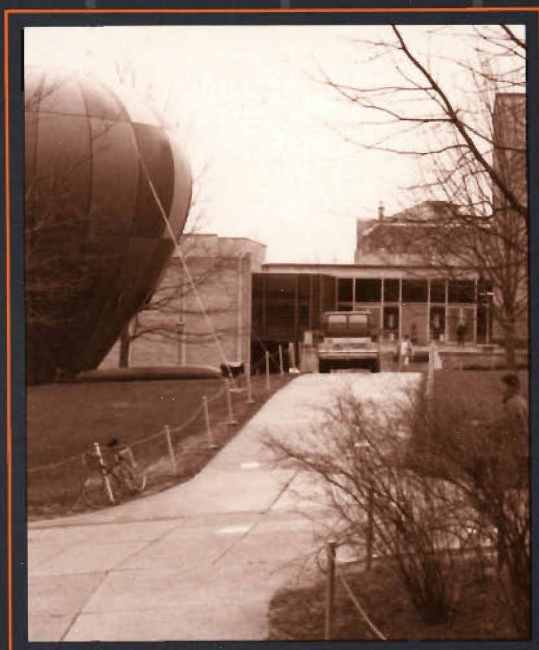


University of Wisconsin Law School Forum

# GARGOYLE



Volume XXI Number 1.

Summer 1990



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Cover photo: While considered as a tempo-  
rary solution to the space shortage in the Law  
Building, the inflatable addition has been  
found impractical.

# 'What Do You Say When You're Number One?'

## A Short Essay on the Real Thing

*Dean Cliff F. Thompson*

A selective survey of law deans in May of 1990 placed the University of Wisconsin second on a list of top U.S. law schools. More on this in a minute. Although Harvard surprisingly did not make the list, it did earn an "up and coming" notation for the recent campaign by some faculty and students to get more diversity in its hirings. "Harvard became great in the 19th century, stumbled through most of the 20th, and may rise again after A.D. 2000." Hawaii Law School also got an "up and coming" approval for overcoming its shaky start, and for "developing excellent programs on the Pacific outer rim." This was a remarkably astute assessment of the law school world.

Would I be mentioning all of this if Wisconsin had done badly in the poll? Of course not. The grimace of glory, however, should be suitably restrained. When U.S. News & World Report prominently included us three years ago in the top 20, newspapers around the region quoted me as agreeing with the ABA and AALS officials who denounce these polls because they are of little value and are likely to mislead the public. One of my Regents wrote me a one-liner: "What would you have said if the poll had ranked Wisconsin number one?" I replied, "They finally got it right!" Whatever the rank, one prefers inclusion to exclusion on a list, however idiosyncratic or idiotic it otherwise appears.

Why did we do so well? How did we get second place? The methodology of the poll helped a lot. More on this in a moment. First, I'll quote from the poll's report: "The University of Wisconsin Law School is a consumer's 'best buy' where traditional analytical and clinical training merge with interdisciplinary and law-in-action programs which are internationally renowned. It has fended off raids on its faculty by other leading law schools, while simultaneously receiving an award in 1989 from the Society of American Law Teachers for increasing the diversity of its faculty. Traditionally beset by relatively modest budgets, it has recently had substantial state increases for faculty salaries and its library, and private annual giving has increased fivefold."

Revelation time. Perhaps you've guessed by now that the "selective survey of law deans" consisted solely of me. Why not? The methodology and reasons are more clearly revealed in my summary than in other lists. Oh yes, I should add that we were second rather than first

because I adjusted us downward on the scientific possibility that I might be biased. Usually, the lists do not give any reasons or reveal methods, or if they do, it is quickly seen that unreliable data is used for judging peculiar criteria; the process is hauntingly similar to how some military planners calculated on the basis of dead body counts that we were winning the war in Vietnam.

My reflections on these matters arose because in March of 1990, U.S. News & World Report issued a press release which included the University of Wisconsin Law School on a list of 25 top schools, in which we ranked 20th for academic reputation. When the magazine appeared a week later, we had been dropped from the list! What happened? They had not changed our academic ranking, but our overall rank, which depended 75% on material and non-reputational factors, had been recalculated downward because the starting salaries of new graduates were lower than originally thought. This is really interesting. Set aside the fact that salary data is what schools choose to report, or that starting salaries all over the country were compared without adjustment for cost of living differences. The most startling fact is that a school which has more students going into the relatively lower paying public service jobs had a proportionally lower chance to be considered "top!" One aspect of the long tradition of the "Wisconsin Idea" is that many of our graduates pursue careers in the public service, and we remain quite certain that this is one of our continuing strengths and glories.

There are 175 law schools accredited by the ABA, which applies tough minimal standards for its approval. I'm sure these schools are like the people in the land of Lake Woebegon: they're all above average! And at least 50 of them are sure they are in the top 10. No one can stop publications from ranking law schools. In the same period (this calendar year) when USNWR thought starting salaries were so important, the Chicago Sun Times (Jan. 28) included us in an unranked list of 18 "often named as top law schools" and the National Law Journal (May 14) included us in an article about "the nation's (20) leading law journals." But if you are worried about incomplete information, or the unreliability of matching it to a definition of "top school" or the impossibility of agreement on that definition, look no further. For a model of unbiased scientific analysis, please begin again the first sentence of this article.

# Passing the Bar: A Brief History of Bar Exam Standards

*Prof. Margo Melli*

Most graduates of the University of Wisconsin Law School are spared one of the major rites of passage in the legal profession—the bar exam. As we all know, graduates of the two law schools located in Wisconsin—The University of Wisconsin Law School and Marquette University Law School—are not required to pass a bar exam to practice in Wisconsin. They are admitted on the basis of what is known as the diploma privilege, i.e., graduation from law school, without the necessity of taking a bar exam. The Wisconsin diploma privilege dates back to 1870 when the legislature authorized automatic admission to the bar by virtue of graduation from the law department of the University of Wisconsin. At that time, the only requirement for admission to practice law was that persons demonstrate their ability and learning before a circuit judge. There were no guidelines for the judges and the requirement of graduation from the law department of the University was an upgrading of the educational standards. In 1931, the diploma privilege was extended to include graduates of the Marquette University Law School.

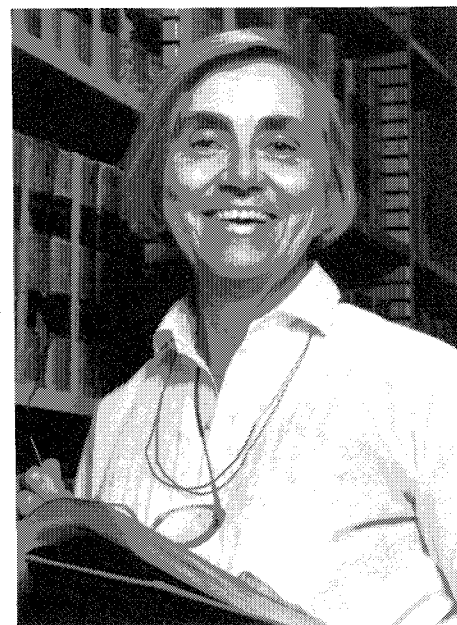
But, Wisconsin is the only American jurisdiction to have such a program. In all other states, as a significant number of alumni know, entry into the legal profession requires the aspiring lawyer to pass a bar examination. In fact, in Wisconsin, graduates of non-Wisconsin law schools are required to take a bar exam to qualify for admission. In 1989, of the 920 lawyers admitted to practice in Wisconsin, 176 were admitted on the basis of passing the bar exam. Four-hundred thirty-nine were admitted by diploma privilege and 205 on motion based on admission in another state followed by the necessary period of practice there.

Because of its almost universal acceptance as the main determinant of competence to practice law, the bar examination is a significant fact of professional life for lawyers. Preparing for, taking, and eventually passing the bar examination is perhaps one of the most important events in the life of a prospective lawyer.

New lawyers invest substantial amounts of time and money studying for them. It is not surprising, therefore, that the legal profession has devoted considerable thought and energy to studying, reviewing, and improving the process.

This article describes briefly the development of bar exam standards from a set of oral questions, administered and determined by a local court, to professionally developed tests on a national level and discusses the history of efforts to improve the bar admission process with particular reference to the work of the National Conference of Bar Examiners. I am serving as Chair of the National Conference of Bar Examiners this year. I was elected to the Board of Managers when I was serving as a member of the Wisconsin Board of Professional Competence, the state agency that oversees bar admission for the Supreme Court in Wisconsin. The Conference is the principal national organization concerned about the quality of bar exams and standards for admission to the bar.

In the 19th Century, bar admission standards were minimal. In fact, in the wake of Jacksonian Democracy, there was a movement in many states to open the bar to all "decent citizens"—regardless of training or ability. However, the norm was an oral exam, administered under the jurisdiction of the local court without any guidelines. Probably the best known description of such an exam—and one that clearly illustrated its shortcomings—was that conducted of a Jonathan Birch by a bar examiner named Abraham Lincoln and described in Beveridge's *Life of Lincoln*. Birch wanted to be admitted to the bar, but his examining district required at least two years apprenticeship in the office of a practicing lawyer. Abraham Lincoln heard about Birch's interest and called him in, explaining that there was no such rule in the Springfield District. Lincoln then proceeded to ask Birch some questions, such as what books he had read lately (which the examinee later said bore but a faint relation to the practice of law), told some stories, and wrote a certificate to the court



Margo Melli

Because of its almost universal acceptance as the main determinant of competence to practice law, the bar examination is a significant fact of professional life for lawyers.

recommending that Birch be admitted.

Beginning in 1880 with New Hampshire, states began to create central boards of bar examiners with state-wide jurisdiction. Wisconsin established such a board in 1885. By 1898, state-wide boards had been established in 12 states and by 1931 all states, except Indiana, had such a board. Gradually, these state-wide boards began conducting written examinations, although oral exams were not unheard of in less populous jurisdictions well into the 20th Century.

Early in the 20th Century, the American Bar Association began working to improve and strengthen the bar admission process. Its Section on Legal Education was concerned about the fact that bar admission standards were often at an extremely low level and varied greatly from state to state. The ABA Section had been instrumental in the founding of the Association of American Law Schools in 1900 and it was interested in a similar national organization for bar examiners. In 1931 the chairman of the Council of the Section appointed a committee of bar examiners from several jurisdictions to investigate the idea of a national organization of bar examiners. The National Conference of Bar Examiners (NCBE) was founded that year.

