

Penn Law Journal

The **MISSION** of Penn Law School :

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1997

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... to
generate

intellectual and human capital

for the

LEADERSHIP

of the legal profession

in the

21st century.

COLIN DIVER ~ Dean

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University of Pennsylvania Law School
3400 Chestnut Street
Philadelphia, PA 19104-6204.

PUBLISHER

Martin W. Shell

ASSISTANT PUBLISHER

Jacquelyn R. Villone

EDITORS

Derek Davis

Theresa D. McClatchy

DESIGN

Mayer & Myers, Philadelphia

CONTRIBUTORS

Siobhan Roth

Mark Fiore

ASSISTANT EDITORS

Thomas Trujillo W'98

Jason Giardino C'97

PHOTOGRAPHY CREDITS

Greg Benson, Tommy Leonard

THE UNIVERSITY OF
PENNSYLVANIA LAW SCHOOL

Martin W. Shell, *Assistant Dean for
Development and Alumni Relations*

Elizabeth C. Brown, *Director, Law
Annual Giving*

Lucille Caniglia, *Administrative Assistant*
Beth Grillet, *Prospect Management &
Research Coordinator*

Reshma Kotecha-Tanna, *Administrative
Assistant*

Deborah D. Liebman, *Assistant Director,
Annual Giving*

Melissa Pierce, *Administrative Assistant*

Mary Ellen Siciliano, *Administrative
Assistant*

Jacquelyn R. Villone, *Financial
Administrator*

Carol G. Weener, *Associate Director of
Development*

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To err is human, to forgive divine.

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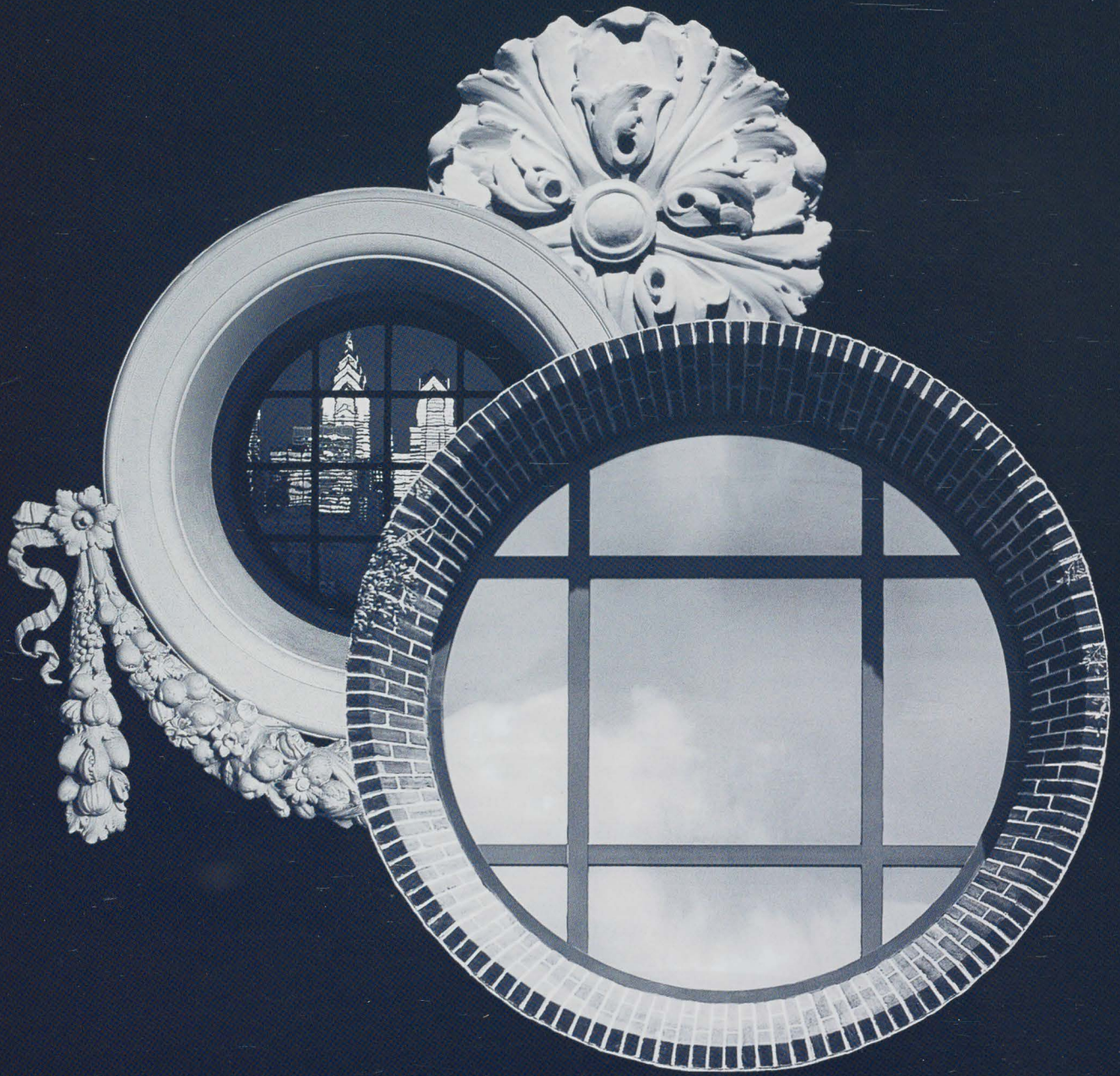


Howard Gittis W'55, L'58 (left) and Philadelphia Mayor Edward Rendell C'65 talk at the dedication of the Gittis Center for Clinical Legal Studies.

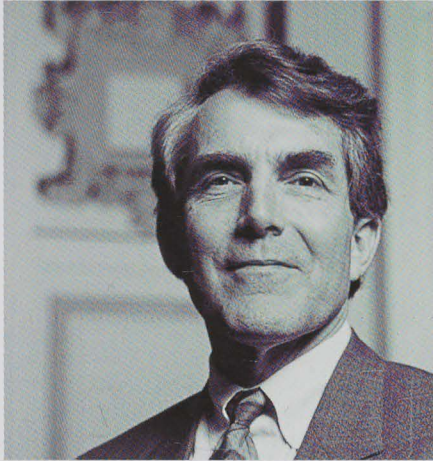


A black tie dinner was held in the refurbished Sharswood Hall as a part of the rededication event for Lewis Hall.

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From the Dean



Dean Colin S. Diver

LEADERSHIP

No other word or idea so succinctly captures the ambition articulated in the Law School's strategic plan. We aspire to be the Leadership Law School. We seek to become—and to be recognized as—that American law school which excels at the training of future lawyer-leaders and the study of leadership through law.

For the past year and a half, we at the Penn Law School have engaged in a process of self-examination and soul-searching. We have candidly assessed our strengths and weaknesses, compared ourselves to our competitors, surveyed trends in legal education and the legal profession.

We have framed a strategic plan to guide the Law School into the coming century. The plan sets an ambitious goal and offers a detailed blueprint for achieving that goal.

The goal is to make Penn the foremost center for the study of leadership

through law. The means to achieve that goal is the “integrative curriculum”—the nation's first genuinely interprofessional academic program.

Society increasingly needs a special breed of leaders to plan the most complex transactions, to structure the most delicate and durable relationships, and to resolve the most intractable conflicts. These leaders will need the traditional skills of great lawyers—analytical reasoning, systematic thinking, communication, and advocacy. These are the skills traditionally taught at great law schools like Penn.

The leaders of the future will need the ability to integrate and synthesize knowledge, to think tactically and strategically in complex, shifting, multicultural environments, to adapt and learn through continuous self-teaching.

The capacity to develop these skills will set apart the great lawyers from the good. And the capacity to teach and study these skills will set apart the great law schools from the good.

Other law schools will claim to teach and study leadership in the sense we have used the term. But they will, by force of habit or necessity, go it alone, attempting, in splendid isolation, to replicate within their four walls the insights offered by sister professions and disciplines. The genius of Penn is its capacity to share strength, rather than replicate strength. The governing principle of our strategic plan is to build bridges, not walls. Our plan is to take full advantage of the extraordinary educational resources within a three-block radius at the Wharton, Annenberg, Education, Medical, and Engineering

Schools, and the Departments of Economics, History, Sociology, and Political Science.

These linkages will take several forms: for example,

- development of concentrations within the J.D. degree program in areas such as law and business, law and communications, and law and medicine;
- development of new courses in the J.D. degree program emphasizing problem-solving, negotiation, and strategic planning skills;
- creation of new “submatriculation” programs, such as the new six-year B.S.-J.D. degree program with Wharton;
- emphasis on collaborative research and research between schools; and
- expanded and enriched opportunities for joint professional degree programs.

The forms will vary, but the goal will always be the same: to instill those leadership skills and attitudes that enable superb lawyers to become leaders.

This is an ambitious goal, but Penn Law has historically been an incubator of leadership. The alumni whom we profile in this issue of the *Journal* all exemplify the qualities we aspire to instill in our students. Each began with a solid grounding in the study and practice of law, and fashioned a career of institutional leadership in the realms of business, education, and public service.

So, in a sense, leadership has been in our “blood stream.” Now all we have to do is bottle it.



P A S T P R E S E N T F U T U R E

A STUDY OF LEADERSHIP

- PAST
- PRESENT
- FUTURE

AT THE
UNIVERSITY OF PENNSYLVANIA
LAW SCHOOL

I. A LEGACY OF LEADERSHIP

“The final test of
a leader is
that he leaves behind him in other men
the conviction
and
the will to carry on.”

WALTER LIPPMANN

Roosevelt Has Gone — April 14, 1945

The University of Pennsylvania Law School

has a long and hallowed history that epitomizes the sentiment expressed by Lippmann. From its 1790 inception as a Department of Law within Benjamin Franklin’s Academe and Charitable School of the Province of Philadelphia to its position today as one of the premier institutions for legal study in the nation, Penn Law has been blazing a trail of leadership—a trail leading to a future full of even more promise.

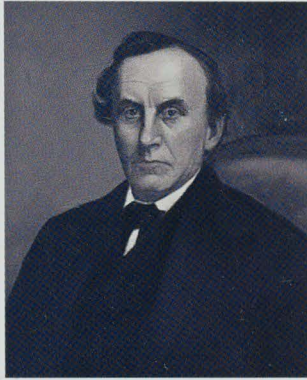
MEET A FEW OF THE PEOPLE WHO BLAZED THIS TRAIL



JAMES WILSON, the first Professor of Law in 1790, is a fine example; signer of the Declaration of Independence, architect of the Constitution with James Madison, and one of the six original justices of the United States Supreme Court, Wilson provided students of law with a series of lectures dissecting and exploring legal systems both contemporary and historic.

Wilson’s maiden address was given before such luminaries as President and Mrs. George Washington, Vice-President John Adams, the members of the cabinet, various members of both houses of Congress and the President and representatives from both houses of the Pennsylvania Legislature.

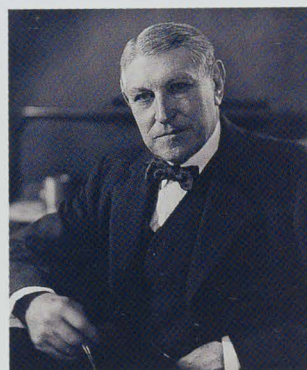
Although such a beginning was certainly auspicious, Wilson had to step down due to other professional responsibilities after one semester. His influence, however, did not leave with him. His reputation and contributions to the fledgling department were far reaching, and



• GEORGE SHARSWOOD



• WILLIAM DRAPER LEWIS



• JUSTICE OWEN J. ROBERTS

instilled in future department heads the desire and motivation to carry on what he had begun—an institution dedicated to the study and mastery of the art and science of law. He died in 1798 after a distinguished legal and public service career full of professional honors and accolades.

The department of law continued, but changed little, until **GEORGE SHARSWOOD**, a judge of the District Court of Philadelphia, manned the helm in 1850 and brought about an era of much change, expansion and improvement.

Under Sharswood's leadership, a two year course of study leading to a degree was established, and in 1852, Penn's first LL.B. degrees were conferred and its first faculty of law appointed. Thirteen years after the two year degree course was introduced, it was changed to three years and recognized as the equivalent to time spent in apprenticeship, thus moving the school into the more conventional definition of a law school and bringing it closer to the level of other, more established law schools of the time.

WILLIAM DRAPER LEWIS, appointed Dean in 1896, followed Sharswood's lead, ushering in the era of the modern Penn Law School. With his sights focused firmly on the future of the Law School, Lewis concentrated solely on his position as dean, the first of those holding the position to do so. This resulted in invigorated fund raising, the elevation of admission standards to a level above that of many other law schools, the establishment of a faculty dedicated solely to the teaching of law, the expansion of the curriculum to promote the case method of study, and the establishment of a first rate law library.

Lewis' opinion of the law was that it held a loftier position in society than just a profession or occupation; he felt it to be deserving of the same reverence held for religious beliefs. In a move worthy of such an opinion, he constructed a marvelous facility in which to pursue the study of law. Lewis Hall, dedicated in 1900 after construction costing roughly \$400,000, is aptly described by current dean, Colin Diver, as William Draper Lewis' "temple."

Lewis retained his influence at the Law School even after stepping down as dean in 1914. As a founding member, and later the director of the American Law Institute, Lewis established a forum in which the faculty and later deans of the Law School could participate in the direction and formation of modern law beyond the classroom.

Perhaps the most famous of all deans to serve Penn Law, and arguably one of its most illustrious graduates, is **JUSTICE OWEN J. ROBERTS**, famed prosecutor and Associate Justice of the United States Supreme Court for 15 years. Roberts, dean from 1948 to 1952, was valedictorian of the Law School class of 1918 and a member of the faculty for 20 years. He brought with him his revered reputation, his estimable knowledge of public law, and a concerted wish to prepare the Law School for the future.



II. LEADERSHIP FOR TODAY'S WORLD

Today's Penn is building on its past history, following the path of bygone leaders to enhance and improve itself in the present, ensuring that today's law students are properly prepared for a future in the law.

Towards that mission, the Law School is currently enjoying a rebirth worthy of the legacy of William Draper Lewis and other past leaders at Penn.

LEADERSHIP THROUGH EXPERIENCE

Still housed in Lewis Hall, albeit in new and more comfortable surroundings, is one of the Law School's most revered programs: The Gittis Center for Clinical Legal Studies. This program, in which students provide legal services to the community, is regarded among the country's best, and offers the students an opportunity to gain valuable, real-life trial, litigation and client relations experience, while providing a much-needed hand to neighbors in need. Students are offered several different clinical opportunities during their course of study and are able to choose between the Civil Practice Clinic, The Mediation Clinic and The Small Business Clinic.

The Civil Practice Clinic participant, under the supervision of a full-time clinical staff, provides legal representation in such matters as employment discrimination, family law, and government benefits distribution to low-income families. The student engages in the entire legal process with the client, from initial interview to final resolution.

The Mediation Clinic instructs students on the processes of dispute resolution, and then employs them as mediators in small-claims litigation as well as in situations involving disciplinary infractions within the University.

The Small Business Clinic immerses students in the world of contracts, business law, regulatory statutes and other aspects of the business world, both for-profit and non-profit. Working under the supervision of clinical instructors, the students are active participants in any and all stages of the development and operation of a small business. (See separate article on the Small Business Clinic in this issue.)

Aside from these three clinical opportunities, students can sign up for an externship with various legal communities in the Philadelphia area, such as the Philadelphia District Attorney, the U.S. Attorney's Office, and the Hospital of the University of Pennsylvania.

Dean Diver and Douglas N. Frenkel '72, Clinical Director and Practice Professor, celebrate the opening of the Gittis Center for Clinical Legal Studies.



LEADERSHIP THROUGH RESPONSIBILITY

In much the same way that the clinical program trains the student to “do well by doing good,” so does the Law School’s Public Service Program. Since 1990, the Law School has required that all second and third year students (first year students may participate voluntarily) perform a total of 70 hours of law-related public service in order to graduate. Adopted in accordance with the American Bar Association’s Model Rules of Professional Conduct, which implores attorneys of all levels to participate in pro-bono work as a service to the community, the Public Service Program ensures that Law School students recognize and appreciate the responsibilities involved in the profession they are preparing to enter.

More than 500 students are placed in over 200 venues annually. Penn Law students undertake approximately 16,000 hours of law-related pro-bono services, including counseling abuse victims, mediating property disputes, teaching law in public schools, and responding to legal needs that otherwise might not be fulfilled. The student-founded Custody and Support Assistance Clinic, for example, has provided over 2,000 hours of service rendered to underprivileged citizens who require legal representation for Family Court, protection from abuse orders and other matters. Legal aid to individuals having to declare insolvency is channelled through the Consumer Bankruptcy Assistance Project.

LEADERSHIP THROUGH INNOVATION

Dedicated in 1993, the five-story Nicole E. Tanenbaum Hall, a high-tech facility, houses, among other things, the Biddle Law Library, the offices for the Public Service Program, Career Planning & Placement and the law journals. It is, however, much more than a newer, larger building in which to provide shelter for certain facets of the Law School; it is a virtual monument to the most up-to-date electronic and technological advancements in education today.

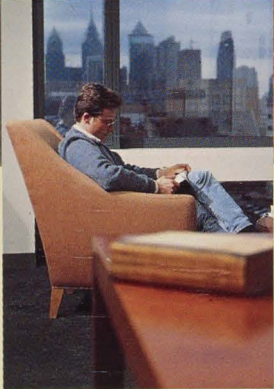
The Biddle Law Library, founded in 1886 with 5,000 volumes from the family of George W. Biddle as a memorial to his three sons, was housed in Lewis Hall until 1994. Now boasting the most impressive collection between Washington, D.C. and New York City, the Biddle Library employs a staff of 29 and houses more than 610,000 volumes in book or microfilm format.

The technological advances in Tanenbaum Hall raise research to an art form. Computer-generated databases such as LOLA, the on-line catalogue, provide access to national databases, the catalogues of other major law libraries, and periodical indexes. Published materials from just about any time or place are at the fingertips of the researcher without having to leave his or her seat in front of the terminal.

Located throughout the library, 600 network access points allow students to hook up their computers and immediately gain access to the vast information sources provided by CD-ROM or on-line databases.



Overview of the Biddle Library,
Tanenbaum Hall



Biddle Library &
Media/Technology Center,
Tanenbaum Hall

Computer technology is not limited to the library, however. Throughout Tanenbaum Hall terminals allow remote access, through a laptop computer, to the Internet—e-mail, on-line catalogues and the World Wide Web, as well as the Law School network, including Lexis and Westlaw. State of the art audio/visual facilities are also available to enrich the learning opportunities.

Two seminar rooms as well as the lecture hall are wired to receive satellite feeds or films, which can be controlled either from the rooms themselves or from a remote location. Cable television reception is also available, to be used to view instructional programming and to televise special events. A “studio,” located in the library, allows students to have videotaped documentation of group negotiating sessions, moot trials, counseling sessions and practice interviews or trial strategies.

Another of the recent improvements at the Law School is the renewal of Lewis Hall. First erected in 1900 under the direction of Dean William Draper Lewis, it was the largest facility in the country devoted exclusively to the study of law. In line with this reputation, the Law School embarked on a massive restructuring and renovation project which culminated in the “rededication” of Lewis Hall in October of 1996. Once again, Penn Law students are afforded the opportunity to study law in a building which can be considered the pinnacle of legal education.

III. THE PROMISE OF LEADERSHIP

Over the past year, Penn Law has begun an intensive study of the school's strategies and objectives for the future. Developed by Dean Colin S. Diver along with a group of faculty, staff and alumni, the plan ensures that Penn Law will continue to enhance its program for generations to come.



Penn Law, close to the heart of Philadelphia, provides a diverse education in one of America's most dynamic cities.

Dean Diver's goal, simply stated, is to make Penn Law School the most integrative among the top law schools in the world; the law school which, through its teaching and research, makes the most valuable contributions to the understanding of law as a field of knowledge as well as a profession. This is to be achieved through the integration of the theory and practice of law and an understanding of American law with that of other world systems. To ensure success for his ambitious plan, Dean Diver plans to build on existing strengths and resources within the Law School.

Penn Law is uniquely positioned to reach this goal for many reasons, both philosophical and physical. On the philosophical side, Penn boasts an intellectually rich, highly interdisciplinary and research-oriented faculty; membership in a world-renowned research university which is located near strong professional schools and academic departments; a tradition of leadership and participation in law reform; and an experience-driven method of education. Other assets include its small size and informal atmosphere which establish a sense of community between students and faculty and encourage alumni loyalty. Physically, Penn possesses a geographical location at an acknowledged juncture in the world of law and public policy and an attractive, state-of-the-art, self-contained physical plant which offers the best opportunities for an enriching learning experience.

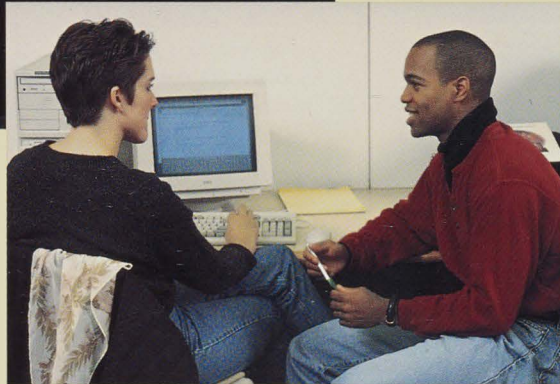
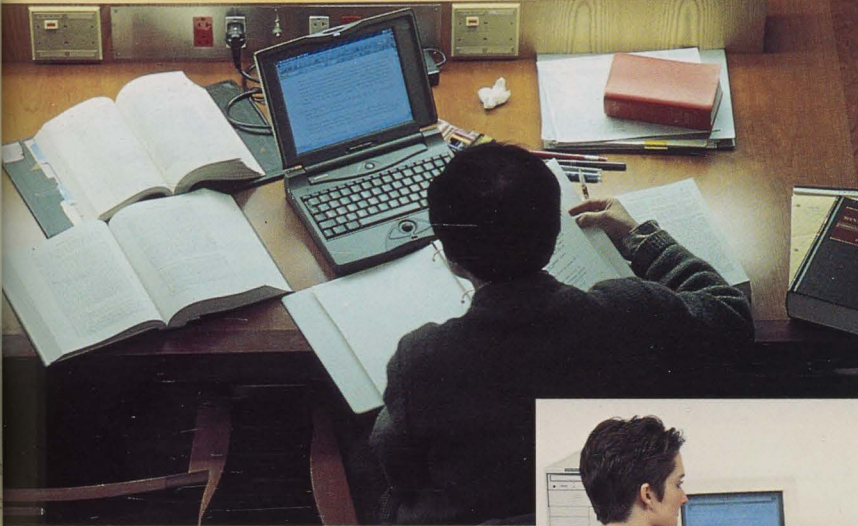
These elements form a symbiotic relationship which allows the Law School to meet the demands of an ever-changing legal world through a long range plan involving strategic initiatives aimed at the integration of many components.

Some examples of these initiatives include:

INTEGRATION ACROSS DISCIPLINES

Penn Law, when seeking new faculty appointments, will maintain an emphasis on interdisciplinary interest coupled with formal disciplinary training, with special thought given to such areas as social psychology, anthropology and political theory in order to better serve the educational interests of the students.

Encouraging joint seminars and shared teaching loads with other academic departments, and offering undergraduate courses taught by law faculty will create an educational "melting pot" of educational opportunities for law students as well as undergraduates, strengthening the academic base university-wide.



ABOVE LEFT:

A student works in Biddle Library—his laptop plugged into a computer port built into the carrel.

LEFT:

Students working in the computer lab in Tanenbaum Hall

Establishing interdisciplinary research centers, such as the Institute for Law and Economics, in fields like sociology or political science, and creating one or more interdisciplinary journals involving students and law faculty editors, will further integrate different academic disciplines.

Towards further symbiotic relationships, the Law School is exploring new joint J.D.-Ph.D. programs in such subjects as history, sociology, economics and political science as well as a six-year B.A.-J.D. program with the college.

INTEGRATION ACROSS PROFESSIONS

In order to present students with a broader definition of law, the Law School will seek to develop concentrations within the present curriculum, in alliance with the other professional schools, to offer courses of study such as business law, health law, and communications law with the possibility of the awarding of a certificate or other form of recognition from the pertinent school.

Other plans aim to encourage more cross registration between schools by developing partnerships and by bringing the Law School's academic calendar in line with the rest of the University. The Law School will also develop new multi-professional clinical programs and public service placements, following the lead of the Small Business Clinic and the Bridging the Gaps cooperative with the Medical School.

Existing student-edited journals will seek input from the students and faculty of the other professional schools. New journals will be founded with a multi-professional editorial staff. In addition, existing dual-professional degree programs (J.D. with M.B.A., M.D., M.S.W., and M.A. in Communications) will be made more accessible to students by lowering admissions barriers, shortening residency requirements, and developing genuinely integrative course offerings.



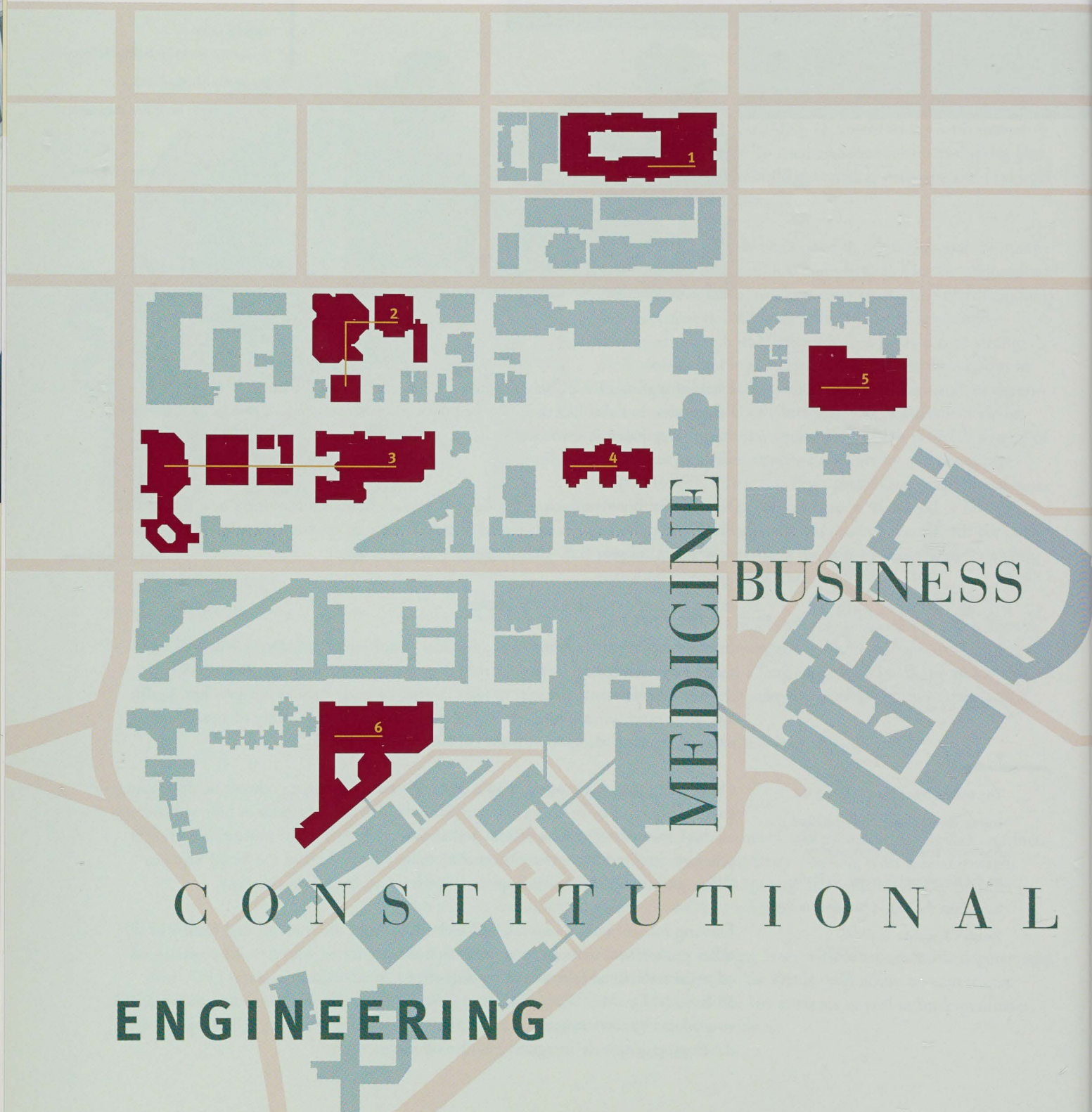
The seal of Hong Kong. During the spring, the *Journal of International Economic Law* held a symposium on the transferral of power in Hong Kong from the United Kingdom to the People's Republic of China.

THE INTERPROFESSIONAL LAW SCHOOL

- THE LAW SCHOOL 1
- ANNENBERG SCHOOL 2
- WHARTON SCHOOL 3
- COLLEGE HALL 4
- ENGINEERING SCHOOL 5
- SCHOOL OF MEDICINE 6

“In fashioning the leadership curriculum, our plan is to take full advantage of the extraordinary educational resources within a three-block radius at the Wharton, Annenberg, Education, Medical, and Engineering Schools, and the Departments of Economics, History, Sociology, and Political Science.”

DEAN COLIN DIVER



1. LAW AND BUSINESS

a. Law and Entrepreneurship

Introductory Courses:

Contracts
Corporations
Corporate Taxation
Property

Advanced Courses:

Accounting
Corporate Finance
Corporate Lawyering
Employment Law
Estate and Gift Taxation
Real Estate Transactions
Securities Regulation

Seminars:

Corporate Finance Practice
Current Developments in Securities
Regulation

Clinics:

Small Business Clinic

b. Law and Finance

Introductory Courses:

Antitrust
Commercial Credit I & II
Contracts
Corporations
Corporate Taxation

Advanced Courses:

Corporate Finance
Insurance Law
Lending Transactions
Mergers and Acquisitions
Regulation of Investment Management
Securities Regulation

Seminars:

Advanced Issues in Secured Financing
Advanced Corporate Bankruptcy
Current Issues in Securities Regulation
Payment Systems

c. Law and International Business

Introductory Courses:

Conflict of Laws
Comparative Law
Contracts
Corporations

Advanced Courses:

Domestic and International Sales
East Asian Law
European Union
International Civil Litigation
International Human Rights
Mergers and Acquisitions
Public International Law
Regulation of International Trade
Research on Foreign and International Law

Seminars:

International Environmental Law
International Taxation
Law and Economic Reform in China

Journals:

Journal of International Economic Law

3. LAW AND MEDICINE

Introductory Courses:

Administrative Law
Antitrust
Contracts
Torts

Advanced Courses:

AIDS and the Law
Bioethics
Food and Drug Law
Insurance Law
Mental Health Law
Products Liability
Toxic Torts

Seminars:

Emerging Issues in Managed Care
Individual Rights and Health Care
Law and the Elderly
Life and Death

Externship:

University Health System

4. LAW AND CONSTITUTIONAL DEMOCRACY

Introductory Courses:

Administrative Law
Constitutional Law

Advanced Courses:

Church and State
Constitutional Litigation
Cultural Conflict and Intentional Torts
Federal Courts
First Amendment
Immigration Law
Law and the Political Process
National Security Law

Seminars:

Comparative Constitutional Law
Constitutional Theory
Critical Perspectives: Race and Gender
Religious Consciousness in Legal
Thought
Welfare Law

Journal:

Journal of Constitutional Law

2. LAW AND COMMUNICATIONS

Introductory Courses:

Administrative Law
Antitrust
Constitutional Law
Copyright

Advanced Courses:

First Amendment
Law and the Arts
Mass Media Law
Intellectual Property: Patents
Intellectual Property: Trademarks
Regulated Industries

Seminars:

Advanced Copyright
Law in the Information Age

COMMUNICATION

LAW

INTEGRATION OF THEORY AND PRACTICE

The Law School plans to introduce practice programs more explicitly into the general classroom core curriculum through such activities as elaborated simulations running concurrently with classroom lectures. These simulations would be developed and perhaps supervised by third year students. Teaching or research collaborations between clinical and nonclinical faculty will also be explored to broaden the experiential opportunities available.

The Public Service program would be broadened and enhanced based on the model of the proposed Interdisciplinary Health Seminar, while the clinical program would undergo improvements through concentration on the transactional and drafting arenas. Expanded externships are planned in areas of particular faculty research interest, which will maximize the faculty's active supervision and conceptual reflection.

The attainment of a synergistic bond between classroom and practical experience will not only enhance the learning experience of the students but also strengthen the Law School's position as a fully integrative institution.

INTEGRATION ACROSS LEGAL CULTURES

First and foremost the Law School's blueprint for the future will maintain and strengthen its already topflight LL.M. program. Some points to consider towards this goal include the expansion of LL.M. enrollment with a student body of unassailable quality, particularly those with English proficiency.

Integration between J.D. and LL.M. programs will be increased by encouraging LL.M. students to take a first year J.D. course, providing co-curricular opportunities like journal writing to LL.M. students, and selectively using LL.M.'s as a resource on foreign law for J.D. students (i.e., as guest lecturers in domestic law classes or as presenters in workshops in important foreign-law issues or developments).

Another path which will be explored is the identification of foreign legal academics to collaborate with the current faculty in research and teaching through the creation of short concentrated courses or seminars. Additionally, partnerships with a small number of foreign universities will be sought to establish a faculty exchange.

Through the successful application of the above four strategic initiatives, the University of Pennsylvania Law School will become the most integrative among the top, research-oriented law schools in the world. It is a future full of promise—the promise of leadership.

Front facade,
Nicole E. Tanenbaum Hall



DEAN COLIN DIVER,

when defining the mission of the
University of Pennsylvania Law School for the future,
in view of its glorious past and its illustrious present,
says it best :

“ The mission of the Penn Law School is, through research and teaching, to generate intellectual and human capital for the leadership of the legal profession in the 21st Century...”

“... We view law broadly, not only as a set of culturally-contingent institutions, doctrines, and procedures, but also as a profession, a field of intellectual inquiry, and an instrument for achieving social order, human progress, and justice....”

“... We view the legal profession broadly, to embrace those who, through the making, interpretation, and application of legal norms, resolve disputes, enforce and implement policy, plan transactions, and structure relationships, incentives, and institutions....”

“... We foresee that, in the coming century, lawyers will be called upon to integrate the findings of an ever wider array of human knowledge, change specialties and update substantive knowledge more frequently and rapidly, move readily across professional boundaries, and devote increasing energy to building, maintaining, and leading organizations. Leaders of the profession will require not only conventional doctrinal and institutional knowledge and skills in analytical reasoning, research, written and oral communications, but also skills in integration and synthesis of knowledge, strategic and tactical thinking, and the capacity for continuous self-criticism and self-education.”



THE
LEADERSHIP
LAW SCHOOL

STRATEGIC PLAN

UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

STATEMENT OF GENERAL GOALS:

THE LEADERSHIP LAW SCHOOL

The goal of the Law School's strategic plan is to become, and to be widely recognized as, the "leadership law school." We use the term "leadership" in both of its senses: innovation and influence. We aspire to be the leader in the study and teaching of leadership through law.

