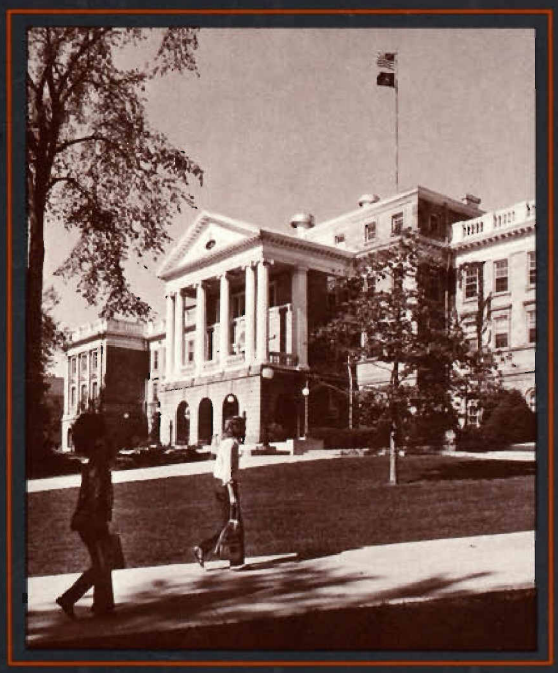
University of Wisconsin Law School Forum

GARGOYLE



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GARGOYLE

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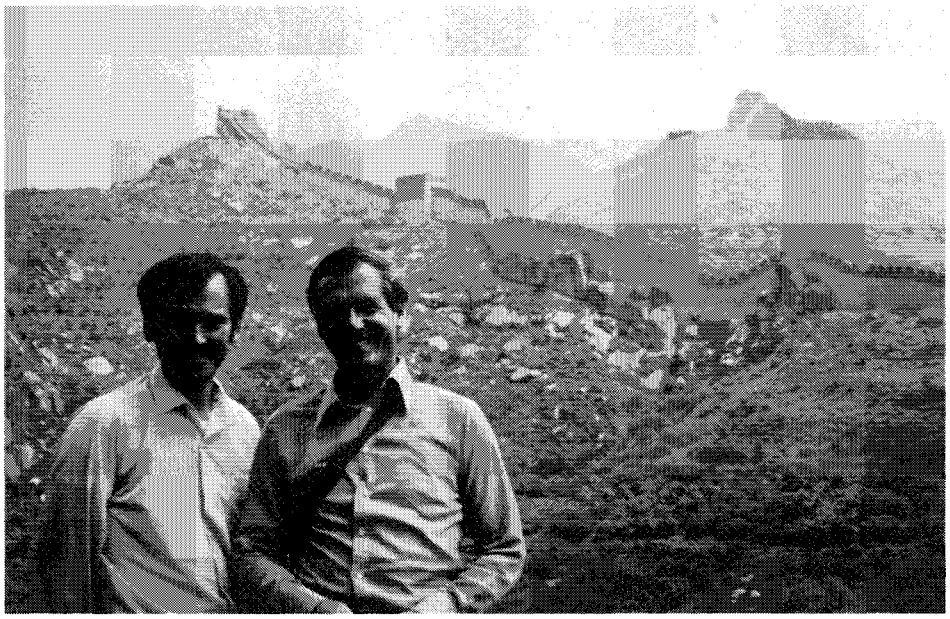
On Bascom Mall and the Great Wall



Cliff Thompson (right) and Jerry Harrison during their 1973 visit to China. Professor Harrison is now Dean of the University of Hawaii Law School.

Dean Cliff F. Thompson

This past October, I visited the Peoples Republic of China along with the law school deans from from Georgetown, N.Y.U., Pennsylvania, the University of Chicago, U.C.L.A., Berkeley, the University of Washington and Stanford. We traveled as the guests of the Chinese Ministries of Justice and Education, and with the support of Columbia University's Committee on Legal Education and Exchange with China. Over a two week period, we met with law faculties and government officials on a daily schedule which usually ran from seven in the morning to past ten at night. There was, of course, some time for seeing great monuments, but on the run: "All right, you've got ten minutes for the Temple of Heaven."

The meetings at law schools and legal institutions provided more extended opportunities to become acquainted. Overwhelmingly, the Chinese showed keenness on two topics: international economic law and the possibilities of legal training in the U.S. In exploring these interests, we were frank in noting the severe constraints on both public and private universities in any effort to provide training positions.

For me, the most fascinating aspect was the contrast with my visit in 1973, when the "Cultural Revolution" was still boiling, and there were no law schools to be shown. One consequence was the loss of a whole generation of law teachers and legally trained personnel. The PRC is now embarked on a widespread legalization of its national economic apparatus, which will have a significant but difficult to predict impact on its society.

It is clear that those who are now being trained in this country and elsewhere will be among the top leaders in China in the coming decades. Chancellor Irving Shain recognized this at an early date, and acted upon it, with the result that the University of Wisconsin–Madison is a preeminent institution in the U.S. for the overseas education of Chinese students and scholars. Now that law has joined the list of suitable subjects, the Law School hopes to have at least a modest role in this extraordinary educational enterprise.

Finding outside funding to support our effort will be the most difficult step. Finding members of the faculty with deep interest and experience in legal developments outside our national boundaries will be easy. I hope you saw the article in the Fall 1985 GARGOYLE which summarized the amazing variety of foreign expertise possessed by our professors. The pattern of faculty experience is consistent with what I've found to be characteristic of the success of the University of Wisconsin: getting two for the price of one. All of the faculty are established teachers and scholars in domestic legal problems, and the familiarity with foreign systems is an "extra."

The value of this "extra" may be noted from another angle. Because we realize that the best destination for a domestic product may be a foreign port, the real market place is global. At a time when Wisconsin is actively seeking trade opportunities in Europe and the Orient, we are fortunate that we have a faculty capable of being responsive to the law issues of an interdependent world.

Reducing the Fear and Incidence of Sexual Assaults:

A Case Study in New Forms of Policing

William G. Moore

UW Law Professor Herman Goldstein has long been recognized as an authority on policing. Since the 1950s he has worked on the tough issues that arise in the policing of a society that expects much of its police, but greatly values individual freedom and therefore curtails the authority and methods available to law enforcement agencies.

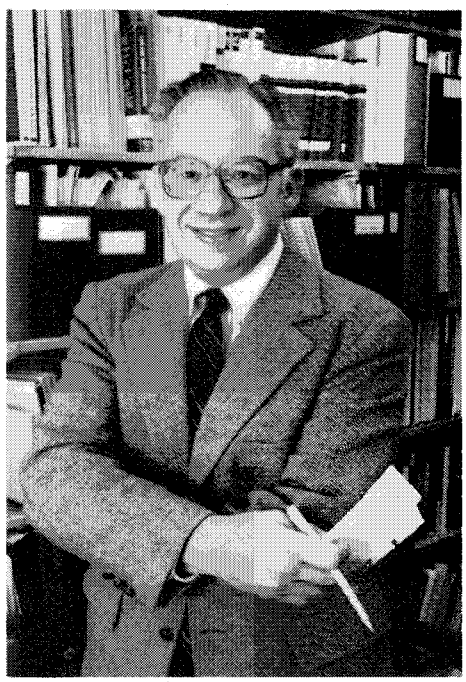
In the constant effort to design a form of police service that better meets our needs within established restraints, Goldstein is convinced that much of our energy has been misdirected; that police have "too often become preoccupied with means rather than ends." He argues that the major emphasis in police reform has been on improving organizational efficiency and the application of modern technology; that these efforts might better be spent on analyzing the behavioral problems the police are expected to handle, and to work out more pragmatic solutions to them.

In 1981, to develop his thesis, Goldstein and an associate from the Department of Sociology conducted two case studies in conjunction with the Madison Police Department: one inquiry involved drunk driving, the results of which were partially reported on in an article which appeared in a past issue of the GARGOYLE; the second study, described in this article, examined the repeat sexual offender (RSO) problem in Madison.

The nature of the RSO problem, and the circumstances surrounding the release of the study's findings, prompted the Madison Police Department to make swift, far-reaching changes in its relationship to convicted sexual offenders under supervision as parolees and probationers. Ultimately, these changes have affected the MPD's relationship with all parolees and probationers.

The MPD's new program for relating to offenders under supervision in the community has begun to fill a void in the workings of the criminal justice system. Police departments in other cities have expressed interest in the program. The results suggest that if the type of critical self-examination that led to the program is applied by more police departments to areas in which they seek to improve their effectiveness, similar benefits can be realized.

The article below describes the analysis of the repeat sexual offender problem in Madison, the suggestions for change in the police response and the impact of the proposed changes on the problem.



Professor Herman Goldstein

In Madison—an intermediate sized city of 170,000 people—many of the crime problems found in larger, less intimate surroundings were, until recently, generally thought to be uncommon, if not altogether absent. Violent crimes, especially homicide and sexual assault, were regarded as particularly rare. Although it is Wisconsin's capital city, Madison is a community with a small-town atmosphere.