In the early years, the Conference concentrated on helping the states to upgrade their approach to the development of a bar exam. State bar examiners were discouraged from using questions such as "What is evidence? List the kinds" (nine minutes were allotted for answering the question); or "Define the term substantial compliance" (to be answered in six minutes); or "Give any two principles or rules used by the courts in the interpretation and construction of

wills" (five minute question). Instead the Conference promoted the type of essay question common to bar exams today, i.e., a statement of hypothetical facts presenting interrelated legal problems and requiring an answer in the form of a short composition that analyzes the facts and discusses and interprets the applicable law.

In 1958 the NCBE, along with the ABA Section on Legal Education and Admission to the Bar and the Association of American Law Schools, developed a Code of Recommended Standards for Bar Examiners. Those Standards stressed the need to give a written examination and emphasized that the exam questions should be hypothetical fact situations requiring essay answers. Standard 16 on "Purpose of Examination" recommended that: "The bar examination should test the applicant's ability to reason logically, to analyze accurately the problems presented to him, and to demonstrate a thorough knowledge of the fundamental principles of law and their application. The examination should not be designed primarily for the purpose of testing information, memory, or experience."

But it was not until the 1970s that the modern type bar exam began to take form. At that time, the Conference revolutionized bar examining by taking an entirely new approach. With a grant from the American Bar Foundation, it developed a six hour, multiple-choice exam that could be given by all examining jurisdictions and could be machine graded. It is known as the Multistate Bar Exam or MBE.

The development of such a test was brought about by several discrete factors. In the first place, the idea of a uniform test given to applicants in all jurisdictions had been discussed as far back as the 1940's as a means of upgrading bar admission standards. It was recognized that most other professions require their members to meet minimum national standards. The possibility of a national bar exam had been explored intermittently for about 30 years without being implemented, even though it was endorsed by the National Conference of Bar Examiners and the Section on Legal Education and Admission to the Bar of the American Bar Association, mainly because it raised fears that such a national exam would take the control of the admission process away from state boards of bar examiners. The Multistate Bar Exam provided a uniform test but left the control up to the jurisdictions, who administered the exam as part of their examination process, and set their own passing grade.

The possibility of a national bar exam had been explored intermittently for about 30 years without being implemented, even though it was endorsed by the National Conference of Bar Examiners and the Section on Legal Education and Admission to the Bar of the American Bar Association, mainly because it raised fears that such a national exam would take the control of the admission process away from state boards of bar examiners.

Second, increases in the numbers of applicants taking the bar exam had overburdened the resources of many states and had led to what they considered unacceptable delays in completing the grading process. Jurisdictions were looking for help with the increased number of applicants. In just two decades, the number of applicants to the legal profession almost quadrupled, from 16,000 in 1960 to over 58,000 in 1980.

Finally, a uniform test seemed possible because advances in testing research and construction had shown that it was possible to use a multiple choice exam to test mastering of legal concepts. A multiple choice exam made the grading of a large number of tests in a short amount of time feasible because the tests could be machine graded. Several of the larger states had pioneered the idea with satisfactory results. In addition, most other professions—medicine, pharmacy, accounting, veterinary medicine, nursing, engineering and architecture—used multiple choice exams for their uniform tests.

The Multistate Bar Examination covers six basic subject matter areas: constitutional law, contracts, criminal law and procedure, evidence, real property and torts with a total of 200 multiple-choice questions. It provides the state examining authorities with the ability to cover a much wider range of topics than an essay exam can include, thus improving the validity of the exam. It offers them the reliability of an objective test in contrast to the subjectivity associated with the grading of an essay. Fifty American jurisdictions, including 46 states, the District

State bar examiners were discouraged from using questions such as "What is evidence? List the kinds" (nine minutes were allotted for answering the question); or "Define the term substantial compliance" (to be answered in six minutes); or "Give any two principles or rules used by the courts in the interpretation and construction of wills" (five minute question).

## These changes will give impetus to the nationalization of bar examining and to interest in national standards.

of Columbia, and three territories use the MBE for one full day of their bar exam.

In 1980, the National Conference of Bar Examiners made another contribution to the bar exam process by introducing the Multistate Professional Responsibility Exam or MPRE. This is a 50 question two-hour multiple-choice exam that is intended to measure both an applicant's awareness of the professional responsibility considerations in a given fact situation and the applicant's knowledge of the ethical rules applicable to that situation. The questions are designed so that the correct answer is the same under both the American Bar Association Code of Professional Responsibility and the American Bar Association Model Rules of Professional Conduct. A small number of the questions also test knowledge of the American Bar Association Code of Judicial Conduct.

The MPRE was a response to interest by state bar examining boards in testing applicants broadly on knowledge of ethics. Although many jurisdictions include ethics issues in their essay examinations, the essay format limits the coverage narrowly. The 50 question MPRE allows much wider coverage. Unlike the MBE, the MPRE is administered by the National Conference and is not a part of any state's bar examination. Thirty-eight American jurisdictions, including 35 states, the District of Columbia and two

territories, require that applicants to their bar have passed the MPRE.

Because the MPRE tests only one subject matter, ethics, it requires the examinee to master and attain a passing score in that area. It does not allow the examinee the opportunity that the MBE or an essay exam gives with their multiple subject matter coverage to have a better knowledge in other substantive areas make up for lack of knowledge of the ethics rules of the profession.

The most recent effort of the National Conference of Bar Examiners in the area of test development is the Multistate Essay Exam or MEE. Like the MBE and MPRE, the MEE is designed to improve the quality of the bar examination process. But, unlike those two tests, which brought a new testing concept, the multiple-choice question, to the bar examination, the MEE is an attempt to improve the quality of what has become, in the latter part of the 20th Century, a traditional staple of the bar examination, the essay question.

The Conference has a long history of concern with the difficult task of drafting good essay questions. Since its inception, the Conference has published articles in the Bar Examiner discussing the problems connected with drafting essay questions and has sponsored panel discussions and seminars on the subject. In 1952, the Conference began the Question Library, a clearinghouse of bar exam questions. That has served as a source of ideas for bar examiners drafting questions for their own exam. Then in July 1988, the Conference began offering the Multistate Essay Exam or MEE that made available to states a complete half day of testing in nine subject matter areas: civil procedure, constitutional law, contracts, corporations, criminal law and procedure, evidence, real property, torts and wills, estates and trusts.

This exam offers the states the advan-

tage of essay questions that have been reviewed by two groups of experts with a specialty in the areas covered by the questions and pretested under conditions similar to an actual bar exam. The Conference hopes the jurisdictions will find this exam as helpful as the others have been.

Several Wisconsin faculty members have been involved in the efforts of the National Conference of Bar Examiners to upgrade bar examinations by participating in that organization's bar examination development process. Walter Raushenbush serves as a member of the Real Property Drafting Committee for the MBE. Dan Bernstine serves as a member of the Torts Drafting Committee for the MBE. Gordon Baldwin has served as a member of the Constitutional Law Drafting Committee for the MBE and as a member of the Drafting Committee for the Multistate Essay Exam; I have served as chair of that Drafting Committee.

This brief review of the development of bar exams illustrates the vast changes that have occurred in the process in the last century. I can only speculate about what the next 100 years will bring, although there seems to be no interest in the Wisconsin "diploma privilege" approach. However, there are changes in the legal profession that will probably affect state based bar exams: the increasing practice of large law firms to become national institutions with offices in several major cities and the mobility of young lawyers who may practice in two or three states in their first five years of practice. These changes will give impetus to the nationalization of bar examining and to interest in national standards. Today, for example, 31 of the 50 jurisdictions that give the Multistate Bar Exam will accept a transfer of an MBE score from an exam taken in conjunction with another state bar exam.

# UW Law School-The World

*The axiom that the boundaries of the University are "the boundaries of the state" no longer applies. A world-class University necessarily is interested in the world and effective in addressing and solving world problems.*

*The three following articles describe recent activities by our faculty in Europe, Central and South America and the Far East. They demonstrate our interest in world problems and the recognition the world offers to our faculty.*

## Ibero American Studies

Kathleen Conklin '90

Through a variety of academic programs and outreach activities, the University of Wisconsin maintains considerable contact with Latin America. Much of the more intense and practical involvement is a result of the programs directed by UW Law School Professor Joseph R. Thome.

Thome moves between two worlds and academic communities. He is a full professor of law, teaching contracts, Latin American legal institutions and modernization in the Third World, and related courses, and also is the Director of the Latin-American and Iberian Studies Program in the College of Letters and Science. This program coordinates or supports activities with Latin America, Spain and Portugal, including BA and MA programs. He is one of the most articulate, if soft-spoken, commentators on the complex economic and legal issues facing what he calls the real third world countries.

One focus of Thome's legal studies is land reform. He is heavily involved in identifying the economic problems, legal obstacles and methods of modifying the legal structure with respect to land ownership.

Countries such as Colombia, Nicaragua, Bolivia and Chile have existing legal systems regarding land ownership. The problem is the distribution. Typically, ninety percent of the land is controlled by 5% of the population. Most of the rural population has little or no land whatsoever. Besides the oppression of workers which results from such a heavy land concentration, there is a troublesome concentration of economic and political power in the elite.

But the legal structure is itself an obstacle to this redistribution. Constitutions guarantees that a property owner may do anything with property. There

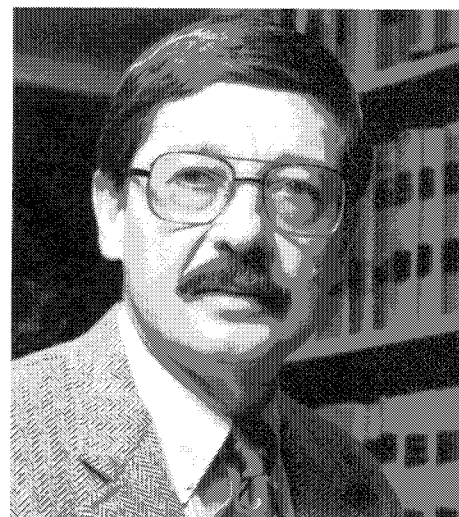
is no obligation to produce. Eminent Domain laws are very cumbersome and require compensation based on market value and paid in cash. In addition, land usually can be acquired for public uses or when it is abandoned or very poorly used.

New land reform laws attempt to remedy this situation by establishing faster procedures and special tribunals. These laws also permit expropriation of land due to excess size alone. Compensation is based on tax appraisals and is payable over a period of 10-20 years, rather than in cash.