In the coming century, all lawyers will be called upon to integrate the findings of an ever wider array of human knowledge, change specialties and update substantive knowledge more frequently, and move readily across professional boundaries. The leaders of the legal profession are those whose actions will add lasting value to the society by: 1) finding creative, positive-sum solutions to conflicts; 2) designing and managing productive institutions and mutually beneficial relationships; and 3) celebrating, embracing and harnessing the energy of our demographic and cultural diversity. The goal of the Law School's strategic plan is to become the national leader in building the intellectual capital and training the human capital for this vision of "lawyer-leadership" in the 21st Century.

Among the elite, research-oriented American law schools, Penn has long been known for its strengths in such traditional doctrinal fields as administrative law, civil procedure, commercial law, criminal law and labor law; its interdisciplinary research in fields such as economics, history and philosophy; its contributions to law reform through its relationship with organizations like the American Law Institute; and its commitment to integrating theory and practice in such experiential learning contexts as clinical and public service programs.

To achieve its aspiration to become the leadership law school, we intend to build a unique "integrative curriculum." Unlike almost all of our competitors in the law school world, which seek to "go it alone," Penn Law is committed to taking full advantage of the University's extraordinary resources in the cognate disciplines of economics, history, philosophy, political science and sociology, and the sister professions of business, communications, education, engineering, medicine and social work. Creative and selective partnerships with those resources will enable Penn Law to create a national model for the study and teaching of leadership through law.

PROPOSED INITIATIVES:

THE INTEGRATIVE CURRICULUM

Our strategic plan calls for continued strengthening of the Law School's outstanding foundation of legal doctrine, theory and skill. In particular, the plan depends on implementation of the following specific initiatives:

A. LAW AND BUSINESS: We aspire to build a world-class program in law and business, one that will make Penn an international center for the study and teaching of the role of law and legal professionals in the design and management of institutions. Initiatives include: strengthening the law faculty in the field of business and finance; expanding clinical programs in transaction planning; creating concentrations within the J.D. degree program in law and business, with emphasis on entrepreneurship, finance and international business, with participation by the Wharton School; establishing a six-year B.S.-J.D. program with Wharton; strengthening the J.D.-M.B.A. program; and increasing collaborative research and teaching with the Wharton faculty. This initiative will be an integral part of the University's academic priority in the field of "Management, Leadership and Organizations."

B. LAW AND COMMUNICATIONS: The Law School seeks to develop international distinction in the field of law and communications and information science. Initiatives include: strengthening the standing faculty in the fields of intellectual property and computer law; exploring the creation of a clinical program in intellectual property; developing a concentration within the J.D. degree program on law and communications with participation by the Annenberg and Engineering Schools; exploring a six-year B.S.-J.D. degree program with the Engineering School as well as collaboration at the masters degree level with Engineering and Annenberg; and increasing faculty collaborations with those schools. This initiative will promote the University's plan to build distinction in "Information Science, Technology and Society."

C. LAW AND MEDICINE: As a component of the first of the University's six academic priorities ("Life Science, Technology and Policy"), we aspire to develop the foremost interdisciplinary program in law and medicine. Initiatives include: appointing one or two faculty with expertise in health law; building a concentration in Health Law within the J.D. degree program in collaboration with the Medical School and other academic departments; research collaborations with the Leonard Davis Institute, the Medical School and other schools and departments; exploration of a graduate program in health law.

D. CONSTITUTIONAL DEMOCRACY AND SOCIAL STRUCTURE: The Law School seeks to strengthen and expand its existing programs of teaching and research in constitutional law, civil rights and liberties, administrative law and urban law. Proposed

initiatives include: strengthening law faculty competence in political theory and empirical social sciences; development of a joint Law School-SAS undergraduate minor in the field of law and social structure; establishment of a new research journal in constitutional law, operated in collaboration with cognate departments at Penn and the National Constitution Center; and establishment of J.D.-Ph.D. programs with the departments of Sociology and Political Science. In this way, the Law School will contribute directly to the development of Penn's distinction in "American and Comparative Democratic and Legal Institutions" and "The Urban Agenda."

OUTCOME MEASUREMENTS & ASSESSMENTS

The only true measure of success of any educational institution is the quality and quantity of the intellectual capital and human capital that it produces. In particular, the Law School's strategic plan calls for the Law School to achieve national leadership in generating and transmitting knowledge about leadership in and through the law.

We will use the following indicators to provide evidence of progress toward this goal:

- A. STUDENT SELECTIVITY:** improved success rate against our principal competitors as measured by admission "overlap reports"; increase (relative to peers) in mean and median LSATs and GPAs of entering class; improved yield (admit to matriculant ratio) for all applicants and particularly minority applicants; increased number of matriculants with demonstrated interest in and commitment to interprofessional study.
- B. CURRICULUM:** expansion of "interprofessional" electives, with an increasing percentage taught by standing faculty; expansion of clinical opportunities, especially in nonlitigation dispute resolution and transaction planning; increased evidence of student selection of concentrations within the J.D. degree program; increased cross-registration between the Law School and other schools (with an improved balance between inflow and outflow).
- C. RESEARCH:** increase in quantity and improvement in quality of faculty research publications, in general, and interdisciplinary and interprofessional research, in particular; increased grant and contract support for research; increased percentage of students writing for research-based law journals.
- D. GRADUATES:** increase in the numbers and prominence of graduates in "leadership" positions such as managing partners of law firms, judges on the nation's leading courts (and their law clerks), founders of businesses, corporate managers, leaders in education, government and other not-for-profit fields.

RESOURCE REQUIREMENTS

Full implementation of the strategic plan would require at least the following incremental resources:

- A. FACULTY:** to expand the standing faculty, with new hiring concentrated in substantive and disciplinary areas that will support the strategic initiatives identified above, and with an emphasis on increasing the demographic, cultural, and intellectual diversity of the faculty. In this connection, the Law School aspires to increase the number of endowed professorships by eight in order to attract and retain world-class scholars.
- B. RESEARCH:** to support expanded interprofessional research: \$800,000 per year.
- C. PROGRAM DEVELOPMENT:** to support development of concentrations and other interprofessional courses: \$200,000 per year.
- D. FINANCIAL AID:** for general competitively-mandated increase in need-based awards, and for a new program of merit awards to attract a select group of outstanding "leadership" candidates: \$1.1 million per year.

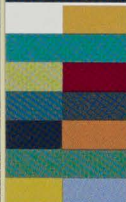
The incremental resources necessary to fund these resource expansions would come from the following sources (in each case, showing increments above the current base):

- A. ENDOWMENT INCOME:** increase of \$2.1 million per year, requiring a total increase in endowment of \$53 million
- B. GIFTS FOR CURRENT USE:** \$500,000
- C. GRANTS AND CONTRACTS:** \$500,000
- D. OTHER** (tuition from new graduate programs, income from continuing legal education, fee for services, etc.): \$400,000

It is assumed that it will take five years for revenues to increase by these amounts. Therefore the resource requirements shown above represent the increments above current baseline in year five.

The premise of the Law School's strategic plan is that the study of law must become allied with the study of leadership, and that Penn is uniquely positioned to accomplish this alliance through a partnership among its professional schools and academic departments. In 1790, with the appointment of James Wilson as its first Professor of Law, Penn assumed leadership by integrating the study of law into the basic liberal education of the new Republic's future leaders. Two centuries later, Penn can again take the lead by making the study of law central to the education of a new generation of leaders — the "interprofessional professionals" of the 21st Century.

THE LEADERS OF PENN LAW



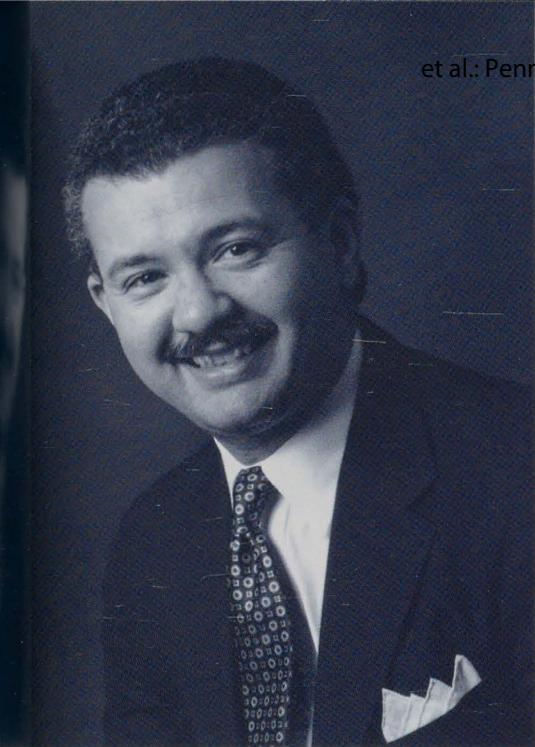
The alumni featured in this issue of the *Journal* have chosen dramatically and remarkably successful careers ranging from law to government to business to entertainment. Yet all of them have one thing in common: they learned invaluable lessons in leadership while at the University of Pennsylvania Law School. Their initiative and determination represents the best of what the Law School offers to today's students and tomorrow's law-leaders.

ALUMNI LEADERS

GILBERT F. CASELLAS

*Chairman
Equal Employment Opportunity Commission
Washington, D.C.*

PENN LAW SCHOOL '77



GILBERT F. CASELLAS is a leader in every sense of the word, as his professional resume clearly illustrates.

Currently serving a five-year term as Chairman of the Equal Employment Opportunity Commission (EEOC), a presidential appointment which requires Senate approval, Casellas oversees an agency which enforces Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act and other federal laws prohibiting job discrimination. In fiscal 1995, the EEOC resolved 19,148 of 19,750 charges received.

Casellas accepted and was approved for the position in 1994, while serving as general counsel to the United States Air Force, where he was involved in international and environmental law, procurement, utilities regulations, criminal activities on base, and even the "Law of Outer Space." Casellas came to the Air Force from his position as litigator and partner at Philadelphia's Montgomery, McCracken, Walker & Rhoads.

Casellas' call to public service surely comes partly from an inner desire to help, but he also credits his education at Penn Law with illuminating the position law and lawyers have in society.

"[Penn Law] taught me how to integrate theory and practice. I learned that law was not simply an abstract concept but an integral part of the fabric of our social, economic and political life. I also learned how the law could change people's lives for the better and why it should."

When describing what he feels makes Penn Law the Leadership Law School, Casellas cites "the integration of disciplines." He says, "Dean Diver's strategic plan captures this integration philosophy by describing the 'integrative curriculum' that will produce the 'inter-professional professional' of the 21st century. In addition, it offers a top-notch faculty, a talented student body, a creative, committed dean and most of all, a collegial atmosphere and culture."

When remembering his years at Penn Law, Casellas' clearest memory is the strong sense of fellowship which defined his education there.

"What dominates my memories of law school is the sense of community and collegiality. Unlike its peer law schools, Penn did not have a cut-throat, competitive atmosphere and its students were not just 'numbers.' Rather, we studied and learned in an atmosphere that encouraged collaboration and collegiality."

Casellas served as law clerk to The Honorable A. Leon Higginbotham, U.S. Court of Appeals for the Third Circuit, Pennsylvania, and was a lecturer-in-law at the Law School for four years during the '80s and '90s. He has served as president of the Hispanic National Bar Association, chairman of the Board of Governors of the Philadelphia Bar Association, a member of the House of Delegates of the American and Pennsylvania Bar Associations, and president of the University of Pennsylvania Law Alumni Society. Casellas was also special counsel on the Philadelphia Commission on Human Relations and the Mayor's Commission on Puerto Rican and Latino Affairs. He has spoken throughout the country on trial advocacy, professional responsibility and the involvement of minorities in the law profession.

Casellas currently serves as a trustee of the University and as chair of the Board of Overseers of the School of Social Work. He resides in Chevy Chase, MD with his wife, Ada, and his daughter, Marisa.

CHARLES A. HEIMBOLD, JR.

*Chairman and CEO
Bristol-Myers Squibb Co.
New York, N.Y.*

PENN LAW SCHOOL '60



SINCE GRADUATING from the University of Pennsylvania Law School in 1960, Charles A. Heimbold, Jr., has been a leader in the fields of law, business and volunteer work. The chairman and chief executive officer of Bristol-Myers Squibb Co., Heimbold serves on the Law School's Board of Overseers. In addition, he has been a trustee of the University of Pennsylvania since 1994 and was recently named to the Trustee Executive Committee.

As chief executive of Bristol-Myers Squibb, Heimbold captains a Fortune 50 company employing more than 51,000 people worldwide. The company's 1996 sales exceeded \$15 billion.

Though no longer a practicing attorney, Heimbold nevertheless relies on his legal education on a daily basis. "The Law School training and experience prepared me very well for my

career," he says. "I developed analytical skills as well as knowledge of a broad range of issues. That background has been an invaluable asset."

Heimbold's road to leadership began in his family, where, as the oldest of six children, he had responsibility for his younger siblings. He cites his service in the U.S. Navy as another valuable experience. "There are certain aspects of leadership that can only be learned in the military," he says.

Several Law School faculty influenced Heimbold, including Jefferson B. Fordham, Leo Levin and Louis Henken. "These were great teachers and leaders, men of high integrity who served as models for us all," he says.

Heimbold was drawn to the legal profession in part because of its stature and leading role in society. "Professor Lou Schwartz used to talk about lawyers being the architects of society," he recalls. "Lawyers were considered leaders of their communities. That had a powerful and positive effect. I was attracted to the aura of responsibility and leadership that was associated with the profession."

When he left the Penn campus in 1960, Heimbold had no specific plans for a business career. But he didn't rule out any possibilities either. "I felt that business was an attractive option," he recalls. "I was always interested in business as well as law."

After law school, Heimbold joined the prestigious law firm of Milbank, Tweed, Hadley & McCloy in New York. "You should pour all your energy into your first job," Heimbold advises. "Look at those long hours of work as an opportunity to develop skills that will serve you well throughout your life. I worked at Milbank for a year and a half on an oil industry issue that amounted to an obscure legal footnote. But I developed a lot of interest in the petroleum industry as a result. Quite a few years later I became a director of Mobil Oil Corporation."

After three years at Milbank, Tweed, Heimbold moved on to the counsel's office at what was then Bristol-Myers, where he continued to practice corporate law. The counsel's office exposed him to a wide range of issues critical to the company and led to additional responsibilities.

After six years as a lawyer for the company, he was assigned to run subsidiaries. Soon, he was managing small companies within the corporation. Eventually, Heimbold's ability to focus thoughtfully on the future led to his appointment as the company's first

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THE LAW SCHOOL TRAINING AND EXPERIENCE PREPARED ME VERY WELL FOR MY CAREER. I DEVELOPED ANALYTICAL SKILLS AS WELL AS KNOWLEDGE OF A BROAD RANGE OF ISSUES. THAT BACKGROUND HAS BEEN AN INVALUABLE ASSET.

strategic planner. (His interest in strategic planning remains acute. Last year he played a vital role in crafting the Law School's own strategic plan.)

Though leadership has become second nature to Heibold, he continually works to expand his own leadership capabilities while developing the leadership talents of subordinates. "This business doesn't grow on its own," he says. "The market rewards performance and the key to performance is leadership. We work very hard to develop leadership skills in our company. In the intensely competitive global market, good leadership can make the difference between success and failure."

Heibold has developed a connoisseur's appreciation of the leadership shown by others. "Colin Diver has done an outstanding job of leading the Law School through the strategic planning process. He skillfully brought faculty, overseers and other constituencies together around the key issues. The new strategic plan sharpens the Law School's focus and builds upon its strengths.

At the same time, it takes full advantage of the diverse resources available on the Penn campus," Heibold says.

Heibold enjoys being a leader. "Leadership is stimulating," he says. "It's hard work but it's also a lot of fun."

"With leadership comes responsibility. A truly good leader must have a deep understanding of the responsibilities attendant to the job. Being a leader means you provide vision and enthusiasm. It means you help others to share the vision and improve upon it. And it means you lead by example, never treating your responsibilities as just a job."

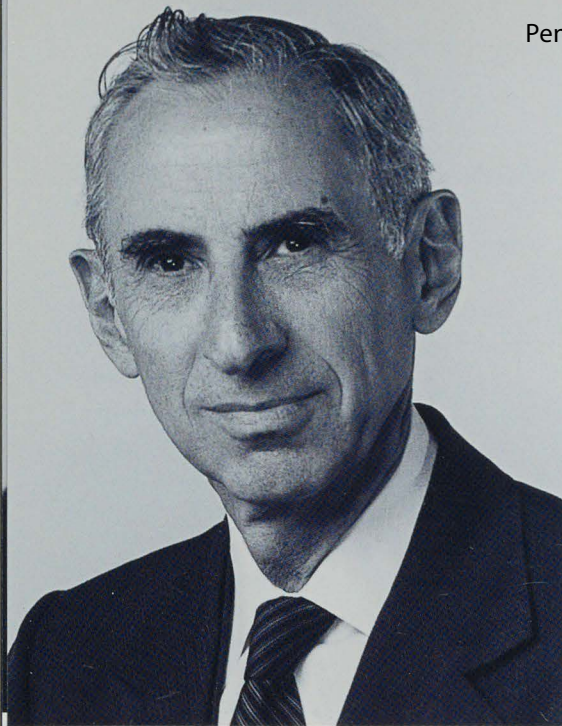


Charles A. Heibold, Jr. '60 and Howard Gittis W'55, L'58 at the rededication of Lewis Hall.

HAROLD E. KOHN

*President and Founding Partner
Kohn, Swift & Graf, P.C.
Philadelphia, Pa.*

**PENN COLLEGE '34
PENN LAW SCHOOL '37**



“ I LOVED THE MOOT COURT ARGUMENTS, THE WAY THEY HELPED ME LEARN ABOUT HOW EASY IT CAN BE TO OVERLOOK THE OBVIOUS! I LOVED LEARNING ABOUT THE PROCESS OF DISCOVERY. IT REALLY INJECTED A CERTAIN AMOUNT OF MODESTY INTO ME.

“ I DIDN'T KNOW WHAT I'D BE when I got out of law school — except that I hoped I'd have a great career,” Harold Kohn recalls.

“Great” only scratches the surface. Kohn has been practicing law for nearly sixty years and now commands one of the most successful firms in the country, Kohn, Swift & Graf, P.C.

When he was admitted to the bar in 1938, Kohn didn't even know what the face of law would look like more than half a century later. “I certainly never expected to be doing the kind of work I'm doing here!” he exclaims. “Lots of it didn't exist; the class-action suits and antitrust work were only really developed after I got out of school.”

The way Kohn says it, it sounds like he was merely an observer of this development, but in actuality, he was a pioneer. Regarded as the “dean of the antitrust class-action bar,” Kohn was among the first lawyers in the country to file class-action lawsuits.

Although the scope of practicing law has dramatically changed since the 1930s, Kohn is still thankful for the fundamentals he learned while at Penn. He credits the Law School for teaching him “how to be a lawyer.” He says he learned “how to grasp concepts [and] understand the theory behind the specifics — that makes it possible to extrapolate the knowledge into new areas and new cases.”

As a student, Kohn “always took an active role in classroom discussions.” He remembers that he “especially enjoyed the give-and-take of the arguments, the

way subtle changes in expressing a point could alter the outcome.” He also enjoyed “the role that imagination plays in the debate.”

Kohn has continued to show his belief in student debate by supporting the Law School Clinical Program through the Arronson Foundation, of which he is the president. The Clinic gives students the opportunity to provide legal services to the community in civil practice, mediation and small business affairs.

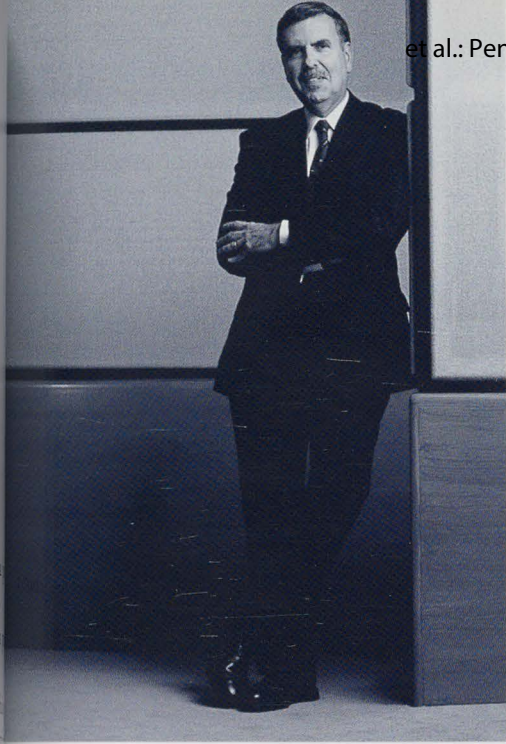
Although the clinical program wasn't available while Kohn was a student, he gained a strong sense of practical experience through Moot Court. “I loved the Moot Court arguments,” he says. “The way they helped me learn about how easy it can be to overlook the obvious! I loved learning about the process of discovery. It really injected a certain amount of modesty into me.”

With a lifetime of successes in his personal and professional life, Kohn still takes the time to donate to a variety of causes in the arts and higher education, and the modesty he learned years ago still shines through today.

GERALD M. LEVIN

CEO
Time Warner
New York, N.Y.

PENN LAW SCHOOL '63



ASK GERALD LEVIN, CEO of Time Warner, what he expected to be doing at this point in his life when he was in law school, and he'll laugh. "At that age," he says, "I was finally coming to terms with the idea that I wasn't going to write what we used to call 'The Great American Novel.'" Levin came to Penn Law with a broad, liberal-arts based background and "only a vague notion" of what going to law school could do for him.

In later years he discovered that the intellectually rigorous experience would be instrumental in building a career that's ranged from traditional lawyerly practices, to government work with the U.S. Department of Housing and Urban Development, to his current position as the chief executive of the world's largest media and entertainment company.

"My years in law school serve me in a less technical sense," he notes. "The benefits fell more in line with crisp analytical thinking, gaining the ability to piece through a problem, and learning how to articulate a point." For him, it was an exercise in advocacy; a lesson in learning to get a message across. "After all," Levin jokes, "Time Warner is not a widget company."

Time Warner was formed in 1990 by a merger of Time and Warner Communications. Last year, Levin proved his mettle as a negotiator when he guided the company through a multi-billion dollar merger with Ted Turner's Turner Broadcasting System, expertly diffusing potential land mines along the way.

Today, the company is a \$20.9 billion giant which controls a wide variety of entertainment branches including various magazines, Warner Music, Warner Bros. Movies and TV shows, HBO and other cable channels, and now Turner's cable channels including CNN, TBS and several mini-movie studios. In addition, Time Warner is the country's second largest cable provider.

Time magazine appropriately reports that Time Warner is a "behemoth" in the media industry. It's a charge that Levin takes seriously. "The way we report the news and the analysis we offer has a substantial impact on how the people view the events of the world and, to some extent, the way they view themselves," he remarks. "The toughest thing about my job is the challenge of upholding that responsibility in an environment that nurtures and nourishes...creativity, within the context of a demanding financial marketplace."

To students considering law school, who may not necessarily want to become lawyers, Levin offers this advice: Go. Law school, he says, can help any young person find him or herself, and students should recognize that law is an avenue into other occupations — including traditional venues such as government and business, as well as careers in fields like

entertainment and communications.

"I'm always surprised to see J.D. degrees embedded in the résumés of my colleagues who aren't lawyers but are excelling in careers that seem to have nothing to do with the law!"

Granted, Levin believes that the law is vital in business transactions, noting that within the context of communications, nearly every facet of the law can come into play. "In today's marketplace, communications are such a dominant part of the global economy that issues are chock full of contracts, copyrights and first amendment concerns," he says. "What is business, but a series of contracts — rights to creative materials — securing rights around the world?"

YOU DON'T HAVE TO CONVINCe the Francis Milone family that Penn Law is the Leadership Law School; they all know it through first hand experience.

Milone, a partner at Morgan, Lewis & Bockius LLP in Philadelphia, is married to Maida (L'83), general counsel of the DuPont Merck Pharmaceutical Company and father to Michael (L'95), a clerk for Judge Hoffman of the Pennsylvania Superior Court.

A partner at Morgan, Lewis & Bockius since 1981, and now the firm's managing partner, Milone specializes in labor and employment law litigation, representing corporate clients in matters involving claims such as age, sex, race and handicap discrimination, as well as breach of contract, wrongful termination and defamation in both jury and non-jury trials. He is also experienced in claims involving collective bargaining agreements and complex employee litigation under ERISA.

"Like most top-rated law schools," he explains when questioned regarding Penn Law's contribution to his successful career, "Penn Law provided me with a very solid base in substantive law and taught me how to think like a lawyer. [More importantly], however, it provided

me with that base in the context of a diverse, highly intelligent, and highly motivated student body. Interacting and competing with my peers both socially and academically during my years at Penn Law prepared me in a unique way for the interpersonal and leadership challenges presented by the large law firm in which I eventually found myself."

Milone firmly believes that Penn Law has earned its reputation as the Leadership Law School on a regional and national basis through the symbiotic relationship between its faculty, its educational programs and the caliber of its graduates.

"The excellence of the faculty and educational experience at Penn Law have permitted its graduates to assume positions of leadership throughout the country in corporations, civic and charitable institutions, and law firms of all sizes and specialties," he asserts. "Those business and civic leaders, in turn, are eager to tap into the new graduates in order continually to revitalize their organizations with the next generation of leaders particularly in the Philadelphia community. This pattern of leadership across the generations has contributed significantly to the Law School's outstanding reputation and, of course, has therefore assisted in attracting Penn's outstanding faculty and student body. There are very few law schools that have achieved that tradition and the multitude of successes of its graduates."

The lessons Milone took with him after graduating, however, were not all learned in the classroom; some were learned on the basketball court when his team won the Law School basketball league championship two consecutive years without a single loss.

"I was the point guard on that team," Milone remembers. "And I learned a lot about leadership and interpersonal skills by trying to distribute the ball to a group of aggressive future lawyers with outstanding judgment and intelligence but with an inflated view of their shooting abilities."

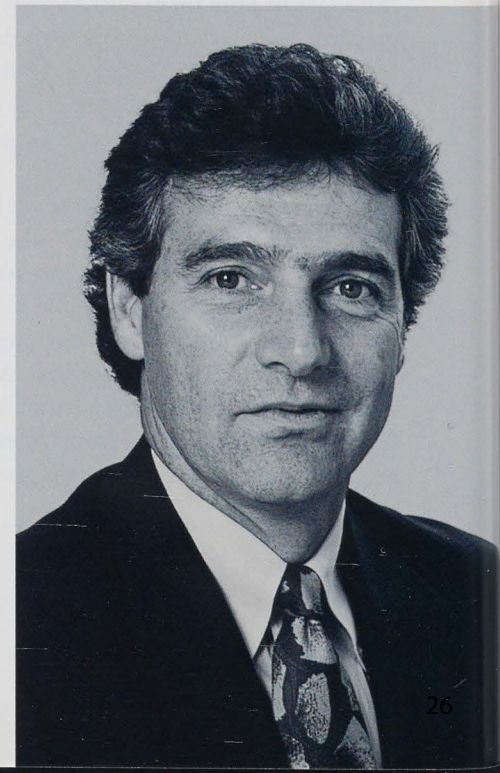
Milone is admitted to practice in, *inter alia*, the Supreme Court of the United States, the Supreme Court of Pennsylvania, the Third, Fourth, Fifth, Eighth and Eleventh Circuit Courts of Appeals, and the United States District Courts for the Eastern and Middle Districts of Pennsylvania and the District of Connecticut.

He is a member of the sections of Labor, Litigation and Antitrust Law of the American Bar Association and the Employee Rights and Responsibilities Committee of the Labor Section. He lectures frequently on a variety of labor and employment law issues.

FRANCIS MILONE

*Managing Partner
Morgan, Lewis & Bockius
Philadelphia, Pa.*

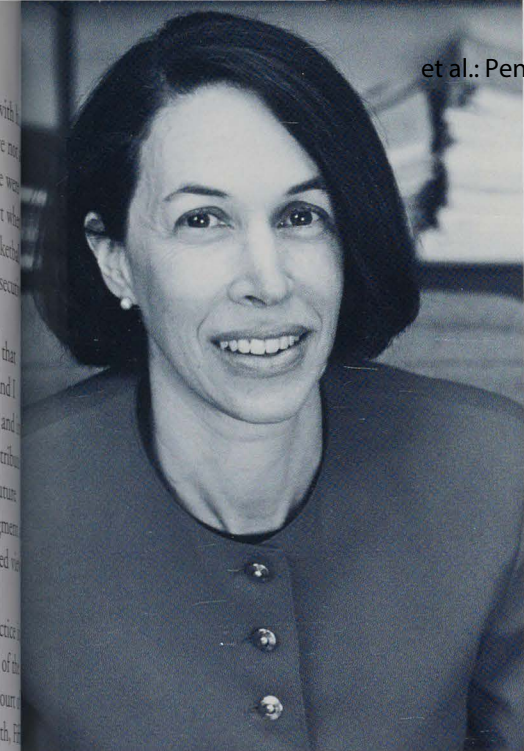
PENN LAW SCHOOL '74



HELEN P. PUDLIN

Vice President and General Counsel
PNC Bank Corp.
Philadelphia, Pa.

PENN COLLEGE FOR WOMEN '71
PENN GRADUATE SCHOOL OF EDUCATION '71
PENN LAW SCHOOL '74



TO SAY THAT Helen Pomerantz Pudlin is a busy person would be the understatement of the year.

Pudlin is senior vice president and general counsel of PNC Bank Corp., N.A., a trustee of the Academy of Natural Sciences and a member of the Board of Philadelphia Facilities Management Corporation and the Board of Ethics of the City of Philadelphia, as well as other civic organizations too numerous to mention.

Add to this a husband (David Pudlin, L'74) and two teenage children, and you have responsibilities that would make most people's heads spin.

Pudlin does it all with aplomb, however, and she still finds time to attend Law School functions and serve on such groups as the 1996 Parents and Partners Day panel, which brought back a select group of graduates to tell first-year law students what they have accomplished through their law degree from Penn.

Her position at PNC — in which she manages the centralized legal staff of 62 attorneys, oversees all legal functions, and serves on the management committee — takes her from Philadelphia to Pittsburgh from early Monday morning to late Thursday evening, with Friday spent in her Philadelphia office. Pudlin joined PNC Bank in 1989 as general counsel of Provident National Bank, PNC's Philadelphia affiliate at the time, from Ballard, Spahr, Andrews and Ingersoll, where she was a partner. In 1992 she was elected senior vice president and deputy counsel for PNC and in 1993 became general counsel of the holding company. Between her offices in Philadelphia and Pittsburgh, she oversees a staff in six states.

Pudlin has many fond memories of Penn Law — not the least of which is meeting her husband — but what she remembers most is the “warm environment and the great friendships with both students and faculty. Many of these friendships I still maintain today.”

Through it all, Pudlin has kept strong ties to the Law School. In July she was named to the Law School Board of Overseers. Previously serving as first vice president of the Law Alumni Society, Pudlin also served for four years as a lecturer at the Law School, an experience she “thoroughly enjoyed.” She remarks, “The students are smart, thoughtful, and provocative. The student body is diverse, the faculty is strong, and the curriculum was then and still is excellent.”

In the past, Pudlin served on the Board of Governors, the Judiciary Committee, and the House of Delegates of the Pennsylvania Bar Association. She currently is a member of the Board of Advisors of the Public Interest Law Center of Philadelphia, and she serves on the Committee of Seventy and the Forum of Executive Women. She has co-authored chapters in the *Criminal Antitrust Litigation Manual*, published by the American Bar Association Litigation Section, and the *Review of Antitrust Laws and Procedures*, published by the American Bar Association Antitrust Section.

JAMES J. SANDMAN

*Managing Partner
Arnold & Porter
Washington, D.C.*

PENN LAW SCHOOL '76

JIM SANDMAN is finding it difficult to practice law lately.

Sandman, Managing Partner of Arnold & Porter, a law firm with headquarters in Washington, D.C., is busy overseeing a 400-lawyer firm with offices in New York, Denver, Los Angeles and London. This leaves little time to practice his specialty, corporate litigation with an emphasis on product liability defense, but he does manage to keep his hand in and maintain his practice above and beyond executive duties.

Sandman's career with Arnold & Porter began in 1977 in Washington, following a clerkship with Judge Max Rosenn of the United States Court of Appeals for the Third Circuit. Working in the firm's Denver office from 1981 to 1991, Sandman then moved to Los Angeles to open Arnold & Porter's offices there. He returned to Washington in 1992 and was named Managing Partner three years later.

His years at Penn Law taught Sandman valuable skills which he has drawn upon throughout his career.

"I found Penn a remarkably civil place where students were respected, both by the faculty and by their peers, for their individual merit," he states. "That atmosphere encouraged my professional development and affected how I relate to others in our profession; I hope in positive ways."

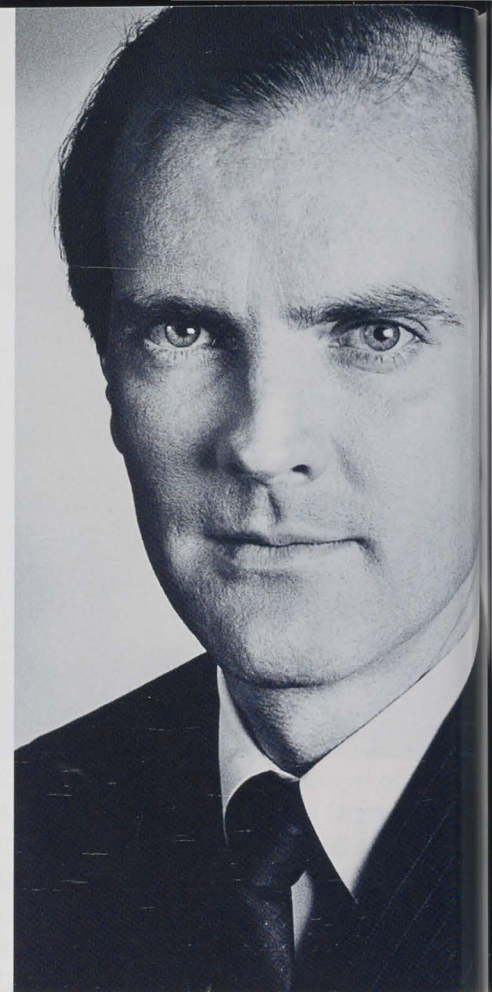
Sandman sees Penn as a leader among law schools. "Penn's accessible faculty and noncompetitive atmosphere are, I think, unusual and encourage the realization of one's potential in ways that elude other law schools."

While at Penn Law, Sandman was executive editor of the *Law Review* and named to the Order of the Coif before going on to graduate cum laude. What he remembers most fondly, however, are the relationships he developed during his years there.

"I made great friends at Penn," he relates. "When I think of the Law School, I think first of my friends, who were and are funny and smart and very supportive."

Sandman is a member of the Board of Directors of the Washington Performing Arts Society, a member of the District of Columbia Bar's Task Force on Sexual Orientation and the Legal Workplace, and a former member of the Colorado Lawyers Committee.

He and his wife, Beth Mullin, who is also a lawyer, reside in the District of Columbia with their two children, Joe, 7, and Elizabeth, 5.



