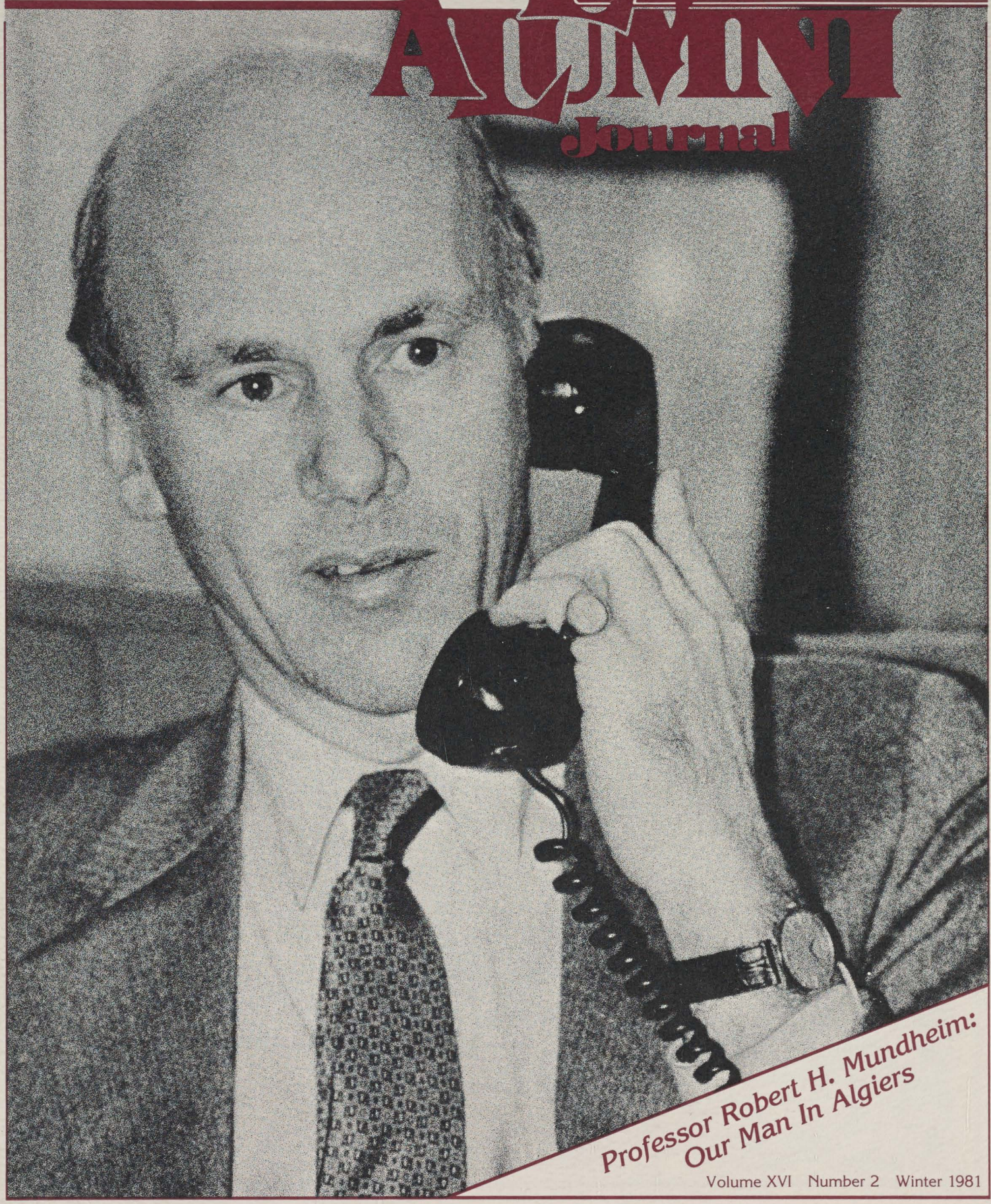
University of Pennsylvania

The Law Alumni Journal



Professor Robert H. Mundheim: Our Man In Algiers

Volume XVI Number 2 Winter 1981

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Vol. XVI No. 2

The Law Alumni Journal
University of Pennsylvania Law School
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From the Dean...

James O. Freedman

With great pride, I report plans for the publication this Spring of four new books by faculty colleagues, Howard Lesnick, George L. Haskins, Alan Watson, and Robert A. Gorman:

Becoming a Lawyer: A Humanistic Perspective on Legal Education and Professionalism by Elizabeth Dvorkin, Jack Himmelstein, and Howard Lesnick will be published by West Publishing Company.

A History of the Supreme Court of the United States, Vol. II, Foundations of Power: John Marshall, 1801-15 by George L. Haskins will be published by Macmillian Company.

The Making of the Civil Law by Alan Watson will be published by the Harvard University Press.

Cases and Materials on Copyright by Alan Latman and Robert A. Gorman will be published by Michie Bobbs-Merrill Company.

Taken together, these books reflect a splendid range of scholarship and indicate the continuing intellectual contributions that members of this faculty are making to understanding our laws and legal institutions. They also suggest the important role that the faculty plays in preserving the strength and the character of the Law School.

That role is being seriously threatened today, at our Law School and many other law schools, by the difficulty of providing adequate faculty compensation and research support.

The graduates of the nation's leading law schools, including our own, now enter New York law firms at starting salaries of approximately $38,000. News reports indicate that the figure will be $40,000 or higher by the time that our present third-year students begin their careers in September 1981. Thus, our best graduates enter the profession at higher salaries than those of many of their teachers.

As law firm salaries have climbed, the law schools of the country have found themselves unable, in most instances, to offer a prospective young faculty member a salary even approaching his prior salary in practice. Young men and women interested in law teaching as a career are usually earning, perhaps after a year's clerkship and two or three years of government or private practice, more than $35,000 a year; many are earning more than $50,000 a year. Outstanding lawyers who graduated a decade earlier may be earning nearly twice these amounts.

Law schools cannot expect to match salaries of that kind. An academic career offers many compensating advantages and rewards. But unless faculty salaries bear a reasonable relationship to the compensation paid to outstanding lawyers in private practice, the law schools will not be able to continue to attract the best young minds into law teaching. The consequences of this for the future of the profession are sobering.

Indeed, at a time when the practice of law is more exciting and more intellectually challenging to young lawyers than it has been for many years, it is particularly important that declining levels of comparative compensation not make careers in law teaching seem even less attractive than they may seem now.

The problem of fair and adequate compensation for law professors is not limited to the entry level. It also exists, in a somewhat different form, at the middle and senior levels of the faculty. In terms of real income, a law professor is earning less today than he or she did a few years ago, and much less comparatively than his or her peers in other sectors of the profession. The disparity in income between the partner in a large firm and the professor has always existed. But it is now too large. The pressures on faculty members at all institutions to engage in outside remunerative work that may not be related to their development as scholars and teachers are growing. Although our faculty has not yet suffered from the destructive impact that such pressures can cause, the subject is one of frequent and worried conversation, as the cost of living, and particularly the tuition costs for faculty children, rise at a far greater rate than faculty compensation.

The Law School's salary scale is now competitive with that of its peer institutions. But this is not likely to remain the case for long if other law schools are successful, as their deans tell me they expect to be, in significantly raising salary scales in the next several years. We must find ways of strengthening the compensation of our faculty if we expect to continue to attract those young men and women we want to join our ranks, particularly when we compete with Harvard, Yale, Columbia, Chicago, Stanford, and Berkeley for virtually every person we hire, and if we expect to hold them once they join the faculty.

It is now the practice of a growing number of peer institutions to provide summer research grants to members of the faculty. At the law schools of Harvard, Yale, Chicago, and Stanford, for example, these grants are available every summer to approximately half the faculty. Our Law School does not have any summer research grants.

These grants are important for many members of the faculty, but they are particularly important for junior members who typically have the greatest need for institutional support, in part because the demands of the early years of teaching leave them little time for research and writing during the academic year, in part because their habits of scholarship are being formed, in part because they have not yet established the reputations necessary to secure funding from outside sources. As summer research grants come to be regarded as a necessary and regular part of academic support at other law schools, it is important that our Law School make provision for their availability.

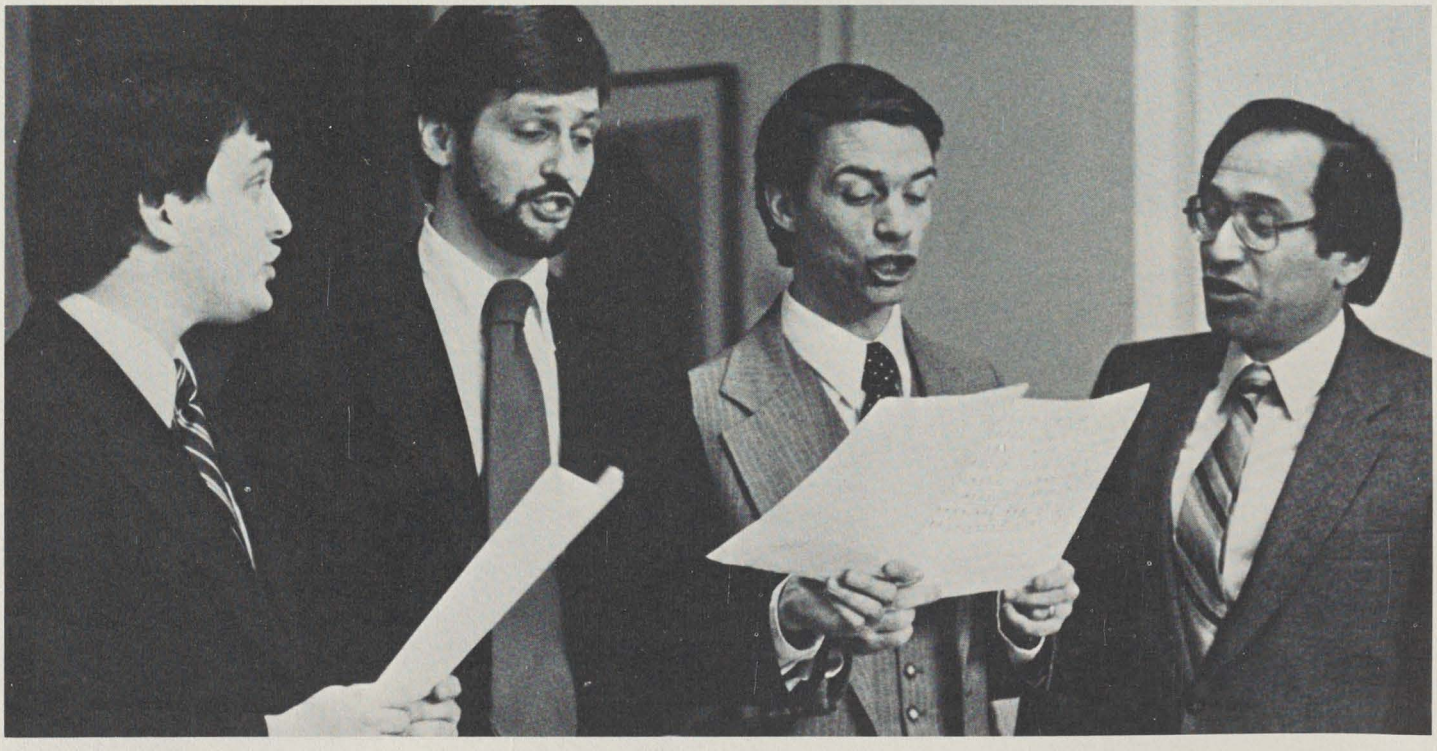
Finally, it is the practice of this University, as it is of most, to grant faculty members sabbatical leaves. Such leaves guarantee a faculty member a semester's leave at full-pay or a year's leave at half-pay on the average of once every seven years. For such leaves to be truly productive—to produce a monograph of book length or to permit a wide course of reading and study in those many disciplines which have become increasingly relevant for lawyers—it is highly desirable that a faculty member secure a source of support to permit him to make use of the entire year.

Although three members of this faculty have been awarded a Fellowship for Independent Research and Study by the National Endowment for the Humanities in recent years, such sources of support are nonetheless difficult to come by. It would be strongly desirable for the Law School to be able to provide an additional half-year of salary support to faculty members with deserving scholarly projects who have qualified for a half-year of sabbatical support from the University. Indeed, the availability of support for a full-year rather than for only a half-year often is the decisive factor in permitting a faculty member to spend his sabbatical at a foreign university—an experience that enriches the faculty member immensely and permits him to convey much of that enrichment to his students and colleagues.

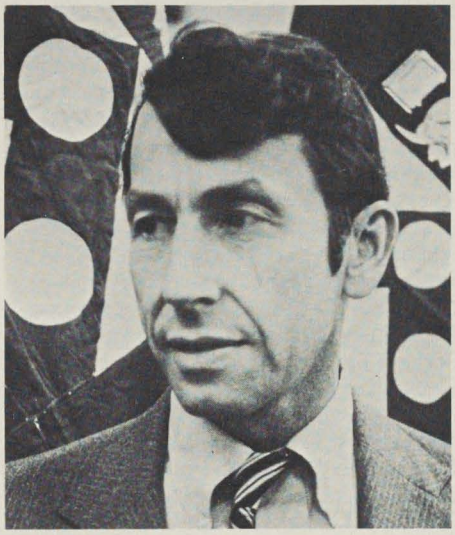
Finally, many other peer institutions now go beyond the traditional university policy of granting a faculty member one semester's leave every seventh year. They grant faculty members one semester's leave at full salary every third year, in addition to the sabbatical entitlement of an entire year's leave at half-salary every seventh year on average. This pattern of leaves permits significantly greater opportunity for scholarly productivity. It is not only an attractive consideration to young men and women weighing competing offers to join the faculties of a number of law schools, some of which have such a policy and some of which do not; it is also an important benefit for younger members of the faculty as they seek to establish their mark as scholars in the early years of teaching that lead to the granting of tenure.

The creation of a Faculty Research and Development Fund is essential to the full professional development of our faculty. I hope that the Law School will be able, with the support of our alumni, to create such a Fund in the years immediately ahead so that we may continue to compete effectively for the most outstanding young men and women seeking to enter law teaching.

The Airs-At-Law caroling at the Law School's Annual Christmas Concert. Associate Dean and Professor Robert A. Gorman is at the far right.



LAW ALUMNI DAY IS APRIL 1, 1981



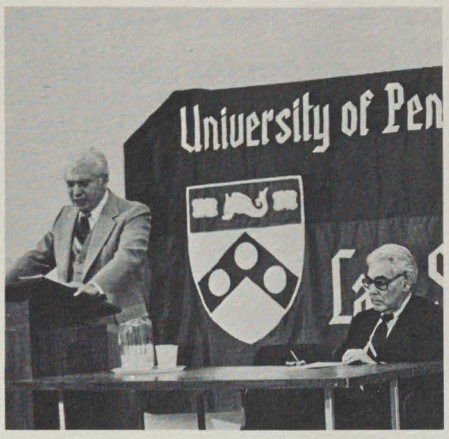
Sheldon Hackney, President of the University of Pennsylvania

Law Alumni Day Features President Hackney

The new President of the University of Pennsylvania, Sheldon Hackney, will address alumni and their guests, Penn Law faculty and administration and members of the Class of 1981, at the Alumni Society's Annual Law Alumni Day, April 1, 1981.

Events begin with the presentation of excerpts from the Law School Light Opera Company's production, "H.M.S. Pinafore", at 4:00 p.m. in the Great Hall. The Alumni Society will hold its Annual Meeting at 5:00 p.m. Outgoing President, Marshall A. Bernstein, '49, will deliver his report, and the nominating committee will present the Society's new executive officers and members of the Board of Managers. Cocktails are scheduled for 6:00 p.m., to be followed by dinner at 7:00 p.m. Remarks by Dean James O. Freedman will precede the speech by President Hackney.

All Alumni and their guests are invited to attend. For further information please contact the Law School Alumni Office (215) 243-6321.



Hon. Melvin G. Levy, '50, Chair of the Second Annual Alumni Forum, introducing Professor A. Leo Levin, '42, who delivered the First Lecture of the Series in January, 1981.

The Alumni Forum Series

The Law Alumni Society presented its second Annual Alumni Forum Lecture Series in January and February. Professor A. Leo Levin delivered the first lecture, "Ineffective Counsel: How Should the Bar and the Courts Respond?", on January 28. Professor Louis B. Schwartz spoke on "Prosecution of Public Officials: ABSCAM and Related Problems" on February 24.

The lectures have been preserved by means of videotape and are available for viewing upon request from the Law Alumni Office.

Robert Carswell is O'Boyle Visiting Practitioner

The Center for Study of Financial Institutions at the Law School has appointed Robert Carswell, the Deputy Secretary of the Treasury from April 1977 through January 1981, as the Thomas A. O'Boyle Distinguished Visiting Practitioner for the Spring 1981 semester.

Mr. Carswell will also deliver the Center's Thomas A. O'Boyle Memorial Lecture.

The Light Opera Company Performs "Pinafore"

The Law School Light Opera Company is presenting the Gilbert and Sullivan opera, "H.M.S. Pinafore" on March 26, 27 and 28 at the Drexel University Main Auditorium.

Those who have attended previous Law School Light Opera productions can attest to the extraordinary talents of the Company, which is composed of Penn law students, faculty and alumni.

Dean James O. Freedman, center, with Betsy Z. Cohen, '66, right, and Harmon S. Spolan, left, of the firm Spector, Cohen, Gadon & Rosen, sponsors of the Law School's new Thomas Jefferson Lectures.

The New Thomas Jefferson Lectures

The Philadelphia law firm of Spector, Cohen, Gadon & Rosen has contributed significantly to the intellectual strength of the University of Pennsylvania Law School with the creation of the Thomas Jefferson Lectures.

To be held twice during a five-year period, the Lectures are fashioned after Harvard Law School's Oliver Wendell Holmes Lectures, Columbia Law School's James S. Carpentier Lectures, the University of Michigan Law School's Thomas M. Cooley Lectures, and the Yale Law School's William L. Storrs Lectures.

In keeping with the formats of other institutions, the Law School will invite a distinguished scholar, judge or practitioner for one week to deliver three or four Lectures dealing with fundamental questions of law and jurisprudence. The Lectures will be published subsequently in book form. The guest lecturer, during his/her residence at the Law School for the week, will have the opportunity to meet informally with students, faculty and alumni.

The First Thomas Jefferson Lecturer

Louis Henkin, Professor of Law at Columbia University Law School, will deliver the first Thomas Jefferson Lectures during the Fall 1982 semester.

Professor Henkin taught at the University of Pennsylvania Law School from 1957 to 1962. He is a leading scholar in the areas of constitutional law and international law, with special emphasis on the international protection of human rights.

Dean James O. Freedman, center, with Allentown Alumni, from left to right, Leon C. Holt, Jr., '51; James H. Agger, '61; and John R. Hudders, '59.

The Dean at a Class of 1978 reception given by Thomas B. McCabe, III, right, in the Fall of 1980.

