

GARGOYLE

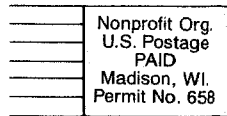
UNIVERSITY OF WISCONSIN LAW SCHOOL FORUM



VOLUME XXIII NO. 2

FALL 1992

University of Wisconsin Law School
236 Law Building
975 Bascom Mall
Madison, WI 53706-1399



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Cover Photo: During planning for the upcoming
addition/remodeling project, our architects noted that
there was only one room that they would preserve—
The Old Reading Room in the Law Library.

COMING TO A THEATER NEAR YOU . . .

Recently I met with about 50 alumni in a wonderful atrium at Rudnick & Wolfe in Chicago. The occasion was our annual reception for Chicago-area alumni but the special highlight was the first roll-out of the building addition and remodeling team.



Dean Daniel O. Bernstine

As you know, the planning process for our \$16 million project has reached a high pitch. At the moment, interior space is about 65% designed and the exterior design is about 85% complete. The time has come for us to start showing off some of the wonderful changes that will soon be happening to the School.

We are confident that the team of local and Chicago-based architects chosen for our project have both the vision and the experience to bring us a building for the twenty-first century.

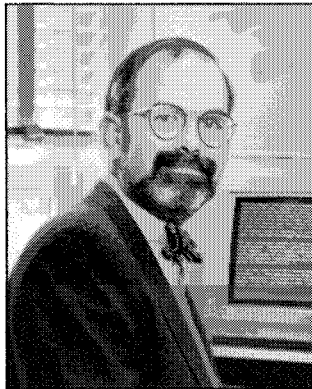
However, plans are only a part of what we hope will be a most successful project. Equally, if not more important, are the people behind the plans.

We are confident that the team of local and Chicago-based architects chosen for our project have both the vision and the experience to bring us a building for the twenty-first century. They have proven their abilities on other similar projects.

What gives us greatest confidence, however, are the two individuals with the largest roles in this undertaking: David Ruder ('57), chairman of the fund-raising effort; and Professor Tom Palay, chairman of the Faculty Building Committee.

David Ruder is now a partner at Baker & McKenzie, something to do in his "retirement." His list of accomplishments is long. But let me focus on one — his service as Dean at Northwestern University Law School from 1977 to 1985. During his tenure David not only oversaw an even larger project at Northwestern, expanding the law building

while at the same time connecting it to the new ABA headquarters, but he also learned the necessity and importance of private fund-raising to the success of such a project. Equally as important, as a Northwestern graduate myself (JD '72), I experienced first-hand David's persuasiveness as a fund-raiser and his ability to convince alumni to "be true to your school." Of



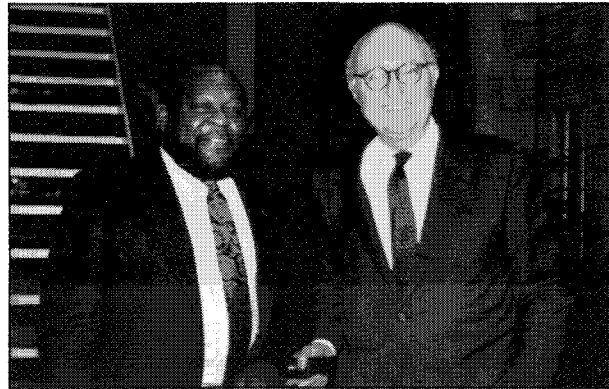
Tom Palay

course, that same motto applies to us as Wisconsin alumni, and I have no doubt that all of you will do your share to make the building project a reality.

Here at Wisconsin, we hope that state funds will be available to build the basic structure for our addition and to do the necessary upgrades to our existing facility. Our alumni, however, will have to help us with the funding that will take us from the basics to the type of facility that matches our academic aspirations.

As David told the gathering in Chicago, our School is nationally admired, but our facility "leaves something to be desired!" In the coming months, David will repeat his comments in many locations and settings, including the private offices of many of you who will be given the opportunity to elevate our facility to the same heights as our reputation.

Also appearing in Chicago with the first substantial drawings from the architects was Professor Tom Palay. Last year, Tom took over from Professor John Kidwell who did an outstanding job getting the project to the planning stage. When Tom was asked to assume the responsibilities of chair of the Building Committee, he began telling friends



Dean Bernstine and David Ruder

that the two things that he thought he would never do were sell shoes and chair a building project. Well, perhaps when the building is done we can find Tom something easy to do in shoe sales.

Tom told the Chicago group that, so far, planning has cost a little more than \$300,000 and an ice cream sundae. The cash went to the architects and the ice cream to Tom's eight-year-old son. After telling his family over dinner that he needed some three-dimensional prop to show what we hoped to accomplish, Tom's son disappeared for an hour only to reappear with a Lego model of the Law School building complete with replaceable elements to show where the new construction will occur.

Perhaps the project would be as well placed now without the outstanding efforts of these two loyal supporters, but I doubt it. Dave, the cheerleader, and Tom, the tactician, complete a leadership team that includes a number of others who are propelling us to success. I sincerely hope that you get to meet all of them personally sometime. Their enthusiasm is contagious and their skill obvious.

The Constitution's Wisdom and Failings— Electing a President

DOWNTOWN ROTARY—July 22, 1992

GORDON B. BALDWIN,
Mortimer M. Jackson Professor of Law

Our ritual for selecting a President rests on two prongs: a political and a constitutional process. First, a pattern of statutes and customs generates primaries, caucuses, petitions and conventions, designed to sift, winnow, torture and bore. The result after an evolution of 150 years—the November ballot names two major candidates and several lesser ones. The process weeds out the faint-hearted, the fanatic and the poor. Last week it weeded out the rich, so it passes the nondiscrimination test. To the Framers this political process, resulting in two party-backed candidates, was anathema. They drafted the Constitution hoping to avoid in America the kind of Whig vs. Tory partisanship observed in England.

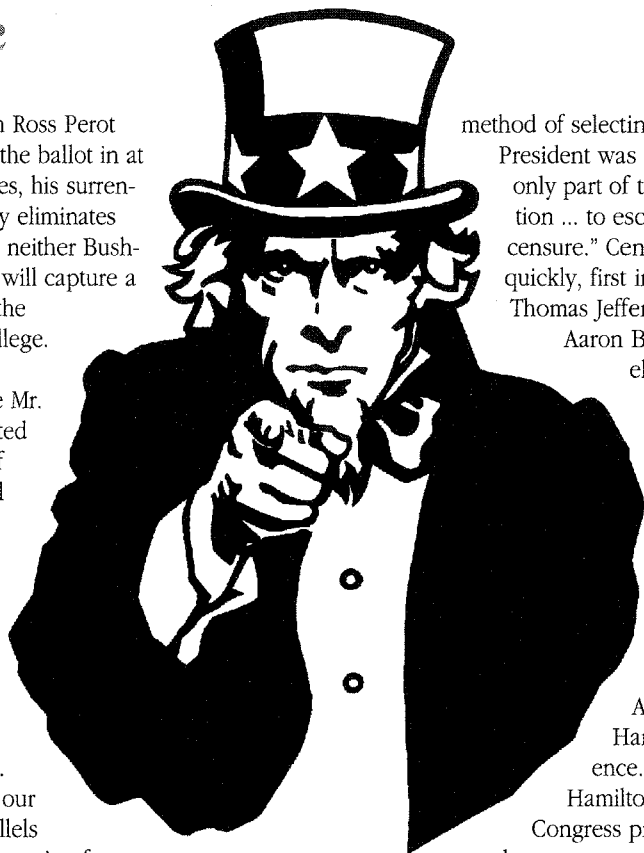
In most years we automatically give formal obedience to the electoral college system established in 1787 by Article II, and in 1804 by the XIIth Amendment hurriedly ratified in reaction to the crisis of 1801 when we came close to electing Aaron Burr. The XXth Amendment of 1933 fills in some details, and sets inauguration day for January 20th. The XXVth Amendment of 1967 provides for filling physical (but not mental) vacancies in the Vice Presidency.

Although Ross Perot remains on the ballot in at least 24 states, his surrender probably eliminates the risk that neither Bush nor Clinton will capture a majority in the electoral college. Perhaps we should trace Mr. Perot's belated discovery of the electoral college to some deficiency in his education, but his critique of our system is not novel.

In form, our system parallels stockholders voting for directors, who in turn elect the company officers. It differs in that voters seldom know the identity of the electors. Nevertheless the law tells us that "a vote for the president ... is a vote for the electors..."

Alexander Hamilton defended the constitutional system with blissful innocence, saying in the Federalist Papers that the

method of selecting the President was "almost the only part of the Constitution ... to escape severe censure." Censure came quickly, first in 1801 when Thomas Jefferson and Aaron Burr tied in electoral vote, and the House of Representatives after 35 ballots narrowly selected Jefferson, largely because of Alexander Hamilton's influence. Burr killed Hamilton to get even. Congress proposed, and the states promptly ratified the XII Amendment which placed the President and Vice President on separate ballots. In 1825 the choice again fell to the House of Representatives. Henry Clay threw his support to John Quincy Adams rather than to Andrew Jackson. Jackson won later, but never did have much use for Henry Clay.



The electoral college frustrated popular will three times: in 1824 when Jackson outpolled John Quincy Adams; in 1876 when Tilden outpolled Hayes; and in 1888 when Cleveland got more popular votes than Harrison.

But we've had close elections. A shift of 11,424 votes in 1960 would have elected Nixon. Dewey with 30,000 more votes in 3 states would have beaten Truman. But for 2,000 votes in California, Hughes would have beaten Wilson in 1916. Elections in 1876, 1884 and 1908 were also close.

THE RATIONALE FOR THE ELECTORAL COLLEGE

The 1787 Constitutional Convention voted 60 times before agreeing on a system for selecting the President. They waffled, they disagreed, and only reached consensus in the last week.

They voted five times to have the President appointed by Congress, and once they voted against that. Once they favored electors chosen by state legislators, twice against. They rejected the option of choosing a President as if passing a law seemed unsatisfactory because this would give one house a veto.

The long debates reveal broad agreement only on the points that the President should be mature, that is, over the age of 35, enjoy enough independence from the Congress to check that body, but not be so strong as to become a tyrant.

Hamilton feared that a President chosen by the Congress would be susceptible to Congressional influence, a body beset with intrigue and corruption. If Congress appointed the President, the President could act independently only if denied another term. However, a one-term President might be so independent as to tyrannize. But if allowed another term, the President might succumb to the temptation of currying favor from the Congress to gain re-election.

A direct popular election might produce demagogues, because of an ill informed populace. Furthermore a majority candidate might not emerge. Southern representatives, knowing their areas harbored large numbers of non-voting slaves feared a dilution of power in a national popular election.

Madison opposed popular election on other grounds: he argued that voters would prefer a fellow resident. The Constitution, therefore, requires that at least one of the candidates voted on by the electoral college "not be an inhabitant of the same state" as the electors. Thus if both President and Vice Presidential candidates came from Texas, the Texas electors could cast their ballot for only one, not both.

Several Framers, including Gouverneur Morris, preferred a monarchy or at least an executive holding office for life. Perhaps if George Washington had a handsome son of proper age and demeanor the monarchical idea would have been more popular.

Madison first proposed the electoral college system (July 19, 1787), but the Convention rejected the idea, although a system of electing selected citizens and authorizing them to pick political leaders existed in Massachusetts and Maryland. After many many votes the Convention voted that the President, all officers, ambassadors, and the Supreme Court would be appointed by the Congress. Nobody felt happy with this conclusion, so they elected a committee of eleven to reconsider. In six days, led by Madison, that committee revived and proposed the electoral college system with the Senate directed to choose should no majority emerge. Madison's drafts ought to placate all factions and largely succeeded. Look what they did.

They placed no limits on presidential terms—pleasing the advocates of a powerful executive;

They overcame fears of subservience to Congress by giving the choice to electors who could not be members of Congress;

They reassured those worried about creating a power hungry authority by providing that the electors from the various states never be permitted to meet together in one place!

The Convention relieved fears that the Senate held too much power by giving the House of Representatives power to break deadlocks. Then they honored the wishes of small states by directing that voting be by states and not by individuals.

Nearly everyone in Philadelphia knew

the nation would select George Washington whatever method the Constitution specified. I expect that the delegates did not anticipate any subsequent candidate would garner a majority of electoral votes, and that they expected elections in the Congress (whether House or Senate) to be commonplace for Washington's successors.

