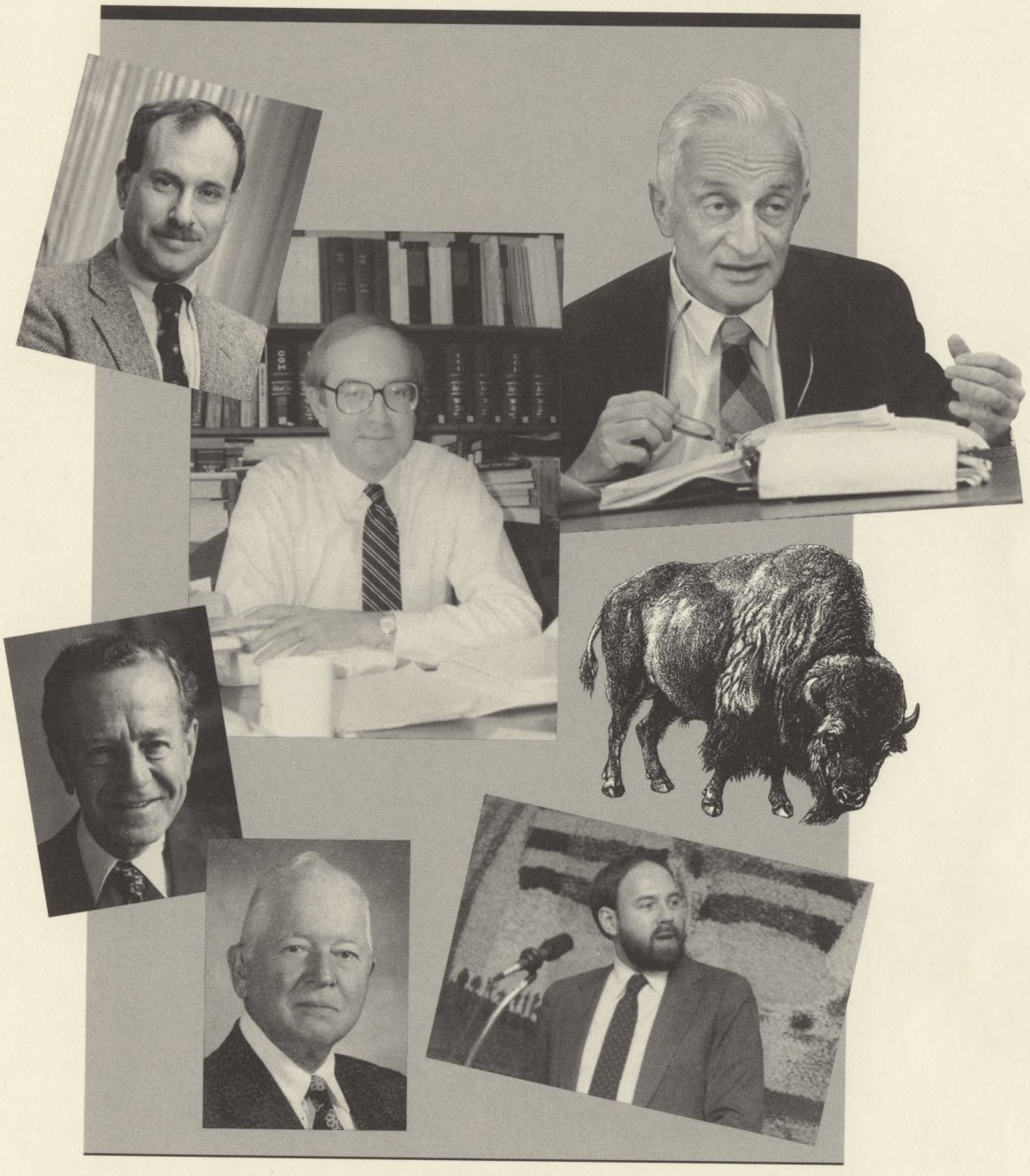
1990

In Brief

Case Western Reserve University **School of Law**

in brief

Law Alumni News Bulletin May, 1990



in brief Number 49

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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 Hlabse

Photographers
Mike Sands
Kerstin Ekfelt Trawick

Law School Administration

Peter M. Gerhart *Dean*	(216) 368-3283
Daniel T. Clancy *Vice Dean*	(216) 368-3308
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Inside this issue...

The Dean Reports

I know that our graduates and friends are deeply interested in the strength of our educational program and the quality of the intellectual life of our students. I also know that our graduates and friends are gratified by the great progress the law school has made over the past two decades, and that you are committed to an even stronger program and an even better education for our students. What I do not yet know is how good you want us to be.

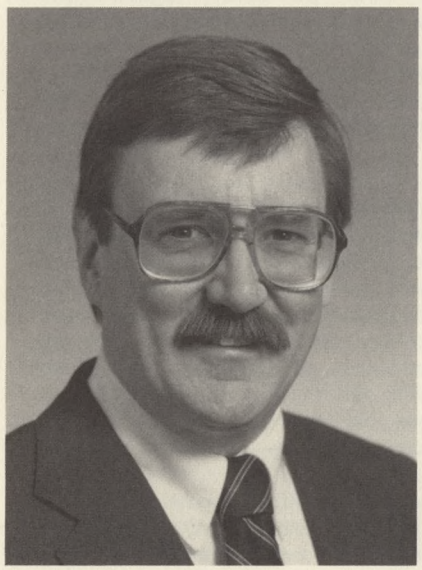
By any measure, we can be proud of the work of our graduates, our students, and our faculty. Our graduates provide leadership to law firms, corporations, government agencies, and other institutions around the country. They serve our society well. Our student body is drawn from all over the country (currently, from twenty-eight states), from all of the best undergraduate schools, and from a wide variety of prior careers. The faculty are recognized around the country for their scholarly writing and their professional activities. I cannot prove it, but I would be surprised if even a dozen law schools can claim the uniformly high quality of classroom teaching that we have, or such a vibrant intellectual atmosphere outside the classroom. We are very, very good. And we are getting better.

Yet when rankings of law schools are published, we are not always listed among the top twenty-five. Should that bother us?

I was forced to ponder that question recently when the *U.S. News and World Report* issued its ranking of the top twenty-five law schools in the country and did not include us. Nor did they recognize us as one of the "up and coming" law schools. We have to suppose that we are in some never-never land in the law school hierarchy: we are already up and already arrived, but not in the top twenty-five. It was some consolation to remember that just a little over a year ago a survey conducted by *Of Counsel* magazine found us among the top twenty-five schools from which law firms around the country look for associates. It was also some consolation to remember that there are now perhaps as many as forty law schools generally agreed to be very good, so that trying to select which ones beyond the "name" schools to include in the top twenty-five is to draw a fairly meaningless line. Clearly, if we are not in the top twenty-five, the distance between "us" and "them" is insignificant.

Still, one must consider the significance of the *U.S. News* rankings.

We all know—even *U.S. News and World Report* knows—that one cannot measure the quality of education by numerical indices, and that reputation surveys are pale images, generally out of date. We know that law schools differ in their strengths and their character, and that different schools are best for different types of people. As long as we are satisfied that we are setting high aspi-



rations and moving as quickly as possible to achieve them, we should rank ourselves high, and outside surveys and rankings should not especially bother us.

But the *U.S. News* survey was based in part on a series of reputational surveys conducted both inside and outside of academia, and our reputation is important. Aside from the fact that it influences our sense of well being, how others perceive us affects our future because it affects our continuing ability to attract top students, employers, faculty, and new resources. Moreover, the *U.S. News* rankings were also based on a factual analysis of law school operations. While facts are only a distant proxy for quality, an analysis of them can tell us interesting things about some differences between our school and other schools, and about our ability to influence the rankings.

Of the four factual categories measured by *U.S. News*, we must be among the top law schools in two. I cannot imagine that many schools have a significantly better placement rate (94 percent) or a significantly better graduation rate (96 percent) than we do. In another category—institutional resources—we score well in some indices and poorly in others. Our student-faculty ratio (18:1) is certainly quite competitive, but we are less competitive in terms of total dollars spent per student, and we are simply not competitive in terms of volumes and volume equivalents in the library.

Fortunately, none of those measures is a certain indicator of quality. We know that our library has a good collection and that our investment in electronic information sources makes the relative paucity of volumes increasingly irrelevant. We are, after all, fifth in the country in the amount that we spend on electronic databases and, by any measure, a leader among law schools in the elec-

tronic library movement. Our commitment to get information to people when and where they want it should be enough to move us to the top rank. Similarly, we may be spending less per student than the schools ranked by *U.S. News*, but we may be more efficient, with lower overhead and less waste.

But we have to acknowledge that there is some truth in the *U.S. News* figures. In particular, I would judge that all of the private schools (and some of the public schools) in the *U.S. News* survey have significantly larger endowments than ours, making them less dependent on tuition and better able to keep up with, for example, inflation in library materials and the need for scholarship aid for students. To a large extent, what differentiates "us" from "them" in terms of the rankings game is simply a matter of money.

The fourth category analyzed by *U.S News*—student selectivity—is the one that most plagues our claim for recognition. For whatever reasons, for the last fifteen years or so we have not attracted the number of applicants that other first-rate law schools have. We can point to declining demographics within our region and we can blame the national reputation of Cleveland, but we cannot ignore the facts. That is why since I became dean I have said that our first goal must be to make ourselves more attractive to more applicants across the country.

As you know, we have successfully turned the situation around. Our student body has remained strong—an exceptionally bright, energetic, and committed group. Each year for the last two years, applications to our school increased by more than the average for our region and the nation. This year our applications will be up by 14 percent, roughly twice the national average. Were we ranked in terms of the increase in applications, we would be ranked very high indeed.

But stories like those in *U.S. News* come back to haunt us, for they influence our reputation and thus our ability to attract the very applicants who will help us to improve our reputation in the future. Can we break through the cycle, and increase our recognition enough to increase our recognition further? Of course we can. We are well on our way. But we must first decide whether we want to.

I have no doubt that our alumni outside of Ohio would love to see our national reputation increase. They are, after all, more dependent on our national reputation than Ohio alumni are. Ohio alumni know of our quality because they see so many of our graduates in action and because they know that our reputation in this part of the country is unparalleled. They rub up against our quality every day. To Ohioans our national reputation may not seem so important.

But it is. Our national reputation is important because improving it is the best way to insure the long-term health of our law school. By improving our national reputation we will insure a steady stream of qualified applicants far into the future, and improved placement opportunities for our graduates, which will generate still more applicants; we will insure our ability to attract and hold outstanding faculty. The entire process becomes self-regenerating. I do not mistake reputation for real quality, but an enhanced reputation will allow us to continue to improve the quality of our program far into the future.

That is why the fund-raising campaign that we are launching as part of the $350 million Campaign for Case Western Reserve University is so important. The only thing standing between us and the national recognition that we deserve is money. We now have the opportunity to find the resources that will place us, unmistakably, among the nation's select law schools. I look forward to talking to all of our alumni and friends about those opportunities. Our challenge is to think in important new ways about the *national* role of our law school, and to find the resources that make that role a reality.

Peter M. Gerhart
Dean

An Omission from the Alumni Directory

After repeated apologies because it was behind schedule, we can report that the law school's 1989 Alumni Directory finally did get printed and mailed. But we must apologize now for its omission of a 1988 graduate, Barbara Goldberg Rosman of Warren, Ohio. The computer did it (of course), but it was a human error that misled the computer. We apologize to Barbara Rosman, and we assure one and all that she really *is* a graduate of this institution.

Except for the no-longer-current address information that is inevitable with a highly mobile population, this is the only directory error that we know of—so far. If you have found other problems, please bring them to our attention.

If you failed to order a directory before publication, we have some extra copies available. The price is $20, which includes postage and handling. Make check payable to CWRU and mail to Office of External Affairs, CWRU School of Law, 11075 East Boulevard, Cleveland, Ohio 44106.

