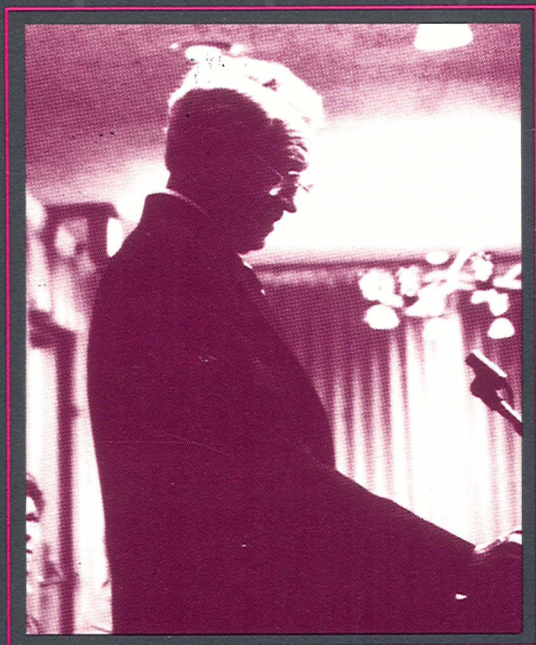


University of Wisconsin Law School Forum

GARGOYLE



Volume XV Number 2

Summer 1984



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The Honorable
Richard W. Orton

Wanted—News From Alums!

A Note from Dean Cliff Thompson

One of our goals for the new-look **Gargoyle** is a regular section with brief news about our grads. Please be a trail blazer and send a note about your professional or personal life which we can share with others.

Our recent efforts to improve the **Gargoyle** stimulated numerous reactions which were overwhelmingly favorable: "professional," "attractive and interesting," "better reflects the school's top quality." But we also got a few warnings not to get too "slick" or omit human interest stories.

We want the Gargoyle to be informative, interesting, and, yes, stimulating, with an appropriate and intelligent light touch . . . tall order!

We want the **Gargoyle** to be informative, interesting, and, yes, stimulating, with an appropriate and intelligent light touch . . . tall order! I imagine it will take quite a while to settle the **Gargoyle** into its new life. But I am sure we are on the right track, and I'm pleased we've gone as far as we have. We managed because volunteers have given a hand to Editor Ed Reisner, especially Development Director David Utley and Professor Bill Foster.



Bill has had to use weekends, including weekends of weeks which were themselves supposed to be holiday, to help. Each issue is still a new adventure, and will be for some time to come. We welcome your continuing suggestions, especially if you tolerantly recognize that we'll receive some contradictory advice.

In any event, help us to start a Class Notes section by sending your news (be sure to include your class year or one of our volunteers may defect while trying to find it.) And send along copies of old law school photos or other items of interest. Personally, in the midst of more serious pursuits, I picked up a couple of doodles drawn by faculty in one of our regular meetings—perhaps to include in the **Gargoyle**?

An Overview of Commercial Speech

Robert M. O'Neil

President, University of Wisconsin

On the evening of May 4, 1984, University of Wisconsin President Robert M. O'Neil (and teaching member of the University Law Faculty at Madison), addressed the Law School's Benchers Society Dinner.

The topic we had given President O'Neil—"An Overview of Commercial Free Speech"—was a formidable one for such an occasion but there were several rather particular reasons for choosing the topic.

First, Bob O'Neil is a truly pre-eminent First Amendment scholar.

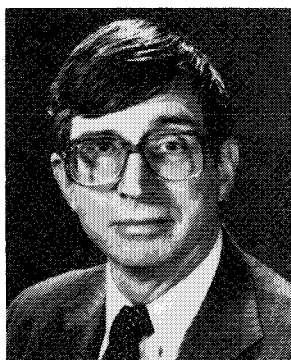
Second, we had scheduled on the Law School's Spring Program the following morning a seminar that would be devoted to lawyer advertising and an overview on First Amendment protection of commercial speech would contribute importantly to putting the seminar in perspective.

And, finally, what we knew of Bob O'Neil as a scholar and teacher gave us confidence that in the role of an after-dinner speaker he could serve our combined needs elegantly. His address, set forth following this introduction, neatly vindicates our expectations.

President O'Neil was introduced by Law Dean Cliff Thompson, that fact itself a nice touch since the two had been very close friends in their undergraduate and law school days at Harvard and their paths have, only within the past year, come together again at Wisconsin.

Excerpts from Dean Thompson's introduction of President O'Neil appear in the quotations which immediately follow:

"President Robert O'Neil will speak to you on '**An Overview of Commercial Speech.**' I am honored to introduce him, though by limiting my remarks to a couple of minutes, I have not made the task an easy one: An outline resume of his achievements is five pages and takes 15 minutes to read at Dan Rather's speed, and 10 minutes at the speed of a sport's broadcaster describing a fast break.



"I tried the tighter summary provided by the latest Who's Who in America but it is also too long as well as too dry. However, I can share a little known fact—his entry appears twice in Who's Who. Perhaps the editors were so impressed they could not resist the repetition, or perhaps there really are two Bob O'Neils.

"For ordinary high achievers, the existence of two Bob O'Neils is the only explanation of his superlative achievements.

"He is a distinguished administrator with enough experience to comprise at least two careers. He is an accomplished teacher with enough expertise to

cover half the curriculum. He is a scholar of outstanding quality. The list of his articles seems to disappear into infinity. His books number more than ten.

"Permit me to notice, idiosyncratically, two items which reflect his merit and wisdom. First, he persuaded Karen Elson to marry him and they have four lovely children. Second, he is a popular teacher in our Law School.

"Overall, he is also a grand human being.

"Finally, I will provide some flavor of Bob's level of achievement by a comparison. Do you remember the spy-adventure films of 'Our Man Flint' with superstar James Coburn as Flint? In the world of education, Bob is Our Man Flint. In one film, the Director of Intelligence comes in to find Flint in the swimming pool talking to dolphins.

'Heavens!' says the Director, 'That's amazing. How do you do it?' Flint gets out of the water and gets a thick book off the shelf, entitled something like 'Communication Theory,' and hands it to the Director, who says, 'Good grief, how do you find time to read things like this?' Flint looks slightly puzzled, and says, 'Read it? I wrote it.'

"Likewise, Bob finds time to write books that most of us feel good about if we can find time to read them. He does the things that others dream might be accomplished. I am honored to introduce him to you: President O'Neil."

The text of President Robert O'Neil's address, "**An Overview of Commercial Speech,**" follows immediately.

There is no group with which I would rather meet than fellow lawyers and friends—nor any topic on which I'd rather speak than First Amendment law. This occasion also gives a chance to do several other things that are closely related. It is an opportunity to express special appreciation to some very special friends of legal education and particularly of the University of Wisconsin Law School. This I do much more as a person proud to be a member of the Law School Faculty than as a general university administrator. My own association with the Law School is one of the happiest parts of life in Wisconsin. It has been made even happier this year by the arrival as our Dean of one of my oldest and closest friends—one with whom just about 30 years ago I made my very first trip to Wisconsin for a college debate in Milwaukee. Little would Cliff and I have supposed at that time that we would some day end up back together again in Wisconsin. (Incidentally, since we lost the debate to Marquette in the Spring of 1954, I suppose we exemplify the maxim "If you can't beat 'em, join 'em!") A week from next Monday, Cliff and Judith, Karen and I are in fact going to Milwaukee for a reunion with George and Campion Kersten—our opponents of 30 years ago—and their wives and several other Marquette colleagues. That's a long way 'round to saying how truly delighted I am to be Cliff's colleague once again and to look to him as the Dean of the Faculty of which I am proud to be a member.