Alexander Hamilton became the most vocal supporter of the electoral college system. Hamilton feared the masses and argued, therefore, that we rely on the wisdom of the few:

"The immediate election shall be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations."

This sounds like an intelligent board of directors actively seeking the best possible CEO. Notice that Hamilton does not advise choosing politicians—perhaps he, like the late Oscar Levant, thought a politician as one "who'll double-cross that bridge when he comes to it."

Hamilton also feared emotional decision-making marked by tumult and disorder:

"The choice of several, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of one who was himself to be the final object of the public wishes."

These wise and dispassionate electors must not, however, be allowed to convene all together lest the passions of a few infect the judgment of the whole.

"... as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened

at one time, in one place. ... Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption."

That electors may neither be members of Congress nor hold any federal office reinforces their dispassion. Electors may not hold "Office of Trust or Profit under the United States." Thus military officers and Postal Service employees need not apply.

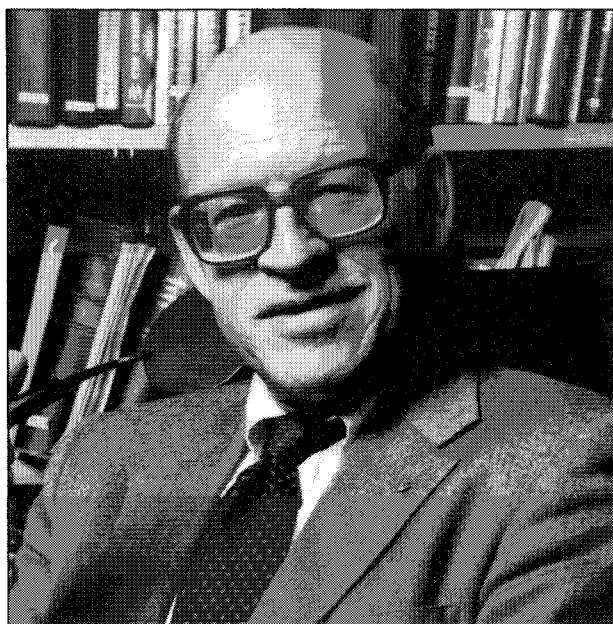
"They have not made the appointment of the President to depend on any pre-existing bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator, representative or other person holding a place of trust or profit under the United States, can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means."

Nearly 30 years ago the Supreme Court cast doubt on Hamilton's support of the electoral college idea. In a footnote in *Gray v. Sanders*, Justice Douglas asserts that subsequent constitutional doctrine, forbidding voting discrimination on the basis of race and gender, and selecting Senators by popular vote "shows [Hamilton's] conception belongs to a bygone day...." Perhaps it does, but we must pass

a constitutional amendment to change the system we labor with today.

THE SYSTEM TODAY

Each state chooses electors "in such manner" as it wishes. The text of the Constitution (which in my mind is not irrelevant) allows a state, by law, to cancel the November election and direct other means to select electors. Indeed we find electors



Gordon B. Baldwin

selected in diverse ways:

"by the legislature itself on joint ballot; by the legislature through a concurrent vote of the two houses; by vote of the people for a general ticket; by vote of the people in districts; by choice partly by the people ... and partly by the legislature; [etc. etc.]...."

The electors voting for George Washington received appointment from legislatures in 5 states, and from districts within the other states voting. Not until after 1832 did most states select electors in a general election. Each state has as many electors as Senators and Members of the House of Representatives combined as determined by the 1990 census. Wisconsin, then has 11 electors, the District of Columbia, under the XXIII Amendment gets three.

WINNER TAKES ALL

Because each state's laws so provide, the winner in each state gets all that state's electors, unless an elector betrays the trust. Constitutional challenges to the winner-take-all rule fail, because nothing in national law or the Constitution forbids it. Theoretically, states could divide themselves into districts and allot each district one electoral vote, or give one

electoral vote to each congressional district. They won't do this, in part because the current system gives large voting power to people in large states, and to people in areas where politicians have power to deliver the votes. Nixon would have beaten Kennedy in 1960 if we'd divided the electoral vote by congressional district.

SELECTING ELECTORS IN WISCONSIN

Wisconsin political parties select candidates for the electoral college in a party convention consisting of the party candidates for the state legislature together with state officers (if members of that party) and the holdover state senators. They meet at 10:00 a.m. on the first Tuesday in October. Wisconsin law requires each party or candidate to nominate two electors from the state at large, and one from each congressional district for a total of 11 for each party. Thus party politics dominates the nomination of electors. If a candidate from a smaller party, Ross Perot, for example, wishes to be on the ballot, that candidate must also file a list of his electors by the 2nd Tuesday preceding the November election. No ballot in Wisconsin identifies these people. If it did you'd not recognize the non-Rotarians, or the candidates to whom they're pledged. Some years ago a lower court in New York declined to require the names of electors on the ballot.

After the November election each county clerk sends the results, enumerating votes for each party's panel of electors, to the State Elections Board. The Board of State Canvassers (the Chair of

the Elections Board, the Attorney General and the State Treasurer) routinely certifies these totals to the Governor. Now the Governor has a problem: Wisconsin law tells him to report results immediately to the Administrator of General Services in Washington. National law commands the Governor to report to the Archivist of the United States. The obvious solution—send the results to both.

THE ELECTORAL COLLEGE MEETS

Wisconsin and national law require the Governor to send six duplicate certified originals to the selected electors "at the state capital" on the first Monday after the 2nd Wednesday in December. Presumably the Governor enjoys some power between November and December to identify the selected electors, if someone contested the election. Obviously litigation may decide that point, but normally the electoral college meets uneventfully.

In 1988 Kevin Kennedy, Executive Director of the State Election Board, convened Wisconsin's winning electors, all Democrats. They promptly selected Suellen Albrecht and Tom Loftus as co-chairs and in their 36-minute meeting cast their written ballots for Dukakis & Bentsen, which they thereafter signed and certified. Then they gratuitously moved to deplore the attacks and negative campaigning of 1988 (naming no one) and called upon Congress to abolish the electoral college. On this point electors Tom Loftus and John Galanis dissented.

Six sealed and certified certificates record Electoral College decisions, and the law guards against their loss by requiring them to be sent:

One to the President of the Senate (in Washington);

Two to the Secretary of State of the State (Douglas LaFollette) who preserves one as a public record, and the other to be held, if the President of the U.S. Senate wants it;

Two to the Archivist of the United States;

One to Federal Judge Barbara Crabb. The design thwarts attempts to hide, destroy or delay reporting the electoral college vote. Drafters of the statutes appear driven by the fear of corruption.

THE FAITHLESS ELECTOR WHEN WINNER DOESN'T TAKE ALL

Wisconsin law says that the presidential electors "shall vote" for the candidates of the political party that nominated them. What about the rogue elector who decides to desert the party? The text of the XIIth Amendment, and the purpose of the Framers, leads me to conclude that an elector has a free choice, and no court or state legislature can say otherwise.

Most electors act as party lackeys, no matter how otherwise independent and distinguished. The President of Harvard, for example, selected in 1876 as an elector pledged to President Hayes, refused to switch his vote to Tilden who had more popular votes. He declined saying he must abide by his party's choice. We've had five exceptions. One Plummer, an elector pledged to James Monroe, instead voted in 1821 for John Quincy Adams, legend tells us because Plummer thought that the honor of a unanimous vote should be accorded only to George Washington, but probably because he wanted to emphasize the ability of the younger Adams. Other faithless electors voted in 1948, 1956 and 1960. Double-crossers of this stripe, said a former President, might be lynched.

A political party can rightfully require a loyalty oath from an otherwise eligible presidential elector, and some jurisdictions require a loyalty oath by law. Scholars argue on both sides, but I'm dubious about enforceability if an elector breaks the promise. However, a party may discharge any electoral candidate who refuses to promise party loyalty in advance.

In any event if the November election is close and contested, you must expect litigation in the state or federal courts on vote fraud, and contests initiated in state courts if electors betray the voter choice. In a close election the practical value of allowing free choice in the Electoral College lies in keeping the choice out of the House of Representatives, because here defects in our Constitution become most apparent.

COUNTING THE ELECTORAL VOTES

The Constitution fails to specify who

counts the electoral college vote, but Congress does. National law establishes the procedure by which the Congress, in a joint session under the Vice President (Mr. Quayle), counts the electoral votes. We have no President-elect until Congress counts and records the votes.

The statute details the precise time, procedure, even the seating, and directs how to contest electoral college results. For the most part each state must resolve issues of vote fraud. This statute avoids the impasse occurring in 1876 when Rutherford Hayes received 165 electoral votes to James Tilden's 184, just one short of a majority. Double sets of electoral votes had come from Oregon, Florida, South Carolina and Louisiana in dispute. Congress, then controlled by Democrats in the House and Republicans in the Senate, avoided the impasse by creating a special Electoral Commission to which it delegated power. Justice Bradley of this commission cast the deciding vote, giving the necessary 20 votes to Hayes, some argue on partisan grounds, but my reading of his reasoning suggests otherwise. Bradley, a giant on the Supreme Court, wrote nothing in his opinion that suggests susceptibility to corruption. Congress accepted the decision. Hayes solaced the Democrats with a promise to withdraw the federal troops occupying the South.

If no candidate receives an electoral majority, the XIIth Amendment commands the House to "choose immediately" among the top three, and now it becomes interesting. Each state votes as a unit: "the votes shall be taken by states, the representation from each state having one vote...." This system assures the influence of small states.

Consider these facts if the House of Representatives chooses the President.

First, the new House with many new and unacclimated members must choose. We don't know what political, economic and social forces act upon the members, and new members may be less predictable than veterans;

Second, the winner requires 26 votes out of the total of 50. We can safely assume all state delegations will show up.

Third, the District of Columbia, with its three electoral votes under the XXIII Amendment, has no role whatsoever. It

isn't represented in the House.

Fourth, 21 states have an even number of Representatives. If some states were evenly divided they might fail to agree on the single ballot required. Some members might desert their party, or be tempted to vote their district. However, the House has strong incentive to decide because their failure to select a President means that the person selected as Vice President by the Senate becomes Acting President of the United States until the House does its job.

Statutes specify the procedure—the critical point is that the House must sit in continual session until they do their job—a notable and praiseworthy command.

Now the Senate chooses from the top two Vice-Presidential candidates, and the Senators vote as individuals, not by state. What if the 100 Senators divide 50-50? Unlikely, to be sure, but conceivable. Could the current Vice President (who holds office until noon on January 20th) vote to break a deadlock? The text gives no clear answers, but I don't think so—the Vice President's power allows him to vote to break a deadlock, but I'd argue that the Vice President is not a Senator within the meaning of the XII Amendment. Mr. Quayle's lawyers might argue differently. Let's pray the issue never arises.

THE DEATH OF A CANDIDATE

Before the general election each party's rules allow a substitute candidate chosen under party rules. In the unfortunate event that a candidate dies after the general election, the merits of the electoral college system become clearer.

We've never experienced the death of a winning candidate after an election, but before the meeting of a state's electoral college. However, Horace Greeley, who lost the general election to Grant, was entitled to 66 electoral votes when he died three weeks later. Some of the electors voted for Greeley anyway (better Greeley dead than Grant alive); the others divided their votes among four others. The

incident's a weak precedent, but illustrative of the need for electoral college choice. I expect the electors would be likely to abide by the dictates of their party, substitute the Vice Presidential candidate on their ticket, and leave open the vexing question of selecting a new Vice President.

If the winning candidate dies after the electoral college meets, but before Congress counts the votes, we're in murkier waters. Let's assume that the various Governors have certified the electoral votes and sent them to the Archivist who in turn has passed them on to the tellers selected by House and Senate. Someone observes that the candidate's dead. Thereafter, a Senator and a Member of the House may offer a written objection. Because no live candidate received a majority in the electoral college, I believe the text of the statute means that the choice of a President falls to the House of Representatives. The House then must vote under the rules of the XII Amendment and the national statutes, and they're restricted to a choice among the top three candidates, of whom only two remain alive.

In this unhappy setting I'd expect the House might, either be hopelessly divided, because the text of the XII Amendment says they must choose "from the persons having the highest numbers not exceeding three on the list of those voted for as President [by the Electoral College]." Members might favor the winning Vice Presidential candidate, but that person was not on the list for President. However, Congress might, by law, and acting under the Necessary and Proper Clause, make a constitutional interpretation advancing the winning Vice Presidential candidate to the Presidential list, and vote accordingly. If, however, the House favored the losing Presidential candidate, they'd inspire a violent reaction. Another solution is to allow the statute on presidential succession to operate. 3 U.S.C. 19 establishes the pecking order if no President or Vice President survives:

Speaker of the House, President pro tempore of the Senate; Secretary of State, Secretary of the Treasury and down the list of the Cabinet (Secretary of Education and of Veteran's Affairs rank at the bottom).

