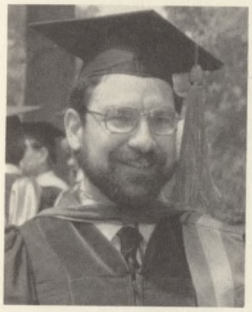
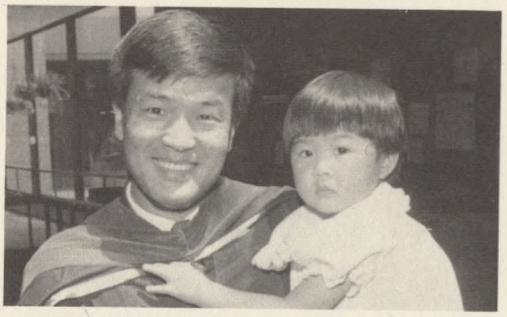
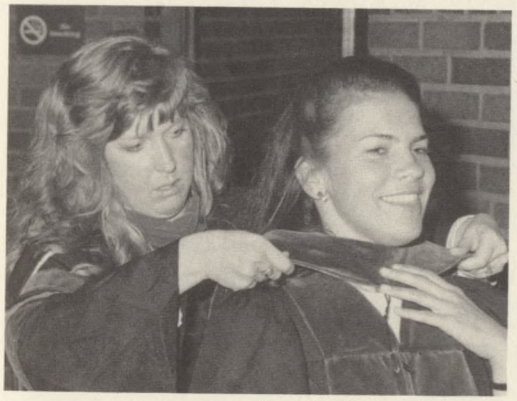
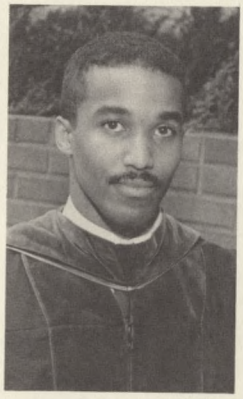
1991

In Brief

in brief

Law Alumni News Bulletin September 1991

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Editor
Kerstin Ekfelt Trawick
Director of Publications and External Affairs
Faculty Editor
Wilbur C. Leatherberry
Professor of Law
Contributing Editor
Elizabeth A. Hlabse
Photographers
Mike Sands
Kerstin Ekfelt Trawick

Law School Administration
Peter M. Gerhart (216) 368-3283
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Daniel T. Clancy (216) 368-3308
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Inside this issue...

The Dean Reports

I write this time about a program and a person. Each serves as a reminder of our law school's past achievements, and each points the way to future successes.

The program of note is our professionalism program, begun two years ago. As you will read on page 18, the American Bar Association has given it one of the E. Smythe Gambrell Professionalism Awards. It is always nice to win prizes, but recognition for our professionalism program is especially welcome because that program says so much about why our law school is achieving distinction.

First, the award recognizes leadership. I have asked each member of the faculty to work toward becoming a leader in his or her field and to see that our various programs lead legal education and the profession. We expect our clinical program, for example, to be among the most innovative in the country. And it is. Under the leadership of Peter Joy, the clinical faculty have integrated the family law clinic into the substantive family law course, have begun to explore the impact of preventive law on nonprofit organizations, and have designed an innovative health law clinic and a program that will put a lawyer alongside health professionals who treat the urban poor. (Responding to the same challenge, our research and writing instructors have pioneered the application of diagnostic tests to refine the teaching of legal writing and are experimenting with new ways of teaching writing and research together.)

Two years ago, some said that we could not mount a professionalism program because there were no materials for it. That did not deter us; we put the materials together. We saw a need and we met it. Why wait for someone else to improve legal education? We can make things happen at Case Western Reserve.

Second, the professionalism program represents our insistence on integrative education. For too long, the curriculum at most law schools has been growing, splintering, fragmenting. Too often, courses that used to make up a common core of jurisprudence are being divided and subdivided until interrelationships are lost and commonality no longer discernible. Too often, law faculty work in isolation, more and more specialized in smaller and smaller units of knowledge. The law school that is able to integrate throughout the curriculum material that follows common themes and reinforces central understanding will stand out from others in coming decades. Its graduates will simply be better lawyers.

The faculty who developed our professionalism program—Peter Joy, Bob Lawry, Kevin McMunigal—recognized that professional responsibility and professional attitudes are not something that can be taught as a discrete chunk of material, but must be infused throughout the curriculum and even beyond it. They worked with each of the teachers of first-year courses to make sure that professionalism would become an integral part of the syllabus. Our task now is to do the same—and we soon will—for upperlevel courses.

This type of integrative education is the hardest to achieve, for it requires the faculty to accept a common vision, to surrender some independence, and to collaborate. It is a great tribute to our faculty that they made this approach work, and bodes well for our future. If we can replicate this approach in other areas, discussing, for example, theories of causation, transnational law, or legal research, then we will have achieved advances in legal education that few others can equal.

Finally, the professionalism program represents our long tradition of keeping in touch with the changing practice of law and making sure that our students are equipped for the realities of law practice. Too much is made of the supposed tension between our role as an academic institution and our role in preparing our students to be practicing professionals. Virtually every segment of our profession welcomes academic study and leadership. As long as we bring all of our academic resources to bear on the issues that we address, we are upholding our responsibilities to both our academic heritage and our profession. Our professionalism program is a prime example.

If our professionalism program represents new directions for our curriculum, Dan Clancy represents new directions for our outreach. As our law school has emerged from a local to a regional law school with national and international aspirations, our administrative structure has grown to govern that wider kingdom, which I have divided into three parts. One is the academic territory, and that will be under the dominion of Associate Dean Calvin Sharpe (see page 21). Associate Dean JoAnne Jackson will oversee the student and administrative structure. Associate Dean Dan Clancy will have responsibility for all external relations, including alumni affairs, development, continuing legal education, other post-J.D. programs, and the Center for Criminal Justice.

That third province assigned to Dean Clancy is where cohesion and continuity are most important. Healthy institutions rejuvenate continually; as their environment changes, they too must adapt and change, but without losing their essential quality in the process.

Dan Clancy surely represents continuity. He has served the law school for twenty-five years. He has had long experience with alumni relations and the annual fund. He is respected and admired by faculty and by alumni and will be able to draw those two constituencies closer together. He is articulate. He is known to more than half our graduates as their law school contemporary (he graduated in 1962), their dean of students, or—most recently—as vice dean. He has served our students so well that he virtually embodies our long tradition of putting student needs foremost. He will bring clarity and cohesion to our administration, and he will increasingly involve his fellow alumni in program planning, admissions, career planning, continuing education, and fund raising.

It is no secret by now that fund raising is going to be a continuing and incessant priority; that is a fact of life for any great private law school. And here the continuity that Dan Clancy provides is critically important. Deans may come and go, and professional development officers are notoriously mobile. Having our external affairs under the leadership of one so long associated with this institution means that the best of our traditions will be preserved and whatever changes come will be orderly.

I have just one request: When Dan Clancy calls, please respond. Your response is important to our future.

Peter M. Gerhart
Dean

Property Meets Con Law in Prince Edward County

by Jonathan L. Entin
Professor of Law

Perhaps the greatest challenge for any teacher of a Property class is helping students understand the law of estates in land and future interests. The rules in this field go back almost a thousand years. Although they do have an inner logic, they are, to put it kindly, counterintuitive to the uninitiated.

One of the puzzles that students must master is the law of defeasible fees: the difference between a fee simple determinable and a fee simple subject to condition subsequent. They must learn some special terminology (possibilities of reverter and powers of termination), some drafting vocabulary (the "magic words" that create each type of defeasible fee), and the legal consequences of classification (one expires automatically upon the happening of a stated event, whereas the other expires only when the grantor reclaims possession after the event).

Most people find this exercise about as enjoyable as figuring out the difference between a contingent remainder and a vested remainder subject to complete divestment. And teaching it is often as much fun as watching the Cleveland Indians suffer yet another shut-out, particularly when you point out that, as many scholars (including my colleague Gerry Korngold) have shown, there is usually no *practical* difference between these two forms of defeasible fees.

Imagine my delight, then, when I discovered the case of *Hermitage Methodist Homes, Inc. v. Dominion Trust Co.*, 239 Va. 46, 387 S.E.2d 740, *cert. denied sub nom. Prince Edward School Foundation v. Hermitage Methodist Homes, Inc.*, 111 S. Ct. 277 (1990). In this remarkable case, the private academy that had been established for white students when the public schools of Prince Edward County, Virginia—one of the original defendants in *Brown v. Board of Education*—were closed to avoid desegregation, challenged the constitutionality of a whites-only restriction in an educational trust. Not only that, but the result was based upon one of the mysterious intricacies of defeasible-fee law, the distinction between a special limitation and a condition subsequent.

We shall see that the logic of the decision has some troubling implications about the constitutionality of sophisticated forms of racial discrimination. But, for a teacher, those implications are part of the case's attractiveness. For once, the arcana of property law might have relevance in the more glamorous arena of constitutional law (another subject that I teach and in which I do most of my research and writing).

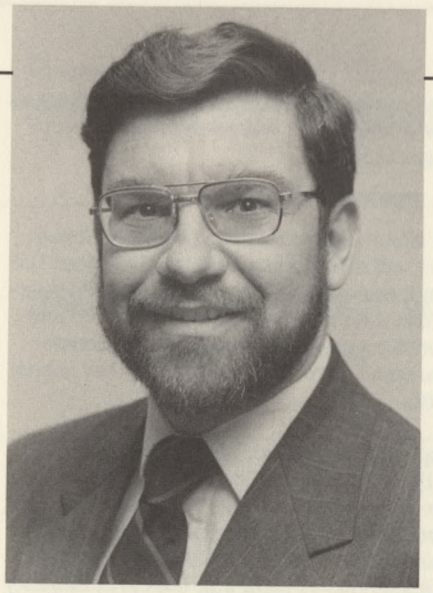
Some Basic Property Concepts

For those of you who may have forgotten the law of defeasible fees, let me begin with a hypothetical that I use in class. Suppose that O owns Blackacre, a valuable parcel in downtown Cleveland, in fee simple absolute. If O conveys the property "to A and her heirs so long as Blackacre is used exclusively for residential purposes," A will have acquired fee simple determinable and O will have retained a possibility of reverter. The residential-use restriction will be called a special limitation. On the other hand, if O conveys the property "to A and her heirs on the express condition that Blackacre shall be used exclusively for residential purposes," A will have acquired fee simple subject to a condition subsequent and O will have retained a power of termination. The restriction in this instance will be called, unsurprisingly, a condition subsequent.

In theory, the main difference between these conveyances is what happens when A opens an office building on Blackacre. Her fee simple determinable would end at the instant the building began to be used for commercial purposes, whereas her fee simple subject to condition subsequent would end only when O or his successor chose to invoke the power of termination after A's breach of the restriction.

As numerous commentators have pointed out, this analysis is not really plausible. It assumes that A, as holder of fee simple determinable, would meekly surrender her interest to a startled O and voluntarily abandon Blackacre when the first tenant moved into her newly-opened office building, while as holder of fee simple subject to condition subsequent she would no doubt do her best to conceal her office complex from an ever-vigilant O lest he force her off the property.

To the contrary, students quickly recognize that O and A are likely to act the same in either situation, regardless of the labels attached to their interests. For that reason, property



Jon Entin received his B.A. degree from Brown University and his J.D. from Northwestern. In between he served as director of the Arizona Civil Liberties Union. Before he joined the CWRU faculty in 1984, he clerked for Judge Ruth Bader Ginsburg (U.S. Court of Appeals, D.C. Circuit), and practiced law with Steptoe & Johnson in Washington.

Entin may well remember 1991 as an annus mirabilis. *He was promoted to the rank of full professor with tenure, received two teaching awards—Professor Pro Bono from the Class of 1991, Teacher of the Year from the Student Bar Association—and was selected a Judicial Fellow. He is spending the 1991-92 academic year in Washington, D.C. at the Federal Judicial Center, the research and development arm of the U.S. courts.*

Entin is one of just three Judicial Fellows. The other two are Jeffrey Jackson, associate professor of law at Mississippi College, who will serve his fellowship at the federal courts' Administrative Office; and Janice Sumler-Lewis, an attorney with the Atlanta firm of Mack & Bernstein, who will spend the year at the Supreme Court.

The Judicial Fellows Program, begun in 1973, selects candidates from diverse fields (e.g., law, economics, journalism, the behavioral sciences) to spend a year working with top officials in the judicial branch. A committee of thirteen, appointed by the chief justice of the U.S. Supreme Court, makes the selections.

scholars have urged—so far without much success—that the formal distinction between fees simple determinable and fees simple subject to condition subsequent be abandoned.

Those scholars—understandably—have not focused on the constitutional implications of the limitation-condition distinction. Because a fee simple determinable expires automatically, no governmental action is required to give effect to O's possibility of reverter if A violates the special limitation. By contrast, a fee simple subject to condition subsequent continues until the power of termination is exercised, typically by O's filing suit in response to A's breach. Judicial enforcement of the condition is a form of governmental action that might raise constitutional concerns.

If the scholarly critics are correct, there is no reason to treat limitations and conditions differently for constitutional purposes. O is not likely to resort to self-help when A breaches the residential-use restriction, regardless of how the parties' interests are denominated. He is much more likely to file suit when he discovers A's breach, and A will retain possession until the court rules.

The *Hermitage Methodist Homes* case makes it clear that this is not a purely hypothetical point. The court explicitly relied on the formal distinction between special limitations and conditions subsequent as the basis for its decision. This in turn suggests that preservation of determinable fees could afford safe harbor for perpetrators of racial discrimination. There are, of course, civil rights statutes that might alleviate the potential harm, but none of those statutes directly addresses the situation in this case.

The Prince Edward County Litigation

The *Hermitage Methodist Homes* case concerns an educational trust created by a man named Jack Adams. The Adams trust named the Prince Edward School Foundation as beneficiary "so long as [it] admits to any school, operated or supported by it, only members of the White Race." The trust provided for gifts over to three other educational institutions, all subject to the same racial restriction, and ultimately to a nursing home. The latter provision said nothing about race.

As a preliminary matter, the basic principles of defeasible fees apply to personalty as well as realty and to equitable as well as legal interests. Moreover, the gifts over to third parties make the foundation's interest subject to executory limitations. For present purposes, there are no relevant distinctions between executory limitations and special limitations (although some important differences do exist in other contexts).

By way of historical background, the Prince Edward School Foundation was established in 1955 to create private schools for white pupils in the event that the federal courts ordered the public schools of Prince Edward County to desegregate. Such an order seemed certain because the county school board was one of the defendants in *Brown v. Board of Education*. The prospect of desegregation in Prince Edward led to a tumultuous period in Virginia during which the state embarked on "massive resistance" in an effort to prevent racially mixed education. Ironically, the massive resistance had largely collapsed by 1959, when the court order finally came. Local officials responded to the order by shutting down the public schools. The foundation simultaneously opened a private school known as Prince Edward Academy that enrolled almost every white student in the county.

The Academy remained all-white for almost thirty years despite losing its federal tax exemption under an Internal Revenue Service ruling that denied favorable tax status to racially discriminatory private schools. After unsuccessfully challenging the revocation in the courts, the Academy suddenly announced in 1985 that it did not have discriminatory admissions policies. Its tax exemption was restored shortly afterward in something of a bureaucratic mix-up. The commissioner of internal revenue admitted that the IRS had not followed its regular procedures for handling applications for tax-exempt status and reopened the case. Before the foundation's tax exemption was finally restored, it elected a black member to its board of directors and established a small fund for minority scholarships. In the fall of 1986, Prince Edward Academy enrolled five African-American students.

At that point the bank administering the Adams trust sought judicial guidance as to which party was entitled to receive the trust income. The trial court voided the trust's whites-only restriction as unconstitutional and held that the foundation should continue to receive the income from the trust. The state supreme court reversed, ruling that the trust should be enforced as written; because the three educational institutions that received gifts over had likewise violated the racial restriction, the nursing home, which had never been subject to the restriction, was now the proper beneficiary.

The Virginia Supreme Court finessed the constitutional issue, concluding that the nursing home should prevail regardless of the validity of the whites-only provision. The opinion instead focused on the semantic distinction between limitations and conditions. The language of the racial restriction included the words "so long as," the classic sign of a limitation. Assuming that the limitation was constitutional, the educational institutions had forfeited their rights by admitting blacks, so the nursing home was entitled to the income by the express terms of the trust. If the limitation were unconstitutional, the court could not excise part of the foundation's interest but would have to strike all of it.

The opinion made clear that classifying the racial restriction as a limitation was crucial to the outcome. A limitation is integral to the estate conveyed, whereas a condition is not. If a limitation fails, so must the rest of the estate. On the other hand, if a condition subsequent fails, the rest of the estate survives. Because the restriction in the Adams trust was a limitation, all of the provisions relating to the educational institutions had to be removed; only the nursing home's unencumbered interest remained intact. By contrast, had the whites-only provision appeared in a condition subsequent, only that provision could have been stricken from the conveyance; this would have left the foundation with an unrestricted beneficial interest in the trust.

The authority for this analysis was thin. A sounder approach would have focused upon the grantor's intent, the cardinal principle for interpreting conveyances. The best indicator of the grantor's intent is the language of the conveyance. The language of the Adams trust strongly suggests that the whites-only provision was inextricably intertwined with the foundation's interest. All of the interests granted to the educational institutions were subject to this restriction, whereas the nursing home's was not.

Any doubt about the centrality of the whites-only provision ought to be dispelled by the circumstances surrounding the conveyance. The Adams trust was part of a will originally drafted in 1956, at the height of the massive resistance movement, and revised in 1964, when the U.S. Supreme Court ordered the Prince Edward County public schools immediately reopened and desegregated. It is inconceivable that Jack Adams, who resided only fifty miles from the Academy, was unaware of these events. In short, the historical background to the conveyance makes it clear that the racial restriction was intended as an essential ingredient of the foundation's interest. Therefore, regardless of the label attached to the whites-only provision, an unconstitutional restriction should have defeated the entire gift to the educational institutions and left the nursing home as sole beneficiary.

All of this assumes that the limitation in the Adams trust was unconstitutional, a question that the state supreme court carefully sidestepped. Suppose, though, that the trust had made no provision for a gift over in case the foundation breached the racial restriction. The constitutional issue then would have been unavoidable.

Defeasible Fees and the Constitution

Special Limitations

The constitutionality of race-based special limitations was examined most fully in *Charlotte Park and Recreation Commission v. Barringer*, 242 N.C. 311, 88 S.E.2d 114 (1955), *cert. denied sub nom. Leeper v. Charlotte Park and Recreation Commission*, 350 U.S. 983 (1956). A municipality acquired land in fee simple determinable for use as a whites-only park. Upholding the constitutionality of the racial restriction, the court found no state action because the forfeiture would occur automatically and instantaneously when nonwhites used the park.