That's not, however, the topic on which Bill Foster many months ago asked me to speak this evening. What he requested was something on the subject of "commercial speech." Since I have long believed commercial speech to be a neglected facet of free expression, I was delighted to accept this specific assignment. Much has been happening in this area of late, and I know tomorrow morning's seminar focuses on one particular dimension of commercial speech. The timeliness of the topic is rein-

forced by having found in my Law School mailbox just yesterday the very first of my spring semester student papers—entitled, "The First Amendment and Professionals: A Study on Lawyer Advertising and Solicitation." That paper should reassure you that students, too, are concerned about these issues.

commercial. Nonetheless, both Judge Gordon in the District Court and, later, the Seventh Circuit have concluded that the proposed answers to the boycott questionnaires "would serve only to allow [the companies] to continue to maintain commercial dealings with the Arab world" and for that reason are merely commer-

The Justice Department argues, however, that the companies' free speech claim was limited by the "commercial" nature of the communication involved. The companies replied that not all speech which relates to commerce is for that reason less protected by the Constitution.

Perhaps I could start by summarizing several recent cases. One of them just happened to arise in Wisconsin and was decided by the Federal Court of Appeals for the Seventh Circuit just a bit over a month ago. The source of this intriguing case is a boycott by many Arab countries against companies who trade with Israel. The Arabs have sent questionnaires to such U.S. companies asking about their business in the Middle East. Companies which refuse to return the questionnaires tend to be black-listed by Arab nations. The federal Export Administration Act and Commerce Department regulations, however, preclude such replies. Faced with this dilemma, several Wisconsin firms (including Briggs and Stratton and the Trane Company) sued in federal court challenging the constitutionality of these federal prohibitions. Specifically, the companies claimed a First Amendment right to respond to the boycott questionnaire in order to maintain profitable trade relations in the Middle East.

The Justice Department argued, however, that the companies' free speech claim was limited by the "commercial" nature of the communication involved. The companies replied that not all speech which relates to commerce is for that reason less protected by the Constitution. They also argued that the speech in question was more political than

cial speech.

The second case is a bit less complex. Christopher Lowe publishes newsletters containing investment advice. Six years ago, he was convicted of two felonies under New York law. The Securities and Exchange Commission then revoked his registration as an investment adviser—a step which makes unlawful the continued publication of such newsletters. Lowe went to federal court challenging the SEC ban as a denial of free speech. The court wrestled with what it conceded to be a novel question—whether investment adviser letters were (as the government argued) properly styled "commercial speech." In the end, a divided District of Columbia Circuit ruled against Mr. Lowe on the ground that the newsletters were merely commercial expression and thus entitled to a lesser measure of protection. While his prior convictions would not have sustained a government ban on non-commercial speech, the nature of the newsletters pushed this issue over to the other side of that elusive line.

The score at this point is government 2, private party 0. In the third very recent case, however, the outcome was rather different. At the risk of intruding upon tomorrow's seminar, I would like to mention one attorney advertising case. Pennsylvania's Code of Professional Responsi-

bility permits lawyers to identify in various forms of advertising their specialties and areas of expertise. Any such claims must, however, be accompanied by a disclaimer that the attorney is not "recognized or certified as a specialist in those fields." A group of Pennsylvania lawyers recently challenged this disclaimer requirement and prevailed in the Federal District Court. This requirement, the federal judge concluded, could create a negative or pejorative implication and thus "cause lawyers to decline to list any fields of concentration simply to avoid the requirement of including the damaging disclaimer." Such a possibly chilling effect made the disclaimer rule itself unconstitutional.

If we put these three very recent lower court cases together, a curious anomaly emerges. In the one case that did involve unquestionably commercial speech—the Pennsylvania attorney disclaimer case—the First Amendment claim prevailed. Yet in the other two cases, the government regulation prevailed despite the less clearly commercial nature of the expression in question. If at this point you feel a bit confused, I can only welcome you to what I believe to be a distinguished—if puzzled—group of constitutional scholars. Maybe this would be an appropriate point to retrace some of the tortuous steps that have brought us the current confusion over Arab boycott, investment adviser letters and attorney advertising.

It all began on the sidewalks of New York in 1940. One F. J. Chrestensen brought a small submarine to New York and moored it at a municipal pier in the East River. He began distributing a handbill which advertised the boat and offered tours for a stated admission fee. When he was told this activity violated the city sanitary code, which forbade distributing commercial material and business advertising on the street—but permitted handbills devoted to "information or a public protest"—he reprinted the handbill asserting on the other side his constitutional right

to advertise his submarine. The reverse also contained a protest against the city dock department for its restrictive policies. The minions of Mayor La Guardia were unmoved and Mr. Chrestensen soon went to court in search of further redress. Within two years, he was before the United States Supreme Court as the very first person to raise a constitutional claim involving advertising or commercial speech.

The Justices disposed of Mr. Chrestensen quite as summarily as the New York City Police had done. "We are equally clear" a unanimous Court proclaimed, "that the Constitution imposes no . . . restraint on government as respects purely commercial advertising." Nor was the Court moved in the least by the double-sided handbill; the protest had been appended "with the intent and for the purpose of evading the prohibition of the ordinance." And if Chrestensen succeeded, then any merchant could violate the handbill ordinance simply by appending whatever grievance he might have with City hall.

This decision is the more remarkable because it evoked not the slightest misgiving from Justices Black, Douglas, Murphy or Rutledge—not even by way of a brief concurrence to suggest possible reservations. The case exemplifies a maxim that has always had some appeal to me—if

The case exemplifies a maxim that has always had some appeal to me—if hard cases can make bad law, cases that look easy may at times be equally mischievous.

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There the issue rested for more than three decades. The court did in the early '70s uphold government regulation of help wanted advertising—but without really considering the nature of the expression involved. It

was not until 1975 that the Justices really returned to the issue Mr. Chrestensen had been so unsuccessful in presenting earlier. Jeffrey Bigelow publishes an underground weekly in Charlottesville, Virginia. His readers are mainly university students and staff. Early in 1971, he published an advertisement for a New York abortion clinic—containing specific information, telephone number, referral data and the like. Abortion clinics were at that time unlawful in Virginia but perfectly legal in New York. Mr. Bigelow was brought to court for violation of a statute which specifically forbade publication or advertisement which would "encourage or prompt the procuring of an abortion." Clearly he had violated the law. The only question was whether some constitutional interest had been abridged.