Meanwhile the Senate would have to choose a Vice President who will become acting president if the House remains deadlocked in its business. But whom to choose? The Constitution appears to restrict the Senate to choosing among the top two candidates. If one has advanced to the Presidency because of the House's action, the Senate has only one choice, the losing candidate. That person would not enjoy much legitimacy.

We observe a complicated, and, under some facts, uncertain system. Whatever happens in November we'll have a qualified President or Acting-President on January 20. The XX Amendment allows Congress to legislate here, and they have.

THE FINAL SOLUTION

How do we evaluate the system? You may agree with Ambrose Bierce who defines the President as "the leading figure in a small group of men of whom—and of whom only—it is positively known that immense numbers of their countrymen did not want any of them for President."

On the other hand, according to Alexander Hamilton, the system produces the perfect President.

"The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States."

A Brief History of the Graduate Legal Studies Program

Gail L. Holmes, Assistant to the Dean, traced the origins of the Graduate Legal Studies Program back to 1934 when the first LL.M. and S.J.D. programs began. The M.L.I. program, with a graduate school degree, not a law school degree, began in 1955.

According to the 1868–1968 Law School Centennial, the LL.M. and S.J.D. degrees emerged during Dean Lloyd K. Garrison's tenure as a graduate program—somewhat unusual in national context but

much in accord with the Wisconsin Idea. Research and writing, intermeshed with on-the-job service in state agencies, was developed as part of the work leading to an S.J.D. degree. Dean Oliver S. Rundell continued a keen interest in the law research program commenced under Dean Garrison. Graduate students, spurred by the stimulus of Professors of Law Jacob Beuscher, Willard Hurst, Frank J. Remington, and others, not only increased in numbers but produced—their

research being published and accepted—and the producers wended their way to professional appointments at other leading law schools.

“Due to the size of the program, there can be flexibility in its design, students can be involved in interdisciplinary work, and, especially with international students, each is treated as an individual with needs and problems. Each is an asset contributing to our programs through their participation,” concluded Ms. Holmes.

Thesis synopses of some of the Law School's graduate law students and fellows evidence an impressive array of scholarly interests as well as a significant diversity of legal and cultural background preparations.

Jong Hoon Lim (Korea, LL.M.) is researching the development of Mr. Justice White's position on recent separation of powers cases decided by the United States Supreme Court, with emphasis on the debate between “formal” and “functional” theories of interpretation of the Constitution. Mr. Lim's faculty advisor is Lawrence Church.

Shuh-Ren Mao (Taiwan, S.R.D.) researching the topic “The Taiwanese Outboard Investment,” is investigating the expansion of direct portfolio investments of Taiwan investors outside Taiwan, especially in the field of computer technology. Because Taiwan investors view the American computer technology as very advanced, they increase their investments in American computer manufacturing companies with such advantages as securing access to industry-wide information on the future trends of computer technology. Mr. Mao's faculty advisor is Charles Irish.

Mr. Mao also earned an LL.M. (1990) degree from the Law School.

Laura Mitchell-Loretan, from California, is working for her Ph.D. degree at Yale University researching “The Fugitive Slave Act of 1850: Religious and Legal Arguments.” She is investigating the clerics' interpretations on the moral and legal behavior of law enforcement agencies and citizens directly and indirectly affected by the cleric or church interpretations of the law. Ms. Loretan is an honorary law school fellow.

KiHan Lee (Korea, S.J.D.) is researching United States environmental laws, particularly the Superfund Act (the Comprehensive Environmental Recovery, Compensation and Liability Act). He will also examine the Resource Conservation and Recovery Act, all in a review of federal solid waste disposal legislation in the United States. Mr. Lee has been continuing

his research during the spring semester as an honorary fellow at Harvard Law School's EAXSC. Mr. Lim's faculty advisor is Lawrence Church.

Jer-Shenq Shieh (Taiwan, S.J.D.) is researching the topic “Good Cause Eviction.” Mr. Shieh earned an M.L.I. degree from the Law School in 1991. Mr. Shieh's faculty advisor is Lawrence Church.

Bert Niemeyer, from Amsterdam, the Netherlands, holds a Ph.D. and is an honorary fellow at the Institute for Legal Studies at the Law School. He teaches and researches in the sociology of law. His research involves conflicts over building plans. His empirical study analyzes the influence of legal rules and dependency relations on conflicts between citizens and the municipality over building and land-use.

Liwei Wang (PRC, S.J.D.) is doing a comparative analysis of Chinese and United States patent law. Although China's economic reform stimulated a patent law, the reform has not solved the basic problems within China's socialist system. Therefore, the patent law can only play a limited role in stimulating Chinese enthusiasm for science and technology. He was a lecturer in the spring of 1991 and 1992 at the UW Law School. Mr. Wang's faculty advisor is John A. Kidwell.

Martin Frohn (Germany, LL.M.) is on the Giessen Exchange at the Law School. He is doing a comparative analysis on the executive's right to withhold information if congress/parliament demands information under the laws of the United States and Germany. Mr. Frohn's faculty advisor is Linda S. Greene.

Peter Heermann (Germany, LL.M.) is also on the Giessen Exchange. He is investigating the structure of lessee's and lessor's remedies with regard to finance leases of equipment and personal property under American and German laws. Mr. Heermann's faculty advisor is Associate Dean Gerald J. Thain.

Lauren Lundin, from Madison, Wisconsin, is working for her LL.M. degree. Her research will explore the question: given an educated forum to discuss sentencing of environmental and economic crimes, what choices will participants make in sentencing and what reasons will they give for their choices? This thesis will attempt to better understand whether prison is the sentence of choice and whether offenders in these areas are being sentenced to prison. Ms. Lundin's faculty advisor is Walter J. Dickey.

Kako Yamauchi (Japan, LL.M.) is researching the topic "Protection of Privacy Through Non-Wire Communication." Her focus is on the Fourth Amendment privacy provisions of the U.S. Constitution and the U.S. Electronic Communications of Privacy Act of 1986. Mr. Yamauchi's faculty advisor is Frank Remington.

Dias Neto Theodomiro (Brazil, LL.M.) practiced criminal law in Brazil before joining the UW graduate law program. He is researching the topic "Potential New Policing Models." He is particularly interested in developing a problem-oriented model that can achieve greater accountability of the police within a given community. Mr. Theodomiro's faculty advisor is Herman Goldstein.

Maivan Clech Lam, from Hawaii, is working towards the LL.M. degree. She is researching the collective human rights and self-determination rights of indigenous people around the world as they evolve through United Nations lobbying efforts. Her thesis argues that the first set of rights without the second set of rights would not appreciably improve the situation of indigenous peoples. Ms. Lam's faculty advisor is David Trubek.

Hiroshi Ushijima (Japan S.J.D.) is researching "Procedural Justice in Administrative Law." Mr. Ushijima was a Fulbright Scholar at the Law School during 1990-91, working on his LL.M. degree. He is now continuing his research on procedural justice in administrative law as an S.J.D. candidate and has been doing research on federal administrative law in Washington, D.C. during the academic year 1991-92. Mr. Ushijima's faculty advisor is Carin Claus.

Gunnar Graf (Germany, LL.M.) is a Giessen Exchange student. His thesis topic is "Prevention of Insider Trading." He is investigating the approach of private entities to meet the requirements of their association and/or the Securities and Exchange Commission in order to prevent insider trading. Mr. Graf's faculty advisor is Peter Carstensen.

Clyde Spillenger, from New York, is a graduate student in history at Yale University who practiced law in Washington, D.C. prior to coming to Madison. In his research project, "Brandeis: The Uses of a Judicial Icon," he analyzes the image of Justice Brandeis as it has been diversely used and interpreted by judges and legal scholars since Brandeis left the U.S.

Supreme Court in 1939. In particular, he is exploring the ways in which Brandeis has become a major source both for advocates of judicial restraint and for proponents on activism in the protection of fundamental rights. Mr. Spillenger's faculty advisor is Hendrik Hartog.

Catherine Fisk is working for her LL.M. degree. She was an attorney with the United States Justice Department from 1990-91 and was in private practice in Washington, D.C. from 1988-90. She is researching the topic "Other People's Money: Workers' Rights in the Employee Retirement Income Security Act of 1974." Ms. Fisk's faculty advisors are Joel Rogers and Peter Carstensen.

Meg Gaines, from Wisconsin, is working for her LL.M. degree. She is performing a case study using 22 inmates in state prison. Her thesis discusses the differences between what we, as lawyers, think of as good lawyering versus what clients appreciate as good lawyering. Before joining the Law School as an assistant clinical professor of law for the Legal Assistance to Institutionalized Persons (LAIP), she served as a law clerk for the 9th Circuit Court of Appeals and a Wisconsin Assistant State Public Defender. Ms. Gaines' faculty advisor is Hendrik Hartog.

Carmen R. Stanfield, from Arkansas, is working for her LL.M. degree. She is the 1991-92 William H. Hastie law teaching fellow. Her research topic is "Great Lakes Critical Programs Act of 1990: The Impact of the Administrative Model and the Litigation Model and the Need for an Alternative Model." She is focusing on the toxic hazardous chemicals emitted into Lake Michigan, Green Bay-Fox River and Lake Superior as a result of industrial, municipal and agricultural waste by-products. In particular, her research targets persistent, nonbiodegradable, toxic chemicals that cause cancer, birth defects, reproductive system failures, and immune system failures in the human life, aquatic life and wildlife species in the affected geographical regions. Ms. Stanfield's faculty advisor is Arlen C. Christenson.

International Faculty and Student Exchange Programs Promote Diversity

The University of Wisconsin Law School's international faculty and student exchange programs promote cultural, ethnic and legal diversity not only in the law faculty, but also in the student composition of the Law School's graduate programs.

The UW Law School has four faculty and student exchange programs, and at least one foreign exchange program is under consideration (with the National Law School of India). The four exchange programs are with Chuo University in Hachioji, near Tokyo, Japan; Justus-Liebig-Universität Giessen in Germany; University of Groningen in the Netherlands; and Warwick University in England.

The Chuo University Exchange Program began in 1983. The UW Law School receives Japanese faculty as well as graduate students who research the dynamics of and interrelationships between United States law and Japanese law. Every two years, a faculty member from the UW Law School lectures at Chuo University for a period of one to two months. Emeritus Professor Samuel Mermin, Mortimer M. Jackson Professor Gordon Baldwin, Emeritus Professor Stuart Gullickson, Emeritus Professor G. William Foster and, most recently, Professor Linda Greene have all served as Chuo University Faculty Exchange Professors. During the exchange period, UW professors discuss recent developments in American law with host legal scholars through an interpreter from Chuo University law faculty. Three to four lectures are given. Two of these lectures are given to regular law students and one or two lectures are given to the faculty and graduate students.

The Justus-Liebig-Universität Giessen Faculty and Student Exchange Program began in 1985, according to Professor

Lawrence Church. Every year, two or three German students come to Madison the same number of American students to Germany; however, it has been difficult filling these slots since very few law students are fluent in German. The Law Exchange Program has been extended campus-wide to encourage students from other departments to take advantage of the exchange opportunity. This fall, there are three students from Germany at the Law School and four Wisconsin students will go to Giessen. They will receive full UW credit for their course work in Germany.

As for the German Faculty Exchange Program, every year two members from the UW faculty teach in Germany during the months of May and June. In September and October, German faculty members teach at the UW Law School. The German professors teach in the areas of their special interests, so the content of their courses vary from year to year. The title of their course, European Law, remains constant, however.

As of 1991, 12 UW faculty have participated in the Justus-Liebig-Universität Giessen Program. The most recent law faculty participants are Dean Daniel O. Bernstine and Professor Frank M. Tuerkheimer, who were in Giessen in May and June of 1991. Professor Alta Charo expects to represent the Law School in May, 1992; the June faculty member has not yet been announced.

The University of Groningen Student Exchange Program at the J.D. level began the fall of 1991. The UW Law School also

contemplates a faculty exchange when funding can be arranged. The University of Groningen offers law courses in European Law in the English language so that UW law students can take them. Dutch students enroll in regular UW law school courses. Five UW students enrolled and five Groningen Law students participated in the mutual exchange in Fall, 1991. This level of enrollment is expected to remain the same.