Thome has also been studying a relatively recent phenomenon in providing poor people with access to the legal system and public services. In the last ten years, Latin America has experienced a significant legal development. New types of legal services programs operate with communities of poor people rather than with individuals. For example, the squatters living in tin and cardboard shacks are able to acquire legal identity as a group, through the program. Once organized as a community, they can pursue enforcement of their legal rights to minimum wages, social security benefits and other entitlements. The goal is not so much to create laws but to access those already on the books and enforce them.

Often these groups have otherwise been ignored by the courts or administrative agencies. With the assistance of the legal services program, they have become better organized. Specific services provided by the program include paralegal training, basic management skills and information about how to use the press and existing legal systems. In the meantime, the program provides education and representation until the communities are empowered to act on their own.

Inter-American Legal Services Associ-



Joseph R. Thome

Typically, ninety percent of the land is controlled by 5% of the population. Most of the rural population has little or no land whatsoever.

ation (ILSA) is an umbrella group which helps the legal service groups, which in turn help the impoverished communities. ILSA is funded by the Inter-American Foundation, Canadian and European foundations and churches. Dutch foundations and churches also provide tremendous support.

Thome's research interest has centered on how the law can be used to promote social change from the bottom up. His study of the legal service programs operating in Latin America suggests equitable development can be brought about in more legal rather than revolutionary ways. Revolution, he suggests, becomes the preferred method only after years of repression, exploitation and perversion of the legal avenues to political power. Even then the outcome is an unhappy one since the revolution provides no experience in structuring an appropriate accessible government.

The goal of stable and mutually beneficial relationships with third world countries is admittedly an ideal one. But growing populations and technological integration make such relationships an absolute necessity. Thome gives two reasons for supporting the legal reform which would open markets and provide equitable distribution in Latin America. One, the people of those countries would have a personal stake in their economy, and society, thereby making it more productive and stable. And two, those countries would become better markets for US products.

Thome notes that US policy now reflects a tendency to support the traditional governments which represent the elite and their social and economic structure. Even if it is a repressive regime, we automatically support anything which appears to be an anti-Marxist government. In the interim, until the US stops attempting to solve disputes by sending troops, the propagation for social change must come from education.

"We need to be educated. What we do is very influential," said Thome. As he sees it, he is primarily an educator about what underdevelopment is and what role the US plays in that underdevelopment. He is guardedly optimistic about the awareness and direction of law students.

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The goal is not so much to create laws but to access those already on the books and enforce them.

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Of the students in his Latin American Legal Studies courses he admits

Most are self-selected; they already have an interest in the issues confronting third world countries. But while law students in general seem to be getting brighter, better informed, there is also much less social concern than was evident in the student body in the '60's and '70's. More seem to be interested in individual careers and achievements. There is just a different focus.

Still there are students whose interest has that social aspect and are willing to sacrifice some self interest. Despite the trend toward individualization of interests, Thome predicts a role for the law student with a gestalt or universal vision. Because of technological capabilities and other advances, the law student must be capable of highly integrated work.

Part of the apparent student apathy may be due to not knowing the potential extent of influence in certain jobs. There are certainly positions available with human rights groups in this country, private foundations and educational organizations. The World Bank and other international agencies provide a somewhat greater scope of opportunity. In Latin America itself, there is work to be done through the Ford Foundation, Agency for International Development and the UN. But, Thome admits, these career opportunities are limited. While there has been some thought toward providing more legal internships in Latin America, money is an obstacle. An even greater consideration is the fact that Latin America already has a good population of lawyers. For students and lawyers wanting to bridge the two worlds and legal systems, there are probably better and more effective opportunities within the United States itself.

This country will also become more aware of the world situation by facilitating exchange of all types of students. Thome hopes more third world students will have the opportunity to study in this country. Students from Korea, Japan and Taiwan are coming in, but, he notes, they do not exactly represent underdeveloped countries. Scholarship programs may be needed to get students other than the elite. Contributions by businesses, which are already tax deductible and good public relations, should also be encouraged as supporting a certain vested interest in the world economy.

Although there is much which can be done through education, Thome emphasizes that we must not have miscon-

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The point is that laws themselves may create enforcement problems when there is no inherent economic incentive to follow them.

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ceptions about the scope, urgency and severity of the legal issues ahead.

Most crucial is an understanding of the interaction of those legal problems. For example, because many of Brazil's people have no land to call their own, they move to the forests and clear them to live. The natural rain forest in Brazil is rapidly being destroyed. Meanwhile, hundreds of thousands of acres of privately owned land lie fallow and unproductive. With more equitable distribution of productive land, the pressure to destroy the rain forest would lessen. But it is not laws per se which can remedy the destruction of natural resources by a desperate people, those laws must be founded on sound economic principles.

The point is that laws themselves may create enforcement problems when there is no inherent economic incentive to follow them. This is further illustrated in what Thome calls the "Rambo mentality" of US involvement in Latin America. In Colombia, for example, current trade practices are destroying coffee prices, the only legitimate crop exported from that country. At the same time, the US is spending billions of dollars on obsolete military equipment to quell the drug cartels. In other words, we are using legal and economic power to eliminate the symptoms, not to destroy the cause of the pressure to engage in illicit drug trafficking.

Prof. Thome is convinced about one thing: "The real evil is in poverty, oppression and inequitable legal structures. Legal reform must address those fundamental issues. It is not enough to knock off the problem people."

*[Editors Note: As confirmation of the Law Schools interest and influence in Latin America, two second-year students, Mary Pitassi and Ed Olson, were recently selected as Tinker Fellows and will spend time in Latin America. Mary will study labor relations and labor law under the Pinochet government. Ed will work with one of the community legal service programs mentioned in this article.]*

# The Beijing Conference on Legislation

*Prof. William C. Whitford*

I had the good fortune to attend a seminar on "Legislation" held on the campus of Peking University, March 14-16, 1990. The conference was co-sponsored by The Faculty of Law, Peking University, the Legal Bureau of the State Council, and the Ford Foundation. The conference was originally scheduled for June 1-3, 1989 but "postponed" for obvious reasons. It was then rescheduled. Participants at the conference included about 40 Chinese Nationals and 10 citizens of other countries. The Chinese participants included both academics from various law schools around the country and employees of the legal drafting departments of various state agencies, including the two most important agencies in this respect, the National People's Congress and the State Council. The foreign participants came from 5 different countries. Most of the foreign participants did not have special expertise in the Chinese legal system but were asked to draw on their experience in their own countries with parallel legal problems. Conference proceedings were in English and Chinese, with simultaneous translation of oral comments for the benefit of those who spoke only one of these languages. Papers prepared for the conference were also translated into both languages before the beginning of the conference.

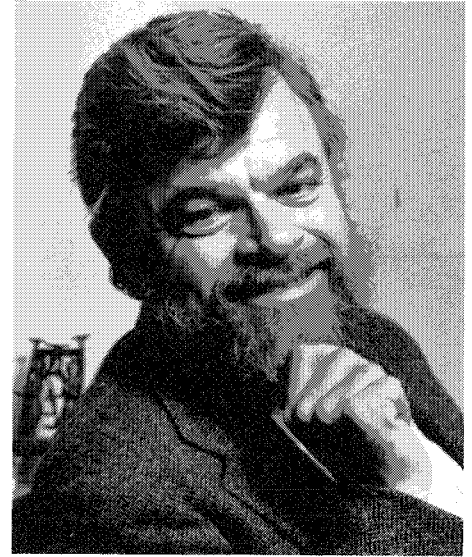
Legislation is a significant topic in any country but it is an especially revolutionary one in the Chinese context. Until the end of the cultural revolution China did not have what lawyers trained in western legal systems would regard as a professionalized legal system or even the rule of law. This was true throughout history, both before and after the Communist revolution. During this period the Chinese did not attempt to control the decisions of local bureaucrats and judges through the adoption of governing rules and the development of a profession specializing in the interpretation and application of these rules. Rather, they emphasized educating officials in the proper moral and/or political principles, so that these principles could guide the exercise of discretion in a satisfactory manner. Indeed, for a period beginning the "anti-rightist" campaign in 1959 and ending approximately with the end of the cultural revolution, lawyers or legal specialists tended to be vilified. The law schools were even closed for periods during the cultural revolution. And when open, they did not award their students law degrees and in

the classes they taught emphasized political theory more than legal doctrine. Few judges were appointed because of their legal training; most judges got their jobs because of political loyalty. In these circumstances, it is not surprising that at the end of the cultural revolution the number of people with formal legal training in China was very limited.

Shortly after the end of the Cultural Revolution, which the Chinese date with the arrest of the Gang of Four in 1976, the Chinese Government and the Communist Party adopted a policy of legality and embarked on a program of legislation. This program has featured the adoption of general statutes by the National People's Congress and the adoption of regulations under these statutes by the State Council. Parallel agencies have been established at provincial levels of government. In recent years efforts have been to professionalize the judiciary. A high percentage of law school graduates are now being assigned to judicial positions.

This Conference marked the first time Chinese academics and important staff in the legal drafting departments have gotten together to discuss the program of legislation since the tumultuous events in Beijing of May and June, 1989. Although there have certainly been changes in China since then, the government has indicated its intent to continue the legislation program. Conference participants seemed particularly interested in any data that would suggest whether that was in fact the case. Since June, 1989, the pace of enactment of legislation and regulations by the National People's Congress (NPC) and the State Council has apparently declined slightly. Recent statistics reported at the Conference indicate that the output of the NPC has declined 15% and of the State Council 40%. While this decline concerned some conference participants, staff members of these two institutions insisted there had been no change in policy and that the decline in "output" was related to the complexity of the matters with which they are dealing and the like.

A wide range of topics were covered by the papers delivered at the conference. The greatest percentage of the papers, however, related to the need for more legislation to facilitate China's program of Economic Reform. Initiated at about the same time as the legislation program, the Economic Reform program involves both a de-emphasize on the role



Bill Whitford

Until the end of the cultural revolution China did not have what lawyers trained in western legal systems would regard as a professionalized legal system or even the rule of law. This was true throughout history, both before and after the Communist revolution.

of central planning in the operation of state enterprises and the introduction into the economy of private enterprise, both domestically and foreign owned. This decentralization of economic decision-making has brought about the need for rules both to define the identity of different economic entities (e.g., a basic corporations code) and to guide their interaction (e.g., a contracts law based on market transactions, rules of unfair competition). There seems to be a general consensus that legislation is the best method to meet this need.