The Supreme Court reached a similar conclusion in *Evans v. Abney*, 396 U.S. 435 (1970), which arose in a slightly different context. The issue there concerned the validity of a racial restriction on land conveyed in trust for use as a municipal park. When it became impossible to continue operating the park on a segregated basis, the state courts ruled that the trust had failed and that the land had automatically reverted to the grantor's heirs. The Supreme Court found no violation of the Fourteenth Amendment. Taken together, these cases suggest that a special limitation relating to race is probably constitutional even though it is morally repugnant.

Conditions Subsequent

The validity of racially restrictive conditions subsequent is much more problematic. Although the Supreme Court has never decided such a case, it has held that judicial enforcement of race-based covenants—by way of injunctions or damages—violates the Fourteenth Amendment.

If judicial enforcement of racially restrictive covenants is unconstitutional, judicial enforcement of similar restrictions embodied in conditions subsequent almost certainly is improper. As we have seen, exercise of the power of termination typically requires resort to litigation. If a court may not grant an injunction or award damages for violation of a race-based restriction, it surely may not order a forfeiture. Courts generally seek to avoid imposing that drastic remedy for breach of obviously lawful conditions subsequent. There is no reason to believe that they would be receptive to forfeitures in situations where less draconian sanctions are constitutionally unavailable.

In sum, the traditional semantic approach suggests the following tentative conclusion: Racial restrictions embodied in special limitations probably are constitutional, whereas the same restrictions expressed in conditions subsequent probably cannot be enforced. On further reflection, however, the traditional approach is troubling because it rests on a purely verbal foundation.

State Action and Special Limitations Reconsidered

At one level, the notion that a fee simple determinable expires without any governmental involvement is consistent with the Supreme Court's approach to the problem of state action under the Fourteenth Amendment. Promulgating a rule that controls the conduct of private parties generally is not sufficient to show state action. Because a determinable fee expires automatically upon the breach of a special limitation, no state action is involved when forfeiture occurs.

At another level, however, this notion is unrealistic. The law that operates "automatically" to end a property interest comes from government, typically a state government. While the mere promulgation of property rules may not represent state action for constitutional purposes, the government in a fee simple determinable does more than provide general rules to structure a private relationship. The parties to a determinable fee are likely to resort to litigation to resolve their dispute. This alone would not necessarily constitute state action if all the court did was confirm that forfeiture had occurred automatically when A violated the special limitation. In fact, however, courts frequently must decide whether the conveyance in question was a fee simple determinable or a fee simple subject to condition subsequent. In many instances courts confuse the two estates, thereby creating powerful incentives for parties to litigate in every dispute over a defeasible fee. W have seen that judicial enforcement of powers of termination constitutes state action. Given the difficulty of differentiating between fees simple determinable and fees simple subject to condition subsequent, it does not make sense to preserve a distinction that would find state action in one situation but no in the other. No matter what labels are used, the court is effec tively ordering the forfeiture.

Eliminating the limitation-condition distinction, as property scholars have urged for other reasons, would also mean that the form of a race-based restriction would not control its constitutionality. One relevant example of judicial unwillingness t be bound by purely semantic considerations is *Capitol Federa Savings and Loan Association v. Smith*, 136 Colo. 265, 316 P.2d 252 (1957), a case that invalidated a whites-only occupancy restriction. The court rejected a very plausible technica argument that the restriction could be upheld as an executory limitation providing for automatic forfeiture and held that the arrangement was, in substance if not in form, identical to the restrictive covenants held unenforceable in *Shelley* and *Barrows*. (Ironically, in rejecting the technical argument the court overlooked the fact that the executory interest was void for violating the Rule Against Perpetuities.)

Although the decision is inadequately reasoned, the court's refusal to allow labels to control analysis has much to commend it. Functionally equivalent private controls on property should receive substantively analogous judicial treatment. If courts may not issue injunctions or award damages for violations of race-based use or occupancy restrictions, they should not be permitted to order the even more drastic remedy of forfeiture. More important, the validity of a judicial ruling enforcing a forfeiture should not turn on evanescent conceptual distinctions arising from the use of essentially equivalent words that have no real consequences for the behavior of the parties. A restriction should not be insulated from constitutional challenge simply because it is denominated a limitation rather than a condition subsequent when a judicial order probably will be required to effect the forfeiture in any event.

Concluding Thoughts

The jurisprudence of defeasible fees too often emphasizes labels rather than substance. The decision in *Hermitage Methodist Homes* is a prime example. The outcome turned on the artificial distinction between limitations and conditions subsequent. In other circumstances, the tyranny of labels could insulate some blatantly discriminatory restrictions from legal attack. Eliminating the semantic distinction not only would improve the law of property but could also strike a small blow against bigotry.

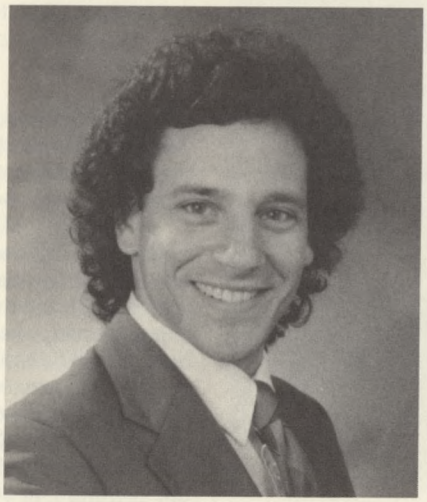
Beyond doctrinal issues, this case dramatically reminds us that a judicial ruling, even in a landmark case like *Brown*, marks the beginning of a complex and sometimes surprising process of implementation and adjustment. Who could have anticipated that the Prince Edward School Foundation, founded by die-hard segregationists who fiercely challenged federal antidiscrimination efforts for almost thirty years, would ever seriously argue to the highest court of Virginia, the birthplace of massive resistance, that a whites-only educational trust is unconstitutional? Perhaps the foundation's change of heart was merely strategic, a device to maintain access to a substantial pool of operating capital. After all, the Academy admitted black students only as part of an elaborate negotiation that led to the restoration of its federal tax exemption. Perhaps, like the state supreme court, the foundation reached the correct conclusion for less than the best reasons. Still, it is no small irony that the foundation was willing to take this position at all. If this development does not usher in the millennium in Prince Edward County, it represents at least some small measure of progress that should not go unremarked.

Student Note Gains National Notice

Not many student notes attract the attention of the national press, or even the national *professional* press. But *The National Law Journal*, March 18, 1991, carried a story on page 10 headlined "Are Judges Overcharged for Insurance? Law review article says premiums are too high." The note was published in the *Case Western Reserve Law Review*, and its author was David R. Cohen '91.

Cohen had worked, before entering law school, as an assistant product manager for the Progressive Insurance Company. When he was searching for a topic for his law review note, he was interested to learn that, because of recent U.S. Supreme Court cases restricting judicial immunity, judges were buying malpractice coverage. He wondered whether the insurance they were buying was really appropriate for their needs.

Cohen had never taken a course in insurance law, but he sought help from Professor Wilbur C. Leatherberry '68, who regularly teaches Insurance. Leatherberry found the topic intriguing. "I encouraged him to pursue it," says Leatherberry, "but I warned him that the material he would need would be hard to get, and that he would have to learn a lot about how insurance works to do a really good job."



Cohen researched the legal developments in the area of judicial immunity and immersed himself in insurance texts in order to understand and evaluate the judges' need for coverage. Just one insurer provided the coverage, and that made Cohen wonder whether it might not be overpriced. He knew that liability exclusions in the policies would eliminate many potential cases from coverage.

Ultimately Cohen concluded that the coverage was indeed overpriced, and that states should not be buying it for their judges. His note, "Judicial Malpractice Insurance? The Judiciary Responds to the Loss of Absolute Judicial Immunity," appeared in 41 *Case Western Reserve Law Review* 267 (1990)—and amply fulfilled the law school's requirement that every student produce a substantial piece of research-and-writing in order to graduate.

Leatherberry thinks the note deserved the attention it got. "It was an unusually interesting topic," he says, "and very well handled. David Cohen did an extraordinary research job, which included persuading the insurer and others—in the insurance industry and at the American Bar Association—to provide information about the coverage. He analyzed that data and the legal materials very carefully, and he produced an exceptionally well-written piece."

Cohen, a Clevelander, received his B.A. degree in 1981 from the University of Michigan, with a double major in psychology and economics. His interim years between college and law school included experience in leasing commercial real estate, as well as the insurance work mentioned earlier. Now he is clerking for Judge Ann Aldrich of the U.S. District Court, Northern District of Ohio.

The Law Annual Fund: An End and a Beginning

by Forrest A. Norman, Jr. '54
Chairman, Law Annual Fund

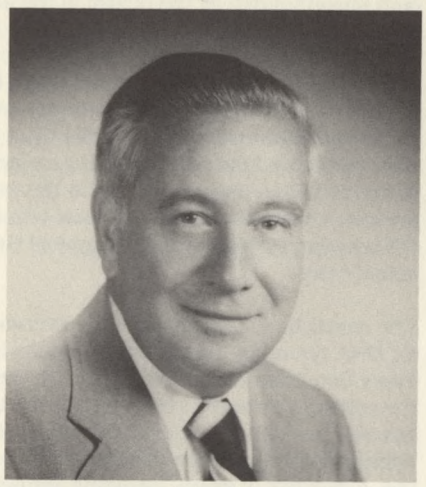
In the face of a recession, the 1991 Law Annual Fund set yet another record with $575,000 received and the best-ever rate of alumni participation. I sincerely thank each of you whose generous gifts—of money *and* of time—contributed to our success. Thank you for your endorsement of our law school.

Now we look forward to another year and a higher goal: $610,000. This figure is about 6 percent above last year's target.

To ensure continuity, I have agreed to serve for a second year as fund chairman. Our volunteer team is already in place, our systems are in place, and our seasoned staff is ready to help. All we need is your continuing support.

Along with the continuity, there is something new this year. To tie in with the law school's Centennial Initiative Campaign, we are inaugurating the *Dean's Initiative Society*. It takes initiative to be an outstanding attorney or to be a pace-setting law school. And it takes initiative to increase your gift. The Dean's Initiative Society will recognize those who increase their gifts in 1991-92 by at least 15 percent; members will be noted within the class listings in the 1992 Annual Report.

You will be hearing soon from the Annual Fund team—with a phone call, a letter, or even a personal visit. When you receive our request, we hope you will respond generously. We need your support to maintain the success and the recognition that our school has achieved in the last few years, and to give life to



the many new programs that are planned for the future. Please continue—and *increase*—your support.

More On Forensic DNA Typing

A Response to the *NY Times*

by James R. Wooley '82
Assistant U.S. Attorney

The May 1991 issue of *In Brief* contains an excerpt from a *New York Times* article which quotes Professor Paul Giannelli on the subject of the admissibility of forensic DNA typing evidence in criminal trials. While the purpose of printing the excerpt appears to have been simply to highlight the fact that the *Times* saw fit to quote Giannelli (and not to address the merits of the dispute over DNA typing), the excerpt itself leaves the reader with the misleading impression that forensic DNA typing has not been embraced by the scientific and legal community. While it is nice to see Professor Giannelli's name in print, the record as to the level of acceptance of forensic DNA typing should be set straight.

By way of background, forensic DNA typing involves the analysis of biological evidence, such as blood or semen, for the purpose of determining whether such evidence is consistent with the genetic make-up of a particular individual, such as a suspect or victim, and thus might be supposed to have originated from that person. Because the analysis focuses on regions of the DNA where high levels of variation have been shown to exist from one human being to another, the test has great discriminating power. In other words, this type of testing leads to very strong statements as to the likelihood that a particular person (usually a suspect) contributed a particular crime scene sample of biological evidence.

The actual technique currently employed in the analysis is an established and accepted laboratory procedure which has been used for years in literally thousands of laboratories worldwide for research and diagnosis of genetic disease. Using this technique, scientists have made tremendous progress in their efforts to understand the genetic aspect (which is the first step towards any sort of prevention or cure) of diseases like Huntington's disease, Duchenne muscular dystrophy, and retinoblastoma. The technique is also widely used, and has been for years, in paternity testing.

The forensic application of DNA typing was first suggested (and implemented) by the British in the early-to-mid 1980s. Since then, numerous crime laboratories in this country and around the world have gone into forensic DNA typing. In this country, by the end of 1988, three major testing laboratories—the FBI's and two private laboratories—were using the technique on a nationwide basis. While these three laboratories have performed the overwhelming majority of the thousands of forensic DNA tests conducted in this country to date, there are also a number of state and local crime labs that have DNA testing systems and have applied the technique to actual cases.

The courts have responded to the ever-increasing use of forensic DNA typing by admitting test results in evidence almost every time they are offered—so far, in well over 400 cases in the courts of virtually every state in the country. The evidence has also been accepted by every federal district court that has considered the question of admissibility of forensic DNA typing. A number of states, including Minnesota, Maryland, Indiana, Nevada, Louisiana, and Virginia, have passed statutes allowing for the admission of the results of DNA testing into evidence. There have been a few instances where courts have declined to admit the evidence, but these instances have been—contrary to the impression created by the popular press—very few and very far between.

Judicial and legislative acceptance of forensic DNA typing has come about because our judges and lawmakers have been listening to what the scientific community has been saying about the technique, rather than to what the newspapers may be saying. And the scientific community has been saying that the theories and techniques involved in forensic DNA typing are well-established and well-understood, and have been generally accepted by the scientific community for years. The scientific community has been saying this in volumes of scientific literature, in dozens of scientific meetings, in an extensive congressional study on DNA typing, and—most important—under oath in the hundreds of admissibility hearings that have addressed the validity of forensic DNA typing. Even the expert witnesses who have testified for the defense have generally conceded the validity of the underlying theories and techniques involved in forensic DNA typing, and have limited their criticisms to the question of how well a particular laboratory performed the test in a particular case. It is these criticisms, specific to a particular test in a particular laboratory, which have resulted in the few unfavorable decisions mentioned above.

In July 1990 the Office of Technology Assessment, an analytical arm of the U.S. Congress and its technological advisor, published a 200-page report, "Genetic Witness: Forensic Uses of DNA Tests." The committee that prepared the report included scientists who had testified on both sides of the DNA issue—for the prosecution, and for the defense. After an in-depth review of the issues raised in the battles over the validity of forensic DNA typing, the report drafters concluded that "forensic uses of DNA tests are both reliable and valid when properly performed and analyzed by skilled personnel. . . . Questions about the validity of DNA typing—either the knowledge base supporting technologies that detect genetic differences or the underlying principles of applying the technique per se—are *red herrings* that do the courts and the public a disservice."

As the overwhelming judicial acceptance of forensic DNA typing demonstrates, our courts have not been fooled by any of the "red herrings" like those raised in the *New York Times* article quoting Professor Giannelli. Our alumni should not be fooled either.

About the author: Jim Wooley came to law school with a B.F.A. degree from the University of Cincinnati. He began his legal career in New York with the Manhattan district attorney, then came home to Cleveland in 1986 and practiced law with Baker & Hostetler until January, 1990, when he joined the Organized Crime Strike Force Division of the U.S. Attorney's Office.

Professor Giannelli Replies

Jim Wooley tried and won one of the most important DNA cases prosecuted in the federal courts—*United States v. Yee*. He has also been gracious enough to talk about DNA evidence at the law school, once to my class in Scientific Evidence. He is one of a half dozen lawyers who can effectively try DNA cases. The *New York Times* may have overstated the problems with DNA evidence, but I think Jim too quickly dismisses these problems.

The controversy surrounding the use of DNA evidence stems from the initial cases. The most publicized case rejecting DNA evidence was *People v. Castro*. It was also one of the first cases in which the defense mounted a serious challenge to admissibility. The ruling in *Castro*, however, was quite limited. The court accepted the general validity of DNA evidence; it ruled only that the results in *Castro* were inadmissible. Interestingly, two experts for the prosecution and two for the defense met without the attorneys in the case. They issued a joint statement, which included the following conclusions: "The DNA data in this case are not scientifically reliable enough to support the assertion that the samples ... do or do not match. If this data were submitted to a peer reviewed journal in support of a conclusion, it would not be accepted. Further experimentation would be required."

The fact that Castro later pleaded guilty does not diminish the significance of the case. *Castro* raised the possibility that fundamental flaws existed, at least in the procedures of one DNA laboratory, Lifecodes.

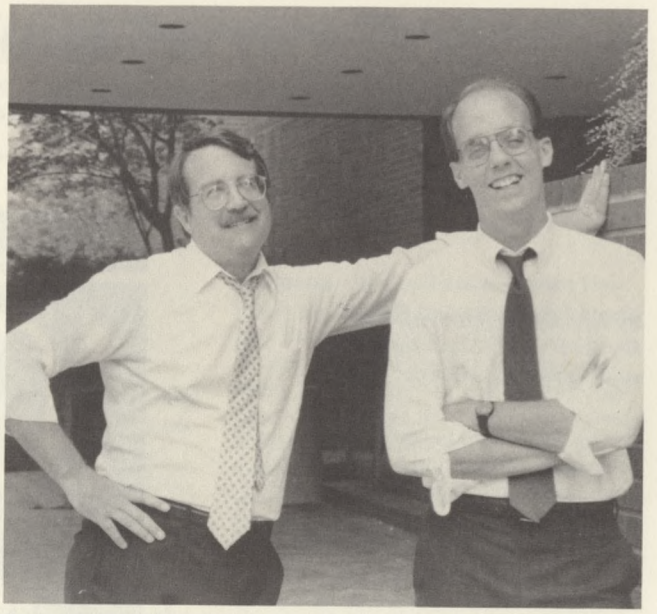
Castro was followed by the *MacLeod* case, in which the prosecutor withdrew the DNA evidence after the defense successfully challenged Lifecodes' procedure for dealing with band shifting. Again, fundamental flaws were involved in this case.

Then in *State v. Schwartz* the Minnesota Supreme Court rejected DNA evidence, citing a proficiency test in which Cellmark, another commercial laboratory, had made a false identification. The Office of Technology Assessment (OTA) report summarizes these proficiency tests:

> With respect to blind trials of forensic DNA testing in the United States, CACLD [California Association of Crime Laboratory Directors] organized trials using case-simulated samples in 1987 and 1988. The three major commercial facilities then performing forensic DNA analysis participated in each trial. In the first trial, out of 50 samples, 2 firms each declared 1 false match that *could have resulted in the conviction of an innocent person*. The errors apparently arose from sample handling problems. The third company declared no false matches. In the second trial, one company again reported an incorrect match. (Emphasis added.)

Some supporters of DNA evidence have claimed that false positives are virtually impossible. Nevertheless, a recent account of an Illinois murder case reported a "false positive": "Cellmark shortly determined that Lifecodes had made a significant measurement mistake in sizing the bands on the autorads."

