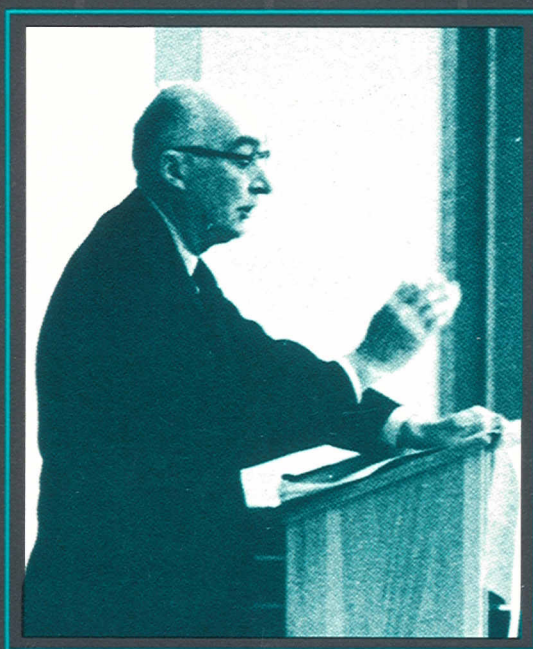


University of Wisconsin Law School Forum

GARGOYLE



Volume XV Number 3

Fall 1984



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The Honorable
George R. Currie

A Note on Binding Ties: *Visits and "The Visitors"*

Dean Cliff F. Thompson

On October 18, 1984, the Honorable Carl McGowan of the United States Court of Appeals for the District of Columbia spoke at the Madison Civic Center on the Presidential pocket veto. His court had recently decided an important case on this topic but its opinion had not yet been published. The faculty invited alums and other friends of the Law School to the speech, which was followed by a reception. The occasion was a grand success, for which Professor Frank Remington deserves special thanks. Judge McGowan, long ago a law professor himself, also met with three law classes during his visit—and from all reports which reached me, both he and the students had a fine time of it.

The McGowan visit was also a sign of our continuing and increasing efforts to encourage a stimulating exchange between the faculty and practicing lawyers, judges, and others involved in the administration of the law. For example, on September 24th, Professor Marc Galanter brought together faculty and local lawyers and judges to meet with Sanford Jaffe, who has been active in developing a program of alternative dispute settlement for the State of New Jersey.

Throughout the year, the faculty has a series of expert visitors who may be of interest to alums and other members of the community. We are working on ways of arranging schedules with sufficient lead time and publicity to allow interested persons to attend. Our experience with Judge McGowan's visit also encourages us to single out one or more events each year which may be an especially attractive opportunity to provide a social and intellectual exchange between the Law School and its professional friends.

An important continuing link between the faculty and the alums is the annual visitation by the Wisconsin Law Alumni Association's Board of Directors and Board of Visi-



tors. Many schools do not establish Boards of Visitors, perhaps in part because the accreditation standards of both the American Bar Association and the Association of American Law Schools place the governance of a school in the hands of the dean and faculty. And questions of governance are taken seriously by law schools—particularly at Wisconsin with its strong tradition of faculty governance.

But there are many potential advantages in the exchange between such visitors and the faculty. Our experience in Wisconsin is relatively brief but clearly successful. I believe this has been possible because everyone has worked to maintain the delicate balance which is required. The Board of Visitors has recognized the faculty's ultimate responsibility for its programs of teaching, research, and service. And the faculty has respected and welcomed the Visitors' initiatives, concerns and support. In the months ahead, we will be working to strengthen further the effective and productive links with the legal community in general and with our alums in particular. We greatly appreciate the assistance we have received.

The Federal Rules of Evidence: Helpful, Hurtful or Inconsequential?

By Frank Tuerkheimer

Frank Tuerkheimer's course in Evidence has been a student favorite for years and he shoulders—when he offers the course—one of the heaviest teaching loads of anyone on the Wisconsin Law Faculty these days.

Those large enrollments obviously reflect his excellence as a teacher. But the big enrollments probably reflect also the fact that Frank has kept sharply tuned his skills in handling the rules of evidence. Indeed, since he joined the Wisconsin Law Faculty in 1970, we have repeatedly lost him to calls for public service taxing his abilities as a trial lawyer: From 1973 to 1975 he served—as an Associate Special Prosecutor—with the Watergate Special Prosecution Force. That in turn was followed by four years of service as the United States Attorney for the Western District of Wisconsin from 1977 to 1981.

Since 1981, he has been back as a full-time member of the Law Faculty but he has carried on the side an important role for the State Bar of Wisconsin and the Wisconsin Judicial Commission, investigating and pressing complaints of lawyer and judicial misconduct.

The essay which follows was written by Professor Tuerkheimer at the request of the GARGOYLE and is offered as his assessment of the Federal Rules of Evidence as they approach their tenth year in operation. As the essay makes clear, he has taken sides on questions which have divided those who have acquired considerable mastery of the art of collecting and offering evidence. And while the GARGOYLE offers no guarantees whatever that it will publish any responses it may receive, our management is open minded and welcomes reactions from readers—some of which we might even publish.

Professor Tuerkheimer's essay:

In 1975 the Federal Rules of Evidence went into effect. The Rules had been drafted by a committee of practitioners, judges and law professors, had been

reviewed by other committees and, presumably, the Supreme Court and the Congress.

The make-up of the drafting committee was designed to insure that the best of the existing body of law was selected and that the end result would be a clear expression of the law. It is interesting to note that despite the august and "non-political" make-up of the group responsible for the Rules, political compromises are plainly evident in the wording of the Rules and there are a number of facial problems with them.



Compromises

An examination of the Rules, especially the hearsay exceptions, reveals a number of compromises explicable only in terms of arbitrary line drawing between those to whom the rule against hearsay was a distrusted rule generally impeding the gathering of probative evidence and those to whom the rule was a vital cog in the process of insuring against unjust verdicts. There are three illustrations of this.

1. Dying Declarations

The role of dying declarations has been the subject of controversy for centuries. Under the common law there was an exception to the hearsay rule in the case of dying declarations where the declarant

died and where the prosecution or defense wanted to put in what the declarant, while under a belief of impending death, said concerning the events that led to the death. The declarant's unavailability was then, and remains, a condition to the use of the evidence. The prosecution might rely on such evidence to show the identification of the defendant. The defendant might rely on it to show that there was a defense of self-defense, that the deceased did something to provoke the defendant and admitted it before dying. In either case, the reliability of the evidence to justify the exception to the hearsay rule came from the idea that a person believing that death was imminent was not about to lie.

Given the logic of that exception, it would follow that in cases where the consequences were far less serious than those in a homicide prosecution, such as in a civil suit brought by the victim or his estate against the perpetrator or in an assault prosecution where the victim survived, that in either of these cases the declaration made under a belief of impending death would be equally admissible. The common law, however, in its strict form, remained rigid, and was changed only in a minority of jurisdictions.