The Dean and the Alumni

Dean James O. Freedman continues to meet with Law School Alumni. In early January, at the meetings of the American Association of Law Schools in San Antonio, Texas, he met with Alumni who have chosen teaching as a career. Later in January, Dean Freedman was honored at a dinner given by Allentown Alumni at the guest house of Air Products and Chemicals Inc. In late February, he was present at the annual meeting of the New York Penn Law School Alumni.

Dean Derrick A. Bell, standing center, with members of the University of Pennsylvania Law School's Black Law Students Union. Standing, from left to right, Linda R. Fanin, '81; Charles Johnson '82; Constance Wynne, '82; Dean Bell; Pat Petty, '81; Phyllis Bernard, '81; and Barbara Brown, '81. Seated are Renee Hooks, left, and Kenneth W. Arrington, both of the Class of 1981.

Dean Bell at Penn

Derrick A. Bell, Dean of the University of Oregon Law School, was a Scholar-in-Residence this past Fall as part of the University of Pennsylvania Black Centenary Celebration.

The Black Alumni Dinner—April 11

The Annual Black Law Alumni Dinner will be held at the University of Pennsylvania Museum, the Lower Egyptian Gallery, April 11, 1981.

Associate Justice Margaret A. Burnham, '69, of the Boston Municipal Court, Boston, Massachusetts, will be the guest speaker.

For more information, contact the convenors for the event, Pat Petty or Ken Arrington, of the Class of 1981, at the Law School.

*Cassandra N. Jones, '81, Editor, **The Black Law Journal.***

The Black Law Journal, Pennsylvania Issue

Students at the University of Pennsylvania Law School will publish *The Black Law Journal*, Volume 7, Number 2. *The Journal* has been published regularly at the U.C.L.A. Law School since 1970.

Cassandra N. Jones, '81, the Editor-in-Chief of *The Journal* notes that the theme of the special double Pennsylvania issue, "Roles For the Black Lawyer", explores the emerging position that the black lawyer will assume in the development of the black community. Contributors include, Honorable A. Leon Higginbotham of the United States Court of Appeals for the Third Circuit; Honorable Robert J. Carter of the United States District Court for the Southern District of New York; Vernon Jordan, President of the Urban League; and William Julius, Author, *The Declining Significance of Race.*

"Law and the Arts"—A New Elective

The Law School, in cooperation with the Philadelphia Volunteer Lawyers for the Arts, has added a new course, "Law and the Arts", to the curriculum. Considered in the course are the legal problems of architects, painters, performers, writers, and composers. Topics incude the relationships of the artist to galleries, museums, record companies, publishers, agents, producers and promoters.

Symposium

Phi Delta Phi Lives Again

On February 26, 1981, the local chapter of Phi Delta Phi National Legal Fraternity, which had been dormant since 1934, was re-activated.

Attending the ceremony was Dr. Sadie T. M. Alexander, who was chosen the namesake of the new chapter. Dr. Alexander, a 1927 Alumna of the Law School, currently serves as Chair of the White House Conference on Aging.

The ceremony, was held at Philadelphia's City Hall, and 41 Penn Law students were inducted into the Chapter as charter members. Presiding was Terry L. Claassen, Esq., Washington, D.C., the National President of Phi Delta Phi. He was assisted by the Honorable Alfred J. DiBona, Philadelphia Court of Common Pleas; Dean Russell N. Fairbanks, Rutgers-Camden Law School; Ross J. Reese, Esq., a partner in the Philadelphia firm of Dilworth, Paxson, Dalish & Levy; and Edward C. German, Esq., German, Gallagher & Murtaugh, Philadelphia. Also attending the ceremony was Sam S. Crutchfield, Esq., Executive Director of Phi Delta Phi, and Baker A. Smith, Esq., Province II President of Phi Delta Phi.

Penn's original chapter was founded in 1886 by Thomas Wood, '86, and eight other students. During its forty-eight year history, it inducted 450 members, including such Law School Alumni as the late William Draper Lewis, former Dean of the Law School, and Owen J. Roberts, former Associate Justice of the U.S. Supreme Court.

Phi Delta Phi has chapters at more than one hundred law schools in the U.S., Canada and Mexico.

The Four-In-One Public Interest Symposium

In November, 1980, the University of Pennsylvania Law School, together with the Law Schools of Rutgers (Camden), Villanova and Temple, sponsored a Public Interest Legal Career Symposium.

One of the twelve public interest attorneys who participated was Alumnus, Alan Lerner, '65, a private public interest practitioner with the Philadelphia firm, Cohen, Shapiro, Polisher, Shiekman & Cohen. Another participant was Frank N. Jones, former Vice-Dean of this Law School from 1973-1976, now President of Boston Commission, Inc.

Setting the Record Straight

In our recent Annual Report:
James H. Agger, '61 was omitted from the list of Charter Members of the Edwin R. Keedy Associates.
James W. Scanlon, '30 was also omitted from the list of Charter Members of the Edwin R. Keedy Associates.

Matching gifts too late to be included in the Annual Report were received from Air Products and Chemical, Inc., and Communications Satellite Corporation.

We regret these omissions.

The 1981 Moot Court Competition

The Annual Edwin R. Keedy Cup Competition will be held November 17, 1981.

The Bench will include: Justice Byron R. White, U.S. Supreme Court, presiding; Judge Harry T. Edwards, U.S. Court of Appeals for the District of Columbia; and Judge John C. Godbold, U.S. Court of Appeals for the Fifth Circuit.

A Faculty and Board for the Institute for Law and Economics

Dean James O. Freedman and the Director of the Institute for Law and Economics, Assistant Professor Henry Hansmann, have announced the Governing Faculty and Advisory Board which will assist in coordinating the Institute's academic programs. When operative, the Institute will serve the two-fold purpose of sponsoring research in Law and Economics, as well as enable students the pursuit of a joint degree in those areas.

Members of the Governing Faculty include Professors Almarin Phillips, Robert Pollak, Louis B. Schwartz, and Oliver Williamson. The Advisory Board members are: John G. Harkins, Jr., '58, *Chairman*, Pepper, Hamilton & Scheetz, Philadelphia; Honorable Arlin M. Adams, '47, U.S. Court of Appeals for the Third Circuit; Curtis H. Barnette, Vice-President and General Counsel, Bethlehem Steel Corporation; William H. Brown, III, '55, Schnader, Harrison, Segal & Lewis, Philadelphia; Sylvan M. Cohen, '38, Cohen, Shapiro, Polisher, Shiekman & Cohen, Philadelphia; Raymond D. Dempsey, President, Fidelcor, Inc., Philadelphia; Richard M. Dicke, '40, Simpson, Thacher & Bartlett, New York; Honorable Harvey T. Edwards, U.S. Court of Appeals for the District of Columbia; Howard Gittis, '58, Wolf, Block, Schorr & Solis-Cohen, Philadelphia; William B. Johnson, '43, Chairman and Chief Executive Officer, IC Industries, Chicago; William G. Kay, Jr., Executive Vice-President, The Sun Company, Inc., Radnor, Pennsylvania; Edwin P. Rome, '35, Blank, Rome, Comisky & McCauley, Philadelphia; Eugene H. Rotberg, '54, Vice-President and Treasurer, The World Bank, Washington, D.C.

Reunions

The following quinquennial classes will celebrate their milestone reunions this spring:

Class of 1931 June 5-7	The Hershey Hotel
Class of 1941 Early June	The Bellevue-Stratford Hotel
Class of 1946 April 1	The Law School on Law Alumni Day
Class of 1951 June 6	The Law School
Class of 1959 May 15	The Law School
Class of 1961 June 26	The St. David's Golf Club
Class of 1966 May 23	The Law School
Class of 1971	Plans in Progress
Class of 1976 June 13	Plans in Progress

If you are a member of one of these classes and have not heard from your class reunion committee, please contact Libby Harwitz at (215) 243-6321.

The Class of '83—Some Statistics

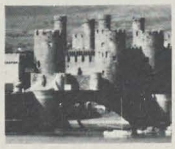
Of the record 3,823 persons who applied for admission, 232 students matriculated at the University of Pennsylvania Law School in the Fall of 1980. They came from 29 different states, the District of Columbia, Puerto Rico and India; 102 undergraduate institutions were represented; 22 students hold graduate degrees, including three who hold or are about to receive PH.D's and one M.D. There are 24 minority students and 80 women in the class. One hundred ten matriculants did not come directly from undergraduate college.

The median LSAT score for regular admittants was 721; the median Grade Point Average was 3.69.

Penn Law School in Israel

Five Penn Law faculty members will attend an International Symposium at Tel Aviv University from May 25-28, 1981. Professors Oliver Williamson, Henry Hansmann, Louis B. Schwartz and Alan Watson will deliver papers at the Conference, which is titled "Inflation and The Law". Dean James O. Freedman will be moderator.

Other participants at the Symposium will be members of the law faculties of the Hebrew University, the University of Strasbourg, and the University of Paris II.



University of Pennsylvania Law Alumni Society
voyage of the yacht Argonaut

Scotland, Wales, Dublin and the Island World of Britain

May 26 to June 7, 1981

You are invited
Cruise through Britain. The sea, inseparable from the heritage of this great island nation, eases access to remote locations where traditions and celebrated sites have been preserved since prehistoric times. Wild and garden flora will be in full bloom, their beauty harmonizing with historic castles and baronial homes. Expert guidance provides special insights into the past, art, architecture, and congenial ways of life. All will be enjoyed with good company in a marvelous variety of interesting places.

MTS Argonaut registered in Greece.

Rates $2895 to $3295 per person, double, New York to New York.

Please send me detailed information about the University of Pennsylvania Law Alumni Society **Island World of Britain** cruise, May 26 to June 7, 1981.

Name _____

Address _____

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Mail to: **RAYMOND & WHITCOMB CO.**
400 Madison Avenue, New York, N.Y. 10017
or call: (212) 759-3960

Featured Events

The 1980 Owen J. Roberts Memorial Lecture

Lecturer: Wade H. McCree, Jr.

An Introduction by Dean James O. Freedman

The Owen J. Roberts Memorial Lecture was established in 1957. It honors the memory of one of the greatest graduates of this Law School and one of the great figures in the life of our Nation.

Owen J. Roberts was a man of extraordinary intellectual and professional achievement. He practiced law with an independence of mind and an integrity of character rarely equalled in the history of the bar. Much of his career was devoted to the service of the public interest—as an assistant district attorney of Philadelphia, as special United States prosecutor in the Teapot Dome cases, as chairman of President Roosevelt's commission to investigate the attack on Pearl Harbor, as an Associate Justice of the Supreme Court of the United States, and, from 1948 to 1951, as the 11th Dean of this Law School.

The standards of personal integrity and professional excellence that Owen J. Roberts brought to each of these responsibilities have been memorialized by the distinction of the lecturers who have given this lecture series its substance and stature. The lecturers have included distinguished judges, such as Felix Frankfurter, Henry J. Friendly, and William H. Hastie; distinguished scholars, such as Arthur L. Goodhart, Erwin Griswold, and my colleague, Covey T. Oliver; distinguished diplomats, such as Paul Henri Spaak and Abba Eban; and distinguished practitioners of law, such as Anthony Lester, who is with us tonight from London. Each of these lecturers has devoted himself to the great tasks of illuminating and improving the law.

The Owen J. Roberts Memorial Lecturer, Wade H. McCree, Jr.

Tonight Wade H. McCree, Jr., will deliver the 22nd annual Owen J. Roberts Memorial Lecture. He brings to this podium a personal distinction worthy of his most eminent predecessors.

Wade McCree was born in Des Moines, Iowa, and graduated from Fisk University *summa cum laude.* After earning his law degree at Harvard Law School, Judge McCree began his career as a practicing lawyer in Detroit—a career that made him one of the most respected advocates and counselors in that city.

He became a state court judge in 1954, a judge of the United States District Court in 1961, and a judge of the United States Court of Appeals for the Sixth Circuit in 1966. In each of these judicial capacities, Wade McCree's performance was marked by high professional competence, wise and imaginative judgment, and sound common sense.

In 1977, President Carter asked Judge McCree to serve as Solicitor General of the United States, a position that had earlier been held by William Howard Taft, by Charles Evans Hughes, by Robert H. Jackson, and by Thurgood Marshall. In resigning his judgeship to accept what is perhaps the most important position a public lawyer can occupy, Judge McCree responded as an American citizen to the President's call to service. As he later told his colleagues, he gave up a life estate for a tenancy at will.

As Solicitor General of the United States, Wade McCree has had the responsibility of appearing before the Supreme Court as an advocate for what he has described as "the best client in the world, the United States of America." He has met that responsibility brilliantly, always insisting that the government must insure that the remedies of the law are available to the poor and to the powerless, to the alienated and to the victimized, to all who comprise the most vulnerable and exploited segments of our society.

During the last two decades, Wade McCree has undertaken a series of professional activities that have made him an eloquent spokesman for strengthening the processes of the law. He has served as a Fellow of the American Bar Foundation, as a member of the Council of the American Law Institute, and as the United States Delegate to the United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Several months ago, to the gratification of all of us, Judge McCree became a member of the Board of Overseers of our Law School, and today he attended his first meeting. His contributions to the law and to American society have been recognized by the fact that thirteen universities have awarded him honorary degrees, including, I am proud to say, the University of Pennsylvania.

In his role as lawyer, as judge, as Solicitor General of the United States, and as citizen, Wade McCree has served his country and his profession with integrity, selflessness, and idealism. By his career he has demonstrated the truth of Walter Lippmann's statement that "responsibility consists in sharing the burden of men directing what is to be done." Judge McCree has chosen to devote his Owen J. Roberts Memorial Lecture to the subject: "Bureaucratic Justice: An Early Warning."

Dean James O. Freedman, center, with Judge McCree, left, and University of Pennsylvania President Emeritus, Martin Meyerson.

Judge McCree, right, with Hon. A. Leon Higginbotham of the U.S. Court of Appeals for the Third Circuit, left, and Sarah D. Mitchell, '79, center.

Hon. Wade McCree, with Law School Assistant Professors Regina Austin, right, and Ralph R. Smith, left, at the 1980 Roberts Lecture.

Judge McCree Proffers "An Early Warning"

In his 1980 Owen J. Roberts Memorial Lecture, "Bureaucratic Justice: An Early Warning", Honorable Wade H. McCree, Jr., the former Solicitor General of the United States, addressed one of the most pressing problems facing the American judiciary system today—the problem of "the staggering increase in litigation". He stated that the number of appeals filed annually in the federal courts has increased more than sixfold since 1940; in contrast, the number of appellate judges has barely doubled.

Confronted with caseloads of "crisis proportions", courts have sought to speed up the judicial process by altering a number of the traditional aspects of the process. Courts are frequently refusing to hear oral arguments. Written opinions are often dispersed with or go unpublished. Law clerks and central staff attorneys are being forced to play an ever-increasing role in judicial decision-making. These are developments over which Judge McCree expressed great concern.

Drawing upon his experiences as both judge and advocate, McCree characterized "judging as a very personal business", and noted the "special trust and confidence" reposed in those persons chosen as judges. Contrasting this traditional image attributed to judges and to the judicial process with the emerging trend towards bureaucratic justice, Judge McCree warned that the drive for increased judicial efficiency and productivity might imperil these notions of justice. He urged that the costs accompanying recent changes in judicial administration be carefully considered. He also suggested that Congress ease the burden facing the Courts by legislating in more specific terms.

Judge McCree, at the conclusion of the Lecture, however, affirmed his faith that the American court system would survive the current crisis.

The Journal *is grateful to Gary B. Born, '81, of* The University of Pennsylvania Law Review *for providing information on the 1980 Owen J. Roberts Lecture. It will appear in its entirety in the May issue of* The Law Review.

The 1980 Keedy Cup: *Ringling Brothers v. Mikos*

The Final Argument of the Edwin R. Keedy Cup Competition was held on November 17, 1980 at the University of Pennsylvania Museum.

This year's illustrious Bench included Chief Justice Warren E. Burger, United States Supreme Court, presiding; Justice Samuel J. Roberts, '31; and Bernard G. Segal, '31, Esq., Schnader, Harrison, Segal & Lewis. The case before the Court, *Ringling Brothers-Barnum & Baily Combined Shows, Inc.*, v. *John Mikos,* raised the issue of whether a state may place an unapportioned *ad valorem* property tax on moveable personal property located within a state for less than two months of the year.

The Keedy finalists, all members of the Class of 1981, were John A. Borek and Ronald M. Eisenberg, for the petitioners, and Thomas R. Herwitz and Randy M. Mastro, for the respondents. The Judges concurred that the arguments presented by both sides were "of extraordinary high quality." They declared the oral arguments a draw; however, the finalists' briefs were decisive and the Cup was awarded to Respondents Herwitz and Mastro.

Prior to the Cup arguments, Dean James O. Freedman presented the following comments to those assembled for the Competition.

Remarks of Dean James O. Freedman at the Edwin R. Keedy Moot Court Competition

I want to extend a particularly warm welcome to all of the members of the judiciary, both federal and state, who are here this evening. You do the Law School honor by joining us, and you do honor as well to the four students who will compete in the final round of our moot court competition.

And I want to say a special word of congratulation to those four students, who are: John A. Borek, Ronald M. Eisenberg, Thomas R. Herwitz, and Randy M. Mastro.

One evening some years ago, when I was myself a law student, I sat in the same seats that the four of you do now. My partner and I did the very best we could that evening, but in the end the judges decided that the other team had won. I went to sleep discouraged, and woke up early the next morning to take a walk. And as I walked the early morning streets of New Haven, I met Mr. Justice Harlan, who had been the presiding justice the evening before. He was obviously taking *his* early morning walk.

We stopped to talk, and he told me that whenever he had lost an appellate argument during the years that he practiced law, he remembered a line of poetry that his father had recited to him when he was a boy. And the line, which I have remembered all these years, went: "'Tis better to have loved and lost than never to have loved at all."

And so I hope that the four of you—who have so distinguished yourselves by earning the right to participate this evening—will keep clearly in mind the admiration that your teachers and classmates have for your achievement in having come this far, and that, whatever the formal outcome may be this evening, you will regard your participation in this competition as a very significant event in your professional development. We are very proud of all of you.

I know that I speak for everyone here in welcoming Chief Justice and Mrs. Burger to this Law School. The work of Chief Justice Burger, during his tenure as the 14th chief justice of the United States, is known to everyone in this room. He has not only devoted himself to reforming and strengthening the administration of the courts. He has also sought to initiate widespread public discussion on how to make the judicial system more responsive to the needs of those it serves. Not since the tenure of William Howard Taft has a chief justice of the United States committed so much energy to the task of administering the nation's judicial system effectively.

What may not be so well known to everyone in this room is the Chief Justice's many associations with this Law School. This is the second time that the Chief Justice has presided at a moot court argument here. During the 24 years that he has been a federal judge, he has selected a number of our graduates to serve as his law clerks, including two who are here this evening, Bill Ewing of the Class of 1965; and Richard Friedman of the Class of 1978.

He has helped to train one of our colleagues, Professor Stephen B. Burbank, who was the Chief Justice's law clerk before joining the faculty. And he has "borrowed"—if I may use that term—the talents of one of the most beloved members of our community, Professor A. Leo Levin, to work closely with him as Director of the Federal Judicial Center.