In *Commonwealth v. Curnin*, the Massachusetts Supreme Court held that DNA evidence had *not* gained general acceptance in the scientific community. Cross-examination of a prosecution expert developed the following information: "The prosecution's expert, who was a Cellmark employee, acknowledged that there was uncertainty concerning the appropriateness of the assumptions Cellmark made about the use of its data base for the determination of genetic probabilities. . . . No study of Cellmark's data base had been published."



Professor Paul Giannelli (left) magnanimously agreed to pose with Jim Wooley '82, author of what Giannelli labeled "this vicious and unprovoked attack," but reserved the right to make faces.

Moreover, qualifications appear even in some of the reports and cases that favor DNA evidence. For example, the OTA report recognized that "serious questions are raised . . . about how best to ensure that any particular *test result* is reliable." The report goes on to identify several issues: "These questions focus on data interpretation, how to minimize realistic human error, and the appropriate level of monitoring to ensure quality. Such questions, which stem from actual court cases, underscore the need to develop both technical and operational standards now."

Magistrate Carr's report in *United States v. Yee*, a case that admitted DNA evidence, contains several disquieting passages: "The F.B.I. program of proficiency testing has serious deficiencies. . . . I do not either disregard or discount the accuracy of many of the criticisms about the remarkably poor quality of the F.B.I.'s work and infidelity to important scientific principles. Research must be undertaken to devise a means of responding more fully to the possibilities of substructure."

This brief summary is offered merely to establish the existence of the controversy, not to judge the validity of DNA evidence. The validity question is obviously a scientific issue, but it is one that courts must deal with in ruling on admissibility.

Memories and Memorabilia

by Kerstin Ekfelt Trawick
Director of Publications
and External Affairs

As the law school looks forward to its centennial celebration in 1992-93, we have been browsing in the university archives, sifting through dusty documents, plodding through minutes of faculty meetings, studying old photographs—all with a view to finding out what has been preserved from our institutional past, and what can be shared with students, graduates, and friends of the law school by way of publications and display cases.

We need your help. Maybe you have photographs, letters, an old catalog of courses, one or two issues of a long-defunct student newspaper, some ancient class notes, a long-out-of-date textbook with faded markings in the margins. And maybe you would be willing to share your memorabilia, either by lending them for a time to the law school, or even by outright gift to the archives. Please let us know what you have that might be of interest.

We are collecting memories as well as memorabilia. Some we have captured on tape in oral interviews, and some have come in on class reunion questionnaires. Recently Dean Peter Gerhart was delighted to receive a letter from Robert J. Felixson '43 with a page of reminiscences.

We offer some samples from our collection in the hope that others will follow Bob Felixson's example. Whether or not you are a saver of memorabilia, surely *everyone* has memories. And your memories are important to the law school. Please let us hear from you!

From Robert J. Felixson '43 (letter of June 25, 1991):

Some of my recollections, freshman year: Finfrock—"A contract's a contract, ain't it?"—and he proceeded to show that in Equity, maybe it wasn't. Cooley—"Filboid studge" was his expression for legal mumbo-jumbo, or obiter dicta. He was with us only one year, as I recall, and was way over the heads of most of the class.

Dean Dunmore greeted his first class with a challenge. He offered to wager that a substantial portion of the class would agree not to practice law if guaranteed a life income of $50 per week!!

Dean Andrews—always a gentleman, even in telling me that the faculty had designated me *co*-editor of the Law Review in as much as I had been nominated president of the class, and they felt I should not have all of the honors.

Prof. Townsend gave an open-book exam on Taxation. It was so tough, I answered only half of the cases and completed my exam book with the statement that it was impossible to deal with all the issues in the allotted time, and the exam was grossly unfair. He gave me the top grade nonetheless.

From Theodore M. Mann '46 (reunion questionnaire, 1991):

My favorite memory from law school is represented in the chance meeting—unscheduled informal debates, sometimes with emotion and volume but always with dedicated sincerity by and between Prof. Finfrock, known as the "high kick" (kicking above his height, a voluntary feat which he performed despite his evidenced bulky girth), subsequently dean of WRU Law School, a staunch New Deal Democrat—taught equity because, as he repetitively stated, "Equity Knows No Law!"—and Prof. Townsend (known as "the weeder" by reason of his number of flunks in freshman Contract Law), dyed-in-the-wool conservative Republican, collector-driver of antique cars, later dean of St. Louis Law School. These "debates" occurred between classes and the word would spread: "They are at it again!" Everyone with common sense dropped what he or she was doing to go see the show. It was, simply stated, eloquently great!

From Howard S. Stern '56 (reunion questionnaire, 1991):

Some favorite memories: Sam Sonenfield's civil procedure class and his wind shield being stickered in the back parking lot. Walter Probert's torts class questioning "What is the law? Who knows what the law will be?" and the response from the back of the class, "The Shadow do!" Clinton DeWitt's demand of Jack Marshall, "What is wheat?" or Howard Baxter's fixation on window shades; or all the profs' fear of Bill Goldfarb's next question, and on and on . . .

From Irene Tenenbaum, former registra (interview, September 28, 1988):

I remember when Peter Junger first walked in. He had a cat on each shoulder—Good and Evil. And we knew on Tuesdays that the cleaning woman was at Peter's house because he had to bring the cats down and keep them in the office. And the pigeons outside were terrified of those cats! We'd hear their noise until he took the cats home.

From William J. Kraus '34 (interview, December 12, 1988):

We had in our class a man named David Macey. He was extremely academic and not practical. We used to have a lot of fun with him. He smoked cigars, and he used to have cigars in his jacket in the top pocket. Somebody would get him in conversation, and then someone else would sneak around behind him and extract the cigars. He'd wonder what happened to the cigars, but he never was quite sure.

Prof. Finfrock had a way of writing little notes on the blackboard, telling a particular student "See me" or "Do such-and-such." We thought we'd have a little fun with Dave, and we put on the board, "Macey— See me immediately. —Fin." (Because that was the way Finfrock signed himself.) Fin's office was in the old library in the old building, at the top of some circular stairs, with a little

landing in front. We watched Macey go to the library and walk up the circular stairs, and he stood on the landing. Fin looked up from his writing, saw Dave Macey standing there, kept on writing, and finally Macey said, "You asked to see me." Fin let a little time go by, and then he looked up at Macey and said, "Ah, spring is here! The horseplay has begun." And he kept on writing. It was absolutely great. Macey stood there for another five minutes, didn't understand what Fin had said, and finally walked down the stairs shaking his head.

From Charles E. Guerrier '72 (interview, fall 1983):

I remember that we had a vegetable garden planted around the old law building, and the medical students kept stealing our canteloupes. So we put up a sign asking them please to return the canteloupes—we were using them for a sterility experiment.

We had some good ideas for the new building, too, but they didn't quite work out. You know that fence that separates the school from the fraternity house—we planted sunflower seeds all along it. They were coming along fine, and they would have been beautiful for the dedication, but then the gardeners cut them down. That was too bad. Also, we planned to hang a large banner from the bridge for the dedication. It was going to read: GRAND OPENING! ALL TUITION 1/3 OFF!" But we just couldn't manage it. The police were really watching that part of the campus, and it just wasn't worth getting arrested for.

Centennial Service Project — Early Returns

by Stuart A. Laven '70
President of the Law Alumni Association

In June every graduate of the law school received a letter from me that might be called a solicitation, except that it did not ask for money. It asked for time: a commitment of 100 hours of community service, over a two-year period, in honor of the law school's 100 years.

Now the replies are coming in from all around the country. We are delighted with the range of classes represented—young, old, and in between—and with the variety of projects undertaken. There's the 1987 graduate in New York who is representing, without compensation, an Afghan national applying for asylum, and who has volunteered through the city bar association to represent indigent victims of domestic violence. There's the 1937 graduate who offers free counseling to owners of small businesses through the Santa Fe chapter of SCORE (Service Corps of Retired Executives), which he helped to found fifteen years ago. In future issues of *In Brief* you will hear more about some of these projects.

Not surprisingly, many of the earliest returns report ongoing pro bono activities: "Here's what I'm doing already." But for many of these already-committed graduates, the Centennial Service Project is an impetus to do more. For example, "I am a guardian ad litem for the Juvenile Court. I usually take one case every 2-3 months, but will increase my case load to meet the Centennial Service Project goal." And some have been inspired to new ventures, like the 1982 graduate who wrote to the counsel of a Sacramento hospital: "This is to inform you of my availability to represent indigent clients, on a pro bono basis, at your facility. My law school, Case Western Reserve University, has requested me to participate in a pro bono project. . . . I have agreed to do so."

The law school has had telephone calls from a few alumni who just wanted to tell someone, "This is a great idea." And many of the returning forms bring that kind of comment: "The Centennial Service Project is a terrific idea." "This is a wonderful project." "P.S. I think this is a *great idea*!" My own favorite is the comment that begins, "As I have almost NO fond memories of the law school, . . ." and ends, "Best of luck on this noble project."

In short, the Centennial Service Project is off to a good beginning. However, there are several hundred alumni out there who have still not been heard from. At this writing (in July) there are some 200 participants, and we think there should be 2,000. Please join us!

Law Alumni Weekend — Last Call!

It's not too late to make your reservations for the Alumni Weekend, but you'll have to hurry. The dates are Friday and Saturday, September 20 and 21. The telephone number to call is 216/368-3860.

All alumni (and their friends and spouses) are invited for cocktails that Friday, 6 to 8 o'clock, at the Gwinn Estate in Bratenahl, and for lunch on Saturday at the law school, beginning at 11:30. Special guests of honor at Saturday's luncheon will be Professors Lewis Katz and Ronald Coffey and Dean Daniel Clancy '62, who have now completed 25 years of service to the law school. An additional attraction will be the annual presentation of awards.

Saturday night is party time for the reunion classes (1941, 1986, and all the -1 and -6 years in between) and also for alumni of the Law School Clinic, which this year celebrates its 15th anniversary and bids a fond farewell to retiring Ruth Harris, its administrative mainstay from the very beginning. The Black Law Students Association invites alumni to begin the evening at the law school; there is a reception, 5 to 7 o'clock, in the Faculty Lounge.

Those who wish to dilute their frivolity with something more serious can get in up to 10 hours of Continuing Legal Education credits. Professor James W. McElhaney teaches 2 sessions on Friday, each for 3 hours: Expert Testimony in the morning, Opening Statements and Closing Argument in the afternoon. Saturday morning Professor Morris G. Shanker will tell you all about Fraudulent Transfers (2 hours). Saturday afternoon you can fulfil the Ohio ethics/substance abuse requirement (2 hours): Professor Robert P. Lawry is the instructor, and his topic is Developments in Legal Ethics—1991.

Commencement 1991

On Commencement Day, May 17, the law school sent forth into the world 205 freshly minted new attorneys—the 194 May graduates, plus ten from January and one from the preceding August who came back to participate in the ceremonies.

Scott Turow, author of *Burden of Proof* and *Presumed Innocent* (and also a partner in the Chicago firm of Sonnenschein Nath & Rosenthal) was the law school's principal speaker. In addition, Stuart Laven '70 brought greetings from the Law Alumni Association (of which he is president), and Eve Biskind Klothen presented the Saul S. Biskind Law Fellowship.

There were four *summa cum laude* graduates this year:

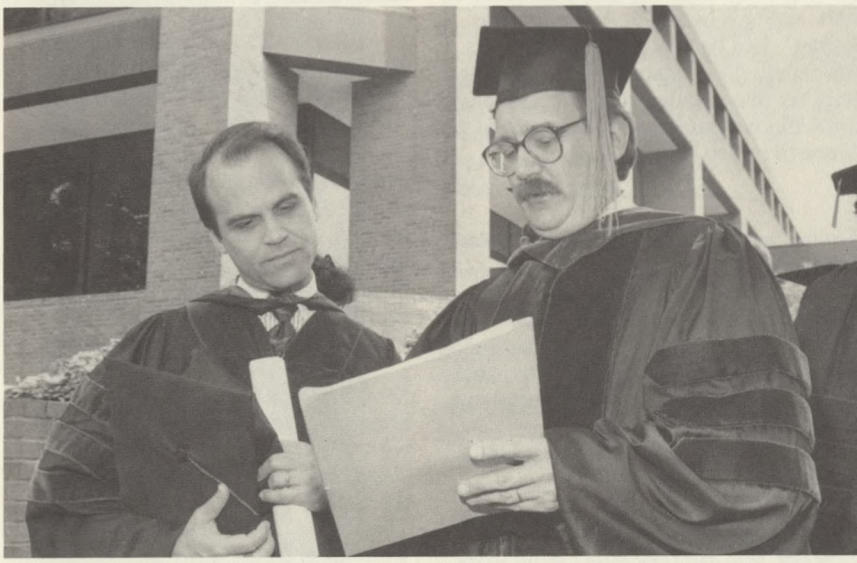
James Andrew DeRoche
Elizabeth Lenore Haber
Mary Francine Jordan
Dennis Leo Murphy

Seventeen graduated *magna cum laude* (and together with the *summa* graduates were elected to the Order of the Coif):

Elaine Marie Boggs
James Walter Brown III
John Thomas Bulloch
Paula Beth Christ
David Rosenblum Cohen
Jean Marie Cullen
David Carr Dvorak
Jacklyn J. Ford
Ronald Paul Friedberg
Christopher Jon Hubbert
Neil Joseph Kinkopf
Jon Evan Lemole
Lauren Leigh McFarlane
Joyce Ann Metti
Rachel Hope Nicholson
Lawrence Shapiro

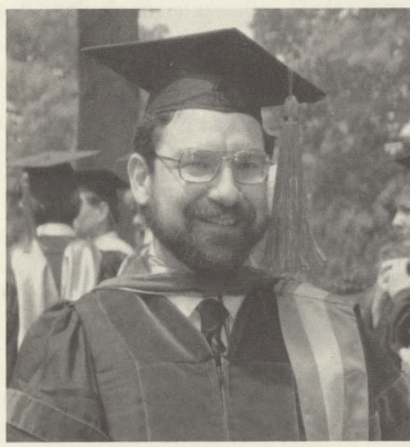
The Order of Barristers, a national honor society, elected the following to membership, recognizing their excellence in advocacy and their total contribution to the school's moot court and advocacy programs:

William Eric Baisden
Brian Keith Brake
Nadine Mary Brennan
David Allan Corrado
Jean Marie Cullen
Peter J. Gauthier
Christine T. Leneghan
PattiJo Mooney
Diane Balchak Moore
Natalie Ann Napierala
Raymond Victor Vasvari, Jr.
Gerald Charles Zeman

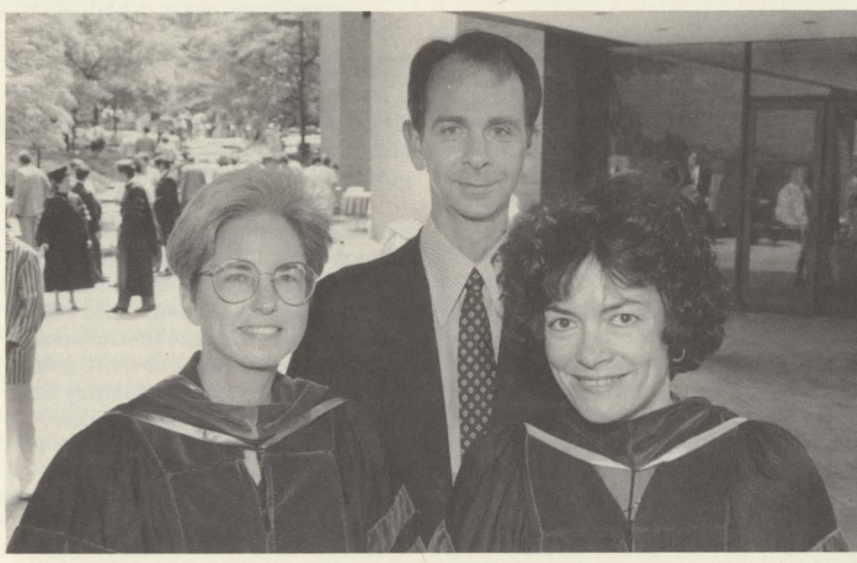


With Dean Gerhart, author and commencement speaker Scott Turow.

JoAnne Urban Jackson, voted Administrator of the Year by the graduating class.



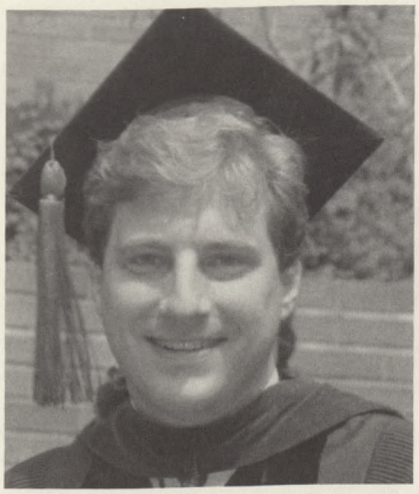
Professor Jonathan Entin received the Studen Bar Association's award for Teacher of the Year.



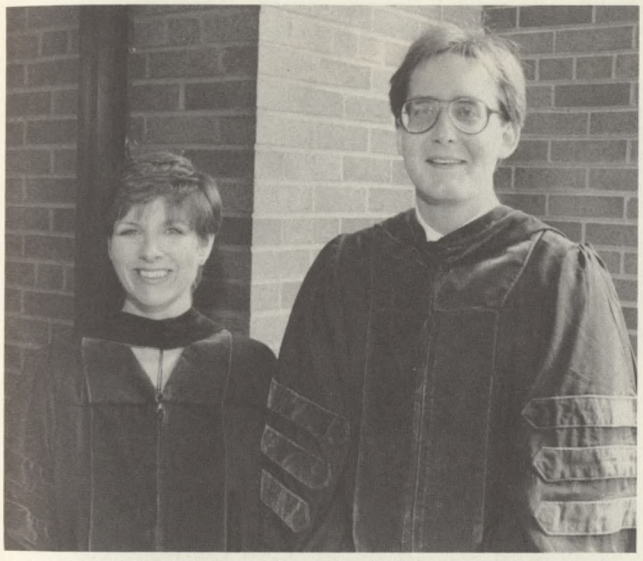
Patricia Giles, winner of the Saul S. Biskind Fellowship in public interest law, with Eve Biskind Klothen and, behind them, Stuart Laven '70, president of the Law Alumni Association.

Michele Brown won the Banks-Baldwin Clinical Program Award.