Although a number of other topics were mentioned, only occasionally was any mention made about legislation defining or regulating the Country's political structure (e.g., method of selection of local councils) or individual rights. And

Shortly after the end of the Cultural Revolution, which the Chinese date with the arrest of the Gang of Four in 1976, the Chinese Government and the Communist Party adopted a policy of legality and embarked on a program of legislation.

although a few foreigners tried to raise questions about the role of the Communist Party, both in the legislative process and in the government of economic enterprise in a period of economic reform, there was virtually no discussion of this topic. I have little doubt that the reluctance to discuss these subjects was a reaction to last year's crisis in Tian'anmen Square.

On the other hand, in the area of economic reform, as well as some other topics, discussion was robust and the disagreements many. Though there seemed to be nearly universal enthusiasm for continuing the program of economic reform, there were differences of opinion about how to proceed. I noted that both the comments about economic reform and the stated disagreements were often cast in general and tentative terms. For example, there were continual calls for enacting basic laws essential for establishing a legal basis for market transactions, such as laws defining what are legal entities and concerning their internal governance, or providing a legal basis of the trading of shares in enterprises. Calls were made for more laws to promote research and development or for the protection of consumers. A common criticism of such proposals was that they were too general, but the critic did not provide the specificity either. When more specific comments were made, they tended to be criticisms of somebody else's proposals. For example, it was pointed out that many enterprises did not have the money needed to pay judgments (or fines for violating environmental or consumer protection regulations), and that if enterprises were not required to continue to remain responsible for workers' social needs, even if the workers are redundant, there was no substitute social security system for them. Again, however, practical solutions to these problems were not proposed.

In general, it seemed to me that there

were fewer suggestions for specific programs or legislative initiatives than I would expect to hear at a conference in the United States on a similar topic (though there were some). Perhaps this reluctance also was a reaction to the events of last year—the hypothesis being that specific suggestions were more likely to get one in trouble. It is possible, however, that at least in part this tendency reflected simply Chinese conventions about the appropriate level of abstraction at an academic conference, a convention that might well have been reinforced by the very general subject matter of the conference.

There were two papers delivered at the conference that provoked particularly lively discussion and are worthy of special mention. One paper dealt with the relation between law and morality, and the topic that produced the most animated disagreement was the extent to which the society should continue to rely on moral teachings as a method of social control. Some participants at the conference were more willing than others to use law as an almost exclusive means of social control, at least social control emanating from government. The second paper concerned the implementation of legislation. It was pointed out that because of ignorance of the law (by judges and administrators) as well as corruption in government, much of the legislation already enacted is not being applied fully. There was also reference to "some leaders" who expect their word to be followed, even if inconsistent with existing legislation. One reaction to this paper was to suggest that perhaps China was enacting legislation more quickly than the system for implementation of new laws could handle. This implicit suggestion, that the pace of legislation should be slowed, was one of the more specific suggestions during the entire conference, but it provoked considerable hostility from conference participants. Though there was agreement that implementation problems were widespread, the majority seemed unwilling to deal with them by slowing the pace of legislation, perhaps fearful that this would risk the policy of promoting legislation altogether.

It seemed to be the general consensus by all concerned that the conference was a great success. A number of participants commented that the discussion was more spirited and there were more conflicts of opinion than had been anticipated. I took such comments as suggesting that perhaps the Chinese participants were feeling more secure in expressing their personal opinions than they had felt in the

Some participants at the conference were more willing than others to use law as an almost exclusive means of social control, at least social control emanating from government.

first months after Tian'anmen Square. It was also clear that there was nearly universal enthusiasm among Conference participants for the program of legislation, with a full understanding that this represented a shift from traditional methods of social control in China to a more westernized system. Such a change has considerable significance for the role of lawyers and law schools in Chinese society, of course, so in some sense the program of legislation can be seen as in the self-interest of those attending the Conference. It can also be seen as a commitment to control of official discretion, and in that sense a commitment to reducing the power of present officeholders.

No comment on this Conference would be complete without noting two additional matters. First, my decision to attend the conference was not made without difficulty. I was aware, and made aware by numerous friends, of the feeling that China should be boycotted as a protest of violent ending of the Tian'anmen Square protests. I decided to attend because I felt that the people at Peking University Law School, the primary organizers, were not the people who should be boycotted, and my experience has convinced me that I was right. I think no purpose is served by avoiding contact with the very people who were the primary victims of the crackdown. Whether one should simply be a tourist in China at this time is a more difficult question. Tourism is down, and there is little doubt that it is taking an economic toll, perhaps an appropriate one.

My final point is simply to note the extreme generosity with which the Chinese hosted the foreign guests at the conference. English-speaking students at the Faculty of Law were particularly giving of their time, in translating for us and in guiding us to the many tourist sites in the Beijing area. A special thanks is due to Dean Wang Chenguang of the Peking University Law School, who organized the conference and saw to it that our every need was met.

## Law in the Baltics

Prof. Zigurds L. Zile, Foley & Lardner-Bascom Professor of Law

[Adapted from remarks at the ABA National Institute—"Change in Eastern Europe and the Soviet Union: Implications and Opportunities for Western Business," New York, New York, April 5-6, 1990.]

Western businesses, we are told, are enthusiastically plunging into the transformative processes in the Soviet Union and the countries of Central and Eastern Europe. And we are, on various occasions, invited to celebrate what is described as new and exciting opportunities.

The general mood in the Western business circles, however, seems less festive than we are sometimes led to believe. Most of the enthusiasm belongs to the Americans, I'm afraid. It belongs to a people who intermittently suffer from the effects of combining measured pragmatism with an excess of rapture.

Pragmatism today urges sober assessment of the causes, the nature, and the probable course of the recent events in Europe and the Soviet Union. Pragmatism also urges close attention to careful design and development of relations, including economic relations, appropriate under the actual conditions. However, the ecstatic interest in the subject that, apparently, accompanies this pragmatic process is apt to distort the perceptions of what the actual conditions are.

It is a legal counselor's job to caution the business venturers to temper their enthusiasm with a keen appreciation of the risks as well as the potential rewards. And it is only natural for a legal counselor to give much weight to "the legal element" in this risk-reward assessment. Indeed, the lawyer is expected to locate and gauge the positive law footings and doctrinal beams thought essential for the support of commercial transactions.

But such firm legal underpinnings, often referred to, with comforting familiarity, as "the legal infrastructure," should not be assumed in the case of the Baltics—the subject area of my remarks.

The relevant legal infrastructure in the Baltic states today can be likened to a multi-layered sand dune. A close examination may reveal different hues and a variegated texture but it's all sand, nonetheless. A set of three perspectives on the law in the Baltics, I believe, support the metaphor. I would like to take up each of them in turn.

First, the USSR regards the occupied Baltic states as constituent parts of the Soviet federal state. In Soviet view, they are among the fifteen union republics. The USSR Constitution of 1977 purports to define their status, their governmental structure and powers, and their external relations. The latter include relations with the federal government in Moscow as well as those with the other republics. The federal constitution contains a supremacy clause which provides that federal law prevails over conflicting republic law. The list of federal powers is comprehensive. The USSR has jurisdiction to ensure unity of legislative regulation throughout the country; to direct the national economy; and to conduct foreign trade and other foreign economic activities on the basis of state monopoly.

At the same time, the federal constitution refers to the union republics as "sovereign." It also grants to them the right to enter into relations with foreign states, conclude treaties, and join international organizations, under federal control, of course. And, finally, each union republic retains the right freely to secede from the USSR, according to procedures (being worked out at this very time) aimed at denying this right as a practical matter.

These constitutional forms, providing for all-pervasive central control and, at the same time, for putative republic autonomy, are responsible for much of the legal uncertainty today. The observed weakening of Moscow's grip has invited the republics to test whether the previously nominal self-rule might be transformable into a broad sphere of genuine independence.

Thus, Latvia—at the time still functioning as the Latvian Soviet Socialist Republic—amended the republic constitution on November 11, 1989. The amendments state, among many other things, that the Latvian Supreme Soviet, or Council, alone has jurisdiction to determine to what extent federal legislation will have an effect on Latvian territory. Moreover, in direct contradiction to the vertical structure of the USSR procuracy, another provision empowers the Latvian Supreme Council alone to appoint the Latvian republic procurator. The procuracy, of course, has the most complete oversight of the uniform application and execution of all laws.



Zigurds L. Zile

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Along the same lines, the Lithuanian Supreme Council announced, early in January, that the USSR Law on Constitutional Review was invalid on the territory of the Lithuanian Republic as of the day of its adoption.

With a regard to economic matters, for instance, Estonia suspended a portion of the Law on the USSR State Budget for 1990. The Estonian enactment essentially erased the distinction between federal and republic taxes and revenues. The Estonian law simply redefined both categories as entirely a republic concern.

There have been scores of other similar legislative challenges in the Baltics.

The federal government in Moscow has, on occasion, ordered the Baltics to reverse their allegedly unconstitutional or unlawful decisions, but without much effect.

The center, that is Moscow, has responded to the growing disarray in the country by a stream of its own legislative enactments and executive decrees which it expects to see applied throughout the realm. But revisions often follow before the implications of the original texts have been tested in practice or, for that matter, sufficiently understood. Since the federal criterion is constantly in flux, the validity of even compliant republic legislation is in doubt. Thus, even those who wish to play by Moscow's rules are poorly informed of what the rules are. Or, to put it in another way, even those who let Moscow's formal constitutional system define their legal universe are rewarded by most limited legal certainty.

Now, to the second perspective on the law in the Baltics. Moscow has directly contributed to the legal uncertainty in the Baltics by singling them out for special treatment within the federal order. I have in mind the USSR Law of November 27, 1989, on the economic independence of the Baltics.

This law has two objectives:

First, it is to serve as a piker's gesture towards the Estonians, Latvians and Lithuanians in view of their rising demands

for restoration of independent statehood. It is a crumb, not even the proverbial half-loaf, tossed in their direction in the naive hopes that it will satisfy their craving for the whole.

The law's second objective is to serve as an economic demonstration project in the helter-skelter to rescue the Russian empire. It is a cynical attempt to exploit the remnants of initiative, workmanship and sense of individual responsibility—a tradition which the forty-five years of continuous Soviet occupation have not entirely eradicated. For instance, statistics show that labor productivity in the three Baltic states is far above the country's average. The three have the lowest percentages of persons living under the poverty line. Also, in the Baltics, the average output of goods and services of the recently permitted so-called cooperatives, or quasi-private enterprises, is more than three times the country's average.