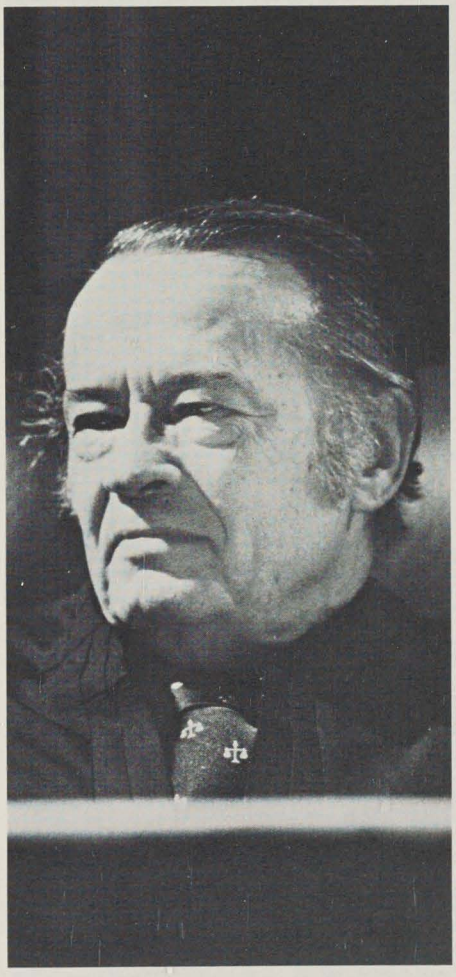
It is a great honor, Mr. Chief Justice, to welcome you and Mrs. Burger to the University of Pennsylvania Law School.

Joining Chief Justice Burger on the court this evening are two distinguished graduates of the Law School, Justice Samuel J. Roberts of the Supreme Court

of Pennsylvania and Bernard G. Segal, chairman of the law firm of Schnader, Harrison, Segal, and Lewis. Justice Roberts and Mr. Segal are both members of the Class of 1931, which this year celebrates the 50th anniversary of its graduation from the Law School.

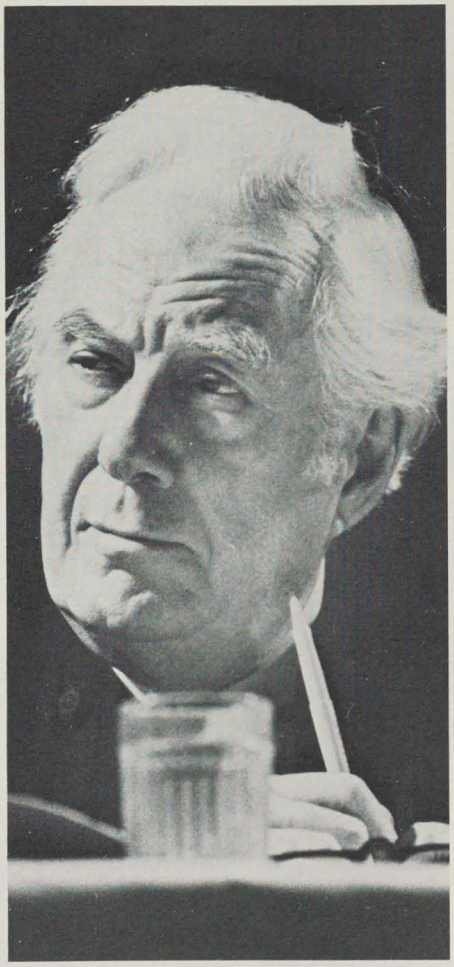
I hardly need recount in detail, for this audience, the distinguished career of Justice Roberts. Upon his graduation from law school, Justice Roberts practiced law in Erie, Pennsylvania, before entering upon a public career that has included service as an assistant district attorney for Erie County, as a special deputy state attorney general, as judge of the Orphans' Court for Erie County, and, since 1963, as a Justice of the Supreme Court of Pennsylvania.

His service on that Court—which is the oldest court in the United States, antedating the United States Supreme Court by 67 years—has been exemplary. His opinions have consistently demonstrated a brilliance of intellect, a subtlety of imagination, and a carefulness of craft, that have earned him the respect of our profession as one of the outstanding judges in the United States.

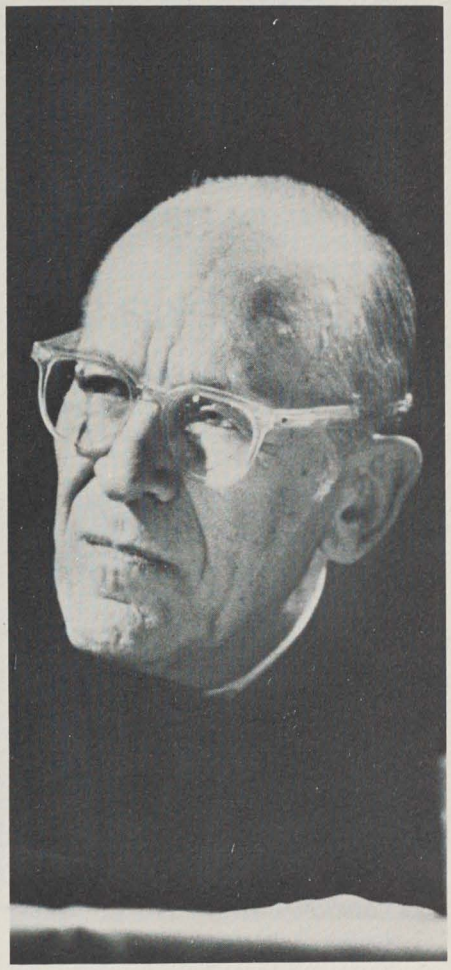


But Justice Roberts is not only a preeminent judge. He is also a lawyer deeply concerned with the future of legal education in America. He is a member of the Law School's Board of Overseers as well as a leader in the American Bar Association's Accreditation Committee for Legal Education. He has worked vigorously, in both capacities, to insure that the quality of legal education remains high in the decades to come. He is a man wise in counsel and rich in experience, and he has put those rare qualities in the service of this and other law schools, time and time again.

Our third judge, Bernard G. Segal, has had one of the great careers in the history of the American bar. He began that career as a deputy attorney general of Pennsylvania, during which time he drafted the state's banking code, its building and loan code, and its milk control law. He has practiced law in Philadelphia since 1934 with the law firm of which he is now chairman, Schnader, Harrison, Segal, & Lewis.



Throughout his years at the bar, Bernard Segal has consistently worked to strengthen the profession and to insure that every citizen enjoys equal justice under law. He has served as Chancellor of the Philadelphia Bar Association, and President of the Pennsylvania Bar Association, the American Bar Association, the American Bar Foundation, and the American College of Trial Lawyers. He has received the Gold Medal of the American Bar Association, its highest award, and the World Lawyer Award of the World Peace Through Law Center.



The 1980 Keedy Cup Bench: from left to right, Justice Samuel J. Roberts, '31, of the Supreme Court of Pennsylvania; Chief Justice of the United States, Warren E. Burger; and Bernard G. Segal, '31, of the Philadelphia firm Schnader, Harrison, Segal & Lewis.

He was appointed by President Kennedy to serve as co-chairman of the Lawyers' Committee for Civil Rights Under Law. And he has served on many national commissions, including the Attorney General's Committee to Study the Antitrust Laws, the Attorney General's National Conference on Court Congestion, and the National Commission on Revision of the Federal Court Appellate System.

He serves today, by appointment of the Chief Justice, as a member of the United States Commission on Executive, Legislative, and Judicial Salaries. He has devoted endless hours to the important work of the American Bar Association in passing upon the quality of federal judicial nominations.

And he has been an indispensable source of encouragement and assistance to many deans of this Law School, as Lou Pollak and I can gratefully attest.

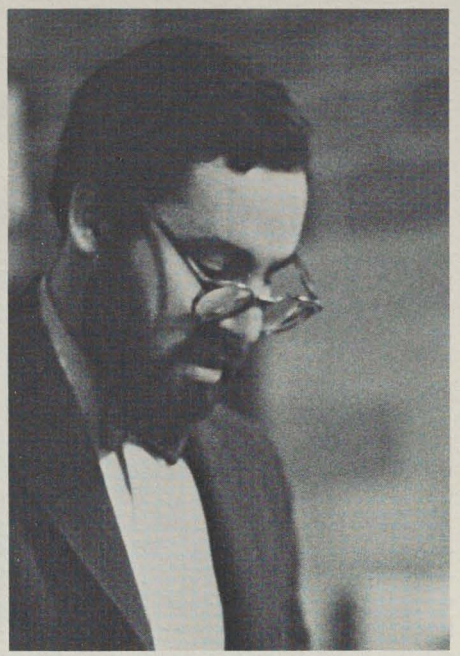
Bernard Segal has worked to strengthen the central institutions of our society so that they will better serve the needs of his fellow man. He has given his energies to the great challenges of alleviating poverty, eliminating unequal justice, and enhancing judicial competence.

I think it is fair to say that Bernard Segal's career as a public lawyer bears comparison with that of three of the greatest graduates of this Law School, George Wharton Pepper, Owen J. Roberts, and William A. Schnader. Bernard Segal is a man of learning, humanity, and dedication, and his qualities of character and mind have made him the most respected leader of the bar of his generation.

As I look at the remarkable careers of these two members of the Class of 1931, I think of Justice Holmes' statement that "*not place nor power nor popularity makes the success that one desires, but the trembling hope that one has come near to an ideal.*"

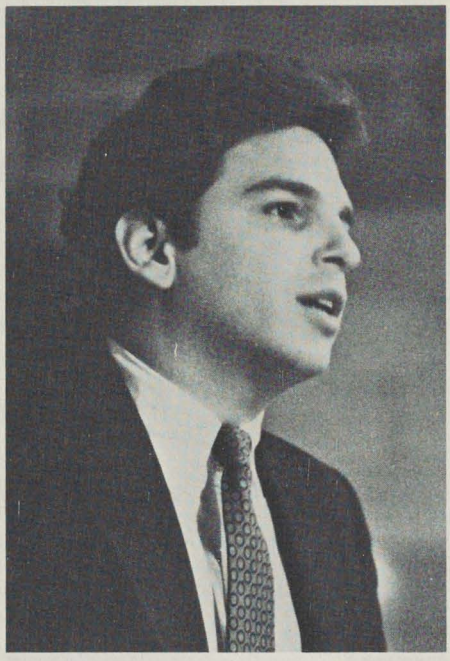
Sam Roberts and Bernie Segal have come near to an ideal that is important for all of us—the ideal that one of the highest functions of a lawyer is to discharge fully the responsibilities of citizenship. Each of these men has devoted his talents and his time to strengthening those institutions—our courts, our bar associations, our law schools, our law firms—that together serve to insure that the rule of law will prevail. For many years to come their lives and the values embodied in their careers will nourish the resolve of others and illuminate the paths that lawyers, as citizens of a commonwealth, should strive to follow.

It is a great honor for the Law School to have two of its most illustrious graduates, Samuel J. Roberts and Bernard G. Segal, serve, during their 50th reunion year, as members of this moot court panel with the Chief Justice of the United States.



Thomas R. Herwitz for the Respondents.

Respondent Randy Mastro



Keedy Cup Respondents Randy M. Mastro, left, and Thomas R. Herwitz, right.

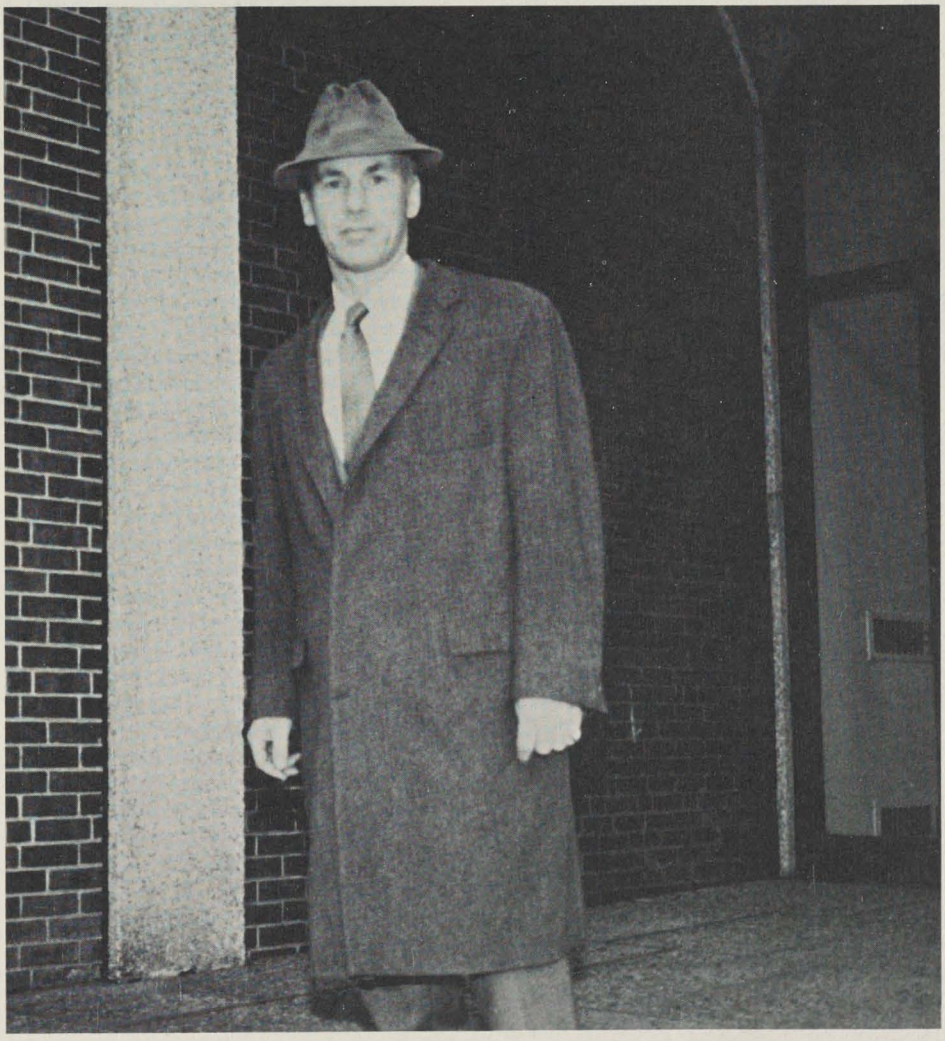
Keedy Petitioner Ronald M. Eisenberg, right, and partner, John A. Borek, left, at the annual competition in November.

Professor Robert H. Mundheim:
Our Man In Algiers

Robert H. Mundheim, University Professor of Law and Finance, returned to the University of Pennsylvania Law School in August, 1980, after three and one-half years as General Counsel to the United States Treasury Department, only to be recalled to government service for an additional two-week stint from January 7–20, 1981.

During his term at the Treasury Department, Professor Mundheim substantially participated in the freezing of Iranian government assets as a response to Iran's seizure of fifty-three American hostages in November 1979. Fourteen months later, as a member of the United States negotiating team responsible for obtaining the release of the hostages, he helped orchestrate what the Carter Administration called, "the largest private financial transfer in history". As Dean James O. Freedman said of Professor Mundheim's role in the negotiations, "Bob Mundheim was in the center of complex negotiations involving representatives of twelve U.S. banks, three governments, four central banks and hundreds of international government officials, bankers and lawyers".

When he returned from Algeria after the hostages' release, Professor Mundheim shared his experiences as a member of the negotiating team with the Law School community. What follows is a transcript of Professor Mundheim's chronicle describing the painstakingly intricate arrangement which resulted in the ultimate freedom of the United States hostages in Iran. —*LSH*



This story began, of course, more than fourteen months ago with the takeover of the United States Embassy and the seizure of the hostages. The first event after that in which I substantially participated and which provides some of the necessary backdrop for understanding the negotiations, began for me about 5:00 A.M., on Wednesday morning, November 14, 1979. At that time, I received a call at home that the Iranian government, in a radio broadcast, threatened to withdraw Iran's dollar deposits in the United States banks as part of an announced scheme to attack the dollar. The response, which was made officially at 8:14 A.M. on that Wednesday, was to freeze, under the International Economic Emergency Powers Act, known as IEEPA, all Iranian governmental assets in the hands of persons subject to the jurisdiction of the United States. Two categories of assets were frozen: One category was the assets held in the United States by the Iranian government, or by government owned entities, such as The Bank Markazi Iran or the National Iranian Oil Company. Such assets include depositor claims against a bank or claims by the Iranian seller of oil for money owned in payment for the oil. The second category of assets were assets held abroad by U.S. persons or persons subject to the control of U.S. persons. This category would include, for example, depositor claims against an overseas branch or subsidiary of a U.S. bank. The reasons for freezing the assets were, first, to permit an orderly settlement of the claims of U.S. citizens against the Iranian government and, second and more generally, to serve as a response to the seizure of the hostages.

The freezing of assets means only that the transfer of rights in those assets was prohibited. It did not mean that the United States took title to those assets. Thus, it was not inconsistent with the notion of freezing that creditors would be permitted to begin the process of bringing attachments against Iranian property in the United States. On the other hand, it would have been inconsistent to allow those attachments to be perfected and the regulations forbade that.

The freeze of Iranian governmental assets created a number of serious problems; I want briefly to sketch those problems because they will give you a sense of some of the pressures which existed for settlement and, indeed, help explain the kind of settlement which was ultimately reached. First of all, even though there was historical precedent, the very notion that dollar deposits of a foreign government would be frozen was a bit of shock, particularly to the major investors in dollar assets in the United States, specifically our friends from the OPEC nations. Indeed, shortly after the freeze, on Thanksgiving evening, Secretary Miller and a small party in which I was included, flew to the Middle East to talk to government officials in Saudi Arabia, Kuwait, and Abu Dabi to try to explain exactly what our action meant, and to try to reassure people that the United States would not freeze assets merely because it was displeased by the policy judgment that another country was making. We emphasized the unique nature of the circumstances, particularly the seizure of embassy personnel. IEEPA purported to permit the President to freeze assets outside the physical jurisdiction of the United States. The only nexus IEEPA required was that the property frozen be held by a U.S. person or a person controlled by a U.S. person. A very substantial portion of the frozen Iranian assets were held outside the United States. Although IEEPA contemplated that the President had the power to freeze those assets, a British court confronted with the simple commercial case of a depositor saying, "I put $100 Million into this bank, and now I would like to have it back", might not be sympathetic to the defense that this banking establishment in London was prevented by U.S. law from making good its obligation. I believe that the *University of Pennsylvania Law Review* was exploring that question in a student note last year. In any event, a very substantial number of British lawyers predicted that the United States would probably lose that case. As you probably know, a number of cases presenting this issue were being litigated in the United Kingdom and France. I don't believe that the United States Government was particularly interested in seeing those cases rapidly decided. It was also clear that the London financial community was very unhappy about the fact that these legal skirmishes between the United States and Iran were taking place on its territory. The City was concerned that it would blemish its reputation as a safe financial haven as long as the U.S. freeze seemed effective for assets held by London branches of U.S. banks. So that's some of the background which may be enlightening for what is to come.

