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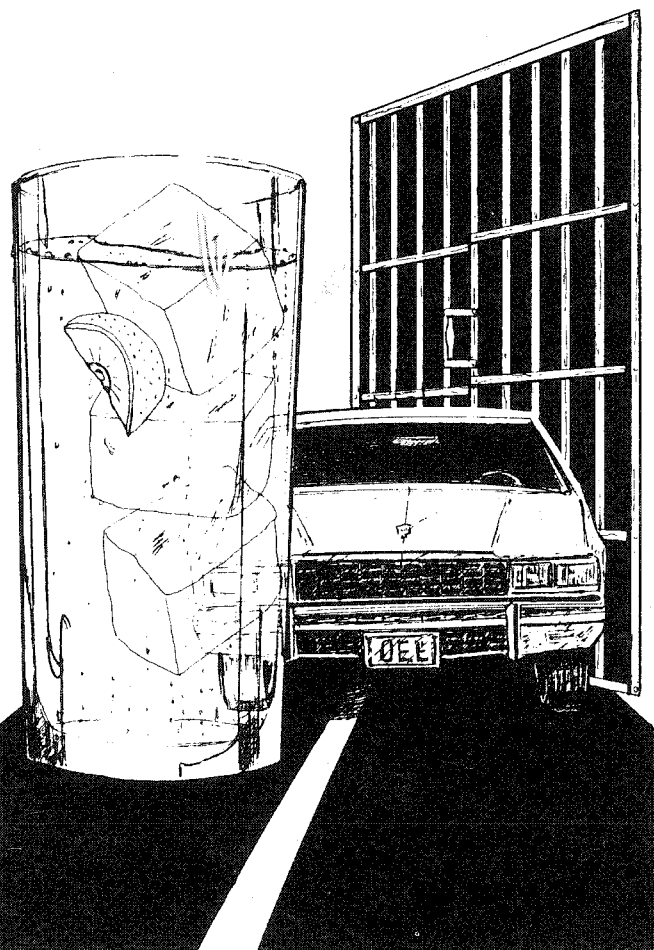
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GETTING DRINKING DRIVERS OFF THE ROAD:

A PERSPECTIVE BASED ON A STUDY
OF POLICE OPERATIONS

by Prof. Herman Goldstein

page 6

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GETTING DRINKING DRIVERS OFF THE ROAD: A Perspective Based on a Study of Police Operations

Herman Goldstein

Set forth below is a reflective article by Wisconsin Law Professor Herman Goldstein on a social problem that is receiving a lot of attention, not just in the United States but in many other parts of the world as well: the drinking driver.

We Americans have long looked to the police to handle some of our most complex social problems, and legislatures across the country — hoping to crack down on those who drink, then drive — have ground out a lot of new laws which rely primarily on police enforcement.

Professor Goldstein, known nationally and internationally for his studies of — and insights into — police operations, recently completed an experimental project in collaboration with the Madison Police Department which examined the problem of the drinking driver and the department's response to it.

Findings of that study, reported here by Professor Goldstein, suggest that primary reliance upon police enforcement isn't likely to have lasting impact in reducing the incidence of the problem. And experience elsewhere, as he also points out, suggests the same conclusion.

Concerned citizens — legislators included — will gain from an understanding of the findings and insights of Professor Goldstein into the nature of the drinking/driving problem, the limitations of police operations in reacting to and handling the problem, and the special problems resulting from police enforcement of laws meant to get drinking drivers off the road.

But Professor Goldstein — a cheery believer that things can be made to work — has not given up in despair on the problem and points instead to solid gains which can come from realistic understanding and appraisal of the drinking driver problem from the perspective of police operations.

Among the first major difficulties one encounters, from the police perspective, in analyzing the drinking-driver problem, is in getting an accurate picture of the problem. It has become almost standard practice, for example, by way of calling attention to the gravity of drinking and driving, to cite the national statistics that report fifty percent of all accidents resulting in fatalities as having involved someone who was drinking. Our review of police records in Madison for a period of six years produced a similar figure. But our interviews with officers and our observations of police actually handling incidents involving intoxicated drivers on the streets suggest that the figure may be somewhat misleading.

On the one hand, based on the local experience, the oft-cited statistic may understate the magnitude of the problem. Determining alcohol involvement, especially in accident situations, is by no means as precise a process as is implied in the use made of the national figures. Consider, for example, what happens at the scene of a serious accident involving one or more fatalities or serious injuries. In the rush to save lives, reroute traffic, perhaps protect others from a downed power line, and calm relatives and friends, the detection of alcohol involvement will most likely get low priority. Unlike those situations in which erratic driving behavior is first observed and a driver is then stopped and his condition scrutinized, police investigating accidents are limited to the observations they can make of the drivers. And in these observations, allowance must be made for lack of stability and coherence that may be due to the shock of the accident. If the driver is seriously injured and is rushed off to a hospital, the investigating officer may have even less to go on.

Without probable cause, an officer cannot order that a driver submit to a blood alcohol test. Recognizing the difficulty in conducting such investigations, the Wisconsin legislature, in 1977, authorized police officers to "request" all drivers involved in an accident resulting in great bodily harm or death to take a blood alcohol test, but the Attorney General subsequently ruled that the officer could not do so without having first made a lawful arrest. The statute has since been repealed.



Prof. Herman Goldstein

The intoxicated condition of one or more of the drivers is of course obvious in many accidents. But even if apparent, a variety of factors may result in the accident being investigated without pursuing alcohol involvement. Officers disagree over how often this occurs, with some contending that they know of no such cases. Those who acknowledge the practice indicate that it is perhaps most common in single car accidents in which the driver is injured, but there is no injury to others or serious property damage to other than the driver's vehicle. As expressed to us, the officers in such cases may conclude that the driver will have suffered enough with his or her injuries, possible permanent disability, damage to the car, increased insurance, and hospital and medical bills. Discretion of this type masks some cases that might otherwise add further to the figures used to underscore the gravity of the problem.

On the other hand, it must constantly be borne in mind that while intoxicated persons ought not to drive, a determination that a driver in an accident had previously consumed alcohol does not mean that the accident would not have occurred if the driver were sober. In our effort to condemn the practice of drinking and driving, we have tended, in our use of statistics, to fuzz-up the distinction between those who are found, because they became involved in an accident, to have been drinking and those who were established as having caused the accident. The oft-cited fifty percent figure includes drivers who were determined to have been drinking, but who may not have been established as at fault for the fatalities that occurred.

In our effort to probe more deeply into local aspects of the drinking driver problem, we gathered detailed data about the 29 persons who died in automobile accidents attributed to drinking-drivers in Madison in the period from 1975 through 1980. We found, somewhat to our surprise, that 18 of these victims were the at-fault drivers themselves. Another nine of the victims were passengers in an at-fault driver's vehicle who we assume entered the vehicle on their own volition, knowing that their driver was intoxicated. Only two victims in the six year period were what we referred to as innocent, in that they were obeying the law when they were hit and were not in any way putting themselves at risk. One was the passenger in a vehicle hit by a drinking driver. The other was a pedestrian.

This finding put the gross national statistics on fatalities in a somewhat different light. If the Madison figures are even a rough reflection of the national experience, we can better understand why the extraordinarily high total of deaths attributed to drinking and driving has not produced the intensity of concern than one would expect. The fatalities to which communities react strongly are those involving an innocent victim. Our tendency to view loss of lives less seriously if the victim bears some degree of responsibility for his or her fate may have had a substantial impact on policies relating to intoxicated drivers in the past.

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Increasing the Number of Arrests

Police agencies in recent years have been under growing pressure to increase the number of arrests they make of drinking drivers. The assumption is that at some yet to be determined enforcement level, the increase in arrests will begin to produce a substantial reduction in the number of intoxicated drivers.

The Madison Police Department increased its arrests of intoxicated drivers from 81 in 1968 to a high of 1,250 in 1978, which was among the highest rates per capita in the state. (Unfortunately, we have no way of knowing what the impact has been on the incidence of drinking and driving in Madison.)

Numbers of arrests have little meaning unless they are related to the total number of violations in the community. We would have liked, therefore, to find out how many drivers on the streets of Madison at any one time are intoxicated. The most effective method that has been developed for acquiring such data is the roadside survey, a procedure by which a roadblock is set up without advance notice. Drivers are asked to cooperate in responding to a series of questions and by providing a sample of their breath. Cooperation is usually very high. We did not have the resources with which to conduct such a survey in Madison. But we were impressed by the consistent findings of those roadside surveys that were conducted in various types of communities for the National Highway Traffic Safety Administration between 1970 and 1974. With only slight variations from one jurisdiction to another, it was found that six per cent of weekend and late weekday (after 10:00 p.m.) drivers had a blood alcohol concentration (BAC) equal to or exceeding .10, which is now the limit in Wisconsin beyond which driving is illegal.

