remaining a full time academic.

One of the things he says he finds most satisfying about being a professor is helping recently graduated students find jobs in Washington. He calls himself a "facilitator of professional opportunities" who uses his continuing contacts to open doors for students.

"I am an unabashed promoter of the Wisconsin product as I go about the country and make contact with people," Jones says.

Jones, 58, is married to the former Joan Turner. The couple has two children. Daughter Evan, 18, just started her freshman year at UW. Son Peter, 16, is a junior at West High School in Madison.

## ON THE LIGHTER SIDE

In Volume XII, No. 1, we gave you a copy of the new standardized examination for potential law professors. In retaliation law professors apparently have come up with their own rules for success in teaching and examining. These rules (inadvertently left in a Law School copying machine) are reprinted here as a service to all of us who have observed their operation.

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Rule 3: Be sure to appear fifteen minutes before the start of the examination with a self-satisfied

smirk on your face. This will convince the students that you are a fine fellow, after all, and sincerely interested in their welfare.

Rule 4: Be certain that there are five or six strategically placed typographical errors in the exam. This will test student ability to resolve ambiguities. It will also enable you to make an opportune entrance with an incomprehensible explanation after the students have resolved those ambiguities. Be sure to announce the corrections in an inaudible tone. This will spread confusion and consternation. After all, anyone can take an examination under ideal conditions.

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Rule 6: Where you have stressed policy all year, be certain to mark on the basis of doctrine and doctrine alone. It is never too late

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# 40th Annual Spring Program

April 22-23, 1983

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- Annual Meeting and Luncheon,

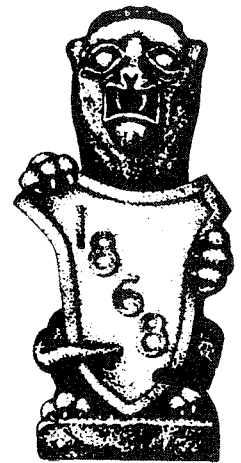
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Presentation of Distinguished Service Award

Recognition of reunion classes (1933, 1938, 1943, 1948, 1953, 1958, 1963, 1968, 1973, and 1978)

Watch your mail for details



# DISPUTES PROCESSING RESEARCH PROGRAM — FIVE YEARS OF PROGRESS

The University of Wisconsin Law School's Disputes Processing Research Program has emerged as the major academic center for research on the relationship between dispute resolution and the civil justice system. Responding to the need for more comprehensive information and a better understanding of the civil justice system, professors from the Law School and related departments came together in 1977 to establish the Program. Initial support from the Ford Foundation, the University and the Law Alumni Association allowed the Program to develop research projects which have since reworked our understanding of how civil trial courts operate.

In 1978, the Program submitted a proposal to the United States Department of Justice to fund the Civil Litigation Research Project. This research represents the largest commitment of money and effort made in the U.S. to study the economic costs of civil litigation. Other Program projects have continued to explore how courts operate within the context of society. To date, the Program has coordinated ten projects involving \$3 million. Ten law school professors, in addition to numerous legal researchers, law students and associates from other departments, have participated.

The results of these projects have been:

- the development of a new way to conceptualize civil justice
- the creation of several major data bases on litigation and alternatives to litigation
- the production of the first baseline data on rates of disputing in various areas of American life
- the creation of the first comprehensive data base on the costs of litigation and its alternatives
- analysis of the costs of litigation, including the factors that affect the time lawyers spend on cases
- detailed examination of how consumer disputes are processed and the role of consumer law in affecting resolution
- identification of the importance of "negotiated justice" in civil litigation with special emphasis on the changing role of the judge in resolving civil cases.

The Program is also committed to the communications of its findings to the academic and professional communities. It has two series of publications — a Working Papers and a Reprint series — which it distributes nationally and internationally. The Program has hosted two national conferences related to its research efforts: "Making Auto Repairs Credible" and "When Consumers Complain." Both brought together researchers, policy analysts and practitioners in efforts to open discussion on the effects of Program findings on approaches to the resolution of disputes. Associates of the Program have been in demand for many national and international conferences sponsored by such institutions and governments as The Rand Corporation, Harvard Law School, Duke University, Federal Republic of Germany, Wisconsin Bar Association.

Summaries of completed and on-going projects are shown below. For more information, contact Professor David A. Trubek, Director, Disputes Processing Research Project, in care of the Law School.