When the Federal Rules were adopted, there was an effort made to have the hearsay exception applied to all cases where it was logically applicable. Others wanted the strict common law adhered to. The sentiment between those in favor of a larger application of the exception and the traditionalists was not resolved with any logic. The Federal Rule now provides that the statement made under belief of impending death is admissible in a prosecution for homicide or in a civil action or proceeding.

What we have done therefore is to take the most serious of the cases—homicides and those cases (civil actions) where there are no penal sanctions—and made the exception applicable. We have left the exception inapplicable in the less serious criminal cases such as assault. It would seem that if reliable enough to use in a homicide case where a person may be subject to life imprisonment or even death, such evidence should be usable in assault cases where the sanctions are far less.

Fortunately, the Wisconsin version of the Rule was not the product of the same diverse pressures. In Wisconsin, a statement made by the declarant while believing that death was imminent is admissible if it concerns the circumstances as to cause of what the declarant believed to be his imminent death, without regard to the kind of case the evidence is offered in.

2. Declarations Against Interest

A second reflection of the political process by which these Rules were adopted relates to the hearsay exception involving a statement against interest, another exception applicable only if the declarant is unavailable.

In the common law, a statement against a declarant's pecuniary interest was admissible on the ground that someone would not make a statement against pecuniary interest unless it were true. Again, it would follow that if the declaration against a civil interest is reliable enough to warrant an exception to the hearsay rule, then a declaration against penal interest—where a person is also subject to potential fine and therefore pecuniary loss and in addition is subject to possible imprisonment—would be equally reliable. At least one could not draw any reliability-type distinctions between the two.

The common law, however, was concerned about the possibility of collusion between a person accused of crime and another. Thus, if A were charged with a crime, B could tell a third person that he, B, committed it and disappear. A would then call the third person as a witness in an effort at creating a reasonable doubt about his commission of the crime by showing that B had confessed to it. After A's acquittal, if B were caught, the evidence against him would be very slim if anything at all. Moreover, A would be free to make comparable admissions to a third party and be immune from further prosecution on double jeopardy grounds. Because of this fear of collusion, under the common law, declarations against penal interests did not qualify under the exception. As was true in the instance of dying declarations, a minority of jurisdic-

tions had changed the common law, applying the declaration against interest exception to penal interests as well.

This was the state of law in 1975. The drafters of the Rules were divided among those who felt the strict common law position was correct and those who felt the exception should be broadened to include penal interest. Supporters of broadening the exception rested on the theory that the usual rules of the courtroom could deal with the possibility of collusion, that all one was talking about was the question of admissibility, that the question of weight was to be left to the jury, and that the prosecution would be free to produce evidence of collusion if in fact there was some. The argument acknowledged that while there might be some collusion in some cases, in other cases there was none and why have an absolute bar against the evidence?

Once again, the promulgation of the Rule reflected a compromise between these two opposing interests. As adopted, the Rule provides that a statement subjecting the declarant to criminal liability is admissible but, where offered to exculpate the accused, admissibility was permitted only where there are corroborating circumstances indicating the trustworthiness of the statement. A comparable condition does not attach to the statements against pecuniary interest.

The Wisconsin rule is identical. The corroboration requirement is unusual. Modern rules (*e.g.*, those in rape prosecutions) have tended away from corroborating requirements, and in any case, a strict implementation of the requirement may raise major constitutional issues, as *Chambers v. Mississippi*, 410 U.S. 284 (1973), makes clear.

3. Prior Inconsistent Statements

A third area of conflict relates to prior inconsistent statements. Under a strict definition of hearsay, a prior inconsistent statement offered for its truth is hearsay. However, by definition, prior inconsistent statements are inconsistent with statements of witnesses who are in court and able to testify—and therefore are available for cross examination. For that reason, the danger of admitting hearsay evidence—words spoken by a person not available for cross examination—is not present.

Therefore, courts had long ago begun the process of permitting such prior inconsistent statements to be received for their truth. The reasons were not only because the declarant was available to be cross examined, but also because it was rather a difficult thing for a jury to understand and apply the distinction between

evidence received for its truth and evidence received only for its impact on the credibility of the witness. Thus, in a large number of jurisdictions—including Wisconsin—the rule had been expanded to provide that a prior inconsistent statement could be received for its truth.

When the Federal Rules of Evidence were adopted, however, once again those favoring strict common law definition ran into those who favored a significant expansion of the common law. The end result is that under the Federal Rule a prior inconsistent statement can be received for its truth if made by someone who is subject to cross examination, is inconsistent with testimony, and was given under oath subject to a perjury penalty. It is this latter requirement which is the compromise between the two factors.

In Wisconsin, again, the broader position was adopted—namely, any prior inconsistent statement made by someone who is subject to cross examination about the statement is receivable for its truth.

Wording Problems

Despite the extensive review process to which the Rules of Evidence were subjected, there remain certain wording problems in the Rules which were there from the beginning and which are still present. Perhaps precisely because of the cumbersome nature of the process which led to their adoption, these problems have not been eliminated.

1. Use of Prior Crimes

The Rules provide that, for purposes of attacking the credibility of the witness, evidence of prior crimes may be established but only if:

- a) the crime involved dishonesty or false statement; or
- b) the crime was a felony "and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect on the defendant."

Thus we have two categories: crimes which involve dishonesty or false statement (which are flatly admissible subject to time requirements)—and felony cases which do not involve dishonesty or false statement (which may be admitted if the judge determines that the probative value of the evidence outweighs the prejudicial effect "to the defendant.")

The difficulty with this Rule is obvious: not every person cross-examined with a prior crime is the defendant. Does this mean that a non-litigant witness may be cross examined with respect to any prior crime regardless of its probative value—or lack thereof—and regardless of the poten-

tial prejudice to the case of the party calling the person? What if the Rule is to be applied to a proceeding where there are "petitioners" and "respondents"—or "libelants" and "libelees"? Courts have not interpreted the Rule as narrowly but the interpretation problem was clearly avoidable in the first place. The Wisconsin version of the Rule does not have this problem. Wisconsin simply admits prior crimes and then provides that prior crimes may be excluded if the probative value is outweighed by the danger of unfair prejudice, without any reference to the entity that has to be prejudiced.

2. Character Evidence

A second problem as to wording can be found by comparing the rule on impeachment (Rule 608) with the rule on character (Rule 404). Rule 404 states that the character of the accused cannot be put into evidence unless the accused himself calls character witnesses and then the prosecution seeks to rebut the accused's evidence of good character.