Our inability to establish with any precision the incidence of intoxicated driving in Madison was initially disappointing. But the most conservative estimates, based on the data acquired elsewhere and on local impressions, were so large, we no longer felt the need for more exact figures. As the police note, for example, if only one of the patrons who, at closing time, drives away from each of the taverns or restaurants serving drinks in Madison has more

than .10 BAC, that in itself would place 300 intoxicated drivers on the streets of the city. The task of the police, it was clear, was overwhelming. This is especially so since the closing time of bars is exactly the time when police departments are busiest with other matters. A decision to arrest an intoxicated driver commits the officer and an assisting officer to from one to two hours of processing. The length of this period has a profound effect on the department's enforcement activity, especially since the decision of one officer to make an arrest places heavier responsibilities on those who remain in the field and who must cover for the officer out of service,

Even with the continued high rate of enforcement in Madison (and constant expressions of concern from prosecutors and judges about the high volume of such cases), the number of arrests averages out to only 3.5 a day — a miniscule number when related to the total number of drinking drivers on the streets. With so low a probability of interference in so common a pattern of behavior, a substantial number of drivers no doubt justifiably conclude that they have

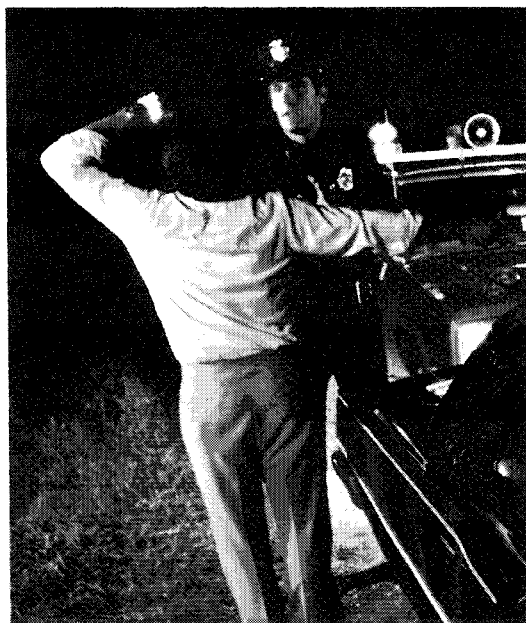
... doubling the number of arrests would still only affect a small fraction of the intoxicated drivers on the streets at any one time ...

immunity from arrest. But doubling the number of arrests would still only affect a small fraction of the intoxicated drivers on the streets at any one time.

Against this background, we should weigh carefully recent proposals that the statutory standard for determining intoxication be reduced to .05 BAC. Given the extraordinarily low probability that a driver with .10 will currently be arrested, should legislatures increase numerous fold the number of drivers subject to enforcement action? Some legislators may see value in giving legislative endorsement to what is essentially good advice (i.e., don't drink and drive even if the consumption of alcohol is less than what has previously been prohibited), but the value in sending out such a message must be balanced against the effect the enactment would have in making even more empty the current threat of prosecution.

Controlling Police Discretion

With so big a gap between the number of violations and the number of prosecutions, police officers exer-



cise broad discretion in their contacts with drinking drivers — especially in deciding who from among the hundreds of violators should be arrested. We were surprised, in our study, to find that this was not generally recognized; that prosecutors and judges, for example, were taken aback when informed that the cases they handle represent but a portion of the cases in which an arrest could have been made.

Conscious of the potential for abuse, the Madison Police Department and other police agencies as well have at times attempted to provide guidance to police officers, but such efforts have been hindered by the legal fiction that police have no such discretion.

Most officers candidly acknowledge that discretion is exercised, that each officer employs somewhat different criteria, and that irrelevant considerations sometimes affect the decisions that are made. At the most general level, discretion is reflected in the fact that some officers, because they view the drinking driver problem seriously, make large number of arrests; others make none. The latter may not view the conduct as serious, or may simply dislike dealing with intoxicated persons.

One of the critical discretionary points, we determined, was in deciding whether or not to stop a suspected driver. Driving behavior was the most common criterion, but the officer may be influenced against involvement by such concerns as the pressure of other police business or nearness to the end of a shift. After stopping a driver and concluding that the driver is intoxicated, the judgment as to whether an arrest is to be made was based on such factors as the likelihood the individual will test well over legal limits; the attitude and cooperation of the offender; and the likelihood that the individual will drive again if not taken into custody. But some officers also consider the offender's past driving record; the offender's honesty in acknowledging past convictions; and the proximity of the individual to his or her home.

Our interviews and field observations indicated that police officers have, over the years, developed a



substantial repertoire of alternatives to arrest: having the driver walk home; having one of the other individuals in the stopped vehicle take over the driving, providing he or she is not also impaired; calling a cab for the driver and securing the vehicle; escorting the driver home; insisting that the driver take time out to eat; or removing the ignition key and either hiding it in the vehicle where it is not easily accessible, or depositing it at some point with information left with the driver as to where it can be retrieved. While there is an obvious element of unfairness in being selected out for such "favored" treatment, it was apparent to us — as it has been to police officers — that such an informal action taken against a particular offender under some limited conditions may indeed be the most effective way in which to deter similar behavior on the part of that particular offender in the future.

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Since it seems inevitable that police will continue to be required to exercise broad discretion in the handling of intoxicated drivers, good sense in the running of a police agency requires that steps be taken, through training and the development of policies, to increase to a maximum the likelihood that it will be exercised in ways that are fair and uniform, and that contribute toward reducing the drinking-driver problem. But movement in this

direction has been seriously impeded by the unsettled state of the law relating to the liability of police officers if, having knowledge that an individual was driving while intoxicated, they choose not to arrest. The periodic messages that reach the police through successful tort actions in which officers are held to a standard of full enforcement of the law makes it impossible for police administrators to deal openly and constructively with the broad range of discretion which police officers must inevitably exercise in this area.

Increasing Sanctions

In response to current concerns, legislatures throughout the country have been moving rapidly to increase sanctions for those convicted of drinking and driving, including mandatory jail sentences for second offenders, increased monetary fines, and im-

The basic question is whether the criminal justice system has the capacity to treat more severely an offense of such high volume ...

mediate loss of license upon conviction. Congress has made the availability of certain funds for increasing highway safety available to the states conditioned on their adopting more severe sanctions. A proposal recently made by a Presidential Commission would make the much larger grants for highway construction also conditioned on enactment of more severe penalties. All of this is so despite the fact that there is no evidence that programs based on severe penalties have been effective, over the long term, in reducing the incidence of drinking and driving. But one of the main reasons we lack any such hard evidence is that in the past, programs carrying heavy sanctions have not worked; they have not been implemented in their entirety or maintained over a sufficiently long period of time to afford an opportunity to measure their effect. It remains to be seen if the results of the current round of legislative actions will be any different.

The basic question is whether the criminal justice system has the capacity to treat more severely an offense of such high volume. Large numbers of cases require expeditious handling which past experience indicates can be achieved if the stakes involved for the defendant are not too high. But as severity increases, due process safeguards become more important. It becomes more difficult, as a consequence, to simplify procedures, and defendants are more likely to make fuller use of the system to avoid the consequences of a conviction.

Madison's experience in processing large numbers

of drunk driving arrests was instructive. To learn what happened to them, we tracked each of the 92 arrests made by Madison police in March of 1980. It is important to note that these arrests were made prior to the most recent changes in the statutes that increased the sanctions for driving while intoxicated. The statute then in effect, which had been enacted in 1977, was intended to increase the number of arrests by reducing the severity of punishment. First offenders were charged with a city ordinance violation. Offenders were given the opportunity to enter educational and treatment programs. The threat of harsher sanctions (fines, jail and revocation) was used to coerce participation in these programs.

With these opportunities to avoid loss of license and incarceration, 90% of the persons charged with driving while intoxicated pled guilty or no contest to the original charge. In 8% of the cases, a plea was accepted to a reduced charge. Only 2% of the cases were dropped. No trials were held. Included in these 92 cases were 19 second offenders and two third offenders who faced heavier sanctions. Observers identified two other factors that contributed to these results: the high quality of the cases presented in the written reports by arresting officers, which were often shown to the defendant or defense counsel; and the fact that .10 BAC was evidence per se of intoxication.

But even under a statute that was not considered as carrying severe penalties, police, prosecutors, judges and defense counsel developed additional accommodations in order to handle the large volume of cases. The most commonly reported accommodation in other areas of the state — that of routinely accepting pleas to a lesser charge — was not used by either the Dane County district attorney or Madison's city attorney. But our field observations of police activities and probes elsewhere in the system revealed numerous other accommodations that were used in order to "make the system work." Offenders with less than .13 BAC were rarely arrested in the first instance. The charge against those arrested with less than a .13 was frequently reduced. In exchange for a guilty pleas, concurrent charges were often dropped and the charge for refusing to submit to a BAC test was automatically dropped. Convicted offenders who lacked the funds with which to pay their fines were routinely allowed liberal periods in which to make payment. When licenses were revoked, an occupational license was routinely issued so long as minimum statutory standards were met. Third offenders were permitted to undergo inpatient treatment as a substitute for serving the legislatively mandated thirty day jail sentence. Finally, the trial of difficult cases was commonly postponed with the hope that some intervening development would facilitate disposition without trial.