A Note of Acknowledgment

Through an editorial oversight, the article by Professor Jonathan L. Entin that appeared in the last issue of *In Brief* failed to carry a note on prior publication. "Psychiatry, Insanity, and the Death Penalty" first appeared in the *Journal of Criminal Law and Criminology*, Volume 79, Issue 1, published by the Northwestern University School of Law. We thank the editors for permission to reprint it, and we apologize for omitting the acknowledgment in the last issue.—K.E.T.

Underservice: The Patient's Perspective

by Maxwell J. Mehlman
Associate Professor of Law

Many different perspectives are represented within the health care system: physicians, nurses, hospital administrators, third-party payers, and so on. Yet there is one perspective that virtually all of us share: the patient's perspective. All of us at some point in our lives may be patients.

One of the most serious concerns that we as patients have is underservice. To put it simply, underservice means getting too little care. Some people, such as many working poor, get too little care because they are un- or underinsured. Some providers may unintentionally provide too little care.

But probably the most significant reason for underservice is economic pressure from third-party payers such as private insurers and government entitlement programs. These pressures are part of payer efforts to contain health care costs. For example, "capitated" or "prospective" payment systems, which pay a lump sum regardless of the frequency or intensity of services, in effect reward providers in proportion to how little care they provide. Utilization review can give rise to direct financial incentives and to more subtle forms of pressure on individual physicians to reduce referrals, hospitalizations, and length of stay. In fact, it has been estimated that 20 percent of health maintenance organizations (HMO's) have physician incentive programs in which a physician's remuneration is based in part on the degree to which he withholds service from patients.

What evidence is there on the prevalence and impact of this type of underservice? Robert Schiff in 1986 calculated that 87 percent of patients transferred from one hospital to another are transferred for economic reasons, but he did not attempt to measure the effect of these transfers on patient outcomes. John Fitzgerald, however, found in 1987 that the mean length of stay for patients with hip fractures dropped from 16.6 to 10.3 days after the Medicare prospective payment system was implemented; there was a 50-percent decrease in physical therapy for these patients, and a 200-percent increase in the number of patients who were still institutionalized in nursing homes six months after discharge. The General Accounting Office calculated that 6.6 percent of Medicare patients under the prospective payment system receive poor care, and that 80 percent of the problem can be attributed to the omission of necessary medical services. But since the GAO did not compare these findings with the quality of care received by patients before the adoption of the prospective payment system, it is impossible to tell how much of this underservice is due to economic pressures under the prospective payment system and how much to inadvertent errors of medical judgment.

So the evidence of economically-motivated underservice is not overwhelming. One reason may be that this type of underservice occurs, if at all, primarily at the margin—that is, the patient care withheld is of relatively little importance to overall patient welfare. If this is the case, then why are we as patients so concerned? The answer is that, in the first place, any incentive for institutional providers and practitioners to act contrary to the interests of their patients to further their own economic self-interest conflicts with their fiduciary duties. Even in the absence of hard data, we are concerned about whether we as patients can trust our caregivers. Furthermore, we are not convinced that the only care cut in response to these pressures is care at the margin. Clearly some patients die as a result of underservice, and we do not know whether the underlying cause is mistakes in judgment or economic pressures.

Now it may be objected that, even if some underservice results from payment systems designed to control costs, we are no worse off than we were under previous payment systems that pressured providers to *over*serve patients. Reimbursement methods like fee-for-service create their own set of perverse incentives: when providers receive more payment for more care, they have an incentive to subject patients to unnecessary risks. Are we patients not at least as well off now under capitated or prospective payment?

From the perspective of an actual patient, the answer is no. To understand why, let us imagine a practitioner under a fee-for-service system. Let us assume that he correctly understands that, under fee-for-service, his net revenue increases the more care he furnishes, and that he is interested in maximizing his own income. Let us also assume that he would resist providing care that would be harmful to the patient—that is, he would not willingly subject the patient to a risk that outweighed the expected benefit—and that he does not wish to increase his own income at the patient's expense. Under fee-for-service, this practitioner will begin by providing care that is of substantial net benefit to the patient and that provides more benefit than it costs. Then, since the system by which he is paid induces him to provide more and more care, he will provide care that is increasingly expensive. At some point the *cost* of the care might be deemed to exceed the benefit, but to the extent that the patient is insured, this cost/benefit disparity will not be a significant concern to the patient: the cost will be spread across all those insured, while the patient retains the benefit.

Let us now take the perspective of the same patient in a system that rewards providers for reducing care. Again, we will assume that the practitioner wishes to maximize his own welfare and to provide care that benefits the patient. The physician will begin by eliminating any care

that costs more than it is worth in patient benefit. To the extent that the patient is insured, the savings will be spread across all insured persons. The patient himself will receive only a small share of the benefit of reduced costs but will lose the entire benefit of the care that has been denied. And once the practitioner eliminates care that is too costly, he will still face an economic incentive to cut care. At this point, the only care that he can cut will be care that provides the patient with greater benefit than it costs. The practitioner may resist this pressure, but unlike the practitioner under fee-for-service, he cannot increase both his own welfare and his patient's. For this reason, as patients we have more to fear from underservice—which threatens to deprive us of care that is *worth* the cost—than from overservice.

What can we do to allay our concerns? One answer is to penalize a provider who succumbs to economic incentives to underserve. For example, if any provider who expected to get an extra $100 by underserving a patient were made to forfeit $100 instead, that provider would have no motivation to underserve. How might patients impose these costs on underserving providers? One way is by suing them. This would not be just a simple malpractice suit, with the plaintiff alleging that the provider acted unreasonably. In addition, the patient could accuse the provider of acting in bad faith by placing his own financial interests above the welfare of the patient. If successful on the bad faith charge, the plaintiff would be entitled to punitive damages, which could be substantially greater than the compensation received in a simple malpractice case.

Since the promise of punitive damages makes these lawsuits quite lucrative, one may wonder why so few of them have been brought. The answer is that it is extremely difficult for a patient to prove that she was injured because the provider acted in bad faith and not because he merely made an unreasonable mistake. If concerns about underservice grow, the courts may conceivably be willing to shift the burden of proof in such cases from the plaintiff to the defendant. In other words, once the patient showed that she was injured as a result of substandard care furnished by a provider who was subject to economic incentives to underserve, the provider would have to prove that the substandard care was due to an error of judgment rather than to the effect of the economic incentives. This would be extremely difficult for the defendant to prove, just as it is presently difficult for the plaintiff to prove that the defendant's actions were the result of bad faith rather than incompetence. If courts were to shift the burden of proof in this way, we would see a dramatic increase in provider liability for underservice.

From the patient's standpoint, however, lawsuits are not an entirely satisfactory solution to the problem of underservice. Private legal remedies are expensive to pursue. And if they strip economic benefit from providers, they transfer much of that benefit not to patients, but to attorneys.

Instead of relying on private lawsuits, patients might turn to public administrative mechanisms, at least for care provided by publicly-funded programs such as Medicare. For example, Medicare's watchdog agencies—the peer review organizations, or PRO's—presently are required to examine 25 percent of hospital readmissions that occur within 31 days of discharge; some of these readmissions may have occurred because economic motivations caused the patient to be discharged too soon. Premature discharge of patients can lead to such sanctions as civil monetary penalties and disqualification from the Medicare program. Another administrative approach to the underservice problem is the anti-dumping provisions of the Comprehensive Omnibus Budget Reconciliation Act of 1985, which authorize the inspector general of the Department of Health and Human Services to penalize providers who transfer patients inappropriately from their institution to another.

But government remedies raise two problems. First, the government is the largest single third-party payer; it has a strong incentive to reduce health care costs. Relying on it to prevent underservice is a little like relying on the proverbial fox to guard the chickens. Second, sanctions under the PRO and anti-dumping programs cannot be imposed without an extremely expensive legal procedure. This may explain why, as of January 31, 1988, only two civil monetary penalties had been levied against providers for violating the anti-dumping provisions of the law.

Another approach to the problem of underservice is to rely on informed patients to choose appropriate providers. According to this approach, patients should be told by their providers or by their providers' competitors about the risk of underservice; then they can decide whether or not to accept the risk. For example, a patient considering whether or not to join a particular health maintenance organization ought to be told whether the HMO gives financial incentives to its physicians to reduce hospitalization. Advertisements aimed at patients might seek to assure them that a particular provider institution does not underserve—e.g., "We will discharge no patient before his time." A patient who does not wish to accept the risk of underservice would be free to seek care from a provider operating under a fee-for-service system, although perhaps at a higher cost.

Disclosure is a classic legal response to conflicts of interest of the type created by economic incentives to underserve. Indeed, the House Committee on Government Operations is considering whether to require providers under Medicare and Medicaid to obtain the patient's informed consent before he can be transferred from one hospital to another.

But there is a problem with relying on patient information and choice to solve the problem of underservice. It may not be possible for a patient to obtain alternate care from a fee-for-service provider. The patient may not be able to afford the additional cost or may not have time to shop around. In any event, as patients we are likely to be profoundly disturbed when we are told by our health care providers that, in effect, they have a financial incentive to sacrifice our health for their own economic gain.

A better alternative is to focus on the underlying economic incentives themselves. It is unlikely that the new prospective payment system and other cost-containment efforts will be dismantled, and that the clock will be rolled back to the days when providers were reimbursed on an unlimited, fee-for-service basis. Cost constraints on institutional providers are necessary evils. But we can and must resist imposing these economic pressures on physicians. As patients, we must be able to continue to trust our doctors to look after our interests exclu-

sively, and to err, if at all, by providing care that is too expensive from the perspective of third-party payers.

In fact, we are already taking steps to insulate physicians from cost-containment pressures. The Omnibus Budget Reconciliation Act of 1986, for example, prohibits "knowingly making a payment, directly or indirectly, to a physician as an inducement to reduce or limit services" to Medicare and Medicaid patients. Furthermore, there is significant resistance to paying physicians on a capitated or prospective basis under Medicare.

Indeed, the law is willing to uphold the role of physicians as allies of patients in resisting pressures to underserve. This is the thrust of the recent *Wickline* case in California, in which the court stated that, in caring for their patients, physicians may not defer to cost constraints imposed by third-party payers. The judges emphasized that payers and institutional providers act at their peril if they override the physician's orders in order to reduce costs.

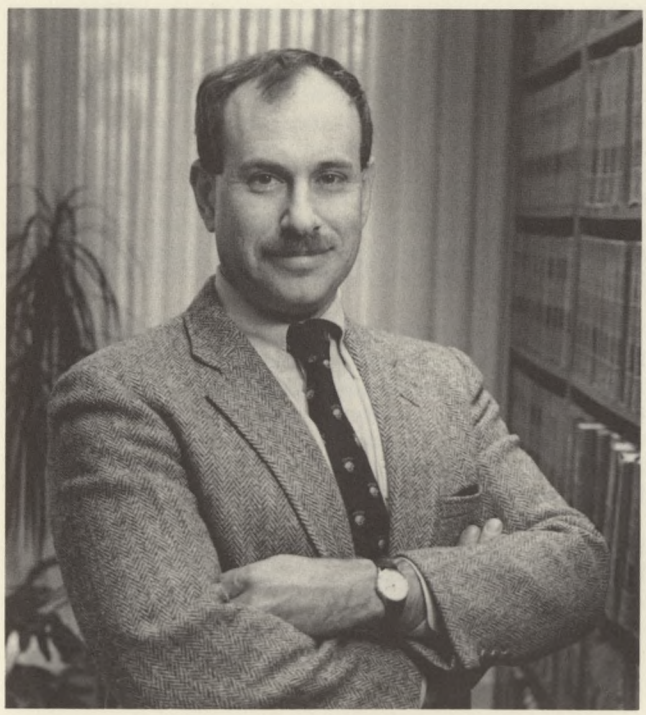
The *Wickline* approach helps restore some of the power that physicians have lost to institutional providers and third-party payers since the advent of serious efforts to constrain health care costs. Physicians should welcome it. An alliance with physicians will be welcomed by patients as well. It reaffirms the traditional role of the physician as caring and trustworthy. And, in the long run, a physician-patient alliance is likely to be good for payers and institutional providers as well, since it will help to rationalize care and to increase patient satisfaction.