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PENN'S ACCESSIBLE
FACULTY AND NONCOM-
PETITIVE ATMOSPHERE
ARE, I THINK, UNUSUAL
AND ENCOURAGE THE
REALIZATION OF ONE'S
POTENTIAL IN WAYS
THAT ELUDE OTHER LAW
SCHOOLS.

FOR MOST PEOPLE, their knowledge of banks peters out at remembering their ATM code. Not so Bob Sheehan.

Robert C. Sheehan, Executive Partner of Skadden, Arps, Slate, Meagher & Flom LLP in New York, knows that dealing with financial institutions is more complicated than simply depositing your paycheck.

In the 28 years since he started his career at Skadden, Arps—today the largest law firm in the nation, and one of the largest in the world, with 1,150 lawyers in 21 offices—Sheehan has represented a multitude of bank and thrift holding companies, both as acquirers and as targets in negotiated and unsolicited acquisition transactions and in numerous matters before various federal and state bank regulatory authorities.

Sheehan started his career at Skadden, Arps in 1969, becoming a partner in 1978. He founded and headed the firm's Financial Institutions Merger and Acquisitions Group. He was named Executive Partner in December 1993.

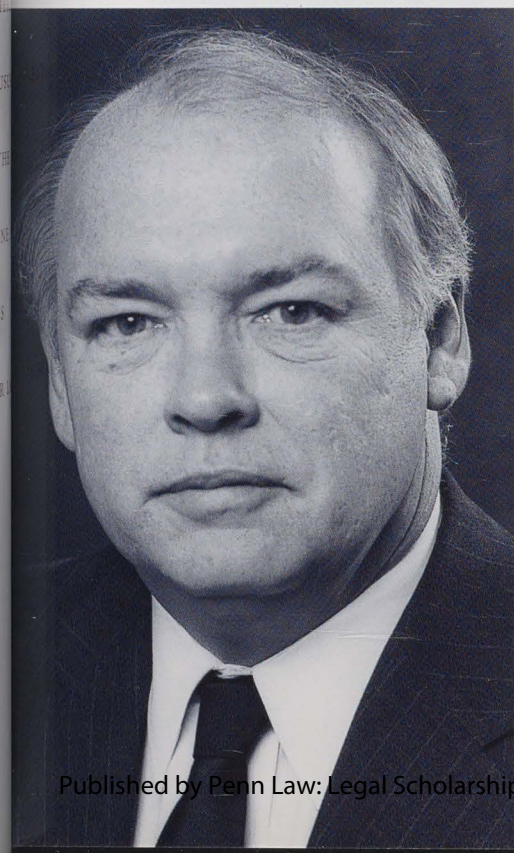
He credits Penn Law with instilling in him the tools necessary to become a successful and productive lawyer, especially in a law firm the size of his. "Penn Law played a significant role in my education, not solely by teaching me to 'think like a lawyer' but also by fostering the highest sense of professional standards and ethics. Dedication to the pursuit of excellence is, I'm sure, a paramount virtue in most career paths for lawyers," he says. "That is unquestionably so in the world of large law firms, where I have spent virtually all of my professional life. The practice of law also demands a virtue which Penn Law instills more subtly, namely, a selfless dedication to the service of your clients.

"Finally, Penn Law also fosters a respect for public service. That likely was a contributing factor in my decision to take a leave of absence from Skadden, Arps in 1974 to work for Congresswoman Elizabeth Holtzman as special counsel in conjunction with the Impeachment Inquiry by the Judiciary Committee of the House of Representatives."

When most people remember Penn Law, they speak of the people they met there, their classmates and teachers, with whom they are still in contact. Sheehan is no exception.

"One of my more amusing memories of Penn Law is the vision of the suave Louis B. Schwartz trying to argue to his first year Criminal Law class that the reach of the criminal statutes is so extensive that prosecutorial discretion becomes crucial. Professor Schwartz tried to illustrate his views about how widely the criminal law net is cast by attempting to convince more than 100 self-perceived "innocents" that virtually all of us at one time or another likely had committed acts proscribed as felonies in one or more statutes. (Perhaps Professor Schwartz indirectly taught me to try to erect more vincible straw men to win a debate.)"

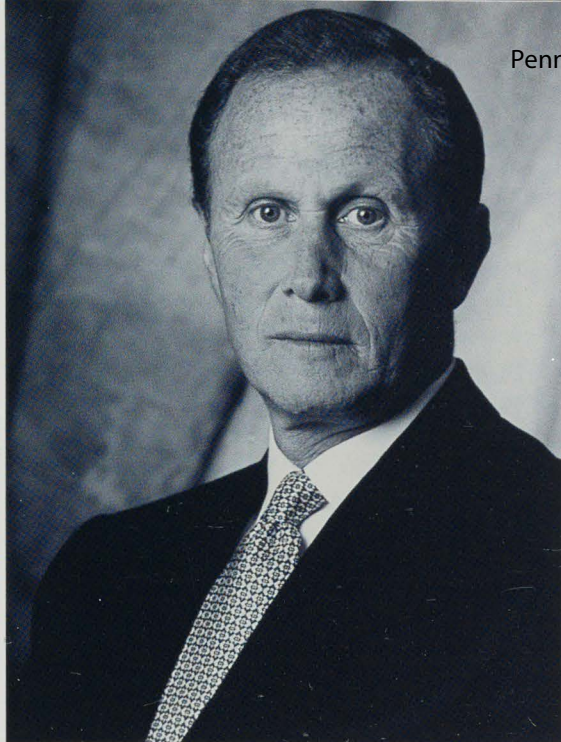
Sheehan resides in Manhattan with his wife, Beth, his daughter Lily, 16, and his two sons Rob, 15, and Will, 11.



ROBERT C. SHEEHAN

*Executive Partner
Skadden, Arps, Slate, Meagher & Flom
New York, N.Y.*

PENN LAW SCHOOL '69



HENRY R. SILVERMAN

*Chairman & CEO
HFS Incorporated
New York, N.Y.*

PENN LAW SCHOOL '64

USING HIS LAW DEGREE as the ticket into business may not have been in the forefront of Henry R. Silverman's mind when he graduated from the University of Pennsylvania Law School, but he knew it was an option. He has since capitalized many times over on that possibility, now controlling the largest hotel network in the world and quickly moving into a host of related hospitality industries.

While Silverman may not be a household name, his businesses are known and used by millions of Americans every year. Silverman's HFS Incorporated owns the rights to such hotels as Howard Johnson, Days Inn and Ramada Inn. In real estate he owns Coldwell Banker, Century 21 and ERA, as well as Avis Rent A Car. HFS has also moved into time-share business and owns a corporate relocation service and a mortgage business. In the fall of 1997 HFS will merge with CUC International, Inc., to form Cendant Corporation, the world's largest consumer service company.

These are a long way from where Silverman started after graduating from Penn Law in 1964. The Williams College undergraduate had also served in the Naval Reserve after leaving the Law School, preferring that to the Vietnam draft.

Silverman practiced law for about 18 months in New York City but was frustrated by the experience. In the mid 1960s, it was considered taboo for a lawyer to solicit business, and being proactive was also considered unethical. The phrase "rain making" was still limited to weather reports, Broadway shows and Hollywood films and was not at all appropriate for a New York lawyer.

"As a frustrated salesman, this was not very attractive to me," Silverman says. He knew the law could be a good vehicle for moving into business. Several family members were lawyers and his father and uncle had since gone into business. As a law student Silverman always knew that "moving into business was an option."

As he considered leaving the traditional practice of law, Silverman saw two distinct career options: investment banking or commercial real estate. In 1966 he chose the former and became assistant to the CEO of White, Weld & Co., an investment banking firm which was later absorbed by Merrill Lynch & Co.

Silverman learned a great deal from his boss at White, Weld and combined that with experiences he gained while working at the law firm. "I was the junior, junior lawyer on some deals so

I had a working knowledge of the business. The junior lawyers are the ones who do most of the work on these deals."

He later left White, Weld and moved to Oppenheimer, becoming manager of the Corporate Finance Department. It was a department of one when he arrived. "It's not that I knew so much about corporate finance, it's just that I knew more than anyone else." He had expanded the department to about 20 people by the time he moved on.

He left Oppenheimer because a client had asked him to come in and clean up a "mini conglomerate." Silverman's father had been chief executive officer of a publicly traded company so the offer was appealing. As the new CEO of the mini-conglomerate Silverman worked through the company's problems realizing that its highest profit potential would occur if the company was divided into pieces and sold.

"In the process, I liquidated myself out of a job," he remarks. "I've essentially been doing the same thing ever since—buying, running, fixing, selling, and merging companies."

Silverman has witnessed and been a part of Wall Street's remarkable run since the 1970s. During the 1980s he worked on leveraged buyouts with Saul Steinberg (W'59), Reliance Group

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IN HIS CURRENT BUSINESSES,
SILVERMAN DOES NOT REALLY
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“I’M STILL A LAWYER, BUT I
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TODAY AND ANNOUNCE ‘I’M
A LAWYER’.”

Holdings Inc. legendary chairman and CEO. He also refined his deal making skills at the Blackstone Group before founding HFS in 1990.

HFS has been a Wall Street favorite since Silverman took it public in 1992. The market capitalization of the company has increased from \$300 million to about \$14 billion in less than five years.

The company’s acquisitions have been especially noteworthy over the past several years. While at Reliance, Silverman and others bought Days Inn in 1984 for \$590 million. They sold it five years later for a \$125 million profit. Three years later Days Inn had fallen into bankruptcy and Silverman came back, buying the motel’s franchise system which paired nicely with Ramada and Howard Johnson, chains he had acquired with Blackstone in 1990. In 1993 he acquired Super 8 Motels and Park Inn International franchise systems. A year later he purchased Village Lodge franchise and established National Gaming. He later spun off National Gaming.

In 1995 Silverman continued his motel franchise acquisitions by purchasing Knights Inn, a 160-motel chain, and started a new chain, Wingate Inns. He also acquired Century 21 and Western Relocation Management.

Last year proved especially busy for Silverman, acquiring the North American Travelodge System, a 400-hotel chain. He also purchased Electronic Realty Associates (ERA), Coldwell Banker, Avis, Resort Condominiums and PHH, a corporate relocation and mortgage origination service.

In his current businesses, Silverman doesn’t really consider himself a “traditional lawyer.” “I’m still a lawyer, but I don’t walk into a room today and announce ‘I’m a lawyer’.”

Silverman’s law school experience gave him a set of skills which have been invaluable to his successes in business transactions. He notes the importance of mental discipline and the ability to analyze problems and recognize issues which his Penn Law experience gave him.

“That training is invaluable,” he says. “Being able to recognize the issues accelerates the decision-making process. The market rewards people who are good at making decisions. Activist managers have to make decisions all the time; recognizing the issues enables you to make quicker and better decisions.”

The ability to analyze problems and recognize these issues allows Silverman to look at a variety of perspectives and ask probing questions about the alternatives. It also enables him to synthesize data, developing creative and often unique alternatives.

Silverman is supportive of Penn Law’s strategic plan which embraces interdisciplinary/interprofessional legal education. He notes that the approach would be very beneficial to lawyers who work with business and for law school graduates who do not want to practice law for their entire career.



DOLORES K. SLOVITER

Chief Judge
United States Court of Appeals for the Third Circuit
Philadelphia, Pa.

PENN LAW SCHOOL '56

DOLORES KORMAN SLOVITER has become absorbed in judicial administration. A member of the U.S. Court of Appeals for the Third Circuit since 1979—the first woman appointed to that court—and elevated to Chief Judge in 1991, she has delivered almost 700 published opinions. But what animates her most in this, her final year as Chief Judge, are the mechanisms that she believes are needed to promote the enlightened, impartial hearing of cases.

“Lawyers, clients and others—including the press—don’t give much attention to judicial administration,” says Sloviter. “It takes place behind closed doors and doesn’t attract headlines like the cases do. But I think it’s very important to provide an understructure on which to build the techniques to facilitate neutral decision making.”

In the U.S. Supreme Court, the judges sit as a group, but in an appeals court, cases and judges are assigned to panels. Sloviter depends in part on random computer assignment to ensure that each panel includes judges with a wide range of experience and views. She then corrects the computerized schedule for any inadvertent pattern which would allow the same group to sit together regularly.

Sloviter refuses to list her “important” cases—“each case is important to

the parties involved, whether it’s a prisoner *pro se* case that we might dismiss or a multi-million dollar case”—but among her decisions that have had a wide impact she includes *Apple Computer Inc. v. Franklin Computer Corp.*, 1983, holding that the Apple operating system can receive copyright protection; several decisions which provided guiding principles for access to court materials, particularly in making available to the press videotapes placed in evidence at the ABSCAM trial (*United States v. Criden*, 1981); a decision granting tenure as a remedy for Title VII violations (*Kunda v. Muhlenberg College*, 1980); and the special statutory three-judge district court case, with Sloviter presiding, holding that the portion of the Communications Decency Act restricting certain communications over computer networks violated the First Amendment, a decision affirmed this June by the Supreme Court (*ACLU v. Reno*, 1996).

In August 1994, Sloviter introduced an appellate mediation program for the Third Circuit which applies to all civil appeals, including government cases, plus petitions for review of agency orders.

Notes Sloviter, “There’s a need for courts to be receptive to new techniques for disposing of the increasing number of appeals and to respect the dignity of the parties and attorneys, while avoiding, where possible, time spent in appeal.”

Another major Sloviter initiative in the Third Circuit has been a task force, set up in 1995, to conduct a comprehensive examination of the treatment of all participants in the judicial process, to

assure equality, regardless of gender, race, or ethnicity. Over 100 judges, lawyers, academicians, court staff and lay persons served actively on the task force or its committees. “Working with the task force is the most exciting thing I’ve been associated with as a judge,” says Sloviter.

What does she consider her most significant accomplishment? She doesn’t hesitate: “The most important thing I’ve done is help raise our daughter, Vikki, 24, to be a responsible human being.” She and her husband—Henry A. Sloviter, M.D., Ph.D., C ’42, M ’49, Professor Emeritus of Surgical Research and Biochemistry and Biophysics at the Penn School of Medicine—have lived lives that “aren’t actually hectic, just full,” she says. “We were fortunate to have day help; my heart goes out to those who don’t have that advantage.”

Looking back to her years at Penn Law, she recalls two salient lessons:

“First, I learned to begin any legal analysis without a preconception of how it should turn out. I learned that from the Socratic technique—start always from the facts, then established legal principles, and apply them or not depending on the facts and whether the legal principles themselves stand up to exacting examination.

“Second, in legal analysis, we all start from a position of equality. I came from immigrant working-class parents; some of my classmates came from well-established Main Line society families. But our treatment by the professors in class depended solely on our contributions in that arena. Penn Law was an intellectual leveling ground. What I learned in that respect has served me well ever since.”

MARK G. YUDOF

President
University of Minnesota
Minneapolis, Minn.

PENN COLLEGE '65
PENN LAW SCHOOL '68



MARK G. YUDOF experienced more than a climate change when he moved from Texas to Minnesota in June. Yudof, executive vice president and provost of the University of Texas at Austin since 1994, took the reins as the 14th president of the University of Minnesota this July.

"The move will cause some adjustments," Yudof admits. "I've already suffered through a minus-50 degree wind-chill evening, and I dropped the first puck at a university hockey game attended by 10,000 fans. But Minnesotans have been extremely warm and welcoming."

Yudof, who was a faculty member of UT Austin Law School since 1971 and served as its dean from 1984-94, has earned a reputation of dedication to scholarship. He initiated programs such as an Academy of Distinguished Teachers to recognize and reward the contributions of exceptional teachers, a sabbatical program allowing faculty to pursue scholarly activities, and a freshman seminar program which allows incoming freshmen to experience a small class atmosphere.

"My education at the University of Penn Law School made numerous contributions to my success. Familiarity with the Socratic method enables me, as an administrator, to ask probing questions, to ascertain the facts, to remain focused on the subject at hand, and to think analytically about problems. The weaving of rule, context, and policy in law school—I'm a trained legal realist!—provides the grounding for thinking systemically about university governance. The substantive law, and more importantly the instilling of habits of mind—learning to learn—was essential to my career as a law professor, law school dean, and sometime practitioner of law."

As for the Law School's strong emphasis on leadership, Yudof remarks, "Penn is a leadership school because it nicely blends theory and application, providing a necessary framework for leaders who should be principled and pragmatic. Penn's enduring qualities consist of a brilliant faculty, a diverse student body, and a student/faculty ratio that facilitates the personal interactions necessary to learning. I also believe that Dean Diver is one of the most effective and visionary law school deans in America."

Yudof authored a book, *When Government Speaks: Politics, Law and Government Expression in America*, which earned him the Meritorious Book Award from the American Society of Legal Writers on Legal Subjects in 1983 and a certificate of merit from the American Bar Association in 1984.

Among the professional honors he has received are the Student Bar Association Teaching Excellence Award, the Chicano Law Students Association Recognition Award, the Thurgood Marshall Legal Society Award, and the Jurisprudence Award from the Anti-Defamation League. Yudof is a fellow of the American Bar Association and the Texas Bar Association, an honorary fellow at the Queen Mary and Westfield College at the University of London, and he held the James A. Elkins Centennial Chair in Law at the University of Texas.

Yudof's fondest memory of Penn Law? Spoofing *You Bet Your Life* on the last day of Professor Clarence Morris' Torts class. The professor, who had a crusty exterior that did not quite hide his warm character, asked a question for which the answer was "fault." Ten or more students failed to give the correct answer, and when Morris grew agitated, the class lowered a stuffed duck adorned with Groucho Marx glasses and mustache with the pertinent term attached.

"Weeks later," Yudof relates, "I noticed that Professor Morris had placed the duck, still with the sign, in a place of honor on a chair in his office."

Who says law school is all work and no play?



At Penn Law, the balance between excellence in instruction (as reflected in the choice of law professor Stephen Morse for the Lindback Award as the University's outstanding instructor of the year), practical scholarship and theoretical research is unmatched. In this issue we feature just a few of the current instructional leaders who provide, by their example, models for the leaders of tomorrow.

FACULTY LEADERS



REGINA AUSTIN

WILLIAM A. SCHNADER PROFESSOR OF LAW,
PENN LAW SCHOOL

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“**I**, LIKE MANY BLACKS, believe that an oppressed people should not be too law abiding, especially where economics is concerned.” These may not be words you’d expect to hear from a law professor, but they are the opening sentence of Regina Austin’s “An Honest Living’: Street Vendors, Municipal Regulation, and the Black Public Sphere” (*The Yale Law Journal*, 103 Yale L.J. 2119, 1994).

They may seem especially startling when attached to the quiet, unassuming presence of Austin, but as a writer she stands up and roars, speaking directly and unhesitatingly about the facts of the real world she knows.

Austin, who teaches a course on intentional torts and cultural conflict, as well as a seminar on environmental justice, views her teaching career as almost predestined. “I was going to be a junior high school teacher, then I thought better of it and decided I’d go to law school. Growing up in Washington, D.C., I knew I was going to become a teacher; it was just a question of what *kind* of teacher—that’s what first-generation college-educated black women did.” She joined the Penn Law faculty after a brief stint in litigation at the Philadelphia firm of Schnader Harrison Segal & Lewis.

As a teacher, Austin especially stresses writing. In her over-subscribed advanced torts course, she assigns two papers in

which she encourages students to draw on their own life histories. Her students produce “wonderful papers,” says Austin. “It’s not just a question of people venting. It’s that real people have a perspective on the law that we folks in law school often pay too little attention to. But when given the opportunity, the students have some deep insights into the way the law actually operates in people’s lives.”

Student topics have included the attitudes of permanent residents of shore towns toward visitors to public beaches; the policing of street festivals such as Mardi Gras and Freaknik; gypsy cab drivers; and the unequal treatment of female and male athletes. And though Austin is best known for her studies of black culture, her students bring perspectives from a wide variety of backgrounds. Commenting on a paper about the stereotype of mob connections among Italian-Americans, she suggests that “we don’t usually talk enough about disparities in treatment across white ethnicities.”

In her own work, writing has become as important for Austin as teaching, and her articles exhibit a rare vitality of style and presentation. Her current projects in what she calls “law and cultural studies” concentrate on governmental restraints on leisure, and the association between fast-food restaurants and violence.

Within the legal issues of leisure, she is considering such matters as curfew laws and restrictions on the use of streets “for strolling, for cruising, for parking.” As for fast-food restaurants, “I’m looking

at what they mean, both as sites of consumption and as workplaces. Many of the perpetrators of acts of violence have worked at the restaurants that they’ve held up.” This particular project combines Austin’s interest in the sociology of food with her work on leisure, since fast-food restaurants have become important social gathering places.

Austin’s most noted work to date involves the notion that black economic activity is perceived as a form of deviance in the eyes of both the black and the dominant white cultures. “There is a suspicion of black consumers—both those who are suspected of not having the money to spend, and those who do have the money to spend,” she says.

Austin adds that many blacks value a salaried job above entrepreneurial activity, which they have come to associate with fraud and theft. She explores both the structural and attitudinal obstacles to the development of the black public economic sphere. Austin particularly stresses the importance of “informal” economic activity in poorer working-class communities, such endeavors as street vending, hair braiding, catering, cleaning, home maintenance—“the kinds of things that people do off the books which are not recognized, not licensed, not regulated.” Her special interest in street vending, she says, comes in part from the open-air markets she visits on her trips to Africa. “There’s a vibrancy in markets that is just wonderful.”



C. EDWIN BAKER

NICHOLAS F. GALLICCHIO PROFESSOR, PENN LAW SCHOOL

A SOUND PRESS is essential to a sound democracy. A well functioning media system is vital to a democratic culture. Professor Ed Baker of the Law School teaches his students to examine, analyze and understand the relationship between the law and the media. He teaches courses in Constitutional Law, Mass Media Law and the First Amendment, as well as a seminar in Mass Media Policy. Last semester, he used a sabbatical for research and to write a paper on democracy and the press.

In the paper he examines how different conceptions of democracy determine views of journalism theory and freedom of the press. "One conception is called elitist democracy, which assumes that elites ought to govern and that elections are merely to shuffle them around to keep them in order. In contrast, a participatory conception of democracy needs a press that has a much more public role, a press must be established that would encourage debate and discussion."

Baker grew up in Madisonville, Kentucky, and graduated from Stanford University. After acquiring his J.D. from Yale Law School, he went on to Harvard University as a Fellow in Law and Humanities. Baker has taught at the Universities of Toledo, Oregon, Texas,

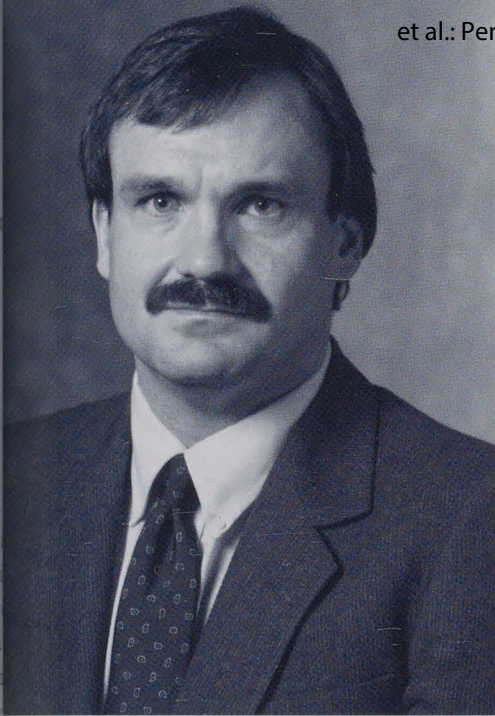
and Cornell and Harvard Universities. He has also worked as a staff attorney for the American Civil Liberties Union. In 1981 he came to Penn Law where he now holds the Nicholas F. Gallicchio Professorship.

His law students have the benefit of learning from a teacher whose research, books and articles have been lauded by all branches of the social sciences. Baker's most recent book, *Advertising and a Democratic Press*, published in 1994, received outstanding reviews from such diverse journals as the *Journal of Economic Issues*, *Media Culture and Society*, *American Political Science Review*, *Journalism Quarterly* and the *American Historical Journal*. His teaching, like his writing, encompasses many fields and the issues that relate them to the law.

In his Mass Media Policy seminar, "problems of concentration of media ownership, the impact of advertising on media content, and the adequacy of a free market in media products are examined from the perspective of the needs of a democratic society," Baker explains. "Policy responses are considered both in terms of their relevance to problems and their constitutionality." Baker brings a mastery of the subject to the class. Among his many publications, topics have included, "New Media Technologies, the First Amendment, and Public Policies," "Merging Phone and Cable," and "Private Power, the Press, and the Constitution." A paper published this spring asks the question, "Can we expect markets to give audiences what they want or does this goal require a critique of this and other

countries' recent moves toward deregulation?" The paper "mixes law and economics" and bridges the two with the concerns of modern mass media. His experience and expertise in these disciplines allow him to introduce a wide array of materials and themes to his classes.

Drawing from his interests and research in the areas of First Amendment Rights, Liberal Media Theory and Mass Media Policy, Baker provides his students with a legal education that highlights issues unheard of as little as a generation ago but of immediate and critical importance to lawyers entering the profession today. In addition to a healthy dose of common sense, Baker asserts that most legal problems involving the media as well as needed legal interventions ought to be considered from an interdisciplinary perspective. His own work in the media field attempts to integrate an economic and sociological examination of the media with liberal political theory and a long study of First Amendment theory, summed up in his book, *Human Liberty and Freedom of Speech*. His goal as a teacher is for "students to be prepared to tackle the legal issues that impact on the quality of the media in a democratic society."



MICHAEL A. FITTS

ROBERT G. FULLER, JR. PROFESSOR OF LAW,
ASSOCIATE DEAN, PENN LAW SCHOOL

WITH A BROAD-RANGING and highly interdisciplinary research background, and extensive experience working with bureaucracies, Michael A. Fitts is a natural choice to help shape, guide and implement the Law School's new strategic plan. His expertise is being utilized both as a faculty member and as the Law School's Associate Dean.

Fitts, the Robert G. Fuller, Jr. Professor of Law, has been at the Law School for 12 years. His primary areas of academic expertise and research interest are in the organization and legal regulation of the presidency, Congress, and the federal bureaucracy, topics on which he has authored numerous articles applying a political science (or so-called public choice) perspective. While these fields are usually categorized in law schools as administrative law and separation of powers, Fitts' scholarship has sought to cross these formal boundaries, illuminating how the informal interrelationships between the various institutions of governments vitally effect their operation in ways that the formal traditional legal analysis may not capture. In pursuing this agenda, Fitts has worked extensively with Wharton Public Finance Professor Robert P. Inman, with whom he has co-authored a series of more technical articles exploring the legal prerequisites to presidential leadership and effective budgeting in Congress, as well as the

budgetary impact of the Voting Rights Act. He also is an associate faculty member of Penn's Institute of Law and Economics (ILE), a cross-disciplinary research institute which analyses the impact of law on the global economy and the role economics plays in shaping legal policy.

Fitts received his bachelor's degree in 1975 from Harvard University and his law degree from Yale University in 1979. He clerked for Judge A. Leon Higginbotham, Jr., in 1979-1981 and then served for four years in the Office of the Legal Counsel in the Department of Justice, the office that serves as outside counsel to the White House and President of the United States. He joined the Law School in 1985, and, in December 1996, was appointed to the Fuller Chair, which was established by Robert G. Fuller, Jr., L'64. Currently, Fitts is in the second year of his two-year term as Associate Dean.

Since joining the Law School, Fitts has been involved in a variety of interdisciplinary activities at the Law School and University. In addition to serving on the University's Budgeting and Planning Committee, which helped draft the strategic plan for the University as a whole, he helped Dean Colin S. Diver craft the Law School's strategic document during the past 18 months. As chair of the School's Appointments Committee between 1992 and 1994 Fitts also helped recruit a number of the faculty members who reflect the school's current interdisciplinary focus in teaching and research.

Fitts has taken those same skills used as Appointments Committee Chair and applied them to the Associate Dean role—also a position which requires a deft hand and a high level of respect from his faculty colleagues. As the Law School implements the strategic plan, Fitts must now negotiate the creation of courses and programs between the Law School and a number of other Schools at the University.

He already has been successful in reaching an agreement between the Law School and Wharton implementing a 3-3 program enabling a select group of Wharton students to attend the Law School after three years of undergraduate work. After completing the first year of Law School, these students will take cross-registered courses, and after six years will hold a bachelor's degree from Wharton and a J.D. from the Law School. The Law School is now working to implement similar programs with Engineering, Arts and Sciences, as well as a number of other interdisciplinary programs. Fitts is leading these discussions.

“Over the years, and especially during the last decade, one of the great strengths of the University of Pennsylvania as a whole, and of Penn Law School in particular, has been the cross-disciplinary and interprofessional emphasis in its teaching and scholarly ventures. This process, which has been fueled both by the close physical proximity of the different schools as well as faculty and student interest, has led to the creation at Penn Law of first-rate programs jointly with the Philosophy

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Fitts continued...

Department, the Economics Department, and Wharton. But our job today is to build on that foundation. Almost no other law school in the country has as many top rank law-related professional schools within its geographic and intellectual reach. We need to make the law related resources of those schools more available to our students and faculty, as well as to communicate that advantage to prospective students and faculty.”

As the Law School recruits new faculty, finding candidates who will complement this approach will be vital, Fitts said. The focus up to now has been on Law and Business (with Wharton), Law and Health (with the Medical School and Leonard Davis Institute), Law and Communications (with the Annenberg School), and Constitutional Law (with the new Constitution Center on Independence Mall).

Academic institutions do not easily change, and a lot of work remains to fully implement the Law School’s strategic plan. New initiatives are needed to ensure the program’s success, especially at the student level, Fitts said. “We are looking for the mechanisms to make it easier for our students to take courses elsewhere at Penn and for other Penn students to take courses at the Law School. If students want to study corporate finance or health regulation, they should feel free to walk over to Wharton and Leonard Davis and take a class with the business and administrative people who will be making many of the substantive policy decisions and, not coincidentally, hiring the lawyers.”

Fitts cited a Negotiation course taught by Stuart “Bud” Diamond, Adjunct Assistant Professor of Legal Studies, as an example of a successful upper-level course which bridges the worlds of two different professions. While the course is taught separately to Law and Wharton graduate students, the two sets of students are brought together at the end of the year to negotiate with one another. From these joint exercises, Wharton students learn from the lawyers

about everything that can go wrong in a deal—in other words, the downside that the lawyers are always thinking about and trying to protect against. The law students, on the other hand, learn about the upside—how to be a “can do” lawyer who seizes the opportunities for the client. Fitts said the student demand for the course is overwhelming at both the Law School and Wharton.

The strategic plan does not change the basic Law School curriculum and philosophy, Fitts cautioned, but it is designed to enhance the student’s legal educational opportunities. The first year will continue to include the traditional classes and curriculum. During the second and third years, however, students should be better able to take advantage of a broad menu of professional law-related course offerings if they want.

Fully implementing the strategic plan should help to set apart Penn Law from its peers, Fitts argues: “A large percentage of our graduates, like the graduates of all the top law schools, eventually ‘practice’ law in non-traditional settings, or at least are required to use quite different skills than are taught in the standard first-year curriculum. The strategic plan is geared for teaching and training lawyers to excel in that type of entrepreneurial and changing environment. From hospital administration to the corporate board room, our students need to be aware of and operate successfully in this world. This plan should make Penn unique among its peers.”

For Professor Fitts, the Law School’s interdisciplinary approach capitalizes on one of the School’s and University’s strongest competitive advantages. As a legal scholar, faculty member, the Fuller Professor and Associate Dean, Fitts is helping to lead the “Leadership Law School” in its bold strategic initiatives.

SARAH BARRINGER GORDON

ASSISTANT PROFESSOR, PENN LAW SCHOOL



FOR SARAH BARRINGER GORDON, the study of law revealed an interesting paradox: for a discipline so firmly rooted in precedent, law lacked a rich sense of its own past. Though the rigor of legal analysis impressed her, she recognized early on the ethereal quality of traditional legal education—how far removed it is from lived experience. This recognition took her on a quest for some “grounding,” which in turn led her to obtain a doctorate in history.

Becoming immersed in the past, Gordon discovered, opened new venues for appreciating the relationship between law and society. “One of the things you learn from the past is that the present is contingent, that the present is not the inevitable result of ‘progress,’ nor is it stable or static. Individuals made a great difference in the past through their courage.” From her history education, Gordon acquired an approach she views as an essential component of legal history—the ability to question the way things are.

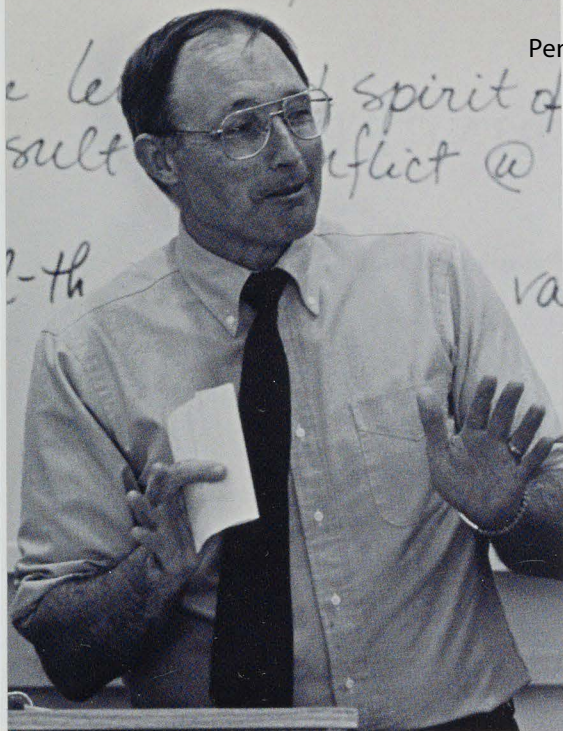
Gordon teaches courses in property, legal history, and religion and the law, as well as seminars in church/state relations. She seeks to instill in her students the analytical approach—the courage to question—that she learned from her own studies: “I want to help them learn to discern what is meaningful to them; a sense of value in one’s own life is what is important, and education should provide you with the courage and the tools, not further your fear.” Such education is by definition a dialogue, a two-way conversation in which ideas are exchanged and debated.

In her property law class, for example, discussions begin with the profound political significance of how to define property. Property, she tells her students, consists of more than just material possessions. It is concerned with the physical constructs of the emotional boundaries surrounding us. “Learning to understand how the law defines what is property and what is not, is a tool for deciphering how the world around you looks,” adds Gordon.

Discussion topics range from the structure of cities and neighborhoods to the structure of households to the structure of inheritance law. Gordon aspires to have her students come away with a sense that property is about how people struggle to create and maintain meaning, privacy, relationships—that, reduced to its basics, property is about *people*. Connecting the study of law to the broader context of society allows Gordon to integrate attention to doctrinal structures and the individual lives that are the catalyst of legal change.

Raised in Massachusetts, Gordon graduated from Vassar before going to Yale, where she earned a J.D. and an M.A.R. in ethics. After clerking for the Hon. Arlin Adams of the U.S. Court of Appeals for the Third Circuit, she practiced at Fine, Kaplan & Black in Philadelphia, where she focused on church/state litigation. She earned her Ph.D. in history from Princeton in 1995 and is spending the 1997-98 academic year as a Rockefeller Fellow at the Center for Human Values at Princeton, and as a faculty fellow in the Pew Program in Religion and American History at Yale. Her current research is a book-length study of church/state relations and marriage in 19th-century America, which will be published by the Studies in Legal History Series at the University of North Carolina Press.