This time a nearly unanimous Court found in Mr. Bigelow's favor. *Chrestensen* could be distinguished as a rather different case—since the public interest in learning about availability of abortion substantially surpassed the value of visiting submarines. Moreover, Virginia had tried to give extraterritorial effect to its laws and thus prevent its citizens from learning about services lawfully available in other states. Yet the whole tone of the *Bigelow* decision departed dramatically from the Court's view three decades earlier. The Virginia courts had "erred in their assumption that advertising as such was entitled to no First Amendment protection." While it was unnecessary to determine the full extent of that protection in order to vindicate Mr. Bigelow, a new chapter had clearly opened.

Much more has been written in that chapter through later decisions. The following year, for example, in another Virginia case the Court struck down a state law against advertising of prescription drug prices. While the public interest might at first seem less substantial, an increasingly consumer sensitive Court pointed to the great value of well informed prescription drug buy-

ers. Even now, the Court did stop short of saying that advertising was entitled to full First Amendment protection; the Justices rejected all the grudging premises of *Chrestensen* but also acknowledged that "some forms of commercial speech regulation are surely permissible." Four possible exceptions emerged at the end of the

ters a bit further by holding that Texas could require optometrists to use individual names for advertising since trade or institutional names might deceive or mislead consumers.

Yet we have evidence as recently as last summer that commercial speech is indeed protected at least to a degree; a unanimous Court last

warns, "be complex mixtures of commercial and non-commercial elements: the commercial message does not obviate the need for appropriate commercial regulation; conversely, the commercial element does not necessarily provide a valid basis for non-commercial censorship." For him, the contraceptive mailing case illustrates the dilemma. The pamphlets in question did indeed contain some purely commercial advertising. They also provided information of a kind which might be entitled to separate treatment had the Court held differently on the advertising ban. While Justice Stevens appeared still to be alone in his plea for more flexible and discriminating treatment of these issues, I rather suspect his voice is that of the future.

Indeed, the flexible analysis that Justice Stevens would bring to this area might help considerably in cases like the Arab boycott questionnaire and the investment adviser newsletter. Just as courts have become more conscious of a continuum of expression in areas like obscenity and defamation, so I suspect a comparable recognition of the complexity of commercial speech will greatly aid the resolution of future cases.

To say more at this point would not only impose unduly upon a Friday evening social gathering but would risk preempting the topic of tomorrow's seminar. Let me, therefore, conclude at this point.

"Advertisement may" [Justice Stevens] warns, "be complex mixtures of commercial and non-commercial elements: the commercial message does not obviate the need for appropriate commercial regulation; conversely, the commercial element does not necessarily provide a valid basis for non-commercial censorship."

opinion: regulation of time, place, and manner; advertisements which are false or misleading; advertisements which propose illegal transactions; and broadcast advertising. Thus, when the dust settled in 1976, the Court had come a very long way since the time it threw Mr. Chrestensen and his handbills off the sidewalks of New York.

The next chapter in this curious drama was the 1977 decision giving constitutional protection to lawyer advertising. Since that is the focus of tomorrow's seminar, I should only observe that the *Bates* decision was essentially an implementation of the Virginia abortion and prescription drug advertising cases. While new claims of professionalism and the like did trouble the Court and evoke substantially longer opinions, the basic test had not varied. (The one important exception was a decision the following year upholding Ohio suspension from practice of an attorney who violated face-to-face solicitation rules and thus exceeded the bounds of constitutional protection. The line between general advertising, on the one hand—yellow pages, mailings and the like—and face-to-face solicitation on the other has been helpful in marking the new line between that commercial speech which is protected and that which is not.)

Later the Court complicated mat-

June held unconstitutional a federal law which prohibits the mailing of unsolicited advertisements for contraceptives. Most of the recent attorney advertising cases have gone in the lawyers' favor—although not without careful analysis of the asserted government interest and the particular effect on expression and communication. In every case, the Court now asks not only whether the expression is essentially protected but also whether the government asserts a substantial interest—and if so, whether that interest could be served in less restrictive or less intrusive ways. Finally, the Court does ask whether the speech for which protection is sought is either unlawful or deceptive and if so, may require a less exalted government interest to uphold regulation.

We return at length to the question that has so troubled the lower courts in recent cases. It is a question first raised by Justice Stevens in a utility advertisement mailing case several years ago and revisited in the contraceptive mailing case last summer. Justice Stevens has been concerned about overly rigid classifications—an artificial distinction between expression which is merely commercial and that which is "pure speech." He wisely suggests that many messages in the real world may partake both qualities: "Advertisement may" he

Alumni Judges in the News:

Gergen ('42) and Orton ('31)

In Spring 1984 the Honorable Henry Gergen, Jr., and the Honorable Richard W. Orton were separately singled out to honor their long records of public service to Wisconsin.

The two were in some respects quite similar. Both had been state Circuit judges from essentially rural areas: Judge Gergen on the Circuit Court for Dodge County in the south central Wisconsin and Judge Orton from Grant County in the southwestern part of the State. And both were widely known and respected as in-charge judges, fully in command of their courts.

But there were differences, too, and not the least in their temperament and outlook. That much is suggested in the separate accounts about the two which follow.

The first of the two accounts consists of the statement by U.W. Law Professor Frank J. Remington at a dinner June 2, 1984, in Beaver Dam, Wisconsin, honoring Judge Gergen on the eve of his retirement after 35 years on the bench in Dodge County. The second account is that of Professor Bill Foster, spelling out his pleasure over the decision of the Wisconsin Law Alumni Association to confer upon Judge Orton its 1984 Distinguished Service Award.

Judge Henry Gergen, Jr.:

A Statement of Appreciation

By Professor Frank J. Remington

Those of us who have been privileged to know Henry Gergen have come to appreciate him—not only as a friend—but as a truly great trial judge. Sitting, as he has in this county, where there have been located the major correctional and mental health institutions, he has kept the door of his courtroom open to even the least worthy among us. And when a person comes into his court, he finds a judge willing to give him a full opportunity to be heard. He is probably the only judge in history who was sued by a public defender who objected that the Judge wanted too many prisoners to have the help of a capable lawyer. Because the door of his court is always open does not mean that he is an easy judge to impress. Like other good trial judges he has the capacity to make up his mind, to decide the case, and his confidence in his own ability is not shaken by an occasional reversal by an appellate court which, when it happens, he accepts with his usual good grace.



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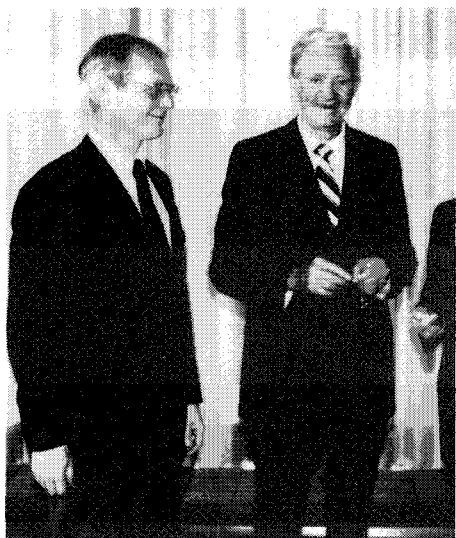
His reputation for fairness is reflected in a statement of a member of the Supreme Court who was heard last week to say that if she were accused of wrongdoing, she would want to be judged by Henry Gergen. His competence is reflected in the fact that he is one of the few trial judges who has had his memorandum decision accepted as the subsequent opinion of a unanimous Supreme Court [Coulson v. Larsen, 94 Wis. 2d 56 (1980)].