The UW Law School also has one student going to Warwick University (England) Law School in Fall, 1992 on a student exchange program.



Five students from the Groningen Exchange Program.

Finally, UW law students are sometimes permitted to study abroad whenever they can put together a program on an ad hoc basis, if the host law school agrees that the UW law student can take certain courses at its law school.

Summer International Program Enters Tenth Year

An outsider wandering into the student lounge during class breaks might wonder if they had the right building. Conversations can be overheard in a variety of foreign languages and those in English are likely to be discussing foreign topics and places. But the speakers are all law students, lawyers and judges. They are all here at the Law School for a five-week course teaching the fundamentals of US law as it is likely to apply in countries around the world.

Founded in 1982 by a core group of

UW Law faculty, the program has become one of the most respected of its kind. "We five faculty members created the Program and continue to administer and teach it today. There is little overhead and we can make decisions on the spot. Our students appreciate our flexibility," commented Professor Larry Church, one of the Program's faculty.

Fifty to seventy students from around the world now travel to Madison to learn the basic structure of the legal system and several significant areas of law in the US: constitutional, commercial transactions, issues in litigation, product liability, corporations and securities regulation. The discussion in each area typically incorporates material relating to international transactions.

"The strength of the program is a product of the fact that students come from so many countries," said Church. "Students are learning about various legal systems from each other, in class and outside."

The program is intended for both practicing lawyers and law students who are near completion of their formal training, who have a strong interest in either US law or the laws applicable to international transactions involving the US. The program is designed to serve as a low-cost alternative to a full-year course in US law or as an introduction to advanced formal training in the US. While most of the pro-



Summer in Madison is too beautiful to spend in classes—leisure time is important in forming friendships.

gram's graduates return to their homes to begin or continue legal practice, some enter J.D., LL.M. or S.J.D. programs at the UW or other law schools in the United States.

When the program began, most of its students came from Europe, including the then-Communist bloc. Recent classes, however, show a decided shift to the Pacific Rim. While one can argue the "chicken v. egg" question, it is clear that this shift is related to the recently created East Asian Legal Studies Center at the Law School. A number of graduates of the summer program have continued here at the Law School under the auspices of the East Asian Center.

Classes are generally held five mornings each week for five weeks with optional short sessions on two or three afternoons. Participants also meet with practicing lawyers, government officials and members of the judiciary. And students do have time to enjoy Madison and Wisconsin during their stay here.

WHERE STUDENTS COME FROM

Argentina	3	Malaysia	1
Austria	5	Mexico	2
Belgium	41	Mongolia	1
Brazil	14	Nepal	1
Chile	5	Netherlands	4
China	2	Nigeria	2
Colombia	1	Norway	1
Denmark	1	Peru	4
Dominican Republic	5	Philippines	1
Ecuador	1	Saudi Arabia	6
Egypt	1	Singapore	1
Finland	4	Spain	6
France	4	Sudan	1
Germany	105	Sweden	3
Ghana	3	Switzerland	13
Grenada	1	Taiwan	25
Hong Kong	1	Thailand	5
India	3	United Arab Emirates	1
Indonesia	3	United Kingdom	1
Israel	5	Yugoslavia	1
Italy	11	Zambia	2
Japan	132	455 students from	
Korea	22	44 countries	

While English is a requirement and classes are conducted in English, language skills do create some problems. "Virtually all of our students have English as a second language. This has lead to obstacles in intellectual understanding," noted Church.

UW Law faculty teaching in the program include: W. Lawrence Church, Kenneth B. Davis, Jr., Charles R. Irish, John A. Kidwell, and Zigurds L. Zile.

Hundreds of graduates of the course are now practicing law, serving in government, or working for corporations around the world. Each, we hope, carries fond memories of their stay in Madison, and each is an unofficial ambassador for the Law School, the University and the country. "The program is a strong source of the Law School's indirect reputation. Its students and graduates are highly talented and motivated. They are tomorrow's leaders of the world's legal sytem," said Church.



Professor Ken Davis confers with Summer International Students.

Changes at the Center for Public Representation

STACY FRIEDMAN

Public Interest Law students at the Wisconsin Law School are getting a boost in the form of Louise Trubek, who is making the transition from practicing lawyer to teacher.

After serving as Executive Director for the Center for Public Representation (CPR) for the past eighteen years, Trubek considers assuming her role as a full time professor a challenge. Trubek founded CPR, which is a nonprofit organization not affiliated with the University in 1974, and she has been the clinical director for the Law School to supervise students at the Center.

Some of the clinics offered include Health, Consumer, AIDS Client Services and a Community Legal Outreach Clinic based in a neighborhood center in South Madison. The Center gives students interested in clinical law experience by working on behalf of groups unable to obtain representation. CPR also includes a classroom seminar component.

This past summer, 17 law students finishing their first year were working at the clinic. "Few universities offer summer programs as good as Wisconsin," Trubek said. Twelve of these students attend the UW, and the others attend Duke, Minnesota, Valparaiso, Hastings and Franklin Pierce. "There's a lot of student interest in public interest lawyering," she remarked.

Trubek solicited students to work at the center and enroll at the UW for the summer. Three lawyer clinicians work with her supervising the students. While working there students get firsthand experience in public interest lawyering.



Michael Pritchard and Louise Trubek.

As of July 1, Trubek has stepped down as executive director and is teaching full time at the Law School. "I have become increasingly interested in thinking about public interest practice, lawyering, writing about it and teaching law students," she said.

This fall she is teaching two courses, Lawyering in the Public Interest and a collaborative course, Families, Poverty and Law with Professor June Weisberger. "Lawyering in the Public Interest discusses the history, practice, theory and institution of public interest lawyering in the US and throughout the world," Trubek said. "Families, Poverty and Law discusses theories of why poverty exists, who are the poor and the various legal approaches to alleviating poverty. I just published articles discussing the pedigree of the seminar."

Filling her shoes at the Center is a "tall

order," according to Michael Pritchard. Trubek served as his first mentor after he finished law school in 1974 and became a staff attorney for CPR. "Louise's energy and attention to the Center has been fantastic," Pritchard said. He hopes to continue Trubek's work by keeping ongoing projects funded and getting upcoming projects started.

Trubek does not limit her work to Wisconsin, however. She is currently working on two promising projects, one in the US and one international. The Inter-University Consortium on Poverty Law is a joint project of Harvard and the UW funded by the Ford Foundation in New York.

The consortium's mission is to mobilize law schools to be more active on poverty law issues by offering more courses on the subject and having professors working and writing about related issues and con-

cerns. This project is entering its fourth year and soon will expand to 40 other schools. Trubek will serve as coordinator for the program.

"I am going to be running the meetings of the group and the peer exchange program," Trubek said. "People from some schools will visit others to see how they can strengthen each other and mobilize law schools." Her second endeavor is developing an international group on social values and law. The organizational meeting occurred last May in Philadelphia.

This project's goal is "to share experience and knowledge about how legal education can be an agent in working

towards more humane and participatory law and legal institutions," Trubek explained.

The next conference will be held in London this March and is entitled "Working With Social Values and Legal Education in Eastern and Western Europe."

So far Trubek has accomplished more than most people do in a lifetime, but she considers the development of CPR as an institution her proudest accomplishment.

Many non-profit organizations have difficulty making the transition from "founder" to a new "executive director," but Trubek is confident that CPR will survive the shift with success under the

direction of Michael Pritchard.

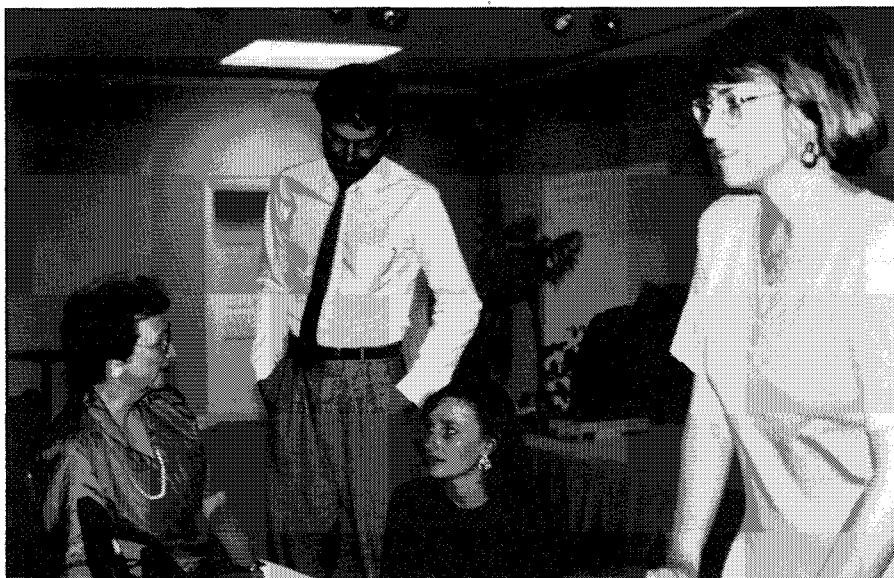
Not one to rest on her laurels, Trubek plans to continue improvements in the clinical field. "My new goals are to see if I can expand as a scholar, teacher and practitioner because I'd like to do all three," Trubek said. "What I'm giving up is management of a nonprofit organization."

Trubek will continue her dedication to clinical law through her position in the Law School. "One of my goals in the Law School is to see if we can get more funding for students interested in public law work and more support for public interest law work," said Trubek.

She hopes the class of 1992 understands the broad range of work lawyers can do. Public interest work offers a broad spectrum, from management of non profit organizations to working in legislative and public policy jobs that generate new ideas for future legal institutions. Elderly law and health law may be particularly promising fields, according to Trubek.

Though today's job market is difficult, Trubek offers words of wisdom for recent law school graduates. "My advice is that I hope you took a wide variety of courses in law school and developed ideas of the kind of roles lawyers could play," she said. "Students should think about how they can use their background in a socially positive way."

"Private practitioners can get involved in issues, too," Trubek said. "I see a lot of potential for the future."



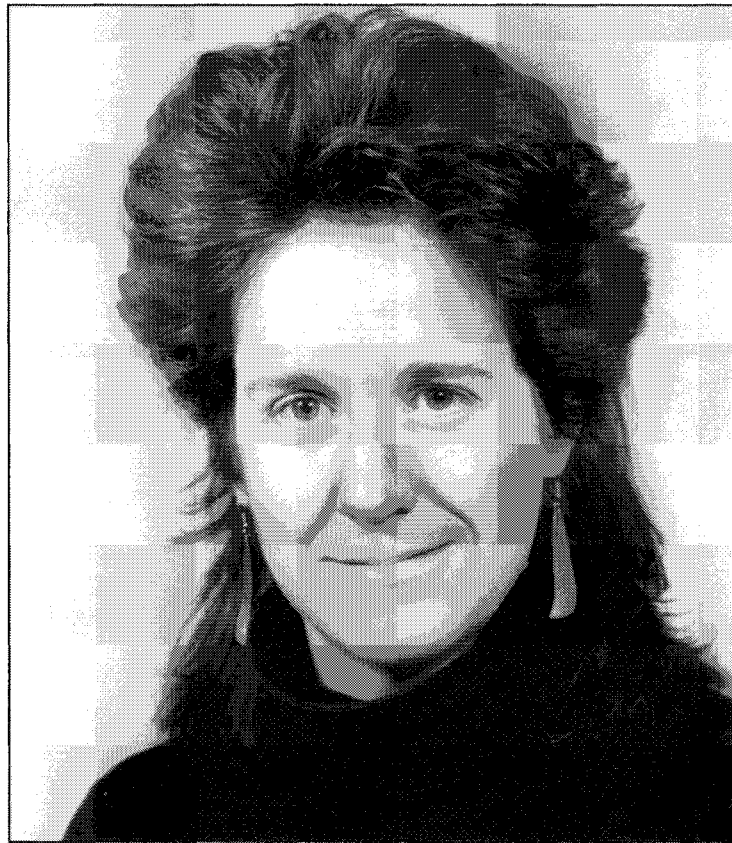
Students and staff engage in community outreach programs.

PROFESSOR JANE SCHACTER

STACY FRIEDMAN

With one year of teaching under her belt, Jane Schacter is making herself at home in the Law School. Memories of her Harvard law professors inspire her to communicate effectively in the classroom. Her wide variety of professional experience is a bonus for her students, and Schacter utilizes her experience to help first-year students understand Civil Procedure. Second or third-year students enrolled in her class may learn about Administrative Law, Sexual Orientation in the Law or participate in a seminar called Statutory Interpretation and the Democratic Ideal.