In the short run, however, providers and payers are still faced with the imperative to reduce costs. What can they do to control costs in a way that does not place them at odds with physicians? In the first place, they can sponsor technology assessment to uncover expensive technologies that provide little or no patient benefit. (These efforts can be in the form of relatively inexpensive consensus conferences, rather than extremely expensive randomized clinical trials.) Technology assessment that identifies inappropriate expensive technologies can legitimately be used by payers to resist physician and patient demands for them. Furthermore, providers and third-party payers can encourage the development of clinical protocols defining what is appropriate care in specific cases. These too can be used to discourage expensive care that is inappropriate.

The concept of a physician-patient alliance whereby the power of physicians is increased and aligned with patients' interests may seem a precarious solution to the problem of underservice. Physicians and patients may feel caught between powerful forces; constant readjustment may be needed to take account of shifts in the relative power of payers, institutional providers, physicians, and patients. But what at first appears precarious may turn out to be the most stable solution in the long run. It is nothing less, after all, than a system of checks and balances—a system which has successfully sustained the nation since its founding and which just might work for health care.

About Professor Mehlman

This has been a busy year for Max Mehlman—so busy and productive that the standard author's note could scarcely do him justice. In fact, he could have provided material for half a dozen separate stories in this issue. What follows is a condensation and compression.



First, the facts of an author's note. Mehlman graduated from Reed College in 1970, won a Rhodes Scholarship, earned a second B.A. degree at Oxford, then took his J.D. at Yale. After nine years with Arnold & Porter in Washington, he came to CWRU in 1984 as an assistant professor. For two years he was associate director of the Law-Medicine Center; in 1987 he succeeded the founding director, Oliver Schroeder, and was promoted to associate professor. As of July 1, 1990, he will advance to the rank of professor with tenure.

His publications in 1989-90 include "Setting Limits: Age-Based Rationing and Technological Development" in the *St. Louis University Law Journal* and "Fiduciary Contracting: Limitations on Bargaining Between Patients and Health Care Providers" in the *University of Pittsburgh Law Review*. "Issues in High Technology Home Care: A Guide for Decision Making" (co-edited with Stuart Youngner) awaits publication by National Health Publishing, and "Health Care Quality: The Impact of New Quality Assurance Technologies" is in progress.

Another 1989 project was done under the auspices of the New York State Bar Association and published as *The*

Harvard No-Fault Project: A Critique. A team of Harvard University researchers conducted a state-sponsored study of malpractice in New York hospitals and concluded that a system of no-fault medical malpractice insurance would not cost a great deal more than what is currently being paid in malpractice insurance premiums by New York doctors and hospitals. When Mehlman was asked by the bar association's Special Committee on Medical Malpractice to examine the design of the study, he found it "heavily biased in favor of no-fault."

Mehlman's critique argues that the study underestimates the true cost of a no-fault system; ignores events and injuries which take place in physicians' offices, hospital outpatient clinics, and nursing homes; and does not adequately take into account the cost of the administrative bureaucracy that would be needed to oversee a no-fault system. Mehlman has commented: "The system they propose wouldn't be any cheaper to operate; in fact it's likely to cost more. What's worse, it would eliminate the deterrent effect of the tort system on hospitals and physicians."

Mehlman's increasing stature as a nationally known expert on health care and the law was evidenced a few years ago when he was named to a special committee of the Institute of Medicine of the National Academy of Sciences. The committee undertook a study, mandated by the Omnibus Budget Reconciliation Act of 1986, of the Medicare program and its mechanisms for quality assurance. The group was asked to define quality, assess methods for measuring quality, and design a strategy for quality review and assurance in Medicare. Of the committee's seventeen members Mehlman was the only lawyer.

The committee's report was released March 7, 1990. A summary by the chairman and the project director appeared in the March 8 issue of the *New England Journal of Medicine*. Briefly, the report recommends a "major redirection" for monitoring Medicare services, with greater emphasis on quality assurance and less emphasis on cost containment. An outgrowth of Mehlman's participation in the study is "Medicare Quality Assurance Mechanisms and the Law," co-authored with A. Smith and published last year by the Institute of Medicine.

Another project of Max Mehlman's is this year's Health Law Teachers Conference, to be held in Cleveland in June under the co-sponsorship of the Case Western Reserve School of Law and the American Society of Law and Medicine. It is expected to attract a hundred or more teachers of health law and bioethics-related courses in schools of law, medicine, public health, health care administration, pharmacy, nursing, and dentistry. Mehlman is the conference chair.

The program that Mehlman has designed, and for which he has recruited an impressive roster of participants from all over the country, includes such topics as Health Care Financing and Reimbursement Issues; The Human Genome Initiative; Empirical and Interdisciplinary Research on Medical Malpractice; Antitrust and Related Issues; and Biomedical Ethics and the Right to Privacy.

In addition to his scholarship and his wide-ranging professional activities, Mehlman is earning a reputation among the law school's students as a committed and innovative teacher. A prime example of innovation is his interdisciplinary law/medicine seminar, Health Care Controversies, which he conceived a couple of years ago and offered this spring for the second time, co-teaching with Dr. Thomas Riemenschneider of the medical faculty.

Health Care Controversies is open to first- and second-year medical students and to law students who have taken the basic Health Law course. Its purpose is to confront the students with difficult (even intractable) problems of health care and health policy. Students work in small interdisciplinary teams; the best kind of team, say the instructors, is a one-on-one pair.

The course revolves around six problems: active euthanasia, medical malpractice, conflicts of interest and overlapping responsibility for patient care, age-based rationing, AIDS and the physician-patient relationship, and quality assurance and the law.

The class deals with each problem in four phases. First, the students digest a set of assigned materials. As an example, the problem on active euthanasia has them reading articles from law journals and medical journals, statutory provisions on homicide, court opinions in some mercy-killing cases, and the notorious "It's Over, Debbie" piece from the *Journal of the American Medical Association*. In the second phase, the class splits into teams for discussion of the problem and the background materials; Mehlman and Riemenschneider rove about from team to team, raising issues and answering questions. The third phase is a class discussion, including presentation and critique of the various teams' positions. The final phase is the writing and review of papers by the law students. The medical students are exempt from the writing requirement because they are taking the class as a pass/fail elective.

Two of the six problems—AIDS, and malpractice—do not require papers, but instead require the teams to deal with a complex issue in a short period of time. The students are given actual medical information that demands a fairly immediate response. They have an hour to formulate their response, and then the class discusses the responses.

One might expect that the dynamics of the seminar would involve a confrontation between legal and medical points of view, and that an observer could easily identify which students come from which school. Not so. One reason is that some of the students have a dual role; Jack Conomy, for example, is a law student *and* a physician at the Cleveland Clinic. But the main reason, said Riemenschneider, is that all the students consistently try to see a problem from alternative perspectives.

Riemenschneider was enthusiastic about co-teaching the course, he said, because his own brother is a lawyer: "We grew up in the era when lawyers and doctors were enemies, and I was interested in seeing if we couldn't bring the two together." To his and Mehlman's delight, that is exactly what seems to be happening in the seminar.

—K.E.T.

A Call for a New Buffalo Scholarship

by Erik M. Jensen
Professor of Law

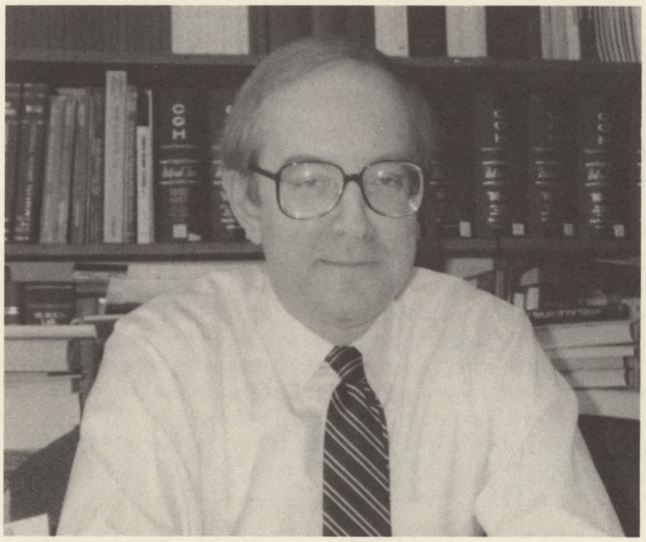
This article, first published in the Kansas Law Review, *is here reprinted with permission. The author sees no reason why one person should take all the blame for this commentary, and he therefore wishes to thank his colleague, Jonathan Entin, for his helpfully absurd comments on an earlier draft.*

Some of us who have long been interested in animal law[1] are only now starting to go public. I, for one, have intended since 1979 to write the definitive article on parrot law,[2] but I have hesitated to tell my dean of this hidden desire. Sheepish proponents of other species have also been waiting anxiously to declare themselves.[3]

It was with particular pleasure, therefore, that I recently came across the *Buffalo Law Review*, a publication that competes with the *Kansas Law Review*, in the library. Buffalo law has many attractions for academic study, and I was delighted that a specialized journal devoted to such scholarship exists. We have been celebrating anniversaries of the nation's founding since 1976: what better way for us academics to honor the various bisontennials than to focus on the buffalo?

The *Buffalo Law Review* has provided an opportunity for scholars to come to terms with the world of buffalo law, but the potential has not been fulfilled. In fact, I have difficulty in seeing what many of the articles within its pages have to do with buffalo law. I suppose an argument can be made that law is a seamless web and that any legal problem eventually affects the buffalo.[4] All of law can therefore be seen as buffalo law.[5] That theory has some appeal, I must admit, but it is not fully satisfying.

The *Kansas Law Review* can do better. Because the *Buffalo Law Review* editors have not filled the void, this journal must now take the lead[6] by putting buffalo law at the center of its activity. This journal is an appropriate forum for several reasons, at least one of which is based on theory. Two Rutgers University professors have recently suggested that the Great Plains states were never suitable for human habitation and that those states should, in effect, be returned to the buffalo.[7] Discounted by the governor of Kansas as "a real buffalo pie in the sky idea,"[8] the notion nevertheless has some merit. This



Erik Jensen, who joined the law faculty in 1983, holds degrees from M.I.T. (S.B.), Chicago (M.A. in political science), and Cornell (J.D.). He clerked for Judge Monroe G. McKay on the Tenth Circuit and practiced in New York with Sullivan & Cromwell before embarking on an academic career. If you read* In Brief*'s Faculty Notes at all faithfully (see, for example, page 18), you know that Jensen is one of Gund Hall's most prolific and (usually) serious scholars.

[1]With the species-centrism characteristic of humanity, I generally use the term "animal law" to mean the law developed by humans to control relationships with animals, rather than the internal ordering mechanisms developed by the animals themselves. However, since consistency is limiting, I may ignore my own definition. *See, e.g.*, notes 26-31 and accompanying text (discussion of buffalo family law).

[2]Luckily, parrots should be able to survive until I complete the project. *See Casablanca* (Metro-Goldwyn-Mayer 1942) (Richard Blaine reminding Ilsa Lund that "[w]e'll always have parrots").

[3]At one time a former colleague of mine wanted to put together a law school course on "Law and the Chicken," studying the sick chicken case, eggshell plaintiffs, Henn on Corporations, and so on. That he is a *former* colleague does not reflect my institution's evaluation of the project's merits. (I must admit, however, that the institution may not have been capable of an informed judgment. *See* W. Percy, Love in the Ruins 219-20 (Dell paperback ed. 1972) (ridiculing the linguistic abilities of "chicken**** Ohioans").) Before the idea had passed beyond the embryonic stage, he moved up (or down) the law school pecking order, becoming a dean. He took his ideas with him—poultry in motion?—leaving chicken law scholarship unhatched at this school.

[4]For example, the *Buffalo Law Review* recently published an American Indian law article, Smith, *Republicanism, Imperialism, and Sovereignty: A History of the Doctrine of Tribal Sovereignty*, 37 Buffalo L. Rev. 527 (1988-89). As numismatists know, Indians and buffalos are two sides of the same coin.