The law on economic independence itself is a couple of pages of banalities whereby Moscow gives up none of its powers to meddle. After listing the ways in which economic life in the three occupied states remains subject to Moscow's diktat, the law surpasses itself by adding a catch-all Article 6: "It is established, [it states], that USSR legislative acts regulating economic relations are in effect on the territories of the indicated republics insofar as they do not hinder the republics' changeover to economic independence."

Confronted with layered legislation one wonders about the locus of authority regarding specific legal questions. In the Baltics (no less than in the USSR) today, there is no tradition to serve as a guide. The temper of the times, the slogans of political and economic restructuring, argue for discarding a flawed past. Indeed, the tenacious ways of the past are to be fought rather than consulted. Yet there is not even an intelligible vision of the political and economic order of the future to take the place of tradition's guidance.

In the Baltics, the federal government's faltering half-measures are regarded with disdain. Amidst the growing chaos the Balts have come to consider their economic independence unthinkable without political sovereignty. And this striving towards sovereign statehood suggests a third perspective on the legal infrastructure in the Baltics.

The Baltics do not seek secession. Instead, they insist on the removal of

The observed weakening of Moscow's grip has invited the republics to test whether the previously nominal self-rule might be transformable into a broad sphere of genuine independence.

Soviet occupation, whereby their statehood, still recognized in international law, would be restored in fact. Taking the secession route within the framework of the USSR federal constitution is regarded as morally repugnant as well as objectionable from a legal point of view. That route would betray the collective memory of these nations and forfeit their claim of international legitimacy. Estonia, for instance, made this point on April 2.

On March 11, the Supreme Council of Lithuania proclaimed "the restoration of the exercise of sovereign powers of the Lithuanian state, which were annulled by an alien power in 1940. From now on," the declaration continued, "Lithuania is once again an independent state."

On March 30, the Supreme Council of Estonia stated that it did "not recognize the legality of state authority of the USSR on the territory of Estonia." It further declared "a beginning of a period of transition" towards "restoration of the republic of Estonia."

Previous to these actions in Lithuania and Estonia, the Latvian Supreme Council had declared, on February 15, that: "It is necessary to do all to restore the state independence of Latvia and transform it into a free, independent Latvian state." The same declaration repudiated the 1940 Soviet decree that had forcibly brought Latvia into the Soviet Union.

Acute legal complications and uncertainties are bound to follow declaration of restored national independence in the face of Moscow's resistance. Dual power raises havoc with legal infrastructure.

An outright declaration of independence, as it happened in Lithuania, in principle, turns the law's clock back to mid-June of 1940; that is, to the date of the Soviet military invasion. As a result, the declaration would seem to invalidate the occupying power's subsequent acts. Indeed, the Lithuanian declaration states: "The February 16, 1918, Act of Independence of the Supreme Council of Lithuania-

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nia and the May 15, 1920, Constituent Assembly Resolution on the restoration of a democratic Lithuanian state have never lost their legal force and are the constitutional foundation of the Lithuanian state. . . . [The] constitution of no other state has jurisdiction within it."

By the same reasoning, a declaration of independence would revive the laws of the independent republic which were in force at the time of the Soviet invasion and, simultaneously, void the legislation of the Soviet period. Invalidation of the subsequent expropriations, for instance, could unsettle all property rights. This, in turn, would cast a pall of uncertainty over both ongoing and contemplated commercial transactions which invariably concern property.

It has been suggested that much of the commercially relevant legal infrastructure might be found in the law which dates back to pre-revolutionary times. The formulation is, certainly, inapposite to the Baltic states; their respective legal orders were not lost in a revolution.

That aside, it is technically true that, upon a declaration restoring independence, the laws on business organizations and civil and commercial law, all in force in June of 1940, would come to life. However, they might not form a lasting set of legal tools for today's modern transnational commerce.

In fact, while the Baltic lawyers today take the restoration-of-independence scenario seriously, they do not, apparently, contemplate rebuilding their countries' economies with revived but, to some extent, obsolete legal mechanisms. Instead, they are searching for possible adaptable models from the more recent Western experience.

\* \* \*

Let me conclude by noting that the Soviet rule has excelled mainly in tearing down existing institutions and ways of

life. It has a sorry record of building anything viable in their stead. When put to test, the Soviet power inclines to respond by what it has been good at—repression.

It stands to reason that Moscow will expend much human energy and, possibly, considerable political capital to stall the independence process in the Baltic states. This resistance will only retard Moscow's fumbling effort to transform its economy. But if, as often asserted, the transformative process in the Soviet Union is irreversible, so is the independence process in the Baltic states.

In the meantime, some transnational commerce might be carried on despite the described softness of the legal infrastructure; despite the many present uncertainties regarding property titles, organizational forms and validity of promises.

The representatives of private and quasi-private entities in the Baltics, I surmise, will continue avidly to seek ways to enter into, preserve and expand relationships with Western partners. It is for the simple reason that their economic interest in such contacts is fortified by strong political considerations.

If this happens, any transaction will be like a new cell in the developing market organism. The parties to a transaction are likely to strive to promote and preserve their relationship in expectation that the developing market will yield further mutual advantage. The parties are not likely to exploit legal uncertainties and contradictions to undermine the relationship. Promises will be kept not for fear of a sanction external to the incipient market, but for the value of the continuing relationship.

Interference by an embattled empire's armed force rather than the shifting sands of law is, in my estimation, the main threat to the opportunities for Western business in the Baltics.

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# The UW Law Library: Visions of the 90s

*S. Blair Kauffman, Director of Law Library and Professor of Law*  
*Cheryl A. O'Connor, Outreach Librarian*

As we head into the 90's, prospects have never been better for using the UW Law Library's resources in creative, innovative ways. A notable feature of the library we envision will be the integrated access it offers to material held in all formats (print, online, and cd-rom). Imagine this scenario . . .

A user enters the library and checks out a laptop computer at the circulation desk. He then goes to an area of the collection he is doing research in, for example the government documents collection on the third floor. He finds an electronic study carrel and plugs his computer into a data outlet. This brings up a menu, likely to include: 1) an automated library catalog plus access to other online systems providing serials, acquisitions, and circulation information; 2) word processing; 3) various cd-rom services like Infotrac, Index to Legal periodicals, and Martindale-Hubbell; 4) gateway access to LEXIS, NEXIS and WESTLAW; 5) and other software choices, such as the Law School's electronic mail system.

Searching the university's online catalog, Network Library System (NLS), the user finds items from the government document collection and begins taking notes on the word processing software off the network. He discovers the need to cite check some cases and to do so, accesses LEXIS. Online cite checking leads to other related research so the user signs off and heads to the fifth floor periodical collection where he finds a convenient carrel and resumes his research. Once he has completed his use of print sources, he leaves the library and continues working at home, dialing the library's local area network. He then sends his completed project to a faculty member via electronic mail.

This scenario illustrates the transformation of legal research. Technology—the electronic storage, selection and transmission of information—will make it possible for the UW Law Library to become a library without walls in this decade. What is the library now doing to move toward this goal?

One of the biggest problems we face is accommodating all the new technology



UW Law Library

in our current space configuration. The Law School building addition addresses these concerns, but realistically it could be six years before remodeling efforts are underway. In the meantime, rewiring the library for electronic study carrels and the local area network, compact shelving to better utilize existing space, new carpeting, a redesigned library entrance and security system, and renovation of the student computer lab are projects budgeted for 1990–1991.

Work must continue on completely automating the library's technical service operations. This means that all library catalog records will be converted to machine readable format and that all of the major processes associated with ordering, cataloging and circulating materials will be tied to a single database. Having this system in place will be the cornerstone for improving access to the collection and will also be essential for interlibrary cooperation. The library will increasingly serve its users through a sophisticated network of libraries which promote resource sharing; it will not be necessary for every library to own what can be accessed elsewhere.

As a result of interlibrary cooperation, print collections will be more focused and specialized. We envision a library with collections which are consistently

good for all areas of United States and international law and nationally known research level collections in subject areas of particular interest to this law school.

Another new initiative for the UW Law Library is the development of an outreach program. Beginning this summer, the library will market fee-based services, will include document delivery, telefacsimile transmission, interlibrary loan, and legal research using online and cd-rom based systems. The UW Law Library will also work with other campus libraries in developing a "business information network" to better support the university's public service mission. This outreach program will make the extensive resources and expertise of the UW Law Library available to users throughout the state and has exciting potential.

As we head into the 90's, the UW Law Library is standing at a crossroads in its distinguished history. The mission of the library remains the same: to serve the legal research needs of the students and faculty of the law school and to support the legal research needs of our alumni, the legal community and the citizens of Wisconsin. However, in an era where every individual is information dependent, the library must re-tool for a new age to help the Law School maintain its national reputation for excellence.

# Women in the Law: The Early Years

*Carol O'Rourke*

One of the most striking features one may notice about the Law School is that the institution is a very different place today than it was forty or fifty years ago. A major change is in the number of women law students. As recently as the early 1970s women composed only fifteen to twenty percent of the student body. Today enrollment is nearly a fifty-fifty split.

Times were much different when Mary Eschweiler ('33) and Dorothy (Clark) von Briesen ('37) attended the Law School. Not only were they among just a handful of women in an almost exclusively male institution, but they attended law school during depression years.

Although there were very few women in law school in the thirties, neither Eschweiler or von Briesen ever felt out of place.

"I never felt that I was treated any differently than any other student when I was in law school," says von Briesen. "I never felt that I was handicapped because I was a woman. There were about six other women in the law school at that time, although I must say, we didn't club together much."

Both Eschweiler and von Briesen remember the Law School as having a very relaxed, friendly atmosphere in those days.

"Students were very willing to help each other and work together," says von Briesen. There was not terribly much competition in those days. It was a very wholesome, friendly atmosphere. I never felt uncomfortable."

Eschweiler notes the differences in the atmosphere of the law school in the thirties as opposed to today.

"Sure, there was a certain amount of rivalry, but for the most part, the atmosphere was not that competitive. There certainly wasn't the specialization you see today. There wasn't this acute separation into different fields. For example, we had no such classes as labor law or family law."

Both Eschweiler and von Briesen feel they were treated very fairly by the faculty. They express a great deal of respect for such professors as Nate Feinsinger, Charlie Bunn, Jake Beuscher, Bill Rice and Oliver Rundel. Both cite Herbie Page as the most memorable.

I think he (Page) was frightened of me because I was much taller than he was," von Briesen says kiddingly. "Whenever I came into the lower lobby of the building, he would run up on a landing and then look down on me before he would say good morning."