Schacter is interested in several aspects of the law and had the chance to gain more experience soon after she graduated from law school. "I clerked for a year for a federal district judge, a trial court judge who also sat frequently by designation on the First Circuit Court of Appeals in Boston, so I had a little bit of a trial clerkship and a little bit of an appellate clerkship." She then served as an associate at Hill and Barlow and as an Assistant Attorney General in Massachusetts. Madison impressed her, however; and the Law School's faculty lured her to the Midwest. "There's just a really tremendous tradition



JANE SCHACTER

here going back to people like Willard Hurst and Sam Mermin and a real interdisciplinary perspective on law, which is something I'm interested in pursuing in thinking about legislation and administrative law," Schacter said.

Schacter hopes to inspire students "to think creatively and in terms of a legal career as a form of public service." Also on her agenda is advancing the study of statutory interpretation which, in her opinion, has experienced a healthy explosion of scholarship in the last five to ten years. She enjoys being on the cutting edge of

this area. According to Schacter, current law, economics and political theory are converging and enriching the study of legal interpretation. Another cutting-edge issue Schacter addresses in class is Sexual Orientation in the Law because the topic is being discussed all over the country. And she addresses the question whether or not to add sexual orientation to the list of protected groups in anti-discrimination laws.

Because the shift from law student to private practice is difficult and does not necessarily leave much time for continued study, Schacter encourages her students to use their three years here as a valuable time to think reflectively about the law.

She hopes they will think critically about themselves and the professional choices they make.

Schacter enjoys the sense of motivation she gets from planning her classes as opposed to always being driven by clients or opposing council in practice. "I'm really struck coming from practice by the amount of autonomy and freedom, and it's something I really welcome."

Based on her first year in Madison, Schacter plans to be around for a while, so she can make a contribution to the Law School and the professional community.

Professor **R. Alta Charo** gave a paper on "The Effect of Changes in Abortion Law on Genetic Services" at the June 28 meeting of the National Academy of Sciences Committee on Assessing Genetic Risks, in Irvine, California. She also had the pleasure of experiencing a 7.4 earthquake while there. In July she was a guest instructor at a National Science Foundation summer course in biology and social issues, aimed at high school science teachers, and gave a plenary address on "Life After Casey: The View from Rehnquist's Potemkin Village" at the Third International Health Law and Ethics Meeting in Toronto. While in Madison, she was a guest on the Tom Clarke show (WHA-AM), discussing the Supreme Court decision to uphold the FDA's ban on personal importation of the French abortion pill. Professor Charo was recently invited to become a regular contributor to the Law and Medicine column of the British medical journal *The Lancet*. This summer she published pieces on mandatory contraception, the Casey decision and the abortion pill for the journal.

Professor **James E. Jones, Jr.** gave the closing address, "The Rewards of the Academic Life -Revisited," at the Association of American Law Schools' Workshop for New Law Teachers, July 23-25, in Washington, D.C., and led two small group workshops at the conference.

Professor **Stewart Macaulay** attended the meeting of the Research Committee on Sociology of Law of the International Sociological Association, June 26-July 3, in Mexico City. He reported on the Wisconsin Business Dispute Group's study of corporate litigation in the automotive sector. He was forced to attempt to revive his Spanish which has been decaying for twenty years.

Associate Dean **Gerald Thain** spent part of his "summer vacation" in July by serving as a consultant and expert witness to the Wisconsin Department of Justice in their action against TCI accusing them of

unfair trade practices in their "negative option" billings.

The University of Wisconsin African Studies Program has elected Professor **Cliff F. Thompson** as Director/Chair for a three-year term. The program has about 65 faculty members, with specialists in most fields including several African languages. The early part of Thompson's professional career, about 12 years, was in law schools in Africa. He has recently returned to Madison from the University of Kansas where he was the Rice Distinguished Visiting Professor. One of his recent duties in the spring semester was serving as AALS representative on the site evaluation team which visited the Vermont Law School.

Professor **Frank Tuerkheimer** argued *U.S. v. Martinez, et al.*, which was assigned to him under the Criminal Justice Act at the Law School in September. The Seventh Circuit Court of Appeals heard three cases in our courtroom that day. The Court consisted of Judges Tom Fairchild, Richard Cudahy and John Coffey. Law student Svetlana Luebow assisted Prof. Tuerkheimer.

Professor **Alan Weisbard** participated in an intensive ten day "Medical Institute for Law Faculty" co-sponsored by the Cleveland Clinic and the Cleveland-Marshall College/School of Law in early June. His activities ranged from observing a number of surgeries to making rounds with the intensive care team, to meeting with patients following liver and bone marrow transplants, and discussing AIDS care with Clinic patients, physicians and lawyers. Weisbard chaired the selection committee of Hastings Center Fellows that awarded the 1992 Henry Knowles Beecher Award to Dr. Jay Katz of Yale Law School. He also presented a talk on ethical considerations applicable to the public activities of professional bioethicists at the Fourth Annual Summer Bioethics Retreat in Jackson Hole, Wyoming in late June. He taught an intensive one-week course on

"New Reproductive Practices: Biblical, Rabbinic and Contemporary Perspectives" at the National Havurah Summer Institute in Bryn Mawr, PA, in early August.

Associate Clinical Professor **Ralph Cagle** was recently appointed chair of the Wisconsin Bar Association Committee on Post-Graduate Education. He also serves on the Bar Association's Finance Committee, Professionalism Committee, Bridge-the-Gap Committee, Advertising and Specialization Committee and the Wisconsin Bar Mentor Council. Cagle was also recently appointed Vice-Chair of the Professionalism and Professional Responsibilities Committee of the ABA Section on General Practice and named a member of the Legal Education Committee of the Western District Bar Association.

Professor **Bill Clune** spent four weeks in China advising the Chinese government on educational policy. He was one of nine foreign lawyer experts in a UN-sponsored project dealing with various aspects of the transition from central planning to a greater role for markets and other autonomous social and economic institutions. Clune met in workshops and larger sessions with representatives of the State Education Commission and the Bureau of Legislative Affairs of the State Council, groups with exclusive authority over the drafting of legislation in China. The project was directed by Professors Ann and Bob Seidman. Bob Seidman is formerly of the UW Law Faculty and now a Professor at Boston University Law School.

Professor **Marc Galanter** was a participant in the Symposium on the Future of the Civil Jury System in the United States, sponsored by the Brookings Institute and the Litigation Section of the ABA, in Charlottesville, VA, June 19-21. He presented a paper entitled "Are Civil Juries a Good Thing?" In July, Galanter visited IESA in Caracas, Venezuela, and presented a day-long seminar on Law Firms and Business Disputing. On August 5, he testified

before the Senate Judiciary Committee on S.640, the Products Liability Bill, and on August 8 he spoke to the National Council of Bar Presidents in San Francisco on "The Costs of Ignorance." He also participated in a forum on "The Civil Justice System—Facts and Fiction" at the annual meeting of the ABA Tort and Insurance Practice Section.

Professor **Len Kaplan** was a member of the organization committee for the 18th Annual Congress of the International Academy of Law and Mental Health where he made three presentations: an analysis of the newly adopted Code of Professional Responsibility for Psychology and Law in the US; "On Prophecy: Theology, Psychology and Law in Heschel and West;" and "Billy Budd and Human Judgment." Kaplan gave up his post as Secretary-General of the Academy and was voted First Vice President for the next year. Kaplan also presented a lead paper ("Law and Theology in Post Modernity") at a plenary session of a conference, "Justice, Peace and Integrity of Creation," held at Lakeland College in Sheboygan, June 28–July 3. Protestant theologians from Wisconsin, England, Germany and South America attended.

Professor **Lynn LoPucki's** "Strange Visions in a Strange World: A Comment on Bradley and Rosenzweig's The Untenable Case for Chapter 11" was published in the Michigan Law Review in October. The comment struck a blow against the dark impulses of law and economics and in favor of bankruptcy reorganization as we all know it. His article "Computerization of the Article 9 Filing System: Thoughts on Building the Electronic Highway" will soon be published in the Duke Journal of Law and Contemporary Problems as part of a symposium on the effects of technology on commercial law. LoPucki will serve as panelist in the David Berger Program on Complex Litigation at the University of Pennsylvania Law School this fall.

Professor **Beverly Moran** received a grant from the UW–Milwaukee Center for the Study of Race and Ethnicity. The grant pays for research assistance.

Visiting Professor **Leon Trakman** presented a paper in absentia on Alternative Dispute Resolution at the National Conference of Corporate Legal Counsel in Hali-

fax, Canada on August 24.

News from the Legal Writing Staff: **Aviva Meridian Kaiser**, Director of the Legal Research and Writing Program, attended the Legal Writing Institute's fifth biennial conference on teaching legal research and writing, July 30–August 2, at the University of Puget Sound in Tacoma, Washington. Aviva gave two presentations, "Documented Needs and Weaknesses in Legal Research Curricula: Solving the Problems through Innovative Course Design" and "Drafting in Litigation: Teaching Law Students to Think Like Judges."

Legal Writing Tutor **Mary Barnard Ray** made a presentation entitled "Text, Sighs and Videotape" at the biannual Legal Writing Institute in Tacoma in July. The presentation, which included a videotape used in TA training here, led to many requests from schools across the country for copies to use in their training programs. Ray also served as facilitator for other structured group discussions during the conference and met with other legal writing specialists to plan upgrading of their annotated bibliography. This bibliography, which is a common source compiled by and available to legal writing specialists nation-wide, is housed at Wisconsin and administered by Ray.

In September, the Legal Assistance to Institutionalized Persons Program filed a petition for Writ of Certiorari in the US Supreme Court. The petitioner is represented by Professor **Walter Dickey**. Most of the work on the petition, which raises the issue of the constitutionality of the failure of a Wisconsin trial court to instruct on a requested lesser included offense, was done by supervising attorney David Cook and Chris Burke, a student intern. Eric Pless, former intern, worked with Cook on the case in the Wisconsin Appellate Courts.

John Pray, also of LAIP, briefed and argued a case in September before the Wisconsin Supreme Court. He was assisted by supervising attorney Kate Kruse-Livermore. Past interns Ann Jacobs and Matt Flanery did substantial work on the case. The issue before the court is the proper unit of prosecution in criminal nonsupport cases in Wisconsin.

This fall, **Ken Streit**, supervising attor-

ney at the Women's Correctional Institution at Taycheedah, is a member of and is helping staff the Wisconsin Legislative Council Committee on the Female Offender. Student interns Kelly Condon and Julie Mann are assisting Streit and the committee.

Professor **Walter Dickey** reports that the Legal Assistance to Institutionalized Persons Program this summer had 51 student placements in federal and state prisons, 15 students in state prosecutor offices and seven in state public defender offices. All were in full-time internships under his overall direction. Ben Kempinen was in charge of prosecution, Michele LaVigne was in charge of the defender, and Meredith Ross had primary responsibility for LAIP.

The Public Intervenor Summer Clinical Intern Program, under the faculty supervision of Professors **Arlen Christenson** and **James MacDonald** had seven students working in environmental advocacy. Environmental issues included: filing a lawsuit against the Department of Industry, Labor and Human Relations to enjoin its new variance policy for on-site sewage systems for new construction; as a follow-up to litigation, negotiating with the Department of Transportation and attending DOT hearings for more "environmentally friendly" transportation policies; participating in national and state wetland protection policy-making; investigating wetland permit applications and illegal wetland filling; participating in Department of Natural Resources groundwater standards setting and Public Service Commission rulemaking; intervening in state Department of Agriculture policy-making regarding Atrazine contamination of groundwater; and assisting citizens dealing with proposed landfills, incinerators, major air pollution sources, aquaculture, hazardous waste sites, highways and other environmental issues.

Professor **Richard Monette**, Director of the Great Lakes Indian Law Center, a new Law School clinical program, reports that the Center had placed seven students on six different reservations throughout the state; St. Croix, Lac Courte Oreilles, Red Cliff, Mole Lake, Menominee, and Oneida. Additionally, one student worked with the Winnebago Nation. The student

interns worked for tribal attorneys, courts and governing bodies. Because Indian law cuts across all substantive legal areas, the students got a broad-based experience in tribal tax, zoning, worker's compensation ordinances, state-tribal jurisdiction, and revision of tribal constitutions. Students have worked in tribal court, appeared before tribal governing councils, and accompanied Indian child welfare workers on home visits and court appearances.