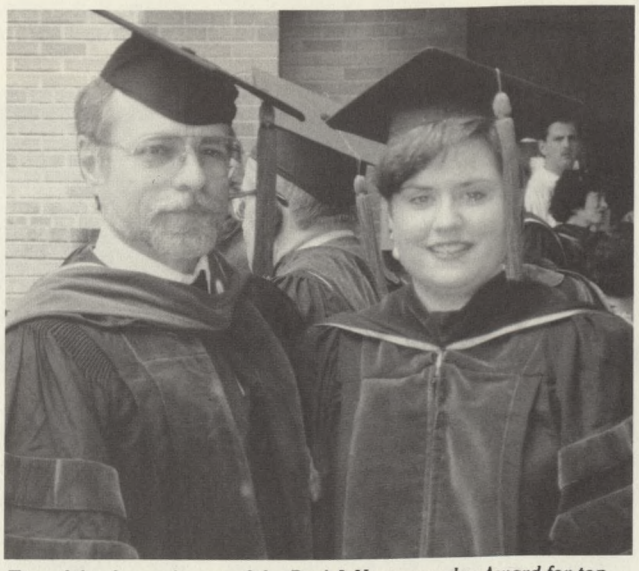
Rosemary Turk, winner of the U.S. Law Week Award.



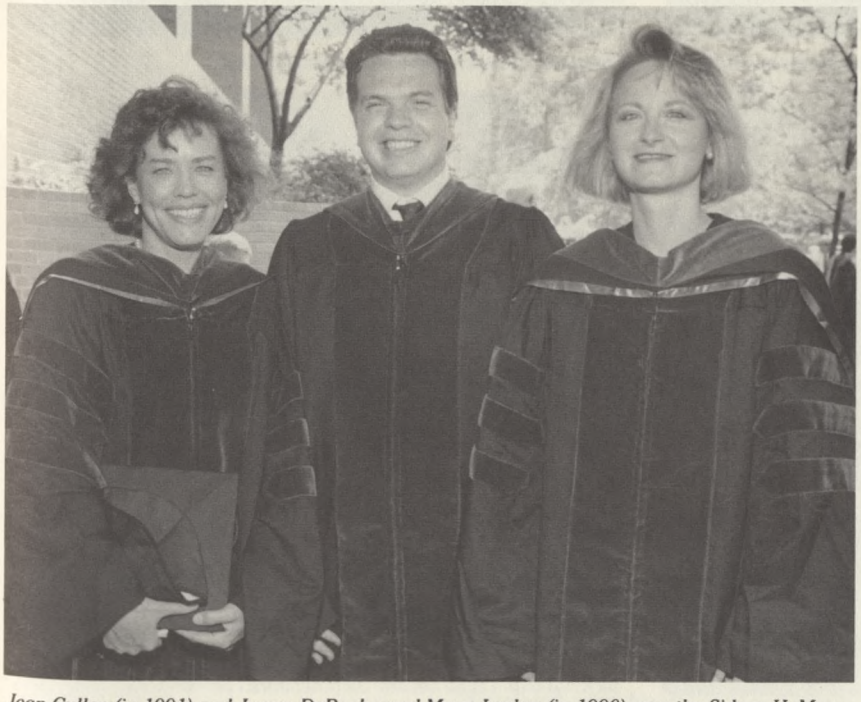
Joseph Russo shared the Paul J. Hergenröeder Award with Gerald Zeman and Marsha Montgomery.



Jonathan Kuhlman (2d) and Nancy Nemec (3d) shared the honors for excellence in the clinical program.

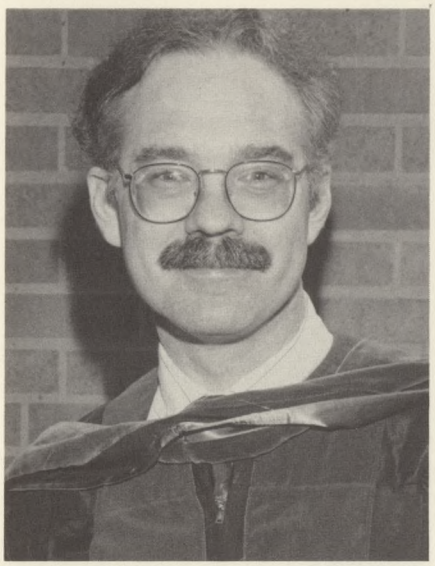


Two of the three winners of the Paul J. Hergenroeder Award for top performance in Trial Tactics: Gerald Zeman and Marsha Montgomery.

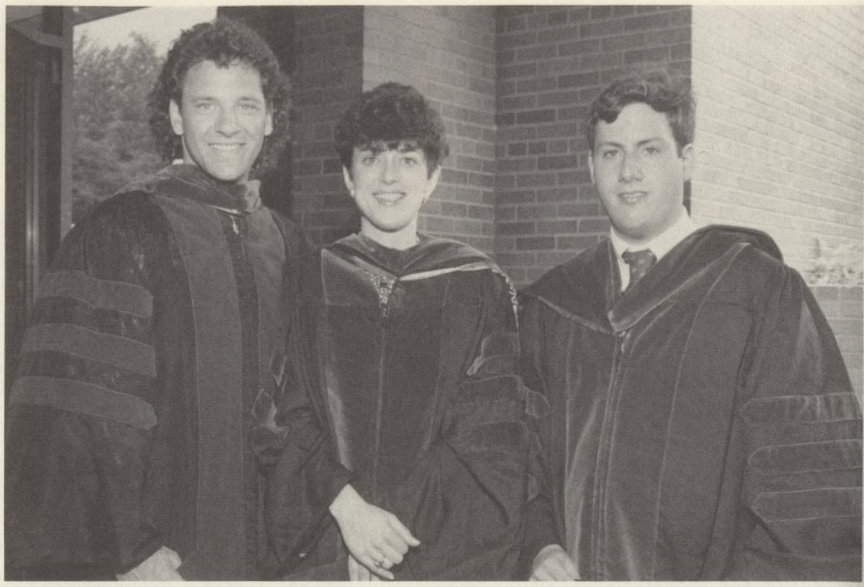


Jean Cullen (in 1991) and James DeRoche and Mary Jordan (in 1990) won the Sidney H. Moss Award in evidence. DeRoche also won the Sherman S. Hollander Award, presented by the Cuyahoga County Bar Association, as the outstanding student in Real Estate Transactions and Finance.

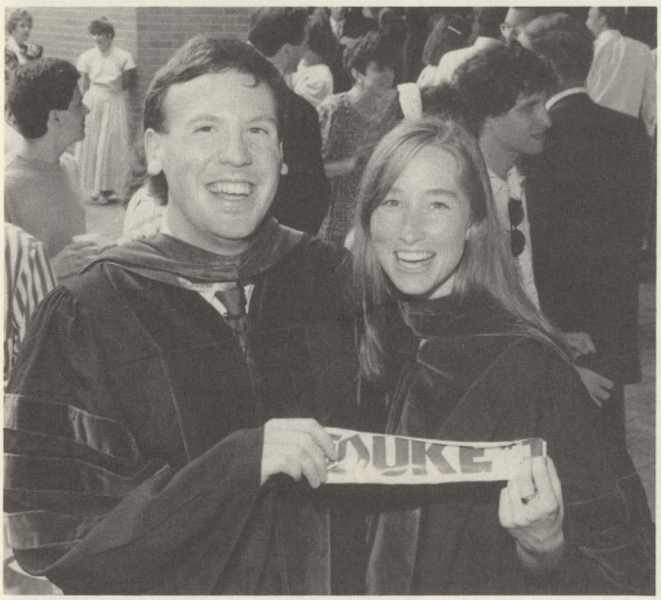
Nathalia Hardy won the award presented by the National Association of Women Lawyers.



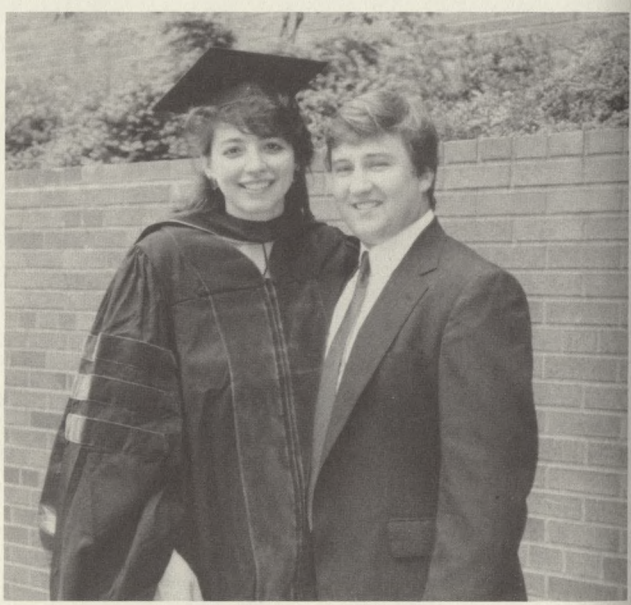
Todd Smith was a winner of the Heiss Labor Law Award, along with Dennis Murphy (pictured elsewhere) and John Bulloch (who managed to elude the photographer).



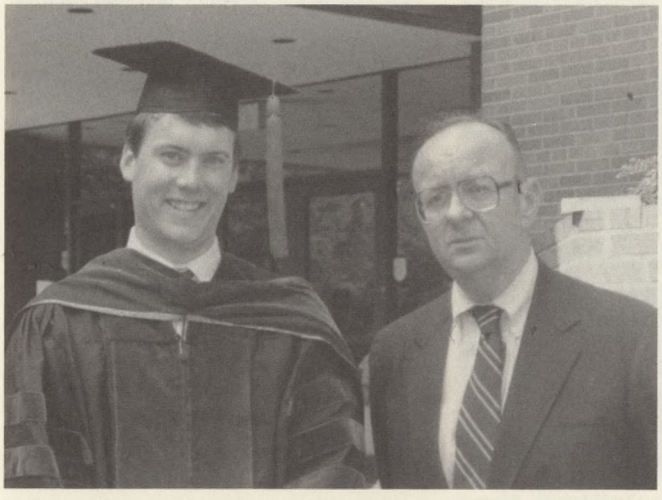
In 1991 there were four winners of the Arthur E. Petersilge Award in wills and trusts: David Cohen, Joyce Metti, Jonathan Mezrich (the three above), and a second-year student, JoAnne Castellanos.



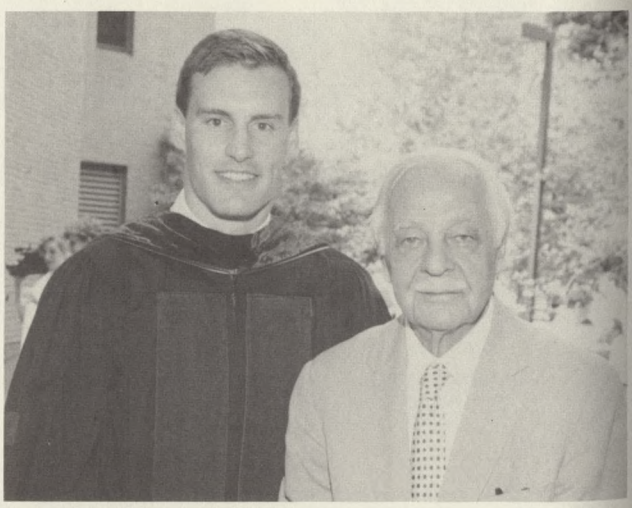
David Cummings (1st) and Elizabeth Haber (2d) were winners of the Stanley and Hope Adelstein Award in environmental law in 1990. A second-year student, Jacqueline Kurtz, won the award in 1991. (As you may surmise, Cummings and Haber are both graduates of Duke University.)



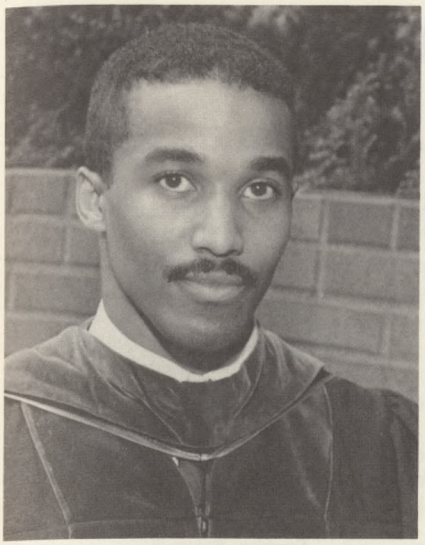
Husband and wife: Christine and Patrick ('89) Leneghan.



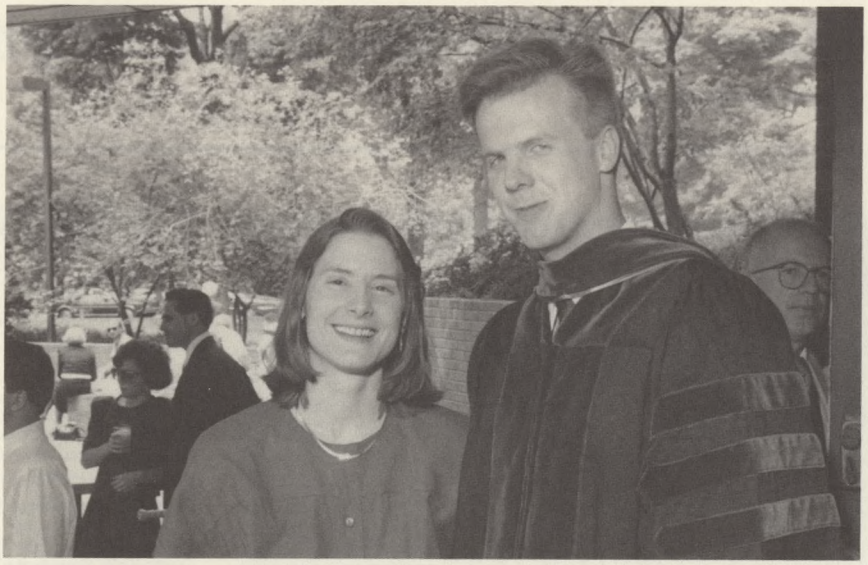
Father and son: Stephen Byron and Barry Byron '56.



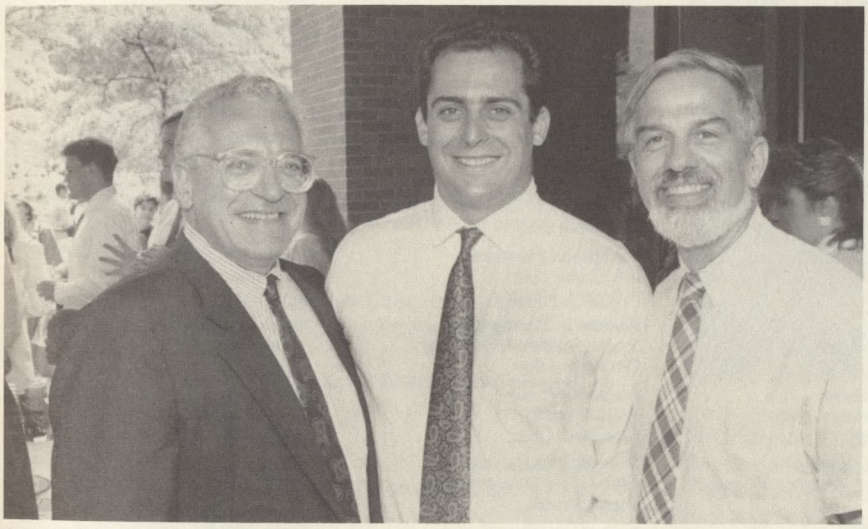
David Dvorak won the Theodore T. Sindell Award in tort law; he is pictured with David Sindell '36 (Theodore's brother). The 1991 winner was H. William Smith III '92.



Ronald Shaw won the Martin Luther King Award and was recognized as the recipient, at the end of the first year of law school, of the John Wragg Kellogg Award.



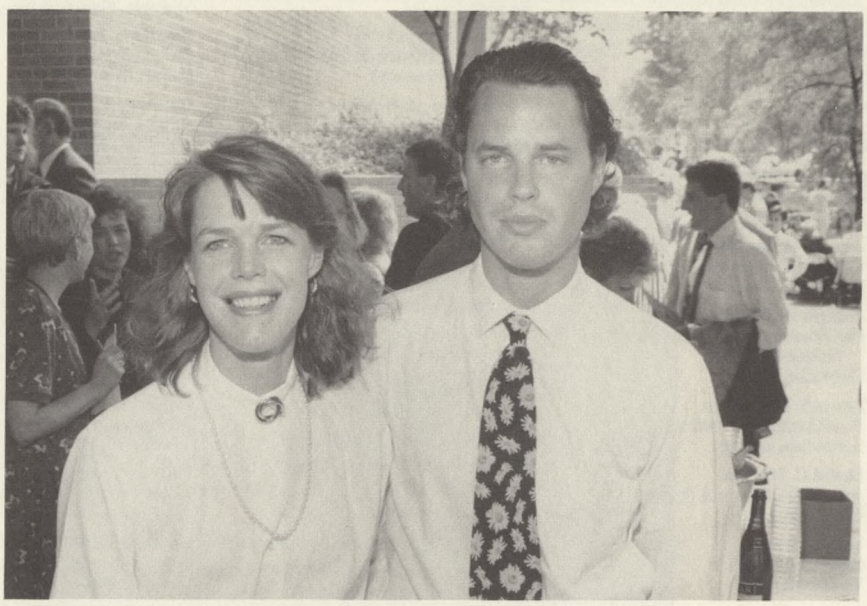
Winners of the Harry and Sarah Blachman Award: Lauren McFarlane in 1991 and Dennis Murphy in 1990. Murphy also won the Society of Benchers Award, shared the Heiss Labor Law Award, and was recognized as the recipient, at the end of the first year of law school, of the Shelley Halpern Memorial Award.



Roland J. Santoni (left) and Robert P. Lawry (right), classmates and Law Review colleagues at the University of Pennsylvania, met for the first time in 25 years when Santoni—now a professor of law at Creighton University—came for his son David's graduation from CWRU.

Marc Morris won the award given by the International Academy of Trial Lawyers. Two other winners were visitors from the University of Western Ontario, Christopher Bogart and John Dick.

Tracy Taylor, Student of the Year and winner, as well, of the William H. Thomas Foundation Award given by Delta Theta Phi.



Brother and sister: James Brown and Virginia Brown '81.

Class of 1991 Placement Report

(as of August 20)

Daniel Anker
Kohrman, Jackson & Krantz
Cleveland, Ohio

William Eric Baisden
Brouse & McDowell
Akron, Ohio

John G. Beck
Ceisler Richman Smith
Washington, Pennsylvania

Elaine Boggs
U.S. Securities and Exchange Commission

Patricia L. Boychuk
Pellegrin & Zone
Lakewood, Ohio

Brian K. Brake
Hunton & Williams
Richmond, Virginia

James W. Brown III
Baker & Hostetler
Cleveland, Ohio

Michele H. Brown
Duvin, Cahn & Barnard
Cleveland, Ohio

John T. Bulloch
Arter & Hadden
Cleveland, Ohio

Stephen L. Byron
Ohio Court of Appeals
Warren, Ohio

James C. Chen
U.S. Environmental Protection Agency
Washington, D.C.

