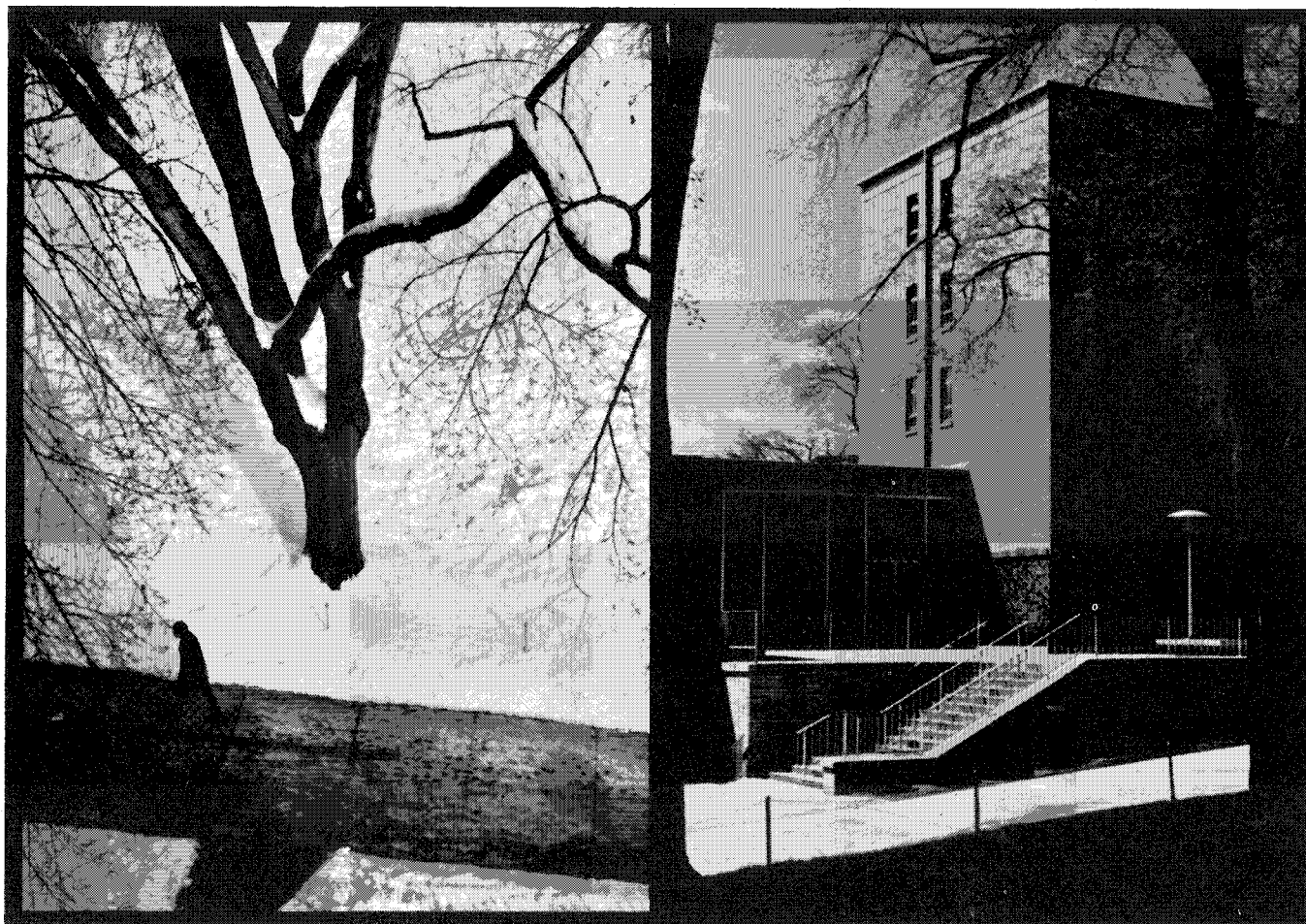


The Gargoyle



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of Wisconsin Law School*

Volume X No.2

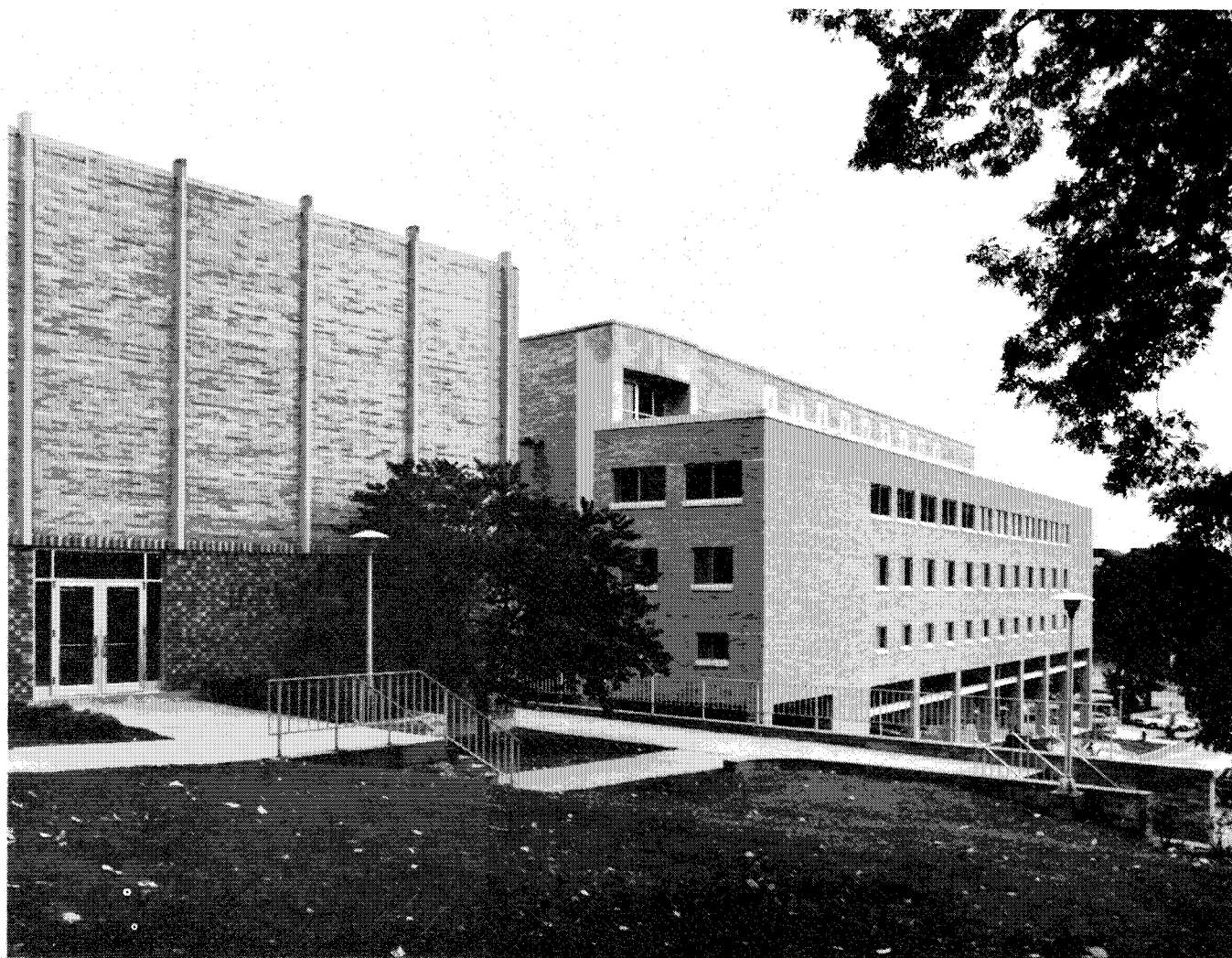
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Who Does the Teaching - A Profile of the Faculty

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None of the regular professorial staff is under 30 years of age at this time. Twenty-one are between 30 and 39. There are 15 professors between 40 and 49, and 17 who are fifty and over.