If there were nothing more to be said about Henry Gergen, he would obviously be known as one of Wisconsin's outstanding trial judges. But there is more—he not only runs a good court; he also devotes generously of his time to improve the justice system. He is the acknowledged leader of the Criminal Jury Instructions Committee. In the important work of the Committee he is always willing to listen to ideas whether the ideas are expressed by judicial colleagues or by the non-judge members, whether the idea comes from the old or the young, the experienced or the inexperienced. He has the great gift of being able to consider ideas on their merits, regardless of whose ideas they are.

At the Law School we have long taken pride in the Wisconsin Idea. We say that the boundaries of the campus are the boundaries of the State and, as Henry Gergen would say, "That includes Dodge County, don't you know?" What many may not realize is that the Wisconsin Idea is a two-way street: the University contributes whatever it can, but it also relies upon many who contribute in turn to the University. This is what Henry Gergen has done by devoting a couple of days a month for the last 25 years to one of the most important and successful programs of the Wisconsin Law School—the Criminal Jury Instructions Project, which is of great benefit to the undergraduate law student and the graduate practitioner alike.

I welcome this opportunity to say, on behalf of the Wisconsin Law School, thanks to Henry Gergen—who will happily continue to work with us.

Thanks also to Eileen, without whom I don't think Henry would have even been invited to be a member of the Jury Instructions Committee.



Five years in retirement haven't in the slightest degree dulled his acute and bellicose views toward changes in The Law across the half century and more since he finished Law School here at Wisconsin.

The Honorable Richard W. Orton:

A Salute from a Fond Admirer

By Professor G. W. Foster, Jr.

Its 1984 Distinguished Service Award was conferred on the Honorable Richard W. Orton by the Wisconsin Law Alumni Association. The occasion was the noon Alumni Luncheon during the Law School's annual Spring Program on Saturday, May 5, 1984.

There were many reasons—and a lot of good ones—for honoring Dick Orton for his long record of contribution to the State. For myself, there is one very special reason for singling Judge Orton out for praise: in my more than a third of a century as an adopted Wisconsinite, I can think of no lawyer who has more forcefully—and predictably—defended the past values of The Law in the face of any proposal for change.

Having Dick Orton on an advisory committee charged with considering law reform has afforded assurance to the public that attention would be thorough: Every case for the status quo and every possible flaw in any proposal for change would have to be faced and considered in the process of adopting reform. Now and then he could be a real pain, but there was always the larger comfort that any arguments for leaving things as they were would have a full hearing with Judge Orton on hand.

My closest contacts with Judge Orton were connected with the development of the Wisconsin Long-Arm Jurisdiction Act, now a part of Chapter 801 of Wisconsin Statutes. The Wisconsin Judicial Council in 1955 had asked me to take on the job of serving as Reporter for the project. Two years later I had examined a number of thousands of opinions written after the 1945 decision of the U.S. Supreme Court in *International Shoe v. Washington*, 326 U.S. 310, and had produced some tentative drafts of possible grounds for personal jurisdiction in Wisconsin over nonresident defendants. Margo Melli, then Executive Secretary of the Judicial Council (and now a faculty colleague), thought it time to ask the State Bar for help in naming an advisory committee to assist in the shaping of proposed legislation. (I've always suspected Margo played an important role in achieving two results when the Advisory Committee was selected: First, in seeing to it that Judge Orton was named as a member and, second, having the Committee stacked in such a way that he couldn't stall the enterprise altogether.)

In any event, Dick Orton was named to the Committee and an initial meeting was scheduled at Lake Delton during the Convention of the State Bar in Summer 1957. In advance of the meeting, copies of my drafts and supporting comments were sent out to Committee members. I first met Judge Orton shortly after arriving at the Bar Convention when he introduced himself, explained he had been named to the Advisory Committee, and then added: "Professor, I've looked over that stuff you've sent and, frankly, I think it's . . ." (People who know Dick can do a reasonably accurate job of filling in the blanks. What he said in substance was that the Wisconsin Legislature would never be crazy enough to adopt anything remotely like the stuff I'd sent him.)

Yet despite that insalubrious beginning, Judge Orton really did his homework on the project and I don't recall that Dick missed a single one of the day-long, monthly meetings of the Committee over the period of a year and a half or so that we met. He was the Devil's Advocate—and sometimes simply the Devil himself—but he forced us all to think things through. And the Wisconsin Long-Arm Statute was a very much better product because of Dick.

In the final Committee vote on the measure we intended to offer the Legislature, Judge Orton voted against two rather important provisions. But having been voted down on both points, he then voted to support the draft as it stood and his support was a critical point in the Wisconsin Legislature's decision to enact the Long-Arm Statute.

This, then, is the account of my special reason for cheering the decision of the Wisconsin Law Alumni Association to honor Judge Dick Orton with its 1984 Distinguished Service Award.

I didn't hear Judge Orton's speech accepting the Award, but I have read a typescript of what he said and it is vintage Orton. Five years in retirement haven't in the slightest degree dulled his acute and bellicose views toward changes in The Law across the half century and more since he finished Law School here at Wisconsin: Changes wrought in the name of procedural and substantive Due Process, cheered in other quarters, have in his view left administration of criminal law in a mess. The complexities of modern product liability litigation create burdens for courts and parties that seemingly outweigh all justifications grounded in social policy for making the litigation effort. And the very thought of lawyer advertising lies so far beyond the pale as to warrant only the observation that it's something he doesn't want to talk about.

Yet for all the growling, the Judge looked great and seems, as always, to appear happiest when growling. And having made that a way of life, he's learned to live with it very well.

So, from me at least, four cheers (one more than the customary three) for the Wisconsin Law Alumni Association's decision to honor Judge Orton in 1984.

Who They Were:

Milwaukee Area Lawyers Who've Helped Us Teach Law

On March 21, 1984, some 120 Milwaukee area lawyers were thanked publicly for their contributions to legal education in teaching various courses at the University of Wisconsin Law School in recent years.

The practice of reaching beyond the services of the full-time law faculty for help in educating law students is as old as the University of Wisconsin Law School itself: In 1868, things got started with two professors—Matthew Carpenter and Henry Vilas—plus members of the Wisconsin Supreme Court, who served without pay for their teaching efforts.

Indeed even today the help we get from outside the law faculty is compensated at a level wholly disproportionate to the value of the contributions these lawyers make to legal education. But beyond thanking them once more by providing a free meal and a small plaque commemorating the service of each at the Appreciation Dinner in March 1984, there really wasn't much else which the Law School and the Wisconsin Law Alumni Association could do.