In addition to her Law School classes, Gordon taught an undergraduate honors seminar last spring on the history of blasphemy—the civil and criminal punishment of dissident religious speech, from the prosecution of witches in 17th-century New England to flag-burning and arts funding in the late 20th century. She plans to pursue her interest in the multiple and often conflicted relations between religion and government, focusing on the congruence of religious and political dissent from the 18th century to the 20th.



MICHAEL S. MOORE

LEON MELTZER PROFESSOR OF LAW, PENN LAW SCHOOL
PROFESSOR OF PHILOSOPHY, SCHOOL OF ARTS AND SCIENCES

WHAT MIGHT Isaac Asimov's output have looked like if he wrote about law? A lot like Michael Moore's. "Writing is probably my main motive for being an academic," says Moore, who has published two books with Oxford University Press in the past four years, presented a third in manuscript, and kept another "indefinitely" in process.

"After I graduated, I would go to my law office at 6 a.m. to write on Freudian dream theory before practicing law," recalls Moore. "Now I can write as part of my job. It's an important part of continuing to learn."

Coming off a sabbatical during which he honed his manuscripts at his remote house in California, Moore is heading for a year as William Minor Lile Distinguished Visiting Professor of Law at the University of Virginia. There, he will teach a course on "how to think as a judge," a staple of his instructional work at Penn that uses the tools of philosophy to deal with the practical issues of reasoning as a judge and predicting and influencing the behavior of judges. "That teaching has been a pleasant surprise understates the case," says Moore. "Your main form of professional interaction in the academy is with students. Research and writing are solitary activities."

At Penn, Moore also teaches a variety of first-year "perspectives" courses, as

well as criminal law, property, constitutional law or torts. Through the philosophy department, he presents an introductory survey course that usually holds legal implications; one of these courses, for example, is on the metaphysics of causation, which is "relevant to moral responsibility and law. Academically, I guess I'm best known for moral realism—I think there are right answers to questions of morality."

His advocacy of bedrock morality has led him to champion retribution as the central function of punishment; that is, "we ought to punish offenders because and only because they deserve to be punished," as Moore defines the concept in "Justifying Retributivism" (*Israel Law Review*, Vol. 27, 1993).

Two decades ago, he notes, this would have been a decidedly minority opinion, but the winds have changed in the public arena, as evidenced by such movements as the end of indeterminate sentencing. Still, notes Moore, "in law schools, the standard *educated* view today is the mixed theory of punishment, as advanced by H.L.A. Hart—we punish because we want to stop crime, but we punish only those who morally deserve it."

Elsewhere too, Moore is not one to shun academically unpopular opinions. In "Torture and the Balance of Evils" (*Israel Law Review*, Vol. 23, 1989), he notes, "I approve of torture in some circumstances."

Moore makes a distinction between work he finds intellectually satisfying (his scholarly, theoretical papers) and work that's more directly influential in the real world. A series of op-ed articles

he wrote for the *Los Angeles Times* on the retention and selection of judges, he says, helped tilt public opinion.

On a broader scale, he was asked to advise Korean President Chun, in the mid eighties, on how to free his country's legislative process from Japanese influences. Later, Moore and his wife, Penn Law professor Heidi Hurd, helped Eastern European and Ukraine leaders adjust to the real-world functioning of democracy and capitalism. "I've also spent a fair amount of time educating federal judges on judicial reasoning," adds Moore. "They have a voracious appetite for jurisprudence—it's what they do nine to five, five days a week."

Moore finds Penn "about the best place in the world for legal philosophy right now," as a result of the roster of scholars drawn to the Law School in the past decade. Among them he mentions Leo Katz, Bill Ewald, Matt Adler, Stephen Morse, Stephen Perry and Moore's wife, Heidi Hurd, who together form a "critical mass of like-minded people."

He also lauds the new six-year Ph.D./J.D. program, which grants degrees in both philosophy and law. "It's a generous program for those who get in, and it's good for us to have those students around."

In case you'd like to sample some of Moore's recent output, you might try *Act and Crime: The Philosophy of Action and Its Implication for Criminal Law* (1993) and *Placing Blame: A General Theory of the Criminal Law* (1997), both from Oxford University Press.

LIKE A MOLE IN A LUSH GARDEN, Stephen Perry worries the roots of law. Perry came to Penn in 1995 for two semesters as visiting professor. The following year he arrived officially, with a dual professorship and a world-wide reputation in the theory of jurisprudence and torts.

"I knew some people already at Penn—Michael Moore, Heidi Hurd—who worked in the same general theoretical areas I do," says Perry. "Penn's a very good school for theoretical studies."

Perry has attempted, through a series of precise, carefully honed articles, to establish a firm methodology for defining the purpose and nature of law, but he didn't start out with that in mind. While studying the philosophy of logic and language at Oxford University in the mid-seventies, he dropped by a series of political philosophy seminars given by Ronald Dworkin and Charles Taylor. He was hooked. After receiving his B. Phil. in Philosophy from Oxford in 1978, he picked up his law degree from the University of Toronto, then returned to Oxford for a doctorate in Philosophy of Law, under Dworkin.

In tort theory, Perry teaches and writes about rights-based philosophy with an emphasis on interaction, "the idea that in our real world, risks that give

rise to accidental harm are the consequence of interactions between persons, rather than A imposing risk upon B."

He also takes issue with the modern academic movement to characterize risk itself as harm. "With toxic torts it's often hard to prove causation—that a toxic element released into the environment caused *this* person's cancer...but if risk itself is harm, then people can collect just for having been subjected to the increase in risk. I don't think that view is properly thought out." Assessing risk, he says, is based on your degree of knowledge. The more you know, the closer you come to certainty—a "risk" of either one or zero. "That's a strange kind of harm, where the nature of the harm itself changes with an increase in knowledge."

In "The Moral Foundations of Tort Law" (*Iowa Law Review*, 1992), Perry deals at length with the theoretical underpinnings of rights and obligations of reparation. He's now working on a "more definitive statement of my views" for the *University of Pennsylvania Law Review*.

In his philosophy of jurisprudence, he deals with methodology on a level that approaches epistemology: What do we know (about law) and how do we know it? Before you can seriously theorize about law, says Perry, you need to have some hypothesis about its purpose or function. If, like Oliver Wendell Holmes, you see the purpose of law as social control, you will place your major emphasis on sanctions. "I don't agree with Holmes' theory, but it's a perfectly coherent and consistent theory of law."

Another approach is to view law as providing general social guidance according to legislated rules. Or you might see law in terms of settling actual and potential disputes, in which case the focus of your theory becomes adjudication.

But how do you come up with a theory of the purpose of law, asks Perry? One way is for the theorist to make an external decision about what law *ought* to be. The other possibility is to look at law internally, through the eyes of the participant—what value does it serve within my society? "I'm trying to develop a more precise methodology for legal theory that draws on the internal perspective," adds Perry.

Perry's most influential publication, "Interpretation and Methodology in Legal Theory," appeared in 1995 in *Law and Interpretation* (Andrei Marmor, ed., Oxford University Press). Here, he argues that jurisprudence holds a unique position as being both a branch of practical philosophy dealing with reasons for action and as a social science, in which it is necessary to decide whether to employ the methodology of the natural sciences or one of a different sort. The article presents a careful analysis of the stated and inherent methodologies of such theorists as Hart, Holmes, Raz and Dworkin.

Though he's taught at Penn for only two years, Perry's attachment to the University is rock-solid: Approached to accept the Quain Chair in Jurisprudence at University College, London—the oldest chair in jurisprudence in the English-speaking world—he turned it down to remain at the Law School, where he has been appointed as the first John J. O'Brien Professor of Law.

STEPHEN PERRY

JOHN J. O'BRIEN PROFESSOR OF LAW AND PHILOSOPHY,
PENN LAW SCHOOL

PROFESSOR OF PHILOSOPHY,
SCHOOL OF ARTS AND SCIENCES



FOR GEORGETTE POINDEXTER, there is no law without business and no business without law. “The law doesn’t stand by itself,” she remarks. “For those of us who are transactional lawyers, we have to understand the deal”—just as the business executives must understand their legal requirements and ramifications.

Trained at Bryn Mawr and Harvard, Poindexter came to Penn in 1992 from the Philadelphia firm of Toll, Ebby, Langer & Marvin where her practice focused on commercial real estate acquisition, financing and development. Her research has centered on the areas of real estate law, housing and the re-use of urban real estate. Poindexter is an assistant professor of real estate and legal studies at the Wharton School and an assistant professor of law at the Law School. In 1995 she received the Undergraduate Outstanding Teacher Award.

“What’s interesting about being in both schools is that I see my subject matter from two different perspectives,” she says. “I show business students how the law fits into their business plans—how the law applies to business. When I’m over at the Law School, I teach the students how to apply business to the law.”

Though Poindexter left her law firm practice to teach at Penn, she continues to maintain contact with the active practice of law in several ways. She lectures frequently to continuing education seminars in real estate transactions to such groups as ALI-ABA and the International Council of Shopping Centers Law Division. Poindexter was also elected to the American College of Real Estate Lawyers and serves on the editorial board of the *Practical Real Estate Lawyer*.

Her research ties into actual legal problems such as Brownfield Redevelopment, which focuses on land within a city that is undevelopable because of environmental contamination. “Brownfield statutes give developers the opportunity to receive a clean bill of health. The state will not sue the developers if they clean up the site to a certain level of cleanliness,” Poindexter says. “The statutes have a two-pronged goal. Prong one is getting these properties back into economic use. The second is shifting environmental standards to recognize that everything doesn’t have to be cleaned up to residential standards.” With the statutes in place, many abandoned industrial sites may be sanitized to a level suitable for new industrial usage without fear of overwhelming expense or possible future law suits brought by the state.

Her current research includes deals with Center City zoning and examining the laws and regulations that affect buildings. “Law and business can’t exist as islands. We need to look at how the law has changed and impacted [the way business is done].”

Poindexter’s experience and knowledge in the fields of law, real estate and business make her a sought after professor for Penn law students interested in transactional law. “I see my law students as business people who have an expertise in law, just as there are business people whose expertise is in accounting or finance.” Those students who qualify for the J.D./M.B.A. joint degree offered at Penn find an enthusiastic supporter in Poindexter. “They are my favorite students,” she says. Sometimes business students may shy away from esoteric legal theory, but the J.D./M.B.A. candidates share her fascination with the intertwining of business and legal theory in any business deal. “It’s such a wonderful program, and I encourage law students to really look into it,” she remarks. “If one thing you can offer as a lawyer is a knowledge of corporate finance, business accounting and skills, that’s a good asset. And if that’s something I can introduce you to, that’s great.”

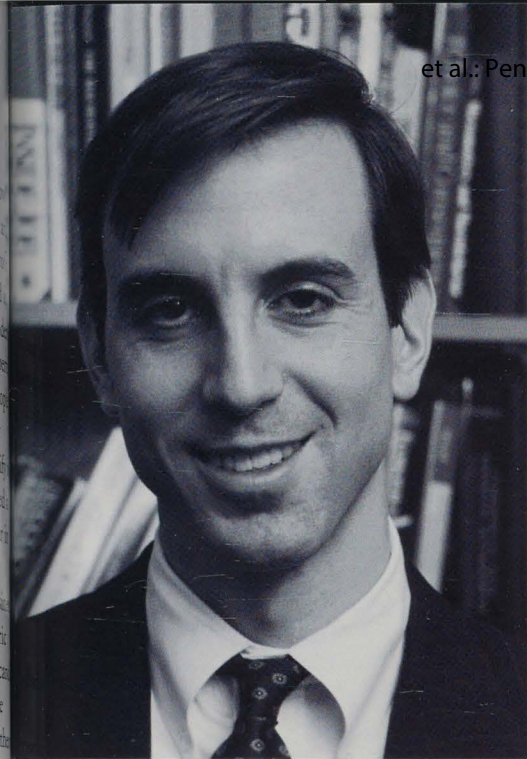


GEORGETTE POINDEXTER

ASSISTANT PROFESSOR, THE WHARTON SCHOOL
ASSISTANT PROFESSOR, PENN LAW SCHOOL

ERIC POSNER

ASSISTANT PROFESSOR, PENN LAW SCHOOL



DON'T BE FOOLED by his youth—Eric Posner has accomplished much in his six years since graduating from Harvard Law School. As a result of his education, his students have the benefit of training under not only a legal scholar, but a philosopher and economist as well.

“Economics and philosophy provide unity to the subjects, so I incorporate theory into my classes—but not too much,” says Posner of his Contracts Law and Commercial Credit II (Bankruptcy) classes. He also makes certain to inject a bit of the real world into his dialogues, cognizant of its importance to students and how often it is overlooked.

Raised in Chicago, Posner earned his B.A. and M.A. in philosophy at Yale University and his J.D. from Harvard Law School. Prior to teaching at Penn, he clerked for the Hon. Stephen F. Williams and practiced as an attorney adviser in the Office of Legal Counsel for the U.S. Department of Justice.

But in 1993 the call of academia lured Posner to Penn; at the age of 26, he was younger than many of his students. The high quality of the faculty and the interdisciplinary nature of the education at Penn were deciding factors for Posner. “Penn is filled with the most sophisticated philosophers, historians and economists,” he says. Posner also describes the quality of his students as “excellent.”

His teaching reflects his scholarly interests: the political history of modern American bankruptcy law, the relationship between social norms and the law, and the use of game theory as a springboard for discussing contract law. He points his bankruptcy students, for instance, toward an understanding of how current bankruptcy laws are a reflection of political influences. And in his contracts law class, students ponder how doctrines such as the unconscionability doctrine affect contractual behavior and what happens in the real world when failure to pay causes the repo man to take away the TV.

Posner is currently busy with a book and a number of articles, including *Law Without Design: How Regulation Subverts Order*, “Voting in Chapter 11,” “Cost-Benefit Analysis: A Philosophical Defense,” and “Autonomy and Welfare in the Regulatory State.”

He recently organized a bankruptcy roundtable at the Penn Law School (sponsored by the University of Pennsylvania’s Institute for Law and Economics), where he delivered a paper

on “The Political Economy of the Bankruptcy Reform Act of 1978” to an audience of academics and practitioners. Posner understands well the benefits of such speaking engagements—the valued opinion of others. “I rarely turn down an invitation to speak because it provides me with the opportunity to put my thoughts out there and have others criticize them.”

As he continues to motivate, inspire and challenge his students with the sophisticated economic and philosophical underpinnings of commercial law, Posner acknowledges the weighty responsibility of training the lawyer-leaders of tomorrow. At the same time, he thrives on the opportunity to influence such a promising group.

His goal as an educator? “To show my students how deep and complex the law is, and how difficult it is to master—but how interesting that process can be.”



KIM LANE SCHEPPELE

PROFESSOR OF LAW, SOCIOLOGY, AND POLITICAL SCIENCE

CO-DIRECTOR, PROGRAM ON GENDER AND CULTURE,
CENTRAL EUROPEAN UNIVERSITY, BUDAPEST

“WHY DO LAWYERS think the way they do?

“Why define torts in terms of negligence and intention? What’s at stake in that distinction?

“Why think about constitutional law only in terms of state action? If constitutional principles are so important, why don’t they apply to all institutions in society?”

Kim Scheppele likes to ask “irreverent” questions in her Penn Law courses. “In law school,” she says “lawyers learn how to think in a way that comes to seem inevitable but looks mysterious to non-lawyers.” From a background in sociology (a Ph.D. from the University of Chicago, 1985) and twelve years of teaching political science at the University of Michigan, Scheppele has moved into the sociology of legal doctrine, examining a variety of legal systems and historical periods to see how people outside our legal tradition think of the law.

Scheppele holds a remarkable dual appointment at Penn Law and at the six-year-old Central European University in Budapest, Hungary. This year, her second at Penn, she’ll spend the fall term here and the spring term in Budapest.

In addition to a course in evidence, she’s teaching a comparative constitutional law course at the Law School with

University Provost Stanley Chodorow. Starting with *Beowulf*, to approach the origins of constitutional ideas, they discuss how European constitutionalism helped enforce the rights of individuals against the state and other large entities, before moving on to the American constitutional convention and roundtable talks leading to new constitutions in Poland and Hungary.

Scheppele’s research produced *Legal Secrets: Equality and Efficiency in the Common Law* (University of Chicago Press, 1988), which attacks the role of economics in legal decisions. She has also challenged legal fictions: “How can a court say that Long Island is a peninsula, as the Supreme Court did in the mid-eighties? How does that connect with people’s common-sense understanding of facts?” Other interests include comparative abortion law and rape victims’ understanding of law as opposed to judicial understanding.

Her most fascinating excursion involves Hungarian constitutional law. Following the Soviet collapse, Eastern European countries set up new legal systems. Hungary produced the most dramatic legal transformation, says Scheppele, enacting a new constitution even before the fall of the Berlin Wall, and, in 1990, establishing an aggressive constitutional court to ensure that all laws would be consistent with the liberal constitution.

“It strikes down one law out of every three,” she adds, “and has the power to declare that the parliament is acting unconstitutionally by omission: If, in the view of the court, the parliament has

failed to pass a constitutionally required law, the court can order them to do so.”

For example, the court held that parliament had failed to provide treatment of gay and lesbian partnerships equal to that of heterosexual couples and gave them six months to remedy the omission—which parliament did, with only 15% opposition.

Anyone can file a petition with the court—you needn’t have a concrete interest in the matter being challenged. Scheppele spent two years reading thousands of petitions from ordinary citizens. Comparing them to 1,800 published court decisions, she discovered that the developing constitutional jurisprudence closely mirrors the values and concerns of the citizenry.

“In America, you can only challenge what the government is doing if you’re directly affected—not on principle,” she notes. “In Hungary, you give up the fiction that a constitutional challenge is about a concrete dispute.”

Constitutional courts have become more aggressive throughout Europe, she adds, in contrast to American attempts to restrict court activism. “Americans take credit for having the first written constitution, but it’s like getting a computer in 1980—if you don’t ever upgrade, your model is slow and limited compared to the newer models.”

In future years at Penn Law, Scheppele hopes to teach courses in law and society, as well as in women and the law. “This is such a friendly place—and my colleagues don’t seem to mind hearing about Hungarian constitutional law, which I find remarkable.”



WILLIAM C. TYSON

ASSOCIATE PROFESSOR, THE WHARTON SCHOOL
ASSOCIATE PROFESSOR, PENN LAW SCHOOL

BILL TYSON is one of the most popular teachers at the Wharton School. The winner of a teaching award every year since 1983, Tyson teaches securities regulation at both Wharton and the Law School. Often students within the J.D./M.B.A. program will ask where they should take the class. "Well, are you going to be a lawyer or are you going to be an investment banker?" he responds. "At the Law School I teach securities regulation from the perspective of a lawyer; I'm training lawyers. Whereas at the Wharton School we take the perspective of the investment banker, who is often being advised by lawyers, and often involved in the same transaction. I try to alert them to instances in which an attorney should be consulted and to improve the effectiveness of their communications with attorneys."

Tyson's appointments at both Penn Law and Wharton illustrate the interdisciplinary nature of both his personal interests and his work. He is an associate

professor in the departments of legal studies, accounting, management and real estate at Wharton and is an associate professor of law at the Law School. But it is not just the different locations of his classes that gives them an interdisciplinary thrust, it is what Tyson brings to them from his varied interests. He teaches a real estate course that includes elements of real estate law, financing and development. "I teach it from both a legal and managerial perspective. It's listed in the management department, it's listed in the legal studies department, it's listed in the real estate department," he says. "I teach the students not to function as lawyers, but I teach them legal and managerial problems that arise from the perspectives of all the various participants in the entire real estate development process."

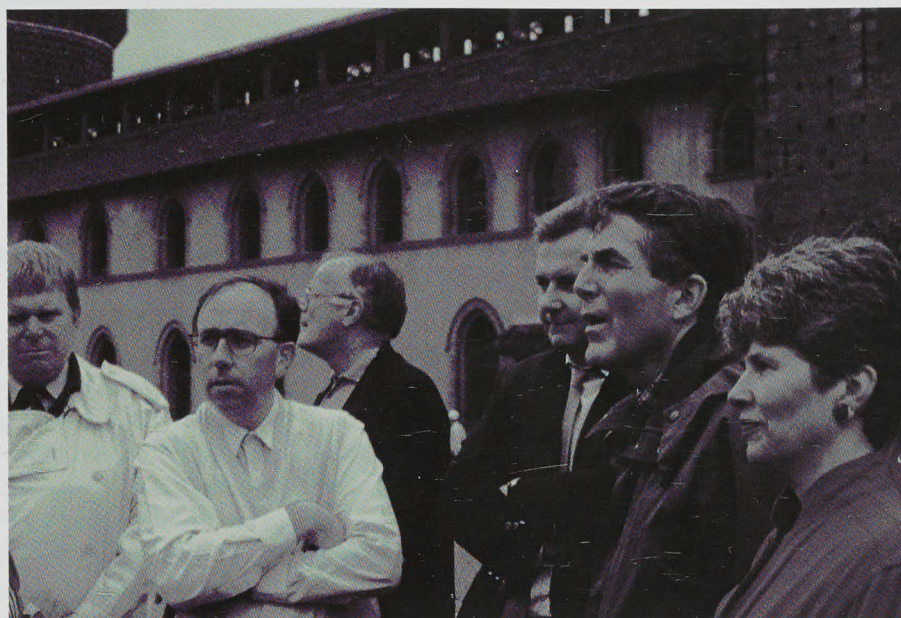
Tyson has also taught a course in the accounting department at Wharton in financial and tax planning in which students develop expertise in accounting, finance theory and tax law to solve problems with the assistance of a computer. He doesn't just teach his students how to be good lawyers or business people, but rather he provides a comprehensive focus on all aspects of business, from law to accounting, to train his students to be effective leaders with a keen awareness of the many facets of their work.

Prior to beginning his academic career, Tyson worked in the firms of Morgan, Lewis & Bockius in Philadelphia and McCutchen, Doyle, Brown & Enersen in San Francisco. From there he moved on to the University of California, Berkeley, where

he taught in both the business and law schools. In addition to teaching, Tyson serves as a consultant to corporations and governments. As an academic consultant, Tyson is a "big proponent" of research. "I think that our research should not trickle down to the user slowly," he explains. Tyson's numerous positions have included consulting for the Turkish government and the Organization for Economic Cooperation and Development as well as assisting the Capital Markets Board in developing their regulatory regime for securities markets. Presently, Tyson is a consultant for the General Electric Capital Corporation and Taco Bell.

With his expertise in such different but related fields, Tyson is a valuable asset to the Law School and an excellent example to law students of the numerous career possibilities open to lawyers. "I very much like teaching at the Law School because I am trained as a lawyer," he says. "And I enjoy... teaching students who want to be what I was: a lawyer. That's a very useful and important part of my teaching. I'm glad to do that."

Symposium



Joan and Colin Diver (far right) tour Milan with other P.L.E.S. participants.

P.L.E.S. (AND THANK YOU)

Penn Law European Society's annual meeting took place at the beginning of June in Milan, Italy. More than 80 Penn alumni and their guests spent the weekend together, organized by Claudio Cocuzza, GL'88. Emissaries from the Law School included Dean and Mrs. Colin Diver; Stephen Burbank, David Berger Professor for the Administration of Justice; and newly elected president of the Law Alumni Society, Arlene Fickler, L'74.

Fickler reports that Professor Burbank delivered a paper on "Working Developments in the United States Approach to International Civil Litigation." Francesco Francioni, Professor of Public International Law at the University of Siena Law School,

also presented a paper, entitled "Ars Grata Legis: the Return of Stolen Cultural Property in Contemporary International Law."

Saturday's program concluded with a gala dinner at the Circolo Mozart, Villa Marchesi di Rozzano, where alumni and guests received Penn Law Alumni Weekend '97 baseball hats as tokens of the occasion. Sunday, the group met for a tour of Milan and a concert at the La Scala Opera House.

Next year's meeting will take place in Oslo, Norway. For the final year of this millennium, the group will meet in Antibes, France. Further information about the 1998 meeting will be posted on the Law School's World Wide Web homepage: <http://www.law.upenn.edu>.

ASIAN ALUMNI

The Law School Alumni Association made its first formal foray into Asia this spring when Dean Colin Diver was hosted at meetings in Japan, Korea and Taiwan.

In Hong Kong, Diver met with alumni as well as J. F. Mathews, British Attorney General of Hong Kong; Daniel Fong, solicitor general; and their staffs prior to the transfer of power from Britain to China. Mathews was replaced in the July changeover. Fong, who remains as solicitor general, participated this spring in a conference at the Law School sponsored by the *Journal of International Economic Law*.

In Tokyo, approximately 40 alumni and guests attended a reception at the Salomon Brothers—Asia office. Akio Kawamura, GL'86, hosted the event, where both Diver and Professor of Law Charles W. Mooney, Jr., were honored. Diver and Mooney also conducted meetings with officials at the Bank of Japan and were guests of Gerald P. McAlinn, L'79, associate professor of law at Aoyama Gakuin University. Approximately 125 Penn Law alumni reside in Japan.

Kyung-Han Sohn, GL'85, secretary of the Korean Penn Law Club, organized a dinner honoring Diver in Seoul. Sohn and Ki-Sup Kim, GL'82, hosted the dinner which included several in-coming LL.M. students from Korea. Martin Shell, Assistant Dean for Development and Alumni Relations, also attended. The Korean Penn Law Club supports the School both through financial contributions and in helping



Dean Diver meets with alumni in Taiwan (above left), Korea (left) and Japan (above right)



to identify prospective students. There are approximately 45 alumni in South Korea.

Ke-Wei "William" Hsu, GL'84, hosted a dinner in Taipei honoring Diver and attended by alumni and prospective students. Diver and Shell were also guests of Wen-Yeu "Wallace" Wang, GL'84, associate professor of law at National Taiwan University. About 40 Penn Law alumni live in Taiwan.

In addition to Korea, Penn Law clubs now exist in Japan and Taiwan. Diver assured each group that the Law School would become more active in Asia and that he hoped annual meetings would be organized and that a representative of the Law School could attend. The School is planning trips to the region in the coming year both to organize alumni activities and to help identify prospective students for the LL.M. program.

**CONGRATULATIONS TO THE FACULTY:
THE BEST TEACHERS**

The Lindback Awards honor the most distinguished teachers at the University of Pennsylvania —those whose work "is intellectually demanding, unusually coherent, and permanent in its effect," according to the award guidelines. A winner this year is STEPHEN MORSE, Ferdinand Wakeman Hubbell Professor of Law at the Law School, as well as professor of psychology and law in psychiatry in the Medical School. One student described Morse's style as "at once challenging, engaging, enlightening, stimulating — and a bit intimidating." Morse was also praised for bringing an interdisciplinary perspective to the study of law and for his ability to respect perspectives with which he disagrees. "Brain and Blame," an example of his research on criminal law and mental health, is included in this issue of the *Journal*.

The Law School's own Harvey Levin Award for Excellence in Teaching goes this year to Professor SETH KREIMER. The selection was made by a majority vote of students earning their J.D. degree in 1997. Kreimer, an expert in constitutional law, constitutional litigation, and health care, is noted for his writings on reproductive freedom, privacy, free expression and interstate travel. Among the students, he's also known as a dedicated and inspiring teacher. The Levin Award was established by the Philadelphia law firm of Schnader Harrison Segal & Lewis.

**NEW APPOINTMENTS TO ENDOWED
CHAIRS:**

REGINA AUSTIN, *William A. Schnader Professor of Law.*

MICHAEL FITTS, *Robert G. Fuller, Jr., Professor of Law.*

STEPHEN PERRY, *John J. O'Brien Professor of Law and Philosophy* (first appointment to this chair).



The four finalists in the Keedy Cup intramural moot court competition, left to right, were Jeffrey Powell, Elizabeth Goodell (Cup winner), Elizabeth Minard, and Russell Kanjorski. Powell, along with Bruce Bellingham, also secured a \$1 million award for a Civil Practice Clinic client.

...AND TO THE STUDENTS:

“We’ve already peaked,” joked JEFFREY POWELL, L’97, in an interview with the *Philadelphia Inquirer*. That’s one way for a pair of law students to look at an award of \$1 million to their client, announced the day after their graduation from Penn Law School.

As part of their course in the Civil Practice Clinic, Powell and his partner, BRUCE BELLINGHAM, L’97, represented Herbert Smith, an indigent West Philadelphian, in an age discrimination suit against International Total Services, Inc., a provider of airport personnel. Smith claimed that ITS had promised him a promotion to skycap—a baggage-checker position that can earn up to \$100,000 a year in wages and tips—but instead kept him in a minimum-wage position as a claims agent.

Smith filed an age-discrimination complaint with the Pennsylvania Human Relations Commission in 1989 which remained under investigation into 1994. Frustrated and unable to afford a lawyer, Smith appealed to the ACLU, which suggested he contact the Law School.

Powell and Bellingham are something of a legal odd couple. Powell, 24, took the more standard route from Penn undergrad to Penn Law. Bellingham, 45, a sociology professor at Florida State, is starting a second career as a lawyer. Apparently their Mr. Laidback

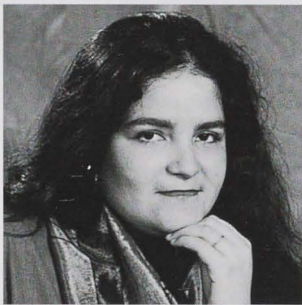
(Bellingham) and Mr. Brash (Powell) act played well to the jury which, after only three hours deliberation, awarded Smith \$464,000 in compensatory damages and \$500,000 in punitive damages. “The synergy between them was terrific,” says their clinic supervisor, Colleen Coonelly, herself involved in her first employment discrimination case.

Though ITS is appealing the verdict, and Powell and Bellingham received not a penny for their work, the two (winners of the Law School’s Trial Advocacy Prize) are riding high. “Somehow winning \$1 million case puts it all into a different realm,” Bellingham told the *Inquirer*.

ELIZABETH C. GOODELL, L’97, won the Edwin R. Keedy Cup intramural moot court competition held in January. Goodell and three other students were chosen to participate in the Cup after two moot court rounds during their second year.

The annual competition pairs four students in random teams to argue a current Supreme Court case before a panel of judges. This year’s case, *Washington v. Glucksberg*, concerned a Washington State statute that prohibits assisted suicide. Goodell successfully argued for the respondents, a group of physicians and terminally ill patients. Judges included the Hon. Betty B. Fletcher of the U.S. Court of Appeals for the Ninth Circuit, the Hon. Gilbert S. Merritt of the U.S. Court of Appeals for the Sixth Circuit, and the Hon. Anita B. Brody of the U.S. District Court for the Eastern District of Pennsylvania.

PENN LAW & *Community Service Leaders*



Claudia Colindres Johnson



Sara Velazquez



Ben Diehl



Vivian Kaepfel

FELLOWSHIPS HELP FOUR VERY SPECIAL STUDENTS HELP THEIR COMMUNITY

This fall four Penn Law graduates from the Class of '97 will begin their careers in Public Interest Law as recipients of the Skadden Foundation and Independence Foundation Public Interest Law Fellowships. Claudia Colindres Johnson and Ben Diehl were awarded fellowships from the Skadden Foundation. Sara Velazquez and Vivian Kaepfel received Independence Foundation Fellowships. These dedicated graduates will join their accomplished predecessors in providing vital legal services to poor and disenfranchised individuals through their work with various legal assistance organizations.

The Skadden Foundation began eight years ago when the New York law firm of Skadden, Arps, Slate, Meagher & Flom decided to commemorate their 40th anniversary by committing \$10,000,000 to implement a program that would provide fellowships to twenty-five graduating law students or judicial clerks who have the desire to work in public interest law, articulated strategies for reaching their goals and secured positions with sponsoring organizations. The Skadden Foundation contributes a grant to the sponsoring organization which is used to pay the salaries, benefits and law school loan debts for the duration of the fellowship. The fellowships are for one year with the understanding that they may be renewed for a second in accordance with the sponsoring organization. Since its inception, the Skadden Foundation Fellowships have been unmatched in scope and the number of fellowships it awards each year. In 1994, by a near unanimous vote, the Skadden Foundation agreed to continue the Fellowships through 1998 to celebrate the firm's fiftieth anniversary.

The Independence Foundation Fellowship is much like the Skadden in that it provides the same salary and benefit package, \$32,000 plus benefits and loan debt payments up to \$10,000 for the year. It, too, is renewable for an additional year. Established in 1996 by the Independence Foundation, a private, not-for-profit philanthropic organization in Philadelphia, the Independence Foundation Fellowship seeks to support public interest law in the greater Philadelphia area. Recipients are required to devote a major portion of their time to the direct legal representation of individual clients thus impacting the community in a very active, immediate and positive manner.

CLAUDIA COLINDRES JOHNSON

With graduate degrees in Public Policy and Public Health, as well as a stint working for the DHIA, Claudia Colindres Johnson brought a wealth of experience to Penn Law. Now, as a recipient of the Skadden Foundation Fellowship, she adds sharp knowledge of the

law to the skills she will use working with the Pennsylvania Health Law Project. The Pennsylvania Health Law Project is Counsel of the Pennsylvania Medical Assistance Advisory Committee Consumer Subcommittee.

Her project is a response to the change in health care policy that shifts medical assistance recipients to a managed care system. She will provide direct legal advocacy to the Philadelphia Latino Community on issues involving local Medicaid and Medicare/HMOs with special emphasis on children, adolescents and the elderly. With 72 percent of Latino children in Philadelphia on medical assistance and many employed Latinos working in jobs without health benefits, the switch to managed care plans has impacted the Latino community tremendously. In addition, she will assist in ongoing litigation at both the State and Federal Levels.

Claudia will exercise her public policy background by providing representation for the Latino Community at the Consumer Subcommittee, training community members to testify at public hearings and acting as a liaison between the Latino Community and regulators managing the Medicaid/HMO contracts. "My goal was to find a job where I could apply my policy and analyst skills as well as my health care and legal training."

Realizing that the task she has chosen is mountainous, Claudia has gotten a head start on her project. She's doing an independent study in which she will set up a database for the project, compiling information gathered by public interest groups across the city. "There's a lot of energy. People from all kinds of public interest groups are coalescing and working together." Claudia has also found common interests and support from the Hispanic Bar Association. "It is a small group of really amazing attorneys. To have a group of peers, a network, is very important to a new lawyer. It played a big role in my decision to stay in Philadelphia."

It may sound strange that a woman so committed to public interest law once worked for DHIA, the powerful insurance company lobby that

"single-handedly defeated health care reform." But, as Claudia puts it, "They had a really good strategy, and I wanted to learn from them. You learn from the best." Her experience has paid off well. Claudia was awarded both a Skadden and an Independence Foundation Fellowship this year. Her decision to accept the Skadden demonstrates her commitment to public interest law in Philadelphia. "I ended up taking the Skadden because it is nationwide. If I had taken the Independence, there would be only four fellowship recipients working in Philadelphia. Because I took the Skadden, there will be five this year."