Throughout the fourteen month period of the hostage captivity, there were numerous efforts to obtain their release. During this period, the Iranians found themselves with a host of legal problems in trying to get back their assets and to ward off attachments and similar efforts to block their ability to utilize their assets. One of the early and fruitful channels of communication was between the lawyers for The Bank Markazi Iran and the lawyers for certain U.S. banks. That channel explored the basic structure of the financial transactions which ultimately became part of the final deal. In all those talks it was recognized that the *sine qua non* of any deal was the release of the hostages as the basic first step.

As the plan ultimately matured, it contemplated the immediate release of the Iranian governmental assets held outside the U.S. plus Iranian governmental assets held in New York by the Federal Reserve Bank of New York. The plan was that the President, who had frozen the assets, would now compel their transfer to the Fed and would then compel the Fed to transfer whatever assets it held to the central bank stakeholder ultimately chosen. Once enough money had been put into escrow with that central bank, the Iranians would begin making the hostages ready for departure. Once the hostages had safely departed Iran, the assets in escrow would be distributed pursuant to a pre-agreed set of instructions.

That left the non-Fed held domestic assets. The United States had more time to get those assets into escrow, largely because they were tied up with attachment suits and other legal proceedings. Some time was needed to allow holders of those assets (or others with an alleged interest in those assets) to challenge the validity of the President's order compelling their transfer to the Fed for ultimate transfer to the central bank stakeholder. So part two of the transaction contemplated a longer period for completion than part one. Also these funds were to be used, in part, to build up funds which would be available to pay off arbitration awards relating to various claims that United States nationals have against the Iranian government.

I received my call to participate in the negotiations on Wednesday, January 7. Treasury Deputy Secretary Carswell asked me whether I could go to London that night along with Ernest Petrikas, the Deputy General Counsel of the Federal Reserve Bank of New York. He wanted me to talk to officials of the Bank of England to see if it would act as the depository bank. Over the weekend, we also explored in Frankfurt, Germany the willingness of the Bundesbank to act.

Basically, the depository had to be a central bank whose trustworthiness, reliability and competence would commend itself to us and to the Iranians. The Iranians ultimately selected the Bank of England. It was a logical choice because the bulk of the overseas money was in London. However, the decision probably rested on some legal judgments as to which central bank would be least subject to the kind of suit which might interfere with the bank's accomplishing its responsibilities as the depository.

The depository in this kind of a circumstance basically performs mechanical functions. The money is given to it under very precise instructions and, when it receives those instructions it gets very precise directions as to what to do with the money—to whom and under what circumstances to pay it out. Therefore, one might say, that's an easy job. There ought to be no difficulty in persuading any central bank to undertake it. Let me share with you one kind of worry that both central banks had. The basic understanding was that the U.S. would cause assets to be put into an escrow account held by a central bank. The bank pays out, in the predetermined way, when it receives a certification which states that the hostages have "safely departed Iran". Upon receiving that certification from the escrow agent, the Central Bank of Algeria, the central bank must then pay out the money. Now the magic words were "safely departed Iran". That does not mean "safely landed in Algeria". "Safely departed Iran" was interpreted by the Algerians to mean "when the plane departs Iranian air space". At that point, certification would occur. Well, suppose an hour after flying out of Iranian air space, the plane blows up. The certification that the hostages had safely departed has been made and that certification is presented to the central bank. Now, as good lawyers, you know that the bank is under a legal obligation at that point to pay up. That would also be true if there were a false certification as to the safe departure of the hostages. As a depository, the central bank would have

no obligation to look behind the certificate to see if the facts were, indeed, true. On the other hand, imagine the bank paying out billions of dollars to the Iranians when there was a suspicion that the Iranians had blown up the aircraft, or that there was evidence that the hostages had not safely departed. You can see that, whatever the legal consequences, the political pressures would be enormous—and no bank, and particularly no central bank which prides itself on its distance from politics, likes to be in the middle of that kind of situation. For that reason, both the Bundesbank and the Bank of England were very anxious to act only for a short period of time; in other words, to minimize the period during which such risks could occur. As the deal evolved and escrow funds had to be maintained for funding dispute resolutions, it became clear that the obligations of the central bank would last much longer than a day or a week. Indeed, they might last a year or more. Again, at least from the central bank's point of view, such a long-term relationship placed it in the middle of potential intergovernmental disputes between the United States and Iran as the agreements were implemented.

There were other problems. The bank of England agreed to be the depository but allowing for the chance that things would go wrong, it wanted to be indemnified against out-of-pocket expenses, including losses incurred in litigation. One of the difficulties in giving an indemnity is that the United States Government has no power to indemnify. The best that the United States Government can do is to say, "We will indemnify you to the extent that we are later able to persuade Congress to vote appropriations to meet any obligation we incur under that indemnity." That is known as a moral obligation indemnity. It may be good or it may not be good, depending upon the mood of Congress when the idemnifiable event occurs. That major problem was ultimately resolved when the Federal Reserve Bank of New York, which acts as the fiscal agent of the United States, decided it could provide the indemnity. The Fed's decision on this point required some subtle thinking and a lot of research. But, fortunately, the Fed's lawyers were able to work out a solution.

I would like to take up another legal problem that relates to functions of the central bank. Let's assume that the assets had already been transferred into escrow and, before the certificate that the hostages had been released had been obtained, suppose an injunction had been issued against the Bank of England by a British Court, ordering the Bank *not* to transfer any of those funds because they really represented Iranian assets on which creditors of Iran claimed they had a right to levy. Now, one can dismiss that as a groundless suit and, predict that the Bank of England would win it on any number of theories. But the problem is that even groundless suits can take time to be resolved and time was of the essence in getting this deal completed. In its first draft of the agreement defining its role as depository, the Bank of England included a broad paragraph specifying that if there was an order or an adverse claim with respect to the assets they were holding, that they would have the sole right to determine whether they would go forward under their instructions or wait until the controversy was settled. The Bank of England was concerned that even if they were indemnified for money damages suffered, they were not going to risk being thrown into jail for disobeying a judge's injunction. Our judgment was that we could engineer the mechanics of the transfers in a way that made it highly unlikely that an injunction could intervene. We also felt that judges are human beings, not likely to issue an injunction in a hurry-up fashion which might interfere with a major transaction involving human lives. We were comfortable enough in our own minds that the event would not occur. On the other hand, how does one draft the language? The British solicitor, who represented the Bank of England, properly sought to do a careful job of protecting his client. On the other hand, we did not want to give undue prominence to an event which was not likely to occur. We began by suggesting that the indemnity should provide the major comfort and that a general clause stating that nothing in the agreement required the Bank of England to violate the law or any order issued pursuant thereto should provide all the protection necessary, without unnecessarily flagging this issue. The Algerians picked up that clause immediately and said, "What does it mean and why is it there?" We urged that obviously the Bank of England could not undertake to violate the law or any orders under it. This led the Algerians to explore various possible issues, including the availability of the sovereign immunity defense. One response might have been to offer an opinion by the Bank or its solicitor that the sovereign immunity defense could be successfully relied upon. But there was a hesitancy in giving a flat opinion. Consequently, we suggested two clauses which were intended to cover the issues raised. I will read them to you as an example of the kind of lawyering which was done in this situation.

Paragraph 14

The Bank and the FED accept that the Escrow Agent is a central bank, whose property is normally entitled to the full immunities of a central bank under the State Immunity Act of 1978 of the United Kingdom. Nothing in this Arrangement shall be considered as constituting, in whole or in part, a waiver of any immunity to which they are entitled.

Paragraph 15

Nothing herein shall require the Bank to violate the laws of England or any court order thereunder; the Bank confirms that none of the provisions of this Arrangement is in violation of the laws of England.

Now, let me identify a third problem. A substantial amount of the assets which the New York Federal Reserve held for the Bank Markazi Iran was gold—fifty tons of it. Now, Iran obviously was not going to be satisfied with *its* gold sitting in New York even if it was held in the name of the Bank of England. Iran wanted all of its assets out of the United States. The delivery to London of the gold to be held by the Bank of England was a necessary and integral part of the transaction. The transfer of the gold had to be done quickly and quietly. It takes a little while to transport fifty tons of gold. Stacking and loading the gold bars cannot be done in the twinkling of an eye. Moreover, it is customary to insure the shipment against loss. One difficulty with insurance is that once one begins shopping for insurance, word of the deal tends to spread quickly. Can one transport gold very rapidly? Yes, by means of a swap. For example, if I have gold in the United States and you have gold in England, and I would like to hold gold in England and you don't mind holding it in the United States, since gold is gold, we could say yours is mine and mine is yours; and we would simply relabel the respective gold parcels and, by that exchange of title, we would have effected the transfer. So the logical move would be to swap gold held by the Fed against gold held by the Bank of England. It turned out that there was only one problem with that idea: The Bank of England owns no gold for swapping. This was quite a shock to all of us. Although it owns no gold, the Bank of England does hold gold for others. The question then became, whose gold does it hold and could we arrange a swap with one of those persons? It turned out that the United Kingdom owns gold held by the Bank of England. Could there be a swap of gold between the United States and the United Kingdom? That, again,

sounds as though it should be simple to arrange. But there were some technical problems and there was a need for an expression of political interest in doing the swap so that quick solutions to the technical problems could be worked out. The need to solve that problem created one of the heartwarming experiences of the trip. Our Ambassador to Great Britain is Kingman Brewster, the former President of Yale University and a former professor at Harvard Law School. He is an extraordinarily able person and, in his four years as Ambassador, has won the admiration and respect of the British people with whom he has worked. In the morning, he received his assignment of arranging a meeting with the Prime Minister and the Chancellor of the Exchequer. He got the meeting for that afternoon. Could the British Ambassador to the United States have been able to arrange a one-half hour meeting with the President of the United States on as short a notice? I don't know, but I was impressed by the results Ambassador Brewster achieved. I was also impressed by Prime Minister Thatcher's attitude which basically was that everything must be done to get the hostages out and, if there were technical obstacles, they must be overcome. That kind of positive attitude was really a tremendous boost to our morale.

One problem in our discussions with the Bank of England was that the other parties in interest, Iran and Algeria (which was chosen as the intermediary for the negotiations), had been unwilling to participate in the definition of the Bank of England's responsibilities. Their reluctance to do so probably was related to the fact that a substantial part of the underlying agreement had not yet been agreed. On the 15th of January, the Iranians decided that the money to be placed in escrow pending the safe departure of the hostages should be used to pay off in full the syndicate loans in which U.S. banks had a participation and to pay off other valid U.S. bank loans. Once that was decided, negotiations on details could proceed in earnest. At midnight on the 15th, we received a call to go to Algiers the next day.

An important consideration was to persuade a high official of the Bank of England to go with us. Fortunately, the Deputy Governor, Kit McMahon, was willing to go. He brought with him the Head Cashier and a member of the law firm that advises the Bank. Their presence in Algeria contributed substantially to the ultimate success of our efforts.

Our negotiations in Algeria were primarily with representatives of the Central Bank of Algeria. This group of three was headed by the Director General of the Bank. The Governor was in Teheran playing an important role in the overall negotiations between the United States and Iran. The Algerians worked long, hard hours and with great patience. But you should understand the very difficult environment in which we all worked.

The principals in the deal were the Iranian government and the United States Government. The ability of the principals to deal with each other was constrained by the absence of official communication between the officials of those two governments. All negotiations were through intermediaries. In our negotiations in Algiers, I never saw an Iranian or talked to an Iranian. The conversation was always through an intermediary who then interpreted our conversation in some fashion. You can imagine how difficult it is to try to understand problems or explain positions without the benefit of seeing the reaction of your opposite number. Moreover, our position (and presumably the Iranians') was always translated to the other side. I had no idea how it was translated because it was clear that the Algerians were going to draft their own telexes and not going to take our drafts. Second, a substantial part of the transaction I was negotiating involved fairly complex financial terms. But we had to discuss those without the benefit of a common language or trained translators. The people on our side had the unfortunately typical American inability to speak any language other than English fluently. The Algerians spoke French, but did not have fluency in English. Although we had a U.S. Treasury attaché from Paris who spoke English and French, he was not a trained interpreter and he generally worked in English, a major act of hospitality on the part of the Algerians. When one thinks about the complicated nature of the transaction, one sees that this lack of a common language imposed a very substantial hurdle both in terms of how long it took to make a concept clear to each party and, secondly, the question of whether one had, in fact, made oneself clear to the other party.

A third element of the environment for the negotiations was that we were operating under a very definite time deadline. It was clear to us that our mandate ran out at noon United States time on Tuesday, January 20, 1981. This was 5:00 p.m. Algeria time. In one sense, the existence of a deadline may have accelerated the pace of the negotiations. On the other hand, it necessitated days of work with hardly any sleep and magnified the importance of time-consuming misunderstandings or inabilities to communicate. The deadline and the stakes kept the tension level high.

Finally, there were many actors in this play, and they were located in various places—in the United States, in London, in Algeria, and in Teheran. In the United States there was activity in New York and Washington, D. C. In order to carry on a multi-sided dialogue, and we did have to consult on many issues, it was imperative that excellent and plentiful communications be available. Often we could not get a line out. Available lines were probably being used by the newsmen seeking to phone in their stories. At other times, the voice on the other end of the line (or on ours) faded away at a critical juncture in the conversation. Also, there were no secure phones available and one had to act as if one's conversation could be overheard. That is quite a restraint when communicating with your client about negotiation tactics.

The critical point in the negotiation was, of course, how much in assets had to be placed in escrow before the Iranians would allow the Algerians to transport the hostages back. You will recall that, at one time, the Iranians had asked for $24 billion. I don't know how they reached that figure, but it had been demanded. Ultimately, the amount that was required was a touch under $8 billion. That $8 billion was composed of about $2.3 billion in assets being held by the Federal Reserve Bank of New York plus overseas deposits of roughly $4.8 billion, plus roughly $800 million of interest earned on those overseas deposits.

Now, I have talked about the fact that when the hostages were released, the $7.9 billion then in escrow was to be distributed. I want to describe how it was distributed so that you can evaluate the entire transaction pursuant to which the hostages were released. $3.667 billion immediately went back to the Fed to be used to pay off all syndicated loans in which any United States Bank had a participation. $1.418 billion was paid into an escrow fund, in the Bank of England, to provide one, for the payment of other United States bank loans and two, to fund certain disputed interest payments. The banks paid over more than they acknowledged they owed as interest on those deposits. They could get back those overpayments if they could persuade the Iranians or an arbitrator that they owed less. Paying in the disputed amount was an important technique. Remember that the U.S. had to produce an agreed amount (roughly $7.9 billion) in the escrow account at the Bank of England before Iran would permit the hostages to depart. We had to scratch around to meet that threshold amount. By counting the roughly $150 million of disputed interest toward the threshold, we met the target without, in effect,

prejudicing the right to receive overpayments back. In sum, $5 billion of the slightly less than $8 billion put in escrow to pay off Iranian obligations. The balance then went to the Bank Markasi Iran. Against that, we got our hostages back. We gave up $5.6 billion in assets which many doubted we could protect anyway in litigation overseas. Analyzed in that way, perhaps you will agree that we did not do badly. We gave up something that we probably would not have been able to hold onto in the end; we got our hostages back; and we got all of our bank loans paid off. In addition, with respect to the balance of the assets, a fund of $1 billion will be created initially for payment of any awards made by an Iranian-U.S. Claims Tribunal in favor of U.S. claimants.

The Faculty Questions Professor Mundheim

PROFESSOR NOYES LEECH: It has been mentioned that you had a deal on Monday morning, January 19, 1981. What was the last minute cliffhanger that prevented the settlement terms from being effected until the next day?

PROFESSOR MUNDHEIM: On Monday morning, at around 7:30, the declaration and the undertakings which provide the basic framework were signed. At 3:00 A.M., four hours before, we had agreed with the Algerian Central Bank, which was the intermediary, on the text of an escrow agreement and a depository agreement. The escrow agreement was divided into two parts. Part one was a general description of the duties of the escrow agent. Part two was a more detailed description of the various procedures to be followed. We got to the Ministry of Finance in Algiers at 8:15 Monday morning and the Algerian Central Bank representatives said, "Wonderful news. Bank Markazi has signed the escrow agreement." I had a niggling doubt and asked, "Did they sign both parts of the escrow agreement?" At the Algerians' insistence, part two was designed to stand on its own feet. The Algerians said that surely both parts were signed. I worried that if the Iranians had not signed both parts, we might not have a binding escrow agreement. We might have all that money in the escrow account at the Bank of England without binding instructions to the escrow agent. I wanted the Algerians to make certain. They telexed to Teheran to check. We heard nothing . . . and nothing . . . and nothing. Finally, we received word back that the Iranians had not, in fact, realized that there was a part two and that they were studying it. We then had another long period of hearing nothing. The deadline was fast approaching. That evening, we received word from the Foreign Minister indicating that there was a specific problem; namely, that proposed instructions to the United States banks from Bank Markazi attached to part two suggested that Markazi had agreed on the amount of money it had deposited in the overseas offices of U.S. banks. Markazi claimed no such agreement had been made. So we then consulted with the two lawyers for the U.S. banks present in Algiers, spoke to Washington and then drafted some new language for part two. That suggestion was telexed by the Algerians to Teheran. Then we waited. That was our normal routine. We would meet, get objections to drafted language, draft responsive language, have the Algerians telex it to Teheran and then we would wait—anxiously. At 10:00 P.M., a telephone call came to the Embassy requesting that we go to the Foreign Ministry immediately. Upon arrival, we were told that the Bank Markazi would not sign part two unless the proposed instructions attached to part two were removed and replaced with an instruction which was read to us. My first worry, at this late moment, was that this type of negotiation could go on indefinitely: they present us with a proposal, we respond, they say thank you very much, and then they come back with a new demand. Such a pattern could have carried the negotiation into the spring. I then announced that I would not respond to their request until I knew that this would be their *last* request. Well, we waited for a response to that. At about midnight, the Director General of the Central Bank of Algeria announced that he had "80% good news for us". So what did 80% mean? Well, they had agreed that this would be the last demand. They reiterated their demand that we substitute the instruction they had offered for the one that was attached to part two as transmitted. I said that we would have to go back to the embassy and think about it. Well, after a hectic round of consultations and telexing, the following was worked out: The U.S. bank lawyers and Markazi lawyers in London worked out an instruction which Markazi agreed to telex immediately to the U.S. banks. I then went back to the Foreign Ministry and at roughly 3:30 A.M. told the Algerians that when the telexed instruction was received, we would sign part two without any attachment. At this point, there appeared to be substantial mechanical problems in getting the telexed instruction transmitted. You can imagine the tension while everyone waited for the agreed message to be sent. After a false start or two, the telex finally arrived in a sufficiently clear form at around 7:00 A.M. (Algerian time). We hurried over to the Foreign Ministry, expecting to hear that part two had now been signed. The answer came at 8:00 A.M., and it was that the Iranians were not going to sign part two, whether or not any instructions were attached. Needless to say, at that point most of us, with five or six hours sleep in the previous seventy-two hours, were impatient. That is a mild word for what we were feeling.