Standing alone, Rule 404 simply embodies the common law rule that the defendant must open the door to such evidence and that the prosecution cannot introduce evidence of the defendant's bad character without the door having been opened. Rule 608, however, provides that a witness's credibility may be attacked in form of character evidence provided the evidence refers to the character for truthfulness or untruthfulness.

The juxtaposition of these two Rules then poses the question whether a defendant in a criminal case is to be viewed as a defendant under Rule 404—or as a witness under Rule 608—when the prosecution seeks to impeach his credibility by evidence showing he is an untruthful person. The handful of cases that deal with this issue tend to resolve the conflict in favor of Rule 404. There is, however, nothing in the Rules that compels such a conclusion.

3. When to Impeach

A third problem relates to impeachment by evidence of conviction of a crime and when such impeachment evidence may be introduced. Rule 609 deals specifically with such impeachment, states that for purposes of attacking the credibility of a witness, evidence that the witness has been convicted of a crime "shall be admitted if elicited from him or established by public record during *cross examination*." Rule 607 of the Rules provides that the credibility of a witness may be attacked by any party, including the party calling

him. This latter Rule codified the trend in the case law present at the time of the promulgation of the Rules that a party may impeach his own witness and was no longer vouching for the witness's credibility as was the case in the common law.

Nevertheless, when one juxtaposes the generality of the Rule 607—which says a witness may be impeached at any time—with the specifics of Rule 609—which provides that the prior crimes "shall" be shown "during cross examination"—there is an obvious conflict.

Analysis

On its face, the fact of Federal Rules of Evidence which can be reproduced in probably less than 20 typewritten pages constitutes a major *tour de force*. Wigmore has written on the rules of evidence in eight volumes; Professor McCormick's simplified version is hundreds of pages long. In this context, an expression of the rules of evidence in such a short space is astounding.

Not surprisingly, therefore, the Federal Rules of Evidence are not, in fact, the last word on the rules of evidence.

This is not, however, to say that the Rules of Evidence are hurtful or inconsequential. The reason for an affirmative and supportive conclusion about the Rules is in part because of their practical impact. One of things they do is to tie the rules of evidence together into a bound volume which is annotated so that issues

and declarations against interest are not, however, the staple of federal evidentiary issues; they arise rarely in federal litigation. When balanced against the tremendous practical value of an evidentiary code—as Judge Doyle has described—the end result is clearly worth it.

My own experience—which includes trials in federal court both before and after the enactment of the Rules—confirms this. There are, however, the inevitable problems of a major change such as the codification of evidentiary case law clearly is: the Rules can be ignored or they can be relied on too heavily. There are lawyers who are totally oblivious to the existence of the Rules. These are mainly lawyers who had been trying cases for many years prior to the enactment of the Rules and who continue to function as if there were no Rules at all. There is also the opposite extreme: lawyers who look upon the Rules as embodying the beginning and the end of the rules of evidence who feel that if they have mastered the Federal Rules of Evidence as contained in 20 pages, then they have indeed mastered the rules of evidence. In either case, discussions on admissibility issues are a disaster and not helpful to the orderly conduct of the case.

It is unfortunate that the political processes at work when the Federal Rules of Evidence were adopted froze into written law changes that were well in progress in the case law. In this respect, the Federal Rules are regressive. Dying declarations

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dealing with questions of evidence can be focused on for research purposes almost immediately. When evidence questions arise during the trial, lawyers and judges have a volume to look to which directs them to the governing rule and relevant case law so that presumably questions of evidence can be resolved more efficiently and more quickly than they were before the Rules went into effect. Judge James Doyle of the Western District of Wisconsin, who has presided over federal trials for many years, both before and after the enactment of the Federal Rules, has made this observation. He notes that the Rules are very helpful to judges because they facilitate trial not only in that they permit a speedier resolution of evidentiary issues, obviating the need for lengthy adjourn-

ments, but they also facilitate a correct decision of the rules because relevant case authority can be found much more quickly. Thus, the time pressures inevitable in resolving legal issues amid trial are less likely to cause a mistake.

A Remembrance of Nate Feinsinger

By Robben W. Fleming

A dinner in memory of Law Professor Nathan P. Feinsinger was sponsored by the Law School on April 9, 1984. The occasion almost certainly was as Nate would have wished such a thing to be, for it was a gathering of his friends, addressed by a handful of people who had known him long and well—Robben W. Fleming, Willard Hurst, and Ed Garvey (JD '69). And the occasion was made specially memorable by recollections of Nate's quick and infectious humor.

Robben Fleming (LL.B. '41)—whose recollections of Nate are set forth following this longish introductory note—occupies a special place in the institutional memory of the University of Wisconsin Law School.

Bob—before becoming President of the University of Michigan—was Chancellor on the Madison campus from 1964 to 1968. That was when an unexpectedly large fraction of the post World War II Baby Boom decided to attend law school. And the Wisconsin Law School, like most others, was not well prepared to cope with mounting enrollment pressures.

At the beginning of the period we had some excess space which helped absorb the initial flood of students. In 1964 we had moved into a new Law Building, large enough according to enrollment projections when it was designed that it would not be filled until the late 1980s. Yet law students overflowed the building by 1968, despite annual—and drastic—tightenings of our admission standards.

But our far more critical problems grew out of the fact that the nationwide surge in law school enrollments created a severe shortage of law teachers. Needing more faculty to handle what for us had been a huge increase in our own enrollment, we found ourselves struggling to hang on to the faculty we had—and to find replacements for those we lost. And professors and those who hoped to become professors responded to the sellers'

market, forcing up the bids for their services.

Bob Fleming was enormously important to the Law School in those difficult days. Outwardly calm and unhurried, he found time not only to listen to what we perceived the problems of the Law School to be but frequently helped us head off or cope with problems we had not seen coming. Some of the problems of the Law School were beyond his or our control and even in the four years of his stewardship as Chancellor, we took some bad knocks. But the help Bob Fleming gave the Law School from 1964 to 1968 when he was Chancellor was crucially important to our continued well-being during the years followed. A healthy Law School requires the sensitive concern and constructive support of the University administration—and Bob Fleming provided both. He listened. And he helped.

Set forth below are Bob Fleming's remarks in remembrance of Law Professor Nate Feinsinger.

I first became acquainted with Nate Feinsinger when I enrolled in the Law School of the University of Wisconsin in 1938. I knew him at that time in the way a student knows one of his professors, but when I graduated he was instrumental in getting me a position with the National War Labor Board. It was with the Board that Nate gained his first national recognition in the labor-management field. By the time World War II was over, Nate had become one of the super-stars of the mediation and arbitration field. For the rest of his life he was one of the best known, most respected, and most popular figures in the profession.

My association with him continued because after I returned from the army following World War II, it was Ed Witte and Nate Feinsinger who brought me back to the University of Wisconsin to administer the new Industrial Relations



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Bob—before becoming President of the University of Michigan—was Chancellor on the Madison campus from 1964 to 1968.