In the late 70s and early 80s, however, Madisonians became concerned about a rather dramatic increase in the reported number of sexual assaults.

Part of this rise was due to feminist efforts to draw attention to the seriousness of the sexual assault problem. This was reflected in a major revision of Wisconsin's rape laws, which was broadened to include a wider range of conduct and to facilitate prosecutions, taking much of the burden off of the victim-complainant. In addition, the increase may have been influenced by steps taken by police to facilitate reporting and investigations. Victims were encouraged to report all forms of sexual assault to police. As a consequence, it was difficult to determine whether the city was experiencing a "paper" increase in the incidents of sexual assaults or an actual increase.

Whatever the reason for the rise, community and police concern for the sexual assault problem was growing, and Madison's town-like atmosphere seemed threatened.

Goldstein and the "Problem Oriented Approach"

At this time, six blocks down State street—and still quite apart from the concern about sexual assault in Madison—Professor Herman Goldstein was involved nationally in efforts to improve policing through the development of a new, "problem oriented" approach. The concept, first publicly expressed in the April 1979 edition of *Crime and Delinquency*, called for the police, rather than focus their improvement efforts on modernizing organization and operating methods, to place more emphasis on the substantive outcome of their work.

Professor Goldstein was later joined by Charles Susmilch, a Research Associate with the University of Wisconsin Department of Sociology, forming a research team to work on the development of the concept. In the Spring of 1981, the team received a grant to finance the project from the National Institute of Justice.

The Madison Police Department was the logical and natural laboratory for the project. The MPD is a progressive police department with a commitment to trying new approaches to policing. It expressed a willingness to work with Goldstein and Susmilch. A collaborative effort was thus launched with the MPD for the purpose of "experimenting with methods for promoting thoughtful consideration within a police agency of community problems to which the police were expected to respond." It was an association founded on a common desire to improve police effectiveness.

The problems on which the team was to focus were chosen by members of the MPD. The MPD singled out two of immediate concern: that of drunk driving and "the problem presented by the repeat sexual offender (RSO)," the focus of this article.

The RSO Study

The MPD had selected the RSO problem simply because it was very aware of the public's growing concern about sexual assault; that fear of sexual assault had affected the lives of many residents. Contributing to police concern about the problem was a "vague sense" within the department that a substantial number of those assaults of greatest concern to the community were being committed by individuals with prior records of sexual assault and that many of these individuals were on probation or parole at the time of their most recent offense.

The research team began its investigation with a series of logically sequenced queries, all with the aim of checking out the MPD's suspicions regarding the role of prior sexual offenders, and then developing a more effective response to Madison's sexual assault problem.

Far too detailed and lengthy to fully recount here, the queries were designed to illustrate the value to the MPD and other police departments of developing "a more systematic process for examining and addressing the problems that the public expects them to handle;" to convince police agencies of the importance of their evaluating their current responses; and to determine, in "the broadest ranging search for solutions," what might constitute the most intelligent response to each problem.

Key Findings in Brief

In order to get a general impression of the sexual assault problem, the research team reviewed the police records of all of the assaults that occurred in a nine-month period in 1981. The result was a "mixed" picture: of the 133 cases reported, 81 were cleared (the offender was identified, but not necessarily charged). Fifteen of these 81 offenders had prior records of sexual assault. Six of these 15 were under supervision when accused of their most recent offense. That finding, by itself was not terribly disturbing.

But during a separate review of the five most publicized cases that had occurred in the longer period of two years—those which caused death or serious injury and which generated intense community-wide fear—an entirely different picture emerged.

All of the assailants in these cases had prior records of assaultive behavior and all were under parole supervision at the time they committed their offenses. The death or injury caused the victims in these cases clearly distinguished them from all other sexual assaults. It is, of course, a matter of speculation as to how much the disclosure of the prior records of the assailants contributed to the special attention drawn to the cases. This common factor, however, was not widely recognized. As the report on the study stated, "[the cases were] obviously not representative of all sexual assaults reported to the department, but because they received so much attention, they have contributed disproportionately to the perception of the sexual assault problem held by the police and the community." The fact that the assailants in all of these cases—which contributed so much to the level of fear in the community—were under supervision at the time they committed their offenses was deemed sufficient cause to examine carefully the local population of prior sexual offenders, and the form of supervision they received.

The In-Migration Problem

On November 1, 1981 the Division of Corrections had 66 persons under supervision in Dane County who had been convicted of a sexual offense. Two especially significant findings surfaced concerning these individuals: three-quarters of them were relatively unknown to the MPD because they had been convicted in another jurisdiction; and this small group of ex-offenders accounted for a disproportionate number of new offenses when compared to the general community." Madison and Dane County were experiencing a large "in-migration " of parolees and probationers who enjoyed, in particular, the anonymity the city could offer, and Madison's "tolerance for alternative lifestyles."

New Relationships; New Procedures

With the realization that three-fourths of the sexual offenders were hardly known to the MPD, it became clear to the research team that if the MPD genuinely desired to tackle the sexual assault problem, it would have to take a new interest in these parolees and probationers. It could do so only with the aid of the Division of Corrections.

It signified the beginning of an unprecedented formal relationship—unprecedented in Dane County, Wisconsin and the entire country—between police and corrections.

But the formal cooperation between police and corrections that was needed had little precedent on which to build. Traditionally, each agency had viewed the other with some suspicion, in Madison and elsewhere. Police have thought of parole agents as "mere" social workers, bent on protecting, even over-protecting their clients from the police; in a similar way, parole agents have seen the police department as an agency over-committed to the punitive aspects of its work. If improved relations were to be realized and the long-standing tensions between the two agencies relaxed, communication lines needed to be cleared and the point emphasized that the two agencies are in pursuit of common goals.

The potential, it was felt, was there, for times and attitudes had changed. The Madison Police had developed much more of a service orientation, illustrated by the sensitive role they play in new programs relating to public inebriates, runaways and the mentally ill. And personnel in Wisconsin corrections had recognized that constructive supervision requires more intensive monitoring of some ex-offenders in their period of reintegration into the community.

It was proposed that police might effectively curb subsequent assaults simply by taking a greater interest in that small number of individuals who, it was determined, committed a disproportionate

number of new offenses; that they lend assistance to probation and parole agents who were otherwise solely responsible for the group's supervision. But this required the development of new procedures and understandings that would assure that ex-offenders are not harassed, but are supported in their efforts to reestablish themsleves in the community.

To aid in meeting these needs, it was proposed that a new position be created—the Police-Corrections Liaison Officer (PCLO), to be filled by a member of the MPD. He or she would "serve as the principle contact with the Division of Corrections" and would take steps to develop the new relationship.

The PCLO: Key to the Program

The PCLO was expected to establish strong, personal contacts with corrections in a short period of time and to become familiar with the inner workings of corrections. He or she was to be clearly identified to probation and parole agents as the member of the MPD to contact when they were uncertain about who to contact directly with information about specific needs or problems. Similarly, officers within the MPD "could turn to their designated colleague when they need[ed] to contact probation and parole." The PCLO would also be responsible for establishing initial police contact with selected offenders and for training officers, with the aid of corrections, to handle contacts with offenders under supervision. In addition, the PCLO was expected to develop specific programs that would arrange for:

—Immediate and continuous notification of police by corrections of those individuals placed on probation and parole in the community, and police notification of corrections regarding any contact with a DC client. The supervisory role of the police thereby would be enhanced, and that of corrections markedly reinforced.

—Registration of all probationers and parolees which, though standard policy of corrections before 1982, had been carried out in very uneven fashion, with substantial discretion having been left to individual agents. Many supervisees were never registered. The PCLO was to assess each person newly placed on probation or parole in Madison to determine the level of interest that the police would take in the individual.

—Facilitation of apprehension requests, which are orders issued by corrections when an agent decides to recall a client. Both agencies were exceedingly uncomfortable with past practices, agents feeling that police did not take corrections' needs seriously; police feeling that they were being asked to do corrections' dirty work. The understanding between the agencies was that police would help to locate a supervisee and then accompany the agent issuing the request to bring the supervisee into custody.

—Training and cross-training programs to help familiarize police officers and corrections agents with the character and nature of one another's work, with the aim of making clear the authority and limitations of the respective agencies.

The Police Response to the Study

By late February 1982, the collaborative study was completed and arrangements were made to engage police and and corrections personnel in a discussion of it on March 10.

But by a bitterly ironic twist of fate, the study was no sooner in the hands of department heads when some of its most important conclusions were decisively and sadly affirmed by a sexual assault that occurred in Madison. The victim, a ten-year-old girl, was abducted, sexually assaulted and strangled by an individual who was among the 81 persons whose records had been reviewed as part of the RSO study.