Eschweiler remembers Page as full of biting sarcasm. "There was a student in his class who was in a play depicting a lawyer. Herbie told him, 'You make a far better actor than you do a lawyer.' Then the student gave up on law and went into the movies."

Attending law school during the Depression, Eschweiler and von Briesen approached the study of law with social policy in mind.

Says Eschweiler, "What appealed to me about law was the romantic notion that an attorney could be a champion of rights. Wisconsin had a more idealistic vision of government and politics than other states. The political and legal professions didn't have that blood-thirsty, money-hungry competition. On the whole, they believed in the rights of the people."



Mary Eschweiler ('33)

von Briesen, who earned her undergraduate degree in social work from Northwestern, studied law through a social work perspective. After graduation, she did social case work for the Welfare Department in Racine, Wisconsin. "I had no trouble finding a job, because in the depths of the Depression, they were crying for social workers."

Eschweiler experienced much more difficulty in finding employment as a woman attorney during the Depression.

"I had a very hard time finding a job. I think this was due largely because I was a woman more so than because of the Depression. Though they might take you, they weren't eager to advance you," says Eschweiler. "I heard excuses such as that the stenographers wouldn't like to work with a woman attorney or that the wives of the fellow attorneys would be jealous if a woman went to a staff dinner with them."

Eschweiler first began work for the City Attorney's office in Milwaukee and remembers just how hard those depression years were.

"While my colleagues in small communities were paid in kind with chickens and vegetables, we were paid in scrip in Milwaukee. Scrip was a type of promissory note paid to city employees and accepted like money at certain businesses in Milwaukee," recalls Eschweiler. "It was the city's own form of barter."

Eschweiler then worked in Madison for the Attorney General as a law fellow. One of her duties included conducting a WPA project indexing Attorney General opinions for the first time. She does recall some gender-based discrimination at that time.

"I had ambitions on becoming an Assistant Attorney General, but the government wasn't keen on having a woman in that position."

After the outbreak of World War II, Eschweiler moved to Washington, D.C. to work for the Office of Price Adminis-



**Dorothy von Briesen ('37)**

tration. She worked in the same unit with none other than Richard Nixon. She eventually joined the Alien Property Administration and moved to California. Eschweiler is now retired and resides in San Francisco.

von Briesen, on the other hand, who married fellow student Ralph von Briesen, took time out of her legal career to raise her children. She eventually resumed her career working for the Legal Aid Society and Legal Services in Milwaukee.

"Going back to work after those years was a little like jumping into an egg beater because many of the laws had changed while I was out." After traveling for a time with her husband and working virtually full-time doing volunteer work, von Briesen is now retired and lives with her husband in Milwaukee.

"I would encourage women to go into the law," says von Briesen. "I think women do very well as attorneys and I'm glad to see that they are achieving equality."

# Public Interest Clinics at the Center for Public Representation Garner Strong Student Support

The Center for Public Representation is a public interest law firm providing information, advocacy, research and training on issues of concern to consumers, families, women and the elderly. Since its inception fifteen years ago, the Center has sponsored a clinical program for the University of Wisconsin Law School. The Public Interest Clinics run all year, including the summer, with law students participating in virtually all the daily operations at the Center. The students are drawn to the center because the wide variety of student opportunities match the various interests and concerns that drew many of them to law school originally.

Carolyn Sullivan explained, "I decided to participate in the Center for Public Representation's clinical for several reasons. I was quite impressed by the glowing recommendations given by former clinical students. I also hoped an internship at the Center would allow me to use the skills I was developing in law school to help other people, especially those with minimal resources and substantial need of legal representation. Finally, I view the clinical experience as an important supplement to traditional classroom education."

"I have not been disappointed!" Carolyn continued. "I enjoy working closely with CPR attorneys, both on my specific projects and in our weekly seminars. And I appreciate the opportunity to learn about areas of law that are rarely offered in other law school courses. Lastly, I hope that I have made a contribution to the important work that CPR performs. Working at the Center has provided me with a wonderful experience that will help round out my legal education. It has been a great semester."

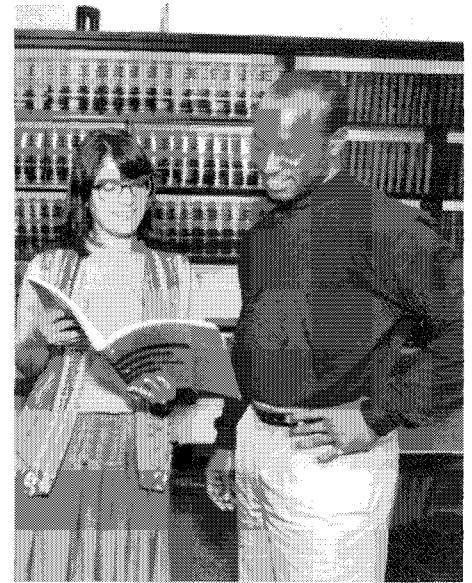
Carolyn is one of seven students working with the Elderly Team at the Center. She has been involved in individual case work. Other students with the Elderly Team have been going to nursing homes and senior centers to inform people about living wills and durable powers of attorney for health care. Molly Crooks, a second year law student, described that

experience by saying: "I enjoyed the CPR experience because it allowed me to get out into the real world and help real people with real concerns. I was privileged enough to participate in public speaking, client interviewing, and the drafting and execution of legal documents. CPR opened my eyes to the practical application of the law and was a great change from the strict theory you get in most classes." Sally Probasco adds, "What's so gratifying is that we help implement what many elderly have thought about for a long time, so the result for them is great peace of mind."

The Elderly team is just one of many teams that includes students. The students are involved with the Women, Poverty and the Law Team, the Families/Health Team, the Consumer Advocacy Team and the Public Education Team. They deal with issues on the cutting edge of the law including AIDS, inadequacies in health insurance and delivery, and the new Family Medical Leave law. Some students research and write position papers or draft legislation, some delivery services and deal directly with clients, some assist attorneys in legal education for the public; in fact most student projects include a combination of all these elements.

Robbie Brooks, a student on the AIDS Project, described his experience as follows: "To me, CPR embodies a collective sense of helping the have-nots in our society. Working with clients in the Aids Legal Service Project, I received a firsthand view of the lack of services and sympathy that we as a society provide for HIV-infected persons. By providing legal services to these individuals and advocating for more sympathetic laws, CPR is filling a vacuum that presently exists. Thus, in my own small way, I am helping the have-nots and also challenging the status quo in our society. What more could a law student ask from a Clinical program?"

Heller continued: "My clinical placement at CPR forced me to think about things I never had before—like prejudices against African-Americans, Women, the



Clinical Supervisor Sue Brehm ('89) confers with intern Joe Jackson ('91).

Elderly, AIDS victims and the poor inherent in our laws. It made me realize that someone needs to advocate for these people—to inform them of their rights and options, enabling them to help themselves and to get laws passed which remove the bias against minorities and other under-represented groups. It felt great to be involved."

There will be over 20 students at the Center this summer and applications are currently being accepted for the Fall. In the words of Michele Miller, "There is always a new challenge available at the Center for those who are willing to become involved. And it's fun." The students seem to enjoy the opportunities and it is "practical, challenging, enlightening, interesting, moving and educational."

The Center is located at 121 South Pinckney Street, Madison, Wisconsin.

## Faculty Notes

**Professor Gordon Baldwin** spent ten days in Majuro, Republic of the Marshall Islands, after being requested to advise the Constitutional Convention of the Republic of the Marshall Islands. While there, Prof. Baldwin met Scott Stege ('70), who practices in the Islands, and his wife, Biram, a delegate to the Convention.

**Professor Ken Davis** was recently the recipient of a University Distinguished Teaching Award.

**Professor Herman Goldstein** received the Honorary Degree of Doctor of Laws from the John Jay College of Criminal Justice of the City University of New York (CUNY).

**Professor Linda Greene** was the keynote speaker at the Massachusetts Women's Bar Association Annual Meeting in Boston. She was appointed to serve as member of the Board of Trustees, National Lawyers Committee for Civil Rights Under Law. Professor Greene also spoke at George Mason University Conference on Bill of Rights on "Rights, What Did the Framers of the Bill of Rights Intend?" She will be the keynote speaker at the Women In Public Policy conference at the University of Wisconsin in May. Greene is also a member of the Organizing Committee for the Race and Critical Legal Theory Workshop to be held this summer in Buffalo, New York.

**Professor Dirk Hartog** has been awarded a Hilldale Undergraduate/Faculty Research Award for a joint research proposal submitted by Professor Hartog and Kara Summit. This award is part of a new program extending research experiences to UW undergraduates.

**Professor Chuck Irish** recently took a small group of students on a field seminar to Antigua and Dominica in the Eastern Caribbean. The group met with senior staff of the Organization of Eastern Caribbean States in Antigua. In Dominica, they spoke with the Prime Minister, the Chief of Carib Reserve, and several people in government and the private sector.

Professor Irish is currently working on a project to establish East Asian Legal Studies Center at the Law School. He has also recently published several articles on international business transactions and completed a study for the United



Gov. Tommy Thompson ('66) congratulates Prof. Ken Davis while signing the recent corporate law revisions bill. Prof. Davis was co-reporter for the project with G. Lane Ware ('65).

Nations on the U.S. tax treatment of inbound and outbound non-equity investments.

**Professor Blair Kauffman** was recently appointed to the Executive Board of the newly formed AALS Section on Law Libraries. He also served on a panel of experts addressing current issues in law library automation at the Workshop for Deans and Library Directors at the AALS meeting. Professor Kauffman addressed the Wisconsin Association of Academic Librarians on "Connectivity: Using 1990's Technology to Link Library Resources." He was an invited speaker at the University of Dayton's Law School on "Technology's Influence on Law Schools."

**Professor Lynn M. LoPucki** led a discussion at the Federal Judicial Center's Workshop for Bankruptcy Judges in Austin, Texas, on findings of the NSF sponsored study of large bankruptcy reorganizations conducted by LoPucki and Professor William C. Whitford.

**Professor Stewart Macaulay** chaired a discussion on using social science re-

search in contracts courses at the AALS Workshop on Law and Social Science held in Washington, D.C. He gave a talk, "Summation and New Directions," at the conference marking the initiation of a partnership between the Centers for Socio-Legal Studies at Wolfson College, Oxford University and the Ohio State University College of Law. Professor Macaulay also attended the European University Institute in Florence on "Regulating the Franchise Relationship: Comparative and European Aspects." His paper was entitled "Long-Term Continuing Relations: The American Experience Regulating Dealerships and Franchises."