SARA VELAZQUEZ

Sara Velazquez will also be working for the Philadelphia Latino Community this fall. Her Independence Foundation Fellowship will allow her to provide legal services to low income Latino parents with HIV and AIDS in custody issues. Her sponsoring organization is the AIDS Law Project of Pennsylvania which is comprised of fifteen attorneys. Until now, however, there were no native Spanish speakers. As the only organization in Pennsylvania that provides free legal services to people living with HIV and AIDS and their families, the AIDS Law Project had an urgent need for a lawyer to assist the Latino community in Philadelphia. "I will be the only person working with Latinos [for the AIDS Law Project]. There were no lawyers who could work with Latinos in a culturally and linguistically appropriate manner."

The Latino community has the fastest growing rate of HIV infection. "What's peculiar about AIDS is that there are times when you are so sick that you can't take care of your children." The goal, then, is to work out a flexible custody arrangement to care for the children when the client is incapacitated and to make legal arrangements for their future care, she explains. Without a pre-arranged custody decision, the children would most likely end up in foster homes.

As part of her project, Sara will work closely with Congreso de Latinos Unidos, the social service agency for Latinos in Philadelphia. In conjunction with "Programa Esfuerzo," a branch of the Congreso that provides services to Latinos with HIV and AIDS, she will lead workshops on the variety of custody planning options for parents. To further educate the community, she will "publish and distribute pamphlets in Spanish on custody planning and on the legal rights of people living with AIDS and HIV generally." She will also provide legal services to individual clients living with HIV/AIDS preparing custodial plans for their children that will ensure a continuity of care in accordance with their wishes.

Sara chose Penn Law for three reasons: "the scholarship, the strong public interest community and Penn's... excellent reputation. I wanted to learn how to be a really good lawyer." She knew she "wanted to represent poor people but didn't know in which way." Taking "Representing Migrants and Refugees," a class taught by Professor Lesnick, added more fuel to her enthusiasm for public interest law. Working with the AIDS Law Project of Pennsylvania on behalf of Latinos she will satisfy a great need within the community. The Independence Foundation Fellowship gives her the opportunity to carve a niche for herself in public interest law.

BEN DIEHL

For Ben Diehl, the Skadden Fellowship is the beginning of a planned career in public interest law. "They basically said, 'Design your dream job, and we'll give it to some of you.' I was lucky enough to be one of the someones." He will be working with Bet Tzedek Legal Services in Los Angeles, where he was a summer associate last year. At Bet Tzedek, he will provide legal services to elderly and low-income home owners who have been victimized in complex home equity fraud schemes.

Property fraud schemes often target low-income persons who cannot afford to consult a lawyer about

contracts they are entering into or “lack the business sophistication necessary to ascertain whether a seemingly honest mortgage company or contractor is attempting to overcharge for services or actually steal their home outright.”

Ben began working on his project last summer and intends to continue by litigating against fraudulent contractors and lenders who prey on low-income home owners throughout L.A. County. He will also publicize the problem of home equity fraud at local and state levels: making presentations throughout the county to educate people in “the typical formulas these scam artists employ and advocating for a legislative response to the seeming ease with which many scammers now act.”

In college, as part of a group called Students for South African Awareness, Ben “saw what activism can achieve. Coupled with that, I already had an interest in law. I began to be interested in the workings of a state, what a state should be, what lawyers or other people in position to change the state can and should be able to do. I enjoy thinking about what I think the law should be and I want to act on that. It was just natural that I go to law school.” Since coming to Penn his commitment to public interest law has only strengthened. He worked with Community Legal Services the summer after his first year. In his third year, he is the chair of the Food Stamp Clinic and is part of the Civil Practice Clinic at the Law School.

Ben plans to proceed in public interest law when the Skadden Foundation Fellowship runs out, continuing with his focus on economics and the law but perhaps incorporating broader issues into it. “I’ve got an underlying interest in welfare law. I don’t anticipate having that much spare time to work on that while I’m doing the fellowship, but that’s another interest in law that I have. I don’t know where it’s going to

lead. But I want to keep doing it. I like my project a lot. I want to be a doer. I want to get my hands dirty throughout.”

VIVIAN KAEPPPEL

After working for three years as a paralegal in the litigation department at the firm of Drinker Biddle & Reath, Vivian Kaepfel knew when she came to Penn Law that while the big firms hold many attractions for a young lawyer, she wanted to work in public interest law. “The reason I came to law school was to practice public interest law. I chose Penn because it is the best law school in the area. I wanted to give myself as many options as possible after I graduated. The Independence Foundation Fellowship is the beginning of a career in public interest and poverty law.”

Vivian has held a long time interest in working with victims of abuse. During her tenure as an Independence Foundation Fellow, she will represent victims of domestic violence through the Women Against Abuse Legal Center. In the majority of her work at the Legal Center she will represent victims of domestic abuse in their efforts to establish custody arrangements for their children. Secondly, Vivian will run what she describes as “basically a custody hot-line,” advising clients of the Legal Center and those referred to her by other parties on all issues of custody.

Women Against Abuse runs the only shelter in Philadelphia for battered women. At the shelter, Vivian will develop workshops for victims and for professionals in other social service areas who work with abused women and children. Vivian’s project sprang from her work in a civil court project she participated in over the summer. “I worked with people who were filing under the Protection From Abuse Act.” Under the statute, victims may achieve protection from the other party, full access to the residence that was shared with the abuser, compensation for any medical expenses incurred as a result of the abuse, and child custody and support.

Vivian stresses the impact the fellowships have on Philadelphia’s public interest organizations. “I don’t think a lot of these organizations were planning to hire this year. They were just trying to stay afloat.” The grants from the Independence Foundation help to bridge the gap between the work that needs to be done and the money needed to do it. For many law students, faced with enormous debt, the fellowships are a means to work in organizations that need their skills but can’t pay their salaries. “It’s an affordable way for people to do public interest law and to keep people in public interest who otherwise wouldn’t be able to because of their loans.”

In an era of budget cuts and reduced services to poor and disempowered people and communities, the Skadden and Independence Foundation Fellowships equip lawyers dedicated to service with the funds they need to carry out their goals. Ben Diehl comments, “I think public interest is at a question mark nationwide generally. There’s all the talk about funding restrictions on Legal Services Corporations. There are the budget crunches that the organizations are all experiencing and so there’s a national debate about what public interest law can do now. What it should do now and how it should attempt to refocus. There’s the great question: What is public interest law going to be in the nineties or in the next century?” The four Penn Law recipients of the Fellowships will be among those who will shape public interest law for the future. In the next two years they will begin to answer the questions of what public interest lawyers can do for their clients and how they can improve the policies that affect them.

PENN LAW
Touching the World



Professor Douglas N. Frenkel

PROFESSOR DOUGLAS
N. FRENKEL L'72
HELPS BRING CLINICAL
EDUCATION TO KENYA

Two law schools in Kenya are on their way to developing clinical education programs. Last summer Frenkel and five other American clinical experts participated in the African Law Initiative, a program funded by the U.S. Information Agency and organized by the American Bar Association.

The project, designed to provide American legal support and to develop ongoing "sister law school" relationships with schools in eastern Africa, is an extension of a program the ABA started in the early 1990s in Eastern Europe after the fall of the Soviet Union.

Frenkel and a colleague from Howard University Law School spent three weeks consulting at the University of Nairobi and at Moi University in Eldoret, Kenya. They also took part in a week-long clinical education conference in Ethiopia. The program's other American participants, who also attended the culminating conference in Ethiopia, assisted in Uganda, Tanzania, and Ethiopia.

Frenkel was struck by the differences between the two state-funded Kenyan universities. He describes Nairobi as a traditional and resource-hungry school in an urban setting and Moi as a modern and progressive school whose clinical system is being built from scratch.

Frenkel notes the enormous resource challenges faced by both schools. Basic items such as course books, photocopying, computers, and even telephones are at a premium. (Technology is not only rare, it is also disfavored in some quarters. Kenyan judges by law have to produce their decisions and notes in long hand; computers are forbidden.) The faculty are paid so poorly that they often must have their own practices as well.

Still, the Kenyans with whom Frenkel worked were eager to experiment with new teaching methodologies, and the students were filled with enthusiasm.

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“I saw students who were highly motivated and articulate,” Frenkel says. “Students in Kenyan law schools, which are all undergraduate, come from the top 3 percent of students finishing high school in the country.”

When Frenkel first arrived in Kenya, he was surprised by the country's many faces. He comments that Nairobi is a crowded city with western skyscrapers but enormous street poverty and crime. Moi, on the other hand, is in a much more rural setting with hints of future economic development. Traveling between the two schools allowed Frenkel to see the country's picturesque landscape.

The Americans had little time for sightseeing, however, as their work days usually went from “sunrise to sunset.” During their stay, Frenkel and his colleague met with the schools' faculty to discuss the implementation and running of a clinical education program and the various aspects of it.

They discussed and documented teaching methods like videotaping and simulation, which is common at Penn's clinic but unheard of at the Kenyan

schools. The Kenyans saw Penn's clinical program in operation when they spent a week in Philadelphia last October, and they were eager to begin the arduous process.

“This was, from their perspective, a pretty tough assignment,” Frenkel remarks. “Any change in curriculum in Kenya needs to be approved by the faculty senate as well as the government.”

At Nairobi, the Kenyans and Americans focused on making the existing externship program more rigorous, and at Moi, they examined administrative issues of starting and running a clinic. Unlike America, where states authorize students to practice law under faculty supervision, there is no such regulation in Kenya. This is an obstacle to the development of a “real case” clinical program.

“It would require an act of parliament to allow students to practice law,” says Frenkel. “Moi is currently in the process of working that out. That would be a predicate to allowing clinical education.”

To learn all they could about the Kenyan legal culture, the Americans also toured the courts, visited non-governmental organizations providing legal services, and met with various student groups. One organization, The Legal Aid Society, had been forced to move to a more fortress-like office because its previous office had been bombed. The Americans also met with bar groups such as the Kenyan Law Society, where Frenkel gave a speech on mediation. On the second day of the trip, Frenkel and his colleague were asked to give a formal presentation to about 150 students. The two Americans quickly concocted a role play and followed it up with a discussion with the students.

“All of this was very different from the teaching methodology they're used to,” Frenkel comments. “It led to a very animated discussion, and I've even gotten follow-up letters from the students.”

Frenkel notes that although Kenya is officially a democracy, it still oppresses opposing views. “There was a sense

that some things were too controversial to say in the classroom,” he says. “They don't know academic freedom as we know it.” This added an interesting twist to the clinical consultation, as some student clinical work might be viewed as threatening to the State.

Frenkel and the program's other participants spent their final week at a conference in Ethiopia, where the Americans gave presentations on the basics of clinical teaching. Frenkel discussed mediation and professional responsibility and made extensive use of videotape. The conference was also designed “to forge some inter-country links between African schools on the theory that they could benefit from exchanges with clinical colleagues.” The conference also focused on overcoming obstacles such as resource constraints in developing clinics.

“So many things that we might take for granted are hurdles there,” Frenkel states. “My hope is that if the African professors take the first step, the growth rate will be self-perpetuating because the richness of the clinical methodology will be its own best selling point, and...they'll be able to get support from others, including American clinical professionals.”

Frenkel, who said he would love to go back and maintain the connections he made, noted that although changes in the schools' curriculums will not come overnight, the schools have made progress in the right direction.

“The development won't be revolutionary or radical, but there will be an evolutionary trend in this area.”

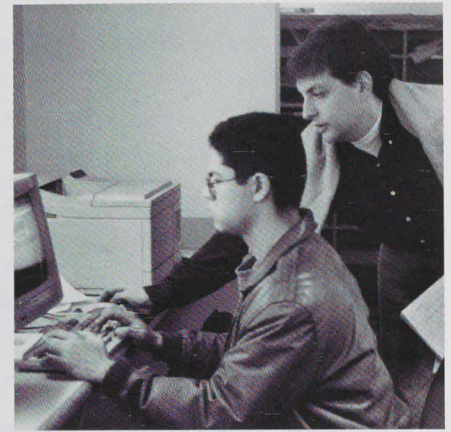
PENN LAW &
*Adventures in the
Real World*



Elizabeth Preate, Dana Ash



Bart Verdirame



Craig Appelbaum, Rolando Sanchez

DIANE WENDER'S SMALL
BUSINESS CLINIC REACHES OUT
TO THE DELAWARE VALLEY
REGION.

*For the little guy and the entrepreneur
who can't afford legal help to set up
a business or draft a contract, Penn Law
provides a course-related service that's
free and personal.*

There's something to be said for the apprenticeship system. In the early nineteenth century, back before the teaching of law became disciplined and rigorous, a would-be lawyer learned at the feet (or more correctly, on the stool) of a master. The student received whatever encouragement the Great Man was willing to give, but more important, he dealt with the practical, day-to-day functioning of the law and heard advice given by a real lawyer to real clients.

The Small Business Clinic supervised by Diane Wender '78 is probably about as close to a modern-day legal apprenticeship as you'd be likely to find. Though it's structured as a one-semester, four-credit-unit elective within the Law School—one of four practice courses under the overall leadership of Douglas Frenkel—it brings students together with actual clients in real-life (as opposed to textbook) situations. Over the course of a year, two dozen students deal with

roughly fifty clients from throughout eastern Pennsylvania.

"The typical client," says Wender, "is someone in the early stages of a business that hasn't started to generate cash flow, or businesses that have been in existence longer but might be short on capital." Student counseling is free to the client; the only charges are those imposed by outside organizations, such as government filing fees.

The clinic also provides a personal ear in a legal world often perceived as impersonal. Notes student Ken Mansfield, "Clients appreciate seeing how the student is fully committed to them."

Of course, both the world and education have changed a bit since the nineteenth century. Wender's charges don't start out with the laborious copying of Herman Melville's *Bartleby*. Instead, they are tossed head-first into the legal

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fray, a sometimes daunting but ultimately rewarding experience for most students.

“You’re given more than you think you can handle, but you find you can deal with what’s thrown your way,” recalls Ryan Pearson, who counseled a group of engineers planning to move from a part-time to a full-time business. “If I thought I had one task to perform, it ballooned into ten tasks. The client always has more concerns than you can think of.”

Potential clients are directed to the clinic by University organizations such as the Wharton Small Business Development Center, through a network of social and community organizations, or just by word of mouth. And they come with a diverse portfolio of needs, says Wender: entrepreneurs trying to decide what legal form their business should take; new non-profit organizations seeking advice on internal governance; established businesses with limited, specific needs, such as drawing up a contract.

Wender chooses clients according to criteria such as whether she feels the clinic can supply the expertise they need, the time constraints of the academic year, the client’s inability to pay for services in the traditional legal market, and how the client’s requests fit the varied needs of her students.

In the case of third-year student Charlotte Lacroix, a practicing veterinarian since 1988, Wender handed her a group related to the veterinary world who wanted to start up a professional association. “I was already planning to form a partnership with a veterinarian attorney, where we’ll consult with veterinarians on legal and business issues,” says Lacroix. “The course was just perfect, because it focuses on small businesses—and that’s what veterinarians are.”

When a businessperson contacts Wender, she sends out a small, no-nonsense brochure that outlines the clinic’s range of services, along with instructions to call her if interested. When they call, she assesses the situation and, if she determines that the clinic might be of service, she places the contact information in a

pending applications file. Then she pairs student with client according to her knowledge of what each is looking for.

Thereafter, she steps out of the picture as far as the client is concerned but remains active behind the scenes. The student and client meet alone at an initial session, videotaped (with client consent) for Wender’s evaluation, which serves as a hands-on lesson on how to structure and conduct an interview. (“I learned a lot from the videotape about how I interact with people,” says Mansfield. “It was often painful to watch, all those personal mannerisms to catch.”)

If Wender and the student determine to take the client on, the clinic writes a letter spelling out the services to be provided, which the client and student co-sign. The client and the student meet as necessary, with the student doing research and drafting agreements, all (including the meetings) subject to Wender’s review. Lacroix estimates that the course consumes about fifteen student hours a week on average.

The clinic highlights the importance of such basic lawyering skills as counseling, negotiation, fact-finding and legal draftsmanship, says Wender—“what do these terms mean in the context of this kind of letter, that kind of agreement? They get to see that the law imposes a certain set of rules, but the law also says that the parties can, to a large extent, create their own set of rules in the form of contracts.”

Wender has designed the course around a “role assumption” model: the student is encouraged to think of him/herself as the lawyer, with Wender serving as supervisor and safety net. The students give Wender’s stand-back approach high marks.

"Diane's amazing at showing people what direction to go but not telling you everything to do," says Pearson. "She stresses the importance of preparation—I think my preparation paid off in helping the client make an educated choice. Rather than making the decision on whether to incorporate for them, I gave them the tools to make their own decision."

Jenny Kim, who counseled a non-profit community development corporation in West Philadelphia, concurs. "It was hands-off in one sense, but Diane was always there for the students. She let us make mistakes—not terribly serious mistakes, because you're supervised—but the mistakes allow you to learn." Not a bad evaluation for an instructor who came to Penn in 1995 with no academic teaching experience, having spent 17 years practicing general corporate and communications industry finance law in the business department of Cohen, Shapiro, Polisher, Shiekman and Cohen, Philadelphia.

Kim's interest in the Small Business Clinic is somewhat unusual. The typical student is pointed toward a career in corporate, securities or real estate law, says Wender. Pearson plans to enter transactional corporate law; Lacroix, as noted, intends to be a veterinary attorney; Mansfield is headed for either corporate law or litigation.

Kim, on the other hand, picked public-interest law. "I would love to work in community and economic development, in communities of color, with minorities." Students with her interests, she says, usually take only the Civil Practice Clinic. "They don't realize that corporate law is so important to public interest. It's a different area of law that gives an understanding of what lawyers do, beyond going to the courtroom—which is not the biggest part of law, as I'm coming to find out."



Diane Wender, L'78

Indeed, Wender emphasizes, one of the most important lessons of the clinic is how to structure agreements so as to keep your client *out* of court. "Here, you see the context in which litigation arises," says Wender. "This is planning lawyering—rather than litigating something after the fact; you're creating agreements up front that synthesize the client's context and objectives and all the laws that pertain to that."

It's not easy. Each client is a unique case with unique needs. As Kim puts it, "You meet clients with a wide range of sophistication in legal matters and differing senses of where they're coming from. You see that lawyers have very different roles depending on context, and you learn how to juggle those roles."

For Kim's non-profit, she dealt with the filing of a 501(c)3 federal tax form and updating their bylaws. For a second client, who wanted to start a medical business in a rural area, she looked into state laws restricting ownership of a medical practice as preliminary preparation for the client's further work with an attorney with special expertise in that law.

Mansfield instructed a tightly focused husband and wife on the relative merits of incorporating vs. forming another kind of entity, then helped them file the necessary papers. For a group of four women nearing retirement who seemed less definite on what kind of business they had in mind, he provided a broader overview and covered more territory.

The clinic experience elicits a rare level of enthusiasm from the students. Says Kim, "The practice courses change the approach to what you're getting out of law. You become enriched and wiser through interaction with clients, and the instructors are much more *teachers* than in the traditional law school classes."

Lacroix notes that she received good feedback from Wender on specific tasks, "which is rare in law school." Her only complaint was lack of time. "I think students should have the option to take more course units. I would have liked to spend more than one semester on this."

Pearson summed up student response most succinctly: "I'd list the Small Business Clinic as one of my top experiences in three years at Penn Law. It was amazing to see the confidence and competence that everybody built, to see where we started and where we finished."

Ill-Gotten Gains

The Kindred Puzzles of the Law



Leo Katz

“**Lawyer:** n. One skilled in the circumvention of the law”

— Ambrose Bierce,

THE DEVIL’S DICTIONARY

When does a business transaction become blackmail? Is there really a difference between a tax shelter and tax evasion?

In his latest book, *Ill-Gotten Gains*, which has been reviewed prominently in such places as *The New Yorker* and *The New Republic*, Penn Law professor LEO KATZ delves into these questions with contagious zeal. Through an examination of engaging, often downright burlesque hypotheticals, he not only reveals his talent for telling a good story, but demonstrates the significance of formalism in our laws and our system of morality. Following is an interview with the author and a short excerpt from *Ill-Gotten Gains*, published by the University of Chicago Press and available at all major bookstores.

OVER, UNDER, AROUND

AND THROUGH:

DECIPHERING LOOPHOLES,

LAWYER JOKES AND

LEGALESE WITH LEO KATZ

by Siobhan Roth

Q: About half of your book deals with the problem of loopholes. What drew you to this topic?

A: People have always been aware of loopholes and lawyers have always engaged in what I dub in the book as “avoision.” But until now, everyone pretty much accepted a certain standard explanation of how we get loopholes and avoision, an explanation that seems quite common-sense and compelling: When drafting a legal rule, especially one that has to cover a lot of ground, it’s impossible for it to say everything we want it to say. The result is a certain gap between the letter and the spirit of the rule; and what the clever lawyer does is to take advantage of that gap. This

explanation of what is going on seemed completely satisfactory to me, indeed self-evidently right. I did not dream that there was an interesting problem buried here.

But then I began to notice something strange. What I call avoision occurs in lots of places where there are no official rules or laws that someone needs to circumvent. When I answer a friend's question in an ambiguous, misleading way rather than lie to him outright, when I provoke a fight with my lover so that she will break up with me rather than I with her, when I broadly hint to an inquiring journalist some fact that I want him to know without actually telling him that fact flat-out—well, in each of those cases I am engaging in avoision. But the avoision here has nothing to do with the old spirit-versus-the-letter-of-the-law conflict. In none of these cases am I trying to take advantage of some misdrafted rule. So these examples first raised the idea in my mind that maybe the standard explanation of what's going on in cases of avoision is really wide of the mark. Which is what I go on to demonstrate in great detail in the first part of my book.

Q: *Generally when people hear about loopholes, they think that means we need some reform — we need to root out the loopholes. Do you agree with that?*

A: No, certainly not. People holler for reform because they think that loopholes have to do with poor draftsmanship. But if I'm right and loopholes are really a fact of morality and not law, reform is going to do no good. As long as we draft our laws in accordance with our moral convictions, they are going to have loopholes because our moral convictions have loopholes. Here's a nice crisp demonstration of that fact in tax law. When I decide to take a job in which my salary is quite low, but I receive lots of extra compensation in the form of untaxed fringe benefits — the use of a company-paid car, a company-paid

apartment, company-paid school tuition — that looks as though I am availing myself of a loophole. Reform seems to be called for: let's make the fringe benefits taxable. And indeed it seems like we have now closed the loophole, but have we? What if I next take a job with a similarly low salary but a more diffuse set of fringe benefits: lush offices, extraordinarily pleasant colleagues, short working hours, you get the picture. You could try to tax those as fringe benefits too, but if you did you would soon be driven to taxing the potential neurosurgeon who decides to become a beachbum, on the grounds that he, too, is simply taking his compensation in the form of untaxable fringe benefits. And that would strike us as morally repulsive. That's what I mean when I say that loopholes are really a product of our moral convictions, not of our laws.

Q: *But if as you say loopholes are basically okay and need not be reformed out of existence, why do we feel so guilty about using them? Specifically, why do we feel guilty about using the various stratagems you detail in your book?*

A: Guilt feelings often are based on mistakes! That's what cognitive therapy—the most successful form of psychotherapy around—is based on. The reason, I claim, that we feel guilty about using loopholes—those indirect stratagems you mention for getting us to some end that was meant to be off limits to us—the reason for our guilt feelings here is that we don't appreciate a very fundamental distinction. We don't appreciate that two kinds of conduct which are functionally or economically or practically speaking the same need not be ethically the same.

There is a famous hypothetical which the tort scholar Guido Calabresi liked to pose to his torts class at Yale. He would ask them first: "If there were an evil deity that offered society a special deal, a magical gadget that's going to make our lives so much more convenient, but every year, in return for it, society is going to have to randomly select some ten of its citizens who are

going to be sacrificed at the altar of this evil deity. That's the price of getting this gadget. Is that an O.K. deal for society, or the government, to accept?" The students, of course, unanimously say: "No way. It's impermissible." He then proceeds to ask them: "Well, what about the automobile?" Calabresi means to show up the students' inconsistency. My own assessment is that the students are being perfectly consistent. What they have intuitively understood, even if they wouldn't think to put it that way, is that two courses of action can be functionally, economically, and practically equivalent, without being ethically equivalent. Just because accepting the existence of automobiles entails the sacrifice of some thousands of motorists' lives does not mean that it is ethically tantamount to offering up those thousands of motorists on the altar of an evil deity. It's the difference between marrying for money and going where the money is to then marry for love!

Q: *Given your endorsement of loopholes and the exploitation of loopholes, I can't help wondering what you think of crooked lawyer jokes?*

A: I love them. I think they are incredibly profound, and are very much in sync with the position I end up adopting. There's a guy who does cartoons for the *National Jurist* which look to me as though they were conceived as illustrations for my book. He has invented this character Harvey Richards, Lawyer for Children. Children come to him for advice on how to get the better of other children in various playground disputes. One set of his cartoons in particular I found nothing short of profound. It's the story of little Suzie who is trying to crash a movie queue. She asks a friend of hers if she can cut in line in front of her. The friend says: "No, but you can come in behind me." But that does Suzie no good, because the other kids won't stand for it. The rule is "frontsies are okay, but not backsies." You can let

someone in front of you but not behind you. So she consults Harvey Richards, who proffers this advice: "Ah, yes, the old frontsies-but-not-backsies rule. Well, why don't we do it this way. Ask your friend to let you in front of her but promise to then let her get in line in front of you." So when the dust settles Suzie really has gotten in behind her friend. Brilliant, isn't it? Worthy of a top-of-the-line tax lawyer. Or Jesuit, for that matter.

Q: *Have your feelings about the legal profession been altered by your research?*

A: Sure. What has changed the most is my view of corporate lawyers. I used to think of the corporate lawyer the way most law and economics scholars like to think of him and the way corporate lawyers profess to think of themselves. Law and economics scholars refer to the corporate lawyer as a transactional engineer, someone whose skill at fashioning and refashioning the terms of a deal makes possible productive transactions that otherwise might never get off the ground. When lawyers themselves talk about greasing the wheels of commerce, they are making the same point.

My own work has made me think that this misses what's at the heart of the lawyer's mission. I think of the lawyer more as the latterday incarnation of the Jesuit or the Talmudist whose unique specialty was to master the ins and outs of the more formalistic aspects of our morality and to design ingenious strategies to take advantage of them. That's not meant as an insult to lawyers, because unlike many people who use "Jesuitical" or even "Talmudic" as an epithet, I think the world of Jesuitic reasoning. What's often decried as specious Jesuitic sophistry I think generally simply reflects a valid counter-intuitive insight into ethics.

Q: *How about your view of the stuff that makes for headlines and editorials—say, the proliferation of tort suits in every avenue of life? Have your views on that been altered by your work on this book?*

A: Yes, quite a bit. Once one becomes sensitive to the moral significance of form in the law, a lot of strange-looking, seemingly formalistic doctrines start to make a lot more sense and a lot of recent efforts by courts and legislatures to do away with those doctrines start to seem misguided.

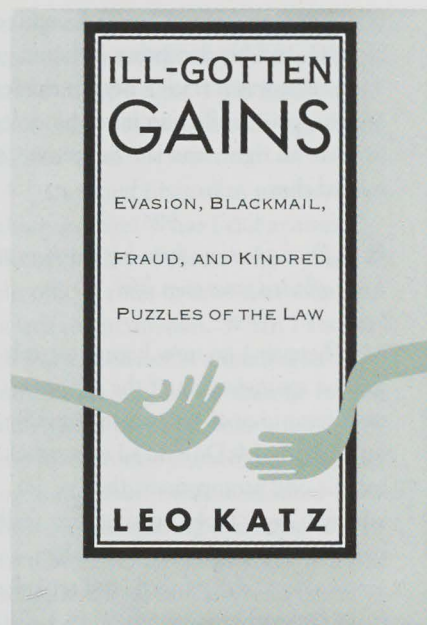
The Supreme Court recently decided that you can sue for securities fraud even though you are unable to prove that you relied on anyone's misrepresentation, so long as you can show that as a result of this misrepresentation the price of the securities you were selling was depressed and you therefore lost money. The court reasoned that if you were hurt by someone's deception, you ought to recover, and that it was an irrelevant formality just how that deception managed to lead to your being harmed—whether it was by your actually hearing the defendant utter his lie or whether it was by your selling some stock whose price was depressed on account of his lie. The defendant lied and you were hurt, period. Grounds enough to make him pay.

Well, I think the court here got it wrong. And I think the reason they got it wrong is that they failed to understand the significance of formalism in law. Not every deception that leads to a loss should be considered fraud. There is a story about the famous rogue speculator Daniel Drew who at the turn of the century had bought stock in a company that was heading downhill. Wanting to get rid of this worthless stock, he visited a dining club and seemingly inadvertently dropped an order form for that very stock on the floor. Other speculators found it, concluded that if Daniel Drew was buying this stock it must be great stuff and started buying it up themselves. Meanwhile Drew through his agents dumped every share he owned

into their lap. He was being deceptive for sure, and his deception inflicted great harm. But was it fraud? I don't think so. Some ways of inflicting harm by deception are all right, and the Supreme Court missed that.

Q: *A final question: how has work on the book affected your own life?*

A: Wherever I go now I seem to stub my toe against some of the stranger manifestations of formalism. A while ago on entering McDonald's I was struck by this odd arrangement they've got whereby most tables seating four really consist of two adjacent little tables, screwed into the ground, and separated from each other by about an inch. With formalism on my brain, it suddenly dawned on me what a brilliant piece of social psychology had gone into this set-up. McDonald's presumably wanted to have tables that seated four but was worried about the awkward fact that nobody wants to sit down at a table that already has someone seated at it. So a single person sitting at a table of four effectively renders three seats in that restaurant unusable. So how has McDonald's coped with this? By arranging for two tables to be side-by-side but separated by an inch. Parties of four will happily treat them as a table for four. But a single person looking for a seat is not going to feel impolite sitting down at such a table for four just because another single person is already sitting there, since technically speaking, that is, formalistically speaking, he is not really sitting at the same table, but at a separate table. I wonder whether it was a lawyer who came up with this arrangement....



The following is excerpted from *Ill-Gotten Gains: Evasion, Blackmail, Fraud and Kindred Puzzles of the Law*, by Leo Katz, professor at the University of Pennsylvania Law School. The editor and staff of the Penn Law Journal are grateful to the author and the University of Chicago Press for their permission to reprint.

I have read somewhere, and I do not remember where, a shrewd bit of marriage advice credited to F. Scott Fitzgerald: "Don't marry for money," he is supposed to have said "go where the money is, then marry for love." What charmed me about this statement when I first read it was the whiff of unabashed immorality that surrounds it. What has come to fascinate me about it since then is that it seems to epitomize much of the advice that good lawyers give their clients, advice which consists of shrewd stratagems surrounded by the whiff of unabashed immorality. The question one wants to ask about such advice is whether it only seems immoral, or whether it really is. And if it is immoral, why isn't it illegal? Or is it illegal? But then how can good lawyers give it?

What to make of such advice and such stratagems is one of the most enduring puzzles of the law. Before I actually try to solve it, however, I will need to get it properly stated, and the best way to do that is with an example. The example I am about to offer may strike you at first as disconcertingly exotic, too unusual and atypical to be illuminating, but I think you will quickly change your mind about that. The lessons it teaches — better than a less-exotic hypothetical would — turn out to be of the utmost generality.

The hypothetical is one with which I have been bugging various of my law school colleagues for some time. Once upon a time there were two fiercely ambitious, aspiring actresses named Mildred and Abigail. They were the same age, looked vaguely alike, and often found themselves competing for the same part. Alas, Abigail tended to be much more the successful of the two. Many a part that was almost Mildred's ultimately eluded her when Abigail applied for it and was found to be "just like Mildred, only better." As time passed, Mildred became increasingly jealous. One day, a truly attractive part was being offered up. Mildred became convinced that that part would make her career if she could get it. She was also convinced that she could get it only if Abigail stayed away from the audition, but Abigail, of course, had no intention of doing that. Mildred, however, happened to know that Abigail had been unfaithful to her husband on several occasions, and she decided to put that knowledge to good use.

What Mildred contemplated doing was to call up Abigail and tell her flat-out that, unless she stayed away from the audition that was to take place next Wednesday between nine and twelve in the morning, Mildred would tell her husband about the affairs. But then she had second thoughts. She worried that what she was about to do amounted to blackmail and that Abigail just might retaliate by reporting her threat to the police. She was correct, of course, in so thinking, for blackmail is what it would indisputably be. To be sure, the typical

blackmailer seeks money, not a theatrical part, in return for not implementing his threat, but that's a difference without a distinction.

Having discarded her original plan, Mildred came up, however, with an alternative. She wrote out a detailed report of Abigail's infidelities, put it in an envelope addressed to Abigail's husband and mailed it off by next-day delivery the day before the audition. She then called up Abigail and told her the letter was in the mail, due to arrive the next day sometime between nine and twelve. "You can draw your own conclusions," she said. As expected, Abigail stayed home to intercept the letter before her husband could see it, and thus she was unable to make it to the audition.

The question I then ask my colleagues is simply whether they think Mildred's stratagem works. Has she by this devious means succeeded in getting the benefits of blackmail without actually committing blackmail? Or, rather, should she be viewed as nothing more than an unusually devious blackmailer and be treated as such? Reactions have been as divided as they have been vehement. Most people tend to say, and they are rarely tentative about it, that Mildred is no better than a blackmailer. Their reaction is captured by the famous opening number in Bertolt Brecht's *Threepenny Opera*, the "Ballad of Mack the Knife":

*Oh the shark has pretty teeth, dear
And he shows them pearly white
Just a jackknife has Macheath, dear
and he keeps it out of sight.*

All that Mildred's stratagem does, they are saying, is to keep the jackknife out of sight. Morally, Mildred is still a shark. What she has done may not technically amount to blackmail, but it is the functional equivalent of blackmail. She has committed blackmail in the thin disguise of a warning. And how can that make a moral difference? If we are concerned about blackmail, how can

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we not be concerned about Mildred’s actions? To condemn blackmail but not condemn what Mildred did is like Yogi Berra telling the waitress to cut his pizza into four pieces rather than eight, because he wasn’t hungry enough for eight. Nothing has changed but the way in which the crime is served up.

Worse yet (they say): to allow Mildred to get away with this is to eviscerate the law against blackmail. Soon, every blackmailer will attain his evil ends by just being clever enough about the way in which he goes about it. Won’t it nearly always be possible to rearrange a blackmail deal so as to turn it into a fait accompli followed by a warning—which is the essence of Mildred’s trick?

So argues one side.

But my colleagues on the other side are no less persuasive. There is a world of difference, they insist, between what Mildred considered doing and what she actually ended up doing. No doubt, they concede, whether Mildred threatens or warns, she is “trying to do the same thing,” namely, keep Abigail away from the audition. But broadly speaking, a bank robber and a businessman are also “trying to do the same thing”—make money; nevertheless, we

treat them differently. Indeed, tax lawyers make their living by exploiting such distinctions, by taking a deal their client is eager to enter into but for its unfortunate tax consequences and finding a way to restructure “the very same deal” so as to minimize the tax burden. Mildred was simply becoming a good tax lawyer.