[5]Or parrot law. *See supra* note 2 and accompanying text.

[6]*See* Chinese Zodiac placemat, Golden Wok Restaurant, Cleveland, Ohio (meal of Oct. 16, 1989) ("Buffalo: A Leader, you are bright and cheerful. Compatible with the snake and rooster; your opposite is the goat.") (on file with the author).

[7]*See Return the Great Plains to Buffalo, Planners Say*, Cleveland Plain Dealer, Oct. 10, 1989, at 11-D, col. 1.

[8]*Id.*

journal, whose sponsoring institution depends on public support, cannot afford to ignore the effects of relinquishing the state of Kansas to the tax-exempt buffalo.

The Shortage

That other legal journal has not lived up to expectations, but I do not question the wisdom of its editorial board. Editors cannot publish articles that are not written, and they now have few buffalo law articles from which to choose. I am aware of no law school offering a course in buffalo law.[9] Although I gather from reading advance sheets that specialists in the subject exist[10]—and I have reason to think that firms of specialists have formed[11]—the academic literature is skimpy. Legal scholars have been slow to pick up on buffalos.[12] Why is there so little buffalo scholarship today?[13]

I am convinced that the primary reason is the difficulty of research. The traditional research services do not isolate buffalo law materials into a discrete category; West Publishing Company has no key number for the buffalo. The computer research services are only slightly more helpful. Put "buffalo" and its variants into the computer and you wind up with lots of cases that mention the snow-covered city on Lake Erie's shores,[14] that cite precedents with the word "buffalo" in the name,[15] or that use "buffalo" as a verb.[16] I don't want to read all that stuff,[17] and I bet others feel the same way.

Buffalo law has generated little academic excitement[18] also because of the Supreme Court's absence from buffalo jurisprudence. Areas of the law can become noteworthy simply because the Court deals with them, but nothing like that has happened with buffalo law. I suspect, but cannot prove, that the justices are not directly to blame—that it is litigants who have kept the buffalo cases out of Washington. No self-respecting buffalo proponent relishes appearing before a body that was once called the Burger Court.[19] Chief Justice Burger may be gone, but we are tasting the aftereffects of his regime. Eventually, one hopes, litigants will muster sufficient courage, forcing the Court to play catch-up and to put buffalo law on the front burner.

The Call

We cannot wait for the Supreme Court, however. Neither research difficulties nor Supreme Court hesitancy should prevent the development of a scholarly field. If authority is scant—or if it is too much of a hassle to find—we academics can proceed in the time-honored way by writing "think pieces." I suggest we do just that: let us bury the editors of this journal in material that will form a new buffalo scholarship.[20]

In urging a new direction,[21] I envision something approaching a stampede of legal academics into buffalo law. A herd mentality has been criticized in some quarters,[22] but it should be encouraged in this special context. Think buffalo![23]

On what should we focus our scholarship? Buffalo scholarship, like the buffalo him- or herself, should be wide-ranging, but we might begin at the beginning. The threshold requirement for buffalo law, it seems to me, is to define the field: What distinguishes the buffalo from

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[9]Some do offer trial practice courses, which teach a form of buffaloing. *Cf.* Henry v. Farmer City State Bank, 127 F.R.D. 154, 157 (C.D. Ill. 1989) ("counsel either are trying to buffalo the court or have not done their homework") (quoting Szabo Food Serv., Inc. v. Canteen Corp., 823 F.2d 1073, 1082 (7th Cir. 1987), *cert. dismissed*, 485 U.S. 901 (1988)).

[10]*See, e.g.*, United States v. McGraw-Edison Co., 718 F. Supp. 154, 159 (W.D.N.Y. 1989) ("Buffalo counsel shall attend in chambers.").

[11]*See, e.g.*, New York State Energy Resources & Dev. Auth. v. Nuclear Fuel Serv. Inc., 714 F. Supp. 71, 73 n.5 (W.D.N.Y. 1989) (referring to "Buffalo firm"). They must send out buffalo bills.

[12]Picking up *after* buffalos is beyond the scope of this essay.

[13]By using the term "little buffalo scholarship," I do not mean to suggest that research on miniature buffalos has priority over research on the larger variety. "Greater buffalos" do seem to have been given disproportionate consideration in the case law. *See, e.g.*, Greater Buffalo Press, Inc. v. Federal Reserve Board, 866 F.2d 38 (2d Cir.), *cert. denied*, 109 S. Ct. 3159 (1989). But reverse sizeism has no place in buffalo scholarship. *Cf. infra* note 20.

[14]*See, e.g.*, A.A. Poultry Farms, Inc. v. Rose Acre Farms, Inc., 881 F.2d 1396, 1398 (7th Cir. 1989) (Indianapolis area egg dealer had "cracked markets as far away as Buffalo"). Another chicken case! *See supra* note 3.

[15]*E.g.*, Buffalo Forge v. United Steelworkers of America, 428 U.S. 397 (1976). Everyone seems to cite this case—it has something to do with labor law—and it really screws up buffalo research. How does one forge a buffalo anyway?

[16]*See, e.g.*, Mid-State Fertilizer Co. v. Exchange Nat'l Bank, 877 F.2d 1333, 1340 (7th Cir. 1989) ("Judges should not be buffaloed by unreasoned expert opinions.").

[17]Nor do I want to do the research on parrot law, which suffers from many of the same problems. Someone is always parroting someone else. Thank goodness there's no Parrot City.

[18]Big academics have remained calm.

[19]The buffalos themselves may be nervous undergoing the grilling common in litigation. *See* Buffalo Shook Co. v. Barksdale, 206 Va. 45, 141 S.E.2d 738 (1965).

[20]I do not mean to distinguish new buffalos from old. Ageism has no place in buffalo scholarship. *Cf. supra* note 13. *But see* United States v. Young Buffalo, 591 F.2d 506 (9th Cir.), *cert. denied*, 441 U.S. 950 (1979).

[21]Governmental thinking about the buffalo has already taken new directions. In the early 1980s Secretary of the Interior James Watt tried to outflank his critics by remodelling the Interior Department's seal—the symbol, not the animal—so that the symbolic buffalo faced right rather than left. The change was sometimes justified on the basis of "artistic reasons," *see* N.Y. Times, May 7, 1981, at B12, col. 2, but a spokesman later admitted that Watt "thought the right side should have equal time." Gailey, *Watt Turns His Buffalo to the Right*, N.Y. Times, May 21, 1982, at A18, col. 4.

When Watt left office after a turnaround in his own fortunes, "right-facing buffaloes were [no longer] in vogue," and the buffalo returned to the orientation he or she had taken since 1849. N.Y. Times, Jan. 24, 1984, at A13, col. 4.

[22]*See, e.g.*, F. NIETZSCHE, BEYOND GOOD AND EVIL 212 (1886) (disparaging the situation "[t]oday, . . when only the herd animal is honored and dispenses honors in Europe"), *reprinted in* THE PORTABLE NIETZSCHE 446 (W. Kaufmann ed. 1954).

[23]Lest any reader misconstrue my approval of a herd mentality, I should emphasize that the scholarship must be unfettered. In the best traditions of academic inquiry, we must let the buffalo chips fall where they may.

other beings for legal purposes? What is the essence of buffalo?[24] Should buffalo law be subsumed by bovine law, or does it stand on its own four feet? At a minimum, we should clarify the nature of the buffalo sufficiently so that confused judges can place the animal in his or her proper habitat.[25]

Once the threshold has been passed,[26] substantive areas will demand attention. Buffalo family law holds particular promise. For example, *C.J. Tower & Sons of Buffalo, Inc. v. United States*,[27] a decision of the now-extinct Court of Customs and Patent Appeals, appears to recognize the buffalo family unit. "Sons of buffalo" has the warm ring of an earlier family-oriented era, evoking images of young buffalo bundled up for the trek to school.[28] But consider the problems needing analysis. We have developed no formalities to memorialize buffalo marriage.[29] What is the appropriate family unit? Moreover, the case law emphasis on "sons of buffalo" suggests an excessive male-orientation.[30] The emergence of buffalo-feminist (or, if you prefer, feminist-buffalo) studies[31] is necessary if buffalo daughters are not to be shortchanged.

After we open the door to feminist-buffalo law studies, critical buffalo-legal studies and buffalo law and economics will surely not be far behind.[32] One might posit the buffalo as a metaphor for subhyperbolic meta-spacial synergistic power relationships in our society. Or one might study how law has moved inexorably to an efficient allocation of buffalo.[33] The possibilities are endless, and I am sure your mind is already filling with buffalo think pieces waiting to be disgorged.

The Conclusion

The possibilities may be endless, but this commentary is not. We are just about there. Few have heard of buffalo law, but I have suggested that the *Kansas Law Review* can change that fact. It is time to begin a new deal for buffalo law, this is the place to do it, and this commentary is a humble attempt at that beginning.

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[24]*See* Mid-State Fertilizer Co. v. Exchange Nat'l Bank, 877 F.2d 1333 (7th Cir. 1989).

[25]*See, e.g.*, Mississippi v. Marsh, 710 F. Supp. 1488, 1491 (S.D. Miss. 1989) (referring to "rough fish such as catfish and buffalo"). Perhaps I am being unfair to the *Marsh* judge. Helping the buffalo to survive by creating alternative aquatic environments is a praiseworthy enterprise, and, if that was the judge's point, I commend him. A buffalo would indeed be one rough fish.

[26]Another threshold question comes to mind: can you imagine Mr. Buffalo carrying a new Mrs. Buffalo into their new home? *But see infra* note 29 and accompanying text (questionable marital status of buffalos).

[27]673 F.2d 1268 (C.C.P.A. 1982).

[28]Education obviously remains important in the buffalo community. *See* Buffalo Teachers Fed'n v. Arthur, 467 U.S. 1259 (1984); Moore v. Buffalo Bd. of Educ., 465 U.S. 1079 (1984).

[29]I am reminded of a *New Yorker* cartoon in which a distressed kitten is reassured by his elders that his status is not peculiar: all cats are bastards. *See* my memory (1989) (computer research services not yet set up for cartoons).

[30]*Cf. supra* notes 13 & 20.

[31]*Cf.* "Buffalo Gals, Won't You Come Out Tonight?" (cassette tape of singing author, who doesn't know how to find citation information for this item, is on file at the *Kansas Law Review*).

[32]Given my research habits, I find all of these possibilities appealing. Think pieces are easiest without documents to read, and none of these schools of thought, in its non-buffalo manifestation, cares about textual analysis—of judicial opinions or anything else.

[33]*I.e.*, almost none anywhere.

BLSA News

The Black Law Students Association had an active year, culminating in the fifth annual scholarship dinner on April 14. The speaker was June M. Baldwin, a graduate of the Harvard Law School and vice president of business affairs with the Carson Productions Group.

In 1989-90 BLSA put special effort into programs benefiting first-year students, starting with a picnic during the days of orientation. In November there was an exam-writing seminar. Explained BLSA President Bryan Adamson: "We all know that it's important to know substance when taking a law school exam, but approach and strategy are important too." Sandra Kerber—writing instructor, attorney, lecturer in BAR/BRI courses—conducted the seminar.

Most important, BLSA helped to launch a mentor program, pairing first-year students with practicing attorneys and judges. Most but not all of the volunteer mentors are alumni of the law school. Everett L. Glenn '77, who practices in Cleveland with Benesch, Friedlander, Coplan & Aronoff, was particularly helpful in setting up the program and recruiting mentors from the local black legal community. (Note: Additional volunteers would be welcomed! Call the Office of Admissions, 368-3600.)

For the sixth straight year BLSA held, in November, a Minority Pre-Law Conference for undergraduate and high school students. The program included a seminar on test-taking, a panel of practitioners discussing career options, a simulated law class, a mock trial demonstration, and discussions with current law students. This year's conference attracted a record number of pre-law students, and the Office of Admissions has received a number of applications from attendees. In March members of BLSA conducted a phonathon, calling admitted minority candidates and talking with them about the law school and life in Cleveland.