Nicolle M. Clessuras
Sullivan & Cromwell
New York, New York

David R. Cohen
Judge Ann Aldrich
U.S. District Court
Cleveland, Ohio

Derrick D. Crago
Judge Donald E. Wieand
Superior Court of Pennsylvania
Allentown, Pennsylvania

Jean R. Crosmun
Procter & Gamble
Cincinnati, Ohio

Jean M. Cullen
Calfee, Halter & Griswold
Cleveland, Ohio

Andrea Y. Davis
Travelers Insurance Company
Cleveland, Ohio

Lawrence C. Davison
Ohio Bureau of Workers' Compensation
Cleveland, Ohio

James A. DeRoche
Ulmer & Berne
Cleveland, Ohio

Joseph A. Donovan
Coopers & Lybrand
New York, New York

Joseph D. Dreher
Fay, Sharpe, Beall, Fagan, Minnich & McKee
Cleveland, Ohio

Sonja S. Duckstein
Rosenbaum & Schwartz
Scottsdale, Arizona

David C. Dvorak
Jones, Day, Reavis & Pogue
Cleveland, Ohio

Van C. Ernest
Howrey & Simon
Washington, D.C.

Christina D. Evans
Krugliak, Wilkins, Griffiths & Dougherty
Canton, Ohio

Harold E. Farling
Squire, Sanders & Dempsey
Cleveland, Ohio

Timothy S. Fenwick
Roetzel & Andress
Akron, Ohio

Jacklyn J. Ford
Squire, Sanders & Dempsey
Cleveland, Ohio

Winston M. Ford
Baker & Hostetler
Columbus, Ohio

Jennifer E. Fournier
U.S. Air Force JAGC

Ronald P. Friedberg
Kahn, Kleinman, Yanowitz & Arnson
Cleveland, Ohio

Josh M. Friedman
Benesch, Friedlander, Coplan & Aronoff
Cleveland, Ohio

Thomas C. Gilchrist
Judge William K. Thomas
U.S. District Court
Cleveland, Ohio

Patricia F. Giles
University Hospitals of Cleveland
Urban Child Heath Care Team
Cleveland, Ohio

Sarah L. Goss
City of Canton
Canton, Ohio

James M. Guelcher
U.S. Army JAGC

Elizabeth L. Haber
Jones, Day, Reavis & Pogue
Chicago, Illinois

Nathalia S. A. Hardy
Kitch, Saurbier, Drutchas, Wagner & Kenney
Detroit, Michigan

John A. Heer II
Calfee, Halter & Griswold
Cleveland, Ohio

Karen A. Hoffman
McFadden, Evans & Sill
Washington, D.C.

Michael A. Hostettler
Woodward, Hobson & Fulton
Louisville, Kentucky

Christopher J. Hubbert
Kohrman, Jackson & Krantz
Cleveland, Ohio

Amy A. Jardine
Judge Daniel Pellegrini
Commonwealth Court of Pennsylvania
Pittsburgh, Pennsylvania

Mary F. Jordan
Squire, Sanders & Dempsey
Cleveland, Ohio

Joseph P. Kieffer
Phillips, Lythe, Hitchcock, Blaine & Huber
Buffalo, New York

Neil J. Kinkopf
Judge Richard Suhrheinrich
U.S. Court of Appeals
Lansing, Michigan

Lynn A. Kriessler
Ulmer & Berne
Cleveland, Ohio

Jonathan R. Kuhlman
Porzio, Bromberg & Newman
Morristown, New Jersey

Jon E. Lemole
Archer & Greiner
Haddonfield, New York

Carolyn S. Lewin
Rosen & Tierman
New York, New York

Robert M. Loesch
U.S. Securities & Exchange Commission
New York, New York

Susan C. Margulies
Judge Glenn J. Berman
Superior Court of New Jersey
South River, New Jersey

Matthew S. Massarelli
Frost & Jacobs
Cincinnati, Ohio

Joseph M. Matteo
Rupert & Quigg
Chicago, Illinois

Cynthia B. Mauser
Weiner & Suit
Cleveland, Ohio

Lauren L. McFarlane
Wildman, Harrold, Allen & Dixon
Chicago, Illinois

Joyce A. Metti
Porter, Wright, Morris & Arthur
Cleveland, Ohio

Jonathan L. Mezrich
U.S. Claims Court
Arlington, Virginia

Marsha L. Montgomery
Squire, Sanders & Dempsey
Cleveland, Ohio

Diane B. Moore
Ernst & Young
Cleveland, Ohio

Marc W. Morris
Office of the State Attorney
Miami, Florida

Mary Anne Mozina
Black, McCuskey, Souers & Arbaugh
Canton, Ohio

Dennis L. Murphy
Judge Edwin M. Kosik
U.S. District Court
Scranton, Pennsylvania

Natalie A. Napierala
Damon & Morey
Buffalo, New York

Dimitri J. Nionakis
Howrey & Simon
Washington, D.C.

Todd N. Ostergard
Office of the State Attorney
Miami, Florida

Alise R. Panitch
Cohen, Shapiro, Polisher, Sheikman & Cohen
Philadelphia, Pennsylvania

Suzanne Y. Park
Calfee, Halter & Griswold
Cleveland, Ohio

Karie E. Peterson
Robison, Curphy & O'Connell
Toledo, Ohio

Paul J. Pusateri
Sager, Curran, Sturges & Zepper
Albuquerque, New Mexico

Karen R. Quinlan
Office of County Prosecutor
Canton, Ohio

Leslie A. Riczo
Coopers & Lybrand
Cleveland, Ohio

Lise A. Rode
Gager & Henry
Waterbury, Connecticut

Matthew J. Rumpke
Keating, Muething & Klekamp
Cincinnati, Ohio

Joseph D. Russo
Landskroner & Phillips
Cleveland, Ohio

Robert W. Rutkowski
Nicola, Gudbranson & Cooper
Cleveland, Ohio

Ramin Salehkhou
Heuking, Kuhn, Herold, Kunz & Partner
Frankfurt, Germany

David M. Santoni
Thompson, Hine & Flory
Cleveland, Ohio

James R. Scher
Ohlin & Ohlin
Warren, Ohio

John B. Schomer
Buckingham, Doolittle & Burroughs
Akron, Ohio

Ronald R. Shaw, Jr.
Jones, Day, Reavis & Pogue
Cleveland, Ohio

Kimberly A. Shuck
Rosenzweig, Schulz & Gillombardo
Cleveland, Ohio

John P. Slagter
Spieth, Bell, McCurdy & Newell
Cleveland, Ohio

Gary E. Smith
Office of Public Defender
Beloit, Wisconsin

Todd M. Smith
Schwarzwald & Rock
Cleveland, Ohio

Jonathan L. Stark
Schneider, Smeltz, Ranney & LaFond
Cleveland, Ohio

Francine M. Stulac
Wildman, Harrold, Allen & Dixon
Chicago, Illinois

Christopher J. Swing
Brouse & McDowell
Akron, Ohio

James L. Tarolli
Tarolli, Sundkein & Covell
Cleveland, Ohio

Tracy L. Taylor
Fuller & Henry
Toledo, Ohio

Christopher W. Thompson
Office of the County Prosecutor
Dayton, Ohio

Raymond V. Vasvari, Jr.
Ulmer & Berne
Cleveland, Ohio

Timothy R. Verrilli
Gottlieb & Schwartz
Chicago, Illinois

Monte E. Weiss
Otjen, Van Ert, Stangle, Lieb & Weir
Milwaukee, Wisconsin

John B. Welch
Jacobson, Maynard, Tuschman & Kalur
Cleveland, Ohio

Mark E. Young
Jacobson, Maynard, Tuschman & Kalur
Cleveland, Ohio

Gerald C. Zeman
Federal Trade Commission
Cleveland, Ohio

Harold J. Krent, Visiting Professor

For the fall semester the University of Virginia has lent us Harold J. Krent as visiting professor. He is teaching Administrative Law (replacing Jonathan Entin, on leave as a judicial fellow at the Federal Judicial Center) and Criminal Law (replacing Kevin McMunigal, on leave as a visiting professor at Loyola Law School in Los Angeles).

Krent is a graduate of Princeton University (A.B. 1977) and New York University (J.D. 1982), where he was a note and comment editor of the *Law Review*. In between he taught history (his undergraduate major) for two years at the Dwight-Englewood School in Englewood, New Jersey.

After clerking for a year for Judge William H. Timbers, U.S. Court of Appeals, Second Circuit, Krent took a job with the U.S. Department of Justice; he was on the appellate staff of the Civil Division. In 1987 he assumed his present position as assistant professor of law at Virginia.

Already Krent has five articles to his credit in as many law reviews:

"Preserving Discretion Without Sacrificing Deterrence: Federal Governmental Liability in Tort," *U.C.L.A. Law Review*, 1991.

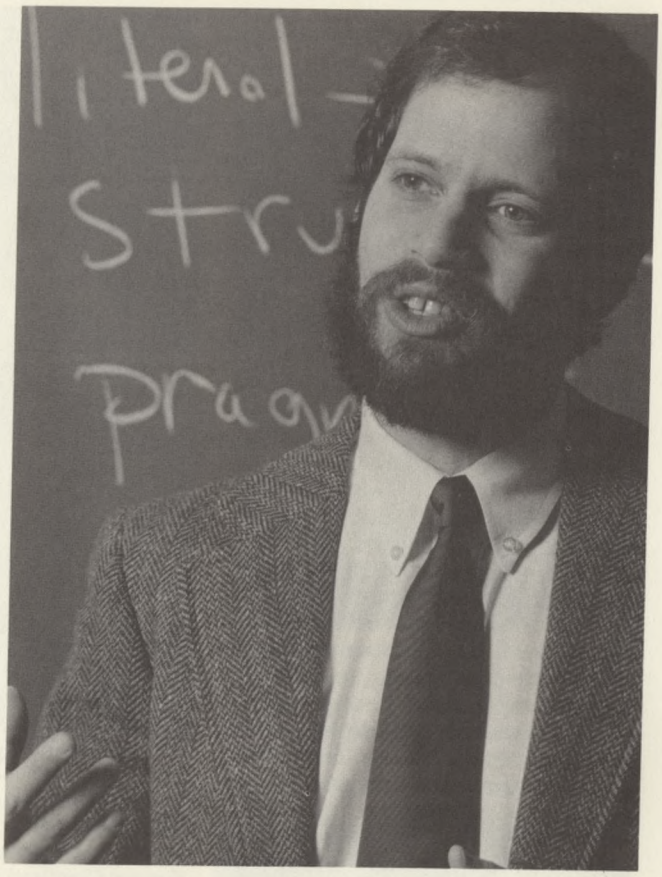
"Fragmenting the Unitary Executive: Congressional Delegations of Administrative Authority Outside the Federal Government," *Northwestern University Law Review*, 1990.

"Executive Control Over Criminal Law Enforcement: Some Lessons from History," *American University Law Review*, 1988.

"Separating the Strands in Separation of Powers Controversies," *Virginia Law Review*, 1988.

"Avoidance and its Costs: Application of the Clear Statement Rule to Supreme Court Review of NLRB Cases," *Connecticut Law Review*, 1983.

For both Harold Krent and his wife, Nancy, the fall term in Cleveland is a visit home. Both grew up here, and Krent's mother still runs senior citizens' programs for the city of Shaker Heights. Nancy Krent is also an attorney, a graduate of the University of Michigan. She has a part-time practice with the Richmond-based firm of McGuire, Woods, Battle & Boothe, which she will be able to continue from Cleveland. There are two Krent daughters, Miriam and Stephanie, ages four and two.



When *In Brief* talked with him in June, Krent was enthusiastic about his visit. He was looking forward to being among another law faculty and gaining a certain comparative experience. He expected to enjoy the smaller classes. (His Criminal Law class is one of the first-year small sections.) He was expecting, he said, to have "a lot of fun."

An Important Notice About Alumni Address Records

The Case Western Reserve University School of Law NEVER makes alumni addresses and telephone numbers available for general commercial purposes.

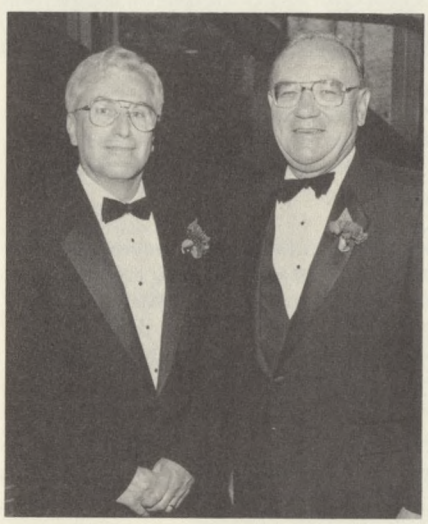
However, we do share such information with other alumni and often with current students, and we respond to telephone inquiries whenever the caller seems to have a legitimate purpose in locating a particular graduate. In general our policy is to be open and helpful, because we believe the benefits to everyone outweigh the risks.

If you want your own address records to be more severely restricted, please put your request in writing to the Director of Publications and External Affairs, Case Western Reserve University School of Law, 11075 East Boulevard, Cleveland, Ohio 44106.

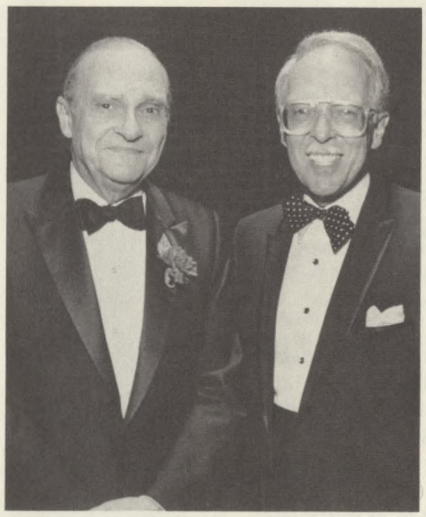
New Benchers Elected

At its annual dinner on May 31, the Society of Benchers inducted nine new members—seven alumni (including the first to be elected posthumously), one member of the faculty, and a public member. William L. Ziegler '55, chairman of the society, presided at the occasion, and the society's secretary, Professor Emeritus Oliver C. Schroeder, Jr., presented the candidates for induction.

The new faculty member is Professor **Lewis R. Katz** (A.B. Queens College, J.D. Indiana University), who just completed his twenty-fifth year at the law school; he holds the John C. Hutchins Professorship. A specialist in criminal law whose primary research interest is the Fourth Amendment, he has published several books that are indispensable for Ohio practitioners; his most recent work, however, is a New York practice manual. In 1984 he was the first recipient of the Law Alumni Association's Distinguished Teacher Award.



Professor Lewis Katz and Carlton Schnell



Jordan Band '48 and Robert Reitman '58

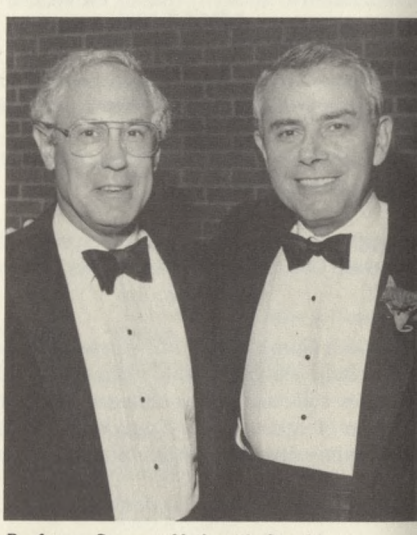
The new public (i.e., non-alumnus) member is **Carlton Schnell** (B.A., LL.B. Yale University), a partner in the firm of Arter & Hadden, specializing in tax and corporate matters. He has chaired the Cleveland Regional Tax Institute and the Taxation Committee of the Cleveland Bar Association and served as president of the Tax Club of Cleveland. He served two terms as secretary and general counsel of the Greater Cleveland Growth Association, and he founded and chaired Build Up Greater Cleveland, a public/private partnership aiming to improve the area's infrastructure. His civic activities have earned him awards from Leadership Cleveland, the Downtown Business Council, and the Citizens League.

These are the seven alumni members (all from Cleveland):

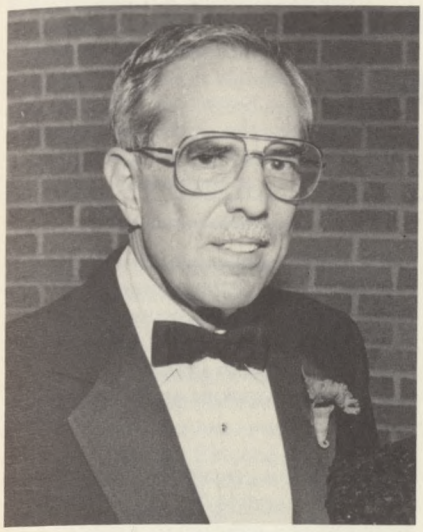
Jordan C. Band '48 (B.B.A. Western Reserve University) has practiced law in Cleveland since graduating from law school; he is a senior partner of Ulmer & Berne and chairs the firm's business law department. He served many years on the city's Community Relations Board, from 1983 to 1990 as its presiding officer. He has been active in Jewish community affairs both locally and nationally, for example as chair of the National Jewish Community Relations Advisory Council and as national vice president of the American Jewish Community.

Norman S. Jeavons '58 (B.A. Dartmouth College) is a partner of Baker & Hostetler, practicing corporate and business law. He serves on the boards of several nonprofit organizations, among them Laurel School and Beech Brook, an institution serving emotionally disturbed children. He is a past president of the Cleveland Hearing and Speech Center and a trustee of the Handgun Control Federation.

Gerald A. Messerman '61 (B.A. Western Reserve University, LL.M. Georgetown University) began his career as an assistant U.S. attorney in the District of Columbia, taught law for four years at Ohio State University, and entered private practice in 1968. His firm, Messerman & Messerman, handles complex civil actions, white collar criminal matters, and other criminal cases. He is a fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers, and a member of the Cleveland Inns of Court.