## PROJECT SUMMARIES

### (1) LAWYERS AND CONSUMER PROTECTION LAWS: Professor Stewart Macaulay, University of Wisconsin Law School.

Examining the role private lawyers play in consumer complaints, this study highlights the role of the lawyer as "gatekeeper" to the remedy system. The study shows that lawyers tend to deflect consumer complaints, which are generally costly to process in relationship to their value, and may create role conflicts for small-town lawyers. As a result, lawyers may "transform" consumer disputes by persuading clients to drop the matter.

### (2) FINAL OFFER INTEREST ARBITRATION IN WISCONSIN: Professor William H. Clune III, University of Wisconsin Law School.

Professor Clune investigated the factors influencing perceptions of the fairness of final offer interest arbitration among participants in the Wisconsin system. It was found that role in the process (Labor-Management, Party-Negotiator) was more important than either economic results or experience with the process (winning, losing, settling, etc.). Thus, preconceived attitudes based on politics and interest

group affiliation were more influential than "micro" disputes-processing variables. The research also investigated some political and legal efforts by interest groups to change the structure of disputing in this area (the procedural ground rules).

### (3) THE MILWAUKEE CONSUMER DISPUTE STUDY: Professor Jack Ladinsky, Department of Sociology, University of Wisconsin-Madison.

The project measured the incidence of consumer problems faced by a cross-section of people in Milwaukee County. Random-sampled telephone interviews solicited information on fourteen different potential consumer disputes during the previous year. Interviews traced the life history of the dispute. This "bottom up" perspective illuminates, from the consumer's perspective, how people handle consumer problems, particularly the degree to which perceived problems are transformed into legal conflicts. Professor Ladinsky also surveyed the institutionalized third-party fora available for handling consumer disputes. His interest was to determine not only the incidence of consumer disputes but how many of them reach the institutionalized fora. The project's find-

ings indicated that most people faced with consumer problems complain directly to the product or service provider and most who complain receive some compensation. While consumers complain frequently to the provider, those with disputes rarely turn to outsiders for help in resolving disputes. Of 663 disputes, only 26 were taken to a third party, usually a lawyer. Only 1 went to court.

(4) READING THE LANDSCAPE OF DISPUTES: WHAT WE KNOW AND DON'T KNOW (AND THINK WE KNOW) ABOUT OUR ALLEGEDLY CONTENTIOUS AND LITIGIOUS SOCIETY: Professor Marc Galanter, UW Law School.

Professor Galanter analyzed the literature which asserts we have a "litigation explosion" and seeks to prescribe cures for this alleged epidemic. Labelling this literature "hyperlexology," from its tendency to find overuse of the law, Galanter explores the basis for the critics' contentions that Americans litigate more than we used to, more than in other nations, or frequently in comparison with any baseline of legally cognizable social conflict. This analysis leads to a critique of current legal scholarship on disputing, which itself is based on very little data and which ignores much of the evidence that is available.

(5) CIVIL LITIGATION RESEARCH PROJECT: Professor David M. Trubek, UW Law School, Professors Joel Grossman and Herbert Kritzer, Department of Political Science, UW-Madison, William L. F. Felstiner, The Rand Corporation, and Professor Austin Sarat, Department of Political Science, Amherst College.

The Civil Litigation Research Project sought to develop a conceptual framework that would relate knowledge about *disputing behavior* to the concerns of judges, court administrators, and others concerned with the *administration* of the civil justice system. This approach, which we call "courts in context" approach provided the basis for the creation of a massive data base including a survey of the disputing experience of the population and detailed data on civil cases in state and federal courts, cases brought to such "alternative institutions" as the American Arbitration Association, and "bilateral disputes" which never went to any third-party forum. These data have been archived and are available for public use.

The CLRP staff has begun to work on the third objective: analysis of the data. Numerous studies have been conducted, including analyses of the incidence of disputes in the U.S., the "pace" of litigation in selected courts, the monetary stakes and costs in typical civil lawsuits, the factors which determine how lawyers allocate time to lawsuits, and the comparative cost-effectiveness of settlement versus adjudication in litigated cases. These studies have been published in various places: a complete set will be available as part of the CLRP Final Report to the Department of Justice, to be available in 1983.

(6) DISCRIMINATION GRIEVANCES, LEGAL IDEOLOGY AND THE INDIVIDUAL SITUATION: Professor Kristin Bumiller, Department of Political Science, Johns Hopkins University.

This study is based upon survey data from the Civil Litigation Research Project's national sample of persons experiencing discrimination problems. Ms. Bumiller conducted followup interviews with a subsample of individuals who reported discrimination grievances to determine how and why they chose among possible disputing trajectories including political action. The analysis will emphasize the process of social exchange between authorities and the discriminated, the social and psychological mechanisms that stifle the perception of conflict, and the role of legal ideology in influencing choice.