The circumstances surrounding the case, like those in the five highly publicized cases noted in the study, generated acute community-wide fear, anger and frustration and focused intense pressure on the police, the prosecutor, the courts and the Division of Corrections. The gap in the criminal justice system identified in the study was now succinctly illustrated.

Whether the study or the case alone would have brought about a marked change in the MPD's response to the sexual assault problem is, of course, not known. But the coincidence of the two produced almost immediate results.

By mid-March, the upper echelons of the police department, corrections and the Dane County Sheriff's Department (an agency not directly involved up until this time) voiced a clear commitment to the proposed program. Contact and cooperation between the agencies improved markedly, and at a joint press conference it was announced that they had a "tentative plan for tighter collaboration" in supervising repeat sexual offenders. The details were to be worked out in full later, but the press conference was, in itself, a landmark. It presented three agencies within the criminal justice system cooperating to deal more effectively with a problem of community-wide concern. It signified the beginning of an unprecedented formal relationship—unprecedented in Dane County, Wisconsin and the entire country—between police and corrections.

Another milestone in the development of the cooperative attitude was a meeting in April 1982 of a task force composed of members of the MPD, the DC and the DCSD. Within a few short hours, misunderstandings began to pale as stereotypes were dismantled and common problems and community pressures acknowledged. Members of the agencies exchanged names and telephone numbers, established a basis for personal contacts, and recognized the potential to be realized from closer cooperation.

By June of 1982, the several departments' commitment to the program was firm and unequivocal. The department heads' signal to the troops was clear: "We want this program to work!" As an indication of this determination, the MPD chose detective Ted Mell, a fourteen-year veteran and highly regarded senior detective as the first PCLO. Following suit, the DCSD chose a highly respected officer to serve as its first liaison.

The Program at Work

Not all of the proposals made in the study were instituted by police and corrections administrators. Similarly, some provisions have received more emphasis than others. In general, however, the program closely follows the proposed model.

As current PCLO, Madison Detective Burr Fraser visits the two local offices of the DC twice a week, at which time he usually meets with each of the agents. During this time, he learns of agents' contacts with probationers and parolees and makes notes of their impressions of the progress of these supervisees; learns about parolees about to be released; learns about parolees who are regarded as particularly volatile; picks up apprehension requests; and discusses any problems that arise between the agencies.

At the MPD, Fraser reviews the records of individuals who are shortly to be released from prison under corrections' supervision; makes certain that corrections is notified when one of its clients comes into police contact, and passes along to other Dane County communities information on supervisees that he and his colleagues at the DC deem important. Thursday is set aside for new parolees and probationers to register with the police.

Operations at the Division of Corrections have been most significantly altered through a greater depth of awareness of the behavior of their clients. If a client comes into police contact, corrections is notified within 24 hours. The agent assigned to the client then reviews the circumstances of the contact and, following appropriate DC regulations, decides how the case should be handled.

Corrections is responsible for maintaining a computer file containing the names of all of its clients, to which the police have access. The police are required to check this file whenever an

arrest is made and to notify corrections, thereby eliminating the need for agents to scour all arrest reports in search of familiar names.

Agency Evaluation

All three agencies involved in the liaison program feel strongly that it has benefited them and that it has been, and continues to be, a "good thing for the community."

Ted Mell believes the crossflow of information has reduced the anonymity that the probationer and parolee may previously have experienced. The feeling is strong in all quarters that probationers and parolees now know that they are being more closely monitored by both the police and corrections, and that agencies communicate regularly with each other. At the same time, it is made clear to the ex-offender that the police are not "out to get them." No concrete evidence is available, but both police and corrections personnel are of the view that this awareness deters criminal conduct.

Judy Witt, who staffs the City-County Committee on Sexual Assault (COSA), the committee that oversees the community's response to sexual assault and maintains data on the cases reported and prosecuted, believes "just the idea that the sex offenders [who reside in Dane County] know that they've been mugged and fingerprinted in registration and that the police department keeps tabs on them," causes supervisees to think twice before becoming reinvolved in crime.

Along the same lines, Kay Kendall, Field Supervisor and twenty-year veteran with the BCC, feels that "the biggest function of the liaison program is just being notified immediately when one of our clients is picked up or arrested, and being able to decide right at that point whether or not that person stays in custody." Police contact with a client of the DC (even if it does not involve an arrest) may imply that an individual is straying back to a life of crime. Kendall claims a night or two in jail, and an earnest chat with an agent can be effective as preventative medicine.

Simple, day-to-day interactions among the agencies have ceased to be points of contention. On apprehension requests, for example, the tensions have been greatly reduced through the virtual elimination of any paper work required by the assisting police officer, who now escorts an agent to assure his or her safety. Corrections now feels that the police take apprehension requests more seriously.

It is clear from the opinions emanating from corrections that Ted Mell, the former PCLO, had "created an atmosphere of trust, cooperation and mutual respect which has improved the MPD's ability to relate more directly to probationers and parolees in the Madison area." Tangential agencies, such as the Rape Crisis Center, a victim support agency, and COSA have remarked on the improved relationship.

All of the evidence suggests that Burr Fraser, Mell's successor, has built stronger relationships based on Mell's primary work.

A more concrete by-product of the crossflow of information was the training and cross-training programs that the agencies carried out jointly. The intent has been, according to Kay Kendall, to allow police to "get a realistic idea of what probation and parole is all about as opposed to what they think it is," to shatter misconceptions and promote understanding between the agencies.

Striving for Full Potential

Some problems remain to be solved before the program can reach its full potential. For example, persistent delays have remained in getting the information on new parolee-sexual offenders entered into the computer files, on which police in the field depend. The computer delays have been cut from six weeks to five days and are likely to be cut further with continuous improvements in electronic transmission of information.

But in the interim, the failure to wholly rectify this shortcoming may have resulted in a weakness in the police ability to closely monitor some recently released ex-offenders.

In May of 1984, a "man who previously assaulted a woman 11 days after being released from prison was charged with committing another attack eight days after his latest release." In another case, in May of 1985, a man "just hours out of prison where he had served a term for sexual assault was arrested for an attempted repeat offense." Police and corrections' feeling that the "potential for reinvolvement in criminal activity is highest in the period immediately following release" makes it essential that the computer delay problem be corrected. Such improvements can greatly strengthen the police response to ex-offenders just released from prison.

Sum of the Impact

In a little over three years, the liaison program has produced some basic, pragmatic and realistic solutions to an acute community problem.

With all of the essential apparatus in place, it now covers all probationers and parolees—not just those connected with sexual assaults. And from the evidence provided by the agencies, the extended program is working well.

Continued success and improvement will be determined by the dedication with which each agency pursues its part of the cooperative arrangement. At present, there seems to be little complacence: As Kay Kendall notes, any tendency to sit back and say "Hey, this is a really good program; it's really running smoothly; we don't have to do a thing to actually keep it going," would be a critical mistake.

She adds that "each agency is far from being a static one and there are areas of new direction that we need to take into account and that can deeply affect how the program works." Such periodic self-examination is to be commended.

Though many individuals associated with the project view the changes that have occurred in the interrelationships among the agencies in Madison as major, Professor Goldstein views the accomplishments in more modest terms. In the larger picture, he sees the project as but one small example of what can be achieved if police agencies direct more attention to examining the end product of their efforts; if they develop a tradition of systematically analyzing the impact of their work on the behavioral problems which the public calls on them to handle.

Such inquiries, he argues, will lead to a wide range of different alternatives that the police can then use for dealing more effectively with these problems—alternatives that depend less on the criminal justice system, which is overburdened and often least effective, and more on new resources, new forms of authority, new training and, as is the case with the liaison project, new types of interrelationships between and among agencies. To further explore this potential, Professor Goldstein is currently working with a number of other progressive police agencies—in Baltimore County, Md., Newport News, Va., and with Scotland Yard in London—on varying forms of the same type of experiment that was conducted in Madison.

Out of these efforts, Goldstein sees the potential for eventually developing a radically different form of policing, in which police agencies will have a much wider range of responses available for dealing with community problems—responses that emphasize prevention and, when the use of authority is required, much more discrete use of it, thereby minimizing some of the negative side effects that currently result from the overuse of criminal law. By getting police officers to relate more directly to all citizens (not just victims and offenders), he sees a day when citizen cooperation with the police will constitute the strongest strategy that the police have for coping with serious crime. And by encouraging police officers to contribute to the thought processes to make all of this possible, he sees the opportunity to reward and educate individuals being attracted to police service with a form of job satisfaction that they are currently denied.

The Judicial Internship Program at Wisconsin

Paul Reidinger

From time to time, the GARGOYLE has reported on some of the changes in teaching style and methods which have entered legal education in recent years. For example, the GARGOYLE (Vol. 14, No. 4) described two of them, both of which rely heavily on "learning by doing."