Remembering Sidney Jacoby

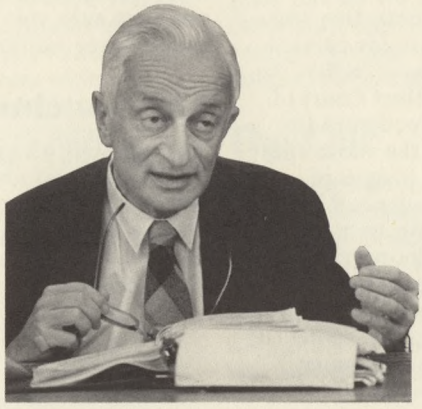
by Sidney Picker, Jr.
Professor of Law

Sidney Jacoby—the quintessential law professor. It is with regret and deep sadness that we at the law school learned of his death on New Year's Eve at the age of 81. Our heartfelt sympathy goes to his widow and the law school's good friend, Elaine Jacoby.

In many ways Sidney was the centerpiece of the faculty during the 1960s and 1970s. A whole generation of students passed through the law school in awe of the one faculty member who fit everyone's stereotypical expectations of what a professor was supposed to be. Straight out of central casting, Sidney was bent, white haired, droopy-eyed, and seemingly absent-minded. Complete, down to his marvelously thick middle-European accent, he would have been a stage director's ideal choice to play Albert Einstein.

In fact, the analogy to Einstein was more than accent-deep. A true scholar in the old-world sense of that word, Sidney was internationally known for his scholarship (including the renowned Schwartz and Jacoby casebook, *Government Litigation*, and treatise, *Litigation and the Federal Government*). He could often be found in the library searching for some case or other, a real effort in the old days before the law school moved to its present quarters. Indeed, Sidney gave a whole new meaning to the word "search" once when, while looking futilely for a book absent from its assigned slot in the overcrowded library, he found instead, tucked horizontally behind the upright tomes, another book he'd been searching for without success weeks earler. To no one and everyone he exploded, "Ziss iss no library, ziss iss an Easter Egg hunt!"

The sight and sound of him instilled instant terror in first-year students. His incredible garden path of questions (so much for "absent-minded") in Civil Procedure left them in dread of being called on, a dread mixed



with anticipation, for to survive marked your rite of passage toward lawyerhood. If, God forbid, you were unprepared, you heard an audible sigh of disappointment from the podium, followed by "Dot's a zeero," as Sidney bent over his seating chart accompanied by his pen. No one knew precisely what the consequences of those "zeeros" were, but the fear of them, coupled with humiliation at somehow having let the old man down, was sufficient to assure an extraordinary level of preparation.

As the term drew to a close, those first-years would try to psyche out their final exam in Civ Pro. I recall once being stopped in the second-floor hallway by a knot of them who were trying to convince me that the secret to acing Sidney's exam was sprinkling it liberally with case names. Just at that moment Sidney came out of his office en route to the Easter Egg hunt. I called him over and asked him in front of the students what he would do to an exam laced with case names. "Why, flunk it of course; only a student who knows nothing knows names. What a waste of time to learn them."

By the end of the term those students learned that, while Sidney had a brain which might have served as role-model to a Mac Plus, he also had a heart of marshmallow. After a timid start they soon learned the path to his office, where they were received with gentleness and patience, no matter the level of questions presented, or whether the problem posed was professional or personal.

Sidney was as generous to his colleagues as he was to his students. When I first came to CWRU in 1969 and met Sidney, I was more terrified of looking foolish in front of him than before a classful of third-years, especially when I learned that his background in international law (my area) was every bit the equal of his foreground in civil procedure! He proved, however, the the ideal mentor. His colleagues knew that his door was always open, and one could walk in to discuss any problem.

That same collegiality and support was evidenced often, with both substance and style. By way of example, when the law school first considered establishing the Canada-U.S. Law Institute in the mid-1970s, Sidney not only encouraged the idea, he backed that encouragement with his time and attention. Among other things, he agreed to be a part of a small group of faculty who would visit and investigate then-candidate Canadian law schools. For Sidney, who suffered from Parkinson's disease, traveling (often in small charter planes) to these schools was not easy, but he would not hear of not helping. En route he would feed his puckish sense of humor by gleefully turning to white-knuckled fellow flier Lew Katz and speculating on the potential consequences of any stray air-bump we encountered. (I learned to sit in the middle seat to separate the two, thereby precluding the inclusion of a new case for Katz's Criminal Law course!)

Sidney knew as much about music as law. Purportedly, one of the principal lures by which then-Dean Lou Toepfer was able to bring him to CWRU was George Szell's Cleveland Orchestra. He went so regularly and with such (audible) fervor that Szell invited him on occasion to attend rehearsals. When in Sidney's opinion the orchestra screwed up, he had been heard to mumble *sotto voce* "Dot's a zeero."

Sidney Jacoby will be remembered and missed by those he taught, worked with, and lived among. His touch and texture are a part of the cultural fabric of this law school. Sidney was a couple of "zeeros" with a one in front.

Book Review

Nan Aron's *Liberty and Justice for All*

by Robert M. Clyde, Jr. '71

"Although still accounting for only a small proportion of total legal activity, public interest law has, to a significant degree, been institutionalized in the American legal system." So concludes Nan Aron '73 in her recently published *Liberty and Justice for All: Public Interest Law in the 1980's and Beyond* (Boulder, Colorado, Westview Press, 1989). As one who has personally struggled for the last seventeen years in the provision of legal services to the poor, I am acutely aware of the importance of this achievement. Aron's book is itself evidence of the coming of age of a vitally important component of America's justice system.

Chronicling the recent emergence of the public interest law movement, Aron provides a thoroughly detailed account of the growth and establishment of the public interest law firm. Historically rooted in the legal aid societies of the late 19th century, the American Civil Liberties Union of World War I vintage, and the civil rights movement through the 1950s, public interest law firms blossomed in the 1960s and 1970s.

Aron, who is executive director of the Alliance for Justice, a national association of public interest law firms, has integrated the results of the Alliance's 1984 survey of its constituency. The survey found that more than 220 public interest law firms existed in 1984. This is an impressive number, particularly since Aron excludes, by definition, more than 280 Legal Services Corporation grantees as well as all of the public defender offices throughout the country. It is also significant that the Alliance found more than 900 attorneys employed by the 158 survey respondents.

I am somewhat in disagreement with Aron's definitional exclusion of legal services firms (or legal aid societies) and public defender offices. Aron excludes them because, she says, their primary function is service to "a large number of individual clients on a wide variety of matters." Aron found public interest law firms to be concentrated on the east and west coasts, focusing principally on impact issues affecting a relatively large population. Noting that the need for such advocacy is just as great in the Midwest and the South, where she asserts that many issues remain unaddressed, she nonetheless fails to credit the important contributions of legal services firms. Many of these firms regularly address state, local, and at times national policy issues. Public defender offices also devote substantial resources to impact issues, e.g., the death penalty, the right to effective assistance of counsel, and other issues involving basic liberty.

The book provides an extensive profile of public interest law firms. Described as cause- or client-defined, these firms are all nonprofit corporations. Client-defined firms include those working (for example) on behalf of the poor, minorities, women, children, the elderly, and the disabled. Among the more readily recognizable are the NAACP Legal Defense Fund, the Native American Rights Fund, California Rural Legal Assistance, Advocates for Basic Legal Equality, the Southern Poverty Law Center, and the Children's Defense Fund. Cause-defined firms include the Environmental Defense Fund, the Natural Resources Defense Council, the Center for Constitutional Rights, and the Center for Law and Social Policy.

Aron describes the public interest law practice as continuing to favor litigation and administrative advocacy as its primary means of effecting policy implementation and change. But she notes that a combination of factors has led to extensive use of other strategies as well. Reagan's much-publicized transformation of the federal courts shifted some of the focus away from use of the formerly activist courts of the 1960s and 1970s. Likewise, although firms had previously enjoyed a decent working relationship with agencies charged with enforcing legislation designed to protect citizens, Reagan's policy makers were not only reluctant to follow legislative mandates, but antagonistic to statutory goals, as well as to public interest law firms' administrative advocacy. The book details the firms' resulting shifts in emphasis and strategy. Building and working with coalitions, firms engaged more extensively in legislative advocacy and administrative oversight. They put more effort into public information, communicating the effects of adverse action to those individuals most directly impacted. (Ironically, the public interest movement had learned something from the tactics of their ideological antagonists throughout the Reagan era.)

Thus, Aron aptly observes, Reagan administration efforts to disengage the federal government from its role as regulator and watchdog for the public good caused a reaction which actually aided in the institutionalization of public interest law firms. These firms diversified their funding base to such an extent that overall funding actually increased slightly throughout the 1980s despite substantial reductions in federal funding.

And the firms' staff managed to hang on. Therein lies one of the most significant keys to institutionalization. It is important to retain staff who have gained experience and maturity and have built a network of allies. These public interest lawyers are accomplished litigators, respected by judges and adversaries alike. Colleagues working on similar issues seek their counsel, and so do others who are working to implement or change policy, such as legislative and administrative staff at both state and national levels. In short, the public interest law firms have become more like their counterparts, America's corporate firms. They have come of age. Bravo.

Bob Clyde spent 17 years with Northeast Ohio Legal Services, the last 12 as executive director; he was one of our graduates included in a Focus on Legal Services, January 1989. Now he is in Cincinnati, working as a legal services/management consultant. Reading and reviewing Aron's book was a particular pleasure, he says, because as a manager of a legal services firm he had as his goal the institutionalization that Nan Aron describes.

1990 Alumni Weekend

Mark the weekend of Saturday, September 15. That's the date of this year's Law Alumni Weekend.

At the time of this writing (mid-March), plans are still fluid but we know that the format will be a little different from that of past years. The Friday evening portion is expanding from a cocktail reception to a gala all-classes alumni dinner, featuring a notable speaker t.b.a., as well as the presentation of the Fletcher Reed Andrews Award and the Alumni Association's awards to a Distinguished Teacher and a Distinguished Recent Graduate.

The Office of Continuing Legal Education will offer a full day—and then some. On Friday John A. Daly, professor of communication at the University of Texas at Austin, will present a 6-credit program, Communication Principles and Strategies for Attorneys. On Saturday you can earn more CLE credits with CWRU law faculty. Teachers and topics have not yet been identified as of this writing, but the program will include ethics/substance abuse, which should be of particular interest to alumni (including non-Ohio residents) who wish to keep up their Ohio bar certification.

All graduates of the law school will receive detailed information about the weekend no later than mid-July. In the meantime, feel free to call (or write) and ask questions. The place to call is the Office of External Affairs: 216/368-3860. Either Kerstin Trawick, the director, or her assistant, Beth Hlabse, will be glad to help you. Even by the time you read this, they should have more information than was available when it was written.

The part of Alumni Weekend that remains essentially unchanged is Saturday night. As in the past, it belongs to the quinquennial reunion classes, five years through fifty. Each class is planning its own party, all at different locations around town. If your class year ends in -0 or -5, you should have received a letter by now; let us know if you haven't.

What follows is a quick summary of the reunion plans as of mid-March. Again, feel free to call 216/368-3860 for more up-to-date information.

1940

The 50-year reunion will be held just off campus, at the College Club in Cleveland Heights. Sherm Dye, Joe Babin, Bunny Goldfarb, and Bill Walker are the local arrangers, with long-distance assistance from Ray Morris, Hub Evans, and Jim Fay.

1945

Probably there will not be a 45-year reunion in 1990. An informal poll of half a dozen members of this small (fewer than 20) class revealed a consensus: Let's wait till 1995 and celebrate the 50th.

1950

The ringleaders of the 40-year party are Mel Andrews, Charlie Kitchen, Tom Murphy, Fred Kidder, Dick Renkert, Rollie Strasshofer, Parker Orr, Charlie Tricarichi, and Jack Whitney. They've chosen a campus site—the lobby and Faculty Dining Room in Tomlinson Hall (which class members who came through Adelbert College will remember as the old Case Institute student union).