Professor **James E. Jones, Jr.**, reports that four Wisconsin students interned at the NAACP Legal Defense Fund clinical program this summer; three students at the New York City office, and one at the office in Washington, D.C.

Clinical Director **Louise Trubek** reports that the Center for Public Representation Summer Clinical Program

concluded the eight-week session in July. Seventeen students participated in the program, including five students from other law schools; Duke, Valparaiso, Minnesota, Franklin Pierce and Hastings. Students worked on a variety of projects, including the new area of elderly housing. Under a grant from the Legal Services Corporation, CPR focused its elderly clinic on housing issues, particularly older people aging in place in their homes. Students conducted workshops throughout Dane, Rock and Dodge counties on programs to help elderly stay in their homes, with special emphasis on property tax deferral, and other ways of financing continued home residence. The Elderly Housing Project has just issued a bulletin for property tax payers on the opportunities available for seniors, with limited income, to

receive property tax deferral and other special treatment in order to reduce their taxes. The Elderly Housing Project was under the direction of Steve Meili, Clinical Supervisor.

CPR also continued its South Madison Clinic, under Susan Brehm, Clinical Instructor, with students working on the food pantry and food stamp projects, initiation of housing outreach projects and work with the Dane County Shelter for Battered Women. The AIDS Clinic, directed by Clinical Instructor Nina Camic, provided legal services to persons with HIV infection. The Health Clinic, under Clinical Professor Louise Trubek, analyzed health legislation enacted by the Wisconsin legislature.

Memorial Resolution of the Faculty of the University of Wisconsin–Madison on the death of Emeritus Professor Robert H. Skilton

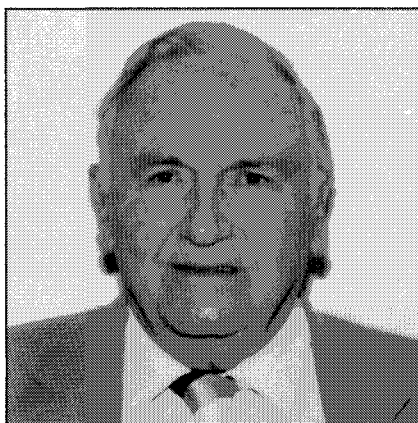
Emeritus Professor Robert H. Skilton died on August 15, 1992 at the age of 83. In the 23 years of his tenure at Wisconsin, he served as the mainstay of the Law School's commercial law curriculum.

Bob Skilton was born in 1909 and raised in Philadelphia. He earned four degrees from the University of Pennsylvania, including a law degree in 1934 and a Ph.D. in Political Science in 1943. In 1936 he married his wife Margaret (Peggy), who survives him along with a daughter, three sons (all lawyers) and nine grandchildren. Before attending law school he served as an instructor in English at Swarthmore.

Upon graduation from Law School, Bob practiced law for three years with a Philadelphia law firm, but the teaching profession beckoned, and from 1937 to 1953 he taught business law at the University of Pennsylvania's Wharton School. His teaching was interrupted by commissioned service in the Navy from 1943–1946. Wisconsin offered him a research grant in 1951. He joined the Law School faculty in 1953.

Bob decided to retire in 1976, but he continued to teach as a visiting professor at other law schools for a number of years after his official retirement at Wisconsin. These included teaching stints at Southern Illinois University School of Law, McGeorge School of Law at University of the Pacific, Wayne State University School of Law and Willamette University College of Law. He ended his teaching career at Wisconsin by responding to our emergency need for a commercial law teacher during the 1983–84 academic year.

Bob Skilton was a prolific scholar and



Robert H. Skilton

a nationally recognized expert in commercial law. During 1978–80, for example, he served as chairman of the American Bar Association's Uniform Commercial Code Subcommittee on General Provisions, Sales, Bulk Transfers and Documents of Title. His many law review articles dealing with various aspects of secured transactions under Article 9 of the Uniform Commercial Code are of particular significance and, in the aggregate, constitute a comprehensive treatment and analysis of that subject area. His deep knowledge in criminal law, securities law, and constitutional law enriched his ability to convey the topical importance of the ordinary commercial transaction.

Professor Skilton was a popular classroom teacher, notwithstanding the fact that he taught courses at first regarded by students as unexciting—subjects such as Commercial Law, Insurance Law, International Business Transactions, Contracts and Restitution. Students and colleagues respected his vast knowledge of business

law, his keen analytical skills and his habit of enlivening the class by reciting poetry from memory to illustrate points of law. From time to time, he also taught Constitutional Law and, in later years, Sports Law. The latter subject was a natural outgrowth of his long-time interest in sports, and particularly, his devotion to the often hapless Philadelphia Athletics. He also enjoyed bowling as a member of the UW Faculty Bowling League.

Bob Skilton's positive contributions as a scholar and teacher will be felt for a long time to come, and those of us who knew him well will cherish the memory of his great sense of humor, his congeniality, his scrupulous honesty and his love of the law.

In 1947 a little volume of his poetry was published containing both the serious and the irreverent. Among the latter—

*A's collarbone was cracked when he
Was battered by a drunken driver
Ungenerously, his lawyer, B,
Took half the settlement as fee.*

*So A, without much more ado,
Broke B's own collarbone in two.
"Since you have split the claim," he said,
"I'll share my injuries with you."*

We mourn Bob's passing.

MEMORIAL COMMITTEE

Gordon Baldwin
Stuart Gullickson
Orrin Helstad, Chair
Jim MacDonald
Marco Melli

Memories of Shibe Park

ROBERT H. SKILTON*

Shibe Park...For sixty-one years from 1909 to 1970, this ballpark was the scene of so many memorable doings in the saga of major league baseball in Philadelphia! It was renamed "Connie Mack Stadium" in 1953. The next year—late in 1954—the Athletics moved to Kansas City and the Phillies—there since 1938—became the sole occupants. In 1970 the Phillies took their baseball games to Veterans Stadium and left only a vacant shell that was eventually gutted by fire and then torn down.

"Connie Mack Stadium it was eventually called, but I shall always remember it by its original name, "Shibe Park." It was "Shibe Park" when the Athletics (the A's for short) played there, under the management of the famous Connie Mack.

When I was in the 7th and 8th grades—a good many years ago now—some of the best times in those years involved Shibe Park. Let me explain. The school I went to was at 23rd and Cambria Streets, not far from Shibe Park. I had a classmate named Earl who lived with his family on 20th Street between Lehigh and Somerset, and this, I found, was a very special location.

What was so special about 20th Street between Lehigh and Somerset? There was

There are pieces of music that transport me back in time, vivid memories of places and events that occurred long ago. Other people have the same experience with sights, sounds or even smells. When Bob Skilton began working on this article about Shibe Park, an obscure baseball field that was torn down years ago, it didn't occur to me that it was more than his recollections, that while he worked and reworked these memories he was, for awhile at least, back on those streets with his childhood friends watching the greats of another generation.

Like always, Bob went through many drafts of the article until he had each word to his satisfaction. In fact, he worked on this article and several others after his illness had been diagnosed as terminal.

Bob was my friend and one of the most gentle and gentlemanly persons I could ever know. His mind was active, his eyes retained their twinkle and his wit was intact to the end.

There are other memorials and tributes to Bob in this magazine and in other publications, but I chose to publish his memories of baseball because now I know where Bob has gone — back to the streets of Philadelphia with his friends, watching Connie Mack and his other heroes.

Editor

nothing special about the type of housing. Visualize a block-long series of row houses—two-story houses, joined together with party walls—no space between—look somewhat like a single structure with separate front porches and entrances for each housing unit, and each unit featuring a bay window at the front of the second floor. This pattern is repeated thousands of times throughout Philadelphia. But

these were not mere apartments or flats, as in New York City. Each unit was a separate house, and at that time, almost all were owner-occupied homes maintained with tender loving care. The neighborhood around 20th Street, as was typical, had its own life and character, and tended to be self-sufficient, with a variety of small stores located on the corners. Philadelphia was rightly called the City of Homes. There were few cars then, and the kids could play in the streets.

What made the block of 20th Street between Lehigh and Somerset special was that the houses were on only one side of the street (the east side), and, on the other side was the right field wall of Shibe Park, about twelve feet high. And from the bay windows on the second floor of most of the houses, you could look out over the wall

and see almost the entire field of play. (The grandstands and bleachers were on the other three sides of the field.)

Now and then Earl would ask me if I wanted to go after school to his home to see the balance of the ball game. (All games, except for a rare morning game, were in the afternoon. Night baseball came much later.) My acceptance was immediate, enthusiastic. When we arrived

at Earl's upstairs bay window, the game would have progressed to the fourth or fifth inning—that left about half of the game to see. It was free, great entertainment.

It was the making of an incurable baseball “fan”—incurable, yes, although with the years this “fan” has become sadder and wiser, and for him the term “fan” is no longer short for “fanatic.”

From that time on, I followed the A's through thick and thin, great years and lean years, as long as they remained in Philadelphia. Interest began at a propitious time. It was exciting to see the team go up the ladder. After being habitual denizens of the cellar (the championship years 1910–1914 long past) the Athletics, beginning about 1922, improved, player by player, until the time came when they surpassed the New York Yankees while the Yankees were still in their glory with Babe Ruth, Lou Gehrig, and the rest of that redoubtable team.¹

It was a great team, with many great players. For example:

Jimmie Foxx, with a 1929 batting average of .354 and 33 home runs,

Bing Miller, .335 ba, 16 hr

Al Simmons, .365 ba, 34 hr

Mule Haas, .313 ba, 16 hr

Jimmy Dykes, .327 ba, 16 hr

Mickey Cochrane, .331 ba, 7 hr

The team batting average in 1929 was .296. (All this, at a time before the introduction of the helmet giving protection to the head.)

Pitchers in 1929 included:

Lefty Grove—won 20 lost 6, 2.82 earned run average,

George Earnshaw, won 21 lost 8, 3.28 era

Rube Walberg, won 18 lost 11, 3.59 era

(This before relief pitching became a vital part of the game. Grove had 21 complete games, Walberg 20, and Earnshaw was low with 13.)² Of the above, eventually Foxx, Simmons, Cochrane, and Grove were elected to the Baseball Hall of Fame.

In 1929 the A's went to the World Series as champions of the American League. They repeated in 1930 and 1931. In 1929 and 1930, they won the World Series. In 1931 they lost to the St. Louis Cardinals, who surprised them with the

phenomenal performance of a team starring the little-known Pepper Martin.

The salaries the players received in those days seem quite modest compared with what a great many baseball players are getting today, even when taking into account inflation and the cheapening of the dollar. In those days the bargaining power of players vis-a-vis the owners was severely restricted because a “reserve clause” in all major league baseball player contracts, upheld by the courts, had the effect of giving the clubs career rights in the players, so that a player could not counter his club salary offer with a threat to play on another major league baseball team making a better offer. The prospect of becoming a free agent with vastly enlarged bargaining power is a comparatively recent development, as a result of an arbitrator's decision in 1975.³

Without having the figures, my guess is that the average annual salary of the 1929 A's was something like \$10,000.⁴

Of course, comparisons between then and now can mean little, considering the differences in taxes, prices and wages. In those days, for those times, some baseball players were well-paid. Babe Ruth superstar, was getting the highest salary in baseball in the early thirties—something like \$70,000-plus for the season. That was a lot of money for the time. The story goes that when he was setting home run records he was introduced to President Hoover. The Depression was spreading disaster. A friend accompanying the Babe commented on the Babe's nonchalance in meeting the President of the United States, and asked him to explain the fact that the Babe was getting more pay than the President. The Babe replied: “Well, he didn't have a good year.”

With the swollen player contracts of the last few years, made possible in part by a team's sometimes greatly increased revenue from licensing TV broadcasting of games, the anecdote about Babe Ruth and President Hoover loses its punch. Today's superstars may expect to be paid about six or seven million dollars a year. Such amounts could top not only the President's salary, but also a good part of his staff thrown in. But perhaps with a shrug you might say, “What of it? The President didn't have a good year.” On

some teams the average player salary may, in 1993, become \$2,000,000!⁵ So if you took all of the team's pay together, you could pay the salaries of the entire 100-member U.S. Senate, and still have plenty to distribute to keep the players miles away from the bread line. But perhaps this is as it should be. The United States Senate, you might observe, didn't have a good year.