What our inquiry revealed, then, was a delicately balanced equilibrium that served the interest of both defendants and the state and that had been arrived at over a period of time through cooperative arrangements among prosecutors, judges and defense counsel. Like the discretion exercised by the police,

the results are rather mixed, with some indications of unfairness and lack of faithfulness to legislative intent, but also with some evidence that the ultimate objective of reducing the incidence of drinking and driving may have been well served.

With the passage of time since the enactment in 1981 of more severe sanctions, it is now possible to make probes similar to that which we conducted in order to determine the new "configuration"; to establish what accommodations have developed in response to the new statute. No doubt the picture that will emerge will differ from one jurisdiction to another. Hopefully, several such inquiries will soon be under way.

While we do not yet know with any preciseness how faithfully the detailed provisions of the newly enacted statute have been implemented, claims have already been made for its effectiveness in reducing drinking and driving. Strangely, those making the claims may be right, but we are unlikely to know

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...

with any certainty. We do know that accidents caused by drinking drivers have decreased in some jurisdictions after all of the publicity associated with the enactment of laws relating to intoxicated drivers, but returned to their previous level as limitations on enforcement became apparent. The most often cited example is the large-scale alcohol-safety program launched in Britain in 1967. The combination of publicity associated with initial enactment of their Road Safety Act and the subsequent legal wrangling in its implementation created an impression among drivers that there was a real chance that they would be caught, charged and convicted. The law was credited — to the extent one can be precise about such measurements — with having reduced crash losses involving drinking-drivers. But alcohol-related casualties and deaths began to rise gradually as drivers recognized that certainty of apprehension and punishment under the law had been grossly overestimated.

The number of accidents attributed to drinking drivers is now down in Wisconsin and in other states as well. But so are the number of accidents involving sober drivers. In addition, other changes — such as the reduction in the speed limit and the reduction,

during some periods, in the amount of miles driven due to fuel shortages and the economy — make it extraordinarily difficult to interpret our experience; i.e., to determine with any preciseness how much of the reduction is due to the publicity associated with the threat of more severe sanctions, if not the actual implementation of those sanctions.

The often cited Scandinavian experience is of limited relevance. Although Sweden, Norway, Finland, and Denmark do have stricter drinking and driving laws than the United States, there is no solid evidence that these laws can be credited with having reduced the incidence of drinking and driving in these countries. Their stiff laws have been on the books for a long time and are more a reflection of how seriously Scandinavians view drinking and driving. This is not to say that the laws are ineffective; only that the evidence and arguments given to support their deterrent value are somewhat misleading. One must take note of fundamental differences in cultural attitudes toward the use of alcohol in the Scandinavian countries, the strength of the temperance movements, and, in particular, the strong

negative attitude toward drinking and driving.

What I find most relevant in the Scandinavian experience is that they have not depended so heavily on arrests and prosecutions to control drinking and driving, but use their laws in a more limited way to backup and underscore self-controls. If there is a single point that emerged most clearly from our inquiries, it is that we are currently depending much too heavily on arrest and prosecution as the primary method for altering the habits of drinking drivers. The criminal justice system simply cannot carry so heavy a burden. That is why we should welcome, in the current wave of concern about intoxicated drivers, the exploration of other alternatives — from technical devices placed on cars to changes in road construction; from greater controls on those who dispense alcohol to more immediate revocation of licenses. But ultimately, the major value of all of these measures will be in the contribution that they — along with legislative enactments — make toward strengthening the norm that says, quite simply, it is socially unacceptable to both drink and drive.

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BREAKING AWAY FROM MASS PRODUCTION

The American law school, throughout its existence, has been an instrument of mass production. Today, and from the beginning, the bulk of formal legal education has been passively acquired in large classes, with only limited opportunities to learn by doing, and few chances for extended one-on-one discussions between student and professor.

To be sure, some opportunities for individualized involvement in the learning process have been available, but they have been generally limited in kind and often open to only a small fraction of all law students. The Socratic method, for example, was intended to make legal education something more than a spectator sport. Participation on law review afforded a chance for individual and intensive efforts to define and seek answers to particular legal problems. Other individualized efforts included moot court participation, serving as a research assistant for a faculty member, or part-time employment with a practicing attorney.

Historical as well as practical reasons probably account for the fact that mass production remains the dominant characteristic of legal education: Legal training first entered college at an undergraduate level, where mass production was the order of the day. In practical terms, mass production of lawyers is much less expensive than any of the individualized alternatives. And, besides, the best of the mass-produced graduates are so very good that it is not easy to argue that the system does any lasting harm to those who survive it.

In the past two decades, however, there has been a sharp increase on the kinds and opportunities for learning by doing and the Wisconsin law student of 1984 has choices on this front that were simply not to be had a generation earlier.

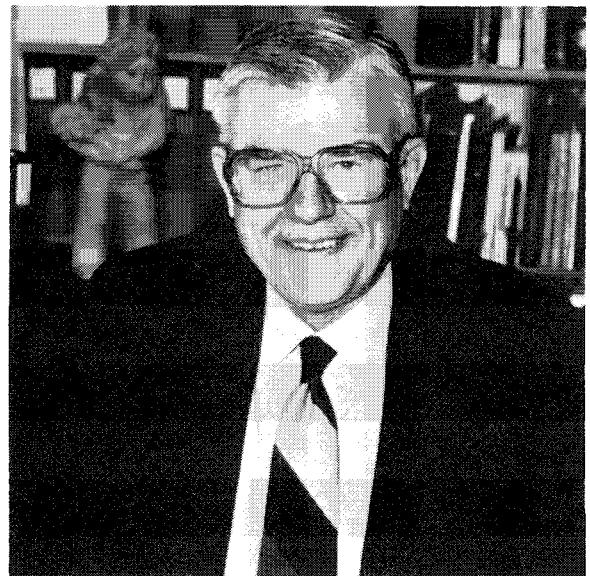
Two quite different approaches to learning by doing at the Wisconsin Law School are illustrated by the pair of articles which follow.

The first of these approaches involves learning by doing the real thing: As many as 75 law students annually participate in providing legal services to inmates of Wisconsin correctional and mental institutions by participation in the Legal Assistance to Institutionalized Persons Program (more commonly referred to as LAIP).

The second — and quite different — approach involves learning by doing a simulation of the real thing, as described in a speech by Professor Stuart Gullickson from which excerpts are reproduced in the last of the two articles.



Prof. Frank Remington: *Mainspring of the Legal Assistance to Institutionalized Persons Program (LAIP) which enables 75 law students annually to learn by providing services to inmates of Wisconsin's institutions.*



Prof. Stuart Gullickson: *His students learn the real thing by functioning as attorneys in simulated situations.*

LEARNING BY DOING THE REAL THING: Wisconsin's Legal Assistance to Institutionalized Persons Program

During the 1983-1984 academic year 70 or more students at the Wisconsin Law School were participating — for academic credit — in what by this time was known as the Legal Assistance to Institutionalized Persons Program (or LAIP as the program is more frequently called).

For undergraduate law students, LAIP participation involves learning by doing the real thing: providing legal services to inmates of Wisconsin correctional and mental health institutions. But LAIP objectives are broader than merely to provide high quality service to inmates, for the program exposes law students to a good, broadening educational experience stressing particular professional responsibilities, and LAIP's research product across two decades has added substantially to knowledge and understanding of the lives of institutionalized persons.

LAIP is the outgrowth of a research project launched at the Wisconsin Law School in the early 1960s which sought an in depth understanding of correctional institutions and of the inmates confined in them. A substantial grant from the American Bar Association funded the initial project and, under the guidance of Professor Frank J. Remington, law students became involved in the studies contemplated by the project. Soon after the program of study began, requests were made for help to inmates who had need for legal assistance. Legal services for inmates soon followed, spurred in part by the decision of the United States Supreme Court in *Johnson v. Avery*, 393 U.S. 483 (1968), which held that jail house lawyering could be prohibited only if alternative methods of legal assistance were made available. The Court suggested that a properly supervised law student program would suffice. Other pressures, too, shaped the development of the program. Inmates, particularly women, had family problems which required the attention of persons with legal training. Also, many inmates had questions about the ac-

curacy of their sentence (usually failure to credit accurately prior jail time). Other inmates had detainers resulting from pending criminal charges in Wisconsin or some other state, or resulting from failure to comply with an order to contribute to the support of the family.

While education of undergraduate law students remains the core objective of the Law School's involvement in the LAIP program, this is costly education when compared to the mass-production process embodied in the conventional law classroom setting. Students receive close and individual supervision and attention from staff lawyers and law professors associated with LAIP. Much student, staff and faculty travel is also involved, for LAIP today serves all the correctional institutions — state and federal — in Wisconsin, plus the Winnebago and Mendota Mental Health Institutes.

