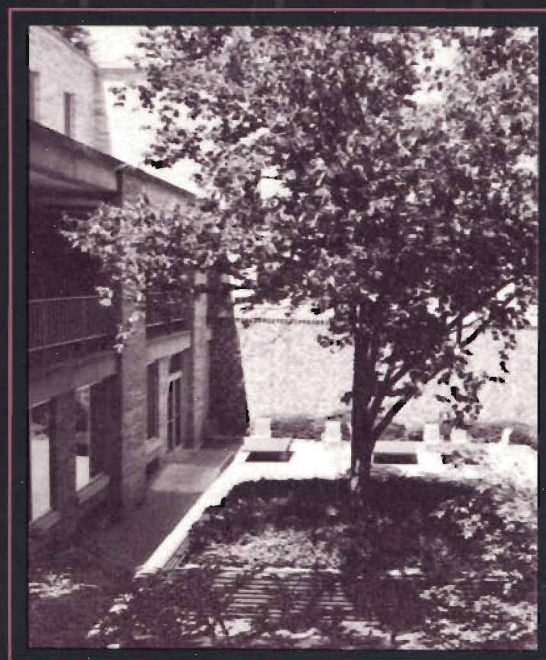


University of Wisconsin Law School Forum

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Profiles in Diversity

Assistant Dean Joan Rundle

2

James B. Doyle, In Memorium

Hon. Barbara Crabb

Hon. John Reynolds

Hon. Nathan Heffernan

Hon. Thomas Fairchild

Prof. Frank Tuerkheimer

Atty. John Greene

6

Northwest Ordinances: Fundamental Law or Trivial Pursuit?

Professor Gordon Baldwin

13

On Returning to Legal Education

Professor Walter Dickey

17

Alumni Notes

21

Editor's Note

22

Mystery Picture

23

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Profiles of Diversity: Four Members of the Class of 1989

by Assistant Dean Joan Rundle

Three years ago, the Law School conducted an experimental and voluntary survey, which will be repeated this fall, of the entering first-year class. As a result, the Admissions Office compiled a booklet which listed the background and experiences of 257 of the 283 first-year students, in areas such as foreign languages, musical talents, public service and volunteer activities, and work experiences. The survey confirmed what the Admissions Committee members, faculty and deans had observed: Wisconsin attracts an incredibly diverse and talented group of people.

Some indication of that diversity is available in the general statistics regularly compiled on each entering class. For example, the figures on the Class of 1989 reveal that of 286 first-year students, 223 are residents and 63 are non-residents. They represent 106 undergraduate institutions and 24 home states plus the District of Columbia. The women students comprise 46% of the class, continuing a 10-year trend of over 40% in each class. (By contrast, the University of Michigan law School reached an all-time high of 39% in their incoming class of 1986.) The average age of the class of 1989 upon entry was about 26 years, and 65 students had completed college work beyond the bachelor's degree. These figures suggest that the Class of 1989 continues the tradition of diversity which makes this Law School a special place to be. To demonstrate the "spice of law school life," I asked four students of the Class of 1989, who have completed their first year, to write brief personal profiles. Their stories follow:

Linda Bennett, New Jersey



I studied Communications at Rutgers University in New Brunswick, New Jersey. To fulfill requirements in my program, I took several photography courses. Strangely, it was those classes which I think best prepared me for law school. Photographic process is similar to legal analysis. I had to master technical skills in developing film and printing negatives so that I could control the variables to create the images and visions I wanted to express. Similarly, I have worked to develop expertise in researching law and in understanding legal doctrines so that I can marshal persuasive arguments. When taking a picture, I concentrated on what to exclude as well as what to include in the view finder. My sense of how to characterize the facts of a case was prefaced by this attention on focusing and framing the basic question of what to photograph.

During college, in 1981, I helped start an Equal Rights Amendment Action Group on campus. Over winter recess, in Florida and Georgia, I worked to ratify

the proposed ERA. I remember one hot afternoon, my feet were blistered and an elderly man had just spit on me and I thought "How is this going to do a damn thing to make society more just?" Yet, it was the time I spent in Florida and Georgia, discussing with senior citizens, laborers, homemakers and other students the meaning of equality that sparked my desire to study law. Through my grass roots work on the ERA I became interested in questions about the nature of law, its limits, history and theory.

I did not enter the University of Wisconsin Law School immediately after college. After graduation in 1983, I worked a year's stint as a typesetter and graphic artist in a newspaper production company. I worked on the production of the Spanish newspaper, "El Diario/La Prensa." In 1984, I took a staff job at *Ms. Magazine* in New York City and worked there until I entered the University of Wisconsin Law School in fall 1986.

While my job in the Research Department did have its share of drudgery, I felt an urgency about the work that was exciting. Part of that urgency stemmed

from the journalistic demands of the job. I was a fact-checker. I was responsible for verifying information in *Ms.* articles under deadline pressure. That meant reading each article carefully and critically. Then I double-checked each supporting detail for accuracy and tried to ascertain if the facts were relevant and not misleading or potentially libelous.

Aside from the rush created by the push to get the magazine ready for the printers, I felt an immediacy about the issues and ideas contained in the articles. As a fact-checker I enjoyed digging into the trivial and essential facts surrounding social and political issues. One day I would be on the phone with scientists to verify the reproductive effects from the Bhopal tragedy and the next day I would be checking statistics about female headed families living below the poverty line.

Besides the research and editorial skills I developed at *Ms.*, I also gained insight into feminism and law. I had a daily view of the conflicts between theory and practice, the tensions between the push for feminist change and the inertia of the status quo. My research on articles about product liability, affirmative action and child abuse, made me more appreciative of the difficult and complex task our courts face when trying to resolve disputes in these areas.

Currently, I am working as a Research Assistant for Law Professor Martha Fineman and at the law offices of Boardman, Suhr, Curry & Field, in Madison.

I am helping Professor Fineman research the politics of fathers' rights. I am also helping to coordinate this summer's Feminism and Legal Theory Conference. The theme of the conference is intimacy. Scholars will be exploring how law regulates, structures and maintains a variety of relationships.

Aaron Bransky, Wisconsin

After four years of working as an ice cream and frozen foods route salesman, I decided to change my career to an indoor job with no heavy lifting. As such, I returned to the University of Wisconsin as a first-year law student.

Some people told me how horrible legal education was supposed to be. True, I have had to work harder in law school than I ever had before. However, I have not found my home life to suffer from this workload, and I have been pleasantly surprised by the high quality of instruction and by the friendliness and intelligence of my classmates. This friendliness and relative informality is a big reason I decided to enroll here and is one of the Law School's strongest points.

This summer I will be enrolled in the Legal Assistance to Institutionalized Persons program (LAIP). LAIP is a clinical program in which students gain experience while attempting to resolve legal problems of indigent clients. I will be working under the supervision of attorney Dave Cook with inmates at various Wisconsin minimum security prisons, and I look forward to this hands-on experience.

I was born in Chicago and lived there on and off until I was eight years old. In 1966, my family moved to Peoria, Illinois, and there I attended elementary and high school. I don't want to say anything unkind about Peoria.

Despite my parents' goading, I did only mediocre scholastic work in high school. I barely graduated in the top third of my class, but I did enjoy being on the high school debate team and won a number of tournaments and speaking awards. I attended Carleton College in Northfield, Minnesota, for two years, and took a junior year abroad in Scotland at the University of St. Andrews. Like many people, I found college brought out better work from me. Activities at Carleton included the Eating and Arguing Society (informal parliamentary style debate), celibacy, and hopping freight trains to various points in Iowa and Minnesota. I think I enjoyed the freight hopping the best, consumed then (as now) with a passion for the railroad. This passion later led me to two fine seasonal jobs, one as a brakeman for the Toledo, Peoria and Western Railroad; and the other as a coach and sleeping car porter for Amtrak. Since then I have been active in groups (such as the National Association of Railroad Passengers) that seek to promote and improve passenger train service in the United States. I have served as president of our local group, ProRail, and am on the board of the state organization. I also have the dubious talent of being able to recite from memory much of the Amtrak timetable.

In 1980, I transferred to the University of Wisconsin at Madison to complete my undergraduate degree. I graduated Phi Beta Kappa with a double degree in Geography and History of Science and then went out to find some kind of job. I managed a food co-op for a short time until it folded, and then climbed aboard the ice cream bandwagon with Larry Tuthill, Madison's Haagen-Dazs distributor. This job was generally quite pleasant, and it gave me enough spare time to do things I liked. Through volunteer work, I met my wife, a nurse at Methodist Hospital. We married in July 1986, a move that I am glad we made, and we enjoy bicycling, travelling, fishing, and stargazing together.



The Law School admits a fair number of older students, so at 28, I am about the same age as many of my classmates. Those of us who have worked and have been out of school probably appreciate student life more than before, and I hope all of my classmates have enjoyed their first year as much as I have.

Keith Borders, Oklahoma



I have just finished my first year as a law student at the University of Wisconsin, which has been an enlightening experience conducive to my belief of achieving knowledge through broadening my exposure to environmental, cultural and academic differences.

My interest in the law, public policy and leadership, spans from being senior class president at Del City High School in Del City, Oklahoma, to participation in an Anti-Apartheid Rally on the steps of Capitol Hill. In the summer of 1987, as a Jackson Fellow, I interned with the NAACP Legal Defense Fund in New York City, a clinical program of the Law School under Professor James E. Jones, Jr.

I have attempted to place myself in many leadership roles to fulfill my contribution to establishing a more equitable environment for minorities. I would hope that my intentions and experience through public policy construct a more aware society.

My current organizational affiliations include being a student liaison to the State Bar of Wisconsin Governmental/Administrative Law Committee, a member of the Faculty Appointments Committee and Black Law Student Association. I have been chapter president at the University of Oklahoma and state vice president of the Alpha Phi Alpha Fraternity. I served as the president of the Black People's Union at Oklahoma University and later became the Chairman of the Big Eight Conference on Black Student Government.

Such involvement has lead to my selection for several honors and awards. I have also been fortunate to participate in numerous internships. As a research assistant for the Southwest Center for Human Relations Studies, I prepared a report on the "Feminization of Poverty," and a demographic analysis of Oklahoma ethnic groups.

I contributed to an analysis on Oklahoma Economic Development Strategies for the State Senate through an Economic Policy Internship. I received the Cortez M. Ewing Public Service Internship which allowed me to prepare a summary of the Department of Education financial assistance programs. The information was later compiled in a policy report for U.S. Senator David Boren.

I was recipient of the Oklahoma University President's Leadership Award, Buford V. Lawson Orator Award, David A. Burr Leadership Award and the George Henderson Leadership Service Award. I have been honored as the Alpha Phi Alpha Distinguished Collegian and Brother of the Year, and named Big Man on Campus at the University of Oklahoma from which I graduated in May 1986 with a public administration degree.

Hopefully, my professional and academic experience will contribute to my credibility as a future attorney.

When I am not preparing for classes or examinations, I enjoy "lighter" reading. The subjects I enjoy most relate to public affairs and policy, such as *Minority Vote Dilution*, *Capitol Hill in Black and White*, and *Simple Justice*. I also enjoy easy-listening jazz, public speaking and playing basketball.

Kimberly Patterson, Wisconsin

After working for nine years, walking back into school, never mind law school, is pretty intimidating. It wasn't long before I knew I had done the right thing. Everyone here did their best to lower the anxiety level, and soon I felt as though I'd never left school.

School began and ended in Milwaukee, where I was born and raised. The oldest of five children, I was always strongly encouraged to continue my education. My parents often told me that I could be whatever I wanted to be if I worked hard. I'm sure they never thought I would be a lawyer, though. My dad wanted me to be an architect. In looking back, it seems that I've been almost everything but an architect.