One was the UW Legal Assistance to Institutionalized Persons Program, the highly regarded clinical program which developed out of the the work of Law Professor Frank Remington and relies on law students working under the direction of supervising attorneys to provide legal services to inmates of correctional and other types of institutions in Wisconsin.

A second article in the same issue was an account by Law Professor Stuart Gullickson of his classroom use of situations which simulate real-life application of the law to particular facts.

The piece below—written by third-year UW law student, Paul Reidinger—is an account of yet another "learning by doing" program at the Law School: The UW Judicial Internship Program which, under the direction of Law Professor Larry Church, has really flourished of late and was participated in by perhaps a quarter of those who recently graduated from Law School.

Madison, as UW alumni know, is a very special place. It has a lot of lakes, students, pizza restaurants, eccentric street people, yard signs, bars, and buses.

It also has a lot of courts: Dane County's Circuit Courts, the 4th District of the State Court of Appeals, the Wisconsin Supreme Court, and the U.S. District Court for the Western District. In these various tribunals, cases of every sort are tried, decided, appealed; old law is modified, new law is made. Despite its relatively modest size, Madison is a hotbed of judicial activity.

The vigor of the city's court life and the intellectual and educational opportunities it presents have not gone unnoticed at the UW Law School. Since the early 1970s, the faculty, in an effort to supplement the traditional law school curriculum, have supported a clinical program of judicial internships in which upperclass students earn up to five units of academic credit working as interns for one of the many judges sitting in Madison (and these days, sometimes for judges as far afield as Milwaukee.)

> . . . About a quarter of the students at this law school will have done a judicial internship by the time they leave here."

Depending on the work of the judge to whom the intern is assigned, a student may do legal research, draft memos to help prepare the judge for oral argument, sit in on trials, read trial records to spot issues, or go through complaints filed by indigents to try to uncover causes of action.

Professor Larry Church, who administers the program, describes it as "a sleeper."

"We've tripled in size in the last two years," he says. "This semester, for example, we've placed twenty-eight students—that's everyone who applied. About a quarter of the students at this law school will have done a judicial internship by the time they leave here."

Given the opportunities presented by the program, the high level of student interest is not surprising. Judges who accept student interns include all seven justices of the Wisconsin Supreme Court, all three federal District Judges from the Western District of Wisconsin (as well as Judge Warren in the Eastern District at Milwaukee), and a number of judges from the state Court of Appeals and the Dane County Circuit Courts. Such a broad assortment of courts and judges gives students a chance to participate in judicial activity of the kind that most interests them, whether trial or appellate, state or federal.

By far the largest share of most interns' time is devoted to legal research and writing. The intern reads the briefs presented by each side in a case—and, if the matter is on appeal, the trial record—and looks up the cases cited along with others that might pertain. The judge may ask for a memorandum outlining the issues, setting forth the relevant law, and stating the intern's conclusions; or sometimes a draft of a sample opinion is requested.

Written work may be critiqued by full-time law clerks, staff attorneys, or the judge. Many of the judges will sit down with the student on a regular basis to evaluate the intern's writing—and also simply to discuss the law.

"I think of the intern's experience as being a lot like the one he'd get in a seminar," says Justice Shirley Abrahamson of the Wisconsin Supreme Court. "He does intensive analysis of and writing about a particular legal question before the Court. Then I critique it and he rewrites it. The only difference between an internship and a seminar is that in a seminar I'm totally in control of the material, whereas many of the questions before the Court are new and unsettled. But of course that just makes it more interesting."

Paul Gartzke, Chief Judge of the Court of Appeals in Madison, emphasizes the

value to an intern of seeing how an appellate court works.

"They learn how to read a record (of a trial)," he says, "and they learn how important 'scope of review' is. Most of them are pretty innocent when they get here from law school."

Trial court judges often encourage their interns to spend time observing litigation.

"I like them to be in court, watching," says Dane County Circuit Judge Angela Bartell. "I try to talk to them during breaks—to discuss the issues, techniques of lawyering, what's effective, what isn't, and so on."

"It's a good way to see how the rules of civil procedure actually work," agrees Federal District Judge Barbara Crabb.

Although students interning at trial courts spend a fair amount of time watching trials, they also do a good deal of research and writing, and receive comments and criticism from the judges.

The stress laid on legal research and writing seems to sit well with most students.

> . . . Most of them are pretty innocent when they get here from law school."

"It's a fantastic legal writing experience," says one student. "It's an experience every law student should have."

Another concurs: "I actually learned something. Other than this program, law school has taught me absolutely nothing practical. I think these things should be mandatory. At least I think the law school should promote and support them with more enthusiasm."

The sense of making a genuine contribution to legal culture also appeals to some students.

"You can have some impact on what happens depending on how hard you work at it," says a student. "They do listen to what you say, and they do read what you write."

Most of the judges agree that their interns are useful sounding boards and often provide helpful insight.

"They offer new perspectives and ask new questions," says Judge Crabb.

"It's helpful to me to bounce ideas off another bright legal mind," says Justice Abrahamson.

According to Gartzke, "Many times their newness enables them to see things we miss."

All this is not to overstate the productivity or impact of student interns. They are, after all, students, and they are not really expected to pull their own weight. They're there to learn. The consensus among the judges is that, as a matter of efficiency, the internship program is "a wash": the interns do contribute, but the cost in judge time is high—sometimes high enough to reduce the amount of contact between judge and student.

Still, the program flourishes, apparently to the satisfaction of all connected with it. For students the benefits are obvious: exposure to "real world" law, a chance to do a significant amount of legal research and writing on a live question, contact with sophisticated legal minds outside the sometimes ethereal environment of law school. The judges, too, come out ahead, according to their own appraisals: although the student interns cannot and do not carry the burdens of full-time paid law clerks, they do contribute research; more important, they bring freshness and insight, and offer to judges an opportunity to exercise an often strong instinct to teach.

In the words of Judge Gartzke: "I love 'em."

Faculty Briefs

Shirley Abrahamson received the highest honor the Indiana University–Bloomington School of Law bestows on its alumni, an award for "significant contributions to [her] community, state and nation." For those who don't know, Shirley is the first woman to be named to the Wisconsin Supreme Court; following her appointment, she was elected to a ten-year term. She is also currently a member of the Indiana University School of Law's Board of Visitors. At the ceremonies held in September, four other distinguished alumni of the Indiana Law School were also honored.

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Frank Tuerkheimer is now of counsel with the firm of Lafollette and Sinykin. At the Law School, Frank is teaching Evidence, Trial Practice, Litigation in Criminal Cases and a seminar on Watergate. He indicates that he plans to spend one day a week at the firm and that he believes his teaching will be "enhanced by virtue of working in the areas in which I teach."

value to an intern of seeing how an appellate court works.

"They learn how to read a record (of a trial)," he says, "and they learn how important 'scope of review' is. Most of them are pretty innocent when they get here from law school."

Trial court judges often encourage their interns to spend time observing litigation.

"I like them to be in court, watching," says Dane County Circuit Judge Angela Bartell. "I try to talk to them during breaks—to discuss the issues, techniques of lawyering, what's effective, what isn't, and so on."

"It's a good way to see how the rules of civil procedure actually work," agrees Federal District Judge Barbara Crabb.

Although students interning at trial courts spend a fair amount of time watching trials, they also do a good deal of research and writing, and receive comments and criticism from the judges.

The stress laid on legal research and writing seems to sit well with most students.

> . . . Most of them are pretty innocent when they get here from law school."

"It's a fantastic legal writing experience," says one student. "It's an experience every law student should have."

Another concurs: "I actually learned something. Other than this program, law school has taught me absolutely nothing practical. I think these things should be mandatory. At least I think the law school should promote and support them with more enthusiasm."

The sense of making a genuine contribution to legal culture also appeals to some students.

"You can have some impact on what happens depending on how hard you work at it," says a student. "They do listen to what you say, and they do read what you write."

Most of the judges agree that their interns are useful sounding boards and often provide helpful insight.

"They offer new perspectives and ask new questions," says Judge Crabb.

"It's helpful to me to bounce ideas off another bright legal mind," says Justice Abrahamson.

According to Gartzke, "Many times their newness enables them to see things we miss."

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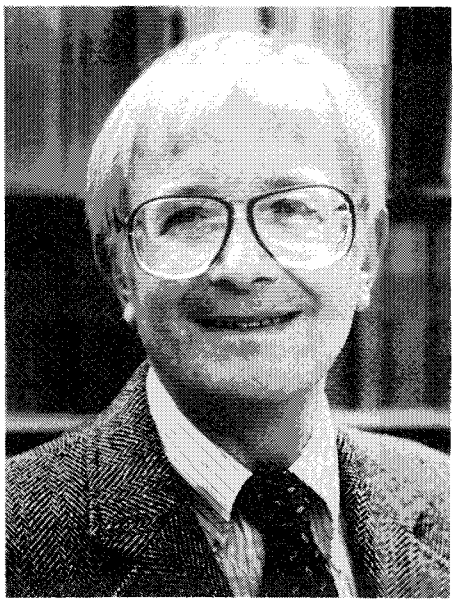
Contracts in Context: The Cheerful Realism of Stewart Macaulay

by Paul Reidinger



Professor Stewart Macauley

For Stewart Macaulay, Malcolm Pitman Sharp Professor at the University of Wisconsin Law School, teaching the law of contracts is not simply a matter of exposing students to a certain body of legal doctrine. Instead, it is primarily a means to make the point to first-year students that law, whether contract or any other kind, is a creature of the society that created it and cannot properly be understood without reference to that society.