The one additional thing we've thought of to express our gratitude is to say thanks once again on these pages and list those attorneys honored at the Milwaukee area Appreciation Dinner. Here's who they were:



Lecturers

William M. Coffey
Adrian N. Cohen
Francis R. Croak
Harry F. Franke
Robert H. Friebe
Conrad G. Goodkind
Robert L. Habush
David J. Hase
John A. Hazelwood
Harry G. Holz
David E. Jarvis
Joan F. Kessler
Thomas E. Martin
James M. Shellow
Dale L. Sorden
Joseph A. Szabo
Joseph E. Tierney, Jr.

General Practice Course

John T. Bannen
Lloyd A. Barbee
Gerald J. Bloch
Robert J. Bonner
Leonard V. Brady
Hugh R. Braun
Larry B. Brueggeman
Richard P. Buellesbach
Barbara L. Burbach
William U. Burke
William J. Campbell
David J. Cannon
Irvin B. Charne
Keith A. Christiansen
Lawrence Clancy
James R. Clark
Dennis P. Coffey
William M. Coffey
Lucy Cooper
Patrick W. Cotter
Francis R. Croak
Howard A. Davis

Margadette M. Demet
Thomas P. Doherty
Thomas J. Drought
Sandra A. Edhlund
Russell A. Eisenberg
Terence T. Evans
James A. Feddersen
Georgia A. Felger
James D. Friedman
Emmett A. Gambrell
Horace R. George
Franklyn M. Gimbel
Stephen M. Glynn
Laurence E. Gooding, Jr.
F. William Haberman
Robert L. Habush
Eugene M. Haertle
Robert E. Hankel
Floyd A. Harris
David J. Hase
Theodore B. Hertel, Jr.
Harry G. Holz
Daniel W. Howard
Kenneth C. Hunt
Allan E. Iding
Harold B. Jackson, Jr.
Thomas M. Jacobson
Robert J. Johannes
LeRoy Jones
Myron L. Joseph
Lawrence J. Jost
E. Campion Kersten
Kenan Kersten
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John A. Kluwin
Stephen E. Kravit
Bernard S. Kubale
Roy C. LaBudde
George J. Laikin
Richard T. Lenz
Robert J. Lerner
David W. Lers
Edward S. Levin
Leonard L. Loeb
Robert J. Loots
Paula K. Lorant

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Honoring Student Service and Scholarship

1984 Awards Convocation

Ray And Ethel Brown Award

For character, leadership and services of a second year student Jeffrey Jan Kassel

Constitutional Law Prize

For students excelling in Constitutional Law Robert Joseph Dreps

Salmon Dalberg Award

For outstanding member of the graduating class Steven Richard Suleski

Joseph B. Davies Award

To an outstanding member of the second year class Mark Henry Van Pelt

Ruth B. Doyle Award

For students with need and contribution to the Law School Community Susan Pauline Strommer
Kurt Alan Johnson

Leon Feingold Memorial Award

To students with outstanding commitment to the Law School and to the greater community Karrin Lee Klotz
Lawrie Jean Kobza

Daniel B. Grady Award

To the top ranking student in the graduating class Robert Joseph Dreps

Greater Milwaukee Legal Auxiliary

For scholarship, character, need and contribution to the life of the school L. Dyan Evans

William G. Hagenah Award

To the incoming Editor-in-Chief of the Law Review Mark Henry Van Pelt

Legal Auxiliary of Wisconsin

For scholarship, character, need and contribution to the life of the school Nancy Helen Kaufman

Mathys Memorial Award for Appellate Advocacy

To outstanding oralists in Moot Court Competition Kirk D. Strang

Milwaukee Bar Moot Court Prize

To students with significant contribution on Moot Court Teams Paul Alan Lucey
Chris Jay Trebatoski

Duane Mowry Award

To the two highest ranking students in the second year Thomas Wilbert Johnson
Virginia Susan Schubert

Phil Owens Memorial Award

To students who are Wisconsin Residents, for scholarship, service to the law school, and the greater community, and leadership Dan D. Peterson
Ruth Roberts

Abe Sigman Award

For general student recognition John Eric Davis
Laura Sutkas Lengjak

University League Scholarship

To a deserving student who has contributed to the life of the school Cristina R. Mondragon

University League Rosa P. Fred Memorial Scholarship

To students who are Wisconsin residents, for scholarship, character, and contribution to the life of the school Laura Marian Flegel
Debra Susan Katz
Jane C. Schraft

Floyd Wheeler Country Lawyer Award

For a student who intends to practice in a rural Wisconsin community Robert Daniel Dietz

Wisconsin Land Title Association, Jacob Beuscher Award

To a second year student with interest and aptitude in real property law Frederick George Lautz

Wisconsin Law Alumni Award

In recognition of significant contribution to life in the Law School Matthew David Cohn
Cheryl Marie Furstace
William Alan Osterndorf

Wiggins Award

For recognition of students with scholarship and need Wiley Sylvester Adams

West Publishing Corpus Juris Secundum Award

For scholarly contribution to the Law School John Steven Greene
Suzanne Lois Johnson

West Publishing Hornbook Award

For students with the highest average in each class
1st year Robert Ernest Shumaker
2nd year . . . Thomas Wilbert Johnson
3rd year Robert Joseph Dreps

William Herbert Page Award

For outstanding written contribution to the Law Review Steven Richard Suleski

George Laikin Award

For an outstanding contribution to the Law Review in Special Fields Anthony John Handzlik

Dean's Academic Achievement Award

Jonathan Charles Aked	Matthew Lewis Jacobs
Ann Elizabeth Baxter	Amanda Jane Kaiser
Lawrence Bensky	Debra Susan Katz
Steven Paul Bogart	Nancy Ann Kopp
Scott Carter Breneman	Gregory Marvin Kostka
James Curtis Burr	Robb Alan Marcus
Barbara Ellen Cohen	Timothy Charles McDonald
Robert Joseph Dreps	Bruce Arnold McIlnay
John Daniel Franzini	Larry Scott Meihnsner
Timothy James Geraghty	Matthew Christopher O'Brien
Dennis Henry Girard	Gary Richard Ostos-Irwin
John Steven Greene	Thomas Wallace Paterson
Julius Otto Grunow	Edward Dean Sieger
Anthony John Handzlik	Susan Pauline Strommer
David Ray Hill	Steven Richard Suleski
Bruce James Hoesly	Helen Elizabeth Weidner
Claire Jean Holtz	Barbara R. Oppenheim Whitish
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Published by the Law School of the University of Wisconsin

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Notes on Grads:

Gordon Sinykin ('33) has received the American Judicature Society's *Herbert Harley Award* in recognition of his service in improving the administration of justice. Named for the founder of the Society, Harley Awards are presented at the state level to recognize individuals who make significant contributions to strengthening the administration of justice. The Wisconsin Law Alumni Association, incidentally, conferred its Distinguished Service Award on Mr. Sinykin in 1981.

Arizona State University's Law Alumni Association has awarded its 1984 Faculty Achievement Award to Professor **Richard W. Effland** ('40). Dick is known to many Wisconsin law alumni for he was a highly thought-of member of the law faculty at Madison from 1946 to 1967. Present at the creation of the Law School at Arizona State in 1967, Dick has frequently been honored for significant contributions both to that school and to the State of Arizona.