**Professor Margo Melli** recently resigned as executive editor of the Journal of the American Academy of Matrimonial Lawyers. She started with the publication in 1985. Professor Melli also organized a conference for The ALI Project on Family Law held in Philadelphia.

As chair of the National Conference of Bar Examiners, Melli attended the mid-winter meeting in Los Angeles of the

ABA Section on Legal Education and Admission to the Bar, a meeting in Florida of the Board of Managers of the National Conference of Bar Examiners and a meeting in Washington, D.C. of representatives of the ABA, AALS and NCBE.

**Professor Gary Milhollin** appeared on Wisconsin Public Television reporting on his tracking of illegal shipments of nuclear materials. He traced the illegal and unethical shipments of nuclear materials, including who handles the shipments, what routes are used and who the buyers and sellers are. Milhollin then exposed the operation in the national media.

**Mary Barnard Ray** served as co-chair of a panel entitled "Theories and Issues Facing Writing Centers" at the Annual Conference on College Composition and Communication, held in Chicago. She is currently serving on the program committee for the biennial national Legal Writing Institute, to be held in Ann Arbor, Michigan, this summer.

**Professors Frank Remington and Marc Galanter** were panelists in San Antonio at the American Judicature Society—State Justice Institute Conference on the Future and the Courts. The panel was entitled "A Look at Federal Developments Which Will Affect the Future of State Courts."

**Professor Joel Rogers** was awarded an H.I. Romnes Faculty Fellowship. The Fellowship is an important University honor for scholarly accomplishments, and it provides substantial support for continuing research.

**Associate Dean Gerald J. Thain** served as attorney for the petitioner

in a writ of certiorari filed in the U.S. Supreme Court in March, concerning the limits placed on state regulation of occupation by the application of some First Amendment protection to commercial speech. The matter arose in Texas. In a similar action, he filed a brief in the California Court of Appeals challenging that State's restrictions on the commercial speech of certain occupational groups. The California action was in conjunction with the Center for Public Interest Law.

Professor Thain was appointed to another term on the editorial board of *The Journal of Consumer Affairs*. He also served as a television commentator on the legal aspects of the action involving the Mapplethorpe exhibit in Cincinnati.

**Professor Joseph Thome** is the director of the Conference on Lawyers and Social Movements in Latin America. Conference participants include Professor Martha Fineman, Clinical Director Louise Trubek, and Tinker Visiting Professor Elizabeth Sussekind.

**Dean Cliff Thompson** was honored at the First University of Wisconsin Alumni Club of Madison, Founders Day Awards Banquet, as the 1990 recipient of the Alumni Club's Distinguished University Achievement Award.

**Professor David Trubek** gave a talk at De Paul Law School on "Lawyer Professionalism and Its Discounts." He also delivered a lecture entitled "Towards a Critical Sociology of the Legal Profession" at Lancaster University (England) and Amsterdam University (Netherlands). Professor Trubek and Professor Patricia Williams participated in a conference in Poland on "Rights, Legality, Redemocratization."

**Professor June Weisberger** was invited to deliver a paper at the International Symposium for Better Lives for Women of Advanced Age sponsored by the Japan Foundation for Research and Development of Pension Schemes. The conferences will be held at the Japan College of Social Work, Kiyose, Japan (outside Tokyo).

**Professor Zig Zile** spoke on "Law in the Baltics: The Case of Latvia" at an ABA sponsored conference on Change in Eastern Europe and the Soviet Union: Implications and Opportunities For Western Business. Professor Zile also attended the International Conference on Self-Employment and Entrepreneurship In The Socialist Countries: Economy, Law and Society, held at the University of Trento, Italy. He will present his paper, "The New Entrepreneurship and Urban Housing in the Soviet Union," at the IV World Congress for Soviet and East European Studies, held in Harrogate, England.

Members of the faculty for the three-day 1990 Criminal Law and Sentencing Institute for Wisconsin Trial Judges include **Professors Walter Dickey, Herman Goldstein, Frank Remington, Dave Schultz, Clinical Director Ben Kempinen**, principal staff member **Dan Schneider** and **James Dillon**, recent recipient of an LL.M from UW Law School. The Institute will be devoted to a review of law school research in criminal justice administration over the course of the past several decades. Emphasis will be given to that research of most significance for the trial judge.

# Alumni Notes

**Roger W. Cheever** ('38), Superior, Wisconsin, reports that he may have had the longest tenure as a Family Court Commissioner in Wisconsin. He served in that position from 1949 to 1978. Mr. Cheever is also the grandson of Joseph P. Cheever, who was in the Law School's very first graduating class in 1869. Joseph Cheever went on to help organize the state of South Dakota.

**David S. Ruder** ('57), former dean of Northwestern University School of Law and former chairman of the Securities and Exchange Commission, has received the Harrison Tweed Award from the American Law Institute-American Bar Association. The award is in recognition of special merit in the area of continuing legal education. Mr. Ruder's efforts in advancing the education and practice skills of attorneys engaged in corporate law were cited.

**Donald R. Stone** ('63) has joined the Washington, D.C., office of McKenna, Conner & Cuneo. Mr. Stone was formerly with Medtronic, Inc., where he served as patent counsel, general counsel, corporate secretary, quality officer and corporate senior president. He is also active in trade associations including leadership positions with the National Electronic Manufacturers Association and the Health Industry Manufacturers Association.

**Richard A. Lehmann** ('65) has become a partner at the Madison, Wisconsin, firm of Boardman, Suhr, Curry & Field. He will concentrate in land use, municipal law and development regulation. Mr. Lehmann is a former associate professor of municipal law at the University of Wisconsin.

**Percy L. Julian, Jr.** ('66), Madison, Wisconsin, was recently on the faculty for a Fair Housing-Fair Lending Seminar co-sponsored by the US Department of Housing and Urban Development and the UW Law School.

**Terry W. Rose** ('67) was recently elected to his third term as Supervisor of Kenosha County.

**Pat Richter** ('71) was named Athletic Director by UW-Madison Chancellor Donna Shalala. Richter was Vice-president for Personnel at Oscar Mayer Corporation prior to his appointment. Richter was the last "nine-letter" winner at UW and played professional football with the Washington Redskins before beginning his legal career.

**Gregory A. Smith** ('71) has joined the tax department at Heller, Ehrman, White & McAuliffe in San Francisco. Mr. Smith specializes in employee benefits law and executive compensation. He has been active in the ALI-ABA Institute on Pension and Profit Sharing, the National Institute of Pension Administrators and the National Institute of Investment Advisors.

**James L. Brown** ('72), director of the Center for Consumer Affairs at UW-Milwaukee, was recently on the faculty for the ABA National Institute on Consumer Financial Services in the 1990's.

**John H. Brown** ('73), a partner in the Denver-based firm Minor and Brown, recently co-authored "How to Run Your Business So You Can Leave It In Style." The book focuses on business planning for small business owners, and includes advice on personal, financial and estate-planning goals.

**Ozell Hudson** ('74) has become executive director of the Lawyers Committee for Civil Rights Under the Law in Boston, Massachusetts. Prior to moving to Boston, Mr. Hudson had practiced law and had some 12 years experience with community services and legal services programs. The Lawyers Committee provides free legal representation to people alleging racial and ethnic discrimination.

**Robert J. Smith** ('74), with Wickwire Gavin, P.C., in Madison, Wisconsin, has been named a Fellow of the American

College of Construction Lawyers. To qualify, fellows must have fifteen years of legal experience, devoting the ten years immediately prior to their nomination to construction law; made significant contributions to the field; and have demonstrated the highest ethical and professional standards.

**Lawrence R. Hitt, II** ('75) has been appointed chancellor of the Colorado Episcopal Diocese. Mr. Hitt practices with a small firm in Denver, and currently volunteers legal services to persons with AIDS and the indigent. He is also an officer on the national board of Big Brothers/Big Sisters of America.

**Steven J. Shimshak** ('80) has joined the New York firm of Milbank, Tweed, Hadley & McCloy.

**Timothy R. Henderson** ('80) has joined Breed, Abbott & Morgan, New York, to specialize in environmental law.

**Greg D. Richardson** ('81) has been named as first Deputy Director of Field Operations for Justice Fellowship Advocates. He will open a Chicago office for the group which is a criminal justice reform organization based in Washington, DC.

**Terry Mead** ('81) was a panelist on "Freedom of Speech in the Media: Who's to Judge?" sponsored by the National Federation of Local Cable Programmers, Tucson Community Cable Corporation and the University of Arizona. Mr. Mead practices with Gust, Rosenfeld & Henderson in Phoenix, Arizona.

**Michael J. Kelly** ('81) and **Jack B. Siegel** ('81) have been elected to partnership in the Milwaukee office of Foley & Lardner. Mr. Kelly practices real estate law, Mr. Siegel, who also has an LL.M. in tax from NYU, practices tax law.

**Erik Salvesson** ('82) has become a principal in the Minneapolis firm of Gray, Plant, Mooty, Mooty & Bennett. Mr. Salvesson does litigation.

**Sara Lee Johann** ('82) has released her second book, "Sourcebook on Pornography," co-authored with Dr. Frank Osanka. The book summarizes and lists most of the serious writing done on this subject.

**Bette J. Roth** ('84) has joined the San Francisco firm of Farella, Braun & Martel as a litigation attorney. She had previously practiced in Boston and had served as a staff attorney in the Los Angeles office of the Securities and Exchange Commission. Ms. Roth co-authored "Securities Arbitration: Special Report" and was a contributing author to "Securities Litigation—State and Federal" for California Continuing Education of the Bar.

**Richard Raemisch** ('88) has been appointed Sheriff of Dane County, Wisconsin. Mr. Raemisch had been an Assistant US Attorney for the Western District of Wisconsin.

**MaryBeth Carbone** ('89) has joined the Phoenix, Arizona, firm of Jennings, Strauss & Salmon

The Association for Women Lawyers recently honored women admitted to the State Bar of Wisconsin prior to 1951. Those in attendance were: Helene Z. Boetticher ('43), Catherine B. Cleary ('43), Emily P. Dodge ('43), Christine M. Fellner ('36), Ann R. Grant ('39), Alice P. Morrissy ('36), Mordella D. Shearer ('48), Cody Splitt ('49), Doris L. Vaudreuil ('36) and Marian J. Wilhelms ('48).