What about the argument that it would eviscerate the law against blackmail to allow Mildred to use her stratagem? Never mind that, say Mildred’s defenders, it would eviscerate personal liberty if we punished Mildred for blackmail every time she does something that is the functional equivalent of her original design. Suppose Mildred had decided to send her incriminating letter outright to Abigail’s husband hoping that it would stir up enough of a marital spat to keep Abigail away from the audition. In doing so, Mildred would merely have found yet another way of using the nasty facts in her possession to achieve her original objective: she would have committed the “fundamental equivalent” of blackmail. Or suppose Mildred had decided to mail her incriminating letter to a *National Enquirer* columnist interested in juicy tidbits about up-and-coming starlets. This would be another “functional equivalent” of blackmail. Or suppose Mildred had merely turned some of the more spectacular episodes in Abigail’s love life into a short story and published it without ever revealing Abigail’s identity. Let us assume she didn’t expect anyone but Abigail to recognize herself in the story, but she believed that just reading the story would be upsetting enough for Abigail to keep her away from the audition. That, too, would be a “functional equivalent” of her original blackmail scheme: Mildred is using the same incendiary information for the identical purpose as before. By now, however, the “functional equivalence” view is really starting to look absurd: we are now punishing Mildred for doing things most of us think she should be perfectly free to do.

So argue Mildred’s defenders.

There is a certain pattern to the way opinion divides among my colleagues. Not surprisingly, I suppose, those who specialize in tax law or in civil and criminal procedure tend to side with Mildred. These are after all fields in which how you get some place is at least as important as where you end up. By contrast, Mildred has her most intense foes among those who like to look at law through an economic lens, who tend to be found especially among specialists in fields like torts, contracts, antitrust, or corporations. Again, that seems only natural. The economically minded lawyer likes to cut through what he considers the layers of irrelevant legal formalism to the economic essence of things; and stripped to its economic essence Mildred appears to be doing the same things as long as she somehow manages to use her damaging information to keep Abigail from that audition.

This then is the problem of avoidance and evasion: Should any of Mildred’s various hypothetical strategies for keeping Abigail away from the audition—sending the letter and then issuing a warning, sending the letter and hoping for a spat, informing the *National Enquirer*, or publishing a short story *a clef*—should any of those, all of those, or some of those serve to get Mildred off the hook? If so, which ones, and why? Mildred’s case has an infinite number of analogues. Just about every field of law—from Antitrust to Zoning—is replete with puzzling cases in which people routinely try to bypass, circumvent, plan around, duck, or slide past some legal provision or other, and we can’t figure out whether to let them get away with it or not. When should we slap down what they did as sleazy evasion, when should we defer to it as circumspect avoidance?

For the answer to this and other puzzles of the law, see *Ill-Gotten Gains*.

Faculty Excerpt



Stephen J. Morse, Ferdinand Wakeman
Hubbell Professor of Law

Professor Morse presented this essay at the Georgetown University Law Center Faculty Workshop and at a panel on "Neuropsychiatry in the Courtroom" at the 1995 annual meeting of the American Neuropsychiatric Association. It was published in the February 1996 issue of the *Georgetown Law Journal*. In modified form, it appeared in *Seminars in Clinical Neuropsychiatry*.

BRAIN AND BLAME

by Stephen J. Morse

I. INTRODUCTION

The discovery of biological pathology that may be associated with criminal behavior lures many people to treat the offender as purely a mechanism, and the offensive conduct as simply the movements of a biological organism. Because mechanisms and their movements are not appropriate objects of moral and legal blame, the inevitable conclusion seems to be that the offender should not be held legally responsible. I suggest in contrast that abnormal biological causes of behavior are not grounds *per se* to excuse. Causation is not an excuse and, even within a more sophisticated theory of excuse, pathology will usually play a limited role in supporting an individual excuse.

Parts II and III of this essay describe the law's concept of the person and its relation to moral and legal responsibility and excusing conditions. Part IV then examines why causation in general, even pathological causation, is not itself an excusing condition. Next, Part V turns to the specific relation of brain or other nervous system pathology to moral and legal responsibility properly understood. Finally, to illustrate the essay's theses, Part VI considers in detail the case of "Spyder Cystkopf," a man with a previously blameless history and a confirmed cyst that impinged on his brain, who killed his wife during a heated argument with her.

II. THE LAW'S CONCEPT OF THE PERSON

Intentional human conduct, that is, *action*, unlike other phenomena, can be explained by physical causes *and* by reasons for action. Although physical causes explain the movements of galaxies and planets, molecules, inhuman species, and all the other moving parts of the physical universe, including the neurophysiological events accompanying human action, only human action can also be explained by reasons.

It makes no sense to ask a bull that goes a matador, "Why did you do that?" but this question makes sense and is vitally important when it is addressed to a person who sticks a knife into the chest of another human being. It makes a great difference to us if the knife-wielder is a surgeon who is cutting with the patient's consent or a person who is enraged at the victim and intends to kill him.

When one asks about human action, "Why did she do that?" two distinct types of answers may be given. The reason-giving explanation accounts for human behavior as a product of intentions that arise from the desires and beliefs of the agent. The second type of explanation treats human behavior as simply one bit of the phenomena of the universe, subject to the same natural, physical laws that explain all phenomena.

Suppose, for example, we wish to explain why Molly became a lawyer. The reason-giving explanation might be that she wishes to emulate her admired mother, a prominent lawyer, and Molly believes that the best way to do so is also

to become a lawyer. If we want to account for why Molly chose one law school rather than another, a perfectly satisfactory explanation under the circumstances would be that Molly chose the best school that admitted her.

The mechanistic type of explanation would approach these questions quite differently. For example, those who believe that mind can ultimately be reduced to the biophysical workings of the brain and nervous system—the eliminative materialists—also believe that Molly’s “decision” is *solely* the law-governed product of biophysical causes. Her desires, beliefs, intentions, and choices are therefore simply epiphenomenal, rather than genuine causes of her behavior.

According to this mode of explanation, Molly’s “choices” to go to law school and to become a lawyer (and all other human behavior) are causally indistinguishable from any other phenomena in the universe, including the movements of molecules and bacteria.

As clinical and experimental sciences of behavior, psychiatry and psychology are uncomfortably wedged between the reason-giving and mechanistic accounts of human conduct. Sometimes they treat actions as purely physical phenomena, sometimes as texts to be interpreted, and sometimes as a combination of the two. Even neuropsychiatry and neuropsychology, the more physical branches of their parent disciplines, are similarly wedged because they begin their investigations with *action* and not simply with abnormal movements.

One can attempt to assimilate reason-giving to mechanistic explanation by claiming that desires, beliefs, and intentions are genuine causes, and not simply rationalizations of behavior. Indeed, folk psychology, the dominant explanatory mode in the social sciences, proceeds on the assumption that reasons for action are genuinely causal. But the assimilationist position is philosophically controversial, a controversy that will not be solved until the mind-body problem is “solved”—an event unlikely to occur in the foreseeable future.

Law, unlike mechanistic explanation or the conflicted stance of psychiatry and psychology, views human action as almost entirely reason-governed. The law’s concept of a person is a practical reasoning, rule-following being, most of whose legally relevant movements must be understood in terms of beliefs, desires, and intentions. As a system of rules to guide and govern *human* interaction—legislatures and courts do not decide what rules infrahuman species must follow—the law presupposes that people use legal rules as premises in the practical syllogisms that guide much human action.

No “instinct” governs how fast a person drives on the open highway. But among the various explanatory variables, the posted speed limit and the belief in the probability of paying the consequences for exceeding it surely play a large role in the driver’s choice of speed. For the law, then, a person is a practical reasoner, a being whose action may be guided by reasons.

The legal view of the person is not that all people always reason and behave consistently rationally according to some preordained, normative notion of rationality. It is simply that people are creatures who act for and consistently with their reasons for action and are generally capable of minimal rationality according to mostly conventional, socially constructed standards.

On occasion, the law appears concerned with a mechanistic causal account of conduct. For example, claims of legal insanity are usually supported and explained by using mental disorder as a variable that at least in part caused the defendant’s offense. Even in such cases, however, the search for a causal account is triggered by the untoward, crazy *reasons* that motivated the defendant. Furthermore, the criteria for legal insanity primarily address the defendant’s reasoning, rather than mechanistic causes.

For example, in addition to a finding of mental disorder, acquittal by reason of insanity requires that the defendant did not know right from wrong or was unable to appreciate the wrongfulness of her act. Conduct motivated by crazy reasons is intentional human action. The law excuses a legally insane defendant, however, because her practical reasoning was nonculpably irrational, not because her behavior was caused by abnormal psychological or biological variables. Indeed, it is a simple matter to devise irrationality criteria for legal insanity that would excuse all people now found legally insane, but which make no mention whatsoever of mental disorder or other alleged mechanistic causes.

III. REASONS, RESPONSIBILITIES & EXCUSES

The law’s conception of responsibility follows logically from its conception of the person and the nature of law itself. Once again, law is a system of rules that guides and governs human interaction. It tells citizens what they may and may not do, what they must or must not do, and what they are entitled to. If human beings were not creatures who could understand and follow the rules of their society, who could not be guided by reasons, the law and all other systems, such as morality, that regulate conduct by reasons and rules would be powerless to affect human action.

Rule-followers must be creatures who are capable of properly using the rules as premises in practical reasoning. It follows that a legally responsible agent is a person who is so capable according to some contingent, normative notion of both rationality itself and how much capability is required.

For example, legal responsibility might require the capacity to understand the reason for an applicable rule, as well as the rule’s narrow behavior command. These are matters of moral, political, and, ultimately, legal judgment, about which reasonable people can and do

differ. There is no uncontroversial definition of rationality or of what kind and how much is required for responsibility. But the debate is about human action—intentional behavior guided by reasons.

Specific legal responsibility criteria exemplify the foregoing analysis. Consider the criminal law and criminal responsibility. Most substantive criminal laws prohibit harmful conduct. Fair and effective criminal law requires that citizens must understand what conduct is prohibited, the nature of their own conduct, and the consequences for doing what the law prohibits. Homicide laws, for example, require that citizens understand that unjustifiably killing other human beings is prohibited, what counts as killing conduct, and that the state will inflict pain if the rule is violated and the perpetrator is caught and convicted.

A person incapable of understanding the rule or the nature of her own conduct, including the context in which it is embedded, could not properly use the rule to guide her conduct. For example, a person who delusionally believed that she was about to be killed by another person and kills the other in the mistaken belief that she must do so to save her own life, does not rationally understand what she is doing. She of course knows that she is killing a human being and does so intentionally, but the rule against *unjustifiable* homicide will be ineffective because she delusionally believes that her action is justifiable.

The inability to follow a rule properly, to be rationally guided by it, is what distinguishes the delusional agent from people who are simply mistaken, but who could have followed the rule by exerting more effort, attention, or the like. We believe that the delusional person's failure to understand is not her fault because she lacked the ability to understand in this context. In contrast, the person capable of rational conduct is at fault if she fails to exercise her rationality. In sum, rationality is required for responsibility, and nonculpable irrationality is an excusing condition.

Blaming and punishing an irrational agent for violating a rule she was incapable of following is unfair and an ineffective mechanism of social control.

Responsibility also requires that the agent act without compulsion or coercion, even if the agent is fully rational, because it is also unfair to hold people accountable for behavior that is wrongly compelled. For example, suppose a gunslinger threatens to kill you unless you kill another innocent person. The balance of evils is not positive: it is one innocent life or another, so the killing would not be justified. But it might be excused because it is compelled.

Compulsion involves a wrongful hard choice that a rational, otherwise responsible agent faces. If she yields to the threat, it will not be because she doesn't understand the legal rule or what she is doing. She knows it is wrong and acts intentionally precisely to avoid the threatened harm. Still, society, acting through its legal rules governing such cases, might decide that some choices are too hard fairly to expect the agent to behave properly and that people will be excused for making the wrong choice. If the hard choice renders the person irrational and incapable of rationality, then there is no need to resort to notions of compulsion to excuse.

In sum, an agent is responsible for a particular action if she was capable of rationality and acted without compulsion in this context. If she was incapable of rationality or compelled to perform the particular action, she will be excused.

IV. CAUSATION IS NOT AN EXCUSING CONDITION

The "fundamental psycholegal error" is the mistaken belief that if science or common sense identifies a cause for human action, including mental or physical disorders, then the conduct is necessarily excused. But causation is neither an excuse *per se* nor the equivalent of compulsion, which is an excusing condition.

For example, suppose that I politely ask the brown-haired members of an audience of lawyers to whom I am speaking to raise their hands to assist me with

a demonstration. As I know from experience, virtually all the brunet(te)s will raise their hands, and I will thank them politely. These hand-raising are clearly caused by a variety of variables over which the brunet(te) attorneys have no control, including genetic endowment (being brunet(te) is a genetically determined, but-for cause of the behavior) and, most proximately, my words. Equally clearly, this conduct is human action—*intentional* bodily movement—and not simply the movements of bodily parts in space, as if, for example, a neurological disorder produced a similar arm-rising.

Moreover, the conduct is entirely rational and uncoerced. The cooperating audience members reasonably desire that the particular lecture they are attending should be useful to them. They reasonably believe that cooperating with the invited lecturer at a professional meeting will help satisfy that desire. Thus, they form the intention to raise their hands, and they do so. It is hard to imagine more completely rational conduct, according to any normative notion of rationality. The hand-raising were not compelled, because the audience was not threatened with any untoward consequences whatsoever for failure to cooperate. In fact, the lecturer's request to participate was more like an *offer*, an opportunity to make oneself better off by improving the presentation's effectiveness, and offers provide easy choices and more freedom, rather than hard choices and less freedom.

The cooperative audience members are clearly responsible for their hand-raising and fully *deserve* my "thank you," even though their conduct was perfectly predictable and every bit as caused as a neuropathologically induced arm-rising. My "thank you" was not intended simply as a positive reinforcer for the hand-raising behavior the audience members performed. Gratitude is the appropriate moral sentiment in response to the willingness of the audience to satisfy the normatively justifiable expectation that they

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should cooperate and the reasonable assumption that a group of lawyers is composed of rational and therefore responsible moral agents. "Thank you" is the appropriate and deserved expression of that moral sentiment. Although the hand-raising conduct is caused, there is no reason why it should be excused.

All phenomena of the universe are presumably caused by the necessary and sufficient conditions that produce them. If causation were an excuse, no one would be responsible for any conduct, and society would not be concerned with moral and legal responsibility and excuse. Indeed, eliminative materialists, among others, often make such assertions, but such a moral and legal world is not the one we have, nor I daresay, one that most of us would prefer to inhabit.

Although neuropathologically induced arm-risings and cooperative, intentional hand-raisings are equally caused, they are distinguishable phenomena, and the difference is vital to our conception of ourselves as human beings.

This is not the appropriate place to offer a defense of the importance of responsibility and excuse and praise and blame, but I will simply assume that such human ideas and practices enrich our lives and encourage human flourishing. In a moral and legal world that encompasses both responsible and excused action, all of which is caused, the discrete excusing conditions that should and do negate responsibility are surely caused by something. Nevertheless, it is the nature of the excusing condition that is doing the work, not that the excusing condition is caused.

The determinist reductio—everyone or no one is responsible if the truth of determinism or universal causation underwrites responsibility—is often attacked in two ways. The first is "selective determinism" or "selective causation"—the claims that only some behavior is caused or determined and that only this subset of behavior should be excused. The metaphysics of selective causation are wildly implausible and "panicky," however. If this is a causal universe, as it most assuredly is, then it strains the imagination also to believe

that some human behavior somehow exits the "causal stream."

To explain in detail why selective causation/selective excuse is an unconvincing and ultimately patronizing argument would require a lengthy digression from this essay's primary purpose. I shall simply assert here that good arguments do not support this position.

The second attack on the determinist reductio claims that only abnormal causes, including psychopathological and physiopathological variables, excuse. Although this argument appears closer to the truth, it is a variant of selective determinism and suffers from the defects of that approach. Pathology can produce an excusing condition, but when it does it is the excusing condition that does the work, not the existence of a pathological cause *per se*.

Consider again the delusional self-defender, who kills in response to the delusionally mistaken belief that she is about to be killed. Human action to save one's life is not a mechanistic, literally irresistible cause of behavior, and crazy beliefs are no more compelling than non-crazy beliefs. The killing is perfectly intentional—the delusional belief provides the precise reason to form the intention to kill. Moreover, the killing is also not compelled simply because the belief is pathologically produced. A non-delusional but unreasonably mistaken self-defender, who feels the same desire to save her own life, would have no excuse for killing. A desire to save one's own life furnishes an excusing condition only under very limited circumstances.

There is also nothing wrong with our defender's "will," properly understood as an intentional executory state that translates desires and beliefs into action. The defender's will operated quite effectively to effectuate her desire to live when she believed that she needed to kill to survive.

Nor does our delusional self-defender lack "free will" simply because she is abnormal. I don't know what free will is in any case, and it is often just a placeholder for the conclusion that the agent supposedly lacking this desirable attribute ought to be excused.

The real reason our delusional self-defender ought to be excused, of course, is that she is not capable of rationality on this occasion. This is the genuine excusing condition that distinguishes her from the non-delusional but unreasonably mistaken self-defender.

When agents behave inexplicably irrationally, we frequently believe that underlying pathology produces the irrationality, but it is the irrationality, not the pathology, that excuses. After all, pathology does not always produce an excusing condition, and when it does not, there is no reason to excuse the resultant conduct. To see why, imagine a case in which pathology is a but-for cause of rational behavior.

Consider a person with paranoid fears for her personal safety who is therefore hyper-vigilant to cues of impending danger. Suppose on a given occasion she accurately perceives such a cue and kills properly to save her life. If she had not been pathologically hyper-vigilant, she would have missed the cue and been killed. She is perfectly responsible for this rational, justifiable homicide.

Or take the case of a hypomanic businessperson, whose manic energy and heightened powers are a but-for cause of making an extremely shrewd deal. Assume that business conditions later change unforeseeably and the deal is now a loser. The deal was surely rational and uncompelled when it was made, and no sensible legal system would later void it because the businessperson was incompetent to contract.

Even when pathology is uncontroversially a but-for cause of behavior, that conduct will be excused only if an independent excusing condition, such as irrationality or compulsion, is present. Even a highly abnormal cause will not excuse unless it produces an excusing condition.

V. BRAIN AND BLAME

The foregoing analysis of excusing conditions applies straightforwardly to cases in which brain or nervous system pathology is part of the causal chain of intentional behavior. To begin, biological causation will only be part of the causal determinants of any intentional conduct, which is always mediated by one's culture, language, and the like. The best accounts of the relation between brain and behavior suggest that no discrete bit of physiology always and everywhere produces exactly the same intentional conduct in all human beings experiencing that physiological state, that no stimulus produces exactly the same brain states in all people responding to it, and that no bit of exactly the same behavior emitted by different people is attended by exactly the same brain state in all the similarly behaving agents.

For example, the same pathophysiological (or psychopathological) processes may produce delusional beliefs in all people with the processes, but the delusional content and resultant behavior of delusional, thirteenth-century subcontinental Indians will surely differ from that of delusional, late-twentieth-century Americans.

For a second intuitive example, consider the demonstration about hand-raising discussed previously. Large numbers of people behave (approximately) exactly the same for the same reasons in response to the same stimulus. It is implausible to assume that their brains and nervous systems are in identical biophysical states. In sum, biological variables will rarely be the sole determinants of intentional human action.

More fundamentally, biological causation will not excuse *per se*, because people are biological creatures and biology is always part of the causal chain for everything we do. If biological causation excused, no one would be responsible. Intentional human action and neuropathologically produced human movements are both biologically driven, yet they are conceptually, morally, and legally distinguishable. Moreover, if biology were "all" the explanation and everything

else, including causal reasons for action, were simply epiphenomenal—as the eliminative materialists claim—then our entire notions of ourselves and responsibility would surely alter radically.

But eliminative materialism is philosophically controversial, and science furnishes no reason to believe that it is true. Indeed, it is not clear conceptually that science could demonstrate that it is true. Thus, until the doctor comes and convinces us that our normative belief in human agency and responsibility is itself pathological, biological causation *per se* does not excuse.

Abnormal biological causation also does not excuse *per se*. Human action can be rational or irrational, uncompelled or compelled, whether its causes are "normal" or "abnormal." Whatever the causes of human action may be, they will ultimately be expressed through reasons for action, which are the true objects of responsibility analysis.

Suppose, for example, that a confirmed brain lesion, such as a tumor, is a but-for cause of behavior. That is, let us suppose that a particular piece of undesirable behavior would not have occurred if the agent never had the tumor. Make the further, strong assumption that once the tumor is removed, the probability that this agent will reoffend drops to zero.

Although one's strong intuition may be that this agent is not responsible for the undesirable behavior, the given assumptions do not entail the conclusion that the agent should be excused. The undesirable behavior is human action, not a literally irresistible mechanism, and the causal role of the brain tumor does not necessarily mean that the behavior was irrational or compelled.

Moreover, it is a mistake to assume that specific brain pathology inevitably produces highly specific, complex intentional action. Certain areas of the brain do control general functions. For example, Broca's area in the left frontal lobe controls the ability to comprehend and produce appropriate language. A sufficient lesion in this site produces and enables us to predict aphasia. But there is no region or site in the frontal lobes or anywhere else in the brain that controls specific, complex intentional actions. No lesion enables us to explain causally or to predict an agent's reasons and consequent intentional action in the same direct, precise way that a lesion in Broca's area permits the explanation or prediction of aphasia.

Neurological lesions can dissociate bodily movements from apparent intentions, producing automatisms and similar "unconscious" states. But such states rarely produce criminal conduct, and when they do, the agent is exculpated. In these cases we need not even reach the issue of whether the agent's intentional action is rational, because action itself is lacking. The story relating brain or nervous system pathology to intentional conduct will be far more complicated and far less direct than the already complicated correspondence between brain and nervous system lesions and the reduction or loss of general functions.

Brain or other nervous system pathology affects agents more generally. Suppose, for example, that the tumor in the previous example makes the agent irritable or emotionally labile. Such emotional states surely make it harder for any agent to fly straight in the face of other criminogenic variables, such as provocation or stress, but *per se* they do not render an agent irrational.

Other agents may be equally irritable or labile as the result of environmental variables, such as the loss of sleep and stress associated with, say, taking law exams or trying an important, difficult,

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lengthy case. But these people would not be excused if they offended while in an uncharacteristic emotional state, unless that state sufficiently deprived them of rationality.

People with criminogenically predisposing congenital abnormalities or lifelong character traits would have even less excuse for undesirable behavior, because they had the time and experience to learn to deal with those aspects of themselves that made flying straight harder.

Consider the case of Charles Whitman, who killed many victims by shooting passersby from the top of the tower on the University of Texas campus. He suffered from a brain tumor, and let us assume that we could demonstrate incontrovertibly that he would not have shot if he had not suffered from the tumor. But whether he is nonetheless responsible depends not on the but-for causation of his homicides, but on his reasons for action.

If Whitman believed, for example, that mass murder of innocents would produce eternal peace on earth, then he should be excused, whether the delusional belief was a product of brain pathology, childhood trauma, or whatever. But if Whitman was simply an angry person who believed that life had dealt him a raw deal and that he was going to go out in a blaze of glory that would give his miserable life meaning, then he is unfortunate but responsible, whether his anger and beliefs were a product of the tumor, childhood trauma, an unfortunate character, or whatever.

All human action is, in part, the product of but-for causes over which agents have no control and which they are powerless to change, including their genetic endowments and the nature and context of their child-rearing. If people had different genes, different parents, and different cultures, they would be different.

Moreover, situational determinants over which agents have no control are but-for causes of much behavior. A victim in the wrong place at the wrong time is as much a but-for cause of the mugging as the mugger's genetics and experiences. If no victim were available, no mugging occurs, whatever the would-be mugger's intentions.

Such considerations are treated by philosophers under the rubric, "moral luck." Our characters and our opportunities are in large measure the product of luck, and if luck excused, no one would be responsible. A brain tumor or other neuropathology that enhances the probability of the sufferer engaging in antisocial behavior is surely an example of dreadful bad luck. But unless the agent is irrational or the behavior is compelled, there is no reason to excuse the agent simply because bad luck in the form of biological pathology played a causal role. A cause is just a cause. It is not *per se* an excuse.

VI. "SPYDER CYSTKOPF"

(The facts of the Spyder Cystkopf case are drawn from Daniel A. Martell, *New York v. Spyder Cystkopf* [unpublished manuscript, on file with *The Georgetown Law Journal*]. Although the Cystkopf case is real, the names of the defendant and his victim are Dr. Martell's pseudonyms. The names and claims of the experts are real. Dr. Martell's description of the Cystkopf case has been published in *Seminars in Clinical Neuropsychiatry*.)

Spyder Cystkopf was charged with second degree murder for killing his wife, Brunhilda, on January 7, 1991. According to Cystkopf, he and Brunhilda had been arguing about their children, and she became enraged and scratched his face. During the ensuing fight, he struck her a number of times, she fell to the floor, and he strangled her to death. Cystkopf then arranged the crime scene to make Brunhilda's death appear to be a suicide, including throwing her out the thirteenth story window of their home. Forensic pathological evidence suggested that Brunhilda was perhaps alive when she hit the pavement. Cystkopf pled legal insanity and used evidence that he had a sub-arachnoid cyst to claim that the normal functioning of his brain was impaired.

Cystkopf was a sixty-four-year-old "semi-retired" advertising executive. He had no previous history of violent conduct and no criminal record. In 1948 he suffered from various neurological abnormalities, including migraine and what was described as a seizure that caused disorientation, difficulty finding words, and an abnormal reflex. Medical tests found nothing wrong of neurological significance, and Cystkopf was discharged with a diagnosis of suspected congenital cerebral aneurysm. From the 1948 discharge until the homicide in 1991, Cystkopf suffered from no neurological problems or disorders.

As a person with far more resources than the average murder defendant, Cystkopf was able to retain excellent private counsel and numerous experts. He was evaluated psychiatrically,

neurologically, and neuropsychologically. Virtually all the evaluations produced normal results, and none produced significant abnormalities. Cystkopf also underwent various brain-imaging procedures, which disclosed the presence of the sub-arachnoid cyst and significant, but possibly artifactual, decreases in cerebral metabolism in regions of the brain adjacent to the cyst.

In light of these findings, Cystkopf's local experts referred him for further evaluation to Dr. Antonio Damasio's well-known neurological and cognitive neuroscience team at the University of Iowa College of Medicine.

Damasio's findings and theories were the crux of Cystkopf's legal insanity claim. The size and location of the sub-arachnoid cyst were confirmed once again. Neuropsychological testing indicated mild defects in "executive control" functions, including prospective memory, sequential learning, and flexible responding to changing environmental contingencies. Most important, Damasio found that Cystkopf's ability to "mark" appropriate behavioral response options with a signal was impaired.

Damasio had previously suggested and tested on a small number of subjects the hypothesis that some adults with acquired frontal lobe damage and socio-pathic behavioral changes suffer an impairment in the ability to "mark [the implications of social situations] with a signal that would automatically distinguish advantageous from pernicious actions, in the perspective of social rules and current contingencies."

Consequently, such people allegedly have diminished ability to *guide* their conduct with appropriate responses, even if their ability cognitively to conjure up such responses is unimpaired.

Because Cystkopf's performance on the experimental protocol was similar to those of the brain-damaged experimental subjects in the earlier study, Damasio concluded that Cystkopf suffered from "a pathological diminution of autonomic responses to highly charged social/affective stimuli, in a nonverbal paradigm." Damasio's final report noted that Cystkopf's response—killing—and his wife's provocation were both unusual. Further, the report asserted: "It is reasonable to assume that his inability to respond correctly is part of the same defect that so limits his emotional and psychophysiological responses, and also that such a defect is due to his long-standing neurological condition."

Armed with these findings and hypotheses about Cystkopf, the defense claimed that Cystkopf's cyst had been inexorably growing, perhaps throughout his life, and finally, in response to the alleged argument with and scratching by his wife, Cystkopf was "unable to select the most appropriate response option" because he had "pathological alterations in [his] modulation of social behavior." As a result, Cystkopf allegedly lacked substantial capacity to appreciate the criminality of his actions.

Cystkopf was not raising a "standard" insanity defense, because he lacked a diagnosis of major mental disorder and grossly psychotic symptoms. Both are usually practically required to support an insanity defense, and the law sometimes requires the presence of severe mental disorder to raise the defense.

Nevertheless, I believe that Cystkopf raised a colorable insanity claim. No diagnosis or symptoms necessarily entail that the agent is not legally responsible, as the American Psychiatric Association's official diagnostic manual admits. The genuine basis for the excuse is nonculpable irrationality. Cystkopf should be excused if he can demonstrate that the tumor (or anything else) rendered him nonculpably irrational when he killed his wife, even if his mental state does not fit traditional definitions of major mental disorder.

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Before addressing Cystkopf's moral and legal responsibility for killing his wife, let us review what we reasonably believe, what we would like to know, and what is speculative.

We reasonably believe that (1) Cystkopf killed his wife by either strangling or defenestrating her; (2) Cystkopf had no history either of any violent conduct whatsoever or of any signs or symptoms of neurological disorder since 1948; and (3) Cystkopf had a sub-arachnoid cyst that may have decreased his cerebral metabolism in the region adjacent to the cyst.

What we would like to know is a very large category, but it includes at least the following: (1) a detailed account of exactly what the fight was about and what was Cystkopf's mental state when he attacked his wife; (2) a detailed, intimate history of Cystkopf's long- and short-term relations with his wife; (3) a detailed account of Cystkopf's usual behavior in a variety of usual and unusual contexts, including stressful and conflictual situations; (4) the statistically normative behavioral abnormalities, especially violent conduct, exhibited by people with Cystkopf's alleged neurological and neuropsychological abnormalities; and (5) the percentage of those with Cystkopf's pathological lesions and test results who demonstrate no behavioral abnormalities in general and no abnormal violence in particular.

The three most important speculations concern the causal role of the cyst in the homicidal behavior, the validity of Damasio's theory in general, and the application of Damasio's theory to Cystkopf in particular. These are speculative for a number of reasons.

First, there is no way to confirm that the cyst played a but-for causal role, especially because we have no evidence that this apparently lifelong abnormality ever produced any other untoward conduct. Moreover, we do know both that most people with such cysts do not engage in homicidal behavior and that many people without abnormalities uncharacteristically "lose it" on a single occasion and do dreadful things. Second, Damasio's theory suffers from a number

of defects, including vague formulation, limited experimental verification, and unknown ecological validity. Third, even if valid, Damasio's theory and findings may not apply to Cystkopf, because he differs importantly from Damasio's experimental subjects.

Despite the large gaps in the factual, scientific, and clinical evidence, I will make the following simplifying assumptions, which are all sympathetic to Cystkopf's excusing claim: (1) Cystkopf killed his wife intentionally, but in a state of extreme emotional disturbance for which his wife's provocative behavior may have been a reasonable explanation or excuse; (2) Cystkopf and his wife had a generally harmonious relationship that was not a dormant but pressure-filled "volcano," ready to erupt if the pressure increased; (3) Cystkopf was a characteristically even-tempered person, not given to rages and other highly emotional responses to stresses and provocations; (4) despite the cautions of the "method skeptics," all the neuropsychological findings are valid; (5) Damasio's theory is correct in general; and (6) Cystkopf had impaired ability to mark the appropriate responses to conflictual situations.

The lack of information that generated the need for these simplifying assumptions is paradoxically beneficial. It allows us to consider the appropriate role of the neurological claim undistracted by facts that might undermine it and our consequent willingness to understand the relevance of such claims in general. Now, how should we assess Cystkopf's moral and legal responsibility for killing his wife?

Cystkopf is not claiming that he was unconscious or suffering from so-called sane or insane automatism when he killed his wife. That is, he is neither denying the act requirement of the *prima facie* case, nor is he raising essentially the same claim as an affirmative defense. The killer, Cystkopf, was not a mechanism, that is, literally physically compelled to perform the bodily movements that caused his wife's death. His deed was conscious, intentional, and motivated by reasons for action.

Moreover, highly unusual and extreme provocation that creates extreme emotional disturbance and is the but-for cause of responsive behavior does not furnish a compulsion excuse. At most, as Cystkopf's charge reflects, it provides a partial excusing condition that reduces the degree of homicide. Any possible fully excusing condition will thus require analysis of his reasons for action and whether that action was either sufficiently irrational or otherwise sufficiently compelled.

Given our assumptions, Cystkopf's reason for killing his wife appears relatively apparent. Unusually provoked and enraged by their argument and by her assaultive scratching, he desired her death and formed the intention to effectuate his desire. The only unusual aspect of his behavior, of course, is that he acted on the desire to kill.

Intense rage and the desire to kill or destroy the objects of our rage are hardly unusual. In response to such feelings and urges, people may utter angry words, perform sub-homicidal actions, or sometimes consciously or unconsciously turn their anger towards themselves in various direct and indirect ways. They seldom kill, however. Cystkopf surely experienced such feelings in his four decades of adulthood prior to the homicide, possibly on many occasions, but he never assaulted those who enraged him. It is reasonable to assume that, like most people, Cystkopf used various techniques to avoid turning antisocial desire into antisocial action. Among these would be his internal moral sense, his conscience, and his fear of various external sanctions.

Cystkopf faced an unusual challenge and failed. People's repertoires for flying straight vary within and among people from time to time. Some people have more of the right stuff that operates as a defense to antisocial conduct, and situational variables can either reinforce or weaken the characteristic level of the right stuff. In addition, different situations exert differential criminogenic effect by providing greater or lesser opportunities for offending. People with less of the right stuff who face more

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criminogenic situations will find it harder to fly straight than people with more of the right stuff who face fewer challenging situations.

But all people, including those with little of the right stuff and those consistently exposed to the strongest challenges to flying straight, are nonetheless held responsible if they possess the capacity for rational conduct and their conduct is not compelled. Even if Cystkopf had never before been so provoked and enraged and even if the homicide would not have occurred but for the unique circumstances, he should be held responsible unless he lacked the capacity for rational conduct, that is, the ability to be guided by good reasons. Simply to conclude that he is not responsible because

he had a biological abnormality and because he acted so seemingly uncharacteristically begs precisely the question of capacity that we must now address.

We have assumed that Cystkopf had impaired capacity properly to mark the appropriate response to situations he confronted and that this impairment made it difficult for him to guide his conduct appropriately in conflictual situations. He may have had lots of other types of the right stuff, but to some degree he lacked this type. In his case, the impairment was apparently caused by biological abnormalities, but the causal story is of little relevance *per se*. Suppose the same impairment were caused by an unfortunate childhood or by situational stress in an otherwise entirely normal person. The moral and legal issue would be the same.

The real question is whether this impairment undermines rationality sufficiently to excuse the agent. To answer it, we must consider Damasio's theory in more detail. The "somatic marker" theory attempts to account in part for functional, socially advantageous human interaction that takes place in time-pressured, conflictual situations. In such cases, there is seldom time for the luxury of complete cost-benefit analysis of all the positive and negative reasons for alternative courses of action.

To help guide our behavioral responses efficiently to charged social situations, the intact person has affective as well as cognitive reactions. Having the right emotional reactions automatically sets neural mechanisms in motion that signal prior punishment and reward experiences to our higher-order control systems. As a result, states Damasio, "the consequences of punishment and reward can be experienced consciously as 'feelings' and 'emotions.'"

When a social situation reactivates the previously learned somatic states that mark behavioral responses, "[t]hey mark unambiguously not only the value of current perceptions, but most importantly, the value of *certain outcomes* to given courses of action.... Somatic states provide an automated way for the brain to select, consciously *and* not consciously,

among response options. On the one hand, it would link a given response option with *both* the pleasure that it may bring immediately, *and* the punishment that it will lead to in the future. By forcing attention on a conflict, a pertinent somatic marker would signal the ultimately deleterious consequences that might arise from a response that might nonetheless bring immediate reward.”