Twenty-nine are full professors, twelve are Associate professors and seven are Assistant professors.

Eight professors have been on the faculty for twenty-five or more years. One of these has been on leave to another department of the University during many of these. Four have been teaching here for 20 or more years, and 14 for 10 or more. Twenty-seven faculty members (just about half) have joined the faculty during the last 10 years.

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Continued on page 17

TABLE OF CONTENTS

A Peek at the Traditional Curriculum	2
Whom Are We Teaching	3
Who Does the Teaching	3
A profile of the Faculty	
The Problem of Grades	4
A Special Committee Tackles Evaluation	
Change — Change — Change	6
What Has Happened to Creditors' Rights	
The First Year Curriculum	8
The Melody Changes	
The Proposal for a Required Third Semester or, Why It Is Difficult to Make Curriculum Changes	9
Homecoming	10
Legal Education and the Liberal Arts	12
The Paper Chase at the U.W.	14
Developments in Pedagogy	

Whom Are We Teaching ?

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In addition to the fully enrolled law students, there are 48 non-law students whose Ph.D. or Masters degree programs require some courses in the Law School, and 17 guest students — usually retired people who are permitted to audit courses in which space is available. Members of both of these groups take one course at a time.

Enrollment figures for 1st semester, 1978-79:

	Men	Women	Total	Resident	Non-Resident
Law 1	193	111	304	244	60
Law 2	189	126	315	255	60
Law 3	179	96	275	246	29
Law 4	6	1	7	4	3
Law Specials	2		2	2	
Totals	569 (63.3%)	334 (36.7%)	903	751 (83%)	152 (17%)
Non-laws	35	13	48	[includes L-5's which are MLI students]	
Guest students	16	1	17		
			65	Total non-laws	

A Peek at the "Traditional" Curriculum

by Dean Orrin Helstad

Changes and innovations in legal education, as well as elsewhere, tend to make the news, but what about the "traditional" law school curriculum which on the surface appears to stay much the same from year to year? We hope to show you through a series of stories in this issue of *The Gargoyle* that the traditional curriculum is alive and well, though it too has been undergoing some change.

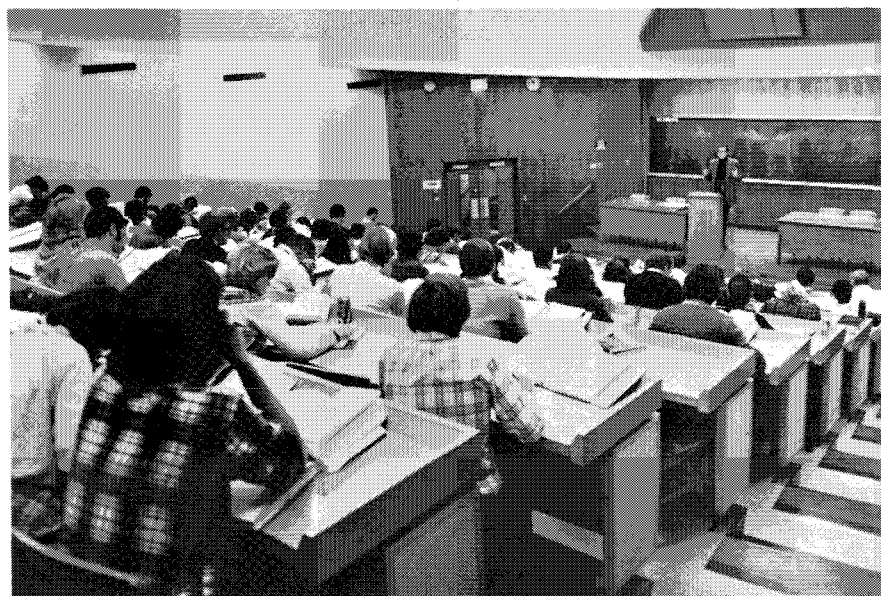
In the first place, despite the inroads of the clinical courses and the practice-simulation courses such as General Practice and Trial Advocacy, at least two-thirds of all student credit hours in the second and third years are earned in the traditional courses and seminars. In the fall semester of 1978-79, for example, 13 traditional courses each enrolled more than 75 students. They are, with enrollments shown in

parentheses: Evidence (224); Trusts & Estates (a) (209); Basic Administrative Law (172); Taxation I (157); Modern American Legal History (155); Real Estate Transactions I (124); Professional Responsibilities (115); Accounting and Law (95); Local Government Law (92); Commercial Law (85); Creditors and Debtors Rights (85); Constitutional Law I (81); and Business Associations (76). An additional 22 courses each enrolled 75 or fewer students. They ranged from traditional courses such as Corporations and Conflict of Laws to the less traditional topics such as Indian Law and the Role of the Police in a Free Society. Twelve seminars also were offered. In addition to the 35 courses and 12 seminars, there were eight separate clinical courses plus the practice-simulation courses such as Client Counseling, General Practice and Trial

Advocacy. Clearly, this is a rich and varied program which only a large law school with a large faculty is able to offer.

In the first-year fall semester courses, we find the traditional subjects of Civil Procedure, Contracts, Criminal Law and Torts. Altogether, 25 separate sections in these four subjects were offered to roughly 300 first-year students.

The stories which follow in this issue of *The Gargoyle* will give you a glimpse of what is going on in the traditional curriculum. Professor Tushnet summarizes some of the innovations which are taking place in some of the first-year courses. Professor Kidwell gives you a good overview of the changes in teaching techniques and general attitudes toward legal education which appear to be taking place throughout the curriculum. Professor Whitford provides us with a glimpse of the difficulties of teaching in an area of statutory law which is rapidly growing and changing. Professor Clune, through an example, illustrates the difficulties inherent in any attempt to achieve curricular "reform." And Professor Church deals with the seemingly perennial problem of grading. I hope you will find all of these stories as interesting and informative as I did.



Professor Raushenbush

THE GARGOYLE

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Continued on page 17

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CURRICULUM

Continued from page 8

As I have indicated, one change in the curriculum has been the introduction of an elective second semester course for first year students. Even here, though, the surface change is less than it might be, for one of the electives is a course in "Legal Process." That course is a direct descendant of the "Law in Society" course, which used materials from the Law of industrial accidents developed long ago by Dean Lloyd K. Garrison and Professors Willard Hurst and Samuel Mermin to explore the various agencies of lawmaking. Currently, the course, as taught by Professors George Bunn and Fredericka Paff, deals with administrative and legislative lawmaking processes, and gives, as did the "Law in Society" course, what the law school rules describe as "a general overview of the legal system." Even though such a course is no longer required of first year students, although it is available to them, completion of a course giving such an overview remains a requirement for graduation from the Law School.

The number of the current faculty who have changed the melodies of traditional courses is

large, and the list includes both senior and junior members of the faculty. But an equally large number teaches those courses in ways not far removed from what was done in 1946. Both groups attempt to convey, in different ways, some of the essential concepts used in their areas and some sense of the suppleness with which a skilled lawyer can use those concepts. All students are likely to have a courseload that includes a mixture of alternative approaches to the law. It is that variety, and the openness of the Law School to novel ways of thinking about traditional problems, which has allowed that flourishing variety which constitutes one of our greatest strengths.