1955

Rush and Nancy McKnight have offered their Moreland Hills home as the party site, and the planning committee has vowed to surpass the record-breaking reunion attendance five years ago. The committee is spearheaded by Bill Ziegler; includes Russell Baron, Jim Wanner, Mike Gavin, and Bill Wallace; and at last report was being expanded.

1960

Those who remember the 25-year reunion at the home of Myron and Kathy Stoll will be delighted to learn that the Stolls' home has been offered again for the 30th. Others helping in the planning are Neal Lavelle, Shelley Berns, Allan Zambie, Jack Wilharm, Jim Young, Tim Treadway, John Kelley, Don Guittar, and the two Goodmans, Bernie and Bob.

1965

The class's 20-year reunion at the Theatrical Restaurant was one of the great successes of the 1985 Alumni Weekend, but Bob Weltman, Gary Bryenton, Bob Balantzow, Gene Bayer, John Marksz, Neil McGinness, and Shelley Braverman assure us that the 25-year celebration will top it. The site had not been agreed on when this was written, but the Marksz home was a possibility.

1970

A good-sized committee has undertaken the planning of the 20-year reunion: Mike Drain, Stu Laven, Bill Lawrence, Kerry Dustin, John Malone, Don Modica, Susan Stauffer, Major Eagan, Tom Liber, Homer Taft, Dan Wilt, Jack Bjerke, Lee Dunn, Tom Ackland. Stu and Lorra Laven have again offered to host the group.

1975

Planning has begin with a group of Cleveland class members: Tom Corrigan, Rick Hauer, Marilyn Shea-Stonum, Louis Rorimer, Tom McKee, George McGaughey, Bruce Bogart, Ralph Tyler, Phil Star, Ken Spanagel, Ed Kramer, Steve Kaufman. At last report they were recruiting non-Cleveland additions. Mary Ann Jorgenson declined to serve on the committee but, in a more-than-fair exchange, offered to host the party at her home.

1980

Pat Donnelly, Mary Anne Garvey, Bill Gagliano, Laurie Baumgardner, Pete Sikora, Rosemary Macedonio, Ro Kiernan Mazanec, Hewitt Shaw, Colleen Flynn Goss, Martin Hoke, Eric Kennedy, Jim Goldsmith, and David Weibel have started the ball rolling, and Rosemary Macedonio has invited the class to party at her house.

1985

At this writing the still-increasing committee consists of Paul Corrado, Ann Harlan Young, Alan Yanowitz, Katy O'Donnell, Anne Heffernan Gray, Carl Gluek, Larry Zukerman, Dave Leopold, Bret Treier, Greg DeGulis, Lynne Fischer, and Ruth Kahn. The probable party site is the Flat Iron Cafe, downtown in the Flats.

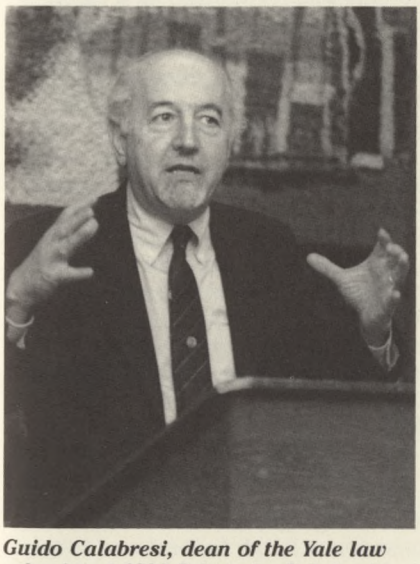
Visitors to the Law School

The 1989-90 academic year has seen a number of distinguished visitors to the law school. In the last issue we noted the 1989 Norman A. Sugarman Tax Lecturer, Professor Bernard Wolfman of Harvard University, and the appearance here of U.S. Supreme Court Justice Antonin Scalia as a Sumner Canary Lecturer. Since then, the Canary Lectureship has brought us a well-known U.S. appellate judge and the Law-Medicine Center has presented this year's Oliver C. Schroeder, Jr., Scholar in Residence.

Judge Frank H. Easterbrook of the Seventh Circuit delivered a public lecture on February 7; he also taught classes in Professional Responsibility and Constitutional Law and met informally with the Federalist Society. Easterbrook is the author (with Posner) of *Antitrust: Cases, Economic Notes and Other Materials* and (with Fischel) of *The Economic Structure of Corporate Law*. In the field of law and economics he is known as one of the most prolific and influential members of the Chicago School.

Frank H. Easterbrook, judge of the U.S. Court of Appeals, 7th Circuit, and Sumner Canary Lecturer.

Guido Calabresi, dean of the law school of Yale University, was the Schroeder Scholar in Residence. He held a faculty workshop on diversity in hiring; met informally with students; and delivered a public lecture, "Do We Own Our Bodies?" A much-published scholar, Calabresi is perhaps best known for his book *Tragic Choices*, the classic work on the just allocation of scarce health care resources.



Guido Calabresi, dean of the Yale law school and 1990 Schroeder Scholar in Residence.

Another scholar in residence during the spring semester was Professor E. Allan Farnsworth of Columbia University, whose visit was made possible by the Cleveland Foundation. The Academy's posters publicizing his noontime talk on "Contract Developments in the 1980s: The Top Ten" identified him simply as "yes, *that* Farnsworth." For anyone who needs further explanation, he is the author of casebooks on contracts (with Young) and commercial law (with Honnold), as well as the 1982 treatise, *Contracts*, and *Introduction to the Legal System of the United States*.

The Academy's spring roster of speakers also included Evan H. Turner, director of the Cleveland Museum of Art; Nathaniel Jones, judge of the Sixth Circuit; David Goldberger, professor of law at Ohio State; Brian Brennan of the Cleveland Browns; W. Lee Hoskins, president of the Federal Reserve Bank of Cleveland; Eric Fingerhut, campaign manager for Cleveland Mayor Michael White; Joel Z. Hyatt of Hyatt Legal Services; Robert L. Smith of the MetroHealth Medical Center; and Donald M. Robiner '61, Cleveland practitioner and former bar examiner, on "Taking the Bar Exam."

Two New Endowment Funds

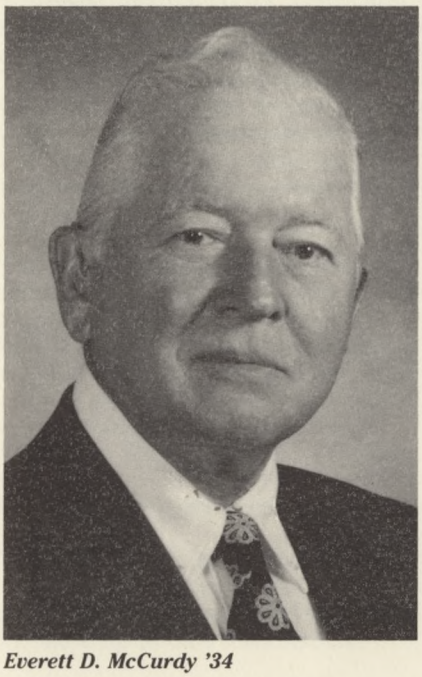
Two new endowment funds have been established in recent months for the benefit of the law school. One will provide student scholarships, and the other will create a new professorial chair.

The McCurdy Fund

The Everett D. and Eugenia S. McCurdy Professorship in Contract Law, established by action of the university's Board of Trustees on February 15, 1990, brings to *nine* the number of the law school's endowed chairs. It is the result of a generous gift by Mrs. McCurdy in memory of her late husband, a 1934 graduate of the law school.

Born in 1905, Everett McCurdy received his B.A. degree from Western Reserve University's Adelbert College in 1926 and was admitted to the bar in 1928—six years before the law school awarded him the LL.B. He began practice in Cleveland with the firm of Boyd, Brooks & Wickham. In 1950 he joined the firm of Spieth, Spring & Bell—now known as Spieth, Bell, McCurdy & Newell. For a time he was the firm's chairman.

He was an active Mason and an active Christian Science reader: he was one of the founders of Overlook House, a Christian Science sanatorium in Cleveland Heights. He also was a member of the Sons of the American Revolution, the Society of Mayflower Descendants, and the Mayfield Country Club. And for many years he taught a law class for laymen at Western Reserve University.



Everett D. McCurdy '34

Professor Emeritus Oliver Schroeder remembers McCurdy not only as a good friend and sometime class agent of the law school, but as his neighbor in the Forest Hills suburban development. At one time, restrictive covenants prevented Jews, blacks, and other "undesirables" from buying homes in Forest Hills. McCurdy, says Schroeder, was one of the leaders of the forces for integration there.

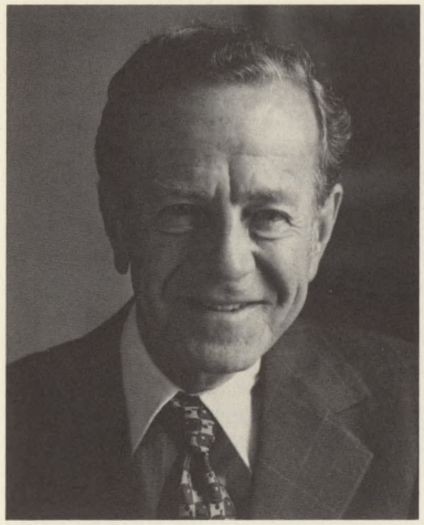
His longtime law partner, Sterling Newell, remembers him as "the kind of lawyer who embraced the causes of his clients with total conviction, and they loved him and he loved them. And he was very fond of the law school, obviously."

The Colbert Fund

A bequest from Ralph Colbert, a 1930 graduate who died in October, 1987, has provided the law school with the Ralph A. Colbert Law Scholarship Fund, formally estasblished last October by the university's Board of Trustees. To that bequest have been added gifts from family and friends, bringing the principal well over $250,000. We are especially grateful to Mrs. Colbert, whose decision to waive her rights to a charitable gift annuity trust allowed it to pass immediately to the law school as residual beneficiary.

A native Clevelander, Ralph Colbert graduated from Glenville High School as valedictorian. He won a statewide scholarship competition, entered Adelbert College at age sixteen, and received his A.B. degree summa cum laude in 1928, with election to Phi Beta Kappa. Having spent his undergraduate senior year in absentia at the law school, he received his law degree two years later, with election to the Order of the Coif. It is said that he had the highest grade point average that anyone had earned at the law school up to that time.

Colbert had a long and distinguished legal career with Squire, Sanders &



Ralph A. Colbert '30

Dempsey in Cleveland, interrupted during World War II by military service. Commissioned in the Army Air Force in 1942 as a first lieutenant, Colbert did intelligence work in Washington and London. In London he developed plans for the organization of the U.S. Strategic Bombing Survey, later established under presidential order. He was awarded the Bronze Star and discharged in 1946 as a lieutenant colonel.

Colbert was recognized as a leader in the Cleveland legal community and in the wider community as well. He headed the local chapter of the American Jewish Committee from 1947 to 1949, and from 1950 to 1955 he chaired the Community Relations Committee of the Jewish Community Federation. For thirty years he was a trustee and member of the executive committee of the Cleveland Council on World Affairs. He was also an active alumnus of the law school, serving as the 1930 class agent and as a member of the school's Development Council. In 1976 he was elected to the Society of Benchers.

The new endowments will honor the memory of Ralph Colbert and Everett McCurdy in perpetuity and will help to assure that later generations of students can follow their example of professional and personal distinction. We are deeply grateful to them, to their wives, and to their friends and colleagues who have made memorial gifts in their honor.

1990 Annual Fund—Close to the Top!

The 1990 Law Annual Fund is within striking distance of reaching the record-setting goal of $525,000. At the end of March we had cash and pledges totaling $420,750. This represents nearly a 24-percent increase over the same time last year.

The driving force behind the 1990 initiative is the $50,000 challenge provided by David L. Brennan '57, who has promised to match all new and increased gifts to the Annual Fund up to that amount. If this year's fund increases by $50,000 over last year's, the law school will qualify for the full $50,000 match.