Yes, the A's were a great team—one of the greatest. But it could have been an even greater team if organized Baseball had not systematically excluded blacks from playing on its teams. Until 1947, when Jackie Robinson became the first black to play in the major leagues in modern times, the color barrier meant that the major leagues deprived themselves of doubtless some of the best players in the game who from want of more lucrative opportunities played in their own leagues. No statistics were kept to memorialize their accomplishments. Thus, famous though some of the stars were at the time, their fame was confined and short-lived.⁶ Although from 1972 on a few such once legendary black players have been admitted to Baseball's Hall of Fame, usually posthumously, there come to mind lines from Gray's *Elegy Written in a Country Churchyard*—that classic tribute to and lament for the unsung:

“Nor you, ye proud, impute to these
the fault

If Memory o'er their tomb no trophies
raise.”

The A's rise to the top did not bring the expected financial rewards to Connie Mack and the Shibes—the owners of the A's. The Great Depression, (1929–1939) fully underway, hit Philadelphia's economic activity hard, and caused low attendance at home games as it continued. Connie Mack was far from being an ultra-rich multimillionaire able to operate a baseball franchise as a luxury showpiece of an investment portfolio (as is now so often the case), nor were the Shibes, although well-to-do. They were instead old-type baseball entrepreneurs who counted on operating the franchise as a profit-making concern and did not intend to lose important money. There was predictable consequence. To pay off debts, the A's sold most of their star players to

other teams. In 1935, only a few of the players of the championship years remained on the roster.

In that year—1935—a long-standing source of irritation was removed—interlopers at the money trough. From the beginning of baseball at Shibe Park the owners of some of the houses on 20th Street had taken advantage of their special location to make money by erecting stands on their roofs and charging admission to see the ball games from rooftop and bay window. During the long, lean years after the first championship A's team (1910–1914) was dismantled, the pickings were modest. A friend recalls that when he sat on the roof, admission was 25¢ versus 55¢ for a bleacher seat inside the park. Business picked up when the A's left the cellar and started their climb. And when the World Series came to Shibe Park, the roof structures expanded. Once modest profits for rooftop seating became fabulous profits.⁷

Obviously, the Shibes and Connie Mack didn't like what they saw—people making money from values generated by the A's, sometimes at the expense of gate receipts. Lawyers might describe what was happening as a syphoning-off activity, persons getting a "free commercial ride: out of the efforts of others (the A's) to which they did not contribute, and debate whether there was any legal injury for which a court should grant a remedy."⁸ Finally reacting, the Shibes and Connie Mack took matters into their own hands, and caused the right field wall to be raised to such height that the view of the playing field was completely cut off from the 20th Street houses.

Impartially, the WALL cast its gloom and affected the lives of all on 20th Street. It was there Spring, Summer, Fall and Winter—all the time—and not just for the 77 times a year while the A's were playing at home (the season was 154 games then).

The shadow of the WALL fell not only on the profit-makers. From that time on, no Earl could invite his friend to see the games from an upstairs bay window.

Did the owners of the A's overreact?⁹ Assuming that they could not erect that wall out of sheer spitefulness—I refer to the law governing "spite fences"¹⁰—did

they have sufficient justification for raising that wall, thus diminishing their neighbor's enjoyment of light and air? Objecting Twentieth Streeters litigated in vain.¹¹

There was an ironic twist. To many a batter, especially a left-handed one, this high wall turned out to be a Monster. Many a hit that formerly would have been a home run now failed to leave the park, and instead, as it bounced off the wall, could be held to a single or at most a double. If a homer-hungry batter tried to hit the ball over that wall with an uppercut swing, he could psych himself into frustration and see his batting average tumble. Shibe Park, alas, had changed.

When the beloved A's skipped town (1954), the deserted A's fans had nowhere to turn to, except to try to transfer their affections to those former enemies—the Philadelphia Phillies, as the sole occupants of Shibe Park, now called Connie Mack Stadium. It did not come easy. Herman Fly, a fictional veteran A's fan in James Michener's "Sports in America"¹² could not make the transition and so gave up his interest in professional baseball. But for most, soon or late, the transition was made—helped by the rise of the Whiz Kids—stars such as Robin Roberts, Curt Simmons, Richie Ashburn, Puddin' Head Jones, Granny Hamner, Jim Konstanty, Del Ennis—to name some but not all. A succession of players in Phillies' uniforms added luster to the history of the Park.

The departure of the Phillies from the Park (1970), to go to the newly built Veterans Stadium several miles away in South Philadelphia, was in more than one respect anticlimactic—it was nothing compared to the loss of the A's to another city. Sure, there was nostalgia—the quest for mementos to recall days of glory at the park—but, to paraphrase one wit's observation, nostalgia wasn't what it used to be.

And so, as the playwright would say, exeunt, leaving only memories....the crack of the bat—the flight of the ball—the roar of the crowd—Action! Sunshine, and real grass, easy on the eyes, easy on the feet, through the hot days of summer. And the players—Ty Cobb, Babe Ruth, Jimmy Foxx, Lefty Grove, Mickey Cochrane—all the players—memories of Shibe Park.

ENDNOTES

*Professor of Law, Emeritus, Law School, University of Wisconsin. No doubt the continuation of an interest developed early in life, as described in these pages, prompted me in 1978 to accept the suggestion of the Assistant Dean John Ryan of McGeorge School of Law to offer a course in Sports Law at that school leading to my teaching Sports Law in six different law schools in ensuing years. Robert M. Sevastian, Esq., helped by supplying some materials.

1. In 1929 the A's won 104 games while losing only 46. "The Yankees were forced to rebuild in places and could not keep pace with the Athletics. Miller Huggins experimented on the left side of the infield, giving Leo Durocher a lot of time at shortstop, while coming up with a gem—catcher Bill Dickey. Good years from Babe Ruth, Lou Gehrig and Tony Lazzeri could carry the club no closer than a distant second." *The Sports Encyclopedia: Baseball*, Neft, Johnson, Deutsch, Grosset & Dunlap, N.Y. 1974 at 170.

2. These numbers come from op. cit. supra note 1.

3. See the discussion of Messerschmidt and McNally Arbitration proceedings in Sobel, *Professional Sports, Law-Arts Publishers, Inc.* Student Ed. 1977 at pages 201–218. The decision by Arbitrator Seitz, based on an interpretation of the Collective Bargaining Agreement undid the hold owners had on players, and in this respect obsoleted Organized Baseball's judicially created exemption from the federal anti-trust laws. See Sobel, id. pages 1–81.

4. I base my guess on what the New York Yankees were paid. "By 1927 Ruth was earning \$70,000, a tremendous amount in those pre-inflation low-tax days. To give some idea of the heights of that figure, the next highest salary on the club was Earle Combes' \$19,500. Lou Gehrig earned \$8,000. The average annual salary per man on the greatest team in history was approximately \$11,000; take away Ruth's and it was closer to \$8,000 per man."

Rafter and Honig, *The Image of Their Greatness* at 94, Crown Publishers 1979.

5. The way things are going in 1992, \$2,000,000 as the average player salary may soon be on the low side for the big-spender teams. In 1992, "[S]eventeen of the 26 clubs averaged more than \$1 million, with the New York Mets setting a record high of \$1,707,769. The Los Angeles Dodgers were second at \$1,613,821 and the Boston Red Sox third at \$1,523,378." Associated Press Report, *Wisconsin State Journal*, 4-8-92 at 3 D. Major League Baseball, a system institutionally dependent on fanning the local loyalties of fans to support the teams, is played by players many of whom follow the free market economics of "have suitcase, will travel" where the big bucks lure. In this aspect, they may be no better or worse than some of the owners.

6. "Decade after decade saw the brilliant talent of such blacks as Cyclone Joe Williams, Cannonball Dick Redding, John Henry Lloyd, Cool Papa Bell, Oscar Charleston, Martin Dihago, Buck Leonard, Josh Gibson, Satchel Paige, and countless others wasted in the shadows and back alleys of baseball because of bigotry and injustice." Ritter & Honig, see note 4 at 197.

7. Bruce Kuklick, in his recent book "To Every Thing A Season" (Princeton Univer-

sity Press 1991 at 74) reports "estimates that ...three thousand people per game collected in the houses, paying from seven to twenty-five dollars per head."

8. In *Pittsburgh Athletic Co. v. KQV Broadcasting Co.* 24 F.Supp.490 (W.D. Pa 1938) a radio station, without the consent of the Pittsburgh Pirates, broadcast baseball games in process by witnessing them from a tall building close to the field of play, despite the fact that the Pirates had licensed another station to broadcast. The court granted an injunction against this form of unfair competition.

9. Quare as to the answer. The adjoining owners would have to get past black-letter law. "A landowner has no right to light and air from adjoining lands," 2 C.J.S. *Adjoining Landowners*, 68. "In the absence of statute or agreement, a landowner has no right to the view or prospect over adjoining land," *id.* 68. Of course, zoning and building codes often take over today.

10. "...wrongful intent, by the prevailing view, will make nuisances out of otherwise reasonable and lawful pursuits. [citing cases] This view assumes property rights to be relative and justifies activities that are harmful to adjoining lands only when such activities serve a useful purpose and the amount of interference

from them is no larger than reasonably necessary for such purpose. To the extent that an operation is motivated by malice, it lacks utility and consequently fails to offset with social values the harm it causes to others. [citing cases] Accordingly, spite fences which are erected for the sole purpose of impairing the light, air and view of one's neighbor, [citing cases] and other activities which one fosters for malicious ends alone [citing cases] are actionable nuisances. The trend in this direction, moreover, has been accelerated by statutes and ordinances making spite fences and other structures nuisances *per se* [citing cases].

Where a structure is erected for a beneficial as well as a malicious purpose, the courts usually emphasize its lawful..." *American Law of Property*, 28.28, (Boston: Little Brown Co., 1954).

Perhaps the A's could have accomplished their purpose of protecting their financial interests, by less drastic measures, e.g., getting an injunction. See footnote 8 *supra*. Even if the reasons for raising the wall seem to a court objectively insufficient, there still remains the question whether the action must be shown to be "with malice."

11. Kuklick, *op.cit.*p.6 at 75.

12. Paperbook Ed. *Fawcett Crest*, 3-43.

HAVE YOU HEARD?

Harry L. Garwood ('62) has been elected a Fellow of the Texas Bar Foundation. Mr. Garwood is a member of the San Antonio firm of Wiley & Garwood.

Peter N. Davis ('63), Isidor Loeb Professor of Law at the University of Missouri-Columbia, recently returned from Australia and New Zealand where he presented six lectures on a variety of environmental law issues.

Jon P. Wilcox ('65) has been appointed Justice of the Wisconsin Supreme Court to succeed **Justice William Callow** ('48). Justice Wilcox took the bench in September after 13 years as Circuit Judge for Waushara County.

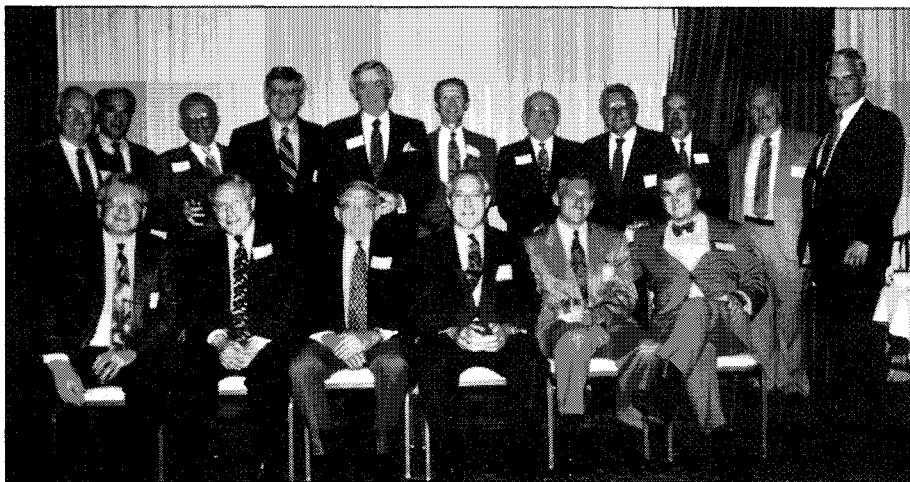
Lawrence Silver ('68) has co-authored an article in the DePaul Business Law Journal entitled, "The Route to the Summit: Jurisdiction Under the Sherman Act." This article follows his successful argument before the US Supreme Court in *Summit Health, Ltd. v. Pinhas* (111 S.Ct. 1842 (1991)). Mr. Silver teaches at Loyola Law School and practices in Los Angeles.