Center which they were starting. We were then colleagues for a few years, and though I left after five years, I came back later to be Chancellor at Wisconsin and we were once again associated. Thus, over a period of more than forty years, he was my teacher, my mentor, my colleague, and my friend.

Among the many attributes which made him so successful as a mediator and arbitrator were his quickness of mind, his instinct for the jugular in identifying the key elements in a dispute, his imagination, which enabled him to package old problems in new ways, his integrity, and his keen sense of humor.

Since this gathering is composed almost entirely of Nate's old friends, perhaps you will find solace, as I do, in hearing some of the funny things that happened over the years in my relationship with Nate.

The first incident I remember occurred in class while I was in Law School. We had a student who almost always wore a Sherlock Holmes hat and smoked a curved pipe which he carried unlit in his mouth most of the time. He had various other idiosyncracies, including occasional unveiling in class of a sandwich drawn from his bag. In any event, on this occasion he did not come into the classroom at all until about five minutes before the hour was over. As he entered that semi-circular lecture room on the basement level of the old law building, he was wearing his hat and had his pipe in his mouth. Nate stopped his lecture while the student walked in silence clear around the room to the back. The students were enthralled.

Finally, Nate said: "Are you coming to class or looking for a match?" That brought the house down, though I think it did not embarrass our student colleague!

Another time, after I returned to the faculty following the war, Nate and I were in Milwaukee together. He was driving and as we came down Wisconsin Avenue, going east, suddenly he made a left turn, despite a sign indicating that this was forbidden. As we did so, he spotted a policeman standing on the corner of the street into which we had just turned. Realizing by this time what he had done, Nate promptly stopped in front of the policeman, rolled down the window, and said: "Captain, I'm lost. I wonder if you could tell me how to get to such and such an address?"

The policeman, wearing the clear insignia of a sergeant, was so startled that he forgot what Nate had just done and proceeded to tell him how to get where he wanted to be. After expressing effusive

thanks, Nate drove off. As we did so, I said to Nate, "Nate, that man wasn't a captain, he was a sergeant." (You can tell that I had just come out of the army!)

Nate replied, "If you just made a left turn where you weren't supposed to, he's a captain." By this time Nate was—as you would expect—immensely pleased with himself.

There was another occasion on which we were in Milwaukee together. Once again, Nate was driving. It was late in the afternoon of a clear summer day and we were heading into Wisconsin Avenue. On our left, the sun was bright, though low in the sky, and not too far on our right was the lake.

Nate, who was never very good at directions, said to me, "Which direction do I go now?" To which I said, "Nate, there is a natural phenomena known as sunrise and sunset. The sun always comes up in the east and goes down in the west. Madison is west of Milwaukee, so what does that tell you?"

Quick as a flash he replied, "I suppose that you seem to know a good deal about the sunrise and sunset, but would you now tell me which way to go?"

My last story concerns an event after I had gone to the University of Michigan, but when I happened to be in Madison. While there, I stopped in Nate's office. This was in his later years when he wasn't very mobile but while he was still trying to keep up his many activities around the country.

As I walked in, Nate was on the long distance phone, an activity which he immensely enjoyed. When I entered, he waved for me to sit down. It was clear he was talking to someone about a conference. Suddenly I heard him say, "The President of the University of Michigan just walked in my office and he will be glad to come and make one of the major speeches on this occasion."

All of this, of course, was without my knowing anything about when the conference was, what the subject was, or where it would be held. But by that time I knew that Nate frequently issued invitations in this manner, and that petty details of the kind that entered my mind would seem to him wholly irrelevant!

I mention that incident to you because those of us who knew Nate were so fond of him that invitations to participate in his ventures, though they might cause inconvenience, require scheduling changes, or near impossible travel plans, were in the nature of command performances, mostly because of our affections for the man.

The University of Wisconsin has lost a very distinguished member of its faculty, the mediation-arbitration profession one of its most honored members, and his colleagues a friend and companion of many years for whom they had great affection.

Thank you for asking me to come and speak on this occasion.



Professor Nathan P. Feinsinger. Among the many attributes which made him so successful as a mediator and arbitrator were his quickness of mind, his instinct for the jugular in identifying the key elements in a dispute, his imagination, which enabled him to package old problems in new ways, his integrity, and his keen sense of humor.

George Currie, Teacher

*A Statement of Tribute from the
Law School of the University of Wisconsin*

G. W. Foster, Jr.

On Thursday, October 18, 1984, the Wisconsin Bar Foundation presented to the Wisconsin Supreme Court an official portrait of the late Chief Justice George R. Currie. In a ceremony before the Court itself, memorial statements were made by Attorney Robert L. Rohde (on behalf of Chief Justice Currie's former law firm at Sheboygan); by Professor G. W. Foster, Jr., (on behalf of the Law School of the University of Wisconsin where Justice Currie had taught after leaving the Wisconsin Supreme Court); by Attorney Thomas G. Ragatz (on behalf of the Currie family); and by Chief Justice Nathan P. Heffernan (on behalf of the Court). The formal presentation of the Currie portrait itself was made by Attorney Rodney O. Kittelsen, President of the Wisconsin Bar Foundation.

Bill Foster's statement recalls a notable event in George Currie's career as a Professor of Law at the University of Wisconsin and the statement is set forth below.

I am both flattered by, and profoundly grateful for, the invitation to speak here on behalf of the Law School of the University of Wisconsin in the memory of Professor George Currie.

George Currie was one of the heroes of my life and I count it as one of my greatest blessings that I knew him for more than a quarter of a century.

Thus I shared with many the sense of shock that he had failed in his bid for reelection to the Supreme Court of Wisconsin in the 1967 Spring elections. Riding to work at the Law School with my colleague, Frank Remington, the morning following the election, the two of us quickly concluded that we should try to pick George up as a member of the faculty when he stepped from the Court the

next January. Entering the lobby of the law building, we ran into Dick Effland, another colleague, and learned at once that he, quite independent of us, had reached the same conclusion concerning George.

Soon thereafter, we descended on George Young, then Dean of the Law School, and he cheered the suggestion. Within hours, we had the essential—and enthusiastic—support of our faculty colleagues, of Bob Fleming, then the Chancellor of the Madison Campus, and of Fred Harrington, the University's President.

In January 1968, George joined us as a Visiting Professor. As a member of the Court he had occasionally helped us as a classroom lecturer but even with that experience, his teaching got off to a somewhat rough start.

For one thing, the times themselves were turbulent and student challenges to what they saw as The Establishment were nearly constant and occurred in almost every form imaginable, in class and out.