FACULTY

Continued from page 3

Nineteen faculty members are graduates of the University of Wisconsin Law School. There are 9 who were educated at Harvard, six at Yale, and five at the University of Chicago Law School. No other Law School has provided more than 2 (Columbia, Stanford, Georgetown and Northwestern); there are one each from Cornell, Case Western, Iowa, Indiana, New

York University, Temple, Vanderbilt and Southern California.

Five of the faculty members are women and two are members of minority groups.

Four faculty members are serving as Associate Deans on a part-time basis during the current academic year. Two of them serve as associate deans for academic affairs, one as associate dean for research development and administration and the fourth (also a member of the Extension faculty) serves as associate dean for continuing legal education.

* * *

Eighteen professors have had experience in the private practice of law before joining the Faculty full-time. The amount of experience varies from two years to seventeen years. Some of these, and more (30 in all) have been employed by local, state and federal government agencies before coming to Wisconsin and during leaves of absence from the Law School.

Ten have been law clerks to Federal Judges and state Supreme Court Justices, including three who have worked with justices on the Supreme Court of the United States.



Professor Finnian

The Problem with Grades

A Special Committee Tackles Evaluation

by Professor W. Lawrence Church

Since the beginning of universal education in America, "report cards" have been an important part of the culture — sources of elation and despair, rewards and punishment, tension and ease. Despite dissatisfaction with the competition which results from comparisons of achievement, attacks on the fairness of the process of evaluation, and the efforts to reduce the importance of grades, the "report cards," whatever their basis and form, are firmly fixed in American education.

It is true in Law School, too. A transcript is the ticket to the Outside World. The very highly selective admissions policies which all law schools currently enjoy has insured that all admittees are potentially successful students. Almost no one flunks out of Law School these days. Nevertheless, there is a top 10% and a lower 50%, and these relative standings have a lot to do with the career opportunities of the newly produced lawyers. Thus, one's grades in Law School continue to be important, if for no other reason than that they play a significant role in the career opportunities available. The influence of grades on job prospects may not be as rigidly automatic as it once was, but it is clear that it remains important.

As long as grades do continue to have practical significance, it is imperative that the system that produces and reports them be as objective and fair as possible. Some of the dangers of subjective influence on the grading process have been eliminated with the introduction of examination numbers several years ago, so that faculty cannot identify those whose examinations they are grading. Another serious problem, however, has been a perceived discrepancy in individual grading patterns of the various faculty members. It is, of course, axiomatic that grades should reflect the abilities of students, not attitudes about proper grade distribution held by various teachers. In order to review the perceived problems in this area, a special grading committee was established in 1977. The committee is continuing its work in 1978-79; its preliminary recommendations were accepted by the faculty in May, 1978.

In preparation for its work, the special committee on grading conducted a statistical study of current Law School grading patterns. The committee noted the following matters which it considers to pose problems worthy of attention:

1. Disparity in grading patterns among the large sections of the same first-year course. First-year courses typically are divided into three fairly large sections, in addition to the small sections which are part of the first-year small-section program. The committee noted with approval that the

average grade in large sections of the same first-year course which are taught by different people typically are within a half point of one another. However, it noted that in about one out of every five courses there is a greater disparity, sometimes ranging up to two or even three points, and suggested that even this occasional disparity ought to be eliminated if possible.

2. Disparity in grading patterns among the small sections of the same first-year course. The committee conceded that there is more of an excuse for deviations in average grades in the small sections than in the large sections, but noted some instances in which the differences in the average grades were more than three points, sufficiently large that they could not be explained merely on the basis of the different abilities of the students in the respective sections.

3. Disparity in grading patterns among the large upper-class courses. The committee found large differences in the average grades in these courses, differences which it felt could be explained only by the differences in grading patterns among the instructors.

4. Disparity in grading patterns among small upper-class courses and seminars. As might be expected, this is the area where the committee found the greatest differences among the average grades in various courses and seminars. The grades in these courses and seminars often are based on a paper rather than on an examination.

5. Disparity in grading patterns between large upper-class courses, as a group, and small upper-class courses or seminars, as a group. The average grades tend to run substantially higher in the small courses and seminars than in the large courses.

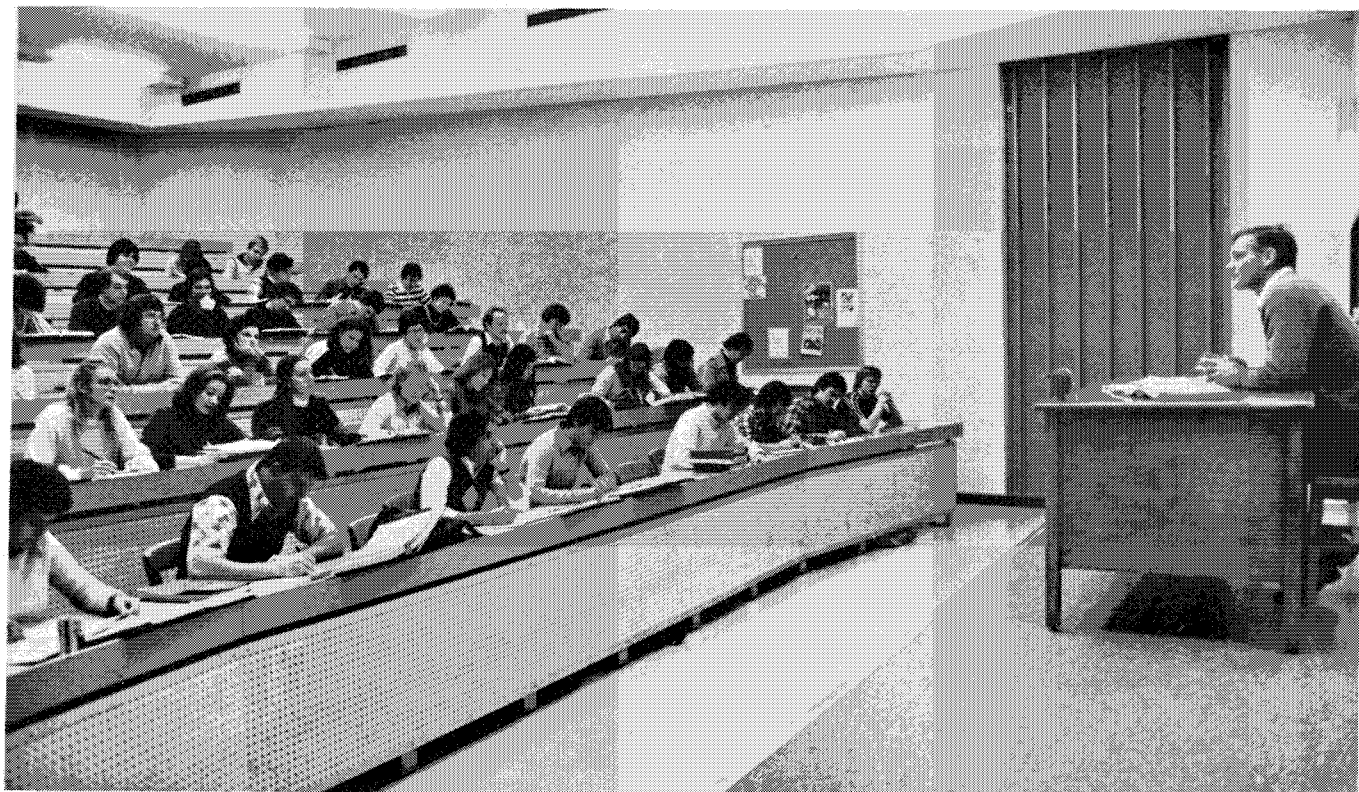
6. Deviations in grading patterns at the upper and lower ends of the grading scale. The committee noted that it is difficult to draw statistical conclusions in this area, but that it appears that some members of the faculty tend to compress their grading scale far more than others, thus giving fewer low and fewer high grades.