Richard J. Byron ('64) has been appointed Assistant General Counsel of Employers Insurance of Wausau, Wisconsin. He previously practiced law in Milwaukee and served as an attorney for Northwestern Mutual Life Insurance.

Joel A. Haber ('67) has been appointed to the Illinois Securities Advisory Committee, the watchdog group responsible for monitoring securities activities in that State. (Haber also, it should be added, is a member of the Board of Directors of the Wisconsin Law Alumni Association.)

After successfully prosecuting the State's first convicted racketeer, Wisconsin Assistant Attorney General **Michael L. Zaleski** ('68) couldn't resist comment on the defendant's subsequent promise to pay everyone back. "[He] couldn't tell the truth about anything. He ripped people off and he did it with great malice and forethought. He will pay back the money about the same time we eliminate poverty, ignorance, pestilence and death from the earth."

Professor **Jean C. Love** ('68) was honored in 1984 with the annual Distinguished Teaching Award conferred on her by the Law School of the University of California at Davis, where she has taught since 1972. She is also one of the new young members of the American Law Institute, elected to it in 1983.

Dan F. Rinzel ('68), formerly head of the criminal section of the U.S. Department of Justice's Civil Rights Division, has been promoted to the position of Deputy Assistant Attorney General for the division.

Thomas Chan ('79) has joined Lee Data Corporation in Minneapolis as General Counsel and Director, Legal Services. Lee Data is a supplier of multi-function terminal systems for large scale computers.

Gene Rankin ('80) recently authored a treatise on the Law of Historic Preservation In Wisconsin, published in the Bulletin of the State Historical Society.

Wisconsin International Law Journal

Published by the Law School of the University of Wisconsin

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Faculty Briefs

"Beautiful Book": Professor Dirk Hartog's History of the Corporation of the City of New York

"It is a joy to review a beautiful book. All the more so when the book encompasses the qualities you admire most in a work of scholarship." Thus began a review, recently published by UCLA historian, Joyce Appleby, of U.W. Law Professor **Hendrik Hartog's** *Public Property and Private Power: The Corporation of the City of New York in American Law, 1720-1870* (Chapel Hill, 1983). Dirk's book traces the story of the conversion of the propertied, chartered City of New York into a model municipality of nineteenth-century America. A nice summary account of his story appears in Professor Appleby's review published in **Reviews in American History**, June 1984, page 198. Better still, simply buy Dirk's book and read the whole story.

Changing Guard at the Law & Society Association—Wisconsin Style

U.W. Law Professor **Stewart Macaulay** in 1984 takes over as the newly elected President of the 20-year old Law and Society Association. His predecessor? U.W. Law Professor **Marc Galanter**.

A Point—a Constitutional One—for Professor Gordon Baldwin

Limits on police entry into a man's home without a warrant got further

definition when U.W. Law Professor **Gordon Baldwin** recently won the case he had taken to the Supreme Court of the United States. Voting 6 to 2 on the merits, the Court reversed the Supreme Court of Wisconsin in *Welsh v. Wisconsin*, decided May 14, 1984.

American Law Institute Membership for Professors Melli and Weisberger

U.W. Law Professors **Margo Melli** ('50) and **June Weisberger** were elected in Spring 1984 to the American Law Institute. Membership in the ALI—composed of some 1900 leading judges, lawyers and law professors—is regarded as one of the profession's highest honors. Other current ALI members of the U.W. Law Faculty are **Shirley Abrahamson** (on leave as a Justice of the Wisconsin Supreme Court), **Bill Foster**, **Frank Remington** and **Cliff Thompson** (Ex Officio). Also elected to the ALI in 1984 was Professor **Roy Mersky**, director of the Tarlton Law Library of the University of Texas, a 1952 graduate of the University of Wisconsin Law School.

Debate Revived: O'Neil & Thompson v. Kersten & Kersten

In Spring 1954 two Harvard undergraduates lost a debate to the Marquette University team in Milwaukee. Thirty years later, the two Harvard debaters were members of the U.W. Law Faculty (U.W. President **Robert M. O'Neil** and Law Dean

Cliff Thompson) and on May 14, 1984, the two returned together to a Milwaukee reunion with their Marquette adversaries, lawyers George and Campion Kersten. (The 1954 debate, incidentally, centered on the appropriateness of McCarthyism; perhaps you saw the longer story on page one of the May 15, 1984 *Milwaukee Sentinel*.)

Successful Safari

It's been a big Spring for Professor **Gordon Baldwin**, since in addition to winning his case in the Supreme Court (see above), he led a group of U.S. lawyers on a safari in East Africa. He returned in one piece—uneaten by any wild animals—we are happy to report. Then, having remained in Madison scarcely long enough to have unpacked, Gordon flew off for a six-week teaching stint in the Institute for Comparative Law in Japan at Chuo University.

Launched: The International Committee on Law and Mental Health

Professor **Len Kaplan** is a founding member, director and member of the executive committee of the International Committee on Law and Mental Health. Sounds a bit like W. S. Gilbert's long and weedy fellow who was practically the entire ship's company of the ill-fated Nancy Brig.

Notice of Things to Come: Fall 1984

Conferences Co-Sponsored by the Law School

Law, Private Governance and Continuing Relationships: What We Do and Don't Know

Friday, September 21, 1984

The Wisconsin Center

702 Langdon Street, Madison, WI 53706

Sponsored by the University of Wisconsin Law School and the *Wisconsin Law Review*, this one-day, interdisciplinary conference will review and assess developments in a field which owes so much to the seminal work of U.W. Law Professor Stewart Macaulay more than two decades ago. Macaulay's research had suggested that among business units which had need to sustain and continue dealings with one another it was the private understandings they had evolved—not the terms of their contracts, not the seemingly relevant judicial precedents or statutes—which fixed the terms of their operational relationships. Both law in its substantive sense and the way law was administered were significantly influenced by these systems of "private governance."

Separate panels, drawn from scholars at a number of universities, will develop the topics of Relational Contracts, Disputes Processing, and the Administrative Process. A conference fee of \$40 (or half that amount for UW-Madison students and faculty) includes the conference, the conference papers, and a Friday evening buffet. Pre-registration is required. For further information or to register for the conference, see the box below.

Poor Clients Without Lawyers: What Can Be Done

Friday and Saturday, October 26-27, 1984

The Wisconsin Center

702 Langdon Street, Madison, WI 53706

Responding to calls for improved and increased delivery of legal advocacy service to the poor and disadvantaged, this two-day conference will explore a wide-ranging agenda:

... Currently available legal services will be assessed in terms of resources presently at hand and the relative effectiveness of their use.

... The potentials of, and the limits on, expanded use of non-professional advocacy resources will be considered—lay advocates, law students, paralegal, community groups, client organizations, political and community action networks and coalitions, self-help guides and public information services.

... The special advocacy needs of identifiable groups—the elderly, single heads of households, the poor—will be looked at.