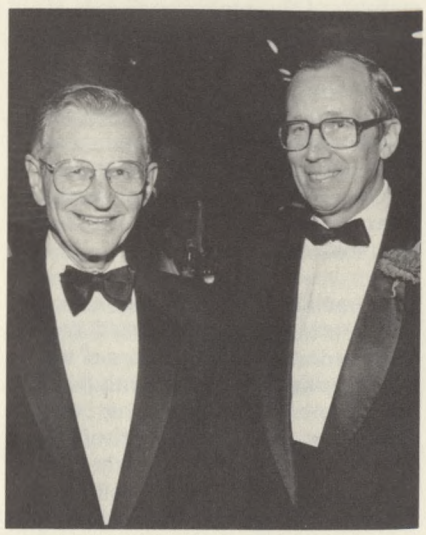
Professor Spencer Neth with Gerald Messerman '61



Albert (Pete) Pickus '58)

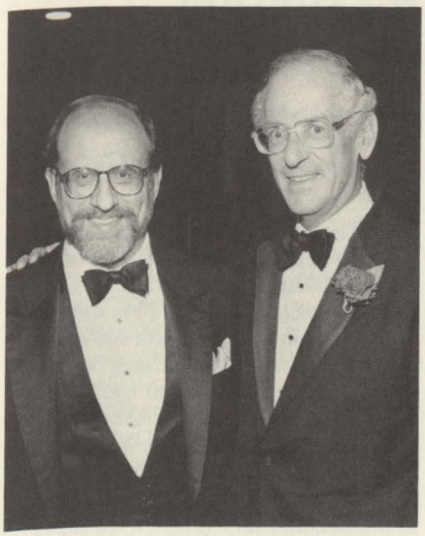
Albert P. (Pete) Pickus '58 (B.A. University of Michigan) is a partner of Squire, Sanders & Dempsey; his practice is mainly in real estate. He has served on the Finance Committee of the Mt. Sinai Medical Center and has been notably active as a Michigan alumnus, serving as president and director of the university's alumni association. Among the Cleveland bar he is noted for his efforts, as chairman of the Cleveland Bar Association's Facilities Subcommittee, to move the association to a new headquarters and develop facilities for its CLE activities.

Phillip A. Ranney '61 (B.A. Dartmouth College) is a partner of Schneider, Smeltz, Ranney & LaFond. He is secretary and trustee of the 1525 Foundation, the Second Foundation, and the P. K. Ranney Foundation. As a law student he was assistant to the mayor of Lakewood, and he has continued to be active in civic affairs as attorney for the public schools, the public library, and the Lakewood Historical Society; member, and for a time president, of the Board of Education; and member of the Lakewood Athletic Commission.



John Smeltz '48 and Phillip Ranney '61

Edwin Z. Singer '55 (B.B.A. Ohio State University) is chairman and CEO of Sandusco, Inc., and a director of several public and private corporations. He has been a trustee of the Jewish Community Federation, trustee and president of the Menorah Park Center for the Aging, trustee and vice chairman of United Way in Cleveland, and a member of the Orange school board.



Brothers-in-law James Berick '58 and Edwin Singer '55

William H. Wallace '55 (A.B. Washington University) died on March 20, 1991, a few days after the Society of Benchers' nominating committee voted to propose his election. He was partner-in-charge of the Cleveland office of Thompson Hine & Flory. He was noted as a litigator and an expert on product liability. He served as president (1976-77) and chairman (1977-78) of the Defense Research Institute, and in 1985-86 as president of the International Association of Defense Counsel.

Following the induction of new members, the chairman introduced the officers of the Society of Benchers in 1991-92: Alvin I. Krenzler '48, chairman; George N. Aronoff '58, vice chairman; Fred D. Kidder '50, treasurer; and—continuing in office—Oliver C. Schroeder, Jr., secretary.

Patricia (Mrs. William) Wallace with longtime friends (and Bill Wallace's classmates) Sharlee and Richard Guster, William and Joan Ziegler.

Two Programs on Professionalism

A Program for Students

by Peter A. Joy '77
Assistant Professor
Director of the Law School Clinic

The letter to Dean Peter Gerhart from the ABA's Special Coordinating Committee on Professionalism, July 17, 1991, begins: "Congratulations. I am delighted to inform you that your professionalism program was selected to share the second place prize in this year's E. Smythe Gambrell Professionalism Awards. The committee was particularly impressed with the depth and excellence of your program and your obvious commitment to professionalism." With the award comes a check for $3,000.

The seeds of our professionalism program were planted two summers ago when I undertook to develop professional responsibility problems that could be used in the first-year courses. The program took root in May of 1990 with the creation of a Professionalism Committee—Robert Lawry, Kevin McMunigal, and me. All of us teach Professional Responsibility, and all of us felt that the school could and should do more than that one required second-year course to emphasize the ethical and professional aspects of the practice of law. We set out to find ways of effectively incorporating professionalism into the lives of law students; to have them discussing, examining, and practicing professionalism from their first day in law school; to make them feel, by the time of their graduation, that professionalism was something "bred in the bone."

We believe that professionalism is not a discrete course topic. Rather it is a way of analyzing problems, reacting, and acting. To learn to act as professionally responsible lawyers, students must understand that professionalism is present in legal analysis as well as in interactions with clients, opposing parties and their counsel, courts, and the public. Professionalism requires that lawyers strive to make our system of justice work fairly and efficiently, and it requires that lawyers embrace both the letter and the spirit of applicable disciplinary standards.

Our committee (which has added a fourth member, Jennifer Russell) has consulted with other members of the faculty, with students, and with the practicing bar. The program we have designed is aimed mainly at the first-year class. I have mentioned the professional responsibility problems that were developed for each of the first-year courses. In addition, there is a special panel on professionalism presented by students and alumni as a part of the orientation program. Then during the first six weeks of classes we have weekly panels, open to the entire student body, covering different types of law practice and the professional demands and ethical issues confronting practitioners. Finally, there is a film series—again, open to the entire law school community—that shows law-related films with discussions following.

Our program has two significant features: (1) it makes professionalism an integral element of the law school's mission, and (2) all its aspects are coordinated so as to illustrate the central need for professional responsibility in all lawyers' actions. All too often legal ethics courses and discussions about professionalism seem peripheral. Ethics and professionalism should be *central* to lawyering decisions and the practice of law.

Our program is premised on the notion that the best way to "teach" professionalism involves repeated exposure in different ways to the demands of good lawyering. We expose our first-year students to the many aspects of professionalism in several different and reinforcing contexts. And we involve second- and third-year law students, as well as faculty and practicing attorneys, in meaningful discussions about professionalism with first-year students.

I believe that the greatest strength of our professionalism program is that we make professionalism pervasive throughout all our students' courses and activities. We intend to keep on emphasizing and reinforcing the idea that professionalism is important, necessary, and central to all that a lawyer does. The Gambrell Award is a validation of our past efforts and an encouragement to continue.

A footnote: We are grateful to the alumni who have taken part in the panels on professionalism, and who surely can take credit for a share in the Gambrell Award. They are Bryan L. Adamson '90, Katherine D. Brandt '89, Frances F. Goins '77, Paula Klausner '90, Deborah Wenner LeBarron '84, Thomas J. Lee '77, Jeanne E. Longmuir '85, Louise W. McKinney '78, Raymond C. Pierce '83, John S. Pyle '74, Ann C. Rowland '76, and Barbara A. Rutigliano '83.

A Conference for Attorneys

by Robert P. Lawry
Professor of Law
Director of the Center for Professional Ethics

In the summer of 1990 Charles R. Ault '51 came to Dean Peter Gerhart with the idea of putting together a conference, or perhaps a series of conferences, on the subject of ethics, professionalism, and the practice of law in the twenty-first century. The attempt would be to anticipate issues that would confront lawyers as we enter the next century, and to suggest ways of dealing with those issues that would be both forward-looking and true to our best traditions. The dean thought this was a marvelous idea and asked me to direct the project. I am delighted to announce that William W. Falsgraf '58, a past president of the American Bar Association, has agreed to be the project's national chairman, and that Holly Myers Brooks '81 has signed on as my associate director.

In the summer of 1991, after meetings and exchanges with various leaders of the bench and bar nationally, we adopted a plan that would put the first conference at our law school in the fall of 1992. The American Bar Association, the Association of American Law Schools, and the American Bar Foundation have promised their cooperation, and now we are working to identify the specific issues to be discussed and the persons who will be asked to address them.

What follows is a somewhat-edited version of the paper I prepared, early on in the process, to explain our basic concept. We think it will interest you, and we will be interested in your reactions to it. We will be pleased to hear from you, and we promise that you will be hearing more from us.

The legal profession is notoriously reactive. Social, economic, and legal upheavals occur; then the profession deals with the aftershocks. The reaction is often crude and polarizing, some decrying any change as "un-professional," others capitalizing on the next seismic shift to get out of the fault line and profit from the move as well. To the former, the world becomes stranger; for the latter, adaptation produces an identity crisis.

Instead of reacting to the past, the paragraphs that follow look to the future. What is the practice of law likely to be in the 21st century? How can we adapt to inevitabilities, but alter what seems wrong-headed or unworthy?

Background and Need

There are signs the legal profession needs and wants to talk about the issues of professionalism in a future-oriented way. The first evidence might be the 1986 report of the ABA Commission on Professionalism: ". . . in the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism." Then in May of 1988 the *Vanderbilt Law Review* contained a symposium, "The Modern Practice of Law: Assessing Change," with a lead article entitled "The Challenge of Change: The Practice of Law in the Year 2000." Most recently, on January 5, 1991, the plenary session of the Association of American Law Schools' annual meeting was on "Preparing Law Students for Professional Life in the 21st Century."

There is no shortage of topics for discussion. For example, at the AALS meeting political scientist Symour Lipset identified the changing demographics of race and age as a significant social reality the profession must understand and respond to. Economist Alice Rivlin stressed the internationalization of the world as a compelling issue. Lawyer Mario Baeza decried the trend among lawyers toward a business mentality and said that the real challenge to the profession lies in meeting the need for basic legal services to the underserved.

The temptation to place personal economic advantage over service obligations is a perennial one for any professional but is always tied to new realities. Today, for example, we have the rise and proliferation of mega-firms and a real question about their basic economic viability. When the famous fall of Finley Kumble was recorded in the bankruptcy courts, the firm was reportedly in debt to the tune of $83 million. Steven Kumble's revelation of his own reasoning is discomforting: "Why," he wrote in *Conduct Unbecoming*, "should a lawyer work very hard and not get paid for it? Most of the lawyers I know are better educated, brighter, and work harder than the people they represent in the business world. But they make less money. Why?" The short answer to Kumble's rhetorical question has always been that lawyers are professionals who subordinate financial gain to service. But the short answer does not begin to address the contextual question: What does it mean to be a professional lawyer in a 750-person firm with a dozen partners earning over $1 million a year? Finley Kumble's rise-and-fall may well be aberrational, but it raises issues that cannot be ignored.

For example, the quest for economic gain has arguably had much to do with the increased demand on attorneys for billable hours. This, in turn, has led to (1) a greater temptation to falsify time sheets and (2) overwork and the sense of unhappiness in law practice that is now so widely documented. At least two questions are obvious: (1) Must the billable-hour method of calculating fees be radically modified or discarded?
(2) What institutional changes can and should be made to humanize the practice of law? Tied to the second question must be an examination of the role of paralegals, the expanding use of technology, and the concomitant efficiency issues. Specialization raises additional concerns. Our dominant question in the next decade may be this: What institutional arrangements are consistent with reasonable profit and true professionalism?

Baeza's point about serving the underserved has always plagued conscientious lawyers. Given our monopoly status and the sheer necessity of lawyers in an increasingly complex world, how are we to serve people's legal needs? Through legal clinics? Are such clinics able to provide competent low-cost service? What about the renewed effort to encourage or require *pro bono publico* work from lawyers? This, too, raises traditional professionalism issues.

As lawyers tend toward a business mindset, the shortcomings of our disciplinary system raise another one of the central questions of traditional professionalism: Can lawyers truly regulate themselves? If so, how can we improve our system and more surely weed out corruption? If not, does this mean the demise of professionalism altogether, or only a significant change in certain aspects of practice, as with the liberalization of the rules on advertising and soliciting.

Allied to the self-regulation issue is the troublesome movement to characterize our self-governing rules as "law for lawyers" rather than as codes or canons of ethics. If the profession is not pressing for a more altruistic set of rules traditionally understood as "ethics," then why should the public allow us to write our own "law"? The newly begun effort by the American Law Institute to "restate" the "law for lawyers" may arguably be only another step along the way toward the destruction of self-regulation. But this issue will be a prominent one at least till the end of the century.

On yet another front, the proliferation of creeds of professionalism in recent years partly evidences the crisis in professionalism that many of us feel. Basic civility seems to be lost in a competitive rush to whip the opposition. What can be done to bring it back? Some have suggested that the emphasis on litigation and advocacy, beginning in law school, needs to be attacked as a distortion of the lawyer's more complex role as a mediator of conflict, indeed something of a mediator between the private and the public worlds which the lawyer inevitably straddles. As Charles Wolfram has put it in *Modern Legal Ethics*, "The litigating lawyer's role colors much of both the public image and the self-perception of the legal profession." Do lawyers think of themselves too much as warriors?

Beyond self-image, are there other reasons for the marked increase in competitiveness? Demographics might explain part of it: in 1984 it was reported that the absolute number of lawyers had nearly doubled since 1970. Another factor may be the increasing number of malpractice actions filed against lawyers in recent years. Surely the Supreme Court's role in all of this must also be noticed and understood. Beginning with its decision in *Goldfarb v. Virginia State Bar* and extending through a series of cases on lawyer advertising and solicitation, the Court has clearly evidenced a desire to see lawyers' competitiveness increase, and the organized bar has fought a rear-guard action rather than trying to anticipate the next constitutional step and adjusting its behavior—or undertaking new efforts to educate the public about what it has a right to expect from good lawyers.

Codes and Rules

Questions about specific ethical rules and their application to changing circumstances deserve special attention.

In the world of mega-firms are traditional conflict-of-interest rules still viable? Is some sort of screening mechanism the only answer? And is there any point, still, in having separate codes for every jurisdiction? Is it time for a truly

national bar exam and a national disciplinary system? Given the "legislative" disagreements over some provisions of the Model Rules, should we not re-think the way we promulgate ethics codes and rules? Perhaps they ought to be more "constitutional" than "legislative." Philosopher Charles Frankel argued years ago that "the value of a code . . . lies less in its specific 'oughts' and 'musts' than in its utility as a catalyst for a continuing discourse on the profession's *raison d'etre*." Frankel criticized the ABA's Model Code of Professional Responsibility as particularly deficient in stimulating any discussion "of the relationship of the practice of law to the welfare of society as a whole." Is that criticism more apt as it applies to the Model Rules?

Problems in defining exceptions to confidentiality rules are seemingly intractable, but concerns about lawyer participation in illegal activities are equally persistent. At the other end of the scale, we have barely begun any hard thinking about lawyers who practice in organizations working for clients which are organizations, and diverse ones at that. Where are the loyalties? How shall those loyalties be embodied in rules? Must not those rules be different for government lawyers and corporate lawyers?

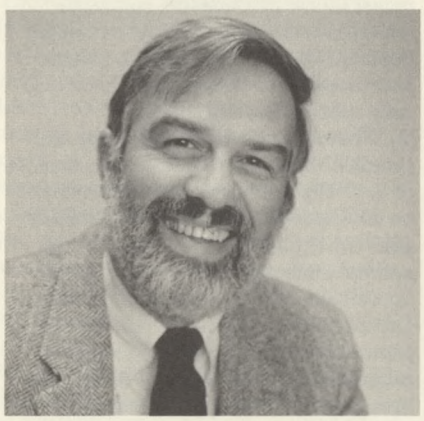
Conclusion

The questions raised above were randomly selected and are still unrefined. Whatever one thinks about them, they are at least good examples of the kinds of questions that ought to be more carefully and systematically explored by thoughtful lawyers in the next decade. This is not to say that there are not other, equally urgent questions, or that there are not questions still waiting to be asked because we lack data or the necessary stimulation. Obviously we must get at those questions too. To repeat what was said at the beginning: we urgently need a sustained effort to understand and evaluate facts and trends, then to suggest specific steps to make a better future for lawyers and the society they serve. The time to begin this effort is now.

Poems by Bob Lawry

Against the Need

Great Grandma Gray saved scraps of string "against the need," she said; and rolled them into little balls; and dropped them into kitchen drawers. She had no need; anyway none I knew, at nine, impatient for her flittering mind to roost again upon the chinese checker board, the marbles and the empty holes, our tournament. She led in games, thirteen to ten; though I was closing fast another gap, which opened every now and then; then closed as if her mind forgot the right moves, settling on a strategy that worked in some forgotten other game, against some other boy who liked to play hard against worthy opposition. "When will Bill come?" she asked. "Not soon," I knew I was supposed to say. "He should come soon. I have to make it home by five o'clock to cook our dinner." Gently I rubbed the knuckle of her hand. "Your move." But from her apron pocket, she produced rolled string. "Bill, put this in the kitchen drawer." I sighed and did what I was told, although I am not Bill. When I returned her eyes were bright. "I've got you now, my boy," she whooped. "Not yet, you don't," I shouted back before I even jumped into my chair. "I'm catching up, gram! Watch my dust!" She chuckled, "Steady, child," eyeing my trembling wrist. Outside it rained; no boys played ball; and Bill stayed quietly away another day.



Robert P. Lawry is not only a professor of law, but a poet as well. "Metamorphosis" was his first published poem (in Bitterroot, *1974); since then his work has appeared in* The New Orleans Review *and other publications.*

Metamorphosis

This my life this shocking thing
has turned
like a grey leopard
at a snap of twig,
has turned is turning
is a slow circle faster
grey to spinning white
leopard
to a replica
of sun.

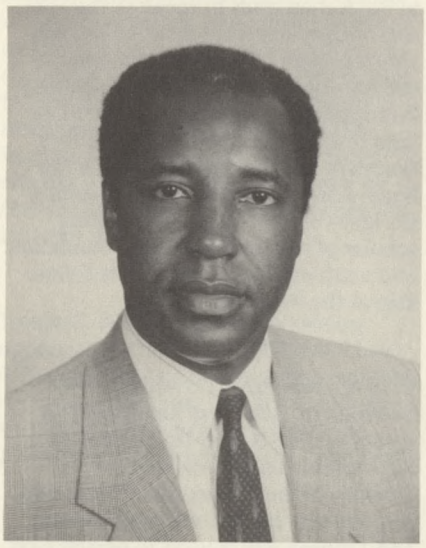
A Very Famous Poet

I will simply write all these poems
put them into a book
put the book in the mail
and be famous.

Meanwhile,
I will swim through the dross
my head held high, my arm
not letting you down
because I am the maker of poems
and I
am secretly famous.

Moreover,
I will be so good at it
that I will say "brown"
and you will feel mud
sliding through your mind;
or "fire" and the sun will lodge
itself behind your eyes; or
"life" and you will dance
and cheer and chuckle with God . . .
or "death"
and you will sit astonished
at the twitch between your ears.

A New Associate Dean



On July 1, 1991, Professor Calvin William Sharpe became the law school's associate dean for academic affairs, replacing Professor Melvyn R. Durchslag (who returned—happily—to full-time teaching).

Said Dean Peter Gerhart: "Calvin Sharpe will serve as second-in-command at the law school, with principal responsibility for shaping the curriculum and academic policies. The appointment as associate dean gives him an opportunity to think broadly about legal education and to shape our curriculum to meet the intellectual and practical demands of our profession in the next century.