It is easy to make too much of the disparities noted above. Law students are likely to be exposed

to both high graders and low graders throughout their law school careers, and so the effects of both the unusually high grading patterns and the unusually low grading patterns are likely to be cancelled to a considerable extent in any particular student's grade point average. Nevertheless, the committee noted that under a hypothetical "worst case" (but not an absurdly impossible one), the following could have happened to two students during the past three years. Assume that both students received the average grades of their sections of all the courses they took. Student "A" was unlucky in the sense of being placed in the sections of the required courses which had the tough graders and in addition

managed to select the optional courses which happened to have the toughest graders. Student "B" was at the opposite extreme and managed to take the courses with the easiest graders. After having taken 73 credits during the period of 1974-77, student "A" would have had a cumulative average of 82.1 and student "B" would have had an average of 85.8. This represents the difference between the bottom third and the top sixth of a law school class. The committee concluded that even though it was posing a worse case, the possibility that such a result might occur was sufficiently serious so that the matter of grading should be reviewed rather carefully.

Continued on page 18



Professor Church

GRADES

Continued from page 5

Grading, of course, is a very sensitive matter. Much must be left to the judgment of individual faculty members. The committee therefore approached the matter cautiously and decided to limit its initial recommendations to the first-year courses where the students are assigned to sections or professors. The committee's preliminary recommendations, which were adopted by the faculty last spring, are as follows:

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(3) A range of grades in a large first-year section of less than 17 points or more than 27 points should be regarded as extraordinary; in a small section, a range of

grades of less than 12 points should be regarded as extraordinary;

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The committee is continuing its study and will make recommendations pertaining to grading of upper-class courses in a report to the faculty during 1978-79. It is hoped the Law School grading system will come ultimately to reflect as faithfully as humanly possible the abilities of the students it evaluates, to the benefit of both those who rely on the grades and those being graded.

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Continued from page 7

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Professor Bernstine

Change ~ Change ~ Change

What Has Happened to Creditors Rights

by Professor William Whitford

Over the years, and with a greatly accelerated pace in the past decade, teachers of Creditor's Rights have had to make a great number of changes in the content of that course.

At one time a traditional creditors' rights course would cover two principal areas. One area was common law remedies, such as the writ of *fiery facias* (known more often today as the writ of execution) and the equitable creditors' bill proceeding. The other principal area was bankruptcy. Bankruptcy is such a broad subject that any teacher must pick and choose as to what parts of it can be covered thoroughly. Traditionally, emphasis was given to the validity of security interests in bankruptcy. This was a very sensible choice. It is a much litigated area of bankruptcy, and it is also of great practical importance to the practitioner, who needs to know how to draft a security agreement that will be valid in bankruptcy.

Today creditors' rights teachers have had to abandon both traditional areas. Though common law collection remedies continue to exist in many states, they are little used. In every state statutory collection procedures have been adopted and are invariably used. These statutory procedures differ greatly in detail among states. Fortunately, however, there has been a general conceptual consistency in the statutory procedures. Thus, nearly every state provides

an attachment procedure, a garnishment procedure, a statutory post-judgment discovery procedure for the creditors, and so forth. Thus, in law schools which aspire to teach more than the law of the state in which they are located, it has been possible to teach the general concepts underlying these procedures, while indicating that in detail the procedures varied greatly among states.

In the past decade two sets of events have caused new turmoil in collection law, creating new difficulties as creditors' rights teachers plan the non-bankruptcy aspects of their courses. One set of events has been a series of Supreme Court decisions, beginning with *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), a Wisconsin case. These cases created concern that much traditional collection law would be found violative of due process, at least when applied to consumer debtors. In particular, a few years ago, it appeared possible the Supreme Court would hold virtually all pre-judgment remedies unconstitutional, and further would require extensive changes in the ways security interests and statutory liens (such as mechanics lien) are enforced. In recent cases, however, — the most recent decided only last term — the

Supreme Court has retreated from its more radical earlier suggestions. It now seems virtually certain that the Constitution will require only detailed changes in traditional collection procedures. After a decade of not being able to tell students what the law is or will be, and feeling compelled to canvass the various possibilities, creditors' rights teachers can return to teaching the general concepts underlying settled collection procedures.

The other recent set of events will have more long-lasting effects. With the consumer movement has come extensive statutory and administrative regulation of the collection of debts from consumers. The amount of this new regulation is so extensive that I could not possibly summarize it here. It is fair to say, however, that the amount of new regulation is greater in Wisconsin than anywhere else, because of the enactment of the Wisconsin Consumer Act. That Act is this country's most comprehensive amendment of traditional collection rules, as applied to consumer debtors.

The effect of the reformist outpouring of the last decade has been to create a separate body of collection law for consumers. It seems important to cover this extensive new legislation in a creditors' rights course. At the same time, coverage of the basic statutory collection procedures,

such as attachment, remains important, for they are critical to collection from a business debtor and have some applicability to consumer transactions as well. The result has been an increase in the amount of non-bankruptcy material to be covered in a creditors' rights course. And it has led me to divide that part of my course into two parts: collection from the consumer; and collection from the business debtor.

Time has also taken its toll on the traditional handling of bankruptcy problems in a creditors' rights course. The first major change was necessitated by the widespread enactment of the Uniform Commercial Code in the early 1960's. With the Code came the introduction into law school curricula of courses which emphasized the Code, and in particular Article 9 of the code. (To a great extent these courses replaced the traditional courses in Sales and Bills and Notes.) Article 9 is drafted with the provisions of the Bankruptcy Act governing the validity of security interests in bankruptcy very much in mind, and it has seemed senseless not to consider the two legislative enactments together. As a result, in this law school and most others, coverage of a bankruptcy trustee's power to set aside security interests has been allocated principally to the Commercial Law course.

There is still much about bankruptcy for a creditors' remedies teacher to cover, of course, even if the traditional "bread and butter" topic has been allocated elsewhere. Further

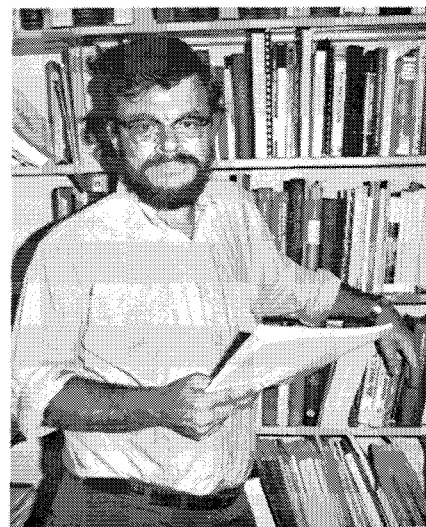
difficulty arose in the 1970's however, when the National Commission on Bankruptcy Laws recommended extensive changes in existing bankruptcy law, including such major matters as abolition of the traditional bankruptcy trustee system for administering bankruptcy estates and the establishment of uniform federal exemptions for bankruptcy proceedings. Moreover, it soon became clear that, in response to the Commission's recommendations, Congress would enact extensive revisions of the existing bankruptcy law. Because many of the Bankruptcy Commission's recommendations were controversial, however, it was not clear precisely what the new Bankruptcy Act would look like. Some compromising seemed inevitable.