We are sorry to report the death of John Bosshard ('47). John was a special friend of the Law School and of education in general. Despite achieving great success as a lawyer, businessman and in government, John continued to live in his home town of Bangor, Wisconsin. His memorial service was held in the local high school gym to accommodate his family, friends and colleagues. Wisconsin Supreme Court Chief Justice Nathan S. Heffernan ('48), a long-time friend of John's, delivered the eulogy. He called John a "great man who never forgot the common man inside."



**John Bosshard** ('47)

**SHARE YOUR NEWS WITH YOUR FELLOW ALUMNI! SEND US YOUR CLASS NOTES:**

Gargoyle  
c/o UW Law School  
975 Bascom Mall  
Madison, WI 53706

**CHANGE OF ADDRESS:** UW Alumni Records now has a toll-free phone number to report address changes. From Wisconsin, call 1-800-262-6243

## Featured Alumni: John A. Kaiser ('76)

During his senior year in Law School, Jack Kaiser began his remarkable record of service to the School by helping to select the Dean. The experience must have been satisfying because he has been helping almost without interruption every since.

Born in Marshfield, Wisconsin, and with an undergraduate degree in economics from UW-Eau Claire, Jack returned to Eau Claire following graduation from Law School. He has practiced with a series of small, general practice firms, much to his satisfaction. "I began by emphasizing the general and valued the experience. It was only after about my fifth year of practice that I knew what I liked and didn't and what I was good at." Now Jack concentrates on personal injury, workers compensation, Social Security disability appeals and municipal law. Last year Jack merged his practice with several other lawyers to allow even more concentration in his practice.

Beginning about 1980, Jack began his service to the Wisconsin Law Alumni Association. He served two terms on its Board of Directors before joining the Board of Visitors. Last year he served as Chairman of the Board of Visitors and directed the visitation program, which was denominated "the Year of the Student." "The role of the Visitor has changed dramatically since my early involvement. We look more deeply into selected aspects of Law School programs, with more critical analysis of these areas. Because the Visits have been less general, the Visitors reports are more specific and the suggestions and critics are more meaningful to the faculty and administration."

Jack also observes that the entire Law Alumni organization has changed in the last ten years. He notes that the genesis for this change may have been the Law School's first Capital Fund Drive. "While the Fund Drive required organizing our alumni to succeed, it coincidentally discovered that alumni really are grateful for their legal education and anxious to serve their School." This, in turn, may have encouraged even more ambitious goals for the Alumni Association and its leadership.

Attending events not only in Eau Claire but also in Minneapolis, Jack observes that "alumni really enjoy themselves when they get together." These events help to strengthen ties to the School and alumni support for it. Jack has helped organized a number of these regional events.

Four times Jack has put his own practice aside to join the teaching team for the Municipal Law portion of the General Practice Course. "It's not as much a burden on me because Municipal Law is only a two day section, not a whole week. It doesn't take as much time to vacate that alley each year." Nevertheless, few lawyers have taught as often as Jack.

"I have been glad to help the School because of all the talented, enthusiastic people I have grown to know. The Boards consist of lawyers, business people, and public officials from so many walks of life. It has been a golden opportunity to learn from others." Jack points out the Boards try to represent the vast variety of alumni, young, old, large firm, small firm, government, business, etc.

At home Jack is involved in activities too numerous to mention. Asked to pick a few more important to him, he named the Board of Directors of UW-Eau Claire's Alumni Association and treasurer of the Park School PTA, in addition to the Law School. "I am able to do what I do today because of the great education I received, and we owe it to our kid's generation to preserve the quality of our public education at all levels."

Jack obviously sees his role in life broader than serving clients in his office or in court. "Stu Gullickson told us in School that wherever we went after graduation, our communities would look to us for leadership. We are the problem solvers, we are trained to identify the solutions and get things done. Here in Eau Claire, few things get done in local government, civic affairs, charitable activities or in business that doesn't involve lawyers in some integral way."

Jack Kaiser already has a career of helping get things done, and he still has several careers left to accomplish even more.



John A. Kaiser

## Editor's Note

As I write, there is the periodic sound of applause from the classrooms around my office. It is the end of another semester and students are applauding either the excellence of their professors or the close of another course. When school began in September it seemed that May would never come. Now it is here and no one knows where the intervening months went.

You may remember that we recently ran a readership poll, asking what you liked or disliked in the Gargoyle. More than 100 responses were received and tabulated. To no one's surprise alumni like to read about alumni. But they also like to read about present faculty and asked for more about past faculty—whatever happened to Prof. Conway. The lowest rated feature was our fund drive reports. Yet professional fund raisers claim that everyone who gives to a charity looks at the reports first to see their name and then to see which of their friends or colleagues also gave. The Alumni Association's Gargoyle Committee, chaired by Alan Post ('72), Springfield, IL, has made recommendations to implement the poll's findings.

The major remodeling and addition plans that we have been talking about for the last year have taken one giant step forward. Chancellor Donna Shalala has placed \$550,000 in planning funds on her top priority request to the UW-System. If System concurs, the list will go to the Board of Regents and then to the State Building Commission. If everyone approves, architects will be commissioned during the 1991-93 biennium. We would then seek approval for the \$12 million in construction funds for the 1993-95 biennium. An improved and enlarged Law Building is still a possibility before the new century.

The picture below is not the mystery picture. Thomas A. Hendrickson ('70), Executive Director of the Michigan Association of Chiefs of Police, sent me a slide showing Wisconsin National Guard troops outside the admission office in April of 1969. The Guard had been called out to deal with students protesting the Vietnam war. Those of us who were on campus in the late 1960's and early 1970's can remember not only the Guardsmen, but jeeps patrolling with machine guns and helicopters overhead at night with incredibly bright spotlights. The amazing thing is that many of our

current first year students were born about this time. To them, the war in Vietnam and the turmoil on many college campuses are, at most, something they read about in their history books.

The mystery picture in the last issue was the most thoroughly identified in a long time. Those pictured were from the Class of 1978 and included: John Nelson, Dennis Gallagher, Mark Sostarich, Bill Fisher, Lea Vander Velde, Joe Hartley, Paul Tillman, Gerard Jensen, Stu Eiche, Sue Scharf, Jon Becker, Leo Wang, Chris Bugg, Pam Mathy and Ron Hammer. If you have a copy of the 1978 Law Review you can discover that this was the Editorial Board for that issue. Most of those pictured took time to call or write and identify the others. Dennis Gallagher, who has practiced with the Office of the Legal Advisor of the US Department of State called it "a matter of unmixed gratification that my class has so far receded in the mists of time as to be eligible for 'Mystery Picture' status." He also admitted that he misses "the old place" and old friends.

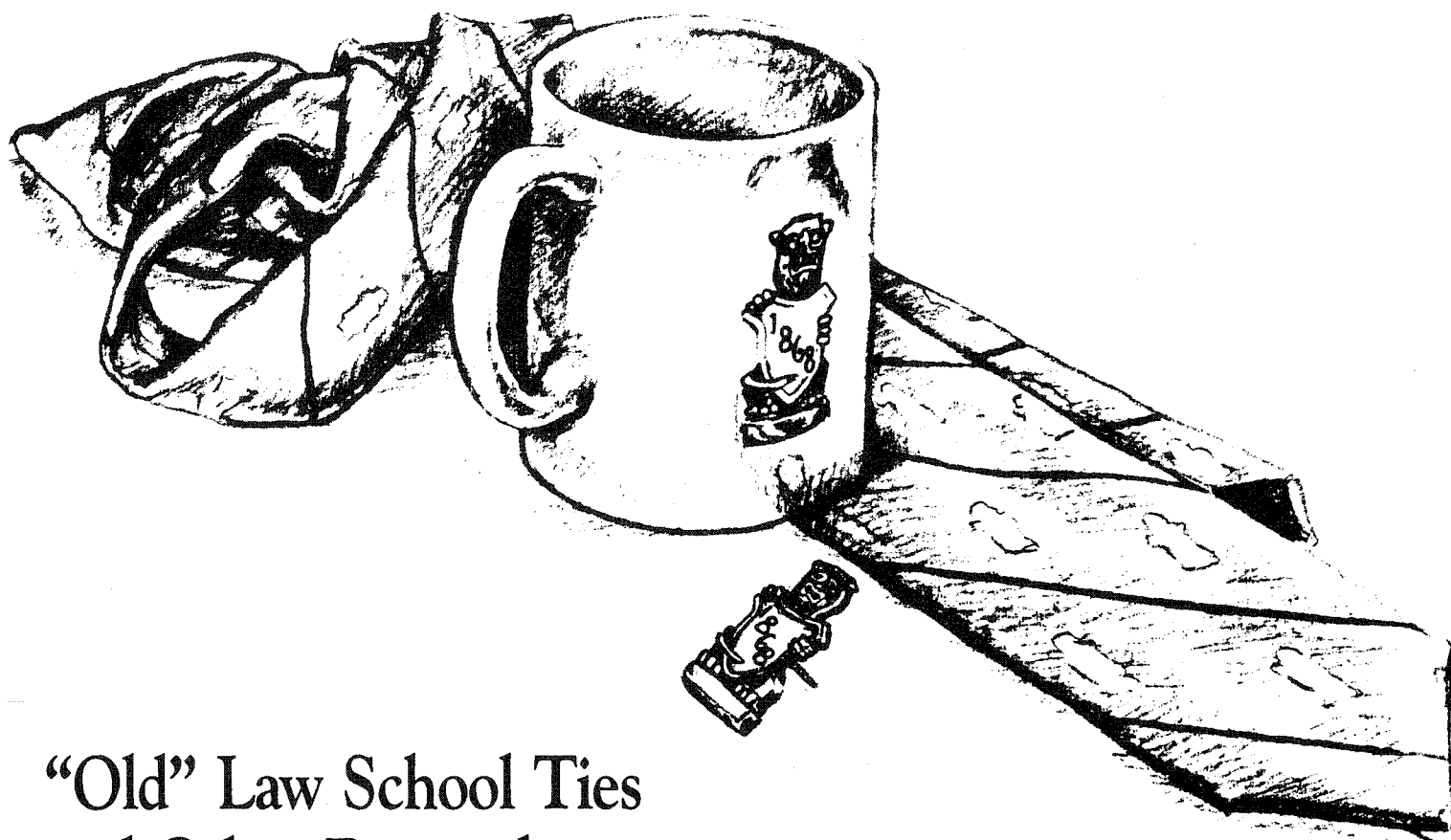
The current mystery picture comes from a Board of Visitors program, probably mid- to late-1970's. Students, faculty and ??????



National Guard in Law School, 1969



Mystery Picture



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