Sponsorship of the conference is by the University of Wisconsin Law School and the Center for Public Representation, Inc., and funding in part has been supplied by the Ford Foundation. The conference is open to the public but all attendees must re-register. A program fee of \$35 includes the conference, Friday luncheon and conference materials (though scholarships will be available to those who for financial reasons would be unable to attend). To register for the conference—or to obtain more information concerning it—see box below.

To Register Or For More Information About Either Conference, Please Contact:

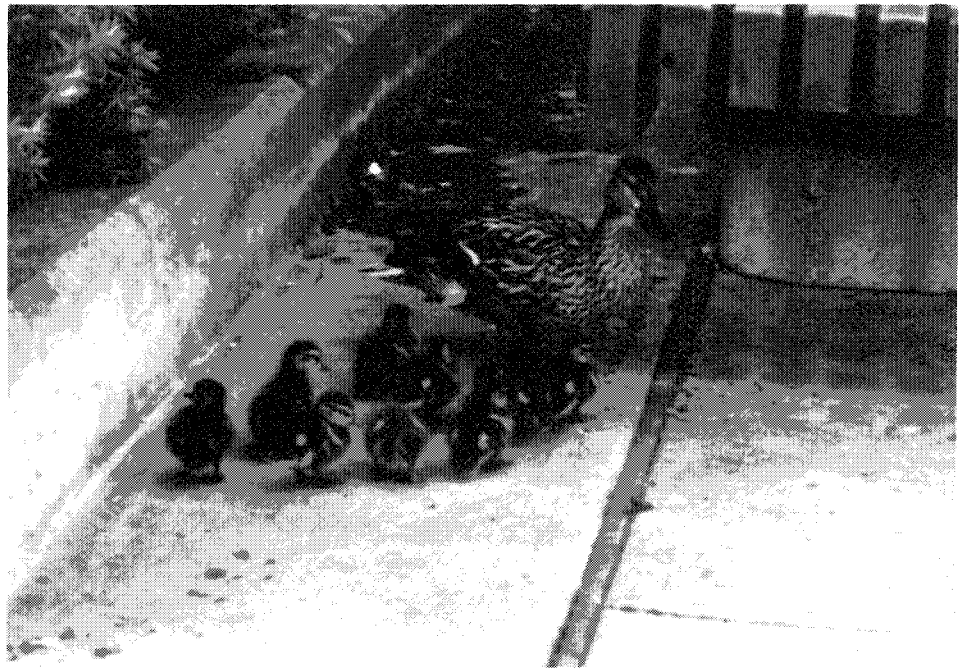
Catherine Meschievitz,
Conference Administrator
University of Wisconsin Law School,
Room 209 Madison, WI 53706
Phone: (608) 263-2451 or 263-2545

Editor's Note

This is the second issue of the *Gargoyle* with its new format. I hope that you enjoy it and find it to be an improvement. While most reaction to the first issue was positive, we have been sensitive to constructive criticism and will continue to change "our look" until we sense a consensus on—or at least an acceptance of—what we're doing. Your comments are, of course, welcomed and encouraged.

Summer is upon us at the Law School. Already complaints concerning the air conditioning are piled as deep as a mid-winter snow. A partial list of the activities you will find running at the Law School includes: Summer School courses running three, five, eight, and ten weeks; ALI-ABA courses in advanced estate planning and labor law; a six week pre-law course for minority students entering law schools across the country this fall; and the Wisconsin Bar Examination; an Association of American Law School's workshop for teachers of commercial law. In addition to all these, the Federal Judicial Center has a program for Federal District judges, focusing on litigation of economic issues, which it will bring to Madison for the week commencing July 9th. And, just outside the School, there is the perennial construction on University Avenue.

Two other Law School sponsored summer seminars continue this year: now in its second year, with its enrollment up to 16 foreign lawyers (from nine in 1983), the Wisconsin Institute for International Legal Programs will offer short courses on U.S. law and legal institutions. And for the fourth consecutive summer, leading legal historians from around the country will participate in the Legal History Program, jointly conducted by the Law School and the U.W. History Department.



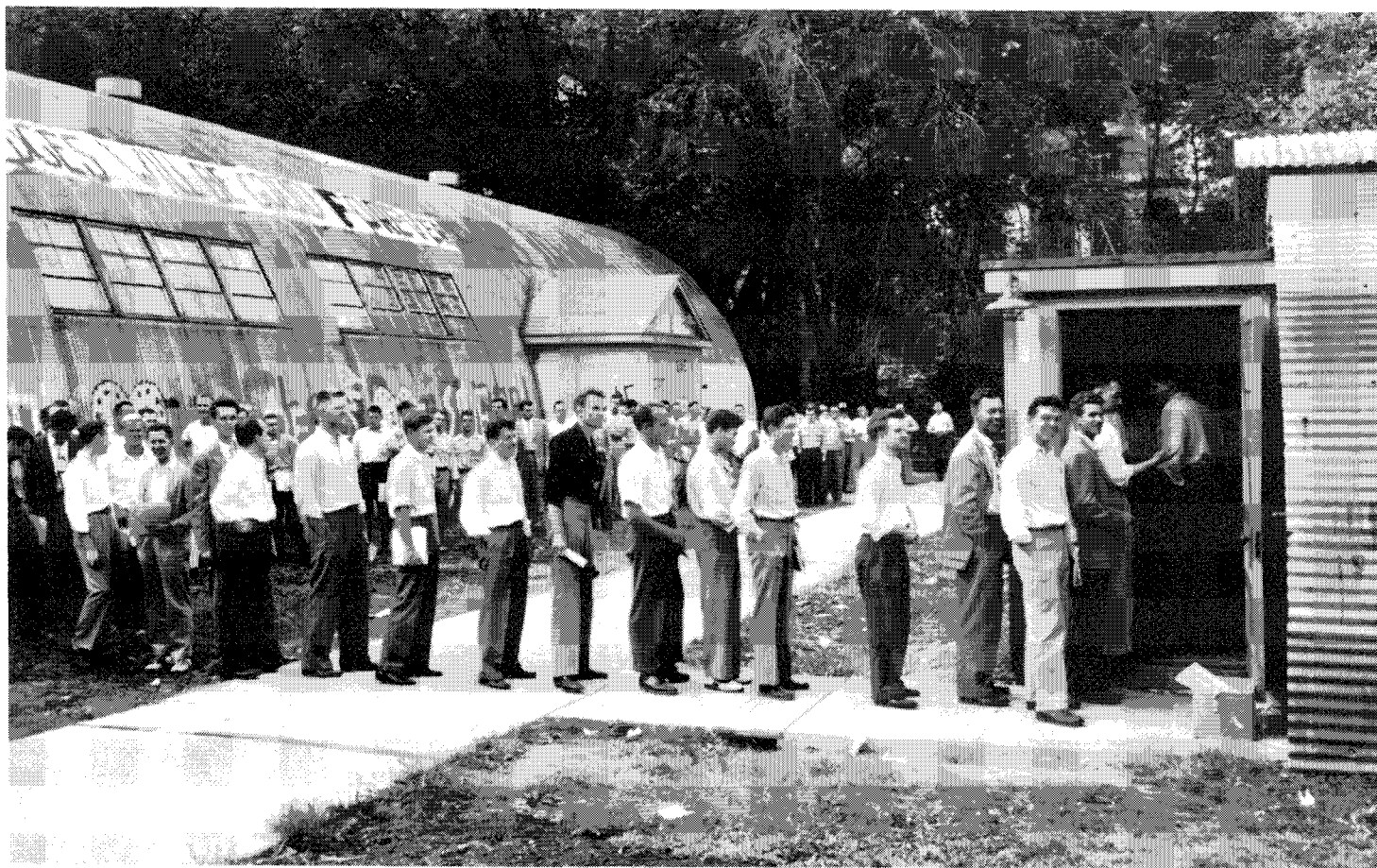
Summer also has another Law School tradition attached to it—the Law School Duck! Almost every year a pair of ducks hatches a brood of ducklings either on our roof or in the courtyard. The mother must enjoy the protection of the law, and this year brought 10 ducklings out of their shells in the courtyard. Yours truly, as Building Manager, then had to round up the ducklings, carry them through the building, and out onto Bascom Hill. Next I chased the somewhat confused mother until she flew out to regain her brood and led them down to the lake. Somehow I doubt that this task was in my job description.