About this time, the House Judiciary Committee, which has jurisdiction over bankruptcy legislation, became concerned with matters it considered more important — such as the impeachment of a President and related concerns. Creditors' Remedies teachers were not consulted about this determination of workload priorities, and the Committee's decision has caused us considerable difficulty. Since the publication of the Report of the Bankruptcy Commission, we have known that bankruptcy law was to be extensively revised, but it was not until the fall of 1978 that we knew what the revisions would be. We could teach existing law, which students are almost certain

not to practice under. We could teach the Bankruptcy Commission's recommendations, but this was not law, and it seemed likely that Congress would make changes in those recommendations before adopting them. Truth, of course, always lies in between, and so I, as did most creditors' remedies teachers, chose to teach both.

It can readily be seen that the various forces that have induced changes in the content of creditors' rights courses have also combined to create a nearly intolerable load on law teachers. In effect, I am teaching two separate bodies of law respecting collection remedies, and lately I have been trying to teach two separate bankruptcy statutes as well. Candor forces me to admit that the consequence has been a neglect of a considerable body of bankruptcy law — much to the gratitude of most students, I am sure, who must regard contemporary creditors' rights courses as inundated with detail.

Continued on page 18



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Professor Bernstine

The First Year Curriculum - The Melody Changes

by Professor Mark Tushnet

There is a saying to the effect that often the words change but the melody stays the same. The basic first year curriculum at the Law School inverts that saying: the words have stayed the same but the melody has changed.

A first year student entering in 1946 was required to take one year each of Contracts, Criminal Law, and Torts, and one semester each of Property, Equity, and "Law in Society." A first year student entering in 1978 is required to take one year of Criminal Law and Procedure, and one semester of Torts, Contracts, Civil Procedure, and Property, and one elective course from offerings in Civil Procedure, Constitutional Law, Contracts, and "Legal Process."

Apart from minor variations in title, some shifts among the credits, and the introduction of a single elective course in the first year, the courses of study look remarkably alike. Indeed, a graduate of the class of 1929 would not notice much difference either: the first year curriculum then differed from that in 1946 only because it included a course in Common Law Actions, now absorbed, with Equity, into Civil Procedure.

Despite the surface resemblance, though, the actual content of what is taught has changed significantly—so much that Contracts in the 1946 curriculum probably bears only a genetic relationship to Contracts in the present curriculum.

One example of changed content within established courses is the Torts course. Professors Neil Komesar and Theodore Schneyer have made the course into one that introduces students to the basic concepts involved in the economic analysis of the law, such as transaction costs. They use the traditional framework of negligence law, but have expanded the scope of the students' consideration to include looks at economic alternatives to negligence as a method of compensation, loss distribution, and loss prevention. Professors Neil Komesar and David Trubek have introduced similar economic concepts into the materials they use in teaching Property.

The Criminal Law course has also changed since 1946, when the assigned casebook was Michael and Wechsler's *Criminal Law and Its Administration*. That book was, in its time, something of a novelty, for it focused both on philosophical issues relating to the definition of crimes and defenses and on questions of appropriate legislative policy. Under the influence of Professors Remington, Melli, Goldstein, and Dickey, the current two-semester sequence in Criminal Law and Procedure has developed and transformed that approach. It is now concerned with policy issues which arise in the system of the administration of criminal justice—how the

police, prosecutors, defense attorneys, and legislatures should deal with assaults within a family or with public intoxication, for example. The course also emphasizes the very important fact that a system is involved, so that an alteration of the rules at one point in the system implies the need to alter other points.

A group of Contracts teachers, including Professors Stewart Macaulay, William Whitford, Marc Galanter, and Robert Gordon, meets regularly to talk about their approach to the course. Here too the emphasis has changed from that in the 1946 course, which was described as treating "mutual assent, consideration, performance, breach," and other topics. Those issues are of course dealt with in the present contracts course, but they are studied with a continuous emphasis on questioning the extent to which these lawyers' concepts really enter into the everyday dealings of people in business or otherwise have relationships based in part upon agreements.

Continued on page 17



Professor Tushnet

CURRICULUM

Continued from page 8

As I have indicated, one change in the curriculum has been the introduction of an elective second semester course for first year students. Even here, though, the surface change is less than it might be, for one of the electives is a course in "Legal Process." That course is a direct descendant of the "Law in Society" course, which used materials from the Law of industrial accidents developed long ago by Dean Lloyd K. Garrison and Professors Willard Hurst and Samuel Mermin to explore the various agencies of lawmaking. Currently, the course, as taught by Professors George Bunn and Fredericka Paff, deals with administrative and legislative lawmaking processes, and gives, as did the "Law in Society" course, what the law school rules describe as "a general overview of the legal system." Even though such a course is no longer required of first year students, although it is available to them, completion of a course giving such an overview remains a requirement for graduation from the Law School.

The number of the current faculty who have changed the melodies of traditional courses is

large, and the list includes both senior and junior members of the faculty. But an equally large number teaches those courses in ways not far removed from what was done in 1946. Both groups attempt to convey, in different ways, some of the essential concepts used in their areas and some sense of the suppleness with which a skilled lawyer can use those concepts. All students are likely to have a courseload that includes a mixture of alternative approaches to the law. It is that variety, and the openness of the Law School to novel ways of thinking about traditional problems, which has allowed that flourishing variety which constitutes one of our greatest strengths.

FACULTY

Continued from page 3

Nineteen faculty members are graduates of the University of Wisconsin Law School. There are 9 who were educated at Harvard, six at Yale, and five at the University of Chicago Law School. No other Law School has provided more than 2 (Columbia, Stanford, Georgetown and Northwestern); there are one each from Cornell, Case Western, Iowa, Indiana, New

York University, Temple, Vanderbilt and Southern California.

Five of the faculty members are women and two are members of minority groups.

Four faculty members are serving as Associate Deans on a part-time basis during the current academic year. Two of them serve as associate deans for academic affairs, one as associate dean for research development and administration and the fourth (also a member of the Extension faculty) serves as associate dean for continuing legal education.

* * *

Eighteen professors have had experience in the private practice of law before joining the Faculty full-time. The amount of experience varies from two years to seventeen years. Some of these, and more (30 in all) have been employed by local, state and federal government agencies before coming to Wisconsin and during leaves of absence from the Law School.

Ten have been law clerks to Federal Judges and state Supreme Court Justices, including three who have worked with justices on the Supreme Court of the United States.



Professor Finnian

The Proposal for a Required Third Semester or Why It Is Difficult to Make Curriculum Changes

by Professor William Clune

Proposals for major curriculum change usually emerge out of a new theory of legal education. In this article, I would like to discuss a proposal whose aim was different. It was not intended to cut deeply into the substance of legal education but rather to make more efficient and beneficial use of what we already have. Even such a modest proposal, as we shall see, raised controversial issues and met with the usual fate of proposed curriculum changes: abandonment when the real ramifications were understood.

The Law School Rules require a sufficient number of courses (mostly pertaining to the Diploma Privilege) beyond the first year to fill an entire third semester. The proposed change was to offer all of these courses in a required third semester rather than allowing students to take them at any point in the second or third year, as at present. Part of that proposal was to assign students to particular sections, in order to guarantee access and keep class sizes reasonably uniform.

The argument in favor of the change was that, on the one hand, these courses are basic to a legal education and hence, prerequisite to many other courses in the curriculum, while, on the other hand, second year students may unwisely choose to take other courses, or, more seriously, be excluded from the required courses because of the prevailing practice of giving priority to third year students who need the courses to graduate. Thus, one of the important reasons why certain courses are required in the first place

(that the content is a prerequisite to other courses) is lost because of scheduling difficulties. Students also are plagued with the problem of trying to fit all the required courses into their individualized class schedules and argue that it ought to be easier to take them.