"We try to put contract problems in their full context," says Macaulay. By "we" he means he and seven of his colleagues—the so-called "Gang of Eight"—whose teaching and research examine the complex links between law and society. Their efforts have won wide notice and have set off some debate among legal educators. "We want people to see all that's involved."

The emphasis on context is what distinguishes Macaulay's Wisconsin Contracts Materials from more conventional contracts casebooks. Those materials, in use in one form or another at the Law School since the late 1970's, grew out of a supplement Macaulay had prepared for use with a standard casebook he was assigning his classes in the early 1970's.

"Students came to me and said, 'You know, the supplement is swallowing up the casebook,' " he recalls. "And they were right."

The materials comprise cases, of course—many of them quite recent—but also a variety of items not found in other casebooks: relevant newspaper and magazine articles, scientific explanations and diagrams, lawyers' briefs, transcripts of conversations with litigants. They are there not to entertain—though often they do that—but to give students a better idea of what is going on in a case, what the real issues are.

"It's important to remember that most contract disputes never come to trial," the professor notes, "and that even those that do seldom end up on appeal. So, right off, students can get the mistaken notion that contract disputes are regularly settled by appellate courts. Also, when a student reads an appellate decision, there is a danger he will think that a court could reach one right decision just by following the rules. That isn't so. Courts often know where they want to end up and will use the facts and law—helpful facts and law—to get there . Our point is that to understand why a decision comes out the way it does, you have got to know what else is going on. You have got to see the context."

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But context, for Macaulay, means more that simply knowing what the lawyers said in their briefs, or what embarrassing details the New York Times discovered about a litigant's quality control. Context means looking at the law as a whole: of trying to see what it is and can do; and, more important, of what it isn't and can't do. In Macaulay's view, many new students bring to law school unrealistic ideas of the law and the legal system.

"They have a false picture of the legal process," he says. "Many of them come here in search of an illusion. They think they'll get a law degree and then go out and bring justice and right to the world. Unfortunately it isn't that simple. I'm not saying you shouldn't try to reach your ideals, and maybe you'll have some success in doing so. But it's just naive to think that one person with a law degree has the same chance as a huge corporation with

two hundred attorneys and the resources to finance major litigation. It isn't enough to know a few rules.

"The point I try to make—and it isn't easy because it doesn't allow for much student romanticism—is that the law is really a set of tools. An imperfect set, certainly, but the only one we have. You can change things with those tools, but only slowly, and never as much as you want. Lawyers nibble away trying to make things better. It doesn't happen through revolution, and I don't think it will—not in my lifetime, anyway. But you can work within the system and bring about some reform, provided you know how the system works. In fact, such an understanding is itself likely to spur reform. That's why I think you have to know the doctrine of consideration even though I think it's a joke."

This is pretty blunt talk. But Macaulay thinks it's crucial to disabuse beginning students of their romantic notions of law, even at the risk of being called cynical.

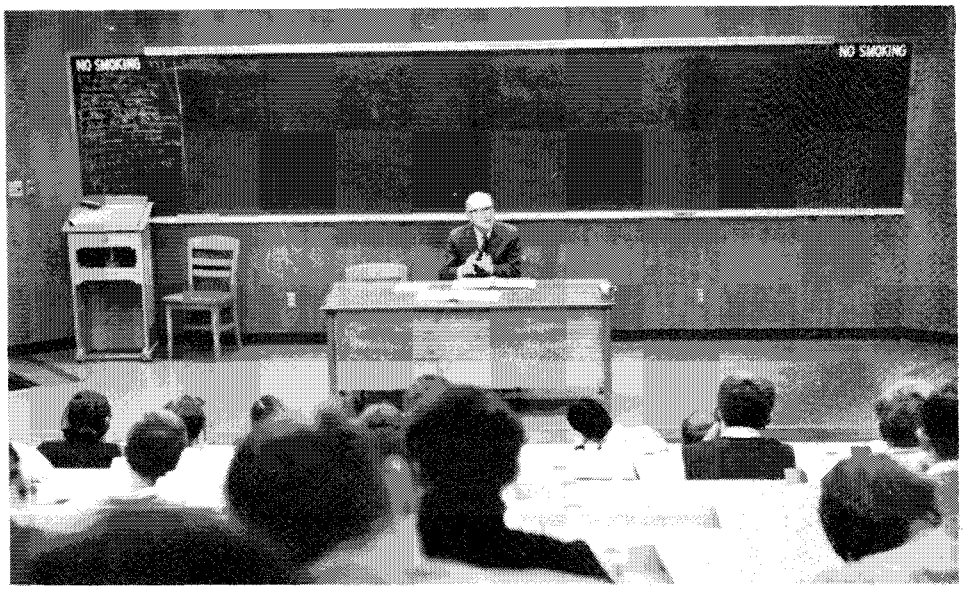
"I'm not cynical," he says. "I'm realistic. There's a difference. It's true that I think the system is in many ways misleading: everyone talks about rights and ends up cutting deals. I think that's true; that's the way our system works, and it's just being realistic to say so. But I'm also optimistic because I believe lawyers can—and do—change things for the better. We'll never make things perfect, of course, but there can be improvement. I think that's a worthy goal—more desirable than, say talking about smashing the system up and then having to replace it with something else."

"Law school teaches people to think like law professors."

Macaulay is realistic, too, about the role played by law schools in training new lawyers; he cautions that there are sharp differences between law school and law practice.

"Law school teaches people to think like law professors," he says. "There is some correlation between law school and law practice, of course, but we've got to be careful not to overstate it. The doctrinal games have a certain usefulness, but I don't want to teach people things they'll have to throw out after a half an hour of practice."

Macaulay's students may laugh at his pointed jokes, and squirm a bit as he repeatedly turns upside down their preconceptions about the law, but it's doubtful that once they reach the world of law practice they'll throw out much of any thing he taught them.



Notes on Alumns

News of **Webster Woodmansee** ('37) surfaced in a "notable and quotable" feature in *The Milwaukee Journal.* Webster is editor, publisher and owner of the Daily Reporter, one of the nation's 80—and Wisconsin's only—exclusively public notice newspaper. Webster has "an extensive history of civil rights and civil liberties activism," and believes his paper is an "important extension of people's right to know." His commitment to free speech has further prompted him to sponsor civil liberties journalism awards in conjunction with the Center for Public Representation, where Louise Trubek is Co-Executive Director.

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After 37 years with the University of Michigan Law School as an assistant in research and a research associate in Law, **Elizabeth Gaspar Brown** ('52) last Spring announced her retirement. At Michigan, Elizabeth initially worked to research Michigan legal histories for professors at the University; she later produced three of her own volumes on American legal history, federal taxation and air law. She has also distinguished herself as somewhat of an authority on the history of Waukesha County.

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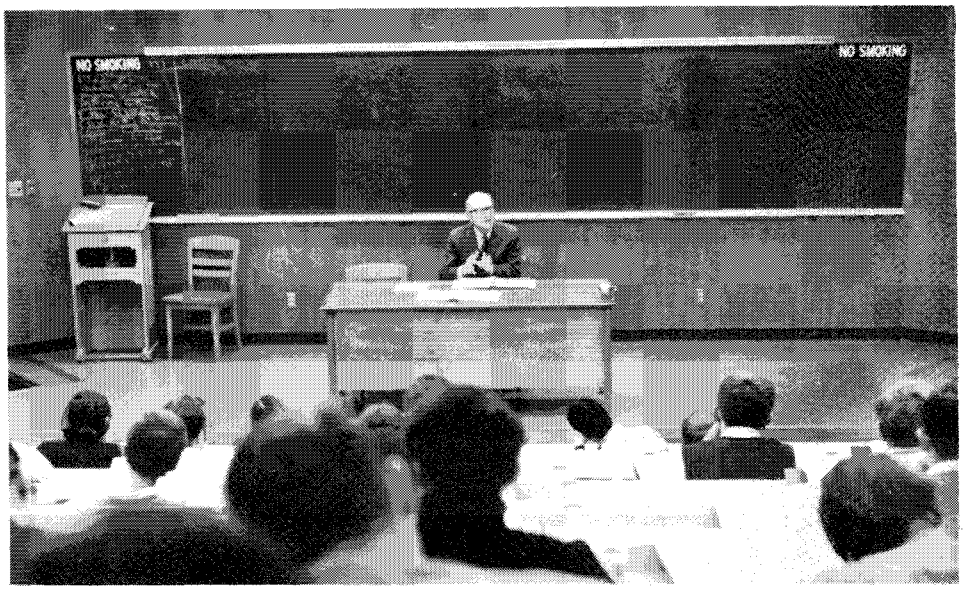