This neural repertoire permits the person consciously to suppress negative responses in favor of more advantageous alternatives, and equally important, it induces “non-conscious inhibition of excitatory subcortical neurotransmitter systems which mediate appetitive behaviors.”

People with an impaired marking system may be fully capable of reasoning correctly about even subtle hypothetical social problems presented verbally. But in conflictual, time-pressured situations, an impaired marking system increases the probability of choosing a disadvantageous or dysfunctional response because the agent lacks the emotional information that helps more fortunately endowed people fly straight.

Even stripped of the neural details, it is perfectly plausible to assume that having the right emotional responses to situations eases the task of behaving appropriately or functionally. This assumption is fully consistent with our view of ourselves as creatures who are capable of rational practical reasoning.

Nothing in the concepts of rationality and practical reasoning suggests that emotions are not appropriate components of rational action. We rarely have time and probably few have the ability ever to be entirely cool, fully logical reasoners. Nature surely has provided us with a “down and dirty” set of techniques for speedy, generally successful, real-time action choices, and the ability to experience and to use one’s own emotional data is credibly one of them.

Some might prefer to conceptualize the consequences of somatic marking problems as “volitional” or as problems with the “will,” but there is usually nothing wrong with an impulsive agent’s executory ability to translate desires, beliefs, and intentions into action. Self-control problems of volitionally unimpaired agents are better understood as rationality defects. For example, it is precisely the lack of the ability properly to use emotional data that allegedly accounts for the so-called “psychopath’s” propensity for antisocial conduct and seeming inability to learn from negative consequences. Psychopaths, however, do not have volitional problems. I shall therefore discuss Cyszkopf’s responsibility in terms of rationality.

Before addressing the normative consequences of assuming that Damasio’s theory is true and that Spitzer Cyszkopf had impaired emotional responses in conflictual, real-world situations, it is necessary to make a few further assumptions. The capacity properly to mark responses somatically, to experience the right emotional data, like virtually all human capacities, is surely distributed along a continuum among human beings.

We don’t know the shape of the curve, but it is reasonable to assume that some people have maximal capacity, others have none or almost none, and most people are somewhere in between. And, presumably, there is an inverse relation between the degree of marking impairment and, to use Damasio’s terms, the “adequacy and speed of response selection.” It is conceivable, of course, but implausible, that this is a binary, all-or-none capacity.

Assume further that a wide range of variables, including, *inter alia*, genetic defects, faulty conditioning, and trauma can produce the impairment. Finally, let us plausibly assume that the somatic marking mechanism is not the only intrapersonal variable that affects the probability that agents will choose socially advantageous actions.

If an agent’s other capacities that guide action are reasonably intact, then the right response may not be so difficult to achieve after all. Indeed, awareness of defects that render the agent a potentially loose cannon on the deck may enable the agent to adopt compensatory coping mechanisms that mitigate or even obviate the defect. We are now ready to address properly Cyszkopf’s responsibility.

Remember that the capacity for rationality is a precondition for moral and legal responsibility. Discussion of Cyszkopf’s responsibility must therefore begin with the prior, entirely normative question of whether and how much the ability to experience the right emotions in conflictual and potentially conflictual situations is a criterion of rationality.

For example, many consider psychopaths to be irrational, even though psychopaths cognitively comprehend the facts about the world, including the legal rules and their consequences. Purely cognitive knowledge, divorced from its emotional context, is allegedly insufficient for moral rationality. The psychopath is “morally insane.” Others disagree, claiming, for example, that psychopaths are rational and should be held responsible unless they lack selfish feelings, which is unlikely. Current criminal law holds psychopaths responsible, despite the arguments that such people lack moral rationality.

Understanding the proper way to assess Cyszkopf’s responsibility requires only that we appreciate the normative nature of the relation between a particular impairment, however it is caused, and the moral and legal conception of rationality. If one believes that unimpaired marking is *not* a criterion of reasonable rationality, then Cyszkopf’s claim for excuse is immediately blocked: If his impairment does not negate the capacity for rational conduct, there is no moral or legal purchase for his claim.

Cystkopf's condition raises a colorable claim only if we decide that impaired marking mechanisms undermine rationality. But we need not resolve the debate. Instead, let us assume for the purpose of discussion that somatic marking is relevant to our conception of rationality.

The next issue to be investigated would be Cystkopf's total capacity for rational conduct, considering all his cognitive and affective repertoires, including his marking capacities. We would want to know as much as possible about his real-world behavior in a variety of contexts, in addition to the medical and psychological findings. Rationality and responsibility are moral and legal, not medical or psychological, issues. The law's central concern is how Cystkopf performs in the real world, not the structure of his brain or how he performs on various tests.

Medical and psychological findings would provide relatively direct evidence about moral and legal criteria only if they are excellent proxies for such standards. They are not good proxies, however, and are unlikely ever to be. Moral and legal criteria are matters of normative meaning, and it is fanciful to assume that there will be a perfect match, uniform among people, between discrete brain states and normative meanings concerning human action.

Nevertheless, abnormal clinical, laboratory, and psychological test findings may add plausibility to claims concerning impairments in the capacity for rational conduct in natural contexts, especially if they can provide reasonably precise estimates of a person's performance on relevant tasks that would permit comparison to people in general. They may, therefore, be relevant, provided they are reliable and valid.

Intelligence tests present a classic, if controversial, example. People whose general behavior demonstrates obviously superior intelligence have no purely cognitive problem understanding moral and legal rules, and we need no I.Q. test to identify such people. In contrast, people with severe and profound developmental disabilities lack the cognitive ability fully to understand the rules and, once again, we need not test them to know this.

Suppose, however, a defendant of limited intelligence claims that he did not appreciate the criminality or wrongfulness of his conduct and, in capital cases, that he does not deserve to die, even if he were criminally responsible. To support this claim, he offers evidence of his performance on a standard general intelligence test, which indicates that he scores in the bottom two percent of the population and has a mild or moderate developmental disability.

This finding would not be dispositive on the issue of criminal responsibility or on death penalty mitigation in those states that (misguidedly) permit execution of developmentally disabled people. As the Supreme Court properly recognized, people with the same level of intellectual impairment can have different moral capacities. But the test result would surely be relevant and equally surely should be admissible.

Thus, even if the science employed to gather medical and psychological findings is reliable and valid, such findings would still be inaccurate proxies for moral and legal criteria for responsible action.

To illustrate further, suppose Cystkopf's medical and psychological findings one month before the homicide would have been indistinguishable from what they were at the time of the crime. Indeed, because all the findings were obtained *after* the homicide, the defense experts' opinions about Cystkopf's condition at the time of the crime imply that they believe the results would have been the same or even *less* abnormal on the day of the killing because the tumor was allegedly growing.

Suppose further that Cystkopf had a heated argument with his wife or had some other conflictual interaction a month before the crime, as he may well have had. It is reasonable to infer that on the prior occasion he chose the right response even though his abnormal neurological and psychological condition was measurably the same as on the day of the killing? Despite the presence of the same abnormal findings, no one would consider Cystkopf not responsible for the right response, and he would properly be praised for doing the right thing.

The impressive theorizing and extensive medical and psychological findings about Cystkopf are unlikely to provide precise data concerning the level of his impairment in the capacity for rational conduct. There is no quantitative scale with which to compare him to normal or abnormal populations. All we know is that there is some defect of indeterminate real-world effect.

Although the uncharacteristic homicidal behavior was not inconsistent with the defect, we cannot even be sure that the defect played a causal role in the conduct. Opinions that it did or that it did not are both speculations, not confirmed scientific or clinical fact. Opinions based on the theory and findings that Cystkopf did or did not appreciate the wrongfulness of his conduct, or that it was or was not impossible for him to do so, are similarly speculative, not fact. Indeed, these are moral and legal conclusions, rather than clinical or scientific opinions.

LET US REVIEW:

Spyder Cystkopf's capacity for rational conduct on the day he killed his wife is the crucial issue. It is relevant but not dispositive that he had an abnormality that may have affected this capacity. Medical and psychological evidence may help us decide if his capacity was affected, but it is not very precise evidence about incapacity, and it is surely not dispositive of the legal issue.

How can the average juror or judge decide whether Cystkopf was criminally responsible? Although the available case material is frustratingly incomplete, jurors at the actual trial would surely have copious evidence concerning Cystkopf's relevant behavioral history. They would have to judge in light of the circumstances of the crime, Cystkopf's full history, and the medical and psychological findings, whether Cystkopf's capacity for rational conduct was so impaired at the time of the crime that he substantially lacked the capacity to appreciate the wrongfulness or criminality of his conduct. This is a normative, moral, and legal judgment they would make using common sense inferences about Cystkopf based on the evidence presented to them. What more could we ask or want of jurors?

Even with the inadequate data about Cystkopf and his history that we possess, we can make some observations that are relevant to deciding whether Cystkopf is responsible for killing his wife.

First and foremost, although the defense experts agreed that Cystkopf had the cyst throughout his life, he had never engaged in any previous violent conduct. This suggests, but does not prove, that any behavioral effects the cyst produced did not previously reduce his capacity for rational conduct in general or predispose him to violence or other dysfunctional social behavior.

There are, however, at least three possible responses to this suggestion. First, the growing cyst produced increasing but unrecognized effects, which ultimately achieved a level that impaired his capacity for rationality. Second, he had never before been as provoked and enraged as he was by his wife on the day of the crime, and thus his generally impaired capacity for rationality had never been so sorely challenged. Third, both the cyst's effects may have worsened and the provocation may have uniquely tested him.

The behavioral history we have thus permits contrary interpretations of the crime. Cystkopf's pacific past suggests that his capacity for rational conduct was not terribly impaired. Dreadfully

provoked by his wife, however, he lost his temper and overreacted homicidally, as many normal people unfortunately do. If this is the right story, he should rightfully be convicted of second degree murder. On the other hand, the killing is so uncharacteristic that perhaps it was the consequence of a uniquely unfortunate coincidence of worsening neuropathology and extreme provocation, which together reduced his capacity for rationality sufficiently to find him not responsible.

Before deciding which of these two accounts is more likely accurate, we would want to know much more about Cystkopf's relationship with his wife, his history of responding to stress, and the circumstances of the crime.

The Damasio theory and findings also point in opposite directions. Cystkopf perhaps had brain pathology similar to the pathology of Damasio's subjects, and he did have experimental results on somatic marking tests that were similar to the results of the experimental subjects. Assuming the validity of Damasio's theory—a large assumption—this suggests that Cystkopf's capacity for rationality was impaired, at least on one plausible account of the content of rationality.

On the other hand, Damasio's subjects seemed to have somewhat different brain pathology and exhibited marked personality changes after suffering brain damage, including dysfunctional social behavior and sociopathy. Cystkopf, who showed no such changes, was apparently different from Damasio's subjects, despite his similar scores on the marking procedure. Again, although the sub-arachnoid cyst had been present for decades and probably for his entire life, it is possible that the most severe effects of the brain damage occurred only at the time of the crime.

Two other, more parsimonious inferences are perhaps more likely, however. Cystkopf may have learned techniques or possessed other capacities to compensate for his somatic marking defect. Or, his brain damage may have been different from Damasio's subjects, and marking defects may be a substantial problem only if they occur in people with brain damage like Damasio's subjects. Cystkopf's excusing claim is strengthened if the cyst did impair his somatic marking and capacity for rationality at the time of the crime. In the alternative, if Cystkopf was relevantly different from Damasio's subjects or if he was able to compensate for his alleged marking defect, his excusing claim is weakened.

Until we have more evidence about Cystkopf, we can go no further.

VII. CONCLUSION

An analysis of moral and legal responsibility must begin with a normative theory of and criteria for excusing conditions. Assessment of responsibility in individual cases requires patient, cautious attention to all the evidence logically and empirically relevant to the presence of genuine excusing conditions. Only if one understands the theory and criteria for excuse, however, can one fully appreciate what evidence is relevant and why.

The case of Spyder Cystkopf is a perfectly generalizable example of the thesis. Causes of behavior are not excuses *per se*. Even confirmed causal physical pathology does not excuse human action unless it produces an independent excusing condition. The focus, then, must be on whether at the time of the crime an individual lacked the capacity for rationality. In Cystkopf's case, his sub-arachnoid cyst and perhaps related neuropsychological defects were relevant to assessing his capacity, but they were only a part of the puzzle. And they were relevant not just because they may have played a causal role, but because they may have affected his capacity for rationality.

Faculty Notes



Matthew Adler

Matthew Adler, *Professor of Law*, published, "Judicial Review in the Administrative State: Beyond Counter-Majoritarian Difficulty," 145 *University of Pennsylvania Law Review* 759 (1997).

Regina Austin '73, *William A. Schnader Professor of Law*, received the first Schnader Harrison Segal & Lewis Community Service Award in recognition of her contributions to the Philadelphia community. She delivered the Robert S. Marx lecture at the University of Cincinnati College of Law, a presentation titled "Nest Eggs & Stormy Weather: Law, Culture and Black Women's Lack of Wealth." She also participated in a conference on the agenda for the 21st century labor force sponsored by the University of Cincinnati Department of Sociology as well as in the Changing Boundaries Conference sponsored by the *Yale Journal of Law and Feminism*. Austin was a commentator at the *Vanderbilt Law Review's* symposium, "Defining Democracy for the Next Century." She is a member of the Institute of Medicine's Division of Health Sciences Policy Committee on Environmental Justice.

C. Edwin Baker, *Nicholas F. Gallicchio Professor of Law*, published "The Evening Hours During Pacific Standard Time," 3 *Villanova Entertainment and Sports Law Journal* 45 (1996). He delivered a panel presentation of "First Amendment Issues in Cyberspace," at St. John's Law School in New York. Other panel presentations included "Welfare and Equal Protection," at the Litigation in the

Block Grant Era Conference, Center for Social Welfare Policy and Law in New York, and one at the Jurisprudence of Ratings Conference held at Cardozo Law School in New York. Professor Baker also presented "The First Amendment and the Internet," at two CLE programs entitled, "The Lawyers' Internet—Technology and the Delivery of Legal Services," both in Philadelphia. He published "New Media Technologies, the First Amendment, and Public Policies," a comment on a paper by E. Volokh, 1 *Communication Review* 315 (1996). He presented "Media Policy-Economic and Constitutional Dimensions" at a luncheon seminar for Reed Hunt, Chair of the FCC, and staff in Washington, D.C., in July 1996. He also published an op-ed piece, "Limits on Campaign 'Speech' Are Just an Extension of Existing Rules," *Philadelphia Inquirer*, Jan. 28, 1997, as well as a commentary for NPR's *Marketplace* on "Advertising and Free Speech." He was a guest on KPCC (Los Angeles NPR affiliate) discussing demonstrations outside abortion clinics. The same month he presented "Media Market Failures" to the annual meeting of the Law and Society Association in Glasgow, Scotland. Last February, he presented "Markets and Media Policy" to the Stanford University Communication Department. In March he presented "Newspapers Without Advertising" to a conference sponsored by New Directions for News in Providence, R.I.



Stephen B. Burbank

Stephen B. Burbank, *David Berger Professor for the Administration of Justice*, testified at the first public hearing held by the American Bar Association's Commission of Separation of Powers and Judicial Independence; his revised testimony was subsequently published as "The Past and Present of Judicial Independence" in *Judicature*. In April, he arranged for the Law School to sponsor a colloquium at which the members of an ABA commission discussed issues they are considering with lawyers, judges and academics. He served as an independent reviewer of the draft reports prepared by RAND's Institute for Civil Justice evaluating experience under the Civil Justice Reform Act of 1990, and was an organizer of an invitational conference to consider the RAND reports held at the University of Alabama in March, where he presented a paper on "Implementing Procedural Change." In the spring he completed an article for the *Columbia Law Review* as part of a Festschrift celebrating the 13th anniversary of Judge Jack Weinstein's appointment to the federal bench. His articles,

"Procedure and Power" and "Where's the Beef: The Interjurisdictional Effects of New Jersey's Entire Controversy Doctrine," were published in the *Journal of Legal Education* and *Rutgers Law Review*, respectively. Burbank spoke at the meeting of the Penn Law European Society in Milan and is teaching in Frankfurt this fall. During 1996, he completed a review of Jonathan Harr's *A Civil Action* and two papers during his research leave in the spring term. He presented the first paper, which analyzes the interjurisdictional effects of New Jersey's "Entire Controversy Doctrine" at a conference in April 1996 at Rutgers Law School. He presented the second paper, a report on developments in the United States co-authored with Professor Linda Silberman of N.Y.U., at a conference on Civil Procedure Reform in Comparative Context in Florence, Italy in May. At the request of Solicitor General Drew Days, Burbank served on the committee that drafted the Bar's resolution in honor of the late Chief Justice Burger that was read at the commemorative proceedings at the Supreme Court on April 30, 1996.

Jacques deLisle, *Assistant Professor of Law*, attended (as a Presidential Fellow) the Salzburg Seminar Session on "U.S. Foreign Policy Toward East Asia: Adapting to Change," where he presented "The Political Challenges of Deepening Economic Integration in East Asia." He also presented "The Impact of China and Lessons from the Chinese Case" at "Focus on the Philippines: The Politics of Peace, Stability and Judicial Reform," a conference sponsored by the Asia Society and the University of Pennsylvania Economics Department. His article, on the implications of recent developments in China for the transformation of international economic law, will appear in the *University of Pennsylvania Journal of International Economic Law*. He spoke on "Hong Kong's Crisis, 1997 and Beyond: Competing Visions of Law and Political Institutions, and the Return to Chinese Rule" at the University of Pennsylvania Center for East Asian Studies.

Colin S. Diver, *Dean and Bernard G. Segal Professor of Law*, published a review of Susan Rose-Ackerman's book, *Controlling Environmental Policy*, in the *Journal of Policy Analysis and Management*, vol. 15, p. 290 (1996). He published "Israeli Administrative Law from an American Perspective," 4 *Law and Government in Israel* 27 (1997). He has been appointed to the Board of Visitors of the Harvard Law School which meets annually to review the operations of the School and report to the Harvard University Board of Overseers. The Dean is also a founding member of the American Law Deans Association. He serves as a member of its executive committee.

Michael A. Fitts, *Robert G. Fuller, Jr. Professor of Law*, chaired a panel on redistricting at the American Political Science Association. He also spoke on the Unitary Presidency at the Washington, D.C., Alumni Association breakfast. Professor Fitts delivered a paper on the line-item veto at a conference on the Presidency at Case Western University Law School; it will be published in a forthcoming symposium issue of the *Case Western University Law Review*. Fitts also authored "The Foibles of Formalism: Applying a Political Transaction Cost Analysis to Separation of Powers," 47 *Case Western University Law Review* (1997) (Symposium on Presidency); and "The Triumph of Timing: *Raines v. Byrd* and the Modern Supreme Court's Attempt to Control Constitutional Confrontations," 86 *Georgetown Law Journal* (1997) (with Neal Devins).

Douglas N. Frenkel, *Practice Professor and Clinical Director*, spent the spring 1997 semester in Australia as a visiting scholar at the University of Sydney School of Law. In the summer of 1996, he served as a consultant to the University of Nairobi and Moi University faculties of law in their efforts to develop clinical legal education programs. He participated in a program on judicial ethics at the annual meeting of Pennsylvania state court trial judges in Hershey, Pa., and in a panel discussion of the interim report on "Ethics: Beyond the Rules," a law-social science study of large firm litigation conduct at the American Bar Association annual meeting in Orlando, Fla. He also gave a presentation entitled "A First Year Intensive Course: Lessons from an Experiment" at the W.M. Keck Foundation Forum on Teaching Legal Ethics held at William and Mary College, Williamsburg, Va. Frenkel spoke on litigating under media attention at a continuing education program for U.S. attorneys and other government lawyers held in Lancaster, Pa.

Sarah Barringer Gordon, *Assistant Professor of Law*, delivered papers at the American Society for Legal History, the Organization of American Historians, Boston University Law School, Columbia Law School, and the New York University Legal History Colloquium. Her article, "Our National Hearthstone: Anti-Polygamy Fiction and Legal Culture in Antebellum America," is forthcoming in the *Yale Journal of Law and the Humanities*.

Lani Guiner, *Professor of Law*, has been awarded grants from the Ford Foundation and the Mott Foundation, with Penn Law Professor Susan Sturm, to study ways of reframing public discourse about race, particularly in the workplace. She, Michelle Fine and Jane Balin authored *Becoming Gentlemen: Women, Law School and Institutional Change* (Beacon Press, 1997). Guiner and Susan Sturm co-published "The Future of Affirmative Action: Reclaiming the Innovative Ideal" 84 *California Law Review* 953 (1996).

Robert A. Gorman, *Kenneth W. Gemmill Professor of Law*, is serving as first vice president of the American Association of University Professors (AAUP) as well as on its committee on Academic Freedom and Tenure. He also chairs an AAUP committee on periodic review of tenured faculty. Gorman published, with co-author Matthew Finkin of the University of Illinois College of Law, the 12th edition of Cox, Bok, Gorman & Finkin, *Labor Law: Cases and Materials*. He also published, with co-author Jane C. Ginsburg of Columbia Law School, the 1996 supplement to *Copyright for the Nineties*. He lectured at Rider College on the law of intellectual property as applied to "distance learning" programs. Finally, he is a member of a committee appointed by the Association of American Law Schools to prepare a model publishing contract for university law journals.

Geoffrey C. Hazard, Jr., *Trustee Professor of Law*, lectured at South Texas College of Law on malpractice liability of transaction lawyers. He conducted a conference on legal ethics in the legal department of the Coca-Cola Company and held a seminar on legal ethics at a New Jersey law firm. He delivered a paper on the "Entire Controversy Doctrine" at Rutgers Camden Law School and participated in an intensive ethics "retreat" at St. Louis University Law School. He also participated in a panel on the Restatement of the Law Governing Lawyers of the Business Law Section of the American Bar Association and served as a member of the awards

committee in a Keck Foundation essay contest on legal ethics. Professor Hazard has been appointed to a special American Bar Association committee providing assistance in "high profile" litigation.

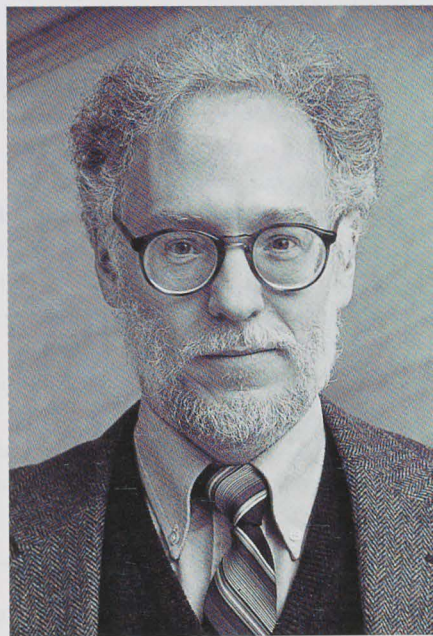
Heidi M. Hurd, *Professor of Law and Philosophy*, delivered an address on the role of the "spirit of law" at the Pennsylvania Conference of State Trial Judges' Mid-Annual Meeting. She lectured to federal bankruptcy judges at their meeting in San Francisco on the constraints of precedent in adjudication. She also addressed federal bankruptcy judges at the Eastern Conference in Philadelphia and gave a full-day mini-course on the role of precedent in legal reasoning to federal judges in Nashville, Tenn. Professor Hurd recently published a new book, *Moral Combat*.

Jason Johnston, *Professor of Law*, presented "Statutory Interpretation and Legislative Incentives" at the Workshop on the Economics of Law and Institutional Organization at the Haas School of Business, University of California, Berkeley. In January 1996, he was elected incoming Chair of the law and economics section of the American Association of Law Schools (AALS). He published two articles—"Legal Formalism" and "The Statute of Frauds"—in *The New Palgrave Dictionary of Law and Economics*. He also published "Preliminary Agreements" in the upcoming edition of *Encyclopedia of Law and Economics*.



Jason Johnston

Seth Kreimer, *Professor of Law*, addressed a conference at Quinnipiac Law School on “Federalism Revisited: Extraterritorial Recognition of Same Sex Marriages.” This spring, he published “Territoriality and Moral Dissensus: Thoughts on Abortion, Slavery, Gay Marriage and Family Values” in the *Quinnipiac Law Review*, and “Exploring the Dark Matter of Judicial Review: A Constitutional Census of the 1990’s” in the *William and Mary Bill of Rights Journal*. He addressed a conference at Fordham University Law School on “Welfare Litigation in the Block Grant Era: Possibilities and Challenges” as part of a panel on Institutional Procedural Fairness. He also serves, along with Professor David Rudovsky, as counsel to the ACLU, the Philadelphia Chapter of the NAACP and the Police Barrio Relations Project in negotiations and potential litigation against the City of Philadelphia arising from the systematic police abuse in the 39th District.



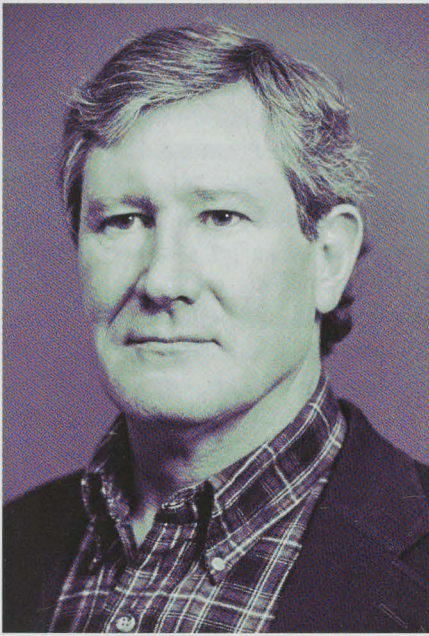
Seth Kreimer

Friedrich Kubler, *Professor of Law*, spoke at the celebration of the 75th anniversary of the Max Planck Institute for Comparative and International Private Law in Hamburg in May 1996. In June, he was the main reporter at the German Banking Law Conference on credit rating. In September, he reported on “Corporate Governance and Financial Institutions” at the biannual conference of the Deutsche Juristentag (corresponding to the American Law Institute). The *Northwestern University Law Review* published his article, co-authored with Professor Richard Herring of the Wharton School, on “The Allocation of Risk in Cross-Border Deposit Transactions.”

Howard Lesnick, *Jefferson B. Fordham Professor of Law*, is offering a program he developed for experienced practitioners on “Seeking the Spiritual Ground of the Lawyer’s Work.” He presented a keynote address on “The Religious Lawyer in a Pluralist Society” at an invitational conference of lawyers, law teachers, theologians and clergy held last June at Fordham University Law School.

A. Leo Levin ’42, *Leon Meltzer Professor of Law Emeritus*, continues to serve as reporter to the advisory group of the U.S. District Court of the Eastern District of Pennsylvania. He also serves as special master in an insurance coverage case pending in Superior Court in Delaware.

Bruce Mann, *Professor of Law and History*, presented papers at the 1996 meeting of the American Society for Legal History and at the Philadelphia Center for Early American Studies. He was named to the advisory council of the Center, which is sponsored by a consortium of Delaware Valley universities and research libraries. In November 1996, he chaired a panel and served on the program committee for “The Many Legalities of Early America,” a conference sponsored by the Institute of Early American History and Culture; Mann is editing a volume of papers from that conference for publication. He published a review in the *Law and History Review* of J.C.D. Clark’s *The Language of Liberty, 1660-1832: Political Discourse and Social Dynamics in the Anglo-American World*. In January 1997, he moderated a panel discussion on citizenship for the College of Arts and Sciences’ observance of Martin Luther King day.



Charles W. Mooney, Jr.

Charles W. Mooney, Jr., *Professor of Law*, was a panelist on a program dealing with secured financing during the annual meeting of the American Association of Law Schools held in San Antonio in January 1996. He was a featured speaker in Jena, Germany, at the 1996 meeting of the German Comparative Law Society, and he made several presentations at the spring meeting of the ABA section of business law held in Nashville, Tenn. He represented the U.S. Department of State as the head of its delegation to the fifth meeting of the study group on International Secured Financing of Mobile Equipment, in Rome, sponsored by the International Institute for the Unification of Private Law (UNIDROIT). He presented a paper before the 1996 meeting of the Washington-Oregon Bar Joint Bankruptcy Committee, in Portland, and was a speaker at ceremonies celebrating the Centennial of the Washington College of Law, American University in Washington, D.C. Professor Mooney continues to serve as co-reporter for the drafting committee for the Revision of Uniform Commercial Code Article 9 (sponsored by the National Conference on



Louis S. Rulli

Commissioners on Uniform State Laws and the American Law Institute), as a Member of the Securities and Exchange Commission's market transactions advisory committee, and as a Member of the Secretary of State's advisory committee for private law.

Michael S. Moore, *Leon Meltzer Professor of Law and Professor of Philosophy*, gave a series of lectures for state and federal judges during February through July 1996: in February, to the Educational Conference of Pennsylvania Trial Judges in Philadelphia; in March, to the Federal Judicial Center's Workshop for Bankruptcy Judges in San Francisco; in May, to the FJC's Traveling Seminars for the Federal Courts in Nashville; another FJC Bankruptcy Judges Workshop in Philadelphia in June; and in July, another FJC Bankruptcy Workshop in Chicago. His article, "Prima Facie Culpability," was published in the 1996 *Boston University Law Review*.

Stephen Perry, *John J. O'Brien Professor of Law and Philosophy*, presented "The Distributive Turn" at a conference on the works of Jules Coleman held at Quinnipiac College School of Law in October 1996. In November, he presented "Responsibility for Outcomes, Risk, and the Law of Torts" to the Colloquium in Law, Philosophy and Legal Theory held at New York University Law School. In February 1997 he presented the same paper to the Seminar in Ethics and Public Affairs at Princeton University and to a workshop at the University of Texas Law School. His article, "Two Models of Legal Principles," will appear in a symposium on legal principles to be published in the *Iowa Law Review* later this year.

Eric Posner, *Assistant Professor*, helped organize a conference on Law, Economics and Norms, held at the Law School in February 1996. "Law, Economics and Inefficient Norms," a paper he presented at the conference, and a comment he presented will be published by the *University of Pennsylvania Law Review*. He also presented his paper at a University of Toronto Law and Economics workshop. Another paper, "The Legal Regulation of Religious Groups," was published in *Legal Theory*. He presented papers at the American Law and Economics meeting in Chicago; the Law and Society annual meeting in Glasgow, Scotland; a conference on law and economics and law and society at the University of Wisconsin Law School; a Federalist Society Conference on Law and Economics and the Rule of Law at Duke Law School; and workshops at Harvard, George Mason and the University of Virginia. A paper, "Rules, Standards, and Social Norms," is forthcoming in the *Harvard Journal of Law and Public Policy* (1998), and he published "Altruism, Status and Trust in Law of Gifts and Gratuitous Promises" in the 1997 *Wisconsin Law Review* 567. He also contributed a chapter on contract remedies to the *Encyclopedia of Law and Economics*, to be published by Kluwer Academic Press.

Curtis Reitz, *Professor of Law*, was appointed to chair a new committee of the National Conference of Commissioners on Uniform State Laws, a group traditionally devoted to preparing uniform laws for adoption by the states. Recently, the Conference has become increasingly active in developing international commercial law. Professor Reitz's committee has oversight for such international developments and acts through the State Department Office of Private International Law and other federal agencies. He published "Manufacturers' Warranties of Consumer Goods," 75 *Washington University Law Quarterly* 357 (1997), and "Enforcement of the General Agreement on Tariffs and Trade" 555, *University of Pennsylvania Journal of International Economic Law*, Summer 1996.

Edward B. Rock, *Professor of Law*, recently returned to the faculty after a year and a half at the Hebrew University of Jerusalem as a Fulbright Senior Scholar and Visiting Professor of Law. While in Israel, he taught antitrust and corporate law at the University, consulted on current cases with Israel's Antitrust Authority and conducted research on the development and role of antitrust law in Israel. Rock also published "Saints and Sinners: How Does Delaware Corporate Law Work?" 44 *UCLA Law Review* 1009 (1997). He and Michael Wachter, William B. Johnson Professor of Law and Economics, presented their most recent collaboration last November at a conference on employees and corporate governance sponsored by Columbia Law School.

Louis S. Rulli, *Associate Practice Professor*, served as an advisor to the Independence Foundation's Public Interest Fellowship Program, which provides financial support to outstanding law graduates placed at public interest legal organizations in Philadelphia and surrounding Pennsylvania counties. He also completed a one-year term as chair of the Philadelphia Bar Association's Commission on Judicial Selection and Retention. He continues to serve as a member of the Third Circuit's Task Force on Equal Treatment in the Courts, and was reappointed a delegate to the Pennsylvania Bar Association's House of Delegates and the Executive Committee of the Philadelphia Volunteers for the Indigent Program, which provides pro bono legal assistance in civil matters to low-income families. He participated on a plenary panel addressing the future of the jury system during the Philadelphia Bar Association's 1996 Annual Meeting; the full text of the discussion was placed on the internet by West Publishing. Rulli served on the 1996 Chancery Court task force investigating the viability of a specialized business or chancery court in Pennsylvania. He received an outstanding leadership award from Pennsylvania Legal Services at its annual banquet and was honored, along with legislative and executive branch and bar association leaders, for their support of legal services to the less fortunate citizens of Pennsylvania.

Kim L. Scheppele, *Professor of Law*, is co-director of the Program on Gender and Culture at the Central European University, Budapest, and was in residence in Budapest during the spring semester 1997. She also began a three-year term as editor of the *American Journal of Sociology*. She served as plenary speaker for the annual meeting of the Law and Society Association in Glasgow, Scotland. She published "The History of Normalcy: Rethinking Legal

Autonomy and the Relative Dependence of Law at the End of the Soviet Empire," in the *Law and Society Review*; and "Constitutionalizing Abortion," in Dorothy McBride and Marianne Githens' *Comparative Abortion Policy* (Routledge, 1996). The book *Alkotmányos Elvek Es Esetek (Constitutional Principles and Cases)*, edited by Kim Scheppele, Gabor Halmai, Peter Paczolay and Zsolt Balogh, was the first casebook on Hungarian Constitutional Law.

David J. Shakow, *Professor of Law*, is a co-reporter (with Professor George Yin of Virginia) on an American Law Institute project focused on identifying the characteristics that should be used to distinguish entities that will be given passthrough tax treatment (such as partnerships) from those that should be taxed separately from their owners (such as corporations). In connection with the project, Professor Shakow made a presentation to the ABA Committee on Tax Structure and Simplification. The second edition of his corporate tax casebook is being published by Foundation Press this fall; it will include basic materials on partnership taxation. His outline, "Basic Rules of International Taxation," appears in *Legal Transactions in A Global Economy*. An article, "The Flood of Tax Legislation," which appeared in *Tax Notes* magazine, showed that the growth of tax legislation since 1954 has paralleled an equal growth of all legislation emanating from Congress.