The proposal had quite a bit of support but floundered because the implications turned out to be wider than first thought. Changes seemed to be called for, such as offering Constitutional Law I in the first year, so that Constitutional Law II, for which Constitutional Law I is a prerequisite, could be offered in the third semester. Once the always controversial topic of the first year curriculum was broached, other highly persuasive proposals were put forward. Some intended that a Civil Pro I—Civil Pro II—Evidence sequence be part of the first three semesters. Others pointed out that the first three semesters as proposed lacked a course which

describes the procedures of administrative agencies and legislatures (as opposed to courts) even though the importance of these institutions to legal practice has been steadily growing. The problem was what to eliminate from the first year. Because it is always easier to believe in the relative lack of importance of someone else's courses, I have always thought that six credits of criminal law is relatively heavy for the first year. Strong proponents of the opposite view cite the large number of advanced criminal law courses in the curriculum, and the fact that a large percentage of young lawyers practice criminal law soon after graduation as appointed counsel, district attorneys, etc. Other objections not associated with the first year were that some students may need to take a four semester sequence of non-required courses as part of an effort to specialize (for example, four labor law courses beginning with basic Labor Law.) Also, limitation of all optional courses to three semesters makes it more likely that a student will not be able to take certain favored courses at all. Many courses are offered only once a year, a few less frequently. It is more likely in three semesters than four that a student will be faced with an irreconcilable scheduling conflict between strongly favored courses. There is, for example, the simple problem of the courses offered only in the Fall semester. Presently, both second and third year students can take such courses. With the required third semester, only third year students would be able to do so; and the likelihood of a serious conflict would be much greater.

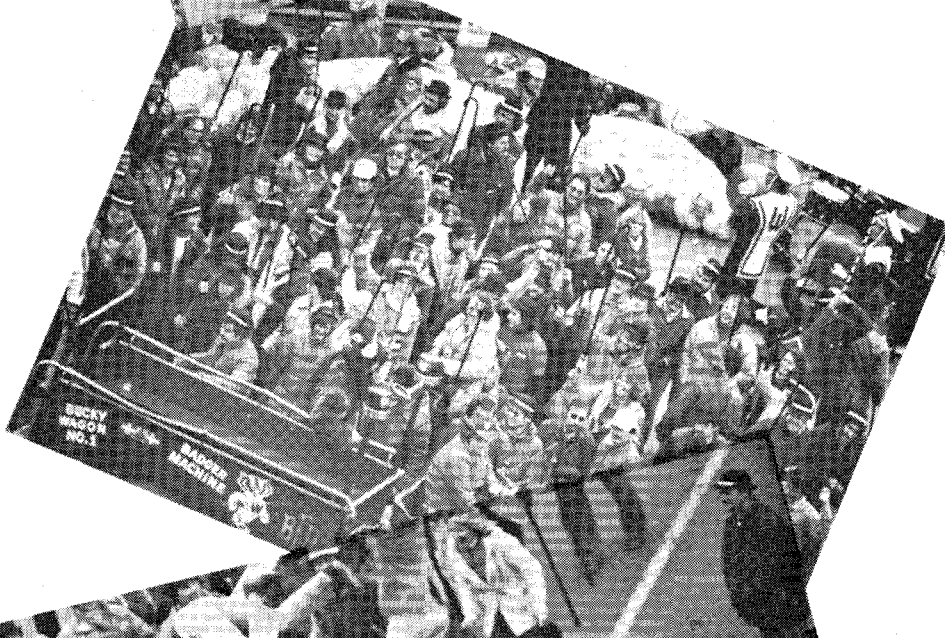
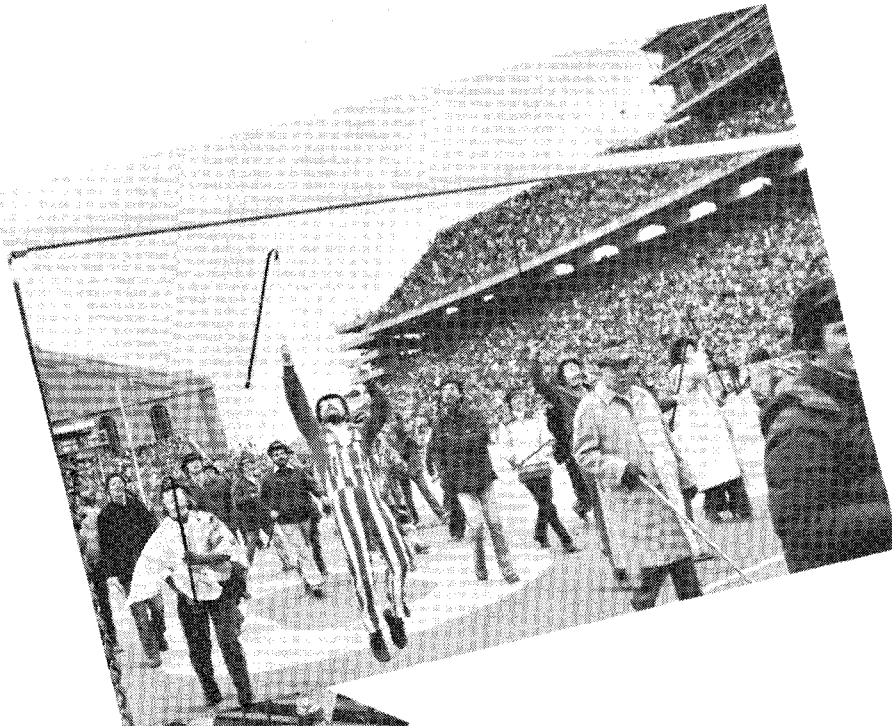
Thus, a proposal which seemed at first to offer many benefits at practically no cost, turned out, like most proposals to change the curriculum, to involve strong arguments on all sides of several issues.

Under those circumstances, lacking a truly dedicated sponsor, the proposal quietly died.



Professor Clune

Some Thing



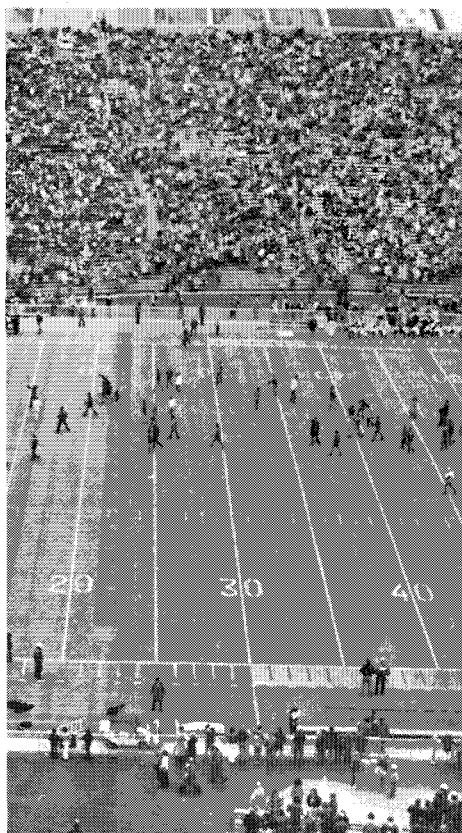
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Legal Education and the Liberal Arts

Since the very early development of higher education in the United States, there has been discussion and controversy about the place of training for the professions within the University. The first professorships in Law (such as that established by Thomas Jefferson at William and Mary in 1779) were part of the offerings in what we now call the Liberal Arts. New lawyers were trained — if at all — by apprenticeships with established lawyers.