In high school and my early college career, I wanted to be a professional musician. Playing several concert violin solos gave me valuable experience in appearing in front of people. The thought of going blank in the middle of a concert performance is more terrifying than the prospect of losing your place during oral argument—the orchestra will just go on without you! Giving music lessons in violin, guitar and bass generated my interest in education, and later I switched to an education major.

After graduation from the University of Wisconsin-Milwaukee in 1977, I substitute taught part-time in elementary education and music. At the same time, I started the job which made me decide that I wanted to be a lawyer. As a private investigator, I got my first close look at the criminal justice system. Working primarily in the criminal defense field, I realized the important part attorneys play in protecting our rights, and indeed our system of law. I also realized that law can

provide a continuing intellectual challenge. I was lucky enough to work with several of the finest attorneys in Wisconsin.

Even a criminal defense investigator's life is not like Mike Hammer's. The scariest thing I ever had to do was to drive across the ice highway of Lake Superior from Bayfield to the Apostle Islands to see a client. Pretty tame stuff!

In 1980, I took a detour from law that lasted for six years. I began working for the division of Hanes Corporation which distributes L'eggs hosiery. In 6½ years, I held five positions. These ranged from the coordinator of a test market program, to managing a region which generated \$8 million per year in sales, to generating \$6 million in sales as a key account sales representative.

Working in business helped me to develop many skills and habits which

I hope will serve me well as an attorney, including discipline, persistence and feeling comfortable making presentations to influential people. It was very hard to leave my company because the people I worked with became my second family. I still check the L'eggs display when I'm in the grocery store. However, my desire to become a lawyer was strong. I recall that once, when I was particularly upset because things hadn't gone well with an account, my boss had some advice for me. He told me not to worry, that in the long run, "it's only pantyhose." You can't say that about law.

I am spending the summer working for LAIP, Legal Assistance to Institutionalized Persons, program. One of the major reasons I chose Wisconsin is their fine clinical programs, which combine public service with a strong educational experience.



James E. Doyle (1915-1987)

Senior Judge, U.S. District Court,
W. District of Wisconsin

When Jim Doyle died, the University of Wisconsin Law School lost a good friend. This tribute to him may seem unusual since he never attended our School. But we could have had no better alum, no firmer friend than James Doyle.

If the Law School was sponsoring some event, or welcoming some dignitary with a dinner, Jim Doyle was there. If we needed someone to talk to law students about judicial clerkships, Jim Doyle was there. Long after his wife, Ruth, had retired as an Assistant to the Dean, Ruth and Jim were as much a part of our Law School family as anyone. Early in his career, Jim even found time to serve us as a lecturer.

The reflections of his friends and colleagues collected on the next several pages more than tell his story. It is a story of political idealism, scholarship and inspiration by example. We will miss Jim Doyle, and use these pages to say not only good bye, but also remind ourselves that his memory will be with us forever.



Remarks by the Hon. Barbara B. Crabb, U.S. District Court, W. District of Wisconsin

Dear Friends of James Doyle,

Each of you knows what kind of a person he was. You know how difficult it is to describe him other than in superlatives, or worse, becoming mushy—a fate I will try to avoid.

I swear to tell the truth and nothing but the truth. I do not presume to tell the whole truth.

As a witness, I would have greater credibility if I could testify that Judge Doyle had some major fault or character flaw. If he did, I never discovered it. The truth is, the longer I worked with him,

the more I admired him and marveled at his abilities. If he had a bad side, it was never visible. With Judge Doyle, "what you saw was what you got." And what you saw was simply the kindest, brightest, most courageous, principled, and wryly humorous person I ever expect to know.

He relished the intellectual challenge of judging and brought to it a formidable intelligence. I would call him brilliant, but for the possibility that "brilliant" might suggest an arrogant intellect, and arrogance was never any part of Judge Doyle. His intellect was of the probing, speculative, questioning kind. It could never be said of him as it is of many federal judges, "often in error; never in doubt." To the contrary, he was often in doubt—particularly of easy answers or unexamined assumptions.

Many capable people can confront a particular problem and devise a reasonably satisfactory solution to it. Only a few, like Judge Doyle, have a different order of intelligence that impels them to look beyond what appears to be the problem to a different reality, to see the problem in a broader context, with farther reaching implications, and to approach it with an utterly fresh perspective.

This capacity often caused some surprises for lawyers, who had not anticipated the issues that Judge Doyle would discover lurking below the surface of an apparently straight-forward case. More than one bewildered lawyer has found him or herself in Chicago urging the court of appeals to affirm a favorable decision of Judge Doyle's on a ground the lawyer never asserted—or necessarily understood in full.

For Judge Doyle, there was no such thing as an unimportant case; there was no such thing as an unimportant person. To him, the purpose of the Constitution of the United States, expressed in the preamble, "to form a more perfect union" meant to form a more perfect union of every person, whatever his or her situation. In a speech he gave in 1973, he expressed this view, saying, "In significant measure, the patients in mental hospitals, the inmates of prisons, the students in the public schools, the soldiers and sailors and marines and air corps personnel, have not been afforded full membership in the constitutional community. It is time that they and others become full members. It is time that there be a sense that the majestic phrases of the constitution—due process of law, the equal protection of the laws—have real meaning for every person within our borders. It is time to form a more perfect constitutional union."

It was a fundamental proposition with him that women and minorities were as capable and as deserving of opportunities as white males and he recruited them and appointed them to positions within the court. In this, surely he was spurred by Ruth Bachhuber Doyle, who by her own example destroyed any myth of female inferiority.

He extended his unimaginable courtesy and kindness to everyone with whom he dealt. He had an empathy for people and their circumstances that was remarkable.

Indeed, his empathy was legendary. It was displayed most publicly in the courtroom when lawyers struggling with their arguments might hear the judge articulate the issue for them, more cogently than they would ever have achieved. The same phenomenon occurred with all of us who worked with him; we'd start talking to him about some problem and find that he had grasped it and could respond before we'd even given shape to it. Unlike most people, and particularly unlike most people in public life, Judge Doyle preserved a calm inner center, and the ability to focus all his energies on the issue, or the task, or the person before him.

His empathy and compassion made him an outstanding judge, but I don't think they made it easy for him to be a judge. Many of the aspects of the job were terribly difficult for him. I think in particular of the early 1970s when so many of the defendants who came before the judge for sentencing were highly moral, young men, full of promise, who chose to resist the draft.

However difficult the task, Judge Doyle never flinched from carrying out the duties imposed upon him by the law. He never viewed himself as having been appointed to the bench to "do good," whatever that might mean. He observed the rule of law with that absolute integrity that governed everything about his life. He was incapable of ignoring an inconvenient fact in a case or a contrary legal precedent. He might disagree with the views of a higher court, but he would never disregard those views. He never hesitated to exercise the authority of his office when it was necessary, but no one knew better than he the limits of that authority, or was more careful not to exercise it except when he was certain of its justification. He operated on the principle that, as arbiters of the legal obligations of others in our society, the courts must be particularly fastidious about the propriety of their own actions.

I have been telling you about James Doyle as a judge. Let me tell you briefly about him as a friend, and about the quality of his friendships.

As anomalous as it may sound to say about a judge, he was the least judgmental of persons. There were no preconditions to his friendship or any obligations placed upon it. Dozens of people sought him out for help, for comfort, for moral support. He never failed to respond, but he almost never gave advice.

He trusted others to make their own decisions. He might help with the process of deciding, articulating the problem, listening with that focused, calm concentration to what was said, and sensing much of what was left unsaid, but he would not impose his own views on his friends. If at times the course of action taken disappointed him, and I'm sure sometimes it did, he never let the dis-

appointment show or let it affect his friendship.

By friends, I include his children and their spouses. Never have I known anyone who treated his children with such respect for their own abilities and individuality. He was proud of each of them for their accomplishments, but his pride was entirely for them and not for himself.

Judge Doyle cared deeply about his friends and cherished them particularly after he became a judge and had to remove himself from the active, more sociable life of politics and private practice.

There is much more to say—about Judge Doyle's gift of expression and love of language that made his speeches and his writings so eloquent, his courage in the lonely years of judging and the lonelier years of his illness, his self-deprecating humor, and his sharp appreciation of the absurdities of life. But time runs out.

Having established myself a hopelessly biased witness, I will cease with the statement of a more impartial observer: a letter to Judge Doyle written on March 2, 1987, from a United States Attorney appointed by President Nixon:

Dear Judge Doyle:

For a long time, I have had some thoughts that I wanted to express to you. I regret that I did not share these thoughts with you at a time prior to learning of your continuing illness. No matter how clumsy the timing of this letter may be, I could not let my thoughts go unstated.

It would not be truthful on my part to suggest that I agreed (or now agree) with some of your more controversial decisions. What is totally truthful is the fact that during the time I had an opportunity to work in your presence, I knew then that I was in the presence of greatness. It may be that I cannot define "greatness," but I like to think that I know it when I see it. What I saw in you was a magnificent human being and jurist. I can truthfully say that I have never had an opportunity to know another person who I considered to measure up to the qualities that you display.

I will always cherish my brief association with you.

SO SAY WE ALL.

Remarks by the Hon. John Reynolds, U.S. District Court, E. District of Wisconsin

James E. Doyle played a central role in shaping Wisconsin's political and legal history for four decades. Jim was the conscience and intellectual leader of the Wisconsin Democratic party in the twenty years immediately following World War II. His dedication towards protecting and nurturing the policies of the Progressives, and extending those principles into the areas of civil rights and individual liberties, is his lasting contribution to our society.

Jim was born and raised in Oshkosh, received his undergraduate education at the University of Wisconsin-Madison and his law degree from Columbia. He immediately commenced his public service by becoming a law clerk for Justice James F. "Jimmy" Byrnes of the U.S. Supreme Court. Service in the U.S. Navy during the war interrupted his legal career. He left the navy when Jimmy Byrnes, who was then "Deputy President," asked him to serve as his aide. He went with Byrnes to the state department and attended the peace conference at Potsdam as an aide to Secretary of State Byrnes.

Jim returned to Wisconsin in 1946 as an Assistant U.S. Attorney for the Western District of Wisconsin. At that time, the liberals were in disarray. Senator Robert M. La Follette, Jr., had just been defeated by Joe McCarthy, and the Democratic party was an empty shell. After he left the U.S. Attorney's Office, he joined the law firm headed up by former Governor Phillip F. La Follette.

Jim and his wife Ruth became active in Wisconsin politics. They helped organize the "Democratic Organizing Committee" ("DOC"); the vehicle used to turn the then-conservative Democratic Party of Wisconsin into a liberal movement. Jim drafted the original constitution of the DOC in 1948, and he, along with several other young persons, set about to organize a DOC chapter in each country in the state.

Jim and his fellow DOC state co-chairmen, Carl Thompson and Gaylord Nelson, proceeded to travel to every county in the state, including some where there were almost no Democrats. Jim once said "There are places around the state where it takes courage to be a Democrat. The few professed Democrats are like the early Christians—they feel as though they should hold their meetings in the cata-

combs." With his extraordinary wit and dry sense of humor, Jim would make friends and gain supporters wherever he traveled for the cause.