Funding of LAIP has drawn from a wide range of sources: grants from private foundations, support from the federal government, from the budget of the University of Wisconsin itself, from explicit support from the Wisconsin Legislature, and from continuing contracts with the Wisconsin Department of Health and Social Services and the United States Bureau of Prisons. It is a measure of the respect which LAIP has earned for itself that it has reached its present size and vitality as an instrument for education, research and public service in a recent era marked by fierce competition for funding from both private and public sources.

Another measure of the respect which LAIP has won is evidenced by the published research product of students who have participated in the program and of staff and faculty members of LAIP across the past two decades. Set forth below is a recent compilation of student, staff and faculty publications generated out of participation in LAIP (with the present position of the former student listed after the name of each).

Student Publications

Note, Transfer of Juveniles to Adult Correctional Institutions, 1966 Wis. L. Rev. 866 (George E. Dix, Professor of Law, University of Texas).

Note, Legal Services for Prison Inmates, 1967 Wis. L. Rev. 514 (Thomas W. O'Brien, Partner, Quarles & Brady, Milwaukee).

Comment, Resolving Civil Problems of Correctional Inmates, 1969 Wis. L. Rev. 574 (James A. Jablonski, former Professor of Law, Washington University, St. Louis, Missouri).

Comment, Administrative Fairness in Corrections, 1969 Wis. L. Rev. 587 (Robert L. Martin, private practice, Orange, New Jersey).

Constitutional Law — Criminal Procedure — Jury Instructions and the Unanimous Jury Verdict, 1978 Wis. L. Rev. 339 (Sally Wellman, Assistant Attorney General, Wisconsin).

Note, Criminal Law — Critique of Wisconsin's Lesser Included Offense Rule, 1979 Wis. L. Rev. 896 (William O. Salen, Brennan, Steil, Ryan, Basting & MacDougall, Janesville, WI).

Comment, Madness and Medicine: The Forcible Administration of Psychotropic Drugs, 1980 Wis. L. Rev. 497 (Stephan Beyer, Sidley & Austin, Chicago, IL).

Note, *The Validity of the Dangerousness Standard for Recommitment of Persons Found Not Guilty by Reason of Mental Disease or Defect*, 1980 Wis. L. Rev. 391 (Kathleen A. Kunde, University of Chicago Law School, Chicago, IL).

Note, *Presumptive Intent Jury Instructions After Sandstrom*, 1980 Wis. L. Rev. 366 (David D. Cook, University of Wisconsin-Extension Law Department).

Comment, *Repeal of the Wisconsin Sex Crimes Act*, 1980 Wis. L. Rev. 941 (Marie T. Ransley, 1981 graduate).

Note, *Beck v. Alabama: The Right to a Lesser Included Offense Instruction in Capital Cases*, 1981 Wis. L. Rev. 560. (Dianne S. McGaan, Williams & Conley, Washington, D.C.).

Note, *After Sandstrom: The Constitutionality of Presumptions that Shift the Burden of Production*, 1981 Wis. L. Rev. 519 (Erica M. Eisinger, Supervising Attorney, LAIP); with a foreword by Frank J. Remington, 1981 Wis. L. Rev. 513).

Note, *Restricting the Admission of Psychiatric Testimony on a Defendant's Mental State: Wisconsin's Steele Curtain*, 1981 Wis. L. Rev. 733 (William M. Conley, clerk, Judge Thomas Fairchild, Seventh Circuit, Chicago, IL).

Comment, *Federal Jurisdiction — Interstate Detainers and Federal Habeas Corpus: Long-Arm Shortcut to Solving the Catch 2241*, 1982 Wis. L. Rev. 863 (Jamie Kittel, staff attorney, Seventh Circuit, Chicago, IL).

Schmolesky & Thorson, *Importance of The Presentence Report After Sentencing*, 18 Crim. L. Bull. 406 (1982) (John Schmolesky, former supervising attorney in the program, is now an Assistant Professor of Law at St. Mary's Law School in San Antonio, Texas; Tim Thorson, Culp, Dwyer, Suterson & Grader, Seattle, WA).

Note, *Sumner v. Mata: Muddying the Waters of Federal Habeas Court Deference to State-Court Findings*, 1981 Wis. L. Rev. 751 (John Greene, 1984 graduate).

Comment, *Municipal Liability: Eliminating the Special Duty Doctrine for Police* (Jerry Krause, student), forthcoming 1984 Wis. L. Rev.

Comment, *Wisconsin's Party to Crime Statute*. (Gary Ostos-Irwin, student), forthcoming 1984 Wis. L. Rev.

Note, *State v. Dean, Compulsory Process* (Debbie Katz, student), forthcoming 1984 Wis. L. Rev.

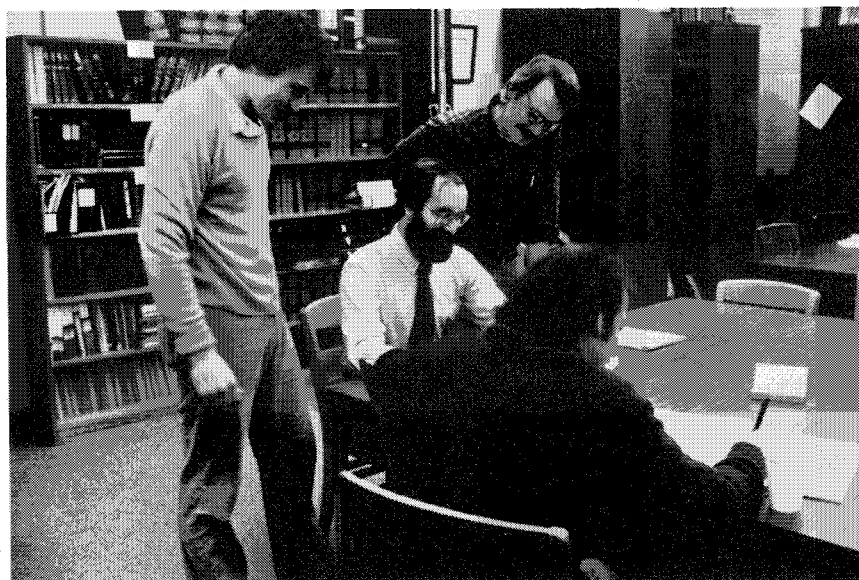
The earlier articles reflected the involvement of students as participant-observers. The participation was wide-ranging — from probation officer, to recreational officer, to administrative assistant to the parole board.

Writing during later stages in the program reflected a greater involvement with the inmate and mental patient clients. Emphasis switched from important policy issues in the correctional system to issues relating to the legal assistance needs of inmates and mental patients.

Some of the most recent student writing has dealt with important doctrinal questions that are of great interest because the issues are currently being litigated in state and federal court and involve issues of fundamental importance in the criminal law field.

Two of the program's publications, David Cook's student note and John Schmolesky's article on *Sandstrom* and *Ulster County* have recently been cited by the Supreme Court in *Connecticut v. Johnson*, 51 USLW 4175, 4178 (Feb. 23, 1983).

Projected research will be of the law-in-action variety with efforts made to acquire additional knowledge and to use that knowledge to improve the correctional and mental health processes.





Staff Publications

Remington, Wisconsin Correctional Internship Program, in *Proceedings of the Asheville Conference of Law School Deans on Education for Professional Responsibility*, at 56 (1965).

Kimball, *Correctional Internships: A Wisconsin Experiment in Education for Professional Responsibility*, 18 *J. of Legal Educ.* 86 (1965).

Dickey & Remington, *Legal Assistance for Institutionalized Persons — An Overlooked Need*, 1976 *S. Ill. U. L. J.* 175.

Remington, *State Prisoner Litigation and the Federal Courts*, 1974 *Ariz. St. L. J.* 549.

Remington, *Recommended Procedures for Handling Prisoner Civil Rights Cases in the Federal Courts* (Federal Judicial Center, 1980).

Dickey, *The Lawyer and the Quality of Service to the Poor and Disadvantaged: Legal Services to the Institutionalized*, 27 *DePaul L. Rev.* 407 (1978).

Dickey, *The Lawyer and the Accuracy of the Presentence Report*, 43 *Fed. Probation* 28 (June 1979).

Dickey, *Incompetency and the Nondangerous Mentally Ill Client*, 16 *Crim. L. Bull.* 22 (1980).

L. Abramson, *Criminal Detainers* (Ballinger Pub. Co., 1979) (Professor Abramson, a member of the Louisville Law School faculty, was in effect a "scholar-in-residence" in the Legal Assistance Program during the 1977-78 academic year).

Dickey, Remington, & Schultz, *Law, Trial Judges, and the Psychiatric Witness — Reflections on How a Change in Legal Doctrine Has Been Implemented in Wisconsin*, 3 *J. of L. and Psychiatry* 331 (1980).

Dickey, *The Promise and Problems of Rulemaking in Corrections: The Wisconsin Experience*, 1983 *Wis. L. Rev.* 285.

Remington, *State Prisoner Access to Post Conviction Relief — A Lessening Role for Federal Courts, An Increasingly Important Role for State Courts*, 44 *Ohio St. L. J.* 287 (1983).