Depressed, we had to return to the embassy and figure out whether or not we could go forward with just part one, which, of course, was already signed. There were a number of different problems. One, the United States banks had insisted on clearly spelled out procedures in the form set out in part two of the escrow venture. If the banks were dissatisfied, they could delay the transactions and thus, in effect, kill the transaction. Secondly, the Fed which, as you remember was supplying the indemnity worried that without clear instructions to the escrow agent, mistakes could be made and the indemnity called on. I would have thought that the Central Bank of Algiers, too, might be concerned because they, no more than the Bank of England, wanted to be under any obligation to exercise discretion. They wanted mechanical instructions which they could follow simply because that was the only way, in a very complicated political situation, that the Bank could hope to stay out of trouble. Under those circumstances, they could always plead that "There is nothing we can do. Our instructions are very clear. Either they say we have to pay out or they say that we do not have to pay out." If there was discretion, then the Bank could be blamed for exercising it incorrectly. There was the hope that the Central Bank of Algeria would, on its own, issue part two as its own planned procedures. But the Bank was disinclined to sign without Markazi's specific approval. Ultimately, concerns were sufficiently alleviated so that the U.S. Government and the Fed decided that they could go forward with just part one of the escrow agreement having been signed. For the lawyers, there was some discomfort because the decision to go forward rested on instinct and trust rather than on a completely worked-out, mutual arrangement.

That's what happened, Noyes. That was the cliffhanger. What intrigues me is whether the refusal to sign at 8:00 A.M., on Tuesday morning was deliberate or whether it resulted from a telex that was sent and had an incorrect statement of position because, when that telex explaining our proposal was drafted by the Central Bank of Algeria's representatives, they were absolutely glassy-eyed. We

ALL were glassy-eyed. It was a situation which was just made for mistakes. So I don't know if it was a deliberate refusal of the Iranians or one that simply resulted from a misfire of communications.

PROFESSOR DOUGLAS FRENKEL: Other loose ends of this deal have been mentioned and written about. For example, the Government has apparently precluded the hostages and their families from suing Iran; however, our Government may be on the hook for possible Constitutional violations as a consequence of those terms. Can you comment on these questionable provisions?

PROFESSOR MUNDHEIM: Well, there is a theory that the President, in the pursuit of his foreign policy powers, has a right to compromise claims and, under certain circumstances, even bargain them away. Clearly, the willingness to forego hostage claims against the Government of Iran was a necessary political ingredient for making the deal. Now, whether the hostages will have a claim, therefore, against the United States because the United States has, as one could put it, taken their claim, I don't know. The United States contemplates a hostage commission composed of nine Congressmen, which will consider the hostages' position and make recommendations to the Congress. Perhaps that procedure sufficiently deals with the hostages' claims. It is also not clear that hostages have claims which can be successfully prosecuted against a foreign government. Isn't there a pretty good case for Iran successfully to assert a sovereign immunity defense to any suit against it?

PROFESSOR STEPHEN BURBANK: Bob, pertaining to the last minute hitch. To what extent did the lawyers who were negotiating in this complex transaction inform the principals of the United States. To what extent did you and the other lawyers who were negotiating this deal feel free to accept or reject proposals on your own? I could see how these circumstances could make the normal lawyer-client communication very difficult.

PROFESSOR MUNDHEIM: There was ample communication and consultation, albeit under circumstances where it was not clear that the conversations were private. The President spent his last two days as President in the Oval Office. He was thoroughly briefed and informed in great detail.

Although the team in Algiers had some discretion, there is no doubt that the Washington team was always fully briefed and had (as it should) the final say.

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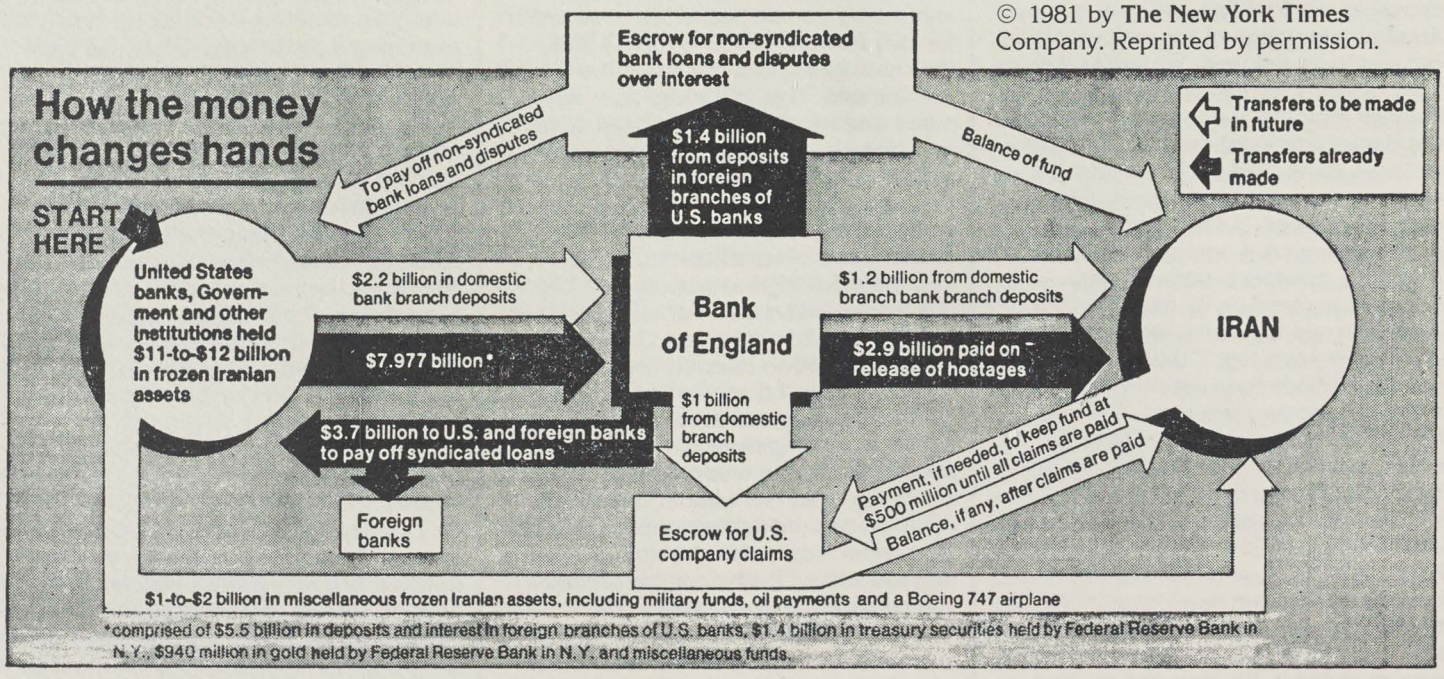


The Riddle of Germany:

A Princess In Berlin

Arthur R.G. Solmssen, '53
(Little, Brown and Co., 1980)

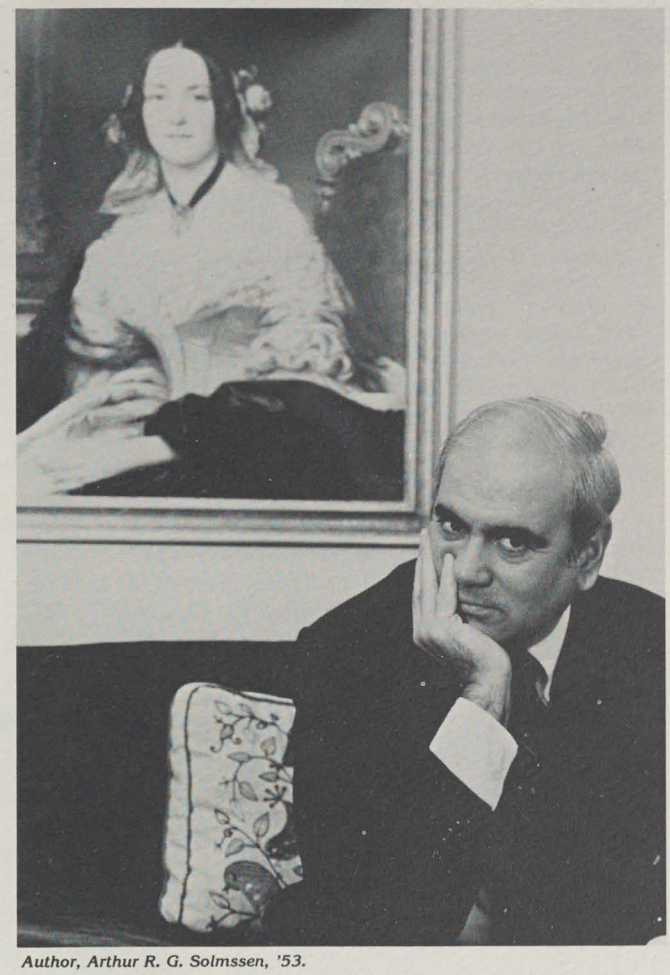
Arthur Solmssen's three previous novels have marked his gathering powers as story-teller, social critic, and connoisseur of the arts. This gray-flannel pied piper had led us through the clubs and countinghouses of Philadelphia in the earlier works, *Rittenhouse Square* and *The Comfort Letter*. In *Alexander's Feast*, we followed him to the concert halls and baroque palaces of Vienna and Salzburg. We have sat enthralled before this master-puppeteer's stages as he manipulated financiers, decaying aristocrats, grasping nouveau-riches, junior and senior law partners, and lovers.

But Berlin? The Berlin of 1922–1923? How can he make it so burningly alive? Paris, perhaps, or Rome, but not Berlin. One knows of the grotesque inflation, the wheelbarrows full of printed money being rushed to the grocery before its value halved in an afternoon. One vaguely recollects fragments of history: the madness of punitive reparations imposed by the Treaty of Versailles, the French occupation of the Ruhr, Hitler's putsch in Munich, perhaps the assassinations of Rosa Luxemburg and Foreign Minister Rathenau. But to most of us Germany is a great blank plain between a few towering monuments of history: Bismarck, Kaiser Wilhelm, the monstrous genocide of the Forties.

Solmssen gives us the feverish post-World-War I Berlin of artists, writers, and idealistic politicians; unemployed generals, grim ex-corporals, and mangled war veterans; gay, desperate whores, and psychotic anti-semites. Here are elegant fifth-generation converted Jews running investment banking houses, newspaper chains and steamship lines, haunted by a secret dread. Here is a Berlin of the pleasant suburban schloss, the liberated upper class actress, and the nubile heiress whom one can teach sailing and other things.

Peter Ellis, eye and voice of the novel, is the scion of a proper Philadelphia Quaker family. He has chosen to study painting in Paris rather than take his predestined slot in Philadelphia's Drexel and Company. Chance and inflation land him in Berlin where his teacher is a wild Bohemian recognizably drawn from George Grosz, although he is called Falke in the novel. In the cafes and at the artists' balls, Falke and Peter listen to Berthold Brecht sing his bitter songs. Conyers & Dean, the Philadelphia law firm that figures so largely in Solmssen's earlier novels, has only a walk-on part in *The Princess*; it supplies the emissary from Peter's family unsuccessfully seeking to lure Peter back to Philadelphia and respectability. But Peter becomes more and more entwined in the politics and passions of Berlin. Eventually he holds the smoking gun in a ghastly political fratricide.

In a moment of inspired bookmaking, the publishers chose to put on the title page of the novel Falke/Grosz' terrifying line drawing of a shattered city haunted by beggars, armed police, pimps and deathheads. So, also, the sinister creations of Max Beckman and other German artists skillfully employed to intensify the chiaroscuro of the novel. These touches, along with the occasional lines of German poetry and song, help to intensify the reader's sense of total immersion in the phantasma of Berlin in 1922.



Author, Arthur R. G. Solmssen, '53.

Who can solve the riddle of the Germans? A people of extraordinary talent in science, industry, music, painting, literature, a people of war, sentimentality, jingoism and genocide. Is it possible that the admired Germany of today could, like the Germany of Weimar, the pleasant lands of pre-Bismarck Germany, or the model of freedom, culture and politico-economic reforms that was the Germany of the late 19th Century, revert to the apocalyptic Beast? Our writers, and German writers as well, have lately been exploring the soul of this portentous nation. Fritz Stern gave us a frightening reading in *Gold and Iron,* a history of the tensions in Bismarckian Germany. Barbara Tuchman has looked into this maelstrom in *Proud Tower, The Guns of August,* and *A Distant Mirror*. Gunther Grass lifts the lid off this same cauldron in *The Tin Drum* and *The Flounder*. There are, of course, no answers to the riddle, but reflective people will be satisfied, in reading *The Princess*, that they understand the question better.

Yet *The Princess* remains, above all, a story to entertain, not a sociological field study or a moralizing history. Readers seeking distraction at the end of wearisome, humdrum days will find all their requirements of mystery, violence, sex, and suspense satisfied. There is another class of readers, already sated with novels of merely personal passions, readers whose Puritan ethic require that they feel they are learning something of the world as they read for pleasure. *The Princess* is uniquely for them.

by Professor Louis B. Schwartz

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Conversation with...

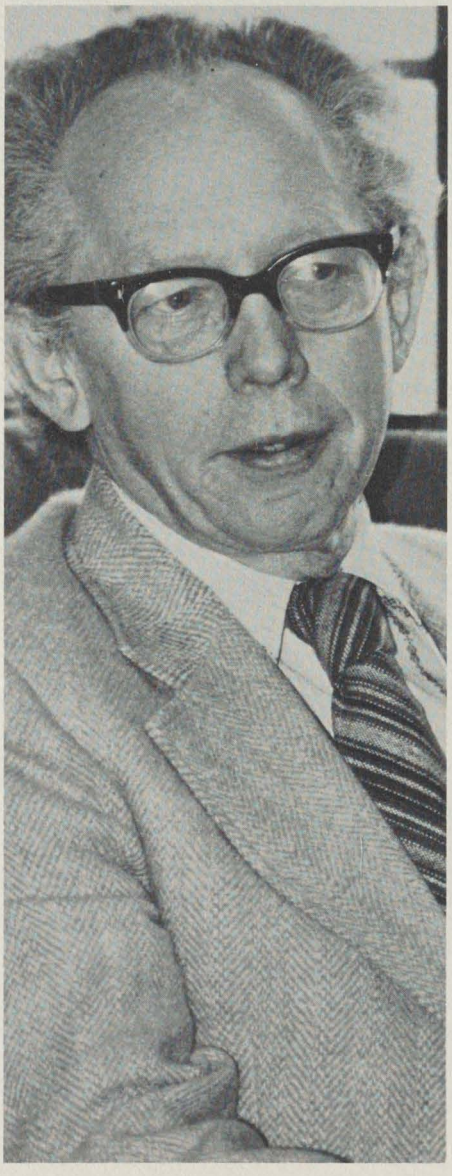
Professor Clyde W. Summers

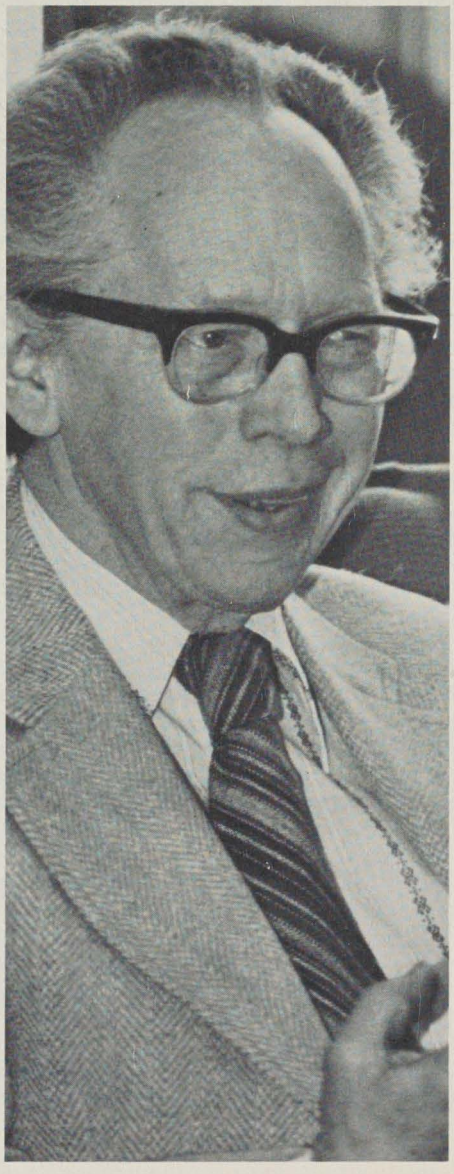
Clyde W. Summers, Jefferson B. Fordham Professor of Law, received his B.S. and J.D. degrees from the University of Illinois. His S.J.D. degree was earned at Columbia University and his LL.D.s' are from the University of Stockholm and the University of Louvain in Belgium. Mr. Summers has been a Guggenheim Fellow, a Columbia University Fellow and a Ford Faculty Fellow.

A nationally recognized scholar in the field of labor law, Professor Summers has co-authored five works as well as numerous law review articles in that area. As the recipient of a National Endowment for the Humanities grant for the year 1977–78, Mr. Summers worked and studied in Europe in the field of labor law.

He came to Penn Law School in 1975, having taught an aggregate of thirty years at the law schools of the Universities of Toledo and Buffalo and at Yale.

Professor Summers was the 1979 recipient of the University of Pennsylvania Christian R. and Mary F. Lindback Award for Distinguished Teaching. He was awarded this coveted honor by his students.





LSH: As a beginning law teacher, had you any notion that labor law would be your specialty?
SUMMERS: Not really. My interest was *in teaching* just for teaching's sake, and I taught a wide range of subjects. However, I always was interested in the field of labor law and so, when the first opportunity to teach such a course came along, I grabbed it. More accurately, I persuaded the dean at the University of Toledo Law School, the school where I was teaching at the time, that there was a need for a course in labor law. Since there was no one else to teach it, I became the one. I have one more confession to make. I had never taken a course in labor law prior to having taught it.
LSH: So as the teacher you taught yourself as well as your students.
SUMMERS: Yes. I then took off a year from teaching for graduate work in labor law at Columbia, doing research and writing. Gradually, over a period of time, I succeeded in concentrating my energies more into labor and less into other subjects.
LSH: How did your law career further evolve into the even more highly specialized area of comparative labor law?
SUMMERS: That's a difficult question. My interest in the area developed accidentally after I had been teaching for about ten years. I was part of a group of labor law teachers who were developing a casebook. One of the group was a former German labor lawyer who suggested that we include some comparative labor law in the material. That was actually my first brush with this area. Soon after this experience, I became a member of the same faculty as the German labor lawyer, and he furthered my interest in comparative labor law. When I had my first sabbatical, I spent it in Sweden studying their collective bargaining system and their system of labor law. When I had my next sabbatical, I went to Brussels to study labor law in the common market countries.
LSH: Did you gather any practical experience in those early years?
SUMMERS: Yes, but not through practicing labor law *per se* or by representing clients, either union or management. I did some consulting work with lawyers, and a fair amount of arbitration, fact-finding and mediation. For a time, I was an alternate member of the Connecticut Board of Labor Relations and Board of Mediation and Arbitration. These gave me a range of practical contacts but my professional experience was different from those of a "practicing lawyer".
LSH: You never practiced with a firm?
SUMMERS: I never practiced in a firm. I began teaching three months after graduation from law school and have been doing that, together with year-long sabbatical research projects ever since.
LSH: Don't you think it is important to experience the reality of the law firm practice?
SUMMERS: It is important, paticularly in labor law, to have practical experience, contact in the field, and a sense of what's going on. But there are a variety of ways of doing that without practicing in a law firm. Indeed, being in a law firm as a labor lawyer raises special problems because most of these firms practice solely on the side of either management *or* union, so one would never get a balanced view in such a situation.