The first statewide convention of the Democratic Organizing Committee was held in Green Bay in 1949, and Jim Doyle of Madison was elected party treasurer. Joe McCarthy started his national campaign against the "communists" in the state department about then. Jim saw the challenge and rededicated himself to the rebuilding of the Democratic party as an effective vehicle against Joe McCarthy. His speech attacking Joe McCarthy at the 1950 Democratic state convention in Eau Claire was electrifying. It inspired those present to go home and work incessantly for the defeat of what was then considered to be one of the most evil forces in America, led by a relatively innocuous, almost comical, figure. Jim later stated that he regarded the whole effort of rebuilding the Democratic party worthwhile if it slowed down or stopped Joe McCarthy. The opposition to Senator McCarthy at home was, in no small part, due to the efforts of Jim Doyle.

Jim was elected chairman of the Democratic party of Wisconsin in 1951 and set upon preparing for the campaign against Joe McCarthy. He released the organizational director of the Democratic party, Pat Lucey, to manage Tom Fairchild's senatorial campaign. He then hired John Gronouski, who later served as Postmaster General and Ambassador to Poland, as the party organizer. Despite the non-endorsement position of the Democratic party, Jim was pleased to see his old friend, Tom Fairchild, win the party's nomination to run against Joe McCarthy. Jim and other Fairchild supporters worked tirelessly because they were driven by a feeling, rarely experienced in a political campaign, that it truly was a battle between good and evil.

All through the 1950s, he took an active role in the Wisconsin Democratic party, going from county meeting to county meeting. Particularly memorable was a speech he gave to a county meeting in Green Bay in 1957. He discussed John Kenneth Galbraith's then-new book, *The Affluent Society*. Jim thoughtfully explained to the Green Bay Democrats the difficulties of maintaining a high level of governmental services, the support for which came from the unpopular progressive income tax. He was one of the first Democrats to support the sales tax as a means to pay for the services the voters desired.

Jim's defeat by William Proxmire in the primary race for Governor in 1954 was a keen disappointment to him. It was especially so because he had such

a devoted and loyal following, many of whom adored him. In fact, his following at times was referred to as a cult. It wasn't though, because you can't have a cult without a cult leader; a role that Jim would never accept. Jim was truly loved and admired deeply by his friends, and they showed their feelings by the hard work they did for him.

As the intellectual leader and conscience of the Democratic party in Wisconsin from 1945 until he assumed the bench in 1965, James E. Doyle had great influence. Jim's individual support for a candidate translated into a statewide network of workers. He gave to the party to which he dedicated himself not only intellectual leadership, but a form of pragmatic liberalism. He recognized that compromise was often times the price of political support for government action or inaction.

Jim brought to the DOC and later to the Democratic party its first and, for a while, only national contacts. His time at Columbia, and as a Supreme Court clerk and assistant to the Secretary of State, gave him contacts with the eastern establishment that few of the homegrown liberals in Wisconsin had. During those crucial post New Deal years, Jim led the DOC, and later the state Democratic party, towards the Americans for Democratic Action's support of Truman's Fair Deal, and away from Henry Wallace's Progressive Party.

Following his term as state chairman in 1952, he was elected national co-chairman of the Americans for Democratic Action with Arthur Schlesinger. Eleanor Roosevelt was honorary chairman. Jim continued his interest in national politics and supported Adlai Stevenson in 1952 and 1956. In the 1960 campaign, he was the national chairman of the "Stevenson for President" committee.

Jim was blessed not only with an amazing political and legal life, but also by a remarkable family. Throughout his career, his wife Ruth was equally involved in the organization of the Democratic party; and in fact one time, Jim wondered out loud, "Wasn't it remarkable how we men just all assumed that those Dane County women should do all that hard work while we would go out and give the speeches?" Ruth always worked very hard in her own right—in party activities, as a candidate for state treasurer, as a two-term member of the legislature, and as a member of the Madison school board.

Jim was also a remarkable and patient father. If he ever gave his children direction, I never noticed it, but he certainly inspired them. They were free to do what they wanted to do, but it so happens they

all wound up being lawyers. Mary is the Dean of the Law School at University of Miami; Jim, Jr., is practicing law in Madison; Kate is practicing law in Milwaukee; and Ann just graduated from Georgetown Law School in Washington.

Jim was a true friend in that he stuck with you even when he thought you were wrong. Anyone can stand by you when you're right, but a man like Jim is very

rare in political life. Others will write, I trust, of his great legal career, but his work and dedication to shaping the public policy of the State of Wisconsin was even more important and profound than his contributions on the bench; and this is not because he wasn't an outstanding judge. His life is a shining example to our young lawyers who will shape the political future; they can become politically

active and still retain their intellectual honesty.

James E. Doyle had a great and full life, and for those of us who had the opportunity to work with him, we were inspired by his example. We are, even those who never met him, better for the fact that Jim has lived amongst us.

Remarks by the Hon. Nathan Heffernan, Chief Justice, Wisconsin Supreme Court

Because I knew Judge Doyle well in his two separate careers—first as a partisan politician and then as a non-partisan judge, it is tempting to dwell on the former at the expense of the latter. I will try not to do so and instead will attempt, I hope, a balanced remembrance of Jim Doyle's completely separate, but nevertheless related personae. I believe the relationship is important, for Jim Doyle's career as a politician foreshadowed his qualities as a judge.

Jim, a Wisconsin native and graduate of the University of Wisconsin, received his legal training at Columbia University. From the beginning, his career was spectacular. He was president of his senior class at Wisconsin; and after his graduation from the Columbia Law School, he was clerk to United States Supreme Court Justice James Byrnes and assistant to the Solicitor General of the United States and, as assistant to the Secretary of State, one of the principal organizers of the San Francisco Conference which formed the United Nations.

But he left this brilliant career in Washington to return to Wisconsin for the avowed purpose of revitalizing the state's Democratic Party, which had fallen into difficult days when the La Follette branch of the Republican Party preempted—or so it seemed—the liberal point of view in Wisconsin.

Jim Doyle, more than anyone else, I believe, was the healer who brought a degree of harmony between the bickering branches of those who would be Wisconsin Democrats. He worked unceasingly on the difficult organizational problems of the new party. He travelled from one end of the state to the other to encourage

persons he considered worthy to be candidates in each county. Additionally, he was the philosopher of the party, articulating in carefully researched speeches the reasons why there should be a vigorous Democratic Party in Wisconsin. He was also the principal speechwriter for numerous candidates on the state Democratic ticket. I think it is clear that he, more than anyone else in the early days of the party's struggles and up to the breakthrough election of 1958 when Gaylord Nelson was elected governor was the spokesman for the party's reason for existence.

In addition, Jim Doyle was the state party's principal liaison with the National Democratic Party and such national organizations as the Americans for Democratic Action, which he co-chaired with Mrs. Eleanor Roosevelt. In 1960, he was first the State Chairman and then the National Chairman of Adlai Stevenson's attempt to secure the Democratic Party nomination for the presidency.

His services as a partisan Democratic were idealistic, unselfish, and committed. While so engaged, he also was developing his skills as a lawyer, and he soon was recognized as one of the leading lawyers in the state.

In 1965, Jim Doyle volunteered to manage my campaign for the Supreme Court. He put his talents as a political organizer and as a fundraiser unstintingly at the disposal of my campaign committee. His wise counsel and abundant experience were undoubtedly the difference that meant success in a hotly contested and narrowly won election.

Shortly after that election in 1965, President Johnson appointed Jim Doyle to be the United States District Judge here in Madison. He was immediately confirmed by the Senate.

He was a natural for the job. His past career had proved that he was a brilliant scholar and a person who understood how the government operated and how the political and legal systems really ran.

While there are those who would contend that judges should spring fullblown from the head of Zeus—or a judicial qualifications commission—it is my belief that the best judges are those who have had experiences in the struggles and passions of their time and have had some contact with the political world.

Additionally, Jim Doyle possessed—beyond mere technical competence and qualifying experience—the cardinal virtues which are the prerequisite to being a great judge. He was independent within the limits of the litigation before him. He strove and succeeded in being free of all partisan influence and the influence of any factors save those that he conceived to be a part of the law and the cause of justice. He was a courteous and patient man. When a lesser person would have been rankled by vexatious situations, Jim Doyle, painstakingly and with consummate patience, gave every litigant and lawyer his day—and then some—in court. He also was a judge of great dignity in the sense that he manifested the noblest and most honorable attributes of high office. He was a person to be trusted with great powers vested in a United States District Judge. Yet, although he took his duties seriously, he was far from being a lugubrious or overly solemn person. He did not take himself too seriously. He was, in fact, one of the funniest and best humored persons I have ever met. It was his good humor that kept Jim Doyle from being a stuffed shirt. He was dignified but never pompous.

Despite his partisan past, open-mindedness and careful attention to contending parties' points of view were the hallmarks of his craft as a judge. Never did he issue an opinion that failed to demonstrate that he had carefully considered the conflicting points of view of the litigants.

He had the great literary aptitude of being able to express his views in a way that his consideration of the fine points of law and the point of view of the par-

ties was demonstrated and expressed with unmistakable clarity.

A corollary to his open-mindedness was his impartiality. Although he was a person of intense personal predilections and beliefs, in his judicial work those personal preferences, no matter how clearly cherished, were put aside and the cases before him were decided with impartiality on the basis of the facts and in accordance with the applicable law.

While these attributes stated above are indicia of deliberativeness, his judgments were decisive for the very reasons that the ratio decedendi of each decision was so framed that the results were the logical and inexorable outcome of his deliberations. Yet, if I were to rest my appraisal of Jim Doyle on only the above qualities—all of which are qualities that make a great judge—I would miss the characteristics that made him more than just an extraordinarily fine judge. I refer to his oft demonstrated characteristic of an understanding and compassionate heart. He was not a mechanical jurisprudent. He was concerned with each litigant as a human being entitled to justice under our system of law. While this is

not the time to digress and to restate his concern about those who had come before him and had been convicted of crimes, I mention in passing his interest in seeing to it that our prison system not contribute to man's inhumanity to man.

Also, while all these attributes—independence, courtesy and patience, dignity with a sense of humor, open-mindedness, impartiality, thoroughness and decisiveness, and an understanding heart—made Jim Doyle a great judge, we should not forget the characteristic that made him a great man before he became a great judge—the characteristic that made him a great and respected political leader—an acute and sensitive social consciousness. I have no doubt that Jim Doyle was impelled to be a judge for the same reason that he was impelled to be a political leader. His motivating force was to improve the lot of his fellowman—as a partisan through a revised and more sensitive political order, and as a judge by assuring that each person before him was afforded equal justice under our Anglo-American system of law.

It has been my good fortune that Jim Doyle's career and mine occasionally

crossed—first in the political world and then as judges. Judge Doyle was acutely aware of the role of the state courts in our American system of justice and was always ready to cooperate and to lead in the efforts to smooth the occasional differences that cropped up between the courts of Wisconsin and the courts of the United States. He actively participated in the programs of the Wisconsin Judicial Conference. He was the understanding friend of every Wisconsin judge.

By the passing of Jim Doyle, I have lost a great friend, who has been an inspiration to my career and for whose help I will be forever grateful. But more significantly, Wisconsin and the nation have lost a great man and a great judge. But the fact that he, for more than forty years, contributed to the political and judicial life of Wisconsin is cause for gratitude. Wisconsin and the nation are better places to live because Jim Doyle has been among us. This enhancement of the cause of justice overshadows our momentary loss. I am sure Judge Doyle would want us to view his career in no other way.

Remarks by the Hon. Thomas Fairchild, 7th Circuit Court of Appeals

More than 50 years ago, while I was a law student at Madison, I became aware of the stature of Jim Doyle as a forceful and eloquent leader among independents in campus politics. Two other university students, Ruth Bachuber, later Doyle, and Eleanor Dahl, later Fairchild, had become friends, and Jim and I got to know each other as a result.