Although law schools with their present combined mission of providing education in law as well as training for lawyers have been functioning for more than 100 years, the idea that liberally educated people — whatever their ultimate professions — should have some education in the legal system of a democratic nation, through the offering of undergraduate courses and ultimately a major in law, has persisted.

During the past year, the American Bar Association has established a Commission on Undergraduate Education in Law and the Humanities with a mandate to foster programs throughout the United States to introduce undergraduate students to the examination of the law's relationship to other disciplines in the humanities such as history, literature and philosophy. Armed with a grant from the National Endowment for the Humanities, the Commission staff is preparing materials which will assist teachers and administrators to establish new programs and enhance current offerings in law and the humanities.

Edward H. Levi, former Dean of the Law School and President of the University of Chicago and former Attorney General of the United States, serves as Chairman of the nine member Commission. Wisconsin Supreme Court Justice Shirley Abrahamson is also a member.

Such integration of law and the social sciences takes several forms at the University of Wisconsin. Courses in Business Law and Constitutional Law have long been offered in the School of Business and Political Science Department.

Since 1975, a major in Behavioral Science and Law has been offered. It is designed, says Professor Jack Ladinsky of the Sociology Department, to "provide a liberal education across traditional disciplines. Students explore the role of Law and legal institutions in society, emphasizing the various functions of law: social control, dispute settlement and social change. The major is not a pre-law program; students are exposed to a broad social science perspective, which is unlike the professional program encountered in law school."

Included in the major are courses in philosophy, political science, sociology and economics. Subjects covered include industrial relations, and collective bargaining (Economics), Constitutional Law, Administrative Law,

Legislation and Civil Liberties (in Political Science), Criminology and other related subjects in Sociology. Included is a senior thesis for 4 to 6 credits.

* * *

For the past several years, there has been a course offered to college freshmen in the Integrated Liberal Studies Program on Introduction to Legal Studies by a Law School Faculty member with the assistance of third year law students who lead the discussion groups. Last year, Professor Martha Fineman taught the course; in 1978-79, it is taught by Douglas Endreson ('78), one of the Hastie Fellows, who assisted Professor Fineman last year.

Mr. Endreson reports that the course is organized around a central question: Among those convicted of crime, who shall be treated and who shall be punished? The course is conducted to provide an opportunity for the young students to apply legal analysis to the broad topic, "whose vagaries" he says, "dissolve quickly into the specifics of case law — for example, is a man whose religious beliefs compel him to cut off a limb a person who ought to be confined? Why?"

"The challenge of the course is great," he says, "students must master legal analysis and then use it to help them understand what the law is and how it works."

There are various ways for students on an individual basis to seek joint degrees, most often in the Law School and the Business School, in Accounting and Law, an M.A. and J.D. combination which offers great job opportunities.

Since the beginning of the school year 1978-79, the Law School and the Center for Public Policy and Administration have offered a joint program in law and public administration leading to the J.D. and M.A. degrees.

The joint program requires seven semesters and a summer school. Fifteen Center credits are counted toward the J.D. degree, and 6 law credits are counted toward the M.A. The student ordinarily spends his first year in law school, the second year and a summer session in the Center, and then three semesters in law school. The Center summer school is an internship in a state or federal agency.

Professor Carlisle Runge, who

has been on leave from the Law School for several years to act as the Chairman of the Department of Urban and Regional Planning, is serving also as Director of the Center for Public Policy and Administration.

The program is designed to give law graduates who see a future in public administration, or in political office where they will be dealing with administrative problems, a knowledge of decision making involving public policy and administrative techniques.



The Paper Chase at the U.W. -

Developments in Pedagogy

by Professor John Kidwell

When I began Law School not so many years ago I was confronted with educational methods really not so different from those of Professor Kingsfield in the movie "Paper Chase." Each day my classmates and I would prepare by reading appellate cases. The classroom experience almost invariably consisted of the teacher asking for the facts of the case, and then posing a series of variations on the basic case or variations on a hypothetical. The casebooks contained almost exclusively appellate opinions, often followed by a short number of cryptic questions and Delphic citations to statutes, or perhaps a section from the Restatements. The teacher seemed to make it a point of honor not to answer any of his own questions, and to a student question the answer was most often, "What do *you* think, Mr. Hart?"

Some minor modifications were encountered in the second and third years. On occasion a law review article was assigned (though rarely discussed.) Some classes involved problem-solving, in which the problems displaced the single hypothetical as the backdrop against which to study appellate opinions. But largely, one learned "case-analysis" in nearly every class, and the method was a mixture of Socratic questioning and lectures, with Socratic questioning being almost the exclusive methodology in the

first year. The objective was to learn legal doctrine, and to learn how it grew, or changed, or didn't change. Now this is not to say that the form of legal training just described was so terrible. I personally enjoyed most of it. And I'm certainly not suggesting that a visitor to the University of Wisconsin Law School would find no casebooks in evidence for first year classes, nor any Socratic questioning. I do think its fair to say, however, that there is a great deal that is new in legal education and that new techniques have entered even the first year.

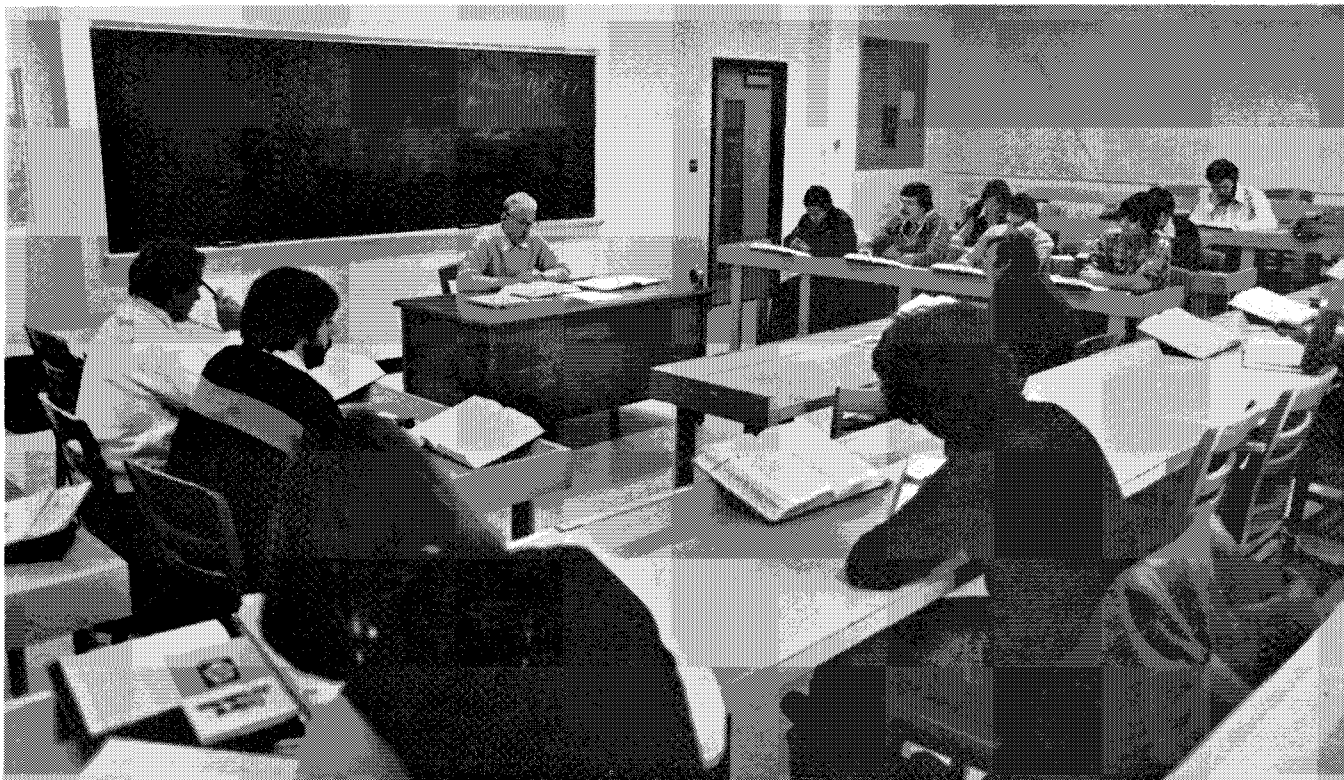
A brief summary of some of these changes may be in order here. I will necessarily draw on my own experience, but I believe my own practices are not at all atypical, and that one can generalize from them to the law school as a whole.