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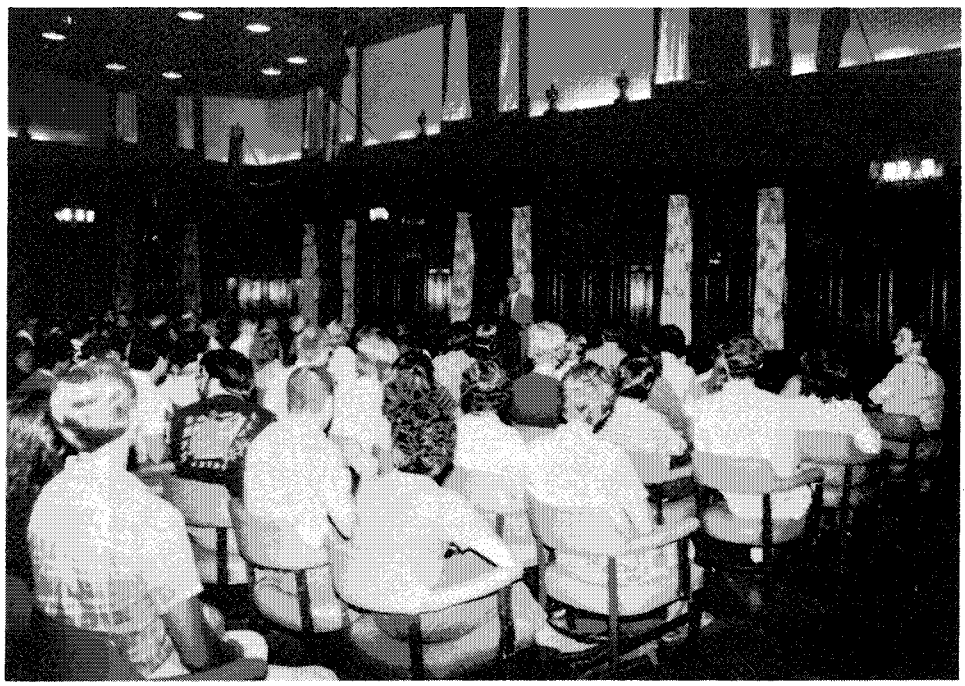
Law School:
Bewilderment and Excitement

J. Willard Hurst

On the evening of August 27, 1985, the University of Wisconsin Law School held what it hopes will become a tradition—an opening Convocation for entering students. Students and their guests, along with faculty and staff of the Law School, filled Tripp Commons in the Memorial Union to hear an address by Emeritus Professor J. Willard Hurst. Prof. Hurst, one of the country's leading legal historians, gave a talk which not only set the tone for the three years facing the new students, but also reminded the graduates in attendance of the traditions and responsibilities of their profession.

The Gargoyle *is reproducing the address here in the hope that you will find it as enlightening as did those attending the Convocation.*



I welcome you to the beginning of a legal education. Let me hope for you the same kind of experience I found in it, especially in the first year. The first year can be a somewhat bewildering experience. For me, it was somewhere around April when I first felt I knew what was really going on. Sometimes I was scared; all my classmates looked about six feet four inches in intellect as well as otherwise. Most of the time I found excitement and stimulation. Like you I'd been in one form of education or another since childhood, and I found law school, particularly that first year, the most stimulating stretch of schooling in the whole lot. Still, you are likely to find much that is confusing, especially at the outset. Let me suggest some reasons for that confusion; recognition may help dispel the fog.

Three years in study of law introduces you to the functional complexity and diversity of this society, and all this in very concrete terms. In the next three years you will encounter something on the order of eight or ten thousand concrete human trouble situations or arrangements. There is no experience in education quite like this. The range and variety of this exposure to issues of life in society flow from the law's broad penetration into social structure and process. We should not exaggerate roles of law; the society includes much besides the legal order. Law is often marginal to social experience. On the other hand, its marginal impacts are often critically important. Law enters substantially into the constitution of the society,—not only in the formal, legal sense, but in the sense that it helps create orderly patterns by which individuals and groups organize and adjust their relations, as in the law of property, of contracts, of corporations, of marriage and divorce. In all such respects law enters into defining and maintaining terms on which we try to live together.

Law also helps facilitate and multiply the number of dealings people have with one another. Thus in its own frame of reference the law of contracts tends to favor private initiatives of will in transactions, as the law of corporations aids associated activity in the market. Lawyers, it has been said, are skilled in bringing things about.

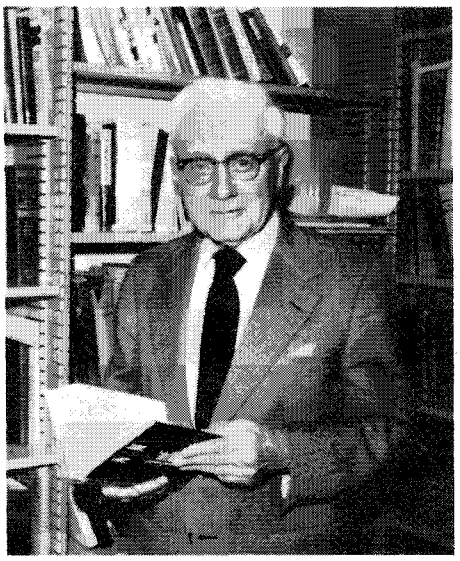
The law also organizes and brings public power to bear on social relations. It is much concerned with care for the social context in which particular transactions and organized efforts go on. Prime examples are in the law of crimes, and of con-

servation of natural resources. In the background of concern with social context is a factor that bulks large in the wise and skillful practice of law, and a prime reason why lawyers can be useful to clients. Legal training seeks to make you more aware that there are likely to be numerous, diverse elements at work in any situation. A lawyer becomes accustomed to examine whether there may be not just two or three, but four or five dimensions to the setting in which his client operates.

In addition to sensitivity to social context, the law performs another power function. Law is one of the society's important means of damage control. Law often comes into play where relations have broken down, at both human and institutional cost, and where a prime question is to contain these costs. We see this function performed as law deals with breaches of contract, with violations of fiduciary obligation in corporate relations, with bankruptcy, with breakdown of marriage and problems of proper care and custody of children. Such occasions draw on lawyers' skills in negotiation, adjustment, and management of tension.

Having sketched these demanding roles of law, however, I return to the caution that we not exaggerate law's importance. Social order is the product of diverse forces. People may press impatiently to board a crowded bus, but though they may do some genteel pushing, they don't typically use their fists. Far in the background to curb violence is criminal and civil law against assault and battery. But plainly the main reason people don't fight their way aboard the bus is because of deeply ingrained patterns of social behavior learned from childhood on. Law is important, but also marginal in social order.

Law school may also seem at first confusing because it embarks you on a long course of acquiring ordered knowledge, but knowledge put in a different context from most you may before have been exposed to. All levels of education deal more or less with ordering knowledge. We have all been exposed to poor education, where the student is asked simply to take in and hand back packaged material. If we have been lucky, we have also been exposed to some good liberal education, alerting students to patterns of basic values and large outlines of cause and effect in social experience. But typically one's prior education has not sought to train one to bring knowledge to a sharp focus. As a professional school, law school offers beginning training in putting knowledge to applied use. Law school looks at arrangements and trouble situations in relation to legally declared standards and rules, and asks, what is the pay-off, what do particular legal doctrines accomplish, or fail to accomplish, in helping bring things about or untangling snarled relations, or apportioning benefits and costs. If you keep steadily in mind that here the point most often is, how to put to specific use the law you are examining, you will more quickly grasp the nature of the enterprise.



Emeritus Professor J. Willard Hurst

I hope that our school will help turn out lawyers to deal with the wolves that prey on society. But I also want our students to be able to know a wolf when they see one.

A third reason you may find law school disturbing, exciting, but often confusing, is that we ask you on the one hand to acquire a good deal of technical knowledge and begin to learn craftsmen's skills, but regularly we also ask you to take more than simply a technician's view. Because the law reflects or helps shape basic values in social living, to understand and have confidence and skill in using law, you need to relate technique to underlying purpose.