I recall a visit with Jim after the war, shortly before he returned to Madison to practice law. He had been a law clerk for Justice Byrnes, and an aide when Byrnes was Secretary of State. Byrnes had advised him not to return to Wisconsin, a solidly Republican state. Jim had said Democratic strength could be built up. Byrnes replied with a prediction: "You will work hard. Every election you will take satisfaction in increasing the Democratic vote a tiny fraction of a per cent. And about the end of your career, maybe you can say, 'Yesterday, we got close to 49%.' " In the late '40s and early '50s, Jim had to be happy with the little frac-

tions, but by 1958, the party began to elect Governors.

Starting in 1948, Jim played a significant role, along with Carl Thompson, Bob Tehan, Horace Wilkie, Jerry Fox, Gaylord Nelson, Miles McMillin, and others in the revitalization of the Wisconsin Democratic Party. The objective was to spark up long-time Democrats, win over former La Follette Progressives, and appeal to other unaligned people. Jim profoundly affected my life with a telephone call early one Sunday morning in July, 1948. He told me a state ticket was being put together, not with any expectation of winning, but as a start in building an effective Party. He persuaded me within a day or two to be a candidate for Attorney General. During my political efforts for the next four years, and in the years to come, I often received his valued advice and help. He was a wonderful person, and great fun to know.

Jim worked to create an effective political instrument to express the will of the many. He had an ideal of a government capable of making rational choices in the search for peace, protection of individual well-being, and broadening opportunities. Any thoughts he had of holding political office himself did not

work out, but bringing government toward his ideal was always the main goal. He said his activity in Americans for Democratic Action and his support for Adlai Stevenson, continuing into 1960, as furthering this purpose.

We know now, of course, of the great individual contribution of public service he was to make as United States District Judge from 1965 to 1987. His task was unusually arduous. He was the only judge in the Western District of Wisconsin. Comparing the per judge case load figures in all Districts, his were for many years consistently near the top. He carried the burden magnificently, without sacrificing his standard of objective, even-tempered consideration of every person who came before him.

He believed in his duty to uphold First Amendment freedoms and gave judicial protection to types of expression distasteful to the majority and probably to himself. He was devoted to the University as an intellectual institution, but in the troubled times of protest, firmly insisted on due process in its regulation of student conduct. He was not in awe of shibboleths and would carefully test a newly advanced proposition in any type of case until convinced it had no merit.

After Congress authorized a second judge for the district, and after Jim became a senior judge, he was free to accept designations to courts of appeals around the country. His work won the

respect of his colleagues on those courts.

Objective, impartial, analytical, learned, and considerate. All those adjectives were characteristic of Jim Doyle as a judge. Partisan politics were wholly for-

eign to his judicial work. The political and judicial stages of his career had in common, however, his service of lofty ideals with ability, integrity, and respect for every individual.

Remarks by Prof. Frank Tuerkheimer, University of Wisconsin Law School

In my first appearance before Judge Doyle, I represented the Sierra Club in an effort to enjoin construction of a dam on the Kickapoo River. I had heard that Judge Doyle was a great "liberal" judge and, feeling that my case was correct and solid, was quite sure that with this combination I would prevail. When I lost the case I learned that "liberals" growing up during the New Deal do not necessarily view public works projects with the same misgivings as latter-day liberals.

In my second appearance before Judge Doyle, I represented an indigent in an effort to set aside a judgment of conviction. I had heard that Judge Doyle was a "pro-defendant" judge and, feeling that my case was meritorious, was sure I had a good chance at prevailing. When I lost the case I learned that Judge Doyle, while perhaps "pro-defendant" in the sense that the presumption of innocence meant something to him, in the last analysis, was governed by the facts. In that vein, he was a master at culling a record and combining the product of that search with precedent. There was a weakness in my position, he found it, enlarged it masterfully in his opinion, and the case was lost.

I subsequently appeared before Judge Doyle on numerous occasions while representing the Government. While my

success rate may have improved somewhat—it hardly couldn't—one aspect of the first two experiences remained constant: every time I appeared before him I learned something. Therefore the perspective I developed of Judge Doyle is a rare perspective of a judge: the judge as teacher.

Judge Doyle was clearly that. He made sure that a lawyer swept nothing under the rug in trial preparation for he was certain to lift the rug and find it. He made sure that lawyers, while mired in the complexities of a case, asked the basic and simple questions because if the lawyers didn't, he was sure to do so. Perhaps most important, Judge Doyle was a fantastic barometer of the rhythm of a case. Passion and dispassion are not mutually exclusive courtroom demeanors; there is a time for each. I learned that by watching him, I could gauge by his reactions whether he thought either was out of place or wanting. His involvement in a trial was total and it created an exciting dimension to the trial of cases in front of him.

Because he had so much to offer trial attorneys, I encouraged new Assistant United States Attorneys to talk to him about their appearances in front of him once the case was over. Their initial reaction of "You can't be serious" amused me because implicit in it was an aura of unapproachability about Judge Doyle which was just plain wrong. The Assistants, after building up their courage, would see him and perhaps an hour later would return with comments such as "I just learned more about trial practice

than I had in my whole life up to an hour ago." For any attorney wanting to learn, Judge Doyle was there to teach.

All of the above, however, only yields a partial picture of Judge Doyle. There were yearly notes on the anniversary of my appointment as United States Attorney containing some personal sentiments of his. There were yearly notes to my secretary on her birthday, written in a tone of appreciation and affinity with just a touch of appropriate distance. There was his inevitable presence at courthouse functions, usually co-mingling with non-legal staff—open, but still, at times, shy.

It is here that Jim Doyle emerges from the pack. There are other brilliant judges, judges who inspire reverence, if not awe from those regularly appearing before them. Perhaps some of these are even more brilliant than Jim Doyle—he certainly would be the first to say they were. But very few judges evoke both a sense of reverence and a sense of warmth. Jim Doyle is one of the very few who does. His extraordinary abilities set him apart from the many; his warmth sets apart from this select few.

From a professional point of view, every litigator's dream is the triad of an interesting and complex case, a masterful judge, and a skillful opponent. With Jim Doyle as judge in the Western District of Wisconsin, we who were fortunate enough to practice here, knew that we always began with a third of that triad as a given. How lucky we were! He was a giant of a judge and a giant of a human being and we will miss him.

Remarks by Atty. John Greene, Legal Action of Wisconsin

I had the great fortune of spending one year at the elbow of a most remarkable human being, Judge James Doyle. From my law clerk's perch inside the Judge's chambers, I offer a few observations of the Judge, as pitifully inadequate as mere words are in such an endeavor.

To me Judge Doyle was and always will be a man of mystery and contradiction: a consummate lawyer and legal scholar, yet utterly lacking in the arrogance and self-importance which so often are appendages to superior traits; a master politician, yet without the capacity for guile and self-promotion; physically frail, in his last years, yet possessed of granite strength. And he was a magnificent judge in all respects, marvelous to behold in the courtroom, yet his character was non judgmental to the core.

On the bench, Judge Doyle was a straight arrow, unbending and undaunted in his pursuit of the right decision. He never flinched when faced with tough decisions, and he never hesitated to apply the rule of law. Those who practiced in his court know well his insistence on adherence to the rules of procedure, and his intolerance of sloppy thinking and careless practice. The many lucky enough to practice before him also know well the excitement and rigors of the Doyle School of Law, which convened in the federal courthouse.

While many lawyers and litigants were able to observe Judge Doyle in his courtroom, perhaps what a former law clerk can best offer is a view of the Judge from behind the bench. I must report that his fabled courtroom demeanor and approach to cases were not ruses to conceal his true persona; he was consistent through and through in his public and private faces.

Judge Doyle savored the intellectual challenge of judging, and he had a great gift of analysis. He would spend long hours mentally dissecting and reconstructing conceptual problems, and he relished his contemplative tasks. The Judge's agile mind and his mental creativity were astounding, not to mention his remarkable memory (which despite the fact that it had been used over forty years longer than mine, was in much better working order). For all those attorneys

who wondered what the Judge did with the motions "under advisement," I can say that from the beginning of the day to the end he would twist and turn problems in his mind, examining them from all sides and creating his own conceptual context. A major part of his job was to make law clerks feel inadequate by demolishing and recreating within minutes what had taken days or weeks to accomplish. Without fail the Judge's analysis was more creative, more insightful, and accomplished in much less time. When he had completed his deliberations, the Judge would march impatiently to his writing table where he would stand and with great gusto and precision pour out his inventive, smooth prose.

Every attorney and litigant in Judge Doyle's court was treated with great respect. The Judge was acutely sensitive to the unequal distribution of power in society, and was loath to perpetuate that inequality in his courtroom. Thus the Judge went to great lengths to give persons, particularly unrepresented ones, the chance to speak their mind. The patient and careful attention which he lavished upon even the most exasperating, unpolished, pro se litigants reflected the fact that Judge Doyle's federal court belonged as much to the poor, ordinary citizen as to the wealthiest and most well-heeled.

No case or legal question was too minor or mundane to engage the full, attention of the Judge. He approached every decision with intellectual freshness and open-mindedness, and in his approach he did not distinguish between the important and the unimportant, the sexy and the routine, the momentous and the trivial. During my period with the Judge, however, there were some cases which he considered so deserving of the utmost care that he shielded them from any tampering by law clerks. These were pro se prisoner cases. To me there is nothing more telling about the Judge's compassion for the powerless in society than in his agonizing over lawsuits brought by inmates and other pro se plaintiffs.

I once asked Judge Doyle what he would most like to be doing if he were not on the bench. I will never forget the Judge's response—so poignant and revealing. After a deep sigh and his usual reflective pause, he replied that he thought he would like to represent

inmates pro bono. Such was the inner soul of James Doyle, and such is the picture of him that I will carry always.

The Judge's great gift to the legal world was to demonstrate that a court is a place where grace, dignity, compassion, and high intellect could unfailingly prevail. In the world of mortals in which we travel most of the time, perpetual frustration is the natural result of the Judge's demonstration. Yet as he always tried to transform negative into positive, the Judge would have us strive to erase our discontent by elevating our standards, by always reaching for the higher path, by not sacrificing our values for unworthy short-term ends. To have inspired something good that otherwise would not have been would have given Judge Doyle his highest pleasure.

Apart from his attributes as a Judge, however, what really defined James Doyle were his intangible personal qualities—his genuine love of others, his unflagging kindness and generosity, his sharp wit and warm humor, his absolute devotion to open inquiry and honest answers, his compassion for persons scorned by society, his genuine modesty, and his simple lifestyle and indifference to the trappings of wealth and luxury. Those around him could not escape the spell cast by his qualities, and he in turn could not escape the universal admiration and love for him that exuded from those whose lives had intersected his—from former law clerks, from attorneys, from the courthouse staff, from friends.

I hold out little hope of ever meeting another Judge Doyle. Although I look for him in every courtroom and on every corner, I am resigned to the futility of my search. Yet the Judge would not be pleased with such a negative perspective. The eternal optimist, the Judge would want us all to strive for the better, to think of the brighter side, to struggle to create in ourselves what we admire in others.

Judge Doyle left a legacy far more important than his legal decisions, a legacy found in the lives of all those he touched and who inexorably came under his spell. It is to the great fortune of the legal profession that James Doyle brought his extraordinary intellectual gifts and wisdom to bear on the legal issues brought before him. It is, too, the undying benefit of us all that he graced our lives with his magical human qualities.

The Northwest Ordinance: Fundamental Law or Trivial Pursuit?