The faculty, too, heard complaints about George as a teacher. Some of the complaints also reached George and he was too acute and caring to be insensitive toward them. Those of us who had particularly championed him for a teaching role sought to remain outwardly confident that the problems would be short-lived and—happily—we can demonstrate with almost mathematical precision that George soon succeeded in establishing himself as a great and respected teacher.

My particular proof for this, however, I did not learn of until several years after he had retired from teaching. And the story I learned from George. He was, as those who knew him were aware, a very



Chief Justice George R. Currie.
His quick intelligence, wise understanding, and gentle decency enriched us all.

private man in so many respects. And an exceptionally modest one. But in what for him must have been a less guarded moment than usual, he let the story slip.

The University campus at Madison was a particularly turbulent place in the Spring of 1969. George had a large class in Civil Procedure II at the time and this was his third semester with us. One of the students in the class—Sherwood Malamud—approached George at the close of one of the last class meetings and requested that a few minutes be relinquished to him at the beginning of the next class session. The request was troublesome because there had been class disruptions, some of them nasty and difficult to stop. And George's concerns weren't lessened by the student's adamant refusal to explain the purpose for which the relinquished time was sought. As they reached a point of almost certain impasse, the student found a solution.

"Professor Currie," he said, "I give you my word of honor that if you allow us this time, nothing will happen to make you or the University embarrassed or ashamed."

That got George. "Very well," he said, "I will accept your word."

As the next class commenced, there was the student, right up front. Through the doors behind him came other students bearing a proclamation which was then presented to George.

Here is what the proclamation said:

Whereas George Currie prepared his classes to a degree unknown before to man or student;

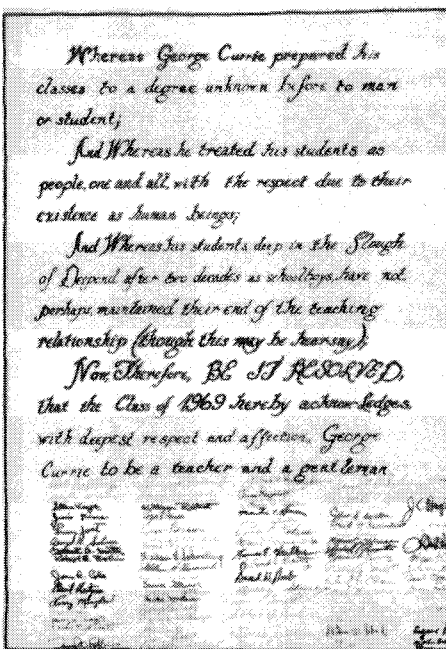
And Whereas he treated his students as people, one and all, with the respect due to their existence as human beings;

An Whereas his students, deep in the Slough of Despond after two decades as schoolboys, have not, perhaps, maintained their end of the teaching relationship (though this may be hearsay);

Now, Therefore, Be It Resolved that the Class of 1969 hereby acknowledges, with deepest respect and affection, George Currie to be a teacher and a gentleman.

Here is the proclamation itself, signed by 83 students. Nearly all the signers were enrolled in the Civil Pro II class, though few others in the Law Class of 1969 apparently got wind of the proclamation and added their names to it.

Telling me the story years later, George was quite visibly moved. And when, still later, I mentioned the story at a Law Faculty meeting, it was evident that—proud as George had been of this—he had appar-



Who Signed?

Robert S. Apfelberg	Charles Leveque
Martha V. Bablitch	Sherwood Malamud
Robert F. Bellin	Lawrence A. Margoles
George W. Benson	Perry Lee Margoles
Richard A. Berthelsen	Richard S. Marshall
William J. Bethune	George McCowan
Robert M. Boeke	William C. Mohrman
Richard J. Boynton	James Calfee Munson
Arthur William Brill	David Wallace Neeb
Eugene J. Brookhouse	Michael Keefe Nolan
William Ulick Burke	John Eugene Nugent
Steven Eugene Cherry	Richard John Olson
Steven J. Cohen	Joseph E. O'Neill
James Ray Cole	Joel R. Oppenheim
James Henry Connors	James L. Pfisterer
Jeremy Blake Crane	Richard Jay Podell
Kenneth Asher Dean	Edward Pribble
Steven C. Dilley	Gerald Henry Rammer
Anthony Eric Dombrow	William Gene Retert
James M. Du Rocher	David Willis Robbins
Neil D. Eisenberg	Paul Edwin Root
Myron Lloyd Erickson	Michael H. Salinsky
William P. Fallon	William H. Schmelling
Edward Garvey	Michael D. Schmitz
William A. Gennrich	Randall E. Schumann
Heiner Giese	Diana Rich Segal
Conrad G. Goodkind	John Skilton
Robert John Grady	Delbert D. Smith
Paul Grimstead	George H. Solveson
John Roger Guiles	Erwin H. Steiner
R. B. Hammerstrom	James Paul Stouffer
David Klay Heitzman	Sandra Marie Stuller
Martin E. Henner	W. T. Terwilliger
Roger Loren Imes	Ronald I. Weisbrod
Henry William Ipsen	James Edison Welker
William D. Johnston	Charles R. Wilson, Jr.
Larry J. Jost	Joseph M. Wilson.
Juris Kins	
Harry W. Knight, Jr.	
Ellen M. Kozak	
Richard A. Kranitz	
F. David Krizeneky	
Edward G. Krueger, Jr.	
Gerald William Laabs	
John Mitchell Leonard	
James Hiram Lesar	

ently told very few of us about it.

Yet that this was for George a special moment in his memorable life can also be demonstrated with considerable precision. When, a few weeks back, I asked George's daughter, Mrs. Ann Roberts, if she knew about the proclamation and whether it still existed, the answer to both questions was an immediate yes and she has generously permitted us to see it here today.

The law faculty concurs in what the students in 1969 said of George Currie. And the students and faculty alike, I believe, would also concur that his quick intelligence, wise understanding, and gentle decency enriched us all. We miss him.

Teaching Law Teachers:

Professors with U.W. Law Degrees

Listed below are the names of more than 100 holders of one or more law degrees from the University of Wisconsin-Madison who are listed as Professors in the current records of the Association of American Law Schools. Just where Wisconsin ranks among law schools these days as a teacher of law teachers is not available to us as this is written. Looking at those in law teaching during the 1975-1976 academic year—almost a decade ago—Wisconsin was ranked 12th in the nation in terms of where people in teaching had received their J.D.s. And the same report placed us second (only behind Michigan) among law schools in the Big Ten.

The list we print here, however, is not limited to law teachers who got their JDs at Wisconsin but includes also those who earned a graduate law degree here. Inclusion of that group makes the important point that the Law School contributes significantly to legal education through its program of graduate legal studies.