You may find it confusing to go to the trouble of mastering some narrowly technical competence, only to find that you must also be capable of moving beyond the technical level to a grasp of larger goals or functions, to appraise the interplay and relations between ends and means. Consider the issues in a case brought to the Supreme Court of the United States in the midst of the 1930's Depression. The Minnesota legislature confronted a situation in which mortgage foreclosure were mounting steadily, land value were plummetting as more and more land was forced to market on foreclosure sales, imperilling the financial bases of banks, insurance companies, and other financial institutions. Reacting, the Minnesota legislature enacted a mortgage moratorium, declaring that mortgagees must wait and not exercise their established legal rights to collect on defaulted mortgage debts. Understanding what was at stake before the Supreme Court calls in the first instance for drawing on technical legal learning. The Federal Constitution forbids states to pass laws impairing the obligation of contracts. To invoke the contract clause here one needed to know that the law treated a mortgage as a contract for purposes of this constitutional provision, and to know in detail what provisions the ordinary law of contract and creditors' rights made for collecting defaulted mortgage debts. Plainly in some sense the statutory moratorium impaired the ordinary legal force a mortgage carried. But mortgage debts and mortgages were also parts of a larger, important social institution, the market. The ordinary rights and remedies relevant to a mortgage debt would amount to nothing in fact if the whole market economy crumbled. Confronted with this collision between ordinary creditors' rights and the society's need to maintain a workable market system, the Supreme Court ruled that the Minnesota legislature was entitled to impose reasonable, limited restraints on the routine operations of mortgage law.

Issues posed by the relation of ends and means are subtle and difficult. Ends and means cannot be sharply distinguished, if only because means may ultimately shape ends, rather than the other way around. People want social order in the most elementary sense, of being able to feel safe on the streets and in their homes. Yet our legal order also takes deliberate chances with social order. We declare that individuals may not be compelled by law to incriminate themselves, we ordinarily require warrants to validate arrests or to sanction entry into homes or search of private papers. We impose such limitations on law enforcement, because we do not want the kind of society we would have without them, the kind of society in which the end of social order would be deemed to justify any means. Law involves organized power. Power may be constructively used; it may also be abused. Some of the most difficult demands made on lawyers and law-trained officials are to make hard choices involving relation of means to ends.

You may be impatient that much technical legal learning seems to have little relation to justice, or seem to obstruct effort to achieve justice. Here again legal education calls for acquiring sophistication in dealing with ends-means relationships. Because the law involves organized power, and power is often abused, one must not lose sight of standards of rightness and equal treatment. But legal training should also teach one sharper awareness that there are likely to be numerous and diverse elements and interests at stake in social situations, and should thus teach against easy dogmatism or self righteousness about values. Legal education should also teach a healthy respect for the need of technical competence as one seeks to achieve some goal of justice. Some years back a law student criticized his law school on the ground that all he saw it doing was to turn out individuals technically competent to serve immediate interests of clients, and that it did not turn out lawyers to deal with the wolves that prey on society. Well, the dean responded, I hope that our school will help turn out lawyers to deal with the wolves that prey on society. But I also want our students to be able to know a wolf when they see one. Doing good calls not just for good intentions but for know-how competence.

Another reason you may find your introduction to the study of law confusing is that you discover almost immediately that in operation the law involves constant adjustments of doctrines, procedures, and interests to particular situations. Perhaps in coming to law school you are already a self-selected, more sophisticated group than most individuals. However, I would be surprised if you did not bring here some notion that you are here primarily to learn a body of rules for specific ordering of people's affairs. But you will learn that there are many rules, and that they are often available to serve conflicting purposes. Lawyers and public officers have to make choices, and to learn not to exaggerate the extent to which any particular rule determines a solution. True, there are a good many rules that do have quite definite effect. If you want to make a legally effective will, you must comply with certain rules. So, too, if you want to make a legally secure and effective transfer of title to land. But time and again you discover that no one rule plainly resolves the practical needs or problems of the client. This is one reason that the practice of law can be a continually stimulating occupation. An experienced counsellor put it well when he said that a good lawyer was an individual who knew how to bring things about, how to get things done. You need technical competence to do that, but you also need creative skill in adjustment, in relating diverse rules of law to diverse states of fact. Nor do rules of law come from only one source. Because from the outset law school exposes you a good deal to law as set out in opinions of courts, it is easy to fall into the attitude that all law is judge-made law. But an important function of three years of law school today is to move you out of undue preoccupation with what judges say, and into keen appreciation of the fact that the bulk of law now is made by legislators and administrative officials. The mix of statute, administrative, and judge-made law services to accentuate the extent to which the practice of law calls for developing skills of adjustment.

There is another aspect of your introduction to the study of law of which we should speak. You are here to study for entering a profession. The idea of a profession is not one we get from logic but from history. There are certain occupations which people have singled out over the years as significantly different from others. A profession involves practice of an ordered body of learning, rather than following rules of thumb or instinct. Practitioners of a profession are subject to a specialized discipline. And they work under obligation primarily to serve persons who depend on their specialized knowledge and skill and their integrity.

There is not much to say at this point about the element of professional discipline. In three years in law school you will learn a good deal, directly but also indirectly, about ethics. The discipline of the profession was in the past largely developed and administered internally, within the bar itself. Today discipline is more in the hands of specialized agencies. But internal discipline continues to be a real factor. Lawyers hold certain standards of expectation as to how other lawyers will deal with them, and violation of these expectations can vary its own informal sanctions in practice; law school courses will contribute to shaping your perception of what some standards of professional conduct you will meet.

Law school asks you to immerse yourself for three years in studying an organized body of learning—about public policy embodied in law, basic values law pursues or purports to pursue, detailed standards and rules to implement policy, and complex doctrine regarding the structure and procedures of legal agencies to apply standards and rules. The substantial commitment the enterprise asks you to make to this study is likely to encounter some resistance.

For one thing this is study of legal theory. There is a central, deep-seated bias in our culture toward a relatively narrow pragmatism in our approach to problems. We are more inclined to ask, what will work here and now, than to ask, what is it all about, and how may it best work. We tend to depreciate "theory" in contrast to what is "practical"; indeed in common talk to say that a proposition is "theoretical" is likely to condemn it as useless or unreal.

It is false or at best a gross oversimplification to condemn theory as such. Of course there can be poor theory. There also is useful, constructive theory, which means just understanding what is really going on and how truly to achieve desired outcomes. Organized study of legal doctrine aims to introduce you to better understanding of what law is, what it is about and what may make it work or fail to work. Consider the problem you confront if you want to drive from Madison to Beloit, and you don't know who to get there. A "practical" individual might learn from gossip that Beloit lies to the south. Someone can tell him how to get

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southward to Oregon. Someone there can tell him how then to get to Orfordville. Stopping every mile or so he may find someone who can tell him how to go on to one point after another until, happily, he finds himself in Beloit. A "theoretically" minded driver might instead look at a road map. Nothing is more theoretical than a map—lines on a piece of paper which bear no visual resemblance to the passing countryside. You may remember that Mark Twain's Tom Sawyer was puzzled when he went from Missouri to Illinois. In the school geography book Missouri was green and Illinois was yellow; but when he got to Illinois, it wasn't yellow. But the theory of the map will get you efficiently to Beloit. In offering you organized learning about contract law, property law, tort law, commercial law, constitutional law, administrative law, three years of law school offer you a store of maps to enable you more surely and efficiently to chart your way in problems clients present. Moreover, because ends and means interplay, these doctrinal maps help you get skill in relating technique to desired ends.

I renew a caution; Law alone does not make social order; indeed in some respects law makes only marginal—though often critically important—contributions to social order. One needs to know as much as he can about the social structures and processes which environ the law—about markets, about social custom and practice, about human relations. Hence we ask that you come here already holding a degree in a liberal education. Hence a good lawyer will take as much pains to read at least one good newspaper and a good journal of current events, as to read the advance sheets that publish new opinions of courts. All this to grasp good "theory"—the best possible understanding of what is going on and how to bring things about.

Even if you do not have to overcome an acquired distaste for "theory," three years of law study are likely at some point to engender impatience with the enterprise. I understand this; like you I had already been many years in one school or another before getting to law school, and from time to time I felt impatience to get some hands-on experience. Law school is only an introduction to becoming a competent lawyer. Becoming an effective legal planner, counsellor and advocate will draw on your whole life experience, on all the resources of you as a person; and effective use of your knowledge of law will come only with a good deal of experience in using law. Yet these years in law school are a critical beginning. This is a very complex society, and in it the patterns of public policy and means of implementing policy are correspondingly complex. You cannot make your way in this terrain without the maps law school can give you. Among other skills, law school can sharpen your awareness that there are likely to be many dimensions, many cross currents involving clients' situations. Typically the client needs from the lawyer a greater capacity than the client has, to see the various factors in law which may play on the client's situation—in a business problem, for example, matters of the law of taxes, zoning, product liability, insurance. As you move further into the three years, temptations may grow to seize opportunities for "practical" experience. I do not depreciate practical experience. But be wary of encroaching on the unique opportunity to map the general policy landscape which the law school years offer; in a busy practice you will likely never again have such an opportunity. By no means all, but a good deal, of "practical" lore you will quickly pick up in the first six months to a year after entering practice. Don't be seduced into using much of these three years for short-term satisfaction at the expense of acquiring long-term competence.