By Professor Gordon B. Baldwin

On July 13th we observed the 200th Anniversary of the Northwest Ordinance, the last significant work of the expiring Continental Congress in New York. It predates the Constitution by two months, but we don't celebrate it with fireworks as we did for the Statute of Liberty, or with the hoopla that at Disneyland began the Constitution's bicentennial. But we should pay tribute, because the Ordinance, I submit, was an indispensable precondition to the success of the Constitutional Convention in Philadelphia. Without the assurance it guaranteed that more states would, in due course, join the union, and that they would dilute the influence of such big states as Virginia, the small states would not have agreed to the federal union.

Three vital forces converged to produce the Northwest Ordinance: high minded idealism, pragmatism, and greed. The authors of the Ordinance, and the minds behind it, included idealists such as Jefferson, honest but aggressive lobbyists like Mannaseh Cutler, politicians with a gift for writing turgid prose like Nathan Dane, and greedy knaves such as William Blount. These remarks focus on those forces and upon the people representing them.

The Continental Congress with its power to dispose of lands was a magnet for rapscallions—hot Philadelphia offered them very little. Hence although there were some overlaps with delegates in Philadelphia acting also as state representatives in New York, the knaves and pharisees mostly collected in New York while perhaps the most competent collection of living Americans gathered in Philadelphia.

The good, the bad and the indifferent politician-drafters of the Ordinance shared a common quality—they were terrible writers. Primary blame for the Ordinance's style and prose must be placed on Nathan Dane, for whom Dane county is named. But there is too much crabbed, inverted and obscure writing to blame on a single mind. The Ordinance's phrasing reflects the worst of our profession. Two



of its first three sentences are more than 170 words long.

Who but lawyers would frame a new government by starting with the words, "be it ordained by the authority aforesaid that there shall be appointed from time to time by Congress a governor. . . ."? They didn't teach legal writing in those days.

In contrast to the turgid Ordinance, the language of the Constitution reflects the style and grace of Gouverneur Morris, Chair of the Committee of Style. Much in final draft of the Constitution was written by that brilliant but notorious rake. How many great writers were philanderers!

The Ordinance's stolid prose at the beginning deals with an apparently dreary subject: "Be it ordained . . . that the estates of both resident and non-resident proprietors in the said territory, dying intestate, shall descend to and be distributed among their children, and the

descendants of a deceased child in equal parts, the descendants of a deceased child or grandchild, to take a share of their deceased parent in equal parts among them. . . ."

And so the first substantive part of the Northwest Ordinance of 1787 starts with the rules of intestate succession. There follows, in this dense opening paragraph, directions preserving the law of dower, a rudimentary law of wills, and finally rules for conveying real and personal property.

"First things first." What one places first tells us something about the placer. Who else but lawyers would put the rules of intestate succession and the law of wills in the vanguard of a document charting the course for new governments, and who else but landowners, or potential landowners, would reveal concern about rights to sell and convey property.

Idealism, pragmatism and self-interest are revealed in these initial provisions

relating to intestate succession, and authorizing bequests and transfers by will. Idealism and equality are revealed in treating male and female children equally, and by failing to give any special rights to the first born child. Fairness is exemplified by the Ordinance's recognition that French and Canadian settlers could retain their own laws and customs relating to rights of conveyance and descent.

By focusing first on the right to convey property, *inter vivos* or by will, the Ordinance's framers promoted the self interest of those representatives with western land claims, and also the interests for which Dr. Mannaseh Cutler lobbied. Mannaseh Cutler is an appealing figure. In the Revolution he served as an Army chaplain. Later he read law, and learned enough medicine to practice that too. He was also an accomplished botanist; he talked shop with Benjamin Franklin, whom he met in Philadelphia. He was in New York and Philadelphia in 1787 because he was a lobbyist—perhaps the first successful one in our history. Several of Cutler's fellow lobbyists were rapscallions. Cutler went back and forth between New York and Philadelphia revealing his concern with the immediate in New York, and with the future plans of the nation being debated in Philadelphia. Cutler was among several people who helped New York and Philadelphia politicians understand each other.

Cutler represented the Ohio Company, which was organized in New England, and he was instrumental in that company's purchase of large tracts of Ohio land from New York, Massachusetts and Connecticut. The Ordinance legitimized some of those cloudy claims, and set the stage for future purchases. Soon after Cutler persuaded the Congress to confirm the Ohio Company's title to 5,000,000 acres for a few cents an acre. The Ordinance made that land marketable. The national government would make a modest profit and the speculative land companies might make a lot more. To buy land wholesale, and sell it retail was the trick, and the land beyond the Ohio River, if it could be pacified, promised vast profits.

The Ordinance like the Constitution, inspires overblown praise. Given its opening, and its origin, Daniel Webster's statement that no law in world history produced effects "more distinct, marked and lasting" than the 1787 Ordinance sounds absurd. Likewise inflated is the claim Senator George Hoar of Massachusetts made 100 years ago that the Ordinance ranked with the Constitution and the Declaration of Independence as one of the three "title deeds of American constitutional liberty."

What is in the Ordinance that inspires such hyperbole, and is it justified? Certainly not the law of wills and of intestate succession. The chief merit is that the Ordinance succeeded where previous efforts to establish a legal regime in the northwest failed. Those failures were spectacular and fully understood by all Americans.

Failure begins with the French. France sent missionaries, explorers and fur trad-

Three vital forces converged to produce the Northwest Ordinance: high minded idealism, pragmatism, and greed.

ers, but no settlers in large numbers. The Paris government never supported large migration to America. "Why do you wish to depopulate France," scolded Colbert, chief minister to Louis XIV, in response for a plea to promote settlement. Colbert was wise, but not enough to appreciate that world history would indeed be different had French settlers poured into the Mississippi valley as did British settlers onto the Atlantic coast.

Victorious Britain took over French Canada in 1763 and they also discouraged settlement, but with better reasons. The American colonists were a rough, hardy and prolific breed moving foolishly close to Indian settlements. Naturally Indians and settlers fought, and the brutality of those wars matches anything we've experienced in the 20th century. Many white men inflicted cruelties on the red men as savage as anything the Indians had done to them. The British solution to the Indian conflicts was in 1774 to extend the boundaries of Quebec into the Ohio lands, and most irritating to the colonists to forbid settlement. It would have been easier to stop the tides! This foolhardy prohibition is mentioned in the Declaration of Independence and was among the causes of our Revolution.

After 1783 the promise of rich lands, which could be used to raise revenues, and pay off the Continental Army, inspired new effort to agree upon some legal regime for the wilderness.

Ancestry of the Ordinance, but not its language, is traceable to the imagination and foresight of Thomas Jefferson who in 1784 framed what we may consider the first draft. It was Jefferson who conceived the idea that the settlers to come

on those vast, unexplored but Indian occupied lands should form a free society linked to the 13 states by articles of compact. The new territories would, in his view, become new states equal in law to the old. Jefferson also urged that slavery be forbidden, but that idea was quickly put aside.

Only a bare outline of Jefferson's ideas survived the sporadic debates between 1784 and 1787. The idea of a multiplicity of new western states was viewed suspiciously by the North, largely because they feared that Southern interests would dominate them, and that the settlers would either fight Spain, or demand concessions from her. Spain controlled the Mississippi, and showed no signs of giving up that valuable monopoly. New England wanted concessions from Spain too, the right to trade freely with its colonies in Latin and South America. Northerners rightly feared that western settlers would give up free trade interests in return for navigational rights on the Mississippi. So, it looked better to discourage settlements.

It took several years for the knaves to realize that a legal regime for the Northwest would produce an incentive for settlement, and that settlers would buy land retail from those smart enough, or powerful enough, to get title wholesale. Land, they eventually realized, offered better promise of profit than trade by sea. William Blount was one of the greedy.

William Blount's notoriety lies less in the fact that he was a boorish, uneducated, and successful rascal, than in his being the first person expelled from the United States Senate, and the first ever impeached by the House of Representatives. His father was wealthy, but didn't press much formal education on his eldest son. The Blount family's abiding interest was making money. William Blount's indifference as to means was matched only by his success. He could resist anything except temptation. He owned mills, forges, ships and plantations, but it was in western lands that he saw the most promise. He owned millions of acres when he died, young at 51, although a good deal of his land claims rested on forged or false deeds.

William Blount is a sleazy and altogether unappealing figure. At the end of the American Revolution he promoted piracy against British merchants who had some claims of safe passage back across the seas. During 1787 he acquired more than 100,000 acres of western land by inventing dummy purchasers. Any land title traceable to William Blount is surely weak. All in all William Blount was a liar, a cheater and a thief.

Blount was 38 in 1787 and serving as one of North Carolina's representatives

in the Continental Congress in New York. Blount's chief interest, after being frustrated in his hope that he'd be elected President of the Congress, was in buying and selling tobacco, the value of which was enhanced by Virginia's willingness to accept tobacco in payment of taxes. He also sought much more land. But he was distracted by a call for duty, which uncharacteristically he answered.

North Carolina needed another hand at the Philadelphia Convention and Blount's younger brother, John, also an affluent merchant and entrepreneur, recommended him to the friendly Governor of North Carolina. It wouldn't cost much to give double duty to the delegates in New York, so Blount, whose ambitions to become President of the Continental Congress were thwarted, willingly set off for Philadelphia.

Blount arrived at the Constitutional Convention in mid June, and promptly breached the pledge of secrecy by writing a North Carolina friend and describing in detail the Randolph/Madison plans for a federal union. He never said a public word in Philadelphia, but his vote was vital.

Blount's legacy to us lies not in what he bought, or in what he said—evidently he said not a word at the Constitutional Convention. Blount's importance was in where he was at a critical time in July 1787—he was not at Philadelphia where he was a delegate, but in New York promoting the Ordinance. We are fortunate in his choice.

The Convention at this time was deadlocked on the question whether the Senate would reflect population, that is be proportional or whether it's membership would be equal. The small states insisted on equal representation, the large ones, including North Carolina, demanded proportional representation.

Each state voted as a unit: if a state's delegates were tied, the state's vote was not counted. The Georgia delegation narrowly favored proportional representation in the Senate, but at a critical time two Georgia representatives favoring proportionality left town. This left the Georgia vote divided, and hence null. The Convention was equally divided, and in effect the large states lost their battle for proportionality.

Blount bears some responsibility for the Georgia split. He and his two Georgia colleagues who favored proportionality might well have changed history by their votes. But they never voted, instead they hurriedly scurried off to New York. Their absence saved the day. The Convention continued; the small states were mollified, and were willing to make some concessions to their larger neighbors. With

Blount's group present it's entirely likely the Constitutional Convention would have foundered on the small state versus large state acrimony.

Why did Blount so hurriedly return to New York? A short note from the secretary of the Continental Congress told him that he, and his Georgia friends were needed in New York to make a quorum. If a quorum could be gathered, an ordinance authorizing disposition might make the lands of the northwest available for quick sale. Blount realized his

Thirty-one of the 50 states joined the union under the principles of the Northwest Ordinance.

personal interests would be immediately served. The land speculators were getting impatient. They wanted the Northwest Ordinance passed quickly. They summoned Blount, Few, Pierce and Hawkins. They came, voted and prospered.

They had other immediate interests. The Continental Congress might, they prayed, supply aid to the settlers in Tennessee who were hard pressed by Indians. The Congress might also be persuaded to obtain navigation rights on the Mississippi from Spain.

Congress had toyed with the Ordinance for nearly three years, but there was no agreed upon text. What it approved on July 13th was a hurriedly prepared final draft, a condition that doubtless contributed to its graceless prose.