A few issues ago we reported the death of Professor Nate Feinsinger. Tom Jones ('59) wrote recently with his own recollection of Professor

Feinsinger. He says that during his Bills and Notes class, Nate never lost his poise, his sense of humor or the attention of the class. Responding to a particular convoluted question from a student, Tom remembers Nate said, "In other words, what you're saying, as I understand it, is that the *Iliad* was not written by Homer, but by another man with the same name!"

On page 17 you will find another of our nostalgic photos. There are half a dozen similar photos in our Law School albums, so I am certain they do relate to our School. This may be registration in the early 1960s when the new Law Building was under construction, or it may be 1946-1948 when the old building was overwhelmed by returning veterans. Anyone recognize a face and recall a date?

Recognize Anyone? Anything?



The photo above is from the Law School archives. We have no clue as to the names of the persons pictured, no idea as to the date or significance of the event shown.

Recognize anyone? Anything? Your responses can provide captions now missing—and we'll try after that to keep them permanently.

And if you have pictures from your own law school days which you think should be added to our archives, why not send them along? If you can, identify anything you send, but even when you can't supply identifying details, pass along pictures you think are related to the Law School when you think others might like to see them.

Wisconsin Law Alumni Association

		Class Year		
			Board of Directors, 1984-1985	
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Past Pres.	1958	Richard L. Olson , <i>Boardman, Suhr, Curry & Field</i> , P.O. Box 927, Madison, WI 53701 (608) 256-9521	Nat'l Chairman Capital Campaign	1949 Irvin B. Charne , <i>Charne, Glassner, Tehan, Clancy and Taitelman, S.C.</i> , 211 W. Wisconsin Ave., Milwaukee, WI 53203 (414) 273-2000
	1968	Jeffrey B. Bartell , <i>Quarles & Brady</i> , P.O. Box 2113, Madison, WI 53701 (608) 251-5000	Development Director, Capital Campaign	David G. Utley , <i>Vice President, U.W. Foundation</i> , Room 337, Wisconsin Center, Madison, WI 53706
	1978	David L. Charne , 211 W. 80th Street, New York, NY 10024 (212) 873-7571	Class Year	Board of Visitors, 1984-1985
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	1979	Roy B. Evans , <i>Wilson, Broadnax & Owens</i> , 711 W. Capital Dr., Milwaukee, WI 53206 (414) 264-3910	V-Chmn	1949 Judge John W. Reynolds , <i>U.S. District Court, Eastern Dist.</i> 517 E. Wisconsin Ave., Milwaukee, WI 53202 (414) 291-3188
	1969	Edward R. Garvey , <i>Deputy Attorney General</i> , 114 E. State Cap., Madison, WI 53702 (608) 266-3164		1955 Lloyd A. Barbee , <i>Barbee & Goldberg</i> 152 W. Wisconsin Ave., Suite 431, Milwaukee, WI 53202 (414) 273-5755
	1967	Joel A. Haber , <i>Berman, Fagel, Haber, Maragos & Abrams</i> , 14th Fl., 140 So. Dearborn St., Chicago, IL 60603 (312) 346-7500		1979 Christopher Bugg , <i>The Milwaukee Co.</i> , One So. Pinckney St., Madison, WI 53703 (608) 255-4512
	1948	Chief Justice Nathan S. Heffernan , 231 East State Capitol, Madison, WI 53702 (608) 266-1886		1973 Kirby O. Bouthilet , 1168 Eliza St., Green Bay, WI 54301 (414) 435-2117
	1976	John A. Kaiser , <i>Riley, Ward & Kaiser</i> , P.O. Box 358, Eau Claire, WI 54702 (715) 835-6178		1977 Peter C. Christianson , <i>Cook & Franke</i> , 660 E. Mason St., Milwaukee, WI 53202 (414) 271-5900
	1978	Pierce A. McNally , <i>Oppenheimer, Wolff, Foster, Shepard and Donnelly</i> , 4824 IDS Center, Minneapolis, MN 55402, (612) 332-6451		1952 David Y. Collins , <i>Collins & Henderson</i> , P.O. Box 777, Beloit, WI 53511 (608) 365-6614
	1951	Vel R. Phillips , <i>Phillips, Gambrell & Jones</i> , Suite 1306, 606 W. Wisconsin Ave., Milwaukee, WI 53203 (414) 224-0888		1951 William E. Dye , <i>Heft, Dye, Heft & Paulson</i> , 827 So. Main St., Racine, WI 53401 (414) 634-3366
	1973	Howard A. Pollack , <i>Charne, Glassner, Tehan, Clancy and Taitelman, S.C.</i> , 211 W. Wis. Ave., Milwaukee, WI 53203 (414) 273-2000		1937 Stanley C. Fruits , 5113 Regent St., Madison, WI 53705 (608) 238-6553
	1978	Patricia M. Thimmig , <i>Wheeler, Van Sickle, Anderson, Norman & Harvey</i> , 25 W. Main St., Madison, WI 53703 (608) 255-7277		1973 Thomas R. Hefty , <i>Blue Cross/Blue Shield United</i> , 401 W. Michigan Ave., Milwaukee, WI 53201 (414) 226-6295
Sec'y-Treas.	1972	Edward J. Reisner , <i>U.W. Law School</i> , Madison, WI 53706 (608) 262-7856	Secretary	1950 William Rosenbaum , <i>Stafford, Rosenbaum, Rieser & Hansen</i> , P.O. Box 1784, Madison, WI 53701 (608) 256-0226
				1978 Mark E. Sostarich , <i>Godfrey & Kahn</i> , 780 N. Water St., Milwaukee, WI 53202 (414) 273-3500

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- ☐ The Advocate (student newspaper)

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- ☐ Board of Visitors, WLAA
- ☐ Placement information, on campus
- ☐ Placement information, in my office
- ☐ Fund raising activities
- ☐ Teaching in the General Practice Course
- ☐ Other interests: _____

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Madison, WI 53706