Any lawyer worth his client's fees, said Root, must know when to tell the client to stop behaving like a damned fool.

I have noted that legal education focuses a good deal on relations of ends and means in public policy, because, though ideally ends should determine means, one must be aware of how much choice of means may shape the content of ends. One reason law school focuses so much on ends-means relations is because of inescapable tensions inherent in the ideal that the practice of law is a service profession. For one thing, the practice of law is both a service profession and a means by which its practitioners earn a living. The professional standard is that the lawyer should govern action primarily by choices that will best assist or protect the client, and not primarily to assure the practitioner's fee, salary or other personal advantage. Obviously the fact that law practice is a means to earn a living may generate tensions with the standard of preferring the client's interests. That such tensions may exist is prime reason for law school's sustained attention to the demands of professional standards. However, I should add another dimension to the picture. The availability of a bar supported by private fees is an important element in civil liberty. An individual or group needing help in dealing with official power is in a precarious position if the only counsellors or advocates available are individuals on the government's payroll. But there is still another facet to the matter. We put some lawyers on government salary to represent interests not so sharply focused on individual self interest, or not so well financed by private means as to assure, that they will be represented by lawyers retained on private fees. To provide salaried government counsellors or advocates is also part of ordered liberty.

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A familiar canon declares that lawyers are officers of the court. That is, that they are servants of the legal order as well as of clients. Here also lie ends-means tensions, which legal education can help adjust, though not eliminate. Building a successful practice calls for satisfying clients. But the professional standard enjoins also that client satisfaction not violate the proper norms of society. There may well be conflicts of interests here for the law-

yer. But they are not necessarily irreconcilable. One of the great lawyers of the turn of the century, Elihu Root, put it crisply. Any lawyer worth his client's fees, said Root, must know when to tell the client to stop behaving like a damned fool. I pointed out earlier that one skill fostered by immersion in professional grasp of law is competence in grasping the numerous, varied dimensions that may be involved in what the client may see as too simple a situation. A lawyer who takes the approach of sheer, unblinking partisanship for the client's immediate wants may not serve the client's own best interest.

Becoming an effective legal planner, counsellor and advocate will draw on your whole life experience, on all the resources of you as a person.

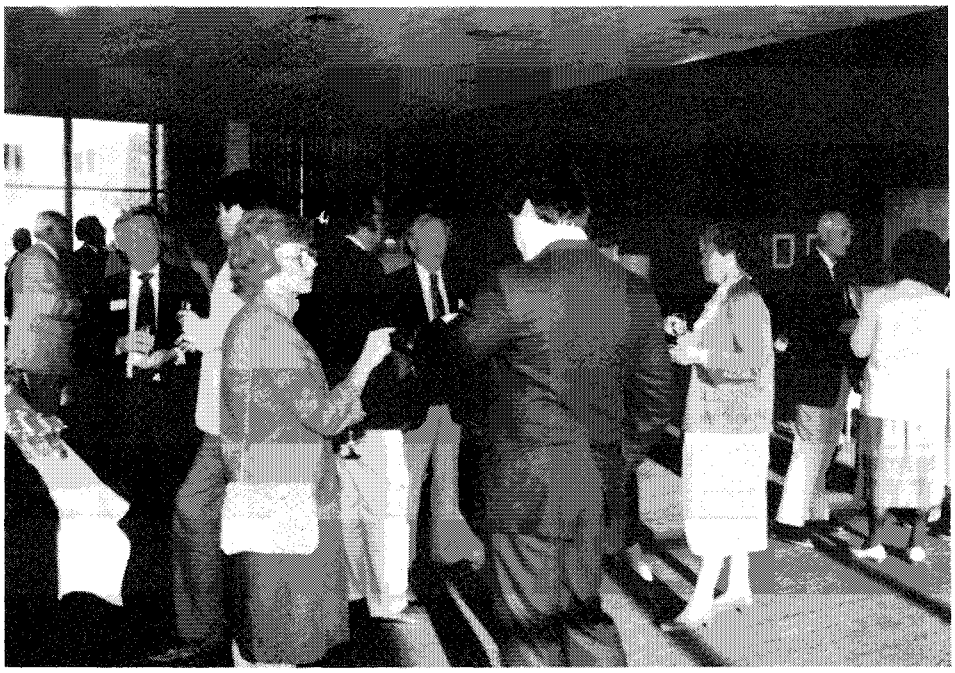
There is, of course, another important aspect of the profession's traditional standard of serving the society as well as private clients. Law practice continues to be a prime avenue into participation in politics, in shaping legislation, and in conducting public administration, as well as participating in the law-making and law-administering work of judges. That lawyers enjoy more flexible work schedules than many other occupations, and that lawyers are more accustomed by their working experience than most people to appraising the interplay of diverse, multiple, conflicting interests are reasons why lawyers continue to be important actors in public affairs. It is a dimension of the profession which adds much to its challenge and its satisfactions.

Speaking almost one hundred years ago to students on the threshold of legal study, Oliver Wendell Holmes, Jr.—later to distinguish himself on the United States Supreme Court—said things that are still relevant to the experience you are beginning:

> *"And now, perhaps, I ought to have done. But I know that some spirit of fire will feel that his main question has not been answered. He will ask, what is all this to my soul? You do not bid me sell my birthright for a mess of pottage; what have you said to show that I can reach my own spiritual possibilities through such a door as this? How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeepers' arts, the mannerless conflicts over often sordid interests, makes out a life? . . . I admit at once that these questions are not futile, that they may prove unanswerable, that they have often seemed to me unanswerable. And yet I believe there is an answer. They are the same questions that meet you in any form of practical life. If a man has the soul of Sancho Panza, the world to him will be Sancho Panza's world; but if he has the soul of an idealist, he will make—I do not say find—his world ideal. Of course the law is not the place for the artist or the poet. The law is the calling of thinkers. But to those who believe with me that not the least godlike of man's activities is the large survey of causes, that to know is not less than to feel, I say—and I say no longer with any doubt—that . . . [one] . . . may live greatly in the law as well as elsewhere; that there as well as elsewhere his though may find its unity in an infinite perspective; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable. All that life offers any [one] . . . from which to start his thinking or his striving is a fact. And if this universe is one universe, if it is so far thinkable that you can pass in reason from one part of it to another, it does not matter very much what that fact is. For every fact leads to every other by the path of the air. Only . . . [we] . . . do not yet see how, always. And your business as thinkers is to make plainer the way from some things to the whole of things, to show the rational connection between your fact and the frame of the universe."*

Holmes, "The Profession of the Law" (talk to undergraduates of Harvard University, February 17, 1886), in Oliver Wendell Holmes, Occasional Papers (Compiled by Mark DeWolf Howe, Cambridge, Belknap Press of Harvard University Press, 1962), pp. 28–29.

Editor's Note



Well, summer is over. That lazy, relaxed time when the Law School goes into an extended rest . . . Wait a minute! Who were all those people going in and out, using our classrooms and offices, working our faculty and staff all summer long? Summer is a vacation no longer. This year we had more than 400 students enrolled in summer school courses. We had a three week session, two five week sessions, an eight week session and a ten week session. We used our own faculty, faculty from other schools, visitors, and practitioners to teach a wide range of regular law school courses. We also hosted two ALI-ABA courses, which we have done now for many years, watched some two hundred nervous lawyers take the Wisconsin bar exam, held a barbecue for the State Judicial College, and provided facilities for a Federal Judicial conference. The lazy, hazy days of summer are no longer lazy, and any haze is really a blur as we rush to fit everything in.

We recently asked you to help us locate our oldest alum . It appears that Arthur Crowns, Sr., a member of the Class of 1911, wins the title. Mr. Crowns was born on October 12, 1885, making him more than 100 years young. In 1951, he served as president of the Wisconsin Law Alumni Association. His daughter, Betty Flynn, and his son, Byron Crowns, also alums of this school, confirm that their father is still in good health and mentally alert. Byron also tells us that a year ago Arthur was offered a commissio as a Marine legal officer. We assume that he declined.

The "mystery picture" in Volume 15, number 4, generated a lot of mail. Thank to Don Ray, Tom Drought, Phil Crump, Ken Johnson, Berwyn Braden and Jim Pope, all members of the Class of 1959, for identifying themselves and others. Th occasion, of course, was bar admission. The date was June 17, 1959, and the Justice in the picture, Grover Broadfoot. Sev eral correspondents also pointed out that our picture contained a ringer. One of those taking the oath graduated from Northwestern University Law School an was being admitted after passing the bar exam.

Mystery Picture

This photo was used in our 1969 *Law School Bulletin,* which gives an idea of its date. The location is obviously the main lobby. Any guesses as to the occasion, anyone want to volunteer identifications?