A few of those listed have emeritus status now. And some are serving time in the largely thankless job of Deaning. Most, though, are occupied with teaching and researching—the business of Professoring. And geographically, they are associated with schools spread across the land—from Harvard to the University of Florida in the East and from the University of Washington to the University of San Diego in the West.

Judging from dates of law degrees, males dominate the more senior ranks in numbers. But two notable women in the Class of 1950—Margo Melli and Eileen Searls—form a lonely vanguard of what, until the 1970s, did not become a swelling force of women teachers. But even now, only ten on our list of 104 professors—not even 10 per cent—are women.

Here, alphabetically, is the list.

RICHARD I. AARON (J.D. '62)

Professor

Univ. of Utah College of Law
Salt Lake City, UT 84112

SHIRLEY S. ABRAHAMSON (S.J.D. '62)

Professor (On lv. as Associate Justice
Wisconsin Supreme Court)
Univ. of Wisconsin Law School
Madison, WI 53706

LESLIE W. ABRAMSON (LL.M. '78; S.J.D. '79)

Professor

University of Louisville, School of Law
Louisville, KY 40292

DANIEL O. BERNSTINE (LL.M. '75)

Associate Professor

Univ. of Wisconsin Law School
Madison, WI 53706

JON E. BISCHER (J.D. '66)

Professor

Syracuse Univ. College of Law
Syracuse, NY 13210

PAUL H. BRIETZKE (J.D. '69)

Professor

Valparaiso University School of Law
Valparaiso, IN 46383

MARK BURSTEIN (J.D. '73)

Associate Professor

Southwestern University School of Law
675 South Westmoreland Avenue
Los Angeles, CA 90005

CLARK BYSE (LL.B. '38)

Byrne Professor Emeritus

Harvard University Law School
Cambridge, MA 02138

THOMAS GILDEA CANNON (J.D. '71)

Assistant Professor

Marquette University Law School
Milwaukee, WI 53233

DONALD M. CARMICHAEL (LL.M. '64)

Professor

University of Puget Sound School of Law
Tacoma, WA 98402

JONATHAN I. CHARNEY (J.D. '68)

Professor

Vanderbilt Univ. School of Law
Nashville, TN 37240

ARLEN C. CHRISTENSON (J.D. '60)

Professor

Univ. of Wisconsin Law School
Madison, WI 53706

W. LAWRENCE CHURCH (LL.B. '63)

Professor

Univ. of Wisconsin Law School
Madison, WI 53706

JOHN E. CONWAY (LL.B. '35)

Emeritus Professor

Univ. of Wisconsin Law School
Madison, WI 53706

RICHARD A. DANNER (J.D. '79)

Director, Law Library and Associate Professor
Duke University School of Law
Durham, NC 27706

PETER N. DAVIS (LL.B. '63; S.J.D. '72)

Isador Loeb Professor

University of Missouri-Columbia
School of Law
Columbia, MO 65211

BERT O. DAWSON (S.J.D. '69)

Judge Benjamin Harrison Powell Professor
University of Texas School of Law
Austin, TX 78705

ORLANDO E. DELOGU (J.D. '66)

Professor

University of Maine School of Law
246 Deering Avenue
Portland, ME 04102

WALTER J. DICKEY (J.D. '71)

Professor (On leave as Administrator
Wis. Dept. of Corrections)

Univ. of Wisconsin Law School
Madison, WI 53706

GEORGE E. DIX (J.D. '66)

Vinson and Elkins Professor

University of Texas School of Law
Austin, TX 78705

WILLIAM F. DOLSON (LL.B. '56; S.J.D. '62)

Professor

University of Louisville School of Law
Louisville, KY 40292

RONALD Z. DOMSKY (J.D. '57)

Professor

John Marshall Law School
315 South Plymouth Court
Chicago, IL 60604

DANIEL J. DYKSTRA (J.D. '48; S.J.D. '50)

Professor

University of California at Davis
School of Law
Davis, CA 95616

AUGUST G. ECKHARDT (LL.M. '46; S.J.D. '51)

Professor Emeritus

University of Arizona College of Law
Tucson, AZ 85721

RICHARD W. EFFLAND (LL.B. '40)

Professor

Arizona State University College of Law
Tempe, AZ 85287

HOWARD B. EISENBERG (J.D. '71)

Associate Professor

Southern Illinois University School of Law
Carbondale, IL 62901

HOWARD S. ERLANGER (J.D. '81)

Professor of Law and Sociology

Univ. of Wisconsin Law School
Madison, WI 53706

ORRIN B. EVANS (LL.B. '35)

Dean Emeritus and Pfleger Professor Emeritus

University of Southern California Law Center
Los Angeles, CA 90089

ROBBEN WRIGHT FLEMING (LL.B. '41)

Professor and President Emeritus

University of Michigan Law School
Ann Arbor, MI 48109

ALAN H. FRANK (J.D. '72)

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University of Nebraska College of Law
Lincoln, NE 68583

DAVID B. GAEBLER (J.D. '73)

Associate Dean and Associate Professor

Northern Illinois University College of Law
DeKalb, IL 60115

- GEORGE E. GARVEY** (J.D. '72)
Associate Professor
Catholic University School of Law
Washington, DC 20064
- NANCY E. GRANDINE** (J.D. '77)
Associate Professor
Vermont Law School
South Royalton, VT 05068
- JUDITH G. GREENBERG** (J.D. '72)
Associate Professor
New England School of Law
Boston, MA 02116
- STUART G. GULLICKSON** (J.D. '50)
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- JOHN F. HAGEMANN** (J.D. '68)
Professor
University of South Dakota School of Law
Vermillion, SD 57069
- EUGENE N. HANSON** (J.D. '46)
Professor
Ohio Northern University College of Law
Ada, OH 45810
- RICHARD HARNSBERGER** (S.J.D. '59)
Professor
University of Nebraska College of Law
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- ROBERT H. HEIDT** (J.D. '72)
Associate Professor
Indiana University School of Law
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- WALTER W. HEISER** (J.D. '71)
Associate Dean and Professor
University of San Diego School of Law
San Diego, CA 92110
- ORRIN L. HELSTAD** (LL.B. '50)
Professor
Univ. of Wisconsin Law School
Madison, WI 53706
- CHRISTOPHER R. HOYT** (J.D. '79)
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University of Missouri-Kansas City
School of Law
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- ROBERT S. HUNT** (S.J.D. '52)
Professor
University of Washington School of Law
Seattle, WA 98105
- JAMES E. JONES, JR.** (J.D. '56)
Professor
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- G. STANLEY JOSLIN** (LL.B. '39)
Emeritus Professor
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- R. RANDALL KELSO** (J.D. '79)
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- SPENCER L. KIMBALL** (S.J.D. '58)
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- KENNETH R. KREILING** (J.D. '66)
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- JAMES E. KRIER** (J.D. '66)
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Antioch School of Law
Washington, DC 20009
- WAYNE R. LAFAVE** (LL.B. '59; S.J.D. '65)
David C. Baum Professor
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- JAN G. LAITOS** (S.J.D. '75)
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Denver, CO 80204
- JAMES A. LAKE, SR.** (S.J.D. '58)
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- MAURICE D. LEON** (LL.B. '48)
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- JANET S. LINDGREN** (J.D. '71)
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Buffalo, NY 14260
- DAVID LOEFFLER** (LL.B. '63)
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Detroit, MI 48202
- JEAN C. LOVE** (J.D. '68)
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School of Law
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Madison, WI 53706
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- DAVID S. RUDER** (J.D. '57)
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Norman, OK 73019