The Ordinance allowed the United States to become the most successful colonizing nation in all history. The Ordinance promoted colonization without the promise of long colonial rule. As soon as enough people congregated an area would become a state, but only after defeating the Indians in battle. It was military victories, not a statute, that permitted settlement. The first victory was in 1795 when the Indians, defeated by Mad Anthony Wayne abandoned the lower midwest. Then only a few thousand people inhabited the Territory. Eighty five years later there were more than eleven million, and nearly half of the total wealth of the nation was held in the five states formed from the old northwest. Military victory was the indispensable precondition for settlement. The Ordinance supplied the mechanics for exploiting those victories.

More important, the Ordinance sup-

plied a natural and convenient model for other territories. Thirty-one of the 50 states joined the union under the principles of the Northwest Ordinance.

The Ordinance has two parts. Part I establishes the interim rules for that vast mostly unexplored land. With the exception of the property rules the document is procedural. It tells us how the land shall be governed in the beginning, and how, "five thousand free male inhabitants of full age" can elect representatives to a territorial assembly. Like the contemporaneous Constitution, the Ordinance is largely a procedural document telling us how, and when, the settlers can create a new local government. The Ordinance promotes colonization, but not colonialism, for it tells us how, in due course, the settlements may become states on an equal footing with the original 13.

The "equal footing" doctrine that all states must be treated equally has roots in the Ordinance as it has in the Constitution itself. It is remarkable that newcomers to the union enjoy the same rights as those in the original parts of the nation.

Part II of the Ordinance consists of the "Articles of Compact" between the "original states and the people and states" in the northwest. This part of the ordinance is substantive law. The compact binds the new states, and in form and substance it constitutes more formidable limits on government than were supplied by the XIVth Amendment eighty years later.

Part II, the Articles of Compact, makes the Ordinance enduring. The contents of the Compact explain why for years it was periodically republished in the biennial collection of Wisconsin Statutes. The Articles of Compact are superior to state laws and state constitutions. They reflect modern values despite their graceless form. The 6 Articles concern religion, the protection of civil liberties, Indians, taxes, navigable waters; new states, and slavery. It is these provisions that give the Ordinance permanent value.

The clause calling for freedom of religion supplies an instructive contrast to the first amendment. It has no establishment clause, the source of our greatest difficulty in accommodating religion and government. It simply states that: "no person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments." Instead of a clause like the Establishment Clause, forbidding too much government aid, the Ordinance actually encourages the teaching of religion, and thus accommodates church and state interests in ways that Chief Justice Rehnquist would like to promote today! "Religion, morality, and knowledge being necessary to good gov-

ernment and the happiness of mankind, schools and the means of education shall forever be encouraged." Nothing in the Ordinance forbids teaching religion in the schools.

At the last minute a clause forbidding slavery was added. This was not simply unselfish idealism, it was self interest as well. Congress had earlier rejected the abolitionist measure, but in 1787 half the Continental Congress was from the south, and southerners feared that new states might compete with them in growing cotton, indigo and tobacco—crops which slave labor made profitable. Best eliminate slavery and eliminate dangerous competition. So, like the Temperance Union and the bootleggers in Kansas who march together to the polls to vote dry, the interests of slave owners and abolitionists converged and they voted together to abolish slavery in the new lands.

The speculators who already had purchased land in the unsettled west were worried—their titles were by no means clear given the bribery, theft, and naked force underlying their claims. The Ordinance, while not explicitly recognizing these cloudy titles, did allow claims, however shady, to be conveyed and bequeathed.

Notable, and it was a practical as well as an idealistic move, the lands and properties of the Indian inhabitants were recognized. Doubtless the protection of Indian claims was more a pious platitude than a significant limitation on invading settlers, but it did promote an important value. The settlers, knowing that Indian land claims had some legal basis, were encouraged to deal with the tribes and make treaties with them. Without the Ordinance it would be cheaper to simply fight. In reality the Indians had no real choice but to fight or make the best deals they could and move further west—the Ordinance supplied some incentive to make treaties, but many Indians fought. Without the Ordinance, however, fighting would have been the norm—with it

treaties, even ones we now view as unfair, were encouraged.

It is not, moreover, in any way a model representative government. Its method for choosing the first territorial government is authoritarian. Congress appoints the governor, for a three year term, a secretary for a four year term, and a three judge court, the judges to hold office "during good behavior." So littered among the miasmatic prose are the roots of an independent judiciary.

The document is littered with ambiguity and questions that necessarily had to be answered promptly. If draftsman today wrote so sloppily their malpractice carrier would surely cancel their policy.

Basically the Ordinance is framed to promote colonization. In the first stage of territorial government the inhabitants have no rights to self government. Even in the second stage, reached when 5,000 free male inhabitants appear, rights of self government are minimal. The governor still appoints major government officials and has an absolute veto over territorial laws passed by the elected representatives. Substantial property qualifications for voters assured that relatively conservative legislators would be chosen. One sees in the second stage government the ideals of a monarchy which a few of our early leaders promoted. That the settlers did not like this part of the Ordinance is suggested by the first state constitutions which established male suffrage, and which made their governors weak.

The document is littered with ambiguity and questions that necessarily had to be answered promptly. If draftsman today wrote so sloppily their malpractice carrier would surely cancel their policy. In the first stage the governor and the judges, or a majority of them, are empowered to "adopt and publish" such laws of the original states as best suited for the territory. They presumably can't make new laws, they merely can import laws already existing on the seaboard. Could a law once adopted for the territory be repealed? Could only portions of existing state laws be imported, or must the whole statute, which might include appeals to the Privy Council in England, be adopted. These unanswered questions simply illustrate the slovenly language of the Ordinance.

When the Ordinance says a majority of the four (Governor plus 3 judges) may adopt and publish laws does it mean that the three judges can act alone? Is the signature of the governor required? In short the Ordinance is so slovenly written that it is hard to acknowledge it as the product of a committee of lawyers.

But these are in large measure quibbles. What makes the Ordinance great, important, and in some measure enduring are:

1. It settled, albeit imperfectly, competing state claims, and supplied an assurance that the nation would grow and the influence of the old seaboard states would be diluted.
2. It promoted notions of equality—new settlers and new states would stand on equal footing with the old.
3. It supplied a small, but indelible model upon which self governing territories could be formed, which would, in the course of human events become states.

It did these jobs awkwardly. Hence the Ordinance confirms Lord Chesterfield's poignant observation, that "anything worth doing, is worth doing badly."

The Ordinance is worthy of note, but not worthy of being read aloud.

On Returning to Legal Education

Walter J. Dickey

Introduction

I was away from legal education and the law school for nearly four years. During that time and since my return people often commented to me that working in corrections must be strikingly different from the law school. While there are many differences, the distance between the functions of director of the correctional system and those of the faculty member is not as great as it might seem. Education has much in common with leadership, particularly with leadership in corrections. Both the leader and educator seek to stimulate and motivate others; both are responsible for taking the long view of issues and events; both should avoid the simply expedient; both are responsible for the standards and values to which others may be held. The measure of the contribution of the educator and leader, at least in part, is the performance of others. I became keenly aware that advancing "the art of democratic living" is a vital function of both our university and our correctional system.

So, I return to the law school with a fresh perspective and a renewed respect for our mission. Done well, education, public service, and research can play a vital role in our society and make a profound difference in the quality of the lives of our citizens. I now adhere to that view more strongly than ever.

As director of the correctional system, I had extensive contact with lawyers, my own, Department of Health and Social Services staff, Department of Justice attorneys, state public defenders, judges, private criminal and civil lawyers, labor lawyers, and jailhouse lawyers. I also had a wide range of experience with people in governmental agencies, including the Departments of Administration and Employment Relations, the legislature and the Governor's Office. And, of course, I worked closely with staff in prisons, probation and parole, juvenile services, and observed their work first hand. I had frequent contact with the public and with union leaders. My experience took me all around the state, since correctional responsibility is a statewide concern.

At the risk of stretching an example further than I have any right to, I want



to relate the way we, in corrections, responded to a critically important and controversial problem—AIDS. Doing so will enable me to do two things:

First, bring to life the qualities which are important in public service, especially services performed by lawyers; and

Second, look at the qualities we should be trying to create in law students so that they can become effective lawyers after graduation.

The AIDS Experience

When I became director of corrections, AIDS was receiving no media, governmental or correctional attention in Wisconsin. There were no reported cases in the state, let alone in the prison system. Now, AIDS has become a problem of international concern. There are at least twenty cases in the prison system, including two in terminal stages of the disease. It was necessary for the Depart-

ment of Health and Social Services to develop a thoughtful policy in response to a problem about which there was and is much ignorance, contentiousness, and fear. It had to be done quickly, without waiting for legislative or judicial action or guidance from other public institutions, but mindful of the fact that others in the society should and would have something to say about how this problem would be handled in and by institutions of government. Happily, the AIDS policy developed for the Wisconsin prison system is now a model used by the National Institute of Justice for other systems in this country.

We confronted more issues than I can list here as we wrestled with this extraordinarily difficult problem. How should our health services deal with AIDS patients? Where should we house them? Should nonterminal patients be in the general prison population? Who could we test for the infection under the law? Who

should we test? Who should have access to the results of the tests? How could we educate staff and inmates about the disease? Could we succeed in getting staff and inmates to deal with inmates with the infection in the atmosphere that existed? How could we change the atmosphere? How could we protect the AIDS patients? What was our responsibility to staff and inmates who do not have the infection? Who should be involved in the development of our AIDS policy?

This brief list of issues helps make many of the points I wish to emphasize in this article. Dealing with this problem required qualities that are essential to responsible and effective public service, including service by lawyers.

(1) Objectivity, Judgment, and Knowledge of the Law-In-Action

Administrators are called upon to exercise judgment constantly. The development of the correctional AIDS policy was certainly no exception. We needed to determine whether to test all inmates admitted to the correctional system, as some states are doing. To answer the question, it was necessary to know whether legal authority existed to do it, how useful the information would be, whether high risk inmates could be counseled into being tested, and what effect such a policy would have on attitudes toward AIDS and our planned educational efforts. This issue has multiple dimensions, including legal ones, and a competent lawyer's objective advice is most helpful. The lawyer or other public servant who brings objectivity to problems such as this and who understands the many factors that go into a decision are invaluable, in part because large bureaucracies, by their very nature, limit staff vision to single dimensions and often thereby limit objectivity. It is essential that the advice not be colored by what the lawyer wants to happen, but is based on the objective judgment as to what the law requires and what is likely to happen.

The advice is usually better if the lawyer understands the factual setting in which the decision will be made, that the legal dimension is only one aspect of the problem and that it may not dictate which course to follow. Insight into how legal policy is apt to be implemented is also crucial to the exercise of sound judgment and such insight itself requires good judgment.

(2) High Standards

It was obviously important that the AIDS policy be developed as well as it

could be. The consequences of doing it poorly could be disastrous and possibly fatal. If ever there was a situation calling for high standards of performance, this was it.

I must admit to some frustration at what I felt were insufficiently high standards in government, among lawyers and staff. I believe that I know excellence when I see it; when a problem has been thoroughly analyzed; when a program has been thought through, described, implemented, and evaluated in accordance with the highest standards.

I also know that given the press of business, doing an excellent job is not always possible, though some matters are so important that the extra effort excellence requires is called for. I also believe that if one has the ability to do a very good job, though not the time, it raises the level of everything we do, much of which must be short of excellence.

While we may excuse less than excellent work on the grounds that there is not enough time; that there are too many other issues to address; or that this problem is not so important that it should take too much time, I do not believe that this fully explains why standards are not higher.

Indeed, I think that most of these are not explanations, but excuses. A most important reason is that people do not know excellence, have not had it consistently demanded of them or demonstrated to them. In short, the rigor that brings excellence has been lacking in their education and professional experience. The result is work that lacks the clarity and precision that ought to be required.