Schmolesky, *County Court of Ulster County v. Allen and Sandstrom v. Montana: The Supreme Court Lends an Ear but Turns Its Face*, 33 *Rutgers L. Rev.* 261 (1981).

F. Remington, D. Newman, E. Kimball, H. Goldstein, W. Dickey, *Criminal Justice Administration* (Michie/Bobbs-Merrill, rev. ed. 1982).

Ongoing Research and Writing

(1) David Cook is writing a new volume of the *Defense of Criminal Cases in Wisconsin*. This new volume, being written in collaboration with the Legal Assistance to Institutionalized Persons Program staff, deals with the postconviction stage of the criminal justice process.

(2) *Edna McConnell Clark Project*. We (Herman Goldstein, Frank Remington, David Schultz together with Walter Dickey) are preparing a proposed research project to be conducted by the law school in collaboration with the Wisconsin Division of Corrections. The project will reflect Herman Goldstein's important work in the police field following the so-called "problem approach" and the long experience we have had in our continuing working relationship with members of the Wisconsin trial judiciary. The research will attempt to create and evaluate more effective programs or responses to important community problems (e.g., prostitution); alternatives to incarceration (e.g., restitution, community service); institutional programs (e.g., education; vocational training); parole and parole planning (e.g., legal services to deal with family, debt, government benefit issues). We anticipate financial support from the National Institute of Corrections; the Edna McConnell Clark Foundation and the Wisconsin Division of Corrections.

(3) Michael Dwyer, Erica Eisinger, supervising attorneys at LAIP, and Robert D. Miller, M.D., Ph.D., Forensic Training Director at the Mendota Mental Health Institute, are preparing a paper on the role of LAIP students at Mendota as members of unit treatment teams. The "team model" represents an experiment which seeks to integrate legal services with psychiatric, social and other services provided at the institute. The study will first describe the history, ob-

jectives and operation of the team model at Mendota. It will then attempt to evaluate the effectiveness of the model from a service and educational point of view with attention to questions of professional responsibility and the constitutional obligation of the state to provide legal assistance. The study will use attitude questionnaires to examine the perceptions of Mendota students, staff and patients. When possible, the study will contrast these perceptions with those of students, staff and patients at the Winnebago Mental Health Institute, a comparable institution where LAIP students assume a traditional adversarial role.

(4) Erica Eisinger is working on a study of federal habeas corpus review of the reliability of state court fact finding. Recently, some federal judges and commentators have called for a curtailment of federal reconsideration of the factual determinations supporting a conviction. This call rests on several assumptions: that state prisoners are overly litigious; that most state habeas claims lack merit; and that state courts can be trusted to avoid convicting the innocent. The study proposes to test these assumptions using interviews conducted by LAIP students with all male prisoners entering the Wisconsin prison system in the summers of 1982 and 1983 as well as interviews during the summer of 1984. The study will look at how many state prisoners express concern over the propriety of their convictions, either upon admission, or, in the case of the 1982 entrants, after education by fellow inmates. From these data, the study will attempt to assess the extent of state court capacity to protect the innocent and to identify the situations in which there is a need for federal review of the reliability of the fact-finding process.

Students currently in the program are working on the following law review notes or comments:

State v. Hegwood; State v. Macemon; sentence modification issues (Jeff Kassel).

The Insanity Defense in Wisconsin — How Beneficial to Clients? (Virginia Schubert).

Bearden v. Georgia: restitution as a condition of probation (Fred Lautz).

Nichols v. Gagnon, 710 F.2d 1267 (7th Cir. 1983); Protection of fact-finding process in conflict, with deference due state court determinations (Tim Schally).

Wisconsin's Rape Shield Law and the Sixth Amendment (*State v. Gavigan*, 111 Wis. 2d 150; *State v. Droste*, Case No. 81-2288 CR, argued October 5, 1983 (David Haxton).

State v. Kaye, 106 Wis. 2d 1 (1982): conflict of interest resulting from dual representation in criminal cases (Dyan Evans).

Parental interests of unwed fathers (Eric Wendorff).

Salinas v. Breier: The Need to Impose Greater Police Chief Accountability for Subordinate's Misconduct (Christopher Lowe).

LEARNING BY DOING A SIMULATION OF THE REAL THING: Professor Stuart Gullickson's Students Perform as Lawyers in Hypothetical Situations

Learning law by doing the real thing — as undergraduate law students do by participating in the LAIP Program at Wisconsin — does not exhaust the possibilities for learning law by doing. Simulation of the real thing by having students function as lawyers in hypothetical situations has been used with increasing frequency in legal education and Professor Stuart Gullickson has been a prime mover behind developments in this direction at the Wisconsin Law School for the past decade and a half.

Using a simulation of real events need not, of course, be anything more than a spectator sport for student learners: Indeed, students and professors, too, can sleep soundly through a videotape presentation which simulates a real trial, for instance. But as Professor Gullickson defines simulation and puts it to use in his teaching, the individual student is required to perform lawyer roles in analyzing and handling legal problems. Learning in that view is by doing, even if the things done are generated out of a hypothetical context.

Because each student is expected to perform in a lawyer's role, the Gullickson use of simulation is a teaching method more expensive than those used in the more traditional mass production methodology. In a speech delivered August 12, 1983, at Innisbrook, Florida, to the Southeastern Conference of the American Association of Law Schools Professor Gullickson described his use of simulation as a teaching technique and assessed its comparative benefits and costs against those involved in more traditional methods.

Excerpts from Professor Gullickson's address follow:

The past fifteen years in legal education have been stimulating ones for law professors who are interested in teaching methods. The turbulence of the late 1960's and early 70's generated pressures on law schools for changes. It fostered an academic climate which encouraged innovation, and resulted in a surge of activity in many areas including teaching methods. Experimentation in instructional techniques spawned new uses of the simulation and problem methods. Workbooks emerged as vehicles for self-study. Clinical instruction took legal education into the client service arena. We learned to complement instruction in both large and small classes with the electronic aid of computers, video cameras, and audio tapes. We even institutionalized a vehicle for exchanging information on pedagogical techniques by adding a Teaching Methods Section to the Association of American Law Schools' structure.

Among all of these developments, one proved to be particularly useful to a large number of educators even though they taught in a variety of ways. That was the expanded use of simulation.

I define simulation as a teaching method in which students function as lawyers in hypothetical situations. It includes gaming, and it contrasts with the principal phase of clinical training in which students represent clients in actual cases.

One should distinguish between simulation and team teaching. They are different concepts, which may or may not be used together. One can present a simulation course alone, or through team teaching.

I believe the simulation method owes its widespread appeal primarily to its versatility. It seems to be appropriate in most classroom settings, and to be effective for most subject matter. It is useful in both large and small classes, and as a component in clinical programs; it works for teaching substantive and procedural law, for the techniques of applying the law, and for interdisciplinary material. It's excellent for explaining concepts through portrayals of them, and for students' learning through experiences.

Simulation is not new. It is probably as old as legal education. We have always used it in moot court programs; and we've probably used it forever in legal writing and in law examinations when we've said, "You are the attorney for the plaintiff. Write a brief on behalf of your client on these facts."

What is new are the additional ways we now employ simulation. Here are some examples. Computer-aided instruction is a form of simulation. A seminar called Metro-Apex uses computer simulation and an interdisciplinary faculty to treat a pollution problem in a large city and thereby teach environmental law, land use controls, local government law, engineering, urban planning, commerce and political science. A Civil Procedure teacher presents a demonstration of a pre-trial conference in lieu of explaining how one operates. An Evidence professor brings out the distinctions between several relevance propositions by having students argue opposing sides of a series of objections based upon relevancy. More and more, we pervasively address professional responsibility by including ethical issues in fact situations that are the basis for simulations in non-professional responsibility courses. In the skills field, we use simulation to develop not just trial and appellate skills, but also to teach interviewing, advising, negotiating, and drafting.

You may find it helpful if I explain the elements of what I call a simulation learning cycle:

First, as with any course, the professor decides upon the educational objective. What is one trying to teach?

Next comes the hard part. One designs an exercise to give students experience with what one seeks to teach. An exercise consists of a fact situation and of directions for carrying out the roles of the participants. The learning opportunity will be richer if the facts appear in the form of the raw materials in opposing counsels' files, rather than in the style of narrative summaries. To prepare the original documents one creates items such as diagrams, excerpts from transcripts of depositions, lawyers' memos to

their files, statements of witnesses, and reports of police officers, doctors, lab technicians, engineers and the like. It may take years to develop enough exercises for an entire course. I find it necessary to use each new one in about three classes to discover all of its latent ambiguities.

Third, one assembles or prepares teaching materials that set out what one expects the class to learn.

Fourth, one prepares a model of the performance one seeks to elicit from the students. When one teaches a skill that is spoken rather than written, such as framing direct questions, one offers an oral model of a direct examination. When tutoring a written task, like drafting articles of incorporation, one presents written examples of well drawn articles. Also, one might portray the model on a video or audio tape, or on a computer screen.