The class agents and gift club advocates have been busy all year long contacting classmates and friends and urging them to meet Brennan's challenge. At a phonathon March 26 and 27, 14 alumni and 20 students made calls to 809 alumni. The results were terrific: 215 alumni pledged a total of $35,651. Dean Peter Gerhart said he was impressed by the generosity of the donors and no less impressed by the commitment of the volunteers who dialed, asked, recorded, redialed, and asked again—hour after hour.

Your gift is needed to help the law school meet current operating expenses. Only 76 percent of the $9.6 million operating budget is covered by tuition and fees. Nearly one quarter has to come from endowment income and grants and gifts—in other words, from you. And we are grateful for your help.

If you have made a pledge, be sure to mail your gift by June 15 so that it will *certainly* be received by the end of the fiscal year and credited toward the 1990 fund. Send it to Law Annual Fund, CWRU School of Law, 11075 East Boulevard, Cleveland, Ohio 44106. If you have a question or wish to make a telephone pledge, call Robin Meinzer at 216/368-4495.

CLE Offerings

During the months of May and June, the law school's Office of Continuing Legal Education is offering a variety of programs.

For those who prefer to earn their CLE credits without leaving home (or office), we are offering some courses by satellite network. The programs will be broadcast from Room 151 of Gund Hall, from 10 a.m. to 5 p.m. Each carries 5.5 CLE credit hours.

For those who enjoy an occasional escape from the office, we continue to offer the more conventional on-campus sessions, each for 6 CLE credit hours, from 9 a.m. to 4:30 p.m. Note the different locations on the CWRU campus.

Be sure to check the September *In Brief* for an exciting array of fall CLE programs. We will mention just one of them here. On Friday, September 14, in conjunction with the 1990 Law Alumni Weekend, Professor John A. Daly of the University of Texas at Austin will present a six-credit program, Communication Principles and Strategies for Attorneys. And we are working on some CLE sessions with our own faculty for that Saturday.

CLE Satellite Network

May 22—*The Automation of Drafting Wills and Trust Agreements.*

June 12—*Marketing of Legal Services.*

June 26—*Corporate Counsel Current Issues.* A potpourri.

June 27—*International Strategic Planning Issues for Corporate Counsel.*

CLE Programs on Campus

June 1—*Negotiation Techniques for Lawyers.* Norbert S. Jacker, Professor of Law, DePaul University. Strosacker Auditorium.

June 15—*How to Collect a Money Judgment.* Robert B. Weltman '65, of Weltman, Weinberg & Associates, Cleveland. Gund Hall.

June 21—*Litigation Management and Organization.* Mark Dombroff, of Hughes, Hubbard & Reed, Washington, D.C. Hatch Auditorium, Baker Building.

For further information, write or call Adrienne Potts, CLE coordinator. Her direct-dial number is 216/368-6363.

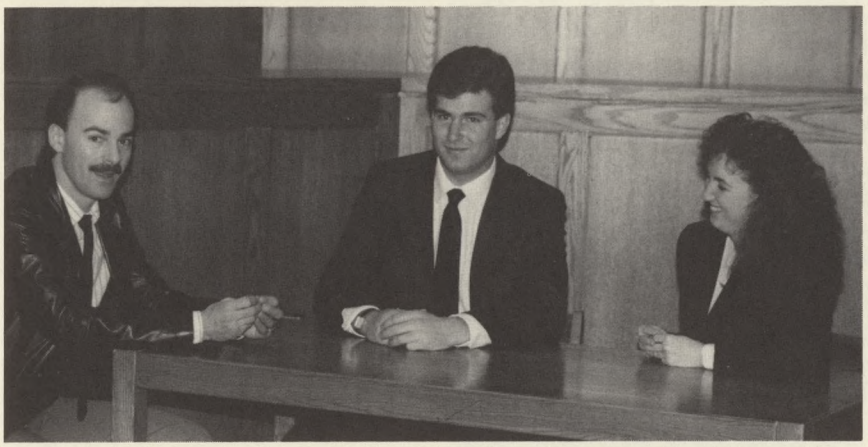
Client Counseling Competition

The annual Client Counseling Competition focused on criminal cases this year. In the final round the client presented a special problem: he had the HIV virus, which inevitably leads to AIDS.

Professor Rhonda R. Rivera of the Ohio State University College of Law, who has represented many AIDS clients and written an article on the subject ("Lawyers, Clients, and AIDS: Some Notes from the Trenches," *Ohio State Law Journal, 1989),* came from Columbus to judge the final round along with Thomas Hall, a clinical psychologist, and Professor Wilbur C. Leatherberry '68, director of the Client Counseling Competition, who stepped into a sudden void when the third panel member had to cancel.

The winning team was a pair of first-year students, Lisa Gale and Robert Faxon, and the "client" was actor Gregory DelTorto, formerly of the Cleveland Playhouse. Other finalist teams were Jacqueline Ford/Amy Freedheim and James DeRoche/Tracy Burton. Nearly 100 students (46 teams) entered the competition this year.

In a state of panic after learning that he had the HIV virus, the client had taken money from his employer and was now under indictment for embezzlement and almost certain to be convicted on five felony counts.



Lisa Gale and Robert Faxon, both '92, with their "client," Gregory DelTorto.

He was remorseful, eager to explain his situation to his former employer and repay the money. He needed to avoid prison and go back to work if he was to care for his nine-year-old son and provide for his own anticipated medical expenses.

The winning team dealt most effectively with the connection between the illness and the crime and with the question how best to approach the former employer. The client's best hope was to make restitution and seek the employer's forgiveness and support in dealing with the prosecutor. Since the client had had an excellent work record and an excellent relationship with his employer, there was a remote possibility that the employer might persuade the prosecutor to drop charges, and might even take back the former employee. But to achieve that result the client would have to reveal his illness, both to the employer and to the prosecutor, and take the risk of a strong negative reaction from either or both.

Before judging the competition in the evening, Professor Rivera had spoken in the afternoon to a group of law students and health professionals on Counseling AIDS Clients. She talked about the many difficulties lawyers have in dealing with a PWA (person with AIDS): fear—rational or not—of catching the disease, (often) their own homophobia, and—especially—the certainty that their young clients will die within a short time. Rivera reported that in one ten-week period she went to sixteen funerals.

The lawyer for a PWA must understand that the client probably can not or will not spend precious time and energy to vindicate legal rights. The legal problems are entwined with difficult practical ones. Many PWAs are estranged from their families. They must balance the need for privacy (often necessary to preserve employment) and the need to collect insurance benefits for expensive treatments. They present the lawyer with excruciating ethical and moral issues. How do you respond when your client asks your advice about suicide?

Judges of the final round: Professor Rhonda R. Rivera of Ohio State University and clinical psychologist Thomas Hall. Photo by the third judge, Professor Wilbur C. Leatherberry '68.

Mock Trial & Moot Court

Our Students Do Us Proud!

This has been a stellar year for CWRU law students in interscholastic competitions!

The mock trial program—now known officially as the Jonathan M. Ault Mock Trial Program—was especially successful. Two teams from CWRU entered the National Mock Trial Competition, and one of them finished second in the country. Telly C. Nakos '90, John R. Liber II '90, and John A. Heer II '91 repeated their 1989 win at the regional meet in Dayton, emerging undefeated after four rounds, and went on to Houston, where they outpaced Boston College, Wake Forest, and Washington University in preliminary rounds; beat Hofstra in the quarter-finals; handed the University of Texas team its first loss of the year in the semi-finals; and lost only in the final round, to Stetson University, the defending national champion. Telly Nakos was named second best advocate.

CWRU's other national team was composed of Romney Cullers, Mark E. Young, and Virginia Mitchell. Professor James W. McElhaney was the faculty adviser.

There is more to the mock trial story. Jonathan R. Kuhlman and Marc W. Morris, both '91, placed second in the competition sponsored by the American Trial Lawyers Association in Des Moines, Iowa—the best performance ever by CWRU in the ATLA tournament. Michael A. Hostettler '91 and Laurie C. Knapp '90 acted as their witnesses in the mock trial. In the Allegheny Competition in Pittsburgh, Todd W. Collis and Max G. Gaujean (with Elizabeth Grove's assistance as their witness) came in fourth. Gaujean was the second runner-up for best advocate.

The Moot Court Board also sent student teams hither and yon. Two teams participated in the National Competition's regional contest in Detroit, Michigan. Joseph T. Burke, Bernadette A. Champa, and Margaret M. Pauken won the award for the best respondent's brief. For the first time in several years we were represented in the J. Braxton Craven Competition in constitutional law in Chapel Hill, North Carolina. Rita Bryce, Jennifer Michalski, and Cash H. Mischka made it into the Sweet Sixteen, along the way defeating last year's winner. Sherri Huber, Lynda Quick, Amy Scott, and Debra Stanton represented CWRU in the Niagara Tournament at the University of Windsor in Canada. Huber and Scott were named the best overall team of two and won the prize for the best respondent's brief; Huber had the second highest oral advocacy score.

Number 2 in the nation—John Heer, John Liber, and Telly Nakos at the site of the National Mock Trial Competition in Houston, Texas.

Dean Peter Gerhart with Judge David D. Dowd, Jr., U.S. District Court, N.D. Ohio, who presided over the Ault National Moot Court Team Night on February 2.

This year the Jessup Competition was dropped by the Moot Court Board and taken over by the International Law Society. Tamara Hrynik, John Helbling, Jocelyn Johnson, and Eleanora Riesenman represented CWRU at the regional competition, hosted by the Dickinson Law School in Carlisle, Pennsylvania.

What is missing from this issue of *In Brief* is news of the law school's longstanding moot court program for (mainly) second-year students: the Dean Dunmore Competition. Its conclusion was later than usual this year, with the tournament's final found on April 21. We promise you a report in September.

Faculty Notes

Arthur D. Austin II has an article forthcoming in the *University of Miami Law Review* on "Footnote Skulduggery and Other Bad Habits," and another—"The 'Custom of Vetting' as a Substitute for Peer Review"—just published in the *Arizona Law Review*. Two review essays should be out by the time this is printed: one in the *George Mason Law Review* on G. Stigler's *Memoirs of an Unregulated Economist* and the other in the *Brigham Young University Law Review* on E. Bronner's *Battle for Justice: How the Bork Nomination Shook America*. An op-ed piece appeared in the Cleveland *Plain Dealer* September 1, 1989: "How Colleges Can Get Together to Fix Prices." Austin's current projects include articles on the demise of antitrust and the "delawing" of law schools.

Law library director **Kathleen M. Carrick**'s book, *LEXIS: A Legal Research Manual*, has been gaining her fame if not fortune. It is the basic text for the Harvard Law School's course in advanced legal research, and required reading at several other law schools, including Texas and Berkeley; it received a rave review in the *Texas Bar Journal* (December 1989); and it inspired the Cleveland-Marshall College of Law to hold a reception in Carrick's honor in February.

Carrick's latest publication is "CALR in the Law School Curriculum," in *Legal Publishing Preview*. In January she spoke in Florida at Mead Data Central's annual business meeting for academic account representatives, and in April she was in Dayton helping to plan the Graylyn Conference, an annual meeting of academic law librarians focused on computer-assisted legal research. In May she will be back in Dayton for the meeting of the Ohio Regional Association of Law Libraries; she is chair of the ORALL Education Committee and vice chair of the Ohio Regional Consortium of Law Libraries. In addition, she continues to serve on the ABA Gavel Awards Committee.

Visiting Professor **Howard M. Friedman** has two recent publications: "The Insider Trading and Securities Fraud Enforcement Act of 1988" in the *North Carolina Law Review* (March 1990), and the 1990 supplement to his *Ohio Securities Law and Practice* (Banks-Baldwin).

Paul C. Giannelli continues to add to his list of publications. "The United States Supreme Court: The 1988-1989 Term" and "Hearsay: Part I" appeared in the *Public Defender Reporter*. The year 1989 saw a partial revision of his *Ohio Evidence Manual* (Banks-Baldwin) and annual supplements of that work and two others: *Courtroom Criminal Evidence* (co-author) and *Scientific Evidence* (both Michie).