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University of the Pacific
Sacramento, CA 95817

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Iowa City, IA 52242

MARLIN M. VOLZ (LL.B. '40; S.J.D. '45)

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Louisville, KY 40292

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Lubbock, TX 79409

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University of Arkansas School of Law
Fayetteville, AR 72701

ROBERT ROSS WRIGHT III (S.J.D. '67)

Donaghey Distinguished Professor
University of Arkansas School of Law
Little Rock, AR 72201

ZIGURDS L. ZILE (LL.B. '58; LL.M. '59)

Univ. of Wisconsin Law School
Madison, WI 53706

DONALD N. ZILLMAN (J.D. '69)

Professor
University of Utah College of Law
Salt Lake City, UT 84112



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head of Ethiopia's government asking for his release. Letters should be addressed to: His Excellency Chairman Mengistu Haile Miriam, Provisional Military Administrative Council, Box 1013, Addis Ababa, Ethiopia (The postage is 40 cents.)

Anthony E. Dombrow (JD '69) is a partner in the Chicago law firm of Dorfman, Cohen, Laner and Muchin, a firm specializing in representing management in labor relations.

Andrew F. Giffin (JD '70) is a member of the management consulting firm of Towers, Perrin, Forster and Crosby at Milwaukee and in August 1984 spoke on "Alternative Corporate Structures for Insurance Companies" at the annual meeting of the American Bar Association in Chicago.

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Michael Nametz (JD '76) is currently Counsel and Assistant Secretary for Exxon Production Research Company in Houston, TX

Walter Hodynsky (JD '77) has been appointed Assistant Director of Labor Relations in the Employee Relations Department in the Twin Cities Region of the Burlington Northern Railroad at St. Paul, MN

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Professor and Librarian
St. Louis University School of Law
St. Louis, MO 63108

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University of Oklahoma Law Center
Norman, OK 73019

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Gainesville, FL 32611

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Denver, CO 80204

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Faculty Briefs

Taxing Travels?

As his reputation in the field of international taxation spreads, so have U.W. Law Professor **Chuck Irish's** travels about the planet increased. At Tokyo in July he lectured on state taxation of multinational enterprises. Later the same month and in August he was in Taipei lecturing on tax reform issues in developing countries. And in mid-October he was off for a week at Khartoum in the Sudan for lectures and discussion of governmental efforts to curb tax evasion and avoidance practices. But for all this bobbing about the world, Chuck was back on hand for the Law Alumni's Board of Visitors dinner at Madison on October 28th.

Public Service, Judicial Style

Our sometimes Professor **Shirley S. Abrahamson**—on leave these days as an Associate Justice of the Wisconsin Supreme Court—has recently been re-elected to the Board of Directors of the American Judicature Society. But that role hardly exhausts the list of her public service activities, for she also serves on the Board of Directors of the Foundation for Women Judges, a fellow of the American Bar Foundation and is a member of the Council, Section on Legal Education and Admissions to the Bar, American Bar Association. Among other things.

Public Service, Law Faculty Style

Keeping track of the public service activities of the U.W. Law Faculty is a goal beyond reach for the GARGOYLE's meager staff resources. But bits and pieces come our way which we try to pass along, not as an exhaustive account but rather as a sporadic and somewhat random sampling of faculty involvement. Here are several recent items:

... Professor **Herman Goldstein**—who

finds it hard to say no to any call for public service—was appointed recently by the Wisconsin Legislative Council to serve as a public member on its Special Committee on Peace Officer Study.

... Professor **Margo Melli**—who like Herman Goldstein also has a hard time saying no to public service—has one of the longest lists of such activities to be found anywhere. Among the things into which her time goes these days are: A special committee of the Wisconsin Judicial Council that will make recommendations to the Wisconsin Supreme Court regarding use of video tapes and statements by children who are victims of sexual abuse. On a different committee, she advises the Department of Health and Social Services on THE CHILD SUPPORT INITIATIVE. In another capacity, she is one of a three-member Board which recommends parole of persons sentenced under the Wisconsin Sex Crimes Act. In a still different role, she serves on the Legal Review Board which advises the Wisconsin Department of Employment Relations on questions of reclassifying lawyers in State service. And from a nationwide base, she serves on the National Conference of Bar Examiners.

... Professor **Ted Finman** is a member of a committee that will advise the Wisconsin Supreme Court whether the State should adopt the ABA model rules of Professional Responsibility, continue under the Code, or adopt a combination of the two.

... Professor **Walter Raushenbush** these days serves as Secretary of the Law School Admission Council Board of Trustees—and is also a member of the Accreditation Committee of the Association of American Law Schools.

Call Him "Dean"

Decanal lightning this past Summer struck Professor **Gerry Thain** when he



Professor Gerry Thain

was tapped by Dean **Cliff Thompson** to serve a stint as Associate Dean for Academic Affairs. The principal purpose of the job is to keep the Deanship from killing the Dean, with the consequence that the wear and tear on the Associate Dean



Professor Stuart Gullickson

is considerable. Professor **Stuart Gullickson**, who had this miserable task for years until his liberation by Gerry's appointment, is beginning to get some color back in his face nowadays and his jaw doesn't seem as tightly set as it had become in his days as Associate Dean. Stu did a fine job of it and we are particularly happy that he escaped with his life. Bon voyage, Gerry!