Clyde Summers

Susan Sturm, *Professor of Law*, has been awarded grants from the Ford Foundation and the Mott Foundation, with Lani Guinier, to study ways of reframing public discourse about race, particularly in the workplace. She delivered a paper, co-authored with Lani Guinier, "Affirmative Action into the Twenty First Century: Reclaiming the Innovative Ideal" (later published in 84 *California Law Review* 953, 1996) at the 11th Annual Labor and Employment Law Conference at Stetson University. She also delivered "From Gladiators to Problem Solvers: Women, the Academy, and the Legal Profession" (later published in 4 *Duke Journal of Gender, Law and Policy* 119, 1997) at the Duke University Conference on Gender and the Higher Education Classroom, and at Columbia Law School. Sturm was also the keynote speaker at a Wharton School conference on Workforce 2000. She participated in a workshop on Third Space at Berkeley Law School and hosted a conference on "Selecting the Police of the Future: Forging New Paradigms, Telling New Stories," supported by the Ford Foundation and the Mott Foundation.

Clyde Summers, *Jefferson B. Fordham Professor of Law Emeritus*, published *Legal Protection of Individual Employees*, by Matthew Firkin, Alvin Goldman, Clyde Summers, Second Edition, 1996, and "Workplace Forums from a Comparative Perspective," 16 *Industrial Law Journal* (SA) 806 (1995). He participated in a panel on "Alternatives to Union Representation" at the Labor Law Conference in Tucson, Az., and served as United States Representative in a seminar on union representation and certification procedures in NAFTA countries held in San Antonio, Tx.

Barbara Bennett Woodhouse, *Professor of Law*, created an on-line "Virtual Supreme Court" as a vehicle for student discussion and class exercises in her constitutional law class. In December 1996, Professor Woodhouse published an opinion piece in the *Philadelphia Inquirer*, "Remember Our Own War Zone Children," contrasting the national commitment to Bosnian peace with our failure to ensure a safe haven for children in our domestic war zones. Her article, "It All Depends on What You Mean by Home: Towards a Coherent Legal Response to the Nontraditional Family," appeared in the *Utah Law Review*. In addition, "Defending a Public Role in the Private Family: The Politics of Children's Rights," appeared in the *Ohio State Law Journal*. Her collaboration with adoption expert Professor Joan Hollinger, which began in the Baby Jessica case, culminated in a recent opinion of the California Appeals Court which held for the first time that children in failed adoptions have Fourteenth Amendment rights to a hearing on their best interests before removal from their homes.



Barbara Bennett Woodhouse

Alumni Briefs

THE PENN LAW JOURNAL IS ALWAYS LOOKING FOR ALUMNI NEWS. IF YOU HAVE SOMETHING YOU THINK MIGHT BE OF INTEREST TO THE PENN LAW ALUMNI COMMUNITY, WE ENCOURAGE YOU TO SEND IT TO:

*Editor, Penn Law Journal
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3400 Chestnut Street
Philadelphia, PA 19104-6204*



Members of the class of 1953 having cocktails prior to a lunch at Marriott's Seaview Country Club, Absecon, N.J. hosted by William B. Scatchard, Jr. From left to right, William B. Scatchard, Jr., Leonard Barkan, Irwin E. Robinson, Hon. Edward J. Bradley, Stanley P. Stern and John P. Knox.

'37

EDWARD I. CUTLER, a senior shareholder with Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Tampa, Fla., became a life member of the National Conference of Commissioners on Uniform State Laws.



Edward I. Cutler '37

'47

The Albert Einstein Society recognized The Honorable ARLIN M. ADAMS, retired judge of the U.S. Court of Appeals for the Third Circuit, for his commitment to Albert Einstein Healthcare Network at the society's annual dinner last September. He also received the first Schnader Harrison Segal & Lewis Community Service Award in honor of his contributions to the Philadelphia community. Most recently, he was named recipient of the 1997 Philadelphia Award, presented by U.S. Supreme Court Justice Sandra Day O'Connor.

'48

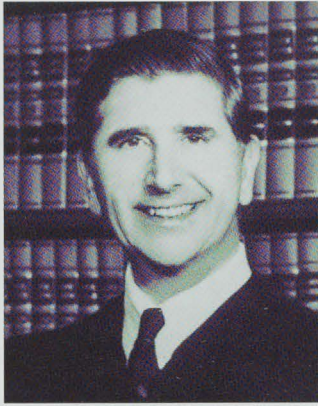
LESTER H. SALTER, a managing partner of Salter, McGowan & Swartz, Providence, R.I., received the first Ralph P. Semonoff Award for Professionalism from the Rhode Island Bar Association.

'52

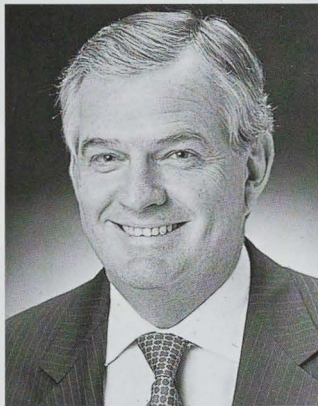
EDWARD W. MADEIRA, JR., a partner with Pepper, Hamilton & Scheetz, Philadelphia, was appointed by American Bar Association President N. Lee Cooper as chair of the newly-formed ABA commission on separation of powers and judicial independence.

JOHN T. SYNNESTVEDT, senior partner at Synnestvedt & Lechner, Philadelphia, presided over the celebration of the firm's 100th anniversary last May.

THOMAS A. MASTERSON has opened Thomas A. Masterson & Associates, Norristown, Pa., a firm specializing in alternate dispute resolution, including mediation and arbitration. Masterson is the former chair of the litigation section of Morgan, Lewis & Bockius, Philadelphia.



E. Norman Veasey '57



John F. Ledwith '63

'55

EDWIN KRAWITZ, president of Krawitz & Krawitz, Stroudsburg, Pa., ran in the 100th Boston Marathon.

'56

HARRIS OMINSKY, a partner with Blank, Rome, Comisky & McCauley, Philadelphia, presented a program detailing Pennsylvania's residential real estate disclosure act to Philadelphia Municipal Court judges at their December educational conference.

The Federal Bar Association's Eastern District of Pennsylvania Chapter appointed Chief Judge DOLORES K. SLOVITER of the 3rd Circuit Court of Appeals as honorary chair of its executive council.

'57

The American Inns of Court selected Delaware Supreme Court Chief Justice E. NORMAN VEASEY to receive the Lewis Powell Award for Professionalism and Ethics. Chief Justice Veasey was also honored last October at a banquet hosted by U.S. Supreme Court Justice Ruth Bader Ginsburg.

'58

The Honorable CAROLYN ENGEL TEMIN was honored by the Philadelphia Bar Association's criminal justice section at its holiday reception last December. She received the section's Thurgood Marshall Award, which recognizes a lifetime of service on behalf of equal justice.

'60

JOHN J. APONICK, JR., has joined the firm of Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, as a senior shareholder in its Scranton, Pa., office.

FREDERICK COHEN joined Obermayer Rebmann Maxwell & Hippel, Philadelphia, as of counsel, practicing in the area of family law.

EDWARD I. DOBIN, senior partner in Curtin and Heefner, Morrisville, Pa., was named Citizen of the Year by the American Red Cross.

'62

ALAN J. POGARSKY, a partner in the Toms River, N.J., firm of Pogarsky, Louis and Santiago, was sworn in to a seven-year term as Superior Court judge in Mercer County, N.J.

'63

The Federation of Insurance & Corporate Counsel appointed JOHN F. LEDWITH, a shareholder with Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, to chair its economics of trial practice section. Last March, he conducted "The Art of Advocacy," a segment of the CLE program presented by the Federation of Insurance & Corporate Counsel. The event was held in Palm Beach, Fla.

MICHAEL J. ROTKO, a partner with Drinker Biddle & Reath, Philadelphia, was appointed Special Counsel by the U.S. Senate Committee on Veterans' Affairs. He will lead an investigation into the Gulf War Syndrome.

Sunbeam Corporation has elected The Honorable FAITH WHITTLESEY to serve on its board of directors.

'64

H. ROBERT FIEBACH, a partner and co-chairman of the commercial litigation practice group of Cozen and O'Connor, Philadelphia, was nominated for membership in the American Bar Association Board of Governors. He also spoke at the American Bar Association's standing committee on lawyer's professional liability conference held last October in Palm Beach, Fla.

The Honorable WILLIAM H. PLATT, judge of the Court of Common Pleas of Lehigh County, Pa., has been elected president of the Pennsylvania Bar Institute, a non-profit arm of the Pennsylvania Bar Association concerned with continuing legal education.

The *National Law Journal* named HERBERT F. SCHWARTZ, a member of the management committee at New York's Fish & Neave, one of the 100 most influential lawyers in America. He has been named a fellow of the American College of Trial Lawyers.

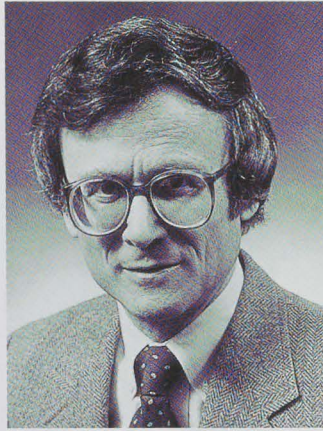
RICHARD M. SHUSTERMAN, a partner in the firm of White and Williams, Philadelphia, spoke on the mediation of insurance coverage disputes at the 60th anniversary meeting of the Federation of Insurance and Corporate Counsel held in London.

JAMES STRAZZELLA received the annual Baccaria Award, honoring "outstanding scholarship and teaching activities, coupled with his long-standing leadership in improving the criminal justice system." He also received the 1996 St. Thomas More Award.

'65

WILLIAM H. EWING, a shareholder in the firm of Connolly Epstein Chicco Foxman Engelmyer & Ewing, Philadelphia, has been elected to the firm's executive committee. Last April, he received a service award from the Philadelphia Committee on City Policy. He spoke at the National Employment Lawyers Seminar, "Trial Practice for the Plaintiff Employment Lawyer," and also at the Philadelphia Bar Education Center program, "Real Estate and Land Use Practice Under Disability and Fair Housing Law."

RICHARD SQUIRE joined Astor Weiss Kaplan & Rosenblum, Philadelphia, where he chairs the litigation department.



William V. Strauss '67

'66

FRANCIS X. GINDHART retired as the Clerk of the U.S. Court of Appeals for the Federal Circuit, concluding a 30-year career in the federal service as an Army judge advocate and a judicial administrator. Gindhart joined Fish and Richardson, Washington, D.C., as a principal.

WILLIAM T. HANGLEY, chairman of the law firm Hangley Aronchick Segal & Pudlin, Philadelphia, has been appointed to a three-year term as one of 12 members of the Philadelphia Bar Association's committee on judicial selection, tenure and compensation.

'67

MARK CHAZIN, a partner in the Clinton, N.J., firm of Gebhardt & Kiefer, joined a trade mission to Israel led by Congressman Michael Pappas.

The Montgomery County Association for Retarded Citizens awarded its Vincent J. Fitzpatrick Leadership Award to JONATHAN M. STEIN, general counsel at Community Legal Services, Philadelphia, at an awards dinner in November.

WILLIAM V. STRAUSS was elected to the board of trustees of Cincinnati's Contemporary Arts Center.

DENNIS R. SUPLEE, a partner in the firm Schnader Harrison Segal & Lewis, Philadelphia, presented a session on how to take and defend depositions at the Pennsylvania Bar Association family law section summer meeting.

'68

DONALD JOSEPH has joined the Dickinson School of Law faculty to teach a new lawyering skills course.

FRANK A. ORBAN, III, has taken temporary leave as legal counsel at Armstrong World Industries, Inc., Lancaster, Pa., to assist the Organization for Security & Cooperation in Europe in implementing the Dayton Peace Accords in Bosnia-Herzegovina.

STEPHEN C. ZIVITZ, a partner in the tax, pension and estates practice group at White and Williams, Philadelphia, lectured on estate planning and probate in Pennsylvania on behalf of the National Business Institute. His lecture focused on fundamentals of will drafting and death tax planning.

'70

ALEXANDER KERR, a partner with Hoyle, Morris & Kerr, Philadelphia, served as course planner and one of the faculty at a Philadelphia Bar Association seminar on litigating punitive damages.

ROBERT WHITELAW, managing partner of the firm Obermayer Rebmann Maxwell & Hoppel, Philadelphia, was elected president of the board of directors of the Big Brother/Big Sister Association of Philadelphia and Delaware County.

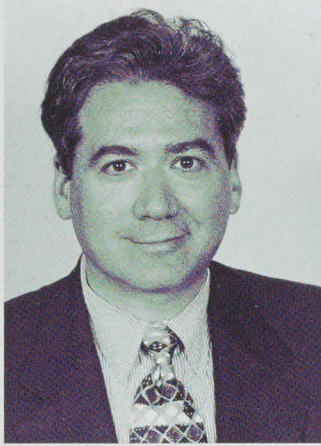
'72

ROBERT C. HEIM, chairman of the litigation department of Dechert Price & Rhoads, Philadelphia, was inducted as a Fellow into the International Academy of Trial Lawyers at an international conference in London.

RALPH A. JACOBS, a partner with Hoyle, Morris & Kerr, Philadelphia, served as a course planner and a faculty member at a Philadelphia Bar Association seminar on Federal Sentencing Guidelines.

ROBERT A. MACDONNELL, a partner with Montgomery, McCracken, Walker & Rhoads, Philadelphia, has been elected to the board of trustees of the Children's Hospital of Philadelphia.

LAWRENCE R. RICHARD has been appointed a principal of Altman Weil Pensa, Inc.



Joseph S. Finkelstein '76



Kathleen O'Brien '76



Niki T. Ingram '79

'73

W. JEFFREY GARSON has joined the firm of Montgomery, McCracken, Walker & Rhoads, Philadelphia, as of counsel in its health, education and non-profit practice department.

JOSEPH MURPHY, executive vice president of Compliance Systems Legal Group, spoke at the Association of Compliance Professionals of Australia's first annual meeting in Sydney, last May. He also spoke at the Conference Board's 1997 Business Ethics Conference in New York. In June and July, Murphy co-chaired the PLI Program, "Corporate Compliance: After Caremark," also in New York.

TIMOTHY C. RUSSELL has joined Christie, Pabarue, Mortensen & Young as of counsel in the firm's Philadelphia office.

SHERRIE R. SAVETT of Berger & Montague, Philadelphia, spoke in December at a conference sponsored by the University of Arizona College of Law, the Law College Association, and the Institute for Law & Economic Policy. She commented on the practical application of class action treatment in leading practice areas.

DONALD K. STERN, U.S. Attorney for the District of Massachusetts, received an honorary doctor of laws degree from New England School of Law last May.

'74

IAN M. COMISKY, a partner in the litigation department of Blank, Rome, Comisky & McCauley, Philadelphia, lectured for the Food and Drug Administration/Office of Criminal Investigation at an advanced asset forfeiture training session. He spoke at the 1996 American Bar Association/American Bankers Association money laundering enforcement seminar and also

appeared on a panel discussion entitled "Asset Forfeiture and Criminal Law Update" in October in Arlington, Va. Comisky spoke at the 13th annual American Bar Association program on "Criminal Tax Fraud in the '90s" and chaired a panel on "Federal Sentencing Guidelines" held in Washington, D.C. He also spoke at the Seventh Annual ICLE seminar on "White Collar Crime: Criminal Tax Fraud and Money Laundering" and chaired a panel discussion on the sentencing guidelines for tax and money-laundering offenses last December in Atlanta, Ga. In June, he spoke at a Penn State Institute program on "Keeping Yourself and Your Client Out of Jail: Legal and Ethical Issues Facing Accountants in the '90s." He has been elected to the board of directors of the Citizens Crime Commission of the Delaware Valley, was quoted in the March issue of *Forbes*, and appeared on the television show, *Minding Your Business*, on CNBC.

MICHAEL K. FUREY, a partner with the Morristown, N.J., firm of Riker, Danzig, Scherer, Hyland & Perretti, has been reappointed to a two-year term on the New Jersey State Bar Association board of trustees.

DAVID B. PUDLIN, a founding shareholder of Hangley Aronchick Segal & Pudlin, Philadelphia, was re-elected president of the firm's board of directors. He presented "Forms of Entities that a Law Firm Can Take" to the mid-size law firm management committee of the Philadelphia Bar Association last September. In December, he was appointed to co-chair the mid-size law firm management committee of the Association.

'76

RICHARD M. BERNSTEIN, a partner with Hoyle, Morris & Kerr, Philadelphia, published an article, "Daubert Revisited: The Proper Standard of Review," which appeared in the *Toxics Law Reporter and Product Safety & Liability Reporter*.

JOSEPH S. FINKELSTEIN, attorney and partner in the real estate department of Wolf, Block, Schorr and Solis-Cohen, Philadelphia, was elected president of the board of directors of Solomon Schechter Day School of Philadelphia.

GARY B. GILMAN, a partner in the Newtown, Pa., law firm of Stief, Waite, Gross, Sagoskin & Gilman, was elected to the board of directors of the Network of Victim Assistance in Bucks County, Pa.

WILLIAM P. MURPHY has published a historical novel, *White Dogs*, framed around General John Sullivan's campaign against the Iroquois in Pennsylvania during the Revolutionary War. It was published by Commonwealth Publications, Inc.

KATHLEEN O'BRIEN, a partner in the business law department of Montgomery, McCracken, Walker & Rhoads, Philadelphia, has been elected president of the Forum of Executive Women.

THOMAS PANEBIANCO was appointed General Counsel of the Federal Maritime Commission.

JEFFREY I. PASEK, chair of the labor and employment law group of Cozen and O'Connor, Philadelphia, was appointed co-chair of the Philadelphia Bar Association's labor and employment law committee for 1997.

'77

DANIEL B. EVANS, an estates lawyer in Wyndmoor, Pa., was elected to a second term on the council of the American Bar Association's law practice management section during its annual meeting in Orlando, Fla.

'78

LEONARD P. GOLDBERGER, a partner with White and Williams, Philadelphia, participated as a member of an advisory panel to the mass torts and future claims working group of the National Bankruptcy Review Commission at the Federal Judiciary Center in Washington, D.C.

AVARITA HANSON was named executive director of the Health and Consumer Services Cluster of the Georgia State Examining Boards division by Georgia Secretary of State Lewis Massey.

D'Accord Financial Services, Inc., has appointed MARC T. RESTON a managing director in the firm's San Francisco headquarters.

'79

TIMOTHY J. BOYCE, a real estate partner with Dechert Price & Rhoads, Hartford, Conn., was inducted into the American College of Real Estate Lawyers.

GEORGE W. BRAUN joined the Philadelphia office of Pepper, Hamilton & Scheetz as a partner in the business department.

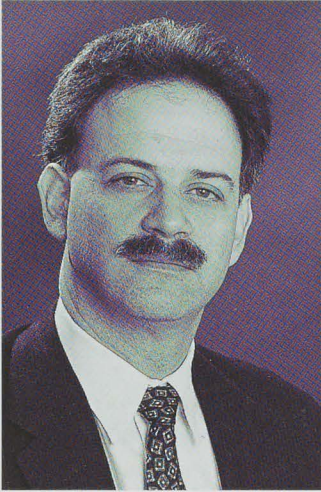
STEVEN H. HOBBS has been elected to the Tom Beville Chair of Law at Washington & Lee University Law School.

NIKI T. INGRAM, a shareholder with Marshall, Dennehey, Warner, Coleman & Goggin, was appointed to vice-chair of the American Bar Association's workers' compensation and employers' liability law committee for 1996-97. Ingram was also appointed to the investigative division of the Philadelphia Bar Association's commission on judicial selection & retention.

JEREMY D. MISHKIN has been named managing partner of Montgomery, McCracken, Walker & Rhoads, Philadelphia, where he is a member of the firm's litigation department.

M. KELLEY TILLERY, senior partner in the firm of Leonard, Tillery & Sciolla, Philadelphia, has been re-elected to the board of the International Anti-Counterfeiting Coalition. He made two presentations to the second annual APEX Insurance Agency's Genstar Management Advisory Board conference in Lake Geneva, Wisc. He also spoke on "Trademarks—What's in a Name" at the Drexel University Program in the Arts.

KENNETH J. WARREN, director of the environmental litigation practice of Manko Gold & Katcher, Bala Cynwyd, Pa., was appointed to chair the public service task force of the American Bar Association's section of natural resources, energy and environmental law.



Jack D. Weiner '80

'80

PETER J. LYNCH, a member of the firm Christie, Pabarue, Mortensen and Young, Philadelphia, spoke on insurance coverage law in New Jersey, at the National Business Institute Seminar held in Mt. Laurel, N.J. in March.

MICHAEL J. MENTZEL joined the business department of White and Williams, Philadelphia, as of counsel.

JACK D. WEINER has joined Fineman & Bach, Philadelphia, as of counsel, concentrating in complex real estate finance and development, corporate and venture capital matters.



Jack C. Liu '84

'81

DAVID L. COHEN, former chief of staff for Philadelphia Mayor Ed Rendell, is now a partner and chair-elect of Ballard Spahr Andrews & Ingersoll.

JEFFREY D. LOBACH, a partner in Barley, Snyder, Senft & Cohen, LLP, received the Crystal Stair Award from the University of Pennsylvania School of Social Work.

'82

STEPHANIE FRANKLIN-SUBER became Philadelphia City Solicitor on December 12, 1996. She has worked in the solicitor's office since 1992 as chair of the corporate group. She is also a governor of the Philadelphia Bar Association and a past president of the Barristers Association of Philadelphia.

'83

LYNN AXELROTH, a partner in the real estate department of Ballard Spahr Andrews & Ingersoll, has been appointed to the contract documents' steering committee of the American Bar Association forum on the construction industry. She also spoke on construction law at the Seventh Annual Greater Philadelphia region construction forecast seminar in April.

RICHARD P. LIMBURG has been named partner at the firm of Obermayer Rebmann Maxwell & Hipple, Philadelphia.

STEVEN K. LUDWIG, a member of the labor and employment department of Fox, Rothschild, O'Brien & Frankel, Philadelphia, has been elected to partnership in the firm.

'84

SCOTT L. BOK has joined Greenhill & Co., a financial advisory firm specializing in mergers, acquisitions and other strategic advisory services, as a managing director. He was previously a managing director in the mergers and acquisitions department of Morgan Stanley.

KEITH B. BRAUN, a partner with Honigman Miller Schwartz & Cohn, who concentrates on estate planning, probate and non-profit organization law, has relocated to the firm's West Palm Beach, Fla., office.

MATTHEW J. COMISKY, a partner in the real estate department of Blank, Rome, Comisky & McCauley, Philadelphia, was sworn in as the youngest president of the Young Lawyers Division of the Florida Bar Association.

Dechert Price & Rhoads, Philadelphia, elected DAVID J. HOWARD to partnership.

JACK C. LIU has joined the business and finance section of the Los Angeles office of Morgan, Lewis & Bockius as of counsel.

THOMAS K. PASCH, a member of the business department at Saul, Ewing, Remick & Saul, Philadelphia, has been elected a partner in the firm.

'85

The Philadelphia firm of Blank, Rome, Comisky & McCauley has named JOHN W. FOWLER JR. a partner.

Fox, Rothchild, O'Brien & Frankel, Philadelphia, has elected MARC E. NEEDLES to partnership.

'86

MITCHELL L. DORF, a partner with Dorf & Dorf, Rahway, N.J., published "Pre-Employment Inquiries and Examinations Under the Americans with Disabilities Act—What's an Employer to Do?" in the June 1996 issue of *New Jersey Municipalities*. He also published "The FLMA Revisited—Intermittent and Reduced Leave Schedule

Medical Leaves," in the November issue of the same journal. Dorf spoke at the annual conference of the New Jersey State League of Municipalities on the topic of the Federal Family and Medical Leave Act of 1993 and the New Jersey Family Leave Act.

EDWARD J. PELTA has been promoted by General Railway Signal Corporation to vice president, general counsel and secretary.

SHELDON D. POLLACK, Assistant Professor, College of Business and Economics, University of Delaware, is the author of *The Failure of U.S. Tax Policy: Revenue and Politics*, published by Penn State Press.

IRA NEIL RICHARDS and KENNETH I. TRUJILLO have joined with LISA J. RODRIGUEZ to form the law firm of Trujillo Rodriguez & Richards, Philadelphia. The firm also maintains offices in Cherry Hill, N.J., and Mexico City.

WILLIAM S. SKINNER, principal of Flaster Greenberg Wallenstein Roderick Spingel Zuckerman Skinner & Kirchner, Cherry Hill, N.J., was chosen by national legal research company LEXIS-NEXIS to review and provide New Jersey expertise for its new Limited Liability Company Practice System.

'87

Dechert Price & Rhoads, Philadelphia, has elected VERNON L. FRANCIS to partnership.

JILL M. HEYMAN presented a workshop on Material Safety Data Sheets last May in Philadelphia.

JAY S. RAND joined Brown Raysman & Millstein, New York, as of counsel.

MARTHA L. SALZMAN, a member of the corporate department, has been named a partner in the Buffalo, N.Y., office of Phillips, Lytle, Hitchcock, Blaine & Huber.

JESSAMYNE M. SIMON was elected a partner with Pepper, Hamilton & Scheetz, Philadelphia.

FERRIER R. STILLMAN has joined the Baltimore law firm of Tydings & Rosenberg. Stillman previously served as assistant secretary for Business and Regulatory Services at the Maryland Department of Health and Mental Hygiene.

FRANK TOBOLSKY presented "Buying Your House: A Step-by-Step Guide" through Temple University. He also presented guidance for conducting commercial real estate transactions in a course sponsored by the Philadelphia Bar Education Center.

KAREN LYNN VALIHURA was elected a partner of the Delaware affiliate of the international law firm Skadden, Arps, Slate, Meagher & Flom LLP.

'88

SALVATORE R. FAIA became a member in the commercial litigation department of Cozen and O'Conner, Philadelphia. His areas of practice include securities, anti-trust, and accountants' malpractice.

CURTIS L. GOLKOW has been named a shareholder of Hanglely Aronchick Segal & Pudlin, Philadelphia. He concentrates his practice in corporate transactions.

Dechert Price & Rhoads, Philadelphia, has elected MARSHALL J. WALTHER to partnership.

'89

TERESITA H. GARCIA, an attorney in the Ft. Lauderdale, Fla., office of Holland & Knight, has been named a partner in the firm. She concentrates in corporate and securities law.

PAUL D. PATTON was promoted to vice president and counsel of the Law Department at Citizens Bank, Providence, R.I.

J. DENNY SHUPE was announced as a partner with Schnader Harrison Segal & Lewis, Philadelphia.

MICHAEL D. SMITH has joined Clark, Thomas & Winters, Austin, Tx., where he is continuing to practice health care law.

'90

ANITA M. ALESSANDRA has become board certified in labor and employment law by the Texas Board of Legal Specialization.

PAUL BONI, a sole practitioner who focuses on environmental law, spoke at a seminar entitled "Wetlands: Regulation and Permit Process."

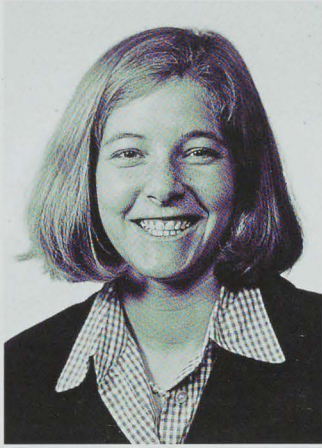
The American Bar Association Young Lawyers Division selected ALISON VALEZ LANE, a managing member of Phillips & Lane, Baltimore, Md., for recognition in its 1996 "Profiles of the Profession" annual issue of the *Barrister*, ABA/YLD's official publication.

'91

IVAN CIMENT has joined the firm of Jacobson & Mermelstein in New York City as an associate.

ANDREW C. COOPER, an environmental litigator at Arent Fox Kitner Plotkin & Kahn, Washington, D.C., has been appointed for a second term as chair of the American Bar Association Young Lawyers Division's natural resources and environmental law committee.

KAREN AND ELLIOT LERNER announce the birth of their first child, Alexis Hope Lerner, March 9, 1996. The family currently resides in Little Falls, N.J.



Kay E. Sickles '94

'92

LILLIAN BENEDICT has joined Cozen and O'Conner, Philadelphia, as an associate. She will concentrate her practice in areas of general commercial litigation.

DAVID S. WACHEN has joined the First Amendment/libel group in the Washington, D.C., office of Baker & Hostetler.

'93

RONALD E. CAHILL has joined the firm of Nutter, McClennen & Fish, Boston, as an associate in the business department specializing in intellectual property law.

ROBERT L. COONEY, JR., has joined Morgan, Lewis & Bockius, Philadelphia, as an associate.

'94

ALICE ELEASE HARVEY has joined the business law department of Hangley Aronchick Segal & Pudlin, Philadelphia.

JEFFREY E. ORAKER, an associate in the Denver office of Gibson, Dunn & Crutcher, was married this past Thanksgiving to Stacy Harris, whom he met while clerking for The Honorable Judge William Flemming Nielsen in the Eastern District of Washington. They reside in Denver.

KAY E. SICKLES joined the Marlton, N.J., office of Marshall, Dennehey, Warner, Coleman & Goggin as an associate in its professional liability and products liability practice groups.

'95

DAVID NASATIR, an associate in the business and finance department of Obermayer Rebmann Maxwell & Hoppel, Philadelphia, has been appointed as the youngest member of the board of directors for the Montgomery County Development Corporation.

KEITA ARCHIE YOUNG, an associate at Hoyle, Morris & Kerr, Philadelphia, participated as a panelist on "The Urban League Speaks," a radio talk show on WDAS last September.

'96

ANA MARIE CASTLE has joined Pepe & Hazard, Hartford, Conn., as an associate attorney in the finance/real estate practice group.

CAROL A. FITZPATRICK has joined Manko, Gold & Katcher, Bala Cynwyd, Pa.

CECIL E. MARTIN, III, has become an associate with McGuire, Woods, Battle & Boothe, Baltimore.

JOHN J. MUSERO, III, received the Philadelphia Trial Lawyers Association's 1996 James J. Manderino Award for Trial Advocacy.

PENN LAW Alumni Admissions Network

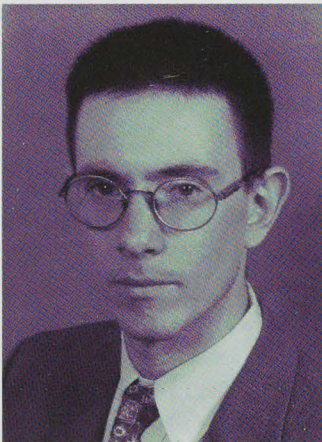
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Robert L. Cooney Jr. '93



David Nasatir '95

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'24
ABRAHAM S.
GREENWOOD

'25
BALDWIN MAULL
December 14, 1995

'29
BENJAMIN SLOBODIN
September 5, 1995

'31
ROBERT FRANKLIN
BROWN
August 23, 1996

G.M.D. RICHARDS
November 24, 1995

WILLIAM R. SCOTT
February 18, 1996

EDITH H. WEST
May 7, 1997

'32
WILLARD S. CURTIN
February 4, 1996

WILLIAM B. REED
February 22, 1997

'33
SAMUEL POPPER
November 28, 1995

'34
W. CLARK HANNA
January 9, 1996

'31
BERNARD G. SEGAL



Bernard Segal, legal friend to the powerful and the powerless, died June 1, 1997, of complications from cancer. A corporate lawyer who specialized in appellate work and argued almost 50 cases before the U.S. Supreme Court, Segal left his most enduring mark in the areas of civil rights and legal representation for the poor and the unpopular.

In 1953, he oversaw the assembly of a team to defend accused communists in Philadelphia being prosecuted under the Smith Act. The defense, hinging on the right to free speech and association, led, on appeal, to the downfall of Smith Act prosecutions. Later, exerting pressure on a succession of presidents and sessions of Congress, he established peer review of judicial appointments. During the 1960s, under his own instigation and at the behest of presidents Kennedy and Johnson, he organized both the Lawyers Committee for Civil Rights and the National Legal Services. He consistently advocated the idea of performing legal work gratis for the poor.

Segal, who gave "full-time lawyer" a new meaning by devoting basically every waking hour to the law, served as the first Jewish chancellor of the Philadelphia Bar Association (1952) and of the American Bar Association (1969). He was also a former chairman of the Philadelphia firm now known as Schnader Harrison Segal & Lewis.

'35
J. PENNINGTON STAUS
September 27, 1996

'36
CLEMENT J. CLARK, JR.
August 8, 1996

SYLVESTER GARRETT
January 11, 1996

WILLIAM SITNEK
March 14, 1996

'37
IRVING W. BACKMAN
November 23, 1995

LESTER SCHAFFER
February, 1997

'38
RICHARD N.
CLATTENBURG
March 3, 1997

'39
ROBERT C. PORTER
March 12, 1997

JACOB M. SNYDER
April 22, 1997

'40
HON. EDWIN H.
SATTEETHWAITE
March 21, 1997

'41
BERNARD J. SMOLENS
May 20, 1997

'47
MICHAEL
VONMOSCHZISKER
December 29, 1995

'48
ROBERT M. JONES
November 5, 1995

'49
THOMAS M. BRUCE

THOMAS J. BURKE
March, 1997

CHARLES J. HENRY, JR.
October 8, 1995

FRANKLIN E. KEPNER
February 8, 1997

HON. SAMUEL W.
MORRIS
December 17, 1995

DONNA JEAN
SHELLABERGER
February 2, 1997

'50
THEODORE H. HUSTED
November 24, 1996

NORMAN KRON
December 27, 1995

'51
HAROLD CAPLAN

MILTON H. TOWNSEND
February 7, 1993

'54
MELVA L. MUELLER
January 21, 1997

'56
ROBERT H. CLAMPITT
August 8, 1996

RICHARD H. FLOUM
June 29, 1996

THOMAS H. GOLDSMITH
October 20, 1995

JOHN T. HOUTENVILLE
April 20, 1996

'69
RICHARD A. FLYE
March 29, 1997

'71
LLOYD ZIFF
September 5, 1996

'73
KARL K. LUNKENHEIMER
November 6, 1996

'80
M. SHANARA GILBERT
April 2, 1996

'82
ROBERT C. BELL, JR.
August 23, 1996

'78
MARGARET BROWNING

Margaret Browning passed away on February 28, 1997, after a long illness. She is remembered by her classmates and the Law School faculty for her vitality, brilliance, conscience and compassion. She was an editor of the *Law Review*, represented the Law School as a Penn Fellow at the Salzburg Seminar in 1990 and was a guest lecturer in Professor Gorman's and Professor Summer's courses on labor law and labor arbitration. Ms. Browning was appointed to the National Labor Relations Board by President Clinton in March 1994. She continued to work until four days before her death. She began her career clerking for U.S. District Judge Murray M. Schwartz in Delaware. After completing her clerkship she worked for Center City law firms, representing labor organizations in private, public and federal sectors. In 1985 she was a founding partner of Spear, Wilderman, Borish, Endy, Browning and Spear. Ms. Browning was an accomplished figure skater and in 1990 served as a member of the U.S. Figure Skating Association Judges Committee. President and Mrs. Clinton issued a statement praising Ms. Browning for contributing to "harmonious labor relations in this country" and for her "compassion, good judgment and, especially in recent months, courage." She is survived by her husband, Joseph Lurie, and three daughters, Lisa, Jenine and Megan Lurie McCarver, and her father, F. Gilbert Browning.

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• *emeritus status*

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Professor of Law

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