"The new position will require many of Calvin's considerable skills. Making up the course schedule requires attention to detail, leading the faculty on curriculum reform will call on his skills of persuasion and negotiation, counseling students on academic regulations requires an iron fist in a velvet glove, while academic planning requires vision. In addition, I will give Calvin exposure to alumni relations and the administrative side of a dean's job so that he has a full appreciation of the range of responsibilities.

"Calvin Sharpe has established himself as a master teacher and as a scholar. The school will profit from his leadership in this new position."

Sharpe graduated in 1967 from Clark College in Atlanta and spent a year at Oberlin College and two years at the Chicago Theological Seminary before entering the Northwestern University law school. He clerked for Judge Hubert L. Will of the U.S. District Court, Northern District of Illinois (1974-76), practiced law in Chicago for a year, then spent about three years as a field attorney with the National Labor Relations Board in North Carolina. He taught law at Virginia and Wake Forest before coming to Case Western Reserve in 1984.

As a teacher and scholar Sharpe has divided his interest between litigation and labor law. He has taught Evidence and Trial Tactics, has chaired the Evidence Section of the Association of American Law Schools, and has seen publication in the *Notre Dame Law Review* with "Two-Step Balancing and the Admissibility of Other Crimes Evidence." He has also taught labor law courses, has published important work in that field, and in November will be inducted into the National Academy of Arbitrators. His work-in-progress includes one article on hearsay and another on unprotected conduct under the National Labor Relations Act.

During the 1990-91 academic year Sharpe was on sabbatical. He spent the fall term as a scholar in residence at Arizona State University, where he completed an article on coal arbitration for the *West Virginia Law Review*'s National Coal Issue. In the spring he was a visiting professor at George Washington University. There he taught a course in basic labor law and an advanced workshop in arbitration and collective bargaining, and he completed a chapter for a Mathew-Bender book, *Labor and Employment Arbitration*.

Sharpe reported to *In Brief* that the semester at George Washington had been particularly exciting and invigorating. He enjoyed being in Washington, and he enjoyed the experience of "a huge law school, about 1400 students, as good as ours at CWRU, very diligent." He enjoyed the sizeable and energetic faculty: "Jack Friedenthal has hired a dozen or more new faculty in the three years he has been dean there, all lateral hires, all very bright people. They were good people to talk with. It's a very friendly, very open place."

Refreshed by the sabbatical year, Sharpe was clearly ready to take on the associate deanship, even "the hairiest part of the job: scheduling courses and faculty into limited hours and limited classrooms." A special part of his assignment, he said, was to "think about pedagogy": "We have a reputation as an excellent teaching faculty, and the dean has asked me to think about how to improve on what we have. I'll be looking at the evaluative process, the examination system, and I'll be thinking about the hiring of adjunct faculty, and how we can do a better job of integrating them into the institution."

Sharpe says he accepted the new assignment because, after ten years of teaching, he was ready for "a new perspective—a different look at legal education, and at the running of a law school. It means an opportunity to think about new issues, and participate in legal education in a broader way."

He notes frankly that the appointment (a) may eventually lead to a deanship or (b) may convince him that he does not want a dean's job. Either way, he says, he thinks of the new job as "a SHORT-term project" and he has some regret about "interrupting the momentum of scholarship" even temporarily. He firmly intends "to complete certain projects" before allowing himself to be more than briefly sidetracked.

—K.E.T.

Are you planning a wedding in Amasa Stone Chapel?

If you have reserved Case Western Reserve University's Amasa Stone Chapel for a wedding (or some other event), you should know that when Adelbert Hall burned in June, the fire destroyed the only record of such reservations.

To renew or confirm your reservation of the chapel, telephone 216/368-4314.

Faculty Notes

Rebecca S. Dresser was an invited participant in a February conference, Biomedical Technology and Health Care: Social and Conceptual Transformations, at the University of Southern California; she was in Phoenix two weeks later for the members' meeting of the Chimpanzee Breeding and Research Management Committee of the National Institutes of Health. In March she was at Georgetown University's Kennedy Institute of Ethics as a faculty member (Ethical Issues in Animal Experimentation), and in April she was back in Washington as a member of the Initial Review Group for the Ethical, Legal and Social Implications Program of the National Center for Human Genome Research. Later in April she went to Toronto as a legal consultant to the Committee on Bioethics of the American Academy of Pediatrics. A June trip took her to New York and a meeting of the Hastings Center Research Group on the Patient Self-Determination Act, and to Philadelphia, where she was a panelist at the Scientists Center for Animal Welfare Conference on Selected Issues on the Well-Being of Animals Used in Research, Testing and Education. All the above is in addition to presentations made during the year at Cleveland hospitals and at special programs on the CWRU campus.

As of July 1, 1991, Dresser was promoted to the rank of full professor with tenure. She holds a secondary appointment in the School of Medicine's Center for Biomedical Ethics.

RAW instructors **Jonathan Gordon** and *Jane Rolnick* collaborated on "Legal Research and Writing as an Integrated Process," published last winter in *Integrated Legal Research*. Gordon also co-authored, with Cleveland-Marshall's Elisabeth Dreyfuss, a brochure on the Bill of Rights that was published under the auspices of the Cleveland Bar Association.

Two publications by **Michael Grossberg** are forthcoming, one in the *Case Western Reserve Law Review* (the symposium issue collecting papers from last fall's conference, The Right to Privacy One Hundred Years Later), and one in the *Journal of Social History* ("Fighting Faiths and the Challenges of Legal History"). Grossberg spoke on Abortion and History at the University of Wisconsin law school in April, and traveled in June to the Netherlands to speak to the Law and Society Association. In 1990-91 he was president of the CWRU chapter of the American Association of University Professors. For the summer of 1991 he held research grants from the Library Company of Philadelphia and the National Endowment for the Humanities. On leave in 1991-92, he is a visiting scholar of the American Bar Foundation and holds an NEH/Lloyd Lewis Fellowship at the Newberry Library.

Erik M. Jensen's "The Unanswered Question in *Tufts*" was published this spring in the *Virginia Tax Review*. In a forthcoming issue Professor Calvin Johnson of the University of Texas will respond and Jensen will reply. Jensen and Johnson will face off in person next February when the ABA Tax Section meets in Dallas.

October will see the publication of the 1991 Supplement to Bruen, Taylor & Jensen, *Federal Income Taxation of Oil and Gas Investments*. The summer issue of *The Tax Lawyer* included the current developments report for the ABA Tax Section's Committee on Sales, Exchanges, and Basis, of which Jensen wrote the section on "Nonrecognition Transactions." As the new chairman of the Subcommittee on Publications, Jensen will be responsible for coordinating the entire current developments report in the future.

In addition, Jensen reports two less weighty pieces: "Reread the 'Brown' Opinion," an op-ed essay in the Cleveland *Plain Dealer*, and "Law Review Correspondence: Better Read Than Dead?" forthcoming in the *Connecticut Law Review* as the inaugural of a new Commentary section.

Jensen's on-campus activities last year included teaching a new course, American Indian Law, and chairing a university task force that considered the feasibility of an on-campus child care facility and reported to the president in March. "I assume," says Jensen, "that the report is now being freeze-dried."

Lewis R. Katz has been appointed to the Sentencing Advisory Committee of the Ohio Supreme Court and elected to the law school's Society of Benchers (see page 00). His speech to the City Club of Cleveland on the Fourth Amendment (part of a series celebrating the bicentennial of the Bill of Rights) will be reprinted in *Vital Speeches*. Recent publications are the 1991 *Ohio Criminal Justice* (with Clancy) and the 1991 service to *Schroeder-Katz Ohio Criminal Law and Practice*.

In June **Henry T. King, Jr.**, became president of the Greater Cleveland International Lawyers Group and traveled to Dallas for the Southwestern Legal Foundation's 1991 Symposium on Private Investment Abroad, where he chaired a session, Focus on New Investment Opportunities. About 300 participants from 38 countries attended the symposium.

King is U.S. chairman of the Joint Working Group of the American and Canadian bar associations on the settlement of international disputes between the U.S. and Canada. With the advent of the Canada/U.S./Mexico Free Trade Agreement negotiations, it is anticipated that the Joint Working Group will be expanded to include representatives of the Barra Mexicana and will be making recommendations on the settlement of disputes under the projected Free Trade Agreement.

Gerald Korngold has advanced from chair-elect to chair of the Real Property Section of the Association of American Law Schools and has been designated an adviser for the American Law Institute's Restatement of the Law of Property (Servitudes). Shepard's/McGraw-Hill has just published the 1991 Supplement to his book, *Private Land Use Arrangements: Easements, Real Covenants, and Equitable Servitudes*.

Recent publications by **William P. Marshall**: "In Defense of *Smith* and Free Exercise Revisionism" in the *University of Chicago Law Review*, and "The Concept of Offensiveness in Establishment and Free Exercise Jurisprudence" in the *Indiana Law Journal*. Marshall spoke on the free exercise clause at the annual meeting of the American Bar Association in August. Earlier in the summer he took part in an academic conference on the First Amendment at the Thomas Jefferson Institute for the Bill of Rights in Charlottesville, Virginia.

In March **James W. McElhaney**'s CLE travels took him to Louisiana, California, Nevada, and Hawaii. In April he was in Chicago at the Federal Judicial Center's Seminar for Federal Defenders, in addition to speaking engagements in Cleveland (Arter & Hadden) and Youngstown (the Mahoning/Trumbull bar associations).

In May McElhaney was the keynote speaker for the ABA's National Conference on Professional Responsibility (Scottsdale, Arizona) and delivered the first McNamara-Tuck Memorial Lecture at the Annual Advocacy Institute in Ann Arbor, Michigan. Other May engagements were in Utah, Indiana, Vermont, and Minnesota—and Cleveland, where he addressed the annual banquet of the Celebrezze Inn of the American Inns of Court. In June he was in Little Rock for the annual meeting of the Arkansas Bar Association.

His monthly columns continued in the *ABA Journal*: "Clutter," "Phantom Cross-Examination," "Focus," "Bad Words," and "The Most Important Witness," while "Character and Conduct" and "Impact" appeared in the quarterly *Litigation* magazine.

Louise W. McKinney attended the Sixth Circuit Social Security Litigation Network last March in Lexington, Kentucky, and (in May) the Workshop on Clinical Legal Education sponsored by the Association of American Law Schools. She was one of nine who came from around the country to attend the Medical Institute for Law Faculty sponsored by the Cleveland-Marshall College of Law. In addition, McKinney continues to attend local and statewide task forces on health law and social security disability law. In June she joined the board of directors of the Long Term Care Ombudsman, an organization with which she has worked in getting referrals for the Health Law Clinic and in developing law that is patient-oriented.

Kevin C. McMunigal has a visiting appointment this fall at the Loyola Law School in Los Angeles; he will teach two sections of Criminal Law. This summer he taught CLE courses for groups of prosecutors in Cleveland and Columbus on ethics in criminal practice. He is working on an article about attorney conflict of interest rules; his argument is that the legal doctrine in that area will be much improved and clarified if it is refocused on principles of risk analysis.

Kathryn S. Mercer presented a workshop at the Midwest Legal Writing Conference in July at Valparaiso University. With **Mary Katherine Kantz** she published an article, "Writing Effectively: A Key Task for Managers" in *Skills for Effective Human Services Management* (Edwards and Yankey, editors, NASW Press).

At a conference of teachers of evidence sponsored by the Association of American Law Schools at the University of Iowa, **Calvin W. Sharpe** spoke on Teaching the Hearsay Rule. For more on Sharpe, see page 21.

Journals Name Editors

As the school year begins, the journals (as always) are under new management.

The *Law Review* is headed by Candace Jones, editor in chief; Michael Kelly, managing editor; and Jeffrey Schwarz, business manager. Jones graduated in 1987 with a major in communications, legal institutions, economics, and government (yes, she says, that's all one major) and worked for the Federal Government Service Task Force of the U.S. Congress for two years before starting law school. As a law student she has clerked for two Cleveland firms—Gold, Rotatori, Schwartz & Gibbons and Hahn Loeser & Parks.

Forrest Norman III is editor in chief of the *Journal of International Law*. (His father is Forrest Norman, Jr. '54, chair of the law school's Annual Fund.) He is a 1986 graduate of CWRU with employment experience that includes the U.S. Marine Corps and the Cleveland law firm of Nurenberg, Pleven, Heller & McCarthy. Norman is assisted by managing editor Andrew Zumbar and executive editors Sean Fahey and Scott Peters.

Robert Melson, editor in chief of *Health Matrix*, proudly identifies himself as a sixth-generation native of rural Stark County, Ohio. His B.A. degree is from the University of Arizona. He spent the summer with the Internal Revenue Service in Washington and plans to specialize in ERISA and pension law. The *Health Matrix* board also includes Charlotte Buford, solicitation editor; Glenn Smith, managing editor; and Thomas Gorman, business manager.

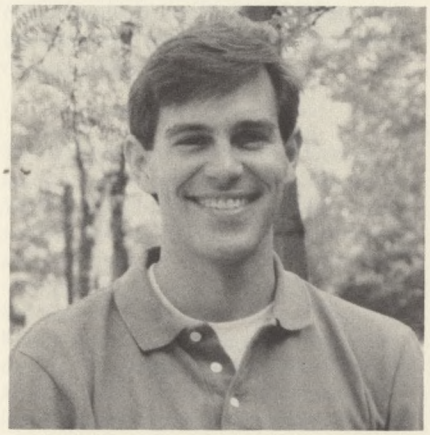
Editors of the journals: Candace Jones (Law Review), Forrest Norman (Journal of International Law), and Robert Melson (Health Matrix).

News of Moot Court

The May issue of *In Brief* was long gone to bed when the Dunmore results came in on April 20. That evening, in the final round of the Dunmore Tournament, Jeffrey Zimon won over Kirk Perry and took the tournament championship (though Perry was named best oral advocate in the overall competition). The panel included Judge David A. Nelson, U.S. Court of Appeals, Sixth Circuit; Judge Alice M. Batchelder, U.S. District Court, N.D. Ohio; and Magistrate David S. Perelman, U.S. District Court, N.D. Ohio.

Susan Belanger, named the best overall advocate in the Dunmore Competition.

Zimon received his B.A. degree in biology from Brandeis University and spent four years as a paralegal with the Boston firm of Palmer & Dodge before entering law school in 1989. This summer he worked in the legal counsel's office at the Centerior Energy Corporation in Cleveland. For Perry, a graduate of Hamilton College, success in the Dunmore Competition was a second moot court triumph: earlier in the year he was named best oral advocate in the regional Frederick Douglass Competition in Minneapolis. Perry spent this summer working for the city prosecutor in Cleveland.



John McKenzie won the brief-writing award.

Finalists in the Dunmore Tournament: Kirk Perry (the runner-up), and Jeffrey Zimon (the winner).

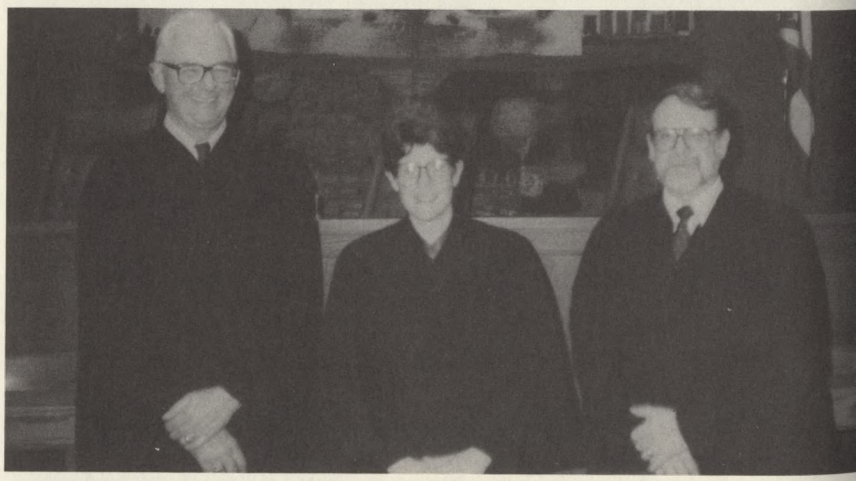
John McKenzie won the brief-writing award, and Susan Belanger won the prize for best overall advocate. McKenzie is a 1985 graduate of Wake Forest University; he worked for the First Union National Bank of Charlotte, North Carolina, between college and law school and spent this summer with Buckingham, Doolittle & Burroughs in Akron. Belanger held a summer clerkship with Arter & Hadden in Cleveland. She comes from Chicago and holds the B.A. in English from the University of Virginia.

Robert Glickman, who won the award for greatest improvement, is another with Carolina connections, namely a B.A. degree from the University of North Carolina at Greensboro. A Clevelander, he has worked for the Cuyahoga County public defender and for Gold, Rotatori, Schwartz & Gibbons.

Tournament participants were the top sixteen of the more than a hundred students, almost all second-years, who entered the Dunmore Competition last fall. They will make up the interscholastic moot court teams in 1991-92.

The National Team will consist of Susan Belanger, Michael Larson, Thomas Lanigan, Joseph Maguire, Andrea Ridgway, and Michele Smolin. Kirk Perry will compete in the Craven Competition in constitutional law, along with Kevin Clegg and Jill Miller. John McKenzie, Jeffrey Zimon, William Celebrezze, and Julie Silver will make up the Niagara Team. Alternates are Rebecca Gerson, Jennifer Nischan, and Katherine Ann Zimmerman.

Peter Gauthier '91 directed the Dunmore Competition, assisted by classmates Pattijo Mooney and Diane Balchak Moore. In 1991-92 the Dunmore director is Thomas Posch; Laura Blue and Hedy Schuster are assistant directors.



Judges of the Dunmore final round: David A. Nelson, Alice M. Batchelder, and David S. Perelman '58.

Good-bye, Ruthie!

by Peter A. Joy '77
Assistant Professor
Director of the Law School Clinic

Ruth Harris, whom we all know as Ruthie, has retired from the Law School Clinic, effective August 31. She was there when the Clinic opened its doors in 1976, and every day since then has been a friend, a colleague, and the best-imaginable professional support to students and faculty. She has also been a valuable resource to the Cleveland community, fielding dozens of calls every week from persons with legal problems who do not know where to turn for help. She has done as much (if not more) to shape the clinical program as any of its faculty or directors, and she certainly has done more than anyone else to create the atmosphere—supportive, caring—that has always been the Clinic's hallmark. Just as her job titles have never described her role adequately, it's hard now to find the right words to express our gratitude and heartfelt congratulations on her retirement.

On Saturday, September 21, we are having a party in her honor (also known as the Clinic Reunion and 15th Anniversary Celebration). Many former students have responded to the announcement with reminiscences and warm wishes. Sharing a few of these is the best way I know to pay Ruthie the tribute she deserves.