Fifth, the students discuss with the professor or with the teaching team, the teaching materials, the model, and their assigned roles. Then they need time to prepare for their work as lawyers. Alternatively, one may prefer to schedule a discussion of the objectives, materials, and assignments before presenting the model, and then limit the discussion following it to questions about the model. One can end a class at this point, or one can continue it and shift to the student presentation phase of another exercise for which one completed the preparation in a previous session.

Now we are ready for the intriguing step, when the students operate as attorneys. For example, they

may put in proof, or draft documents, or conduct a dialogue with a computer, or, perhaps, do all three. During the early stages of a course one is likely to have students repeat the same exercise as the one portrayed in the model. Soon however one should base the work of the class on different, but parallel, fact situations so pupils cannot just mimic the mentor.

One can have a few of the student-lawyers do their exercises before the rest of the class, or one can divide the group into small units and send each of them to different rooms so everyone can have an active role. If one uses a teaching team one member of it supervises each small unit. One can record the presentations on video or audio tape for critique purposes.

Finally, and perhaps the most important step of all, comes the critique of the student-lawyers. The manner of critique will vary with what one is trying to teach. If it is a spoken technique then the critique is likely to include one or more of these options: a conference with the student-lawyers, a written report, or the review of an audio or video tape. If the entire class observed the activity then at least part of the critique should be before them to involve them in the learning process. Some professors have had good success with students critiquing students.

The critique for a written lesson requires correcting each student's paper, discussing it with that person or the class or both, and, perhaps, furnishing a copy of a model solution.





Advantages and Disadvantages

There are a number of advantages to using simulation in addition to its obvious versatility. Learning-by-doing seems to be a more effective device than learning-by-listening for teaching some subjects. It enables us to treat the application of the law. I find lectures and Socratic dialogue to be less than satisfactory for that purpose. Most students seem to be more highly motivated when they are active participants in a learning process, than when they sit passively through it. Simulation allows students to learn by trial and error, but not at the expense of real clients. Simulation lends itself to team teaching which substantially reduces the teacher-student ratio. When I use team teaching in Trial Advocacy my teacher-student ratio is one to four; in my office practice course it was one to 15. Doing simulated exercises is a more efficient way to learn than handling real cases, though it is not necessarily a better way. The efficiency springs from designing the exercises for planned objectives, and omitting surplusage. Last but by no means least, simulation courses usually cost less than programs in which students work with actual cases.

The bad news is that it usually costs more for instruction through simulation than it costs to teach large classes with traditional methods. Other disadvantages attend simulation. While it is more efficient to work with well focused hypothetical cases than with real ones, one loses the value of students having to sift and winnow the significant facts from the irrelevant ones. Also, simulation courses do not render the legal services to underrepresented people which clinical programs do.

It usually takes more of a professor's time to teach the same material through simulation than it takes with traditional techniques, and often simulation courses can accommodate only about 10 to 30 students. Simulation is simply a slower way to teach than the lecture method. Professors who use simulation extensively are likely to have less time for

scholarly production and public service.

Simulation courses may cause space problems, if the professor elects to break out into small groups. When I use team teaching in Trial Advocacy I need 5 rooms for 20 students. Sometimes we have to conduct those classes in three buildings.

If one avoids break-out workshops, then the bulk of the class observes the activity of a few. I believe the learning value of observing other students' presentations diminishes markedly after seeing a few of them, and the motivation of observers tails off as the course progresses.

There may be insufficient class time in stand alone simulation courses, such as those which are not part of a clinical program, to do much more than expose students to concepts, and professors probably will be unable to develop any significant degree of proficiency in their students. That, of course, is a problem common to almost all types of legal education.

I believe we have an inadequate empirical base from which to teach skills at this time, through simulation or otherwise. Our instruction is primarily anecdotal, and based almost exclusively upon the experience of the teacher or of an author whose base is similarly limited. We need to do empirical research in lawyering skills, in conjunction with investigators from other disciplines, to improve the quality of skills instruction.

Finally, a drawback to teaching oral trial skills through simulation is the lack of a completely satisfactory way to grade oral exercises. That deficiency presents teachers with the dilemma either of foregoing grading, or of testing only on written exercises because that may deflect students' attention away from the primary objectives.

In conclusion, I believe the simulation technique can be useful not only as an exclusive method of instruction, but also as a component in clinical programs, and as a supplement to traditional methods in large classes.

VIEWING CORRECTIONS AND CORRECTING VIEWS

Dean Cliff F. Thompson

During the Fall of 1983, there was considerable publicity about the Law School's continuing contributions to law-in-action. The two big stories were about Professor Walter Dickey, who had taken leave of absence to become Chief Administrator of the Wisconsin Division of Corrections, and about the Law School's Civil Litigation Research Project, most prominently featured in more than full-page coverage in *Newsweek* magazine on November 21st.

These developments are only a portion of the outstanding work being done by faculty, but they are characteristic of our professors' contributions beyond their dedication to teaching. For those of you who may have missed these stories, or for those of you who, like me, enjoy a sense of pride in even a brief retelling, I will summarize them. I'll conclude by thanking you for your support, without which our margin of excellence would not have been achieved.

— Viewing Corrections —

The Governor's selection of Walter Dickey to take responsibility for the prison, probation, and parole system of Wisconsin is a consistent and satisfying step in the School's long involvement in criminal justice administration. Professor Frank Remington's leadership in this field goes back nearly thirty-five years, and his project, Legal Assistance for Institutionalized Persons (LAIP), is nearing its twentieth birthday. The LAIP project has simultaneously made a tremendous contribution to the quality of criminal justice administration in the state and a significant educational contribution to our students, the future members of the bar.

Much of Walter Dickey's professional development at the Law School has been in connection with LAIP, as a teacher, scholar, and administrator. In addition to

analyzing aspects of criminal justice in law journals, he drafted the Wisconsin Administrative Code for the Division of Corrections. At the time of his appointment by the Governor, he was administrator for the School's LAIP project. We will therefore greatly miss him as a faculty colleague, but we are reconciled to his departure because it is not permanent and because he will continue to serve the state so well with his expertise.

In an important sense, Walter Dickey's new responsibilities are not a loss to the Law School, but a rearrangement of our commitment to service to the state. In the Fall, the Law School hosted a major conference of national and local leaders in the criminal justice field. Organized by Professor Frank Remington and Professor Goldstein, our faculty member with an international reputation in solving police-public problems, the conference provided a forum where Professor Dickey and the participants could discuss and define new directions in the corrections field. I have no doubt that these directions will be useful for Wisconsin and a model for other states.



— Correcting Views —

The other story involves another aspect of Wisconsin's outstanding tradition in law-in-action. Penetrating studies of the actual impact of law in society by our law professors have tumbled false assumptions about the role of law, and re-oriented and re-defined thinking about the real problems in society. An obvious example of this is the pioneering work by Professor Willard Hurst, whose studies of what law did — and didn't do — to foster economic development have gained him a worldwide following. Another is Professor Stewart Macaulay's justly famous article on "Non-Contractual Relations in Business" which revolutionized thinking about the real relations between contract law and business life.

In this tradition is the Law School's Civil Litigation Research Project (CLRP), directed by Professor David Trubek. Word of it reached the lay public in *Newsweek's* article "Debunking Litigation Magic." According to prevailing popular assumption, a major problem in our legal system is that we have gone litigation mad. Chief Justice Burger is a pro-

fessional champion of the view that we are trapped by hyperlexis. But the Project's analysis, based on data from five judicial districts around the nation, shows that people with grievances do not rush to lawyers, and lawyers do not rush them to courts. Out of every ten persons with a legally related grievance, only one made it to a lawyer; half of those who went to a lawyer did not file an action, and of those who filed suit, only one in ten went to trial, since most cases were settled. Professor Marc Galanter, who is quoted at length in *Newsweek*, uses the CLRP data and other information collected by the UW-Madison Disputes Processing Research Program (which the Law School sponsors) to cast serious doubt on the belief that we are in the grips of a litigation explosion. Drawing on U.S. history and comparative statistics, he shows that there is little support for the view that we are an excessively litigious society. The Wisconsin studies have struck a spark which may melt the snowballing of hyperlexis opinion, which has grown rapidly by mere repetition.

The search for the truth, and the correcting of wrong views, are part of the quest for knowledge which need no additional justification in an enlightened age. *Newsweek* emphasized that the project's findings also have an immediate and important significance for the American legal system. The conventional assumption about a hyperlexis danger has led to efforts to create procedural barriers to law suits or otherwise to restrict the public's access to the courts. But Circuit Court of Appeals Judges Harry Edwards and Patricia Wald have used the Wisconsin study to argue against such precipitous and potentially dangerous moves. Issues raised by

the Wisconsin Project are far from resolved, for more research, analysis, and discussion are needed. For Wisconsin alumni, it should be a satisfying experience to know that the Law School is providing illumination at the center of a momentous national topic.