There are, however, a variety of public agencies and activities such as arbitrations, which can keep a labor law teacher in touch with the issues. Also, for a period, when I was in Buffalo, New York, I did a good deal of adult education work with both union and management people dealing with labor law. I taught classes on workmen's compensation, unemployment insurance, social security, Taft-Hartley—actually an entire range of short-course classes—and, in those, I was dealing with people who were really in the thick of things. The process of discussion and questioning gave me considerable insight and understanding into the attitudes, practices and what was happening with those working in the field. So, there was opportunity to gain an understanding of the character of the problems, without being in a law firm.

What I never experienced was how the people in a law firm go about handling their cases. I witnessed lawyers performing at arbitrations and read their briefs so I got a sense of the work product, but I never actively have done it myself.
LSH: Do you regret having missed that experience?
SUMMERS: Had the situation developed differently, I would like to have done some practical work in a law firm for a year or two and to have experienced the mechanics of the legal process in that context. It probably took longer for me to understand the process than it would have, had I practiced in a firm. I suppose there were some other disadvantages—but not really serious ones.
LSH: Where were you and what was the nature of your research when you took leave of the School in the year 1977–78 for the National Endowment for the Humanities grant?
SUMMERS: I was in Germany, Sweden, Belgium and England, trying to study the structure and functioning of various kinds of worker participation systems in those European countries. My examinations were not only of worker representatives on corporate boards, but of the functioning of worker councils at the shop level and of collective bargaining processes. Actually, I was looking at the various devices by which workers at all levels got some voice in the decisions which concerned their futures. In addition, I read a lot of legal and economic literature, talked to academicians and others, and met with union people and employers. So, shall I say, the project was a combination of library-type research and interviewing.
LSH: This is an obvious question. Did you find it invaluable living in the countries which you were studying?
SUMMERS: Most certainly. First, available printed material was more readily accessible. Also, there was direct communication with the people. Living in their environment and specifically observing how their unions functioned gave me a better feeling for their behavior, their attitudes and their character. And, I think, the ultimate value was that, in the process of learning about how the other systems worked, I suddenly recognized aspects within our own system—aspects present for years—which I never really focused upon or considered important. So, I ended up with a different perspective of our system. One of the consequences is that when I returned home, I found myself doing research in areas I had not considered studying previously.
LSH: What did you accomplish and produce as a result of the sabbatical experience?
SUMMERS: I collected a lot of material and information and published an article comparing the German and American systems in *Recht der Arbeit,* a German labor law journal. I have done a paper on how European-type co-determination systems might apply in the American system in terms of membership on corporate boards. This was given at a conference on co-determination in England last summer and is being published in the *Journal of Comparative Securities Law.* I am in the process of doing another article comparing certain aspects of the Swedish and American systems which will appear in a Swedish law journal. The last two years, I have given a seminar on comparative labor law dealing with some of these problems. Two years ago, I gave a lecture in Cleveland which is published in the *Cleveland Marshall Law Review,* trying to put in a different perspective what I consider some fundamental needs and weaknesses of the American system of collective bargaining and labor relations. But, you must remember always, that none of this would *ever* have been possible—in fact, it would not have *occurred* to me to write those articles before my experience on that sabbatical. In some of these articles, there is almost no mention of European labor systems, but the perspectives and

the ideas are a result of the comparative work. A comparison of the European and American systems enables one to see the irrational and often inexcusable way in which the American system deals with certain problems. But we have for so long become accustomed to these ways, that we accept them without question because "that's the way things have always been". And yet, they need not and should not be done that way.

LSH: How different is the European system of collective bargaining from the American system?

SUMMERS: The most marked difference must be stated as a seeming paradox. The American system is, at the same time, strong and weak. The system is strongest and most effective in terms of the ability of the union to make agreements and to administer and enforce them. The American collective agreement is more elaborate, more complete, more detailed, and the union's role in it is more effective than in other countries. That aspect is the vitality of the system and in this respect, it is an exceedingly mature system. At the same time, it is probably one of the most incomplete and inadequate systems. The problem is that only 25% of the working population is covered by collective agreements. So that where the agreements exist it is, in many respects, a very excellent system. But it does not exist for most people. 70-75% of the people have no collective agreements. They have no union. They have no representation. There *is* a system of unions and collective bargaining *if* one works in a steel mill or in an auto factory, or for a railroad or for an airline, or if one drives a truck. But, if one works in a department store or in a supermarket, one may or may not have union representation. Almost no bank workers have union representation, and few employees in insurance companies have union representation either. A General Motors employee on the assembly line is represented by a union, but the General Motors employee in the engineering department has no union protection. So it is questionable whether, even in what is considered highly-organized industries like steel and auto, more than 50% of the employees have a collective bargaining system. And the unrepresented groups such as the white collar and professional people become a larger and larger proportion as the industry gets more automated.

The crucial difference is that in the American system, 70% of the people have *nothing,* whereas in the European systems, the unions tend to blanket the entire work force so that almost everyone is covered by a collective bargaining system. In addition, employees in Europe have statutes giving all of them certain protection and rights, independent of collective agreements. In this country, we have collective agreements which do everything for the people who are union members, especially those in the strong unions and big industries; however, everyone else is excluded. Those covered by collective agreements cannot be discharged without just cause; but those who are excluded have no protection against unjust discharge. As to them, an employer or supervisor can come in and say, "Sorry, don't come in on Monday; you're through. Goodbye, and don't ask why."

A problem now being focused on is sexual harassment. Formerly, in many situations, women who received jobs were those willing to accommodate the demands of male supervisors. It wasn't just an *occasional* thing, and it took all kinds of forms, but there was no protection against it. Now, however, sexual harassment has become recognized as a form of discrimination. But we should not have to elaborate a special statute like the Civil Rights Act to provide such protection.

LSH: So true. There should be honest, outright protection rather than our having to resort to circuitous claims.

SUMMERS: Right. We should, like the Europeans, have long since recognized the right to protection against *all* forms of unjust discharge. Let's say someone gets discharged from a job because it was discovered that the person contributed to his/her own political party. There is now no legal protection for this person. There is scarcely a civilized country other than ours which doesn't have such a statute. If one has a union, one has *very* good protection. In fact, an employee covered by a collective agreement probably has the *best* protection against discharge of employees anywhere, better even than employees in other countries which have statutes. But, without a union, an employee has nothing. People have no statutory right to paid holidays; as a result, many must take the holiday, but with no pay. Some holiday, right? Similarly, we have no legal right to vacations with pay; employees get no vacation or lose their pay to take one. But, in the European countries, these benefits are taken for granted. They are standard. The importance of comparative studies is that if one hasn't examined the European system, then one is unaware of how much we have *not* been doing.

LSH: What else is "not being done" in this country that is being offered in European countries?

SUMMERS: Well, for instance, we have passed a federal Occupational Safety Health Act requiring minimally safe and healthful conditions in the workshop, but we have no adequate way of enforcing it. We do have inspectors, but a small number who, it has been said, might finally get to inspect every plant once in twenty years, if they all worked steadily. Hiring enough outside inspectors is beyond reach. These are totally inadequate facilities! In the European system, the law requires that in every work place of more than five employees, there must be a safety representative elected by the employees and, in every plant of more than twenty-five, a safety committee must be elected. The employer *must pay* them for the time spent in doing inspections. The employer *must pay* for their time spent in class learning the law and how to apply it. So there are statutory requirements for the creation of what really is an in-plant/worker inspection system, which is considered part of the normal cost of doing business. This country has never seriously considered such a possibility, because we seem incapable of imagining doing things that way. These are the kinds of things about our system which I see as glaring defects.

LSH: Have you recorded and made known your dissatisfactions and criticisms of these conditions?

SUMMERS: Yes. I have written a couple of articles on this matter of the lack of protection against unjust discharge, advocating that we should have some statutory protection in this country. There are an increasing number who think it is a good idea. But for most lawyers, the attitude is that legislation to provide such protection is out of this world. It just can't be done, even though it *is* being done in other countries. It would undermine efficiency, even though the countries who have such protection are beating us competitively in the world market.

LSH: Why should such an unmoving attitude exist? Are we fearful of disturbing the *status quo*?

SUMMERS: We are very parochial. In the first place, we are geographically isolated to a certain degree, so there is not the common exchange that exists in many European countries, especially since the war. The parochialism, I think is in large measure a state of mind. There is a great tendency for us to start with an assumption that if *we* do it this way, then *everyone* must do it this way—this is the only way that would work. Also, we don't get exposed to varieties of ways of doing things.

In labor law, there are "fundamental principles". Most of the people in this country who work in the field probably would say, "A system couldn't be run on any other basis than through these principles." Sometimes the principles are good, sometimes they are bad, and sometimes they are irrelevant. But the attitude that the principles "have to be that

way" is the parochialism of which I speak. It is an almost overwhelmingly pervasive conservatism—an inability to think of really significant change—an assumption that we ought not touch anything because: (a) we are presently doing things the best way or we wouldn't be doing them; (b) it is the only *possible* way of doing things because we do not know other people are doing differently, or (c) that this system is so fragile that if one touches any part of it, the entire thing will fall apart.

LSH: What a bleak prognosis for a country that has the reputation for being the forerunner of change!

SUMMERS: Yes, but change is a peculiar phenomenon. In some areas, we move significantly and rapidly. Something happens and people have the sense of exasperation, so they seize upon the need that something has to be done. At other times, nothing seems to change, really. I see no way of predicting when very significant changes will come. Take the civil rights movement of the 60's. Who could have predicted in 1955 what would be happening ten years later? Why were there such massive changes in attitudes, practices and institutions, in comparative terms, at that time? Why did change come then? Often, with significant change going on, at one point, other things seem to remain immovable. Change comes at different points, at different times and in, what seems to me, a totally random fashion.

LSH: Then that which sets off change is a mystery.

SUMMERS: To me it is. I don't know what sets it off. But I do not think we should make our advocacy of change depend on expectancy of success. If we see things that need to be done, things that are wrong and changes that might be made, then we should marshall the facts, develop proposals and advocate change. We should not ask whether this is or is not the time when change can be achieved.

So, one writes about and works on things which appear beyond all hope at the time. Whenever or if ever their times will come cannot govern our concern. When I began to do graduate work at Columbia, I became interested in working on the problem of the internal structure of the processes of unions. I wrote about the rights of union members, not with reference to their employers, but with reference to the union itself as an institution—their legal rights within their unions. I wrote a number of articles focusing on these problems, arguing that unions should be democratic and that union members should have the rights of citizens in their unions. At the time, the likelihood that there would be anyone other than a "lunatic fringe" who would seriously consider such ideas was completely remote. I was young, brash and pleased to see my words in print. But, in retrospect, those ideas had not the slightest chance of materializing into reality. But then, thanks to Jimmy Hoffa and a fight inside the Teamster's Union, the McClellan Committee was created to inquire into the internal problems of unions. The end result in 1959 was a federal statute which was far beyond what anyone dreamed of five years before. What I had written about, at a time when no one could have conceived such changes were possible, ultimately became federal law and is now a basic part of our body of labor law. It is true that, in a sense, I have a bleak outlook. But along with it is also a conviction that one cannot afford to be pessimistic to the point of being immobile. Now, I write of things like the proposed statute concerning protection against unjust discharge. Certainly at the time that I first wrote about it, the idea was considered a wild one; and most people *still* conceive of it as a wild idea. But, in the last couple of years, more and more people have come to give the idea more serious consideration.

LSH: So you are saying that attitudes can evolve and, with patience and the passage of time, one can sometimes hope to see his/her ideas come to pass.

SUMMERS: That is very true. But, I will confess, it is probably part rationalization. It wouldn't make much difference whether I thought an idea would get accepted or not. I would probably present it anyway. When an idea gets ahold, it is difficult to resist pursuing it even though it may be totally unrealistic. If an idea is worth studying and writing about, then the time can be found to do the work and a law review will always be available to publish it. So one does it, even if it doesn't have *practical* importance. That's the beauty of academia. There is no worry about whether anyone approves or disapproves of one's ideas. One need not, in scholarly work, be "practical". Only in one's teaching must he be concerned about his effectiveness.

LSH: Which brings us conveniently to the next question. As a 1979 winner of the University of Pennsylvania Lindback Award for teaching excellence, your success as a teacher was publicly affirmed by your students. Modesty aside, to what do you attribute this acclaim?

SUMMERS: Most importantly, I enjoy teaching. I would rather teach than do anything else. And that's been true from the time I began. In fact, after about two or three years of teaching, someone asked how long I intended to continue and I said, "Well, my intention is that when I get wealthy enough to retire, I'll retire to teaching." I *never* had any thought that there was anything I'd rather do than teach. I think that has a lot to do with success in teaching.

The second important thing is that, from the time I began teaching, there has always been an irrepressible inner voice prodding me with the question, "How can I do it to help them understand?" My first teaching experience was as a student tutoring fellow-students paralyzed by upcoming examinations. They would organize study groups of five or six, and ask me to come and explain the course which I also was taking. My whole thrust was "How can I help them to understand?" When I started teaching in Toledo, the students came to school at night and worked full-time by day. Many were older. When I walked in to teach my first class, I realized that I was the youngest person in the room. When one sees these people who work so industriously, it is very difficult to escape the persistent question, "What can I do to help them understand?" This viewpoint, I think, is an important aspect of teaching. One does not play games to try to confuse these students unnecessarily. One does not engage in intellectual calisthenics which have no point but the exercise. The real question is, "Am I really helping them to understand?" That doesn't mean that I never leave them puzzled and confused but, at least, I try to explain what it is that I am attempting to do and why. This is my ideal; of course, I frequently fall from grace and fail myself.

The third thing is that I like students. I enjoy talking to most of them. Maybe a part of it is that *because* I began teaching when I was so young, I really felt a part of them. That set the attitude in me that there was no separation or distance between us. I must confess, sometimes I have a hard time reminding myself of that separation. The students may see a generation gap between us, but I do not. It was a tremendous jolt to me when I found myself teaching the child of a former student.

LSH: What do you expect of your students?

SUMMERS: I expect them to work. I expect them to reflect on what they are studying, to see beyond what is stated in the cases and to ask themselves questions over and above what they read. To be a bit more mundane, I ask them to be serious about what they are about. The one kind of student I have difficulty being pleasant to is the one who comes to class to play games. These are students who want to divert discussion to show that they have read other cases or have some special knowledge. Others are those who create "clever" arguments just to show their cleverness, not really believing in their positions, but persisting when their arguments have proven empty. I lose patience with such people.

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Dealing with serious arguments is difficult enough without having to cope with superficial silliness.

The students who bother me the most, however, are those who do not come to class at all. Then there are those who do come, but are *chronically* unprepared—those who just don't *bother*—and then proceed to ask questions, make arguments and participate in class discussion not knowing what they are talking about.

LSH: How do you deal with this? You are attempting to keep a class together and cannot afford to waste time.

SUMMERS: I deal with it in two ways. Once I identify the people, they can wave their hands all day and I will never see them. I just don't recognize them. I also am not beyond embarrassing such people. If they lead me down the road far enough, I will then say, "How was that problem handled in the next case?" And they say, "Well, I haven't read that case". I never have to say anything; that is adequate. In general, however, I really try to avoid embarrassing students, even when they deserve it. That is my weakness; I can't be harsh, even when I want to.

LSH: That reflects so favorably on you as a human being as well as a teacher. Don't you think that those who engage in tactics which dehumanize students are often reflecting their own needs?

SUMMERS: As a law student and since, I have seen teachers who make Kingsfield from *The Paper Chase* look like a gentleman. Any law teacher who has taught more than two or three years can make any student look like a fool. There's no trick to that. A teacher has *all* of the advantages over the student. *He* can frame the questions, *he* can choose the student who is to be questioned, *he* can direct the class, *he* knows what answers are likely to be given, and *he* can lead the student down the daisy trail to utter disaster. Anyone can do that once one has become accustomed to the material and the classroom format. However, I really don't understand the purpose of this sort of negative teaching. Those people who feel that such tactics demonstrate their superiority and give them power and control are dimwits, because that is the easiest of all games to play.

LSH: How important do you think it is for a teacher to continue to do research and to write?

SUMMERS: I think that for an academic person in the field of law and also in other disciplines, continued research and writing is crucially important. If one teaches first-year labor law, or any first-year course, every year is a new group, but one is dealing with the same kinds of people, time after time, and one is engaged in repeated activity. It is very easy to simply repeat. If all one does is that, then teaching has to be the cushiest job around. If you've taught a basic course ten times, you know every case in the book, and you know an entire set of questions to ask concerning each case. It is not difficult at all to go into a class with a minimum of preparation and do a good job, because it is simply a re-run. After a time, that leads to staleness and deadness. From my viewpoint, the only thing that keeps a person from becoming just an infinitely repeated recording is the matter of working on varied, but specialized projects. The only way to keep intellectually alive and to change and to see new things in material is to constantly work on other vistas. Really, if one didn't do the research and writing, after teaching for twenty years, it would be boring as hell. Some of the worst teachers are frequently those who were once very good but have repeated the old stuff, have not looked at anything new, have not pushed or questioned or probed anything deeply for ten years—and then find themselves just replaying an increasingly dull game.

LSH: Besides fortifying and refueling the spirit and the soul of the teacher, doesn't research also help effectuate movement in a particular field?

SUMMERS: I think it does. Particularly in the area of labor law. It is incredibly difficult to teach the course without keeping up to date. Yearly, the law is changing. However, there are many fields in which change is very, very slow. That occurs with many first-year courses. How much change can occur in a first-year torts course? Let me tell you. Two years ago, I taught from the new edition of a casebook from which I taught fifteen years ago. The first edition was published in 1940—and the number of new cases in that book are relatively limited. And in terms of the court cases which comprise the course, nothing much has changed. This is true in other courses, too. I have taught property law. How much has 16th Century property law changed in the last hundred years? So, as I said before, unless one is constantly working at research, he/she can go dead.

LSH: Has continued study and research contributed to your ongoing growth and vitality as a law professor?