From Mary Busby '88: "I have nothing but fond memories of the Clinic, mainly because of Ruthie. Always there to guide and provide essential support and information, Ruthie helped me through my first experiences as a 'real' attorney. I am positive that I have managed to gain what success I have in large part due to Ruthie's patient guidance. . . . I want to proclaim as loud as I can that I AM A LITIGATOR (finally)!! I wouldn't be a litigator if it weren't for the Clinic."

That is a typical comment. Many students come into the Clinic wondering if they are really are suited for lawyering. Ruthie has given them the encouragement they needed, and has dealt kindly and patiently with all the questions they were afraid to ask anyone else. Along with kindness, she has given effective assistance. From Alexander Kinzler '84: "I would guess that you will have to hire about three people to take over for Ruthie, from my recollection of everything that she did at the Clinic office. She should practically get an honorary professorship for all the knowledge she has imparted to students in the Clinic."

Alex is right. Ruthie should have an honorary professorship—and an honorary J.D. degree. Whenever I have sought Ruthie's counsel in dealing with a difficult decision or problem (and I have worked with her as clinic student, clinic instructor, and now clinic director), her insights have been invaluable. I cannot think of anyone who will miss Ruthie more than I will.

Special congratulations to Ruthie come from the previous clinic directors—Owen Heggs, Lee Hutton, and Mary Jo Long—and from former instructors Robert Stotter, Gail Auster, Maurice Schoby, Theodore Meckler, Robert Kirk, and Jennifer Monroe. The present staff—Lewis Katz, Judith Lipton, Kenneth Margolis, and Louise McKinney—join me in wishing her good luck and many happy years of retirement.

At the end of every semester there is an evaluation form that every clinic student fills out. The next-to-last question has always been, "Name one thing about the clinic that you would not change." More than half of the students always answer, "Ruthie." The last question asks, "What additional comments or suggestions would you like to make?" Most students write, "Ruthie is great!" or "Give Ruthie a big raise!" How can anything I write top those comments?

Good luck, Ruthie! We'll miss you even more than we can imagine.

Who Passes the Bar Exam?

Of the 200+ students appearing at Gund Hall for first-year orientation on August 22, most will finish the J.D. degree but a few will not. Most will pass the bar, but some will fail. That much is known. What is not known is who will succeed and who won't. And why? What are the contributing factors?

In a few years we may have at least some of the answers.

The Law School Admission Council is launching "the first nationwide, comprehensive, longitudinal bar passage study to be undertaken in the United States." Co-sponsors include such organizations as the American Bar Association, the Association of American Law Schools, the National Bar Association, and the National Conference of Bar Examiners. Many state boards are participating, and many ABA-accredited law schools all over the country, among them Case Western Reserve.

Our 200+ first-year students—along with thousands nationwide—will be given half an hour during their orientation to fill out a questionnaire (if they are willing to take part in the survey). This law school, along with others, will provide information during the next three years about each student's academic performance. Meanwhile a sample of some 8,000 students nationally will complete additional questionnaires as they progress through law school. Finally, the participating state boards will report the bar results. And computers will whir, and professional researchers will analyze.

When it's all over, it is hoped that pre-law advisers and law school admissions officers will be better able to predict which prospective law students are more likely or less likely to make it through law school and the bar exam. More important, law schools will have a better idea of what they can do to improve the odds for those less likely students, and help many succeed who otherwise might well have failed.

Class Notes

by Beth Hlabse

1926

Ralph Vince has been honored by having a new John Carroll University fitness complex named for him.

1936

Harley J. McNeal has been elected to the board of delegates of the Ohio State Bar Association.

David I. Sindell has become of counsel to the law firm of Weisman, Goldberg, Weisman & Kaufman in Cleveland.

1940

Joseph M. Sindell has become of counsel to the law firm of Weisman, Goldberg, Weisman & Kaufman in Cleveland.

1942

John J. Conway has become of counsel to the Cleveland office of Thompson, Hine & Flory.

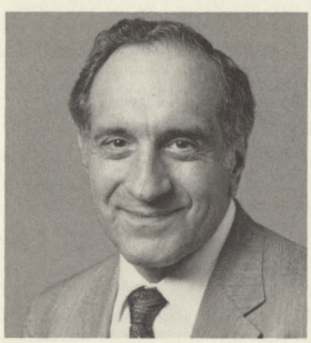
1946

Jay B. White has been elected to the board of delegates of the Ohio State Bar Association.

1948

John V. Corrigan was honored at a luncheon on St. Patrick's Day by the Irish Good Fellowship Club of Cleveland.

1950



Paul K. Christoff has been elected to the executive committee of the Ohio State Bar Association.

Edward J. Mahoney received the Professional Award at the University of Akron Dean's Club dinner.

1951

David A. Funk has published articles on traditional Hindu, Chinese, and Japanese jurisprudence, respectively, in three recent issues of the *Southern University Law Review*.

1953

Howard L. Sokolsky has been named to the fourth edition of *The Best Lawyers in America* in the bankruptcy category.

1958

George N. Aronoff has been named to the fourth edition of *The Best Lawyers in America* in the corporate law category.

1960

Bernard D. Goodman has been named to the fourth edition of *The Best Lawyers in America* in the real estate law category.

George M. White was presented with the Harold Hitz Burton Award for Distinguished Public Service by the Cleveland Club of Washington, D.C.

1961

Edward A. Bayer was appointed by Governor Voinovich to the Akron Municipal Court and commenced work on May 13, 1991. This was the governor's first appointment in Summit County.

Lawrence M. Bell has been named to the fourth edition of *The Best Lawyers in America* in the corporate law category.

Donald M. Robiner has been elected to the board of delegates of the Ohio State Bar Association.

1962

Robert J. Rotatori is president-elect of the Cleveland Bar Association.

1965

George J. Limbert has been elected to the board of delegates of the Ohio State Bar Association.

1967

Michael R. Kube has been elected to the board of trustees of the Cleveland Bar Association and to the board of delegates of the Ohio State Bar Association.

The Ohio State Bar Association presented its Distinguished Service Award to **Ronald J. Suster**, recognizing him for his support and effort in preserving and advancing the administration of justice and improvement in the law during his service as a member of the Ohio General Assembly.

1968

Mario C. Ciano has been elected to the board of delegates of the Ohio State Bar Association.

1969

Charles R. Schaefer was appointed to the Ohio Small Business and Entrepreneurial Council.

Harold R. Weinberg was named to the Wyatt Tarrant and Combs Professorship at the University of Kentucky College of Law. Weinberg is a member of the American Bar Association Task Force on Security Interests in Intellectual Property and recently co-authored a law review article on the topic. He also heads an advisory group on security interests in tort claims which is part of the Uniform Commercial Code Permanent Editorial Board Study of Article Nine.

1973

Margaret A. Cannon has been named president of the Cuyahoga County Law Directors Association.

James M. Petro has been sworn in as a Cuyahoga County Commissioner.

1974

Kenneth B. Davis, Jr. was awarded the 1990 President's Award of Excellence from the State Bar of Wisconsin.

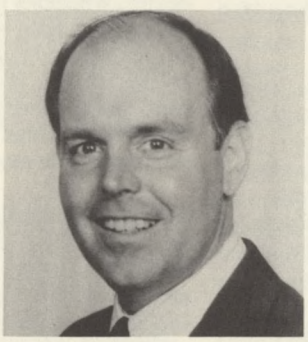
John T. Mulligan was named the "1991 Irishman of the Year" by the Cleveland Athletic Club.

1975

George S. Coakley has been elected to the board of trustees of the Cleveland Bar Association.

Gary S. Glazer has been appointed judge in Philadelphia, Pennsylvania.

1977



Curtis L. Lyman, Jr. has joined the private banking division of the Chase Manhattan Bank of Florida as a vice president.

Thomas J. Lee was named law director for the village of Middlefield, Ohio.

1978

Patrick M. Zohn, chairman of on-air fundraising for WCPN, Cleveland Public Radio, was honored at the station's recent annual meeting, receiving the Volunteer of the Year award. Zohn has recently been reassigned for three months from the U.S. Department of Labor's Cleveland Office to its headquarters in Washington. There he will be working on the government's litigation involving over five hundred mining companies with respect to their respirable dust sampling programs.

1979

This note from **Teresia B. Jovanovic**: "I have recently been promoted to the position of managing editor of the state jurisprudence department of Lawyers Cooperative Publishing. My department is responsible for the production of publications such as *New York Jur 2d*, *Ohio Jur 3d*, and *Standard Pa. Practice 2d*.

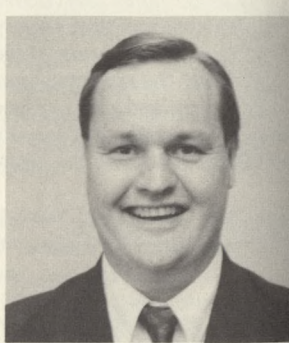
Jori Bloom Naegele has recently been elected president of the Lorain County Bar Association for a term commencing July 1, 1991. Her private practice of law is in Lorain, Ohio, where she works in the areas of civil litigation including environmental law, personal injury, sexual harassment and discrimination, and class action litigation.

1980

Marc A. Rabin has recently been named a partner at Goldfarb, Levy, Giniger, Eran & Co., Tel Aviv Israel.

George R. Sarkis, executive chairman of operations for this year's NEC World Series of Golf, has been named chairman of the 1992 tournament by the executive committee of Akron Golf Charities, the group that oversees the annual tournament.

1981



James R. Van Horn has been named a senior vice president and general counsel of Citizens First National Bank of New Jersey.

New partners: **D. Cheryl Atwel** at Gallagher, Sharp, Fulton & Norman in Cleveland and **Carolyn J. Buller** at Squire, Sanders & Dempsey in Cleveland.

Bryan Holzberg has been reelected deputy mayor of the Village of Thomaston in Great Neck, New York. He also recently joined Dollinger, Gonski, Grossman, Permut & Hirschhorn as a litigator.

1982

Elizabeth Barker Brandt received the Peter E. Heiser Award for Teaching Excellence, awarded to her by the third year students at the University of Idaho. She is an associate professor teaching wills and trusts, family law and community property, and she directs the legal residency and the writing program.

Kathleen M. O'Malley has been named partner at Porter, Wright, Morris & Arthur in Cleveland.

1983

Bruce G. Alexander has been named partner at Boose, Casey, Cilkin, Lubitz, Martens, McBane & O'Connell in West Palm Beach, Florida.

From **R. Leland Evans**: "After having been in private practice in Cleveland, I spent the past 3 1/2 years as in-house litigation counsel for Ashland Chemical, Inc. In September, 1990, I joined the Columbus office of Porter, Wright, Morris & Arthur. I am involved in a wide variety of litigation, but I spend the majority of my time in the products liability area."

1984

Kevin F. O'Neill has left Arter & Hadden in Cleveland to become the Ohio legal director for the American Civil Liberties Union.

William G. Porter III has been named partner at Vorys, Sater, Seymour & Pease in Columbus, Ohio.

Veronica Toth Reese has been appointed trust officer in the trust probate department of the trust and investment management group of Ameritrust in Cleveland.

Coast Guard Commander **Stefan G. Venckus** was awarded the Meritorious Service Medal for his legal work in international law and drug enforcement. He negotiated several important bilateral agreements for the Coast Guard with the Soviet Union on fisheries and radionavigation; and with the Bahamas and Panama on illicit maritime narcotics trafficking.

1985

From **William H. Lockard** comes: "I was recently elected an officer of Twentieth Century Fox Film Corporation and Fox Broadcasting Company. I continue to work for Fox as counsel and director of the Copyright/Trademark Department where I oversee the international intellectual property and antipiracy operations for all Fox companies. The one unfortunate side effect of my job is that I am unable to watch "The Simpsons" with any pleasure, since I now see it only as a commercial for bootleg T-shirt vendors who will have to be sued. I have also picked up a sideline at the University of Southern California Law Center where I will be teaching copyright law next year and where I can work through everyone's fantasy of reliving law school from the other side of the seating chart. I spent 3 weeks last year in Brazil, Argentina and Chile, a beautiful land where "The Simpsons" are refreshingly absent, and where I enjoyed one of the most surreal moments I've had in a long time, when the changing of the guard at the presidential palace in Santiago was accompanied by the Chilean military band playing a martial version of the theme from "Goldfinger." I toured around the Pacific Northwest this spring and I'm off to Australia again at the end of this summer, proving once again that I'm a sucker for a cheap airfare. I wonder if there's a twelve-step program for compulsive travellers?"

Carol Stamatakis has been named partner at Elliott, Jaster & Stamatakis in Newport, New Hampshire. She is currently serving her second term as a New Hampshire state representative.

1986

People for the American Way has named **Daniel Y. Mayer** director of its new Artsave project. Artsave is a nationwide research, technical assistance, and public education project to protect freedom of expression in the visual and performing arts.

1987

Captain **Donald A. Arndt** recently returned from a seven-month deployment to the Mediterranean and west coast of Africa while serving with the 26th Marine Expeditionary Unit.

Mark A. Prosise writes: "On April 15, 1991, I opened my own law practice in Pepper Pike. I will engage in the general practice of law."

1988

A note from **William M. Hayes**: "I have been spending the past year studying international and European Community law at the London School of Economics. I frequently speak with Abby Price, who is working in New York City and doing very well. I also hear from classmates Buzz Yancich, who is enjoying the California lifestyle in Los Angeles, and Anne Sturtz, who is in Columbus."

From **Douglas W. Tulin**: "Recently moved back to Colorado to take a position as an associate doing trial work exclusively, representing GAF and W.R. Grace Company, among other clients, in the areas of environmental law and commercial litigation. I'm still doing matrimonial and civil rights litigation as well."

1989

Jeffrey Denning writes: "I accepted a new position and am finally working in international law. I very much enjoy my co-workers and responsibilities. Plus, D.C. is a delight in the spring."

Dawn Haghighi was invited by Judge Dorothy Nelson of the Ninth Circuit Court of Appeals to participate in a legal delegation of five American lawyers which will meet with various members of the Chinese law society in Beijing and Shanghai.

In Memoriam

David P. Hyman '22
April 20, 1991

Hyman R. Goldstein '24
July 5, 1991

Cyril McFrederick '27
August 3, 1991

Jack S. Roesch '31
July 11, 1991

Aaron A. Caghan '33
May 5, 1991

John J. Klise, Jr. '41
June 17, 1991

Keith S. Benson '47
Society of Benchers
July 6, 1991

R. William Bashein '48
May 16, 1991

William T. Griffiths '52
April 30, 1991

Eugene B. Skeebo '54
January 29, 1991

Howard M. Saddler '56
July 29, 1991

Morton Stotter '58 LL.M.
May 12, 1991

Edward L. Seikel '59
May 1, 1991

Missing Persons

Please help! Listed below are graduates for whom the law school has no mailing address. Some are long lost; some have recently disappeared; some may be deceased. If you have any information—or even a clue—please call (216/368-3860) or write the Office of External Affairs, Case Western Reserve University School of Law, 11075 East Boulevard, Cleveland, Ohio 44106.

Class of 1942
Peter H. Behrendt
William Bradford Martin

Class of 1943
David J. Winer

Class of 1947
Louis E. Dolan
George J. Dynda

Class of 1948
Hugh McVey Bailey
Walter Bernard Corley
Joseph Norman Frank
Kenneth E. Murphy
Albert Ohralik
James L. Smith

Class of 1949
Benjamin F. Kelly, Jr.
Coleman L. Lieber

Class of 1950
Oliver Fiske Barrett, Jr.

Class of 1951
Robert L. Quigley

Class of 1952
Anthony C. Caruso
Frank J. Miller, Jr.
Allan Arthur Riippa

Class of 1958
Leonard David Brown

Class of 1961
James E. Meder

Class of 1964
Dennis R. Canfield
Frank M. VanAmeringen
Ronald E. Wilkinson

Class of 1965
Salvador y Salcedo Tensuan (LLM)

Class of 1966
Robert F. Gould
Harvey Leiser

Class of 1967
Donald J. Reino

Class of 1969
Gary L. Cannon
Howard M. Simms

Class of 1970
Marc C. Goodman

Class of 1971
Christopher R. Conybeare
Michael D. Franke
Michael D. Paris

Class of 1973
Thomas A. Clark
Thomas D. Colbridge
Richard J. Cronin

Class of 1974
Robert G. Adams
Arthur M. Reynolds
Glen M. Rickles
John W. Wiley

Class of 1976
A. Carl Maier

Class of 1977
Stephen R. Archer

Class of 1978
Andrew J. Herschkowitz
Robert E. Owens
Lenore M. J. Simon
Jonathan S. Taylor

Class of 1979
Corbie V. C. Chupick
Gregory Allan McFadden

Class of 1980
Stephen Edward Dobush
Lewette A. Fielding
Steven D. Price

Class of 1981
Luis A. Cabanillas, Jr.

Class of 1982
Heather J. Broadhurst
Stephen A. Watson

Class of 1983
David Steele Marshall
Alayne Marcy Rosenfeld

Class of 1984
Elaine Quinones
Richard S. Starnes

Class of 1985
Paul A. Steckler

Class of 1987
Edward M. Aretz
Ralf W. Greenwood

Class of 1989
James Burdett
Gwenna Rose Wootress

Class of 1990
Michael A. Mitchell

Class of 1991
Scott A. Anderson
Brian P. Dart
Grace P. De Iuliis
Sara A. Evans
Bonnie M. Gust
Shelbra J. Haggins
N. Celeste Holt-Mensforth
David R. Hood
Joseph A. Pfundstein

Calendar of Events

September 20 and 21
LAW ALUMNI WEEKEND
Dean's Cocktail Reception
Alumni Awards Luncheon
Continuing Legal Education
BLSA and JIL Receptions
Class Reunions

Sep

26 Los Angeles Alumni Event
Speaker: Professor Kevin C. McMunigal

Oct

4 Chicago Alumni Luncheon

11 Toledo Alumni Luncheon

18 West-of-Cleveland Alumni Luncheon — Elyria

25 Canton Alumni Luncheon

30 Cincinnati Alumni Reception

31 Dayton Alumni Luncheon

Nov

1 Akron Alumni Luncheon

8 Youngstown Alumni Luncheon
Speaker: Paul M. Dutton '72
Member, Ohio Board of Regents

14 Washington Alumni Reception

19 Columbus Alumni Luncheon
Speaker: Lee I. Fisher '76, Ohio Attorney General

22 Faculty/Alumni Luncheon — Cleveland
Speaker: Stephanie Tubbs Jones '74
Cuyahoga County Prosecutor

Jan

6 San Antonio Alumni Luncheon (tentative date)
Association of American Law Schools

Feb

5 Sumner Canary Lecture
Kenneth W. Starr, U.S. Solicitor General

For further information: Office of External Affairs
Case Western Reserve University
School of Law
11075 East Boulevard
Cleveland, Ohio 44106
216-368-3860

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