James N. Roethe ('69) has been appointed director of litigation and senior vice president at the Bank of America. Roethe practiced litigation for 25 years in the San Francisco firm of Pillsbury, Madison & Sutro. In his new position he will direct a staff of 25 litigation attorneys and coordinate outside counsel. Roethe is a Fellow of the American Bar Foundation.

Nikola P. Kostich ('70) has been elected president of the Wisconsin Association of Criminal Defense Lawyers. He is a partner in the Milwaukee firm of Styler, Kostich, LeBell and Dobroski.

Howard Eisenberg ('71) recently completed his first year as Dean of the Law School at the University of Arkansas-Little Rock. Prior to being selected as Dean, Eisenberg was Professor of Law at Southern Illinois University and had served as State Public Defender for Wisconsin.

Geraldine S. Hines ('71) has been honored by the National Lawyers Guild



Members of the Class of 1962 recently enjoyed a reunion in Madison. They attended the UW-Northern Illinois football game, won by Wisconsin with a slide into the end zone for a two-point conversion, and a reunion dinner.

for her work in combating racial injustice. Hines is a partner with the firm Burnham, Hines & Dilday in Roxbury, Massachusetts. She had been director of the Roxbury Defenders Committee, an attorney with the Harvard Center for Law and Education and a fellow at the Massachusetts Institute of Technology.

Peter D. Humleker, III ('72), senior partner of Humleker, Forsgren & Jones in Neenah, Wisconsin, has been elected to the Board of Directors of Goodwill Industries of America.

Christopher L. Risetto ('73) has joined the Washington, DC, office of Saul, Ewing, Remick & Saul, where he practices environmental law, government contracts, grants and litigation.

Erica Moeser ('74) has been re-elected to a second three-year term as a member of the Council of the American Bar Association's Section of Legal Education and Admissions to the Bar. Moeser is executive director of the Board of Bar Examiners of the State of Wisconsin.

Sidney M. Nowell ('75) was recently appointed Assistant General Counsel for Real Estate Development and Human Resources for the New York City Housing

Authority.

The Rev. Charles F. ("Chuck") Parthum, III ('75), an Episcopal priest, is now rector of St. Peter's Church in Weston, Massachusetts.

Evan Jay Cutting ('76) has been appointed Assistant General Counsel for the Boeing Company, in charge of Litigation and government contracts practice groups on the corporate legal staff.

Mark R. Conrad ('78) has been named Senior Vice President of Prudential Home Mortgage in Minneapolis, MN. Prudential Home Mortgage ranked third nationally in residential loans made in 1991.

Prof. R. Randall Kelso ('79), of South Texas College of Law, was a visiting professor this summer at the University of the Pacific, McGeorge School of Law. He has also published an article entitled "Filling Gaps in the Supreme Court's Approach to Constitutional Review of Legislation: Standards, Ends and Burdens Reconsidered" in the *South Texas Law Review*.

Kenneth C. Kotenberg ('79), trademark counsel at the Dow Chemical Company in Midland, Michigan, has been elected to the Board of Directors of the US Trademark Association. Kotenberg is

responsible for managing the trademark affairs of Marion Merrell Dow, Inc.

Pamela Barker ('79), a partner at the Milwaukee firm of Godfrey & Kahn, has been elected as the first female president of the State Bar of Wisconsin. She will take office in July 1993.

William P. O'Connor ('79) has been elected to the Land Trust Alliance Board of Directors. The Land Trust Alliance is a national organization for new and established land trusts. O'Connor is a partner in the Madison firm of Wheeler, Van Sickle & Anderson, and is actively involved in water resources law and public policy.

Coleen C. Higgins ('80) has become the senior official at the London, England, office of the International Maritime Organization, an agency of the United Nations. Higgins holds an LL.M. in Admiralty from Tulane Law School.

Suzanne K. Schallig ('81) has been appointed City Attorney for the City of Brookfield, Wisconsin. She was previously an Assistant City Attorney for Wauwatosa.

Thomas G. MacDonald ('81) has become a partner in the New York law firm of Seward & Kissel. He practices in the areas of securities, corporate finance and investment companies.

Karin A. Bentz ('82) has joined the firm of Devostlo, an international law firm located in New York, as an attorney in the

St. Thomas, US Virgin Islands office.

William Lahey ('82) has become a partner in the Lexington, Massachusetts firm of Palmer & Dodge, one of the oldest and largest in New England.

John J. Ryberg ('83) has been promoted to Group Patent Counsel of the GECO-PRAKLA division of Schlumberger Limited, located in Paris, France. Ryberg previously served Schlumberger as patent counsel for its Anadrill division in Houston, Texas.

Joseph J. Balistreri ('84), **Steven P. Bogart** ('84) and **Anthony J. Handzlik** ('84) have become partners in the Milwaukee firm of Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C. Balistreri does real estate financing, loan workouts, foreclosures and commercial leases and sales. Bogart is a member of the litigation and environmental law departments. Handzlik works with closely held and mid-sized businesses on corporate law issues in the tax division.

Paul Higginbotham ('85) has been appointed the first judge of Madison's new municipal court. He is the first African American to serve as a judge in Dane County. Prior to taking office, Higginbotham was minority affairs coordinator for Dane County.

Will Morris ('86) has been named assistant men's basketball coach at the Uni-

versity of La Verne, La Verne, California. While in Law School, Morris coached the "Learned Hands," a team composed of UW women law students and alumnae. The team competed in the Madison City League and in the Badger State Games. Morris is also treasurer and a member of the Board of the San Gabriel Valley Bar Association.

JoAnne Smith Johnston ('87) has accepted a position as corporate counsel with Baxter Healthcare Corporation. She previously was a litigation associate with the Chicago firm of Wildman, Harrold, Allen & Dixon.

Douglas G. White ('88) has moved from San Francisco to Wilmington, Delaware. He recently began work at the Pennsylvania Department of Environmental Resources.

Charles B. Hoslet ('89) has been appointed executive assistant at the Wisconsin Department of Veterans Affairs. He previously served as legal counsel to Gov. Tommy Thompson and as one of the Governor's representatives during negotiations with the state's Indian tribes over Indian Gaming Compacts.

Mitchell Rose ('90) has become associated with the Chicago firm of Friedman & Holtz, P.C. He will concentrate in civil litigation and local government/park district law.

R. J. Ramsey ('91) and **April Madison** ('92) were married in Milwaukee in August.

Michael T. Meurer ('91) has opened a law office in Elkhorn, Wisconsin, and will concentrate in real estate and business law.

Thomas A. Allen ('92) has joined the Madison firm of Lee, Kilkelly, Paulson & Kabaker. He is practicing primarily in the areas of business, corporate and commercial law and litigation.

Barbara Van Dam ('92) has joined the Legal Department of United Wisconsin Services, Inc., in Milwaukee. UWSI is the holding company of the for-profit subsidiaries of Blue Cross & Blue Shield United of Wisconsin. She will be doing general corporate law, business transactions and tax.

Geri T. Krupp-Gordon ('92) and **David G. Hanson** ('92) have joined the Milwaukee firm of Reinhart, Boerner, Van Deuren, Norris & Rieselbach. Both will join the litigation department.



Doris M. Wallsch (left), UW Law School Educational Services Assistant, was honored for 23 years of exceptional service to the students, faculty and staff at her retirement luncheon, July 28, 1992. From 1969 to her retirement, Doris assisted over 6,325 law students with their financial aid questions and graduation requirements. She is shown here with Mary Duckwitz (right), who retired from the Law School Admissions Office in 1991.

Last weekend was Homecoming and the Law School celebrated in a number of ways. The weekend saw the 10th Reunion of the Class of 1982, an action-packed series of events organized by a committee of classmates chaired by Maureen McGinnity. Law School seniors conducted their traditional cane-toss under the watchful eyes of some 80 members of the Class of '82 and their guests. One class member, Fran Deisinger, happened to be sitting near me. When the mad rush from one end of the field to the other began, Fran observed, "Oh look, they've changed the direction they run." Several of us, including Ken Haydock and Eric Christianson, tried to correct Fran, but it looks like we failed. Fran showed up in my office as an interviewer still insisting that HE ran north to south. Notes of condolence can be sent to Fran in Milwaukee, or, maybe you did observe one senior in the fall of 1981 running against the grain (or perhaps at a non-homecoming game).

Also during homecoming weekend we

conducted our first annual Admissions Program. The audience was small, but made up for their lack of numbers with the quality of their persons and their questions. Prof. Gordon Baldwin; Joan Rundle, one of our financial aid counselors; Tori Wing, a second-year law student; and I spoke about applying for, paying for and surviving law school as well as what you can do after graduation. Look forward to a repeat next homecoming, October 9, 1993.

In the last issue we announced the "retirement" of Prof. Frank Remington. Vicki Schur Orrico ('86) wrote to comment. I quote from her letter at length:

"It was with great sadness that I learned Prof. Remington is retiring. Both my father and I studied under [him], and somewhere in the back of my mind I just assumed my children would have an opportunity to hear him lecture! Two of my partners, Ben Porter and Dennis George, also studied under [him].

"There was no other professor while I was in law school that was regarded with such awe and respect. He was commonly known as "The Distinguished." I don't know if this was a special nickname attributed by our class or if we picked it up from prior classes, but it certainly fit and was never used with anything but the greatest respect.

"What I remember most was his sharp, dry wit and the humor with which he taught (that is, after I became accustomed to being awake for his 7:45 am class!). I received my best grades from Prof. Remington, probably due to the fact that I was interested in what he was saying, and thus paid better attention than perhaps to my other professors.

"I am grateful for the knowledge, insights, and, most of all, attitude toward people and the law, that I learned from Prof. Remington. It is sad to see him go, but I am glad that I had the opportunity to be one of his many students."

Glenn Hartley ('74) wrote to identify the mystery picture from the summer issue. Glenn questions whether he ever really had that much hair on top and so few on his face, but admits that he was sitting at the counsel table for a trial advocacy course in the spring of 1974. While confident that it is him in the picture, Glenn does recognize the possibility that he is simply trying to realize a wish to be so young. Can anyone else confirm Glenn's recollections?

The mystery picture in this issue was taken in the main hallway of the "new" building, making it post-1963. The clothing doesn't offer many clues. Can you identify any of these students?



Mystery Picture

Upcoming Alumni Events

Madison-area Alumni Reception	Madison	12/10/92
AALS/Alumni Breakfast	San Francisco	1/7/93
Los Angeles Alumni Reception	Los Angeles	1/18-21/93*
Milwaukee Reception/State Bar Mtg.	Milwaukee	1/29/93
ABA/Alumni Reception	Boston	2/3/93
Phoenix Alumni Reception	Phoenix	3/23-26/93*
ALI/DC Area Alumni Reception	Washington	4/11-14/93*
Twin Cities Alumni Reception	Minneapolis	5/5-6/93*
Alumni Reception/State Bar	Oshkosh	6/17-19/93*

*Exact date to be determined

Continuing Legal Education for Wisconsin at the University of Wisconsin Law School

UPCOMING SEMINARS:

1992 CLEW TaxWorkshop

November 6-7, 1992
Mead Inn, Wisconsin Rapids

Sales and Use Tax in Wisconsin

November 18, 1992
Paper Valley Hotel, Appleton

Financial Planning for Professionals

December 2, 1992
Pfister Hotel, Milwaukee

Sales and Use Tax in Wisconsin

December 3, 1992
Sheraton Inn, Madison

Estate Planning:

Marital Property Agreements

December 11, 1992 12:00-4:50 pm
Teleconference at 92 statewide locations

Income Tax Preparation Refresher

December 14, 1992 12:00-4:50 pm
Teleconference at 92 statewide locations

Income Tax Preparation Refresher

December 18, 1992 12:00-4:50 pm
Teleconference at 92 statewide locations

Income Tax Preparation Refresher

January 29, 1993 12:00-4:50 pm
Teleconference at 92 statewide locations

NEW TAX PUBLICATION COMING THIS FALL

Wisconsin Sales Tax — A Practical Guide

by Robert Dallman, Timothy A. Nettesheim, and John R. Austin
The University of Wisconsin Law School, in cooperation with the Wisconsin Institute of CPA's, will be publishing a major reference on Wisconsin sales taxation. This new publication will be a useful aid for lawyers, CPA's and Wisconsin businesses in answering practical problems and questions concerning the Wisconsin sales tax.

The anticipated publication date is December 1, 1992. More information on the new book will be sent to tax professionals this fall.

For more information on CLEW programs and publications, please call 608/262-3588.