Editor's Note

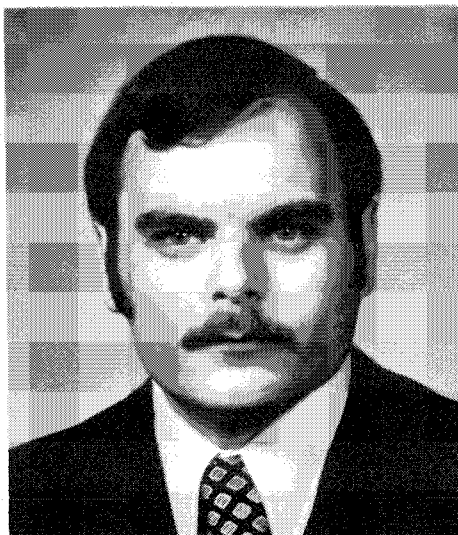
This morning Bascom Hill was white with a heavy frost. It wasn't the first frost of the fall but we all know now that summer will have no more reprise this year. It is an eventful time around the Law School. Students have settled into the semester routine. The other day, the Dean actually found students studying in the Library at 11:45 p.m. on a Saturday night. As a reward for their diligence, he invited several to have lunch with him. This week included one of the biggest events of the year for the campus and the city—the annual Halloween Party on State Street. In an average year some 50,000 partygoers will try to scare each other and have a good time. Many will be dressed as their favorite—or least favorite—political personality. Politics has been an active pastime here this fall, as it surely has been across the country. Law students have organized to support candidates for political offices, ranging from the Student Bar Association to the Presidency of the United States.

Two activities deserve particular note:

After two years of on-campus interviewing declines, employers have returned to the Law School this fall in record numbers. The increase over last fall will be about 20%, and we expect a total of about 150 employers. They come from all across the country and represent all types of practice. In some areas, starting salaries increased sharply. These signs point not only to a general improvement in the market for law graduates, but also to the continued high reputation this Law School enjoys in the legal community.

We have also just hosted our annual meeting with the Alumni Association's Board of Visitors. Their report will be published in a future issue of *Gargoyle*, but every indication is that the Visitors found the School in good health, and the School found that the Visitors are more than willing to support the School in whatever way they can. One member of the Board was vividly reminded of the agricultural beginnings of this University: On his way up Bascom Hill on Monday morning, he met a cow being escorted down the Hill (probably to a 7:45 class?).

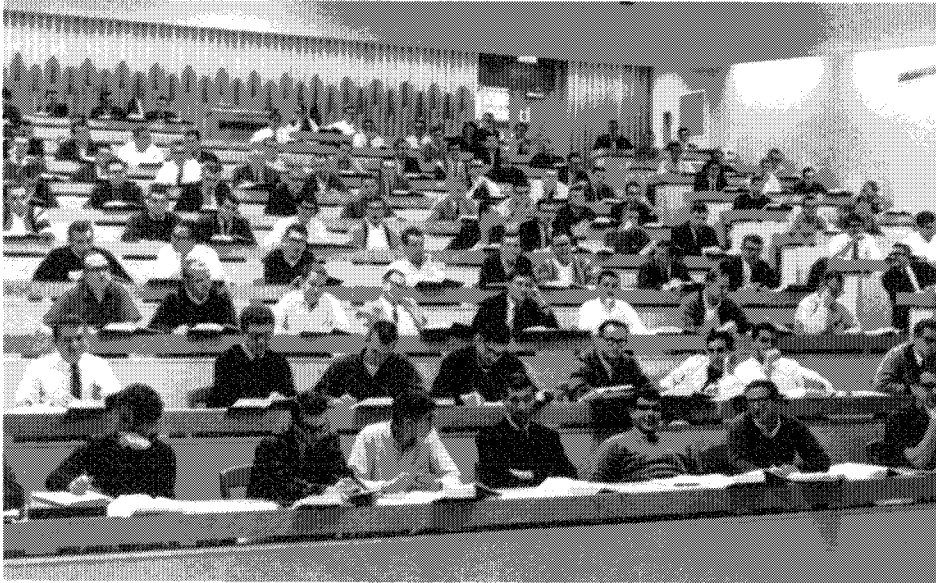
Several of you wrote or called about our "mystery picture" in the last issue. The place and time were easy—the Library Mall in the post-WWII era. When the University was flooded with returning veterans, it erected a number of the ubiquitous



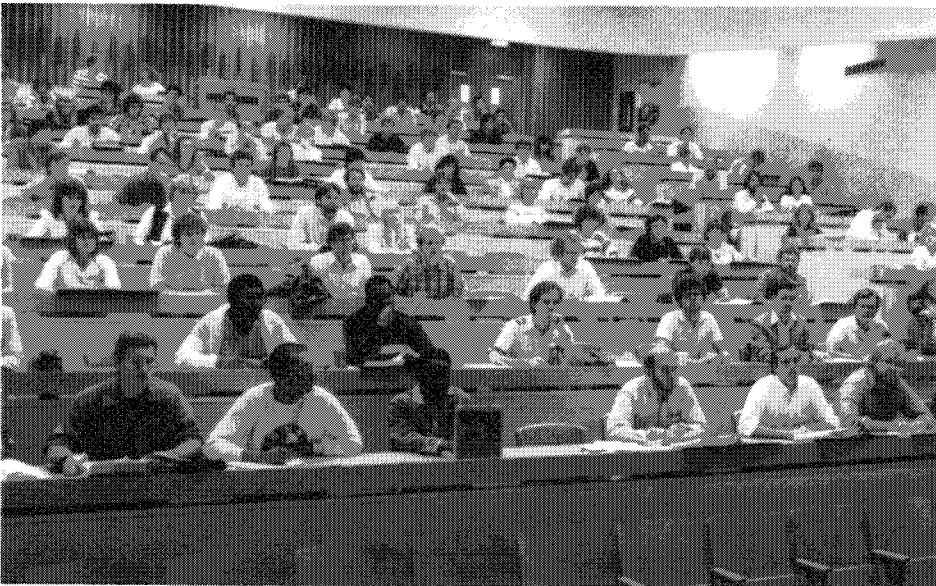
Quonset huts on the mall for both classroom and administrative use. The last of these huts did not disappear until the 70s. The students pictured could not be identified—and may not even have been law students, although several correspondents could remember standing there in line for one thing or another while in Law School.

In this issue, we have something a little different: two pictures taken in Room 225 of the Law Building, 20 years apart, in 1964 and 1984. Let me know if you were in that earlier class and know what the course was.

Same Place, Different Time

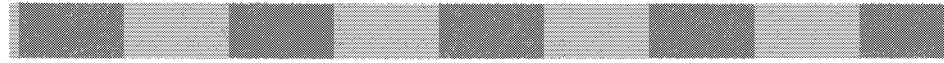


Room 225 of Law Building, 1964



Same, 1984

Let us know if you were in the 1964 picture. And can you tell us what the course was? Professor Walter Raushenbush says the 1984 picture is of his class in Real Estate Transactions I.



Become Involved in Your Law School

*I would like to have the following item
considered for Faculty/Alumni notes in the Gargoyle:*

I would like information on subscriptions to:

- ☐ Wisconsin Law Review
- ☐ Wisconsin International Law Journal
- ☐ The Advocate (student newspaper)

I would like to volunteer for:

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

Name: _____ Class: _____ Phone: _____
Address: _____ City: _____ Zip: _____

☐ Check if address is new

Mail to WLAA, c/o UW Law School
Madison, WI 53706