SUMMERS: Growth is an important thing. Much as I enjoy teaching, if I were not working in different areas, it would get boring. As a teacher, I have used one protective device ever since the beginning. Rarely do I prepare notes and, if I do, they are purely temporary. I taught torts ten times before coming to Penn. Now that I am teaching it again, I find that I have no more than twenty one-half pages of notes for the entire torts course. Returning to it is like starting from scratch. Of course, I remember some of the problems with the material, and it isn't as though I am teaching it for the first time, but it is mandatory that I prepare every class anew. Frequently when I go back and reread the cases, I suddenly discover something that I had never seen before. This is true even in labor law. Every year, old cases have new looks. This compels me to reconsider and to rethink the material. Listen, when material becomes dead for the teacher, it must be exceedingly difficult for that teacher to deceive his/her students into thinking it is interesting or something worthy of *their* attention.

LSH: It takes a great deal of energy to teach an exciting, vital class. Are you able to muster that "up" feeling even when you are not inclined?

SUMMERS: No matter how much one enjoys teaching there are times when one thinks, "God, I wish I didn't have to teach this class today". I may feel this way before going to class but, unless the students are dead, and then one gets the feeling that one is walking through wet cement, it never lasts beyond the first five minutes. Once I get in there, somehow or other, the juices take over. Teaching is at least 50% show business. It is the ultimate ego trip—and I like it!

LSH: You taught at the University of Toledo for six years, at the University of Buffalo for six years, at Yale University for nineteen years, and now you are here at the University of Pennsylvania. Are students basically the same wherever one teaches?

SUMMERS: Yes, except when it comes to first-year students. At Toledo, students were attending parttime and were predominantly older. To go to Law School there was a real struggle. It was pain and sacrifice in terms of all the conveniences, comforts and enjoyments of life for the four or five years it took those students to get their degrees. These were people with a very special kind of determination and drive. At the same time, they were students who really didn't have the time to prepare in the way in which one would really have liked them to. Though they came to class prepared, they couldn't do much library research. That was quite a different experience.

The first-year students I taught in Buffalo were a nonselect group. The entering class ranged from very, very good to wholly inadequate. To gain entrance, all that was required was an undergraduate degree from an accredited school, and the desire to attend law school. There, in the first year particularly, a lot of efforts had to be spent helping those students having trouble. There was the fear of leaving people behind. There was always the desire to pull up the bottom. This was difficult to deal with. Then I went to Yale. That was an *entirely* different experience. It didn't take me long to realize that there was *no* bottom half of the

class. Cases which I labored long in attempting to make plain in Toledo and Buffalo were understood adequately in ten minutes, and we could go on.

As far as the second year was concerned, the difference in students was not as extreme. At the University of Buffalo, the bottom half of the class was not around for the second year; they were weeded out. Those students remaining, especially the marginal ones, were frightened that they would be the next ones out the door, and they made extra efforts towards class preparation. The end result was that the classroom performance of the Yale students taking labor law, which was taught as second and third year courses, was no better than it was in Buffalo. Of course, a lot of second and third year students at Yale thought they were very hot stuff. They were extremely verbal, wanted to play all kinds of intellectual games, and made arguments over issues about which they thought they knew everything. It took extra effort to deflate the discussion to solid substance.

As between Yale and Penn, there is a degree of difference. The Yale students seemed to me to be more self-confident and self-assured, sometimes to the point of arrogance. The students at Penn seem to be substantially more serious than those at Yale. They are highly motivated to work and I think this continues more through the second and third years. Some Yale students, possibly because of their self-confidence, were perhaps more anxious and willing to undertake very ambitious independent projects. But, I think the students here, generally, are happier and more content.

LSH: Erica Summers, your daughter, is an Alumna of this School, Class of 1977. Were you pleased with her decision to attend Law School and to enter the legal profession?

SUMMERS: Yes, I was a bit surprised to find out that she intended to go to law school because she had never communicated that desire to me. In fact, she insists that her decision to become a lawyer was made when she was in high school. She was here at Penn the year before I joined the Faculty. In fact, a lot of my perspectives of this School came from her. I really was uncertain as to whether she would like law school—but, I must say, she was the happiest law student I have ever seen. She *loved* it. I wouldn't say that she was incredibly interested in *all* of her courses but, on the whole, she was a lot happier in law school than she was as an undergraduate at Yale. She now works for the Federal Trade Commission in Washington.

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Vice-Dean Phyllis W. Beck presented a paper entitled "A Balancing Act: Preserving Family Autonomy and Protecting the Child" at a symposium at the Educational Testing Service in Princeton, New Jersey in November, 1980. The paper will be published in a volume entitled, *Changing Families* by Plenum Press.

Professor Alexander M. Capron has been elected a member of the Institute of Medicine, which was established in 1970 by the National Academy of Sciences "for the examination of policy matters pertaining to the health of the public".

Dean James O. Freedman has been named to The Philadelphia Board of Ethics by Mayor William J. Green.

Associate Dean and Professor Robert A. Gorman together with Alan Latman will publish *Cases and Materials on Copyright,* Michie Bobbs-Merrill Company, in June, 1981.

Professor George L. Haskins has been notified by the President of the Academie d'Histoire Europeene of his election as honorary corresponding member of that Academy, which is headquartered in Brussels. He is scheduled to deliver the Annual Lecture of the Supreme Court Historical Society in Washington, on May 18th, speaking on the topic, "Aspects of the Early History of the Court under John Marshall".

Professor Howard Lesnick, second from right, was the guest speaker at the annual luncheon meeting of the New York Alumni in February, 1981. With him are Dean James O. Freedman, left; William H. Bohnett, '74, Chair of the luncheon; and Richard M. Dicke, '40, right.

Professor Howard Lesnick has published *Becoming a Lawyer: A Humanistic Perspective on Legal Education and Professionalism* (West Publishing Company) with Elizabeth Dvorkin and Jack Himmelstein. Presently, Professor Lesnick is Visiting Professor of Law at New York University. He addressed a luncheon meeting sponsored by New York Law Alumni on February 23, 1981.

Assistant Dean for Alumni Affairs, Alice B. Lonsdorf has been named a Distinguished Daughter of Pennsylvania for the year, 1980. The citation notes her service as founder and past chair of the Board of Friends of Independence National Historical Park, chair of Philadelphia Open House, Secretary of the Philadelphia Museum of Art's Women's Committee, and Past President of the Junior League of Philadelphia, Inc.

Hubbell Professor Emeritus, Covey T. Oliver, has elected to end his four semester post-retirement assignment at the Jones Graduate School of Administration of Rice University, Houston in the spring term, 1981. He has been involved there in the fashioning and presentation of a range of legal subjects as variables in public and private managerial decision-making. Professor Oliver will teach International Public Law at a San Diego Law School summer session in Paris. He has co-authored the second edition of *The International Legal System,* now at press, with Professor Noyes E. Leech and Professor J. M. Sweeney of Tulane. Mr. Oliver plans to continue his research and writing at the Law School in the Fall.

Professor Robert H. Mundheim addressed the University of California Securities Regulation Institute on Friday, January 23, 1981, on the subject of "Tax Shelter Opinions and Proposed Revisions to Circular 230". He co-chaired the 12th Annual Institute on Securities Regulations held in New York City on November 7-9, 1980. Roughly one thousand lawyers attended the session.

Mr. Mundheim was part of the United States Negotiating team responsible for the freeing of the U.S. hostages in Iran. See "Professor Robert H. Mundheim: Our Man in Algiers" in this issue of *The Journal.*

Professor Curtis R. Reitz during the Fall 1980 served on an accreditation review team regarding Western New England Law School's application to join AALS. The Chair of the team was Dean Peter Liacouras, '56, of the Temple University Law School. In December, Professor Reitz participated in a review of the Multistate Bar Examination on behalf of the National Conference of Bar Examiners. Other alumni participating were Justice Arthur J. England, '61, Professor Robert J. Levy, '57, and M. Michael Sharlott, '62.

Mr. Reitz's work as Reporter for the American Bar Association's Standing Committee for Standards for Criminal Justice appeared as Volume IV of the *ABA Standards for Criminal Justice* (Little, Brown, 2d. ed., 1980). The volume covers appellate review of sentences, criminal appeals and post-conviction remedies.

Professor Louis B. Schwartz's article "OPEC and Big Oil", first published in *The Nation* (1975), was reprinted in Engler, *America's Energy* (Pantheon, 1980).

Assistant Professor Ralph R. Smith was named Director of the Black Centenary held at the University of Pennsylvania. He served on a Panel of the National Education Association and was re-elected to Chair the Section on Minority Groups for the American Association of American Law Schools. He participated in a National Endowment for the Humanities workshop at the University of Oregon and was one of twelve faculty to be selected for the Tenth Annual Shell Faculty Forum held in Houston, January 11-14, 1981, a seminar which brought together influential young faculty to meet with Shell's executives to discuss topics of mutual interest.

Professor Alan Watson will publish *The Making of the Civil Law* by the Harvard University Press in May, 1981.

Alumni Briefs

'14 John S. Bradway of San Francisco, California, has been involved in the advancement of legal aid service for the poor throughout his years as a member of the Pennsylvania and Philadelphia Bar Associations. He was Secretary of the National Association of Legal Aid Organizations and, for two years, was its President. Mr. Bradway has also been active in the field of legal education as a member of the law faculties of the University of Southern California, Duke, California Western and Hastings. In addition, he has been a member of the California and North Carolina Bars. In 1930, Southern California elected him to the Order of the Coif, and, in 1957, Haverford College, where he received his undergraduate education, gave him the honorary degree of LL.D. In 1976, California Western gave Mr. Bradway the honorary degree of DHL.

'18 Sydney Grabowski was Honorary Chairman of the Twenty-Third Annual Polaski Day observance in Scranton, Pennsylvania.

'25 Honorable Louis A. Bloom, Delaware County, Pennsylvania Senior Judge, has been named President of the Advisory Board of Pennsylvania State University's Delaware County campus. This is Judge Bloom's 14th year as a member of the Board and his 13th year as its President.

Francis I. Farley announced the removal of his offices to 8111 Oxford Avenue, Philadelphia.

'28 John Pemberton Jordan has established law offices in Suite 1802 Pennwalt Building, Three Parkway, Philadelphia.

'29 Sydney Schulman, of Philadelphia, has been presented the Gerald F. Flood Memorial Award for Legal and Civil Achievement.

'32 David Kubert, of Philadelphia, was instrumental in planning ceremonies at Independence Hall, sponsored by the Philadelphia Bar Association, marking the anniversary of the adoption of America's Constitution.

Honorable Max Rosenn, of the United States Court of Appeals for the Third Circuit, recently celebrated his tenth anniversary on the Federal Bench. A party, given in his honor, was attended by all of his former law clerks, his family and his long-time associates. To further honor him, an endowed lecture series, the Max Rosenn Lecture Series in Law and Humanities was created at Wilkes College by his law clerks.

'33 Gustave G. Amsterdam, of Philadelphia, has retired as Chairman of Bankers Securities Corporation.

Henry Greenwald of Wilkes Barre, Pennsylvania, was honored by the Wilkes Barre Committee for State of Israel Bonds for his years of service to the community.

'34 Ernest D. Preate, of Clarks Summit, Pennsylvania, has been designated a Distinguished Pennsylvanian by Governor Dick Thornburgh.

'36 Honorable J. Sydney Hoffman, of Philadelphia, has been presented the first annual Justice Michael A. Musmanno Award, by the Philadelphia Trial Lawyers Association.

Honorable Joseph S. Lord, III, of Philadelphia, Chief Judge of the United States District Court for the Eastern District of Pennsylvania, recently spoke at Independence Hall ceremonies marking the anniversary of the adoption of America's Constitution.

'38 Honorable Gregory G. Lagakos, of the Philadelphia Court of Common Pleas, recently discussed "Equitable Distribution of Assets Under the New Pennsylvania Divorce Law" at the 1980 Dickinson Law Forum, Dickinson School of Law in Carlisle, Pennsylvania.

'40 George Ovington, III has moved his law offices to 8111 Oxford Avenue, Philadelphia.

'41 Michael C. Rainone, of Philadelphia, was recently elected First-Vice-President of the Philadelphia Lawyers Club. He is also Vice-President of the Philadelphia Trial Lawyers Association, and a member of the Board of Governors of the Philadelphia Bar Association.

'47 Robert M. Landis, of the Philadelphia firm of Dechert, Price & Rhoads, has been appointed to a three-year term as a Class C director of the Federal Reserve Bank of Philadelphia as of January, 1981, by the Board of Governors of the Federal Reserve System.

James B. Schellinger, President and Chief Executive Officer of the Philadelphia-based Delaware Management Company, has been elected a member of the Board of Trustees of the Presbyterian-University of Pennsylvania Medical Center.

'48 President Judge James C. Crumlish, of the Commonwealth Court of Pennsylvania, was a guest faculty speaker before the National Judicial College at its first annual seminar for Appellate Chief Judges.

Honorable Joseph D. Roulhac of the Akron, Ohio Municipal Court, was granted an Honorary Doctor of Laws Degree at the 135th Annual Founder's Day Program at Baldwin-Wallace College in October, 1980.

Professor Bernard Wolfman, of the Harvard Law School, delivered the 1980 Irvine Lecture at Cornell University in November, on the subject: "The Supreme Court in the Lyon's Den: The Story of a Case".

Louis J. Carter, left, with former Law School Professor Clark Byse, center, and Professor and former Penn Law School Dean, Bernard Wolfman, right, at a reception for the Program of Instruction for Lawyers held at Harvard Law School.

'49 Louis J. Carter, former Chairman of the Pennsylvania Public Utility Commission and member of the Pennsylvania Environmental Quality Board, is now a consultant to the U.S. Nuclear Regulatory Commission. He has been appointed Presiding Administrative Judge and Chairman of the Atomic Safety and Licensing Board Panel to hear the application of the Armed Forces Radiobiology Research Institute to renew the operating license of its triga-mark nuclear reactor in Bethesda, Maryland. Mr. Carter specializes in public utility, carrier, and environmental law matters in Philadelphia and Washington, D.C., where he is consultant to the District of Columbia Public Service Commission.

M. Stuart Goldin, of Philadelphia, is a co-chairman of the Luncheon Lecture Committee of the Professional Education Section of the Philadelphia Bar Association.

Peter M. Ward, of New York City, has been a Director of the National Legal Aid Society for the past two years, which provides almost all of the legal services constitutionally required for indigent defendants in the State and Federal Courts and, in addition, for most of the civil legal services available for poor persons living in New York City. Mr. Ward is one of the Society's four Vice-Presidents, and he is responsible for fund raising for the Civil Division.

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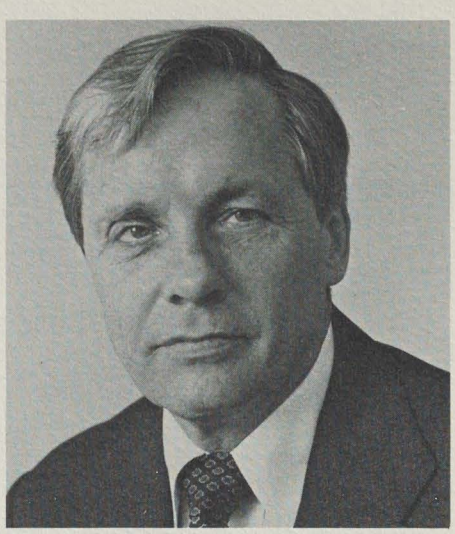
'50 Paul L. Jaffe has been elected Chairman of the Board of Moss Rehabilitation Hospital. He has been a member of the Board since 1968 and has served as President of the Hospital for the past three years.



'53 Joseph H. Foster, of Wyncote, Pennsylvania, is Chancellor of the 7,200 member Philadelphia Bar Association. Mr. Foster, a partner in the firm of White & Williams, is a former President of the Pennsylvania Defense Institute and a former member of the Philadelphia County Board of Law Examiners.

'54 Stanley W. Bluestine announced the relocation of his offices to Suite 1310, Two Penn Center, Philadelphia.

Honorable Berel Caesar, of the Philadelphia Court of Common Pleas, hosted the Philadelphia Judicial Institute Program on "The Judge as Defendant".

Captain James J. McHugh has been appointed the Deputy Judge Advocate General, United States Navy, Washington, D.C.

Morris M. Shuster announces the relocation of his firm, Shuster & Beckman, to 601 Widener Building, 1339 Chestnut Street, Philadelphia. Mr. Shuster is a visiting Clinical Supervisor-Lecturer at the University of Pennsylvania Law School Legal Assistance Clinic for the Spring semester.

'55 Manuel Grife has opened new offices at Suite 1200, Two Penn Center Plaza, Philadelphia, 19102. He is a National Vice-President of the United Synagogue of America, and was recently appointed to the Board of Trustees of Martins Run in Delaware County, Pennsylvania, the first Jewish-sponsored Life Care Community.

'56 Arthur W. Leibold, Jr., was re-elected Treasurer of the American Bar Association. A Washington, D.C. resident partner of the firm, Dechert, Price & Rhoads, he is also Treasurer of the American Bar Association and the American Bar Retirement Association.

'57 Jay G. Ochroch, has been elected Chairman of the Montgomery County Redevelopment Authority. He is a partner in the Philadelphia firm, Fox, Rothschild, O'Brien & Frankel.

'58 Marvin Weiss was elected Chairman of the Metropolitan Philadelphia Anti-Defamation League of B'nai B'rith Advisory Board at its annual meeting.

Carl K. Zucker has joined the real estate department of the Philadelphia law firm of Pechner, Dorfman, Wolfe, Rounick & Cabot.

'59 William M. Eastburn, III, has been appointed to the Steering Committee of the Domestic Relations Training School to be established in coordination with Pennsylvania State University.

John J. Francis, Jr., of Bedminster, New Jersey, has been elected Chairman of the Board of Trustees of the Hospital Center at Orange, New Jersey. He is a Fellow of the American College of Trial Lawyers and of the American Bar Foundation.

'60 Marvin Goldklang, of New York, was a guest speaker at the installation luncheon of the New Leadership Group of the Philadelphia State of Israel Bonds Organization. Mr. Goldklang practices on Wall Street and is part-owner of the New York Yankees baseball team.

'61 Franklin L. Kury was the leadoff speaker among seven retiring senators who spoke at the final meeting of the Pennsylvania State Senate's 1980 session. In his fourteen years in the State House and Senate, Senator Kury was the chief sponsor of thirty bills and two Constitutional Amendments which became law. He has returned to private practice.

Mayor Shanken has returned to Phoenix, Arizona, where he resumed his prior association with the firm of O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears, 3003 North Central Avenue, Phoenix, Arizona 85012.

Roger S. Young has been appointed to the position of Assistant Director of the FBI, the third ranking position. Since March, he has served as inspector in charge of the FBI's Public Affairs Office, recently renamed the Office of Congressional and Public Affairs. That office has been given the responsibility for liaison with Congress.

'62 John E. Gillmor, of Philadelphia, has been elected senior Vice-President and general counselor of INA Health Care Group, Inc., a subsidiary of INA Corporation, as of January 1, 1981.

Alan R. Smukler, a Philadelphia Assistant District Attorney, has been hired to coordinate a special State Senate committee investigation on the April 24, 1980 daily number drawing.