If I sound overly critical, let me point out what I am *not* saying. I am not saying that people are poorly motivated or that they do not care whether their work is good or not. I am not saying that they do not put substantial effort into what they do, that they do not try hard to do well. On the contrary, my overall impression of staff in government is that they are extremely well motivated and put a good deal of effort into what they do.

What I am saying is that had they been exposed to and *immersed* in experiences that truly pushed them, that taught them what a good job is and how to do it, the standard of everything they did would be raised.

(3) Working With Others

Given the complex nature of problems government is called upon to solve and the complexity of government itself, *effective* effort is *often* collective effort. A prob-

lem such as AIDS in prisons has medical, legal, security, personnel, treatment, and budget dimensions and calls for expertise in each discipline if a comprehensive policy is to be developed. It calls for these many perspectives to be reflected in a single policy.

It is essential, then, that people know how to work together, to share ideas, to advance and develop solutions, so that the collective effort takes into account all relevant factors and is a product that is better for the involvement of all in the group.

That sounds simple enough. For a variety of reasons, however, people's abilities to work together to solve problems is not what it should be. In part, the fault lies in our educational system, including higher education and legal education, which put little emphasis on collective efforts. There are other explanations, including a lack of leadership in government agencies, a bureaucracy that encourages looking out for one's turf, a general lack of trust within agencies and among them, and a system that stresses too many checks and balances and too little working together to solve problems.

People can learn to work together by working together. The results are better products and more learning than comes from people working alone. Two heads working together are better than one.

(4) Confidence and Determination

Given the complexity of problems like AIDS that confront government and its sometimes ponderous methods of decisionmaking, it is tempting to throw one's hands up, to be discouraged, to discourage others, and to say "to hell with it!" The fact is, however, that even if all problems cannot be solved, we can improve upon most situations, develop and choose the best of what may be disappointing alternatives, and generally advance the mission of the agency (or client) through thoughtful responses to problems. Most problems do present opportunities if we have the patience and vision required to find them.

To achieve this requires the *confidence* that issues can be resolved satisfactorily by careful attention to them and the *determination* to do so. In my experience in corrections, what often brought satisfactory solutions to problems was persistence born of confidence, the belief that the problem could be solved, and the willingness to try multiple ideas and approaches until the best one was discovered.

The people, including lawyers, who consistently performed well were those

with the confidence and determination to solve problems.

(5) *The Ability to Deal With Change*

The AIDS problem is a clear example of change in the world and the need for the world to cope with it. While it is also dramatic, I do not think it is atypical.

AIDS certainly required the correctional system to change its method of doing business. But so did increased populations in prisons and on probation and parole, increasingly large numbers of uneducated offenders, more dangerous offenders, and a climate in which the public was determined to "get tough" on crime.

I was continually struck by how pervasive change was, how often situations that appeared similar to others were different, how important flexibility and the capacity to apply knowledge to new situations was. The effective staff member was not satisfied with the easy answer, but possessed the intellectual curiosity to look further at the problem and to tailor the solution to what was unique about it.

(6) *The Work Ethic*

The staff, including lawyers, who performed well were usually the hardest workers. They had the interest and ability to immerse themselves in an issue, such as AIDS, and pursue solutions that were developed through great effort. They had, what I took to calling, the work ethic.

But there is more to the quality I am trying to describe than the ability to work hard. Underlying the capacity for hard work was usually a well-developed sense that there was a direct relationship between effort and achievement. This lesson, simple to state and important to learn, seems basic to most high quality jobs. I thought a good deal about what values to impart to staff and inmates and this is one with which I was most comfortable: that effort brings achievement.

(7) *Concern for People*

An important and constant challenge that every administrator faces is keeping the agency focused on the people it serves. This seems true in all large bureaucracies, whether they are correctional systems, universities, or other branches of government.

The most effective public servants, including lawyers, at advancing the substantive vision of the corrections system, were those who cared about people. They were the most likely to identify and attend to the human dimension of problems, including the AIDS problem, and not become mired in bureaucratic objec-

tives. This is not a quality that is easy to develop or maintain in a correctional system, particularly because some of the people the administrator must be concerned about have behaved as destructively as convicted offenders sometimes have.

The problem is complicated when the public servant does not identify with or is otherwise not close to those about whom he is to be concerned. The distance between offenders and correctional staff is great, and I fear, growing. I believe it is the duty of both correctional administrators and educators to create opportunities for public servants to understand those whom they serve. From exposure to and understanding of those we serve comes the commitment to people that distinguishes the excellent public servants.

(8) *Understanding the Functions of the Three Branches of Government In a Free Society*

I often heard from judges, legislators, and the press their frustration with the operation of the correctional system. Many correctional staff expressed frustration, a frustration I sometimes shared, with the actions of judges, legislators, and the press that affected correctional policy and its implementation. It is one thing, however, to be concerned that a judge did not fully understand the implications of a decision on, say, inmate discipline, and quite another to believe inmate discipline is none of the court's business. The first view is a reflection of the limits on effective advocacy in a particular case, difference in perspective, judgment, emphasis, or values. The second view reflects a fundamental misunderstanding of our system of government.

As I often told my staff in corrections, our challenge was to run an effective correctional system *in a free society*.

By this I meant that we live in a society in which authority and responsibility is shared, in which formal and informal checks exist to insure that the system operates in accordance with our form of government, and in which there is a responsibility to be open about what is going on. This is the challenge even when that very openness apparently impedes one's ability to fulfill other responsibility. As I often told our staff, it would have been easier to run the prison system in the USSR, but much more costly in almost every important way.

But I, by no means, believe that inadequate understanding of our form of government is limited to those in administrative agencies. To be sure, the lines between the branches are not always

clear. I also observed what, in my opinion, was overreaching by other branches, including the legislature and judiciary, into the domain of others. I do not believe there is anything extraordinary about this, but I do believe it sometimes frustrated the implementation of public policy. Neither the legislature nor the courts can manage administrative agencies and to announce policy based on the false assumption that it is possible to do so in any systematic way only leads to the distortion of that policy in practice. Nor should administrative agencies intrude into the domain of the legislature or judiciary. A better understanding by all of their responsibilities and possibilities would have led to more effective creation and implementation of public policy. I say this recognizing that such "intrusions" are often the result of the "intruded upon" branch failing to do its job properly.

A better understanding of how administrative agencies operate by all branches including itself, would also make for more effective and efficient policy implementation. Lack of understanding when combined with our proclivity for checks and balances and the lack of trust this breeds creates bureaucracy that is stifling, uncreative, and sometimes paralyzed.

This is true primarily with respect to budget and personnel matters, which have considerable effect upon substantive policy. It is unfortunate that the solution to too many problems, particularly if it is in another branch of government, is more process, more review, more checks on the system.

Of course, how much process is desirable is a matter of opinion and degree, but in government today it is excessive. The consequences are serious. The emphasis on process deflects concern from the substantive; it is difficult enough to keep staff focused on substance without creating a system so emphasizing process that people are more attentive to whether they have jumped through all the hoops than to whether they have achieved a meaningful substantive result.

Summary of Qualities I Believe Necessary To Be Effective as A Lawyer

To summarize, what separated the effective public servants, especially lawyers, from the ineffective were the following qualities.

Those who were effective:

- (1) Were objective, possessed knowledge of how law and policy worked in action and exercised sound judgment;

- (2) Had high standards, an appreciation of what a good job is;
- (3) Worked well with others to solve problems;
- (4) Approached issues with the confidence that they could be satisfactorily resolved and with the determination to do so;
- (5) Could apply their ability and knowledge to new situations, could, in short, deal with change;
- (6) Worked hard and expected achievement to follow effort;
- (7) Cared about people and how what they did affected people;
- (8) Understood the roles and responsibilities of the three branches of government and that they operate in a free society.

Implications for Legal Education

It hardly needs emphasis that legal educator and lawyers ought to be concerned about the qualities which distinguish the most effective lawyers. I was prompted to write to share whatever insight I gained in my four years in corrections.

The comments which follow, then, are prompted by my observations of this wide range of people, many of whom were trained in law, and the qualities which distinguished the very effective from those who were less so.

What also prompts my writing is the situation of law students today. If we are to further the education of our law students, we need a sense of their values and aspirations. I have been listening carefully to the students in my classes to determine what is important to them; to discover whether they are seeking to develop the qualities I consider important in our law graduates; to gain a sense of how equipped the law school is, as a total

endeavor, to advance the educational objectives I believe are significant. I do not pretend to know the educational or vocational aspirations of law students. I worry, though, that what I see and hear suggests that they do not necessarily seek all that law school can provide and they need if they are to be effective.

Finally, as I return to legal education with a new perspective, I have been asking myself how I as a faculty member and we as a law school could provide better legal education. Are our present methods likely to encourage students to seek to develop the qualities I outline here? Do we as a law faculty believe them to be important? Do we strive to develop them? Does their achievement call for any different approach by the faculty?

Based on my recent experience I believe there are several important principles that deserve emphasis in our curriculum and teaching methods. These principles are responsive to the need for the qualities I have described. I hope brief mention of this less than comprehensive list of principles for legal education (some of which we at Wisconsin implement well) stimulates thought on the subject.

(1) As things now stand, jobs and job seeking divert substantial student energy from legal education, to the detriment of legal education. This is often done with the blessing of the law school. The primary, if not only, concern of the law school with respect to students ought to be education and their professional development. If this were so, and if greater educational demands were placed on students, they would be much more likely to be immersed in legal education. This itself would lay the foundation for many educational benefits for students for ultimate success in employment.

(2) Legal education should require intensive, closely supervised writing proj-

ects, particularly in the second and third year. These experiences should emphasize the production of a high quality written product, usually if not always, produced and improved through several revisions. This will do much for the student, including raise their standards and demonstrate what effort can achieve. It should also help develop their confidence.

(3) Students should be required to undertake projects in small groups that make them work together to examine a problem and propose a solution. The result should be a single work product that is the result of collective efforts. An obvious objective is learning how to work collectively.

(4) While the study of legal doctrine is certainly important, emphasis should also be given to the study of the law-in-action. Knowledge of how the legal system operates, of the interplay of institutions and influences that go into the creation and implementation of policy, is essential for law trained graduates.

(5) Students should be exposed, under careful supervision, to experiences that bring them into contact with people, the clients of lawyers and the legal system, so they can begin to understand the human dimensions of the problems with which they deal. This should require the student to consider the people for whom they work, assist in the development of judgment, and apply knowledge to a variety of different situations.

This is by no means a comprehensive list of either the qualities effective lawyers need or the principles that should be the basis for legal education. It is, based on my recent experience in government in Wisconsin, an outline of the qualities that made the most difference in the world in which I worked as a public servant and sometimes as a client of lawyers.

Alumni Notes

Northwestern Law School Prof. **David Ruder** ('57), who served that school as dean from 1977 to 1985, has been nominated as Chairman of the Securities Exchange Commission. Prof. Ruder was Editor-in-Chief of the Wisconsin Law Review and began his career with Quarles & Brady in Milwaukee, Wisconsin.

Daniel W. Stolper ('76) has become a partner in the Madison, Wisconsin firm of Stafford, Rosenbaum, Rieser & Hansen. Mr. Stolper was formerly an Assistant Professor of Business Administration at UW-Green Bay.

Robert E. Holtz ('85) has joined the Milwaukee, Wisconsin firm of Meissner & Tierney.

Peter K. Trzyna ('83) has become associated with the Washington, DC office of Cadwalader, Wickersham & Taft to establish a patent and intellectual property group.

Richard J. Byron ('64) has been named vice president, associate general counsel and secretary of the Wausau Insurance Companies. He joined the company in 1970 as an attorney.