The first-class programs and projects in law-in-action at Wisconsin require more than the annual state appropriation to fund them. Your support has been vital. Alumni support helped us initiate these projects and will be needed to keep this work going. The relative decline in federal and foundation grants, quite apart from the fortunes of the state's economy, will make your generosity more important. The annual Alumni Drive will continue to provide us with flexibility in many small but crucial matters. Our Capital Campaign, the first in the Law School's 116 year history, is a tremendous step forward. We are seeking a permanent endowment of at least \$4,000,000 which will provide annual income for two major components; (1) a general endowment for our overall program, including library, student aid, teaching materials, and faculty research; (2) specific endowments to support (a) The Business Law Program (George Young Fund), (b) The Labor Law Program (Nate Feinsinger Fund), and (c) Interdisciplinary Legal Studies (J. Willard Hurst Fund).

The National Chairman of the Capital Campaign is Irvin B. Charne, LL.B. '49 of Charne, Glassner, Clancy & Taitelman in Milwaukee. In a later issue of the *Gargoyle*, our Development Director, Dave Utley, will give you more details of an already encouraging campaign. We are grateful for your support.

Cliff F. Thompson

In Memoriam: JOHN C. STEDMAN 1904 - 1983

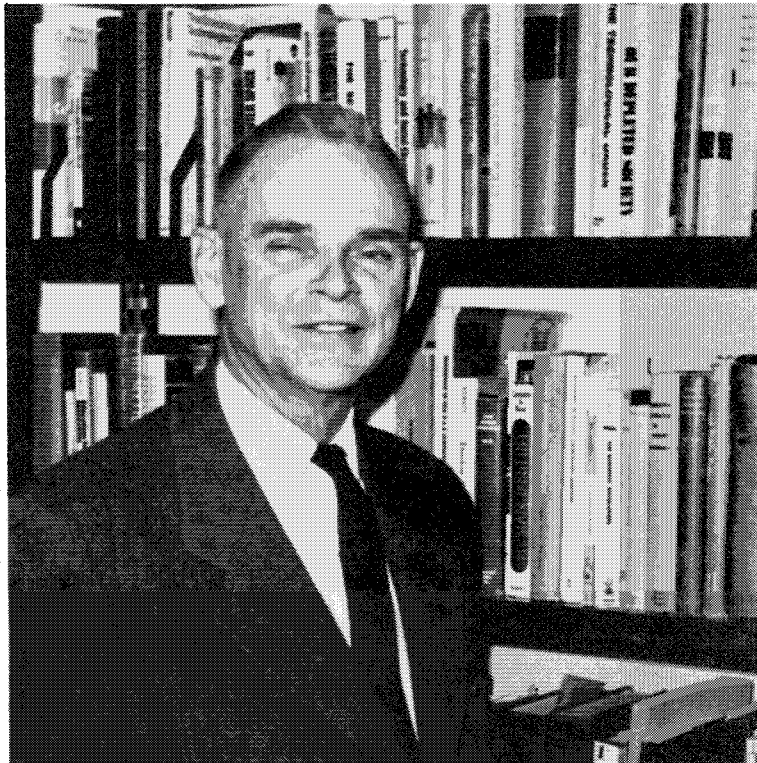
Fifty-two years ago a barn burned down in Door County and John Stedman, who had been on the verge of buying the farm on which it stood, decided to go to the University of Wisconsin Law School rather than become a cherry farmer. On December 2, 1983 John Stedman died, having been a member of the Law Faculty of his alma mater since 1935. Had anyone realized the contributions John Stedman would make to the university, and to the law of intellectual property over his long career, he himself would have been tempted to set that barn afire.

John C. Stedman was born on November 3, 1904 in Berlin, Wisconsin but grew up in Sturgeon Bay. He received his BA at the University of Wisconsin in 1928, and returned to Madison to earn his LL.B. at the law school in 1934. He served, during his last year of law school and for a short time thereafter, as "secretary" to Justice Fairchild of the Wisconsin Supreme Court, one of the first law clerks to a Wisconsin Supreme Court Justice. Shortly after his graduation he went to Minneapolis where he entered practice with the firm of Junell, Driscoll, Fletcher, Dorsey & Barker — now one of that city's most respected firms, Dorsey and Whitney. He shared an office there with another young lawyer who would achieve some success in his career; his officemate was Harry Blackmun who would eventually become a Justice of the United States Supreme Court.

His first exposure to private practice was brief. In 1935 the dean of the Law School, Lloyd Garrison,

prevailed upon him to return and join the faculty. It was in that same year that he met and married Patricia Mason, a Madison native; together they were to raise five children over the next 48 years. In 1939 he went to Columbia University to work on an LL.M. and it was there that he developed his interest in patent law, an interest which was to become the focus of research and public service for more than forty years. In 1941, unable to join the army because of blindness in one eye, he went to Washington to serve in the Office of Price Administration. It turned out that his government service was to keep him in Washington for 8 years and include service in four government offices, including two divisions of the Justice Department. During the course of that time he produced a three-volume study on research and development by government contractors which substantially affected the development of government policy in this area, and became the standard work relied upon by government agencies when dealing with the problem of inventions financed with public money. He participated in formulating the policies of the Antitrust Division in cases in which patents were involved, as well as playing an important role in a number of other projects of substantial public significance. In 1950 he returned to Madison to stay.

Even by conventional measures, John was an extremely productive scholar; he published more than 40 articles in journals and as chapters in books. But his true productivity is not so easily measured. In ad-



dition to the journal articles he was the author of many legislative memoranda which became part of the legislative history of laws relating to patents and antitrust. He was, for example, the editor of a series of thirty Studies of the Patent Law done for the Senate Judiciary Subcommittee on Patents, Trademarks and Copyrights; this project spanned the years 1956-1961 and those who were involved in the studies know how much the project owed to John. He also gave dozens of speeches, many of which remained unpublished, and carried on an extensive correspondence with people interested in patents, copyrights, and antitrust law. Although much of his work before his retirement from classroom teaching in 1974 dealt with patent law, he became very interested in the 1976 revision of the copyright statute and the implications of that effort at law revision. He served as the Chairman of the A.A.U.P. Copyright Revision Committee, for example, and was a consultant to the National Science Foundation. His contributions to an understanding of the implications of the new copyright law, especially as it related to photocopying by libraries, led the American Library Association to dedicate their June 1983 session on copyright law to John. Wisconsin Congressman Robert Kastenmeier, Chairman of the subcommittee that reviews all patent and copyright legislation, has said that John Stedman was a "unique resource" and a "fresh and independent thinker" — traits of

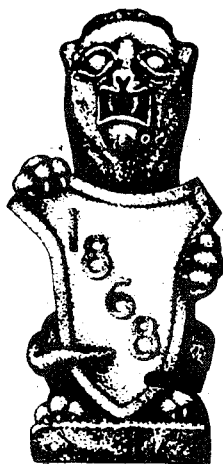
special significance in a world filled with spokesmen for special interests.

A remarkable thing about John Stedman, though, is that if you ask people who knew him and his work what they remember most vividly about him, they speak first not about his fine teaching, or his exemplary scholarship, but rather of what an extraordinarily gentle person John was. He was a man of exceptional balance and perspective. He was a person with great compassion, who always revealed his concern for others in the respect he showed them. He was scrupulously fair. In addition, he had a great sense of humor and revealed it in his writing, as well as in conversation. All of these traits made him a valued member of the university community; his balance and fairness led to requests that he serve on innumerable committees. He was always ready to help a student or colleague and never asked for the credit he so richly deserved. He was modest to a fault. Another side of John was his love for the outdoors; he took great pleasure in his farm near Baraboo. He was an avid skier; he gave up downhill skiing in his 70s!

Someone who knew John said that it was his firm conviction that every person who encountered John Stedman was better off for it. We should try to find out what day that barn burned and celebrate it as a private holiday.

* * *

JAK



41st Annual Spring Program

May 4-5, 1984

Madison, WI

Friday evening . . .

Benchers Society Dinner

Address by Prof. Robert O'Neil, UW President on First Amendment Protection of Free Speech.

Saturday morning . . .

Spring Program Seminar (9:30 a.m.)

Saturday noon . . .

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Presentation of Distinguished Service Award

Recognition of reunion classes (1934, 1939, 1944, 1949, 1954, 1959, 1964, 1969, 1974, and 1979)

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DPRP PUBLICATION SERIES ANNOUNCED

Working papers of the University of Wisconsin-Madison's Disputes Processing Research Program (DPRP) may now be obtained either on an annual subscription basis or by ordering a working paper individually by title.

A subscription rate of \$10 (overseas airmail, \$20) will include all working papers produced by DPRP in 1984, and all currently available working papers from 1983. Individual working papers may be purchased for \$1.00 each (which includes postage costs within the United States and for surface mail overseas).

DPRP working papers are individual studies that have not been published (though some will be published at a later stage). In addition to working papers, DPRP also has a series of "special publications," major monographs, reprints of important studies, reports and conference proceedings. These "special publications" are, as indicated in the list below, individually priced and generally will be available to subscribers to the DPRP working papers at a discount.