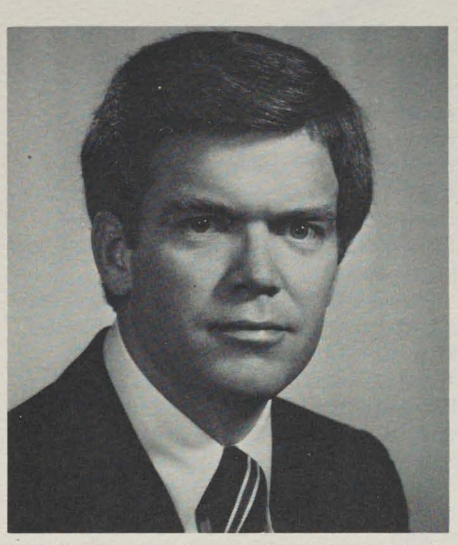
'63 David C. Auten spoke at a luncheon of the Philadelphia Bar Association, on the subject: "Usury: With All the Holes in the Ceilings, What is Left? A Review of Recent Federal and Pennsylvania Developments". Mr. Auten is one of four recipients of the 1981 University of Pennsylvania Alumni Award of Merit.

David H. Marion, a member of the Board of Governors of the Philadelphia Bar Association, appeared on WCAU-TV, Monday, November 17, 1980 on the program "Whitney & Co., Live". The topic of discussion was libel suits and newspapers.

Faith Ryan Whittlesey has joined the Philadelphia firm of Wolf, Block, Schorr & Solis-Cohen. She is Vice-Chair of the Delaware County Council and is a former member of the Pennsylvania House of Representatives.

'64 James Robert Parish of Los Angeles, California, is collaborating with Yvonne De Carlo on her autobiography, for publication by William Morrow & Company.

'65 Sheldon N. Sandler, a partner in the Wilmington, Delaware, law firm of Bader, Dorsey & Kreshtool, is Chair of the Delaware State Bar Association's Labor Relations Law Committee. He is also Chair of the Subcommittee on Strike Litigation of the American Bar Association Committee on State and Local Governments Bargaining of the Section of Labor Relations Law. He served as Reporter for the 1980 Third Circuit Judicial Conference.



'66 Charles B. Burr, II of Philadelphia, is a partner in the firm Griffith & Burr, P.C., 8th and Chestnut Streets, Philadelphia, 19107, specializing in medical malpractice and products liability defense. Mr. Burr also handles criminal litigation. He is a Director of the Citizen's Crime Commission of Philadelphia and is also the Solicitor to the Zoning Hearing Board in Radnor Township. He has authored the lead article in *33 U. Pitt. L. Rev. 1 (1971)* —"Appellate Review as a Means of Controlling Criminal Sentencing Discretion— A Workable Alternative?" and has co-authored the article: "Contribution, Indemnity, Settlements and Releases: What the Pennsylvania Comparative Negligence Statute Did Not Say," *24 Vill. L. Rev. 494 (1979).*

Bernhardt Wruble left U.S. Government service with the change in Administration. Since 1977, he has served as Principal Deputy General Counsel to the Army, the first Director of the Office of Government Ethics and as the Executive Assistant to the Secretary and Deputy Secretary of Energy. In his last position, he also acted as Executive Director of the President's Interagency Coal Export Task Force. Mr. Wruble is now a partner in the Washington, D.C. law firm, Verner, Liipfert, Bernhard & McPherson.

'67 Ira Brind, Chairman and President of Brind Leasing Corp., Philadelphia, was named Chairman of the Board of the Philadelphia College of the Performing Arts.

'68 Frank A. Orban, III, is a senior attorney for Armstrong World Industries, Inc., in Lancaster, Pennsylvania. He spoke at the International Product Liability Conference sponsored by Management Centre Europe in Copenhagen, Denmark.

Donald W. Stever, Jr., of Chevy Chase, Maryland, wrote a book entitled *Seabrook and the Nuclear Regulatory Commission: The Licensing of a Nuclear Power Plant,* which was published in September by the University Press of New England. The book is a legal and political analysis of the means by which nuclear technology is regulated. Its format is that of a case study.

'69 John C. Green received an MBA from Stanford University and has joined Interlink Associates in Palo Alto, California, a consulting firm engaged in management consulting and litigation support. Prior to attending Stanford, he spent seven years with the Department of State and Defense in Asia.

John L. Rolfe has become an associate with Tabas and Furlong, P.C., Philadelphia.

'70 Ronald E. Bornstein has become a member of the firm of Thelen, Marrin, Johnson & Bridges, 2 Embarcadero Center, San Francisco, California. Mr. Bornstein, whose main areas of practice are corporate, securities, financial, and international law, was formerly associated with the New York and Paris offices of the firm, Sullivan & Cromwell.

Alexander Kerr announced the formation of this new partnership, Hunt, Kerr, Bloom & Hitchner, The Drexel Building, 15th and Walnut Streets, Philadelphia.

Thomas J. McGrew, of Washington, D.C. has written an article entitled "Try Reading, Say, a Package Insert . . ." for the November, 1980, issue of the *Legal Times of Washington.*

Steven R. Waxman has been re-elected Assistant Secretary of the Philadelphia Bar Association. He is a Director of the ABA's Young Lawyers Division, a member of the boards of Community Legal Services and the Public Interest Law Center of Philadelphia, and of the Support Center for Child Advocates.

'71 Charles J. Bloom is a partner in the firm, Hunt, Kerr, Bloom & Hitchner, with offices located at the Drexel Building, 15th and Walnut Streets, Philadelphia.

Arthur W. Lefco, of Philadelphia, has become a member of the firm of Mesirov, Gelman, Jaffe, Cramer & Jamieson.

'72 David Ferleger, of Philadelphia, filed suit against Pennhurst, a home for the mentally retarded in Valley Forge, Pennsylvania, in an attempt to close the institution and move the residents to special community homes. The case won in the United States District Court and was upheld at the Appellate level. With the State's appeal, the case has been taken to the Supreme Court.

Michael F. Kraemer has become a partner in the firm of Kleinbard, Bell & Brecker, 1550 United Engineers Building, 30 South 17th Street, Philadelphia 19103.

Ellsworth McMeen, of New York, collaborated with John Sarchio '79, on the lead article, "Administrative Flexibility and the FAA: The Background and Development of United States Registration of Foreign Owned Aircraft", published in the Fall, 1980 issue of the *Journal of Air Law and Commerce,* (Vol. 46, pg. 1).

Richard Walden, presently residing in California, is the founder of an international relief agency, Operation California, which has delivered $6.5 Million in relief supplies to Cambodia. He has produced a CBS special, aired in February, which was Hollywood's tribute to the Cambodian relief effort.

'73 Charles I. Cogut, of New York, has become a partner in the New York City firm of Simpson, Thacher & Bartlett, One Battery Park Plaza.

Howard N. Greenburg has become a partner in the Philadelphia firm of Kleinbard, Bell & Brecker, 1550 United Engineers Building, 30 South 17th Street, Philadelphia, 19103.

Sean A. McCarthy, has been named Counsel for Regulatory and Judicial Matters at Satellite Business Systems, McLean, Virginia. He was previously Counsel for Government Relations at SBS.

William C. Sussman, has become a partner in the firm of Schoninger, Jankowitz & Siegfried, P.A., 9300 South Dadeland Boulevard, Miami, Florida 33156.

'74 Susan Dein Bricklin was sworn in as United States Attorney, by Chief Judge Joseph S. Lord, III, on November 10, 1980.

Elliot J. Hahn received his LLM in Japanese Law in May, 1980, from the Graduate Legal Department of the Columbia Law School. He then spent three months teaching American law at the Institute for International Studies and Training in Japan at the invitation of the Japanese Government. He is presently an Assistant Professor of Law at California Western School of Law in San Diego, California, where he teaches Japanese Law and contracts.

Helge Loytved, of West Germany, has been appointed Judge at the Social Court in Yelsenkirschen, a city in the Ruhr industrial district, close to Essen.

Frederica Massiah-Jackson, of Philadelphia, was elected to the Board of Governors of the Philadelphia Bar Association. The only black member of the Board, Mrs. Massiah-Jackson presently serves as Chief Counsel for the Pennsylvania Insurance Committee.

Gail Lione Massee, was named Vice President of the First National Bank of Atlanta, P.O. Box 4148, MC 0634, Atlanta, Georgia, 30302, as of January 15, 1981.

Joseph F. Roda is associated with Bernadette, McKean & Mohenadel, 36 East King Street, Lancaster, Pennsylvania.

Barry P. Rosenthal has become a partner in the law firm of Brownstein Zeidman & Schoner, 1025 Connecticut Avenue, N.W., Washington, D.C., practicing in the areas of real estate and housing law.

Manuel Sanchez has become a partner in the Chicago firm of Hinshaw, Culbertson, Moelmann, Hoban & Fuller, 69 W. Washington Street, Suite 2700, Chicago, Illinois 60602.

'76 Michael P. Malloy, of Annapolis, Maryland, published an article entitled "The Impact of U.S. Control of Foreign Assets in Refugees and Expatriates", which he delivered in January, 1981, before the Third Annual Colloquium on International Law sponsored by the Michigan Yearbook of International Legal Studies. Mr. Malloy was recently appointed Attorney-Advisor (Finance) in the Securities Disclosure Division, Office of the Comptroller of the Currency.

William E. Seals was appointed to the post of Deputy Assistant General Counsel, Pension Benefit Guaranty Corporation, in Washington, D.C.

'77 Dennis Bechara has earned the status of Diplomate of the Court Practice Institute, having participated in the National Trial Advocacy Seminar in Chicago, Illinois, in December, 1980. This intensive program is designed to improve trial skills of attorneys of all experience levels.

Ellen Metzger has become associated with the New York City law firm of Shereff, Friedman, Hoffman & Goodman.

'78 Brian P. Flaherty, of Philadelphia, is an associate with the Philadelphia firm of Wolf, Block, Schorr & Solis-Cohen. He married Karen M. Lyons, M.D., a resident physician at the Hospital of the University of Pennsylvania.

Simon B. Jawitz served as law clerk to Honorable Jacob Misler, Chief Judge, United States District Court for the Eastern District of New York, from September, 1979 to August, 1980. He is presently an associate in the New York law firm of Davis, Polk & Wardwell.

Mark Werner has become associated with the firm of Mann & Ungar, 1711 Rittenhouse Square, Philadelphia 19103. He practiced previously in Chicago, Illinois.

Helena Nita White was elected a Judge of the Court of Common Pleas in Detroit, Michigan in November, 1980. She was law clerk to Justice Charles Levin of the Michigan Supreme Court from September, 1978 to September, 1980.

'79 Dale Barnes was associated for one year with Maria T. Hodge, a sole practitioner in St. Thomas, U.S. Virgin Islands. He is presently associated with McCutcheon, Doyle, Brown & Emersen, San Francisco, California.

Isis Carbajal de Garcia, of Philadelphia, has been working with the office for Civil Rights, U.S. Department of Education (formerly HEW), in Philadelphia, since graduation. Last November, she received the Regional Director's Award, the office's highest award, and a Special Act Award for her contribution to the furtherance of civil rights and her outstanding efforts concerning the proposed Civil Rights Language Minority Regulation published by the department on August 5, 1980. She was chosen by the department to be a panel member in three of the public hearings held throughout the nation last September, to hear people's comments on the regulation.

Sarah Duggin is currently a law clerk to Judge Spottswood Robinson, United States Court of Appeals for the District of Columbia Circuit.

Kit Kinports will be the law clerk to United States Supreme Court Justice Harry A. Blackman for the 1981 Term.

Walter Rivera is completing his second and final year as law clerk to the Judges of New York State Court of Appeals, in Albany and plans to return to New York City in the Fall of 1981.

John Sarchio and Ellsworth McMeen, '72, collaborated on the lead article on aviation law published in the Fall, 1980 issue of the *Journal of Air Law and Commerce,* (Vol. 46 at page 1). The article is entitled, "Administrative Flexibility and the FAA: The Background and Development of United States Registration of Foreign-Owned Aircraft". Mr. Sarchio is a member of the New York Bar.

Leslie K. Shedlin has been appointed an Assistant Corporation Counsel in the New York City Law Department. Her Article, "Regulation of Disclosure of Economic and Financial Data and the Impact on the American System of Labor-Management Relations" was published in a symposium on labor law in the *Ohio State Law Journal,* Vol. 41 (1980).

'80 Charles Goldberg, has been admitted to the Supreme Court of Texas and is presently employed in the Litigation Department of Exxon Company, U.S.A., in Houston.

Sarah E. McCarty recently returned from one year at Cambridge University, England, as a Thouran Fellow, where she received an LL.B. She is clerking for Sixth Circuit Court of Appeals Judge Boyce Martin. Ms. McCarty and Peter Y. Solmssen '80 plan to marry on June 6, 1981.

In Memoriam

'14 Stanley J. McKinney
Englewood, New Jersey,

'16 Moses J. Slonim,
Chesterfield, Missouri,

'17 Honorable Harold D. Sayler,
Philadelphia, Pennsylvania,

Edward A. Tobin,
Collingswood, New Jersey,

'19 Alfred Baker Lewis,
Riverside, Connecticut,

'21 John Russell, Jr.,
Gladwyne, Pennsylvania,

'25 Howard Y. Crossland,
Pittsburgh, Pennsylvania,

Carl W. Funk,
Philadelphia, Pennsylvania,

Maurice Stern,
Philadelphia, Pennsylvania,

'27 Wallace W. Bland,
Pittsburgh, Pennsylvania,

'29 Alex Z. Brister,
East Norriton, Pennsylvania,

'30 Honorable Victor J. DiNubile,
Philadelphia, Pennsylvania,

'33 Lawrence R. VanDeusen,
Naples, Florida

'34 Kendall M. Barnes,
Alexandria, Virginia,

'38 Morris Pfaelzer,
Los Angeles, California,

H. Clayton Louderback,
Rosemont, Pennsylvania,

'47 David L. Levan,
Reading, Pennsylvania,

'48 Honorable Robert B. Campbell
Hollidaysburg, Pennsylvania,

'56 Honorable Milton O. Moss,
Elkins Park, Pennsylvania,

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End Notes

As a last note to the Winter *Journal*, we share with the Alumni-at-large an exchange of correspondence between three persons with vested interests in the University of Pennsylvania Law School and in the truths surrounding its history.

UNIVERSITY of PENNSYLVANIA

PHILADELPHIA 19104

JAMES O. FREEDMAN
Dean

The Law School
3400 Chestnut Street

Professor Morris S. Arnold
The Law School

Dear Morris:

I read your article, The Right to Jury Trial at the Time of the Adoption of the Seventh Amendment, with profit and admiration. It is a splendid piece of work.

But whatever led you to describe George Wythe as "America's first law professor," as you do at page 7? One ought not deny Wythe the degree of historical distinction that he has rightfully earned; he was, after all, the teacher of John Marshall, Henry Clay, Spencer Roane, and Thomas Jefferson. But "America's first law professor"? Every school boy know that that distinction belongs to James Wilson.

I send you this clarification without a soupcon of institutional parochialism. The fact that James Wilson did his professing, as it happened, at the University of Pennsylvania is quite beside the point. Facts are facts, and there they are.

Your enviable reputation will survive this lapse. Even Homer nodded. But I trust that this Southern heresy concerning George Wythe will not mar your scrupulous, luminous scholarship in the future.

Sincerely,

Jim

UNIVERSITY of PENNSYLVANIA
PHILADELPHIA 19104

MORRIS S. ARNOLD
Director of the Office of the President
and Professor of Law

100 College Hall CO
(215) 243-6813

Dean James O. Freedman
Room 103 School of Law
100 South 34th Street I4

Dear Jim:

You know me well enough to know how loathe I am to contradict my superiors. But your recent attack on George Wythe moves me to write for I feel I am bound to defend Virginia against Eastern chauvinism. One sometimes hears it bruited (never outside Philadelphia) that James Wilson was America's first law professor. Alas, it is not so. As Professor Friedman notes, Wythe occupied "the first chair of law in an American college" since he was "professor of law and policy" at William and Mary in 1779-80. (Friedman, A History of American Law 120 (1973).) As you know, J. Wilson did not bestir himself until some 11 years later. Robert Stevens, in his article entitled "Two Cheers for 1870: The American Law School" in 5 Perspectives in American History 415 (1971) states: "The title of first 'law professor' properly belongs to Jefferson's law preceptor, George Wythe, who was appointed Professor of Law and Police [sic] at William and Mary in 1779." Indeed, this view is adopted unanimously by those who write on the history of American legal education. Meyerson and Winegrad in Gladly Learn and Gladly Teach say simply that Wilson was "the new Republic's first law professor" (emphasis mine). This seems to me, incidentally, simply a circumlocution for a statement to the effect that we got started a bit late.

I am sure that much of what I write is subject to criticism and flawed by erroneous information. An historian learns to live with his errors. But on matters of hornbook history which illustrate the cultural pre-eminence of the South I take some pride in my accuracy. Massachusetts long ago made off with the seventeenth century with all the manufactured hoopla over "the pilgrims," thus managing to submerge almost entirely the memory of Jamestown. (The Romans called this technique abolitio memoriae). We cannot allow Pennsylvania to do the same to George Wythe!

Sincerely,

Buzz

Morris S. Arnold

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United States District Court
For The Eastern District Of Pennsylvania

Chambers of
Louis H. Pollak
United States District Judge

13613 United States Courthouse
Independence Mall West
Philadelphia, Pa. 19106
215 597-9590

Professor Morris S. Arnold
Dean James O. Freedman
University of Pennsylvania
Law School
3400 Chestnut Street
Philadelphia, Pennsylvania 19104

Dear Professor Arnold and Dean Freedman:

I suppose one should be gratified that Professor Arnold -- by letter of 21 January 1980 to Dean Freedman -- has undertaken to raise the level of debate from the miasma of institutional chauvinism to the piedmont of history.

But one's sense of gratification must be tempered by the question whether Professor Arnold -- in his zest for reporting a datum which is more remote in time than the datum relied on by Dean Freedman -- has neglected to report other data which might yield a more comprehensive and more comprehensible comprehension. A more generous view of the past -- shall I say a more historical view of history? -- prompts one to inquire whether any significance whatsoever attaches (except as it may matter to those concerned with fund raising) to a question in the following form: Was James Wilson, or George Wythe, or someone else, the first person designated a Professor of Law in a college in [North(?)] America? To the extent that this question matters to anyone, the answer is indeed the one insisted on by Professor Arnold -- to wit, Wythe. But the question of consequence would seem to be -- Who first taught law in [North(?)] America? To that question, the answer is neither Wythe nor Wilson. The answer is Tapping Reeve. To be sure, Reeve did not launch the School of Law at Litchfield until 1784. But it appears that he first undertook to present systematic instruction in law some nine years earlier when he commenced the intellectual retreading of a Princeton graduate, briefly afflicted by theology, named Aaron Burr.

I understand that, as Professor Arnold has so well put it, "a historian learns to live with his errors." But a society which intends to remain free cannnot subsist on such short rations.

Very truly yours,

Louis H Pollak

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