The New Technologies:

Some of the changes in teaching may be a result simply of changes in what is possible. The University of Wisconsin Law School is fortunate to have an outstanding photo-reproduction center, capable of providing hundreds of copies of photo-reproduced teaching materials on relatively short notice. As a consequence many teachers choose to customize teaching materials to their own tastes, to meet the objectives of the course as they see them. Few

courses are taught without some kind of photocopied supplement, and many courses use only photocopied materials. A second year student mentioned to me the other day that in three semesters of law school she had collected only three bound books! Law book publishing companies necessarily must take a conservative approach to what they publish. To the extent that this causes law teaching materials to be less imaginative than they could be, the photocopy machine has to a large extent solved the problem. If no national casebook embodies a particular approach to a course one can feasibly simply create a new book in photocopied form, or supplement the national casebook. One can take a chance one year and try something unusual; if the risk doesn't pay off, the materials can simply be omitted for the next year.

Another advantage is that one can supplement the case materials with extracts from briefs, transcripts, letters, newspaper or magazine articles, etc. And one can add these current materials long before they could ever be added to a published casebook. In fact, many of the "handouts" are materials that one would rarely find in a casebook. For example we recently supplemented the well-known case of *Hawkins v. McGee* ("the Hairy Hand" case) with an account of Hawkins' life subsequent to the



Professor Conway

litigation. I would estimate that the materials currently being used by a number of the contracts teachers contain at least a dozen handouts of the "clipping" variety, designed most often to vivify what to the students might otherwise appear to be sterile doctrinal puzzles.

The photocopy machine is not the only piece of new equipment in the Law School. A cabinet in the moot court room contains a first class black and white videotape machine. The equipment allows the law school to create its own videotape cassettes. This in turn allows a teacher to do stop-action critiques of students learning trial advocacy, interviewing, negotiating, and other critical skills. The videotape facility is less frequently used in the context of the first year, but it did allow us to tape a visiting speaker last year so that we will be able to give students access to the talk in the future. One of the criminal law teachers used the videotape facility to tape a mock plea bargaining session which was then analyzed by the class. The members of the class had pre-

viously engaged in plea-bargaining sessions with one another, and so the videotaped session could act as a bench-mark against which to evaluate their own experiences. (In my own law school experience we spent almost no time talking about plea-bargaining — perhaps because it had no doctrinal content?)

A room in the library is the home of the LEXIS legal research computer. The computer is used by some teachers and students but is not presently a major part of the educational experience of most students.

New Attitudes:

Most of the differences in the classroom experiences of present students are the product, however, not so much of changes in technologies as of changes in attitudes of the faculty about legal education. My legal education seemed devoted almost exclusively to studying legal doctrine. We studied past decisions as a sailor must study his charts, and spoke about the currents and the changing shoals of doctrine. We rarely addressed the

ways in which trial court decisions might differ from appellate opinions, the tactical concerns affecting the shaping of lawsuits by contending parties, the process of negotiation, or the fact that an attorney's letter to a client is the form of legal opinion most commonly encountered after graduation. Although a great deal of time is still spent by nearly everyone acquainting students with the twists and turns of legal doctrine, many have broadened the conception of what is worth doing in the classroom. Another example may prove useful here. In discussing the question of capacity-to-contract in the first year contracts course, we often confront the students with competing standards. Here, for example, one standard has been whether the alleged incompetent was "wholly and absolutely unable to understand the nature of the transaction." This strict standard can be contrasted with one which would relieve persons of contracts if the agreement was entered into "under the compulsion of a mental disease or disorder but for which the contract would not have been made." Too

often a discussion of these competing standards sounds like political philosophy. Not that political philosophy is not involved. But the discussion of the issue can be enriched if students are confronted with a transcript of a trial in which the more liberal standard was urged, so that the students have the opportunity to see the kinds of testimony that will likely be available on such an issue. It also provides an opportunity to talk briefly about the constraints that evidentiary requirements place on doctrine, as well as giving students a glimpse of the manner in which a case is transformed when it is distilled in an appellate opinion. A steady diet of appellate opinions in law school, as a means of learning how to function in the legal system, is too much like studying whale oil and corset stays in order to learn about whales. Some of the changes in legal education seem to involve giving students more frequent glances of the whole whale.

Some faculty members in upper level classes have largely abandoned the analysis of cases as the focus for class discussion. Instead, they pose problems which require that students put themselves in the roles of attorneys giving advice. The members of the class



Professor Kidwell

might be expected to draft a motion, or write a letter to a client. They are encouraged to consider not only the teachings of statutes and cases, but the problems of obtaining proof, the costs of litigation considered against the benefits of the tactical or strategic benefits of one course of action as opposed to another. Such exercises are usually referred to as simulations or "role-playing" and might, for example, involve the use of the video tape equipment mentioned earlier.

One of my own pet concerns is to train students to be self-conscious about the process of negotiation. In courses in contracts, remedies, and patents and copyrights, I have created situations which require students to negotiate contracts, or settle cases short of litigation. In more than one instance, this required the generation of mock files from which negotiations could proceed. In most cases, we took class time to talk about the dynamics of negotiation and settlement. I know that some other teachers of first year students have used similar exercises in their classes.

I have not touched at all on the clinical programs in my brief sketch of changes in methodology in law school training, since I am not involved in any of the clinical programs, and I could not possibly do them justice in the short space available to me here. Suffice it to say that many students have the opportunity to represent real clients and to discuss their experiences with faculty supervisors.

New Atmosphere:

Finally a word should be said about the atmosphere in classes. Since I didn't attend the UW Law School I really can't say that things have changed here. I can say that the atmosphere in classes, here, now, seems quite different from the atmosphere in the classes I attended as a student 10 years ago. There was in most of these classes (and certainly in the first year classes) a terrific

amount of tension. Students were made to feel that they were "on the line" when called upon, and many were humiliated when they were unable to respond adequately. One simply was not permitted to be unprepared—and a student might choose to stay away from class rather than run the risk of being caught in error in class. There were, of course, positive features to this system, one of them being that we were trained to be responsible for everything we said, and as a consequence we developed the habit of being precise and weighing words carefully. But after teaching first year courses here for six years, I'm persuaded that the "bootcamp" theory of law school is obsolete. Some students benefited under the old regime, but many others were unnecessarily intimidated by the first year experience.

Ironically, under the traditional regimen it was usually the case that the pressure was largely removed during the second and third years. Personally I wholeheartedly agree that law school should prepare students to be responsible for the quality of their work, but my own belief is that we should be more supportive during the first year and more demanding during the third. There are more than enough reasons for a first year student to work hard—they hardly need to be frightened into diligence. Conversations with other teachers, students, and some of the members of the law school visitation committee lead me to believe that the UW Law School has abandoned most of what was counter-productive about the once predominant bootcamp methodology and that the new methods constitute improvements over the old.