Set forth below are lists of currently available (and forthcoming) working papers — and of current "special publications."

Current Working Papers

- 1983-8 *Sweeping "Little Injustices" Under the Carpet: A Case Study of Consumer Dispute Treatment and Norm Generation in Denmark*, by Britt-Mari Blegvad. 67 pages, \$1.00.

A study of extra legal dispute treatment agencies in Denmark since 1975, the generation of norms in the settlement process and the resulting roles and power relationships between consumers and decision-making agencies.

- 1983-12 *The Discretionary Decision: Adversarial Advocacy — Reform or Reconstruction?* by Joel F. Handler. 78 pages, \$1.00.

This essay provides the theoretical arguments in support of the author's thesis that in relations between the state and people that are discretionary and continuous, a cooperative or consensual mode of decision making is more appropriate than standard adversarial forms.

- 1983-13 *Comparative Institutional Economics: The Governance of Rail Freight Contracting*, by Thomas M. Palay. 37 pages, \$1.00.

This essay empirically verifies the hypothesis that the form of the governance structure chosen to facilitate a contractual relation depends upon the character of the investment supporting the underlying transaction. Where the investment is idiosyncratic, the governance mechanism is apt to be bilateral and unique to the parties. Conversely, as investment becomes more fungible, a reduction in governance specialization results.

- 1983-14 *Community Factors in the Brokerage of Consumer Product and Service Problems*, by Jack Ladinsky and Charles Susmilch, 39 pages, \$1.00.

Using a stratified sample of 1,269 households in Milwaukee, this study reveals that the use of informal brokerage networks appears mostly in service-related consumer problems; virtually no one uses formal brokerage networks. They conclude that urban dispute institutions for most urban dwellers

are not viable alternatives to informal dispute resolution.

- 1983-15 *Courts and Legislatures as Arbitrators*, by William H. Clune (forthcoming in the *Yale Law Review*). 32 pages, \$1.00.

Reviewing Rebell and Block's *Educational Policy Making and the Courts* (Chicago, 1982), Clune reanalyzes the data using "comparative institutional analysis": this suggests 1) in correcting for discrimination against minorities, courts enhance the democratic process. 2) Through techniques of political representation, courts fulfill their proper role while preserving democratic values. 3) Because they are constituted and limited by the democratic process, courts may act progressively (their proper role) or conservatively (an improper role); but they are incapable of sponsoring radical change.

- 1983-16 *Law and the Behavioral Sciences: Is There Any There There?* by Stewart Macaulay. 71 pages, \$1.00.

This article, a revised version of the 1983 James McCormick Mitchell Lecture, given on April 7, 1983, at the Law School, SUNY-Buffalo, assesses two decades of law and society research and identifies problems the field faces. The usual prescription to cure these difficulties is more theory, and yet calls for theory, reflect a distinct style of research with both costs and benefits. Some of the empirical findings about the operation of the legal system call into question some parts of common theories about the role of law in society. In turn, current theories, particularly those of the Conference on Critical Legal Studies, suggest that law and society research would profit if it were to attend more to such things as the legal culture and general world views about what is tolerable, necessary and just.

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The Final Report of the Civil Litigation Research Project (CLRP) describes this pioneering nationwide study of litigation and other forms of dispute processing and sets forth all findings to date. Drawing on a sample of terminated cases from federal and state courts in five states, the study looked at the incidence of civil litigation, available alternatives to litigation, and the costs of civil litigation in time and in dollars.

EDITOR'S NOTE

Some of you may have seen the newest addition to the University of Michigan's Law School building. It is multistoried, has a marvelous atrium, and is barely visible since it is almost completely underground. Only the sun-catching roof of the atrium pokes up above ground, disclosing its location. We also have, albeit modest, underground expansion plans, or should I say hopes. For the past few years the Law School's Building Committee has been pushing an addition to our building that would include an underground courtroom complex and faculty library. No atrium, no sun roof, just much needed facilities and space. So in December my hopes were raised when a backhoe ap-

peared on Bascom Hill and began digging a hole adjacent to the Law building. The hole got larger and larger, my hopes got higher and higher. Then, on the first day of exams, workers moved in an airhammer and I was forced to inquire about the purpose of the hole and how long the disturbing noise would continue. Alas, it was just a water main leak! No new offices, no new courtroom. But hope does spring eternal. Now almost two months after the hole was opened there is still no sign that it is about to be refilled. In fact, a plastic roof has appeared over it. Perhaps we can move fast and get squatter's rights (i.e., adverse possession). Even temporary space would be useful to us.

The photo on the back cover of

this issue shows registration activities in the lobby of the Law School. This scene was repeated in January as the second semester got underway. There were, however, no students in shorts this time, as Madison was locked in a typical registration week sub-zero spell. All of us who remember registration in the cold and snow, or hot and rain, will undoubtedly mourn the introduction of computerized registration. The entire University hopes to go to this system within a few years, and the Law School may serve as the guinea pig to test the system. As a veteran of 14 semesters of in-person registration, I hope the University at least lowers the flag on Bascom Hall to half mast in memory of this "quaint" custom.

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WLAA BOARD OF VISITORS REPORT

The Board of Visitors of the Wisconsin Law Alumni Association made its annual visitation to the Law School on October 16 and 17, 1983. For many of us it was the first opportunity to meet Dean Cliff F. Thompson. We were happy to have him attend the opening session on Sunday, the dinner Sunday evening and our closing session Monday afternoon. The Board in this report welcomes Dean Thompson to the University of Wisconsin Law School. We look forward to his dedicated leadership.

The greatest single concern of the Board of Visitors is the deplorable lack of adequate funding which is developing at the University of Wisconsin and, of particular concern to us, at the Law School. This lack of adequate funding is appearing at many levels. The need for additional library resources affects faculty and students as well. It is necessary to support research projects of the faculty. Because of a lack of resources, too few of the students have the opportunity to research with Lexis and Westlaw. At the time of our visit in October, there was but one Lexis terminal with restricted hours, to serve 900 students and a faculty of 50. This is clearly not adequate for legal education in the 1980's.

The problem of inadequate funding affects library resources but of greater concern is the disparity that is developing between salary levels of faculty at Wisconsin and other major law schools. Between 1978 and 1983 the median faculty salary at Wisconsin fell from 51st to 70th among the 157 law schools reporting faculty salaries. The problem is greatest for the experienced faculty. This group earned less than their contemporaries in 1978 (approximately \$4,700 less per year). By 1983 the gap increased to \$14,400 per year. The fact that we have been able to retain outstanding

faculty members is nothing less than a miracle. Few can argue that Lake Mendota is worth \$15,000 per year to anyone.

Fortunately the faculty still demonstrates enthusiasm in service, research and teaching. It is of high quality, but we would be fools if we did not admit that this disparity is going to affect recruiting of new faculty members. The difficulty in recruiting a person in the business law area is already apparent. The Board believes that we can no longer look exclusively to the Legislature to solve these problems. Greater effort on the part of the Alumni to support the Law School is urged.

It was suggested at the closing session of the Board that the visitors' agenda should include a meeting with Chancellor Shain to make him even more aware of these concerns. This may consist of a committee visit or a visit by the entire Board. An appropriate method of accomplishing this is under study.

Some of the visitors sensed that a lack of enthusiasm has pervaded the students because of the critical funding problems facing the administration. This is hard to assess. The noon luncheon does not seem to provide an adequate forum for a determination of student concerns. The Board suggests that the next visitation should provide an open forum from noon to 3 p.m. Sandwiches for the visitors can be brought in and wide publicity should be given to attract students, student leaders and faculty members. The present luncheon appears to attract only student leaders acting in a representative capacity.

Those students who did express concerns urged the Board (1) to involve the organized bar in legal education to a greater degree, (2) to expand placement services to counsel students on opportunities in the job market which are out-

side the generally accepted notion of what lawyers do, and (3) to urge the administration to expand its counseling program for law students. Members of the Board in turn suggested that second and third year students are well equipped to counsel entering students in many areas, and an effort should be made among student organizations to establish such a program.

The Board generally was disappointed in having only a minimal opportunity to appreciate the extent of faculty involvement in research, writing and public service. We were able to visit classes and were impressed as before with their skills in teaching. But we need to spend more time with faculty in open forum and at social events so that we may be informed and be able to assess their contributions to legal education and public service outside the classroom. We know there is much of this, but this Board particularly needs to know more about the extent and nature of that contribution. Various members of the Board of Directors have also expressed the need for greater faculty contact. A dinner meeting is urged for the express purpose of having the Board of Directors and the Board of Visitors meet with faculty to discuss their needs and those of the Law School generally.

Our desire, as always, is to help the University of Wisconsin Law School maintain its position of greatness.

Respectfully submitted:

Glenn R. Coates, Chair
Susan Wiesner-Hawley, V. Chair
Lloyd A. Barbee
Kirby O. Bouthilet
Peter C. Christianson
David Y. Collins
William E. Dye
Judge John W. Reynolds
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Patricia M. Thimmig