(7) COMPARATIVE DISPUTES PROJECT: Dr. Jeffrey FitzGerald, School of Social Sciences, LaTrobe University (Australia) and Honorary Fellow, University of Wisconsin Law School.

Dr. FitzGerald's project compares the incidence of disputing in Australia and the United States. Using a questionnaire modeled on the household survey developed by the Civil Litigation Research Project, he surveyed over 1,000 households in an Australian state. The results permit comparisons with American data reported by the Civil Litigation Research Project. The study examines the patterns in the range of potential grievances, the relationship between types of grievances and dispute trajectories, the role third parties play in influencing trajectories, and variation in outcomes. In comparing the Australian and American data, Dr. FitzGerald has found overall a marked similarity between the incidence of disputing. While Australians appear a bit more inclined to complain, Americans are slightly more apt to litigate. However, for some dispute categories, most notably discrimination, he found a substantial variation. This has led him to turn to a detailed examination of the influence of lawyers and fee arrangements on disputing behavior.

(8) JUDICIAL PARTICIPATION IN THE SETTLEMENT OF CIVIL CASES: Professor Marc Galanter, UW Law School.

The project seeks to explore a growing trend toward judicial involvement in the settlement of civil cases. Its goal is to build a theory concerning the judge's role. Professor Galanter suggests that two clusters of factors affect the frequency, mode and outcomes of judicial participation: "bargaining arena" and "court." The bargaining arena includes such factors as case characteristics, party characteristics, lawyer-client relations, lawyer characteristics, and structure and culture of the bargaining arena. This last factor includes local norms and shared understandings about fairness of settlements in various substantive law areas. The second cluster, courts, includes the judicial organization, legal structure and culture. This approach to judicial involvement in settlement aspires to give a rich and differentiated account of what produces settlements, and to provide the basis for a more penetrating examination of the qualitative characteristics of settlements.

(9) THE PROCESS OF NEGOTIATION: AN EXPLORATORY INVESTIGATION IN THE DIVORCE CONTEXT: Professor Marygold Melli, UW Law School and Professor Howard Erlanger, UW Law School and Department of Sociology.

The present study examines negotiated justice in the context of setting child support awards in divorce cases in Dane County, Wisconsin. The research focuses on the roles litigants, lawyers and court officials play in determining whether a case will be settled, when it will be settled, and the amount of the child support award. Much of the work will be qualitative, based on observation and in-depth interviews; quantitative analysis, especially of the case files, is also involved.

(10) FEE ARRANGEMENTS AND FEE SHIFTING IN CANADA: Professor Herbert Kritzer, Department of Political Science, University of Wisconsin-Madison.

The project is an examination of the fee shifting rules employed in the province of Ontario, Canada. Initially, Professor Kritzer was concerned to find if the existence of court-based controls on lawyers' fees would preclude the need for closer supervision of lawyers' time. He found, first, that corporations do not rely on the formal structures of control but, second, these controls do appear to play a major role in affecting access to the courts. The fee shifting arrangements appear to inhibit innovative cases and cases pitting a person of low income against one of high income. This enhances the likelihood of settlement. Further, the research is finding that while contingency fees are officially banned in Ontario, they are developing indirectly as one means of slightly off-setting the conservative effects of the fee shifting role.

(11) THE SMALL CASE DIVISION OF THE U.S. TAX COURT: IS IT A SUCCESSFUL SMALL CLAIMS COURT? Professor William C. Whitford, University of Wisconsin Law School.

In the late 1960s, a Small Case Division was established within the U.S. Tax Court to permit taxpayers to appeal *pro se* Internal Revenue Service decisions. Initial information on the Small Case Division has been favorable. The Division as with other *pro se* courts is meant to minimize the formal adversarial nature of litigation and permit wider access for people suffering the "little injustices." Research on other *pro se* courts has, however, concluded that they work mainly against the individual, favoring institutional users. Professor Whitford's research will investigate the initial claims for the Division's success in light of present knowledge of defects in other *pro se* courts. His research includes direct observation of court proceedings, interviews with government and private attorneys, a limited mail survey of taxpayers who have used the Division, and a data set detailing 1200 small cases from 1978 and 1981. The research initially appears to bear out claims for the Division's success. *Pro se* taxpayers appear to fare almost as well as taxpayers outside the Division who employ counsel. One explanation for the contrast between the Division and other *pro se* courts is that here the taxpayer is the proactive participant, initiating the proceedings, while in the usual case the individual is only responding to proceedings initiated by another, generally institutional, party.

— Rob Sikorski

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