John C. Oestreicher ('63), formerly a member of the Wisconsin Public Service Commission and chairman of the Wisconsin Hospital Rate-Setting Commission has become associated with the Madison, Wisconsin firm of Wheeler, Van Sickle & Anderson.

James T. Rogers ('66) has been elected as President-elect of the Wisconsin Association of Criminal Defense Lawyers.

Mark A. Nordenberg ('73) has been appointed Dean of the University of Pittsburgh School of Law. Nordenberg joined Pitt's faculty in 1977 and has been serving as interim dean since November 1985.

Paul R. Jaessing ('81) has been appointed as state counsel for the Wisconsin operations of American Title Insurance Company.

Gregory P. Crinion ('85), a member of the Litigation Section of Exxon Co. USA, has recently authored two articles on taxation, one published in the Wisconsin International Law Journal and the other in The International Lawyer.

Dr. Eugene E. Welch ('50) has retired as a Professor of Law and Director of the Criminal Justice Degree Program at the University of Georgia. Dr. Welch had previously retired as a Colonel in the US Air Force.

Leonard L. Loeb ('52) was recently elected President-elect of the Milwaukee Bar Association.

John E. Walsh ('75) has been elected President-elect of the State Bar of Wisconsin.

Todd J. Michell ('68) has been elected President and Director of the Milwaukee Estate Counselors Forum. The Forum is a professional organization of attorneys, accountants, certified life underwriters, trust officers and financial planners who specialize in estate planning.

Peter J. Hildebrand ('74) has become Assistant Vice President of Great American Insurance Companies in Cincinnati. He will head their casualty operation and supervise nationwide litigation.

Richard Baumann ('64) was elected to a three year term on the Board of Governors of the Commercial Law League of America. League members are experts in the field of credit and finance. Mr. Baumann practices in Los Angeles.

Robert M. Simmons ('73) has accepted the position of Regional Attorney for the US Department of Agriculture in San Francisco, CA.

Steven A. Felsenthal ('74), formerly Chief Staff Attorney for the Fifth Circuit Court of Appeals, has been nominated as a Bankruptcy Judge in Dallas, TX.

Peter M. Weil ('74) has been elected President of the Century City Bar Association in Los Angeles. Mr. Weil is also a member of the Board of Visitors of this Law School.

Joseph M. Troy ('80) has been elected Circuit Judge for Outagamie County. Mr. Troy formerly practiced with the Herrling, Clark firm in Appleton, WI.

John A. Franke ('76) has been elected Circuit Judge for Milwaukee County. Mr. Franke had been an Assistant US Attorney.

Donald R. Stone ('63) has become a shareholder in the Washington, DC firm of Burditt, Bowles & Radzius, concentrating on food, drug and health care law.

Tomas M. Russell ('67), a past president of the Wisconsin Law Alumni Association, has joined Hopkins & Sutter, Chicago, as a partner.

Thomas G. Barkin ('74) has been appointed Assistant Commissioner of the Proceedings Division, Public Utility Commission of Oregon. The Division is responsible for contested cases and rule-making hearings before the Commission.

Debra S. Katz ('84) and Lynne Bernabei have opened the firm of Bernabei & Katz, Washington, DC. The firm specializes in employment discrimination, civil rights and civil liberties, and consumer protection litigation.

Editor's Note

By now you have probably spotted the most recent incantation of our Law School symbol, the Gargoyle. Yes, now you too can own a Gargoyle tie! Each tie has a field of embroidered Gargoyles marching across, row after row. But why, many of you might ask, does this Law School use such an unusual symbol?

According to the dictionary, a gargoyle is "a roof spout carved to represent a grotesque human or animal figure, and projected from a gutter to carry rainwater clear of the wall." The term comes from the French "gargouilles," an onomatopoeic for the sound of the rushing water from their mouths. It has come to include any ornamental figures at or near the roof of a building. Some believe that they were carved to represent those fallen from the faith, or in our case, those who missed an exam.

On the original Law building, circa 1893, four ornamental statues or gargoyles were included at the corners of the main roof. No one seemed to attach any significance to these gargoyles until, during demolition of the building in 1961, one (or possibly two) of them fell undamaged as the wrecking ball swung. Dean George Young, who took great personal pride in obtaining the new building, was nearby and must have felt that there was some significance in this miraculous deliverance and ordered that one of the gargoyles be saved. That gargoyle became The Gargoyle, and is displayed today outside the main entrance of the current Law building.

What became of the other original is open to speculation. Upon becoming building manager, a few years ago, I decided to check out the rumor of a second gargoyle. The number of nooks and crannies in this polyglot building is truly amazing, but none of them contained the rumored second gargoyle. Just recently, however, I discovered that I may have been looking in the wrong place, in the wrong city as a matter of fact.

According to Prof. Margo Melli, the second gargoyle was discovered on the ground by a law student, who carried it away. The student she thinks has, or at least had, the gargoyle now lives Texas. Has anyone out there seen a brownstone gargoyle that bears some resemblance to Bucky Badger?

By the time I began as a student in 1969 the Gargoyle had become firmly attached to the Law School. When this magazine was founded by Dean Spencer Kimball in 1968, he chose The Gargoyle as the title and drawings of the little beast began appearing not only in the magazine, but also on anything else that we wanted to identify as belonging to the School.

Seventy years at the top of the building and a seventy foot fall might be expected to cause some wear and tear, but no one seems to remember any visible signs until very recently. During the winter of 1985/86, Madison was graced with even more snow than normal. In fact, snow got piled over the top of our Gargoyle. When it finally thawed (about June 15th!) we discovered that several fist-sized pieces had broken off. Gone were part of the lower jaw and fangs, part of the nose and the tip of one ear. In an effort to preserve the Gargoyle for another 90 years, we contracted with a graduate Art student, Kurt Wold, to restore the damage. He pointed out that the Gargoyle was also suffering from acid rain damage, and fine features were beginning to disappear.

Dean Thompson, who has witnessed the decay of carved facades at Cambridge as a Rhodes Scholar, decided to seek a long term solution. We decided to have a mold made, and a replica cast. The process was most interesting to observe, involving an inch-thick black plastic coat, followed by several inches of plaster to stiffen the mold. After the mold was removed, it was reassembled and a hydrite copy made. The copy weighs about 200 pounds.

It is possible that we will make a limited number of copies available for purchase, but delivery will not be included and you will have to provide a medical release.

Mystery Picture



And now for something completely different. The mystery picture in the last issue received a unique father-daughter response. The picture showed Ellen M. Frantz ('80) receiving her law degree from Dean Orrin Helstad. Ellen wrote to suggest a "twenty year rule" for these photos, since they make one realize how much time has passed. Ellen also identified David Lange. We also received a letter from Ellen's father, Conrad J. Frantz ('39).

This issue shows the student lounge and has the date "Spring 1971" on the back. The original print shows that the TV is tuned to a baseball game and the clock shows 1:45 p.m. Why aren't all these students in class?



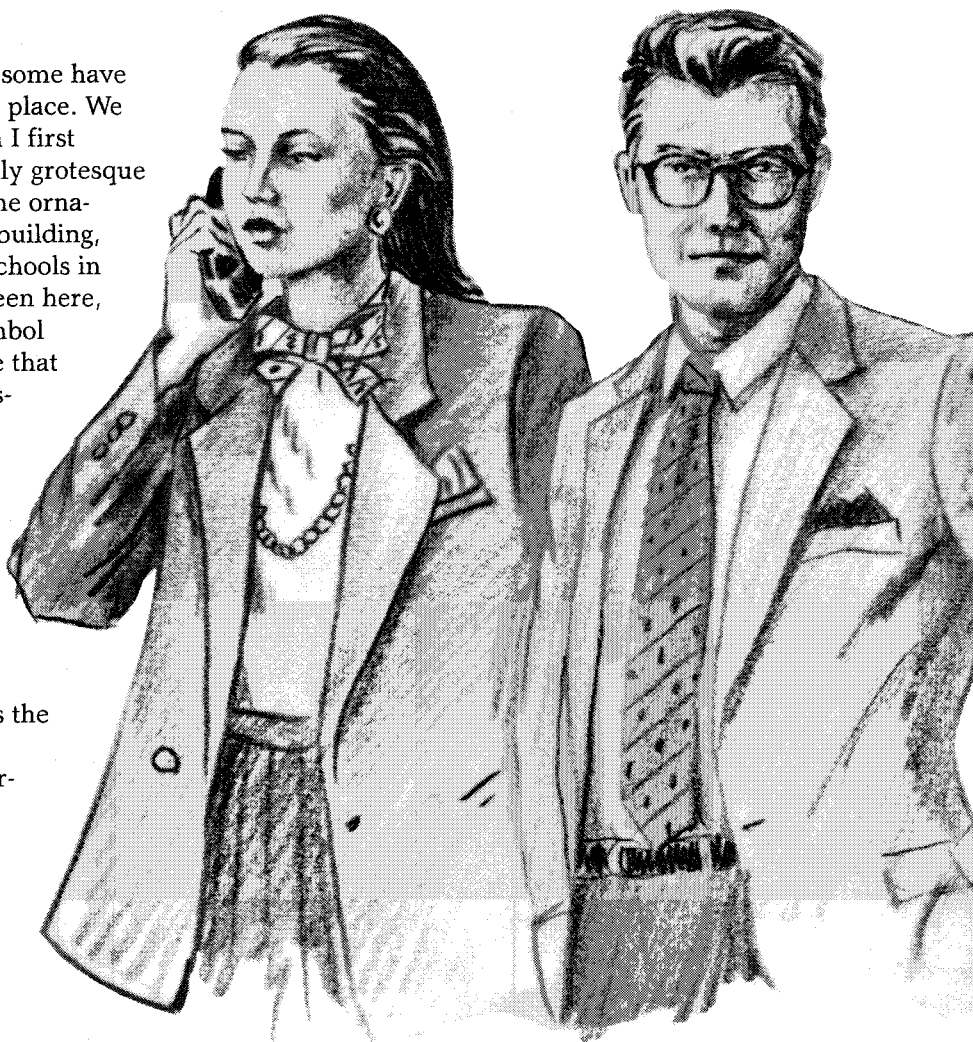
The "Old" Law School Ties

Dear Alum:

Some schools have their "halls of ivy," some have a school song or a traditional gathering place. We at Wisconsin have the Gargoyle! When I first arrived I wondered about this pleasantly grotesque symbol. What did a weathered old stone ornament, fallen from an almost forgotten building, have to do with one of the finest law schools in the country? In the few years I have been here, I have come to not only accept the symbol but to embrace it. It seems appropriate that the excellence of the University of Wisconsin Law School should be represented by our Gargoyle—ancient, yet timeless; mysterious, but our protective friend.

Well, now we can show the world where we are from and what our symbol is. We have created the "old" school tie, a silk blend necktie embroidered with a Gargoyle pattern. On the shield, held by the Gargoyle, is the founding date of the School, 1868.

As we approach our 120th Anniversary, you, too, can show our Gargoyle to the world.



Cliff F. Thompson
Dean

University of Wisconsin Law School Ties

Silk blend ties, available in Cardinal Red or Dark Blue, in a traditional Men's tie, or a Women's bow tie.

\$25.00, which includes sales tax, postage and handling

Make checks payable to "WLAA" and return to:
Wisconsin Law Alumni Association
University of Wisconsin Law School
Madison, WI 53706

	Number		Total
Men's—Blue	_____	@\$25	_____
Men's—Red	_____	@\$25	_____
Women's—Blue	_____	@\$25	_____
Women's—Red	_____	@\$25	_____
		Total	\$ _____