Erik M. Jensen reports two recently published articles: "The Law Review Manuscript Glut" in *Journal of Legal Education*, and "A Call for a New Buffalo Law Scholarship" in the *University of Kansas Law Review* (see page 7 for the reprint). A third, in the *Indiana Law Journal*, is imminent: "Commentary: Food for Thought and Thoughts About Food: Can Meals and Lodging Provided to Domestic Servants be for the Convenience of the Employer?" He also reports two book reviews: one of *Right V. Might: International Law and the Use of Force* by Louis Henkin and others, solicited by the *Vanderbilt Journal of Transnational Law*, and the other of *A Law Unto Itself: The Untold Story of the Law Firm Sullivan & Cromsell* by Nancy Lisagor and Frank Lipsius, in the *Columbia Business Law Review*. In addition, Jensen was the author (without attribution) of part of the 1988 Current Developments report for the Committee on Sales, Exchanges and Basis of the ABA Section of Taxation, published in *The Tax Lawyer*.

Law School Clinic director **Peter A. Joy** has presented several CLE programs: "Ethics for the Practicing Attorney" in two sessions at the law school; "Asylum Issues" at the Immigration and Naturalization Law Seminar presented by the Cleveland chapter of the Federal Bar Association; and "Substance Abuse and the Workplace" for the Cleveland Bar Association. He was the moderator for a meeting of Senator John Glenn with several groups discussing U.S. policies in Central America, and he is listed as an expert on human rights, immigration, sanctuary, and asylum policies in the Directory of Northern Ohio Expertise in International Affairs prepared by the Cleveland Council on World Affairs.

In 1990 Joy is serving as president of the Cleveland chapter of the American Civil Liberties Union and as a director of the Ohio ACLU. He has been re-elected vice president of Cleveland Public Theatre for 1990.

Gerald Korngold is chair-elect of the Real Property Section of the Association of American Law Schools.

The *Albany Law Review* has just published **Juliet P. Kostritsky**'s "Stepping out of the Morass of Duress Cases: A Suggested Policy Guide."

Throughout the year **Robert P. Lawry** has been busy on the lecture circuit. He presented a CLE program, "Conflict of Interest," to attorneys at Jones, Day, Reavis & Pogue, and presented a CLE program on "Confidentiality, Zealousness, and Professionalism" on several occasions. He played a major part last fall in the series of events that the university organized under the title *Political Resistance in the 20th Century* and in a media and ethics conference co-sponsored by the Center for Professional Ethics (of which he is co-director). In addition, he spoke to

CWRU alumni groups in Pittsburgh and in Naples, Florida; took part in a legal ethics symposium at Capital Law School; addressed the national convention of the Tau Epsilon Rho Law Society; and lectured (or presented workshops) on ethics to public school administrators, dentists, high school students, university administrators, the Phi Delta Phi Legal Fraternity, federal judges, and CWRU freshmen.

James W. McElhaney has been busy on the CLE circuit, presenting programs in Georgia, Mississippi, Minnesota, Ohio, South Carolina, Colorado, Oregon, Texas, and Hawaii, not to mention Canada: Saskatoon, Regina, Edmondton, and Calgary. The American Bar Association published *McElhaney's Trial Notebook on Tape* in December; it was sold out by February, and the ABA was planning a second, more advanced series of tapes. His regular monthly columns continued to appear in the *ABA Journal* and in *Litigation* magazine; one of these, "Jumping to Conclusions" in the *ABA Journal*, included a particularly impressive bit of work by Chris Flemming '90, a student in his Trial Tactics class. This spring McElhaney served as editorial consultant to the Oxford University Press for a new book for lawyers on writing style, and he submitted an article, "A Style Sheet for Litigation," to the inaugural issue of *The Scribes Journal of Legal Writing*.

The Cuyahoga County Department of Human Services asked **Kathryn S. Mercer** to provide core training for the county's child welfare workers. In a six-hour class presented to four separate groups, Mercer outlined the structure of the legal system and the basis for and limitations of child welfare worker authority; she also covered protective service legislation and social worker liability.

In 1990-91 **Karen Nelson Moore** will be a visiting professor at the Harvard Law School, teaching Taxation and Civil Procedure. She reports two recently published articles: "The Foreign Tax Credit for Foreign Taxes Paid in Lieu of Income Taxes: An Evaluation of the Rationale and a Reform Proposal," in the *American Journal of Tax Policy*, and "The Sham Transaction Doctrine: An Outmoded and Unnecessary Approach to Combating Tax Avoidance," in the *Florida Law review*.

Five Faculty Promotions

Five members of the law faculty will be promoted in rank, effective July 1, 1990. Associate Professors Laura B. Chisolm, Juliet P. Kostritsky, and Maxwell J. Mehlman will become full professors *with tenure*, and Kevin C. McMunigal and Richard S. Myers will advance from assistant to associate professor.

The promotion-and-tenure process at CWRU, as at any major university, is lengthy and arduous. The law candidates' credentials first were reviewed by their peers—a committee chaired by Gerald Korngold and including Leon Gabinet, Wilbur C. Leatherberry, James W. McElhaney, and Associate Dean Melvyn R. Durchslag. The committee read the candidates' published writings and works in progress, reviewed student evaluations of their teaching, and solicited comments on each candidate from legal scholars prominent in that person's particular field(s). Upon recommendation by the committee, the candidates were reviewed and ultimately approved by the faculty, the dean, the provost, the president of the university, and the Board of Trustees.

Dean Peter Gerhart commented: "In these promotions, we can see the strong future of the law school. Each person is contributing to the national dialogue or important legal issues and bringing new insights to our students. We are proud to have them with us."

Class Notes

by Beth Hlabse

1926

Ralph Vince has been inducted into the Greater Cleveland Athletic Hall of Fame in recognition of his achievements in sports. He will also be honored at John Carroll University with a fitness complex named in his honor.

1943

Austin T. Klein was honored posthumously by the Tau Epsilon Rho Society at its 69th annual convention in Naples, Florida. He received the Distinguished Service Award for his lifetime of service. Mr. Klein had been a member of the legal fraternity since 1932 and served as editor of its newspaper and as its chancellor.

1948

Jordan C. Band, a partner at Ulmer & Berne in Cleveland, has been listed in Marquis' *Who's Who in American Law*, sixth edition.

Fredrick S. Myers has been named first assistant to U.S. Attorney Joyce C. George in Cleveland.

1949

Conrad J. Morgenstern was on a panel of U.S. bankruptcy trustees at a seminar at the Commercial Law League in New York City.

1950

Lawrence E. Stewart was a lecturer at the Medical Grand Rounds, a continuing medical education program at Lutheran Medical Center in Cleveland.

1951

John H. Gherlein has been elected a trustee of University Circle, Inc., in Cleveland.

Does anyone know the whereabouts of **Theodore Burns Molden**, who entered the law school in the fall of 1948 and dropped out in January, 1950? An old friend is looking for him—Phil Whitelock at (918) 486-4397.

1954

The Dayton Bar Association presented **James J. Gilvary** with a Certificate of Appreciation. The award is given once every decade to members who have made contributions in kind by undertaking litigation on behalf of and in support of the DBA.

1955

F. Rush McKnight has been elected secretary and general counsel of the Greater Cleveland Growth Association.

1956

Bernard Levine has been named the National Labor Relation Board's first inspector general. He will be responsible for detecting and preventing fraud, waste, and mismanagement relating to the programs and operations of the NLRB.

1959

Saul Eisen has been appointed secretary of the National Association of Bankruptcy Trustees, which represents some 17,000 trustees throughout the United States.

1960

Cleveland's "Tennis Father" **James A. Young** has been invited to serve as a member of the United States Tennis Association's Junior Recreational Tennis Committee and has been appointed chair of the USTA National Junior League Committee.

1961

We received this from **Myron L. Joseph**: "I was recently elected to the board of directors and elected treasurer of the Milwaukee Estate Planning Council. I also just completed nine years on the board of directors of the Tax Section of the State Bar of Wisconsin."

1964

John M. Widder has joined Koblentz & Koblentz in Cleveland as an associate.

1965

In the Statewide Drug Summit in Columbus, Ohio, **Kenneth A. Rocco**, judge of the Cuyahoga County juvenile court, spoke at a workshop for caseworkers who deal with children neglected or abused because of parental drug use.

1966

Paul Brickner has had these book reviews published: "Fortas: The Rise and Ruin of the Supreme Court Justice" in *The Georgetown Journal of Legal Ethics*; and "The Fundamentals of Bankruptcy Law" and "The Logic and Limits of Bankruptcy Law" in *The Business Lawyer*.

1967

We received this from **Gary B. Schwartz**: "I was elected president of the Greater Miami Tax Institute for 1990. Currently I am of counsel to Shea & Gould and head of the Miami office's tax department."

1969

Terence J. Clark has been appointed chair of the Ohio State Bar Association's new statewide Media Law Committee.

1970

TRW, Inc. in Cleveland has announced that **William B. Lawrence** has been elected executive vice president of planning, technology, and government affairs.

Thomas C. Liber received Bowling Green State University's Alumni Service Award.

1971

Jack Kurant has been named partner with Walter, Haverfield, Buescher & Chockley in Cleveland.

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.

1972

Carolyn Watts Allen was recently appointed Cleveland public safety director.

Joseph J. Allotta spoke at Harbor Hills High School on "Constitutional Rights of Individuals."

Rick Carbone has been named law director of Lyndhurst, Ohio.

Jeffrey H. Friedman has been re-elected by his colleagues for his fifth term as vice mayor of University Heights, Ohio.

1973

James C. Diggs has been named vice president of law at TRW, Inc.'s automotive sector.

Mark F. Swary has been re-elected treasurer of the Association for Retarded Citizens in Cleveland.

George Wentz was one of five lawyers featured by the *Valley Business Journal* in a lengthy article about solo practice in New Hampshire and Vermont.

1974

Glenn A. Galbreath has been appointed director of Cornell Legal Aid, Cornell University's civil law clinic. He recently gave a speech to the Tompkins County Magistrates Association on the clinic as the bridge between legal education and practice. He is also the faculty advisor for the Cornell Law School's Moot Court Board.

Judge Stephanie Tubbs Jones of the Cuyahoga County Court of Common Pleas was moderator of the forum "Working Women Make it Work" at Notre Dame College in Cleveland.

John S. Pyle has been elected vice president of the Board of Trustees of the Citizens League of Greater Cleveland.

1975

We received this from **Stanley M. Dub**: "I recently left the Akron firm of Buckingham, Doolittle & Burroughs and joined Dworken & Bernstein in Painesville, a firm of twelve attorneys with a broad general practice. This will be my fifth, and hopefully final, legal position. It has provided me with some interesting experience. Perhaps my most unusual assignment was supervising a farm in the Costa Rican jungle."

The Ohio State Bar Association recently reached the 21,000 membership mark and marked the occasion by interviewing **Steve S. Kaufman**, who was that new member.

James E. Phillips was appointed to the ABA Law-Related Education Committee.

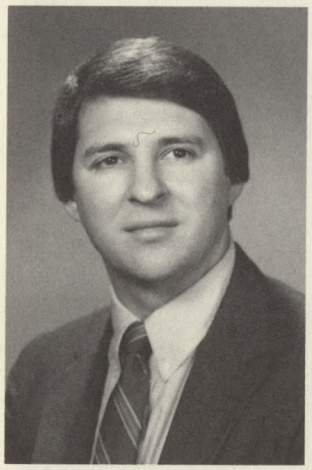
Nancy L. Walsh sent us this: "I have just taken a position as general counsel of Meridia Health System in Cleveland, Ohio."

1977

Thomas J. Lee has become a partner with Kelley, McCann & Livingstone in Cleveland, Ohio.

James W. Westfall of Marshman, Snyder & Corrigan has been re-elected president of the Lakewood Civil Service Commission, which has jurisdiction over civil servants for the City of Lakewood and the Lakewood School District.

1978



Ernst & Young has named **Charles R. Kowal** as partner in charge of personal financial planning in its Cleveland offices. He will direct tax, retirement, estate and gift, and investment planning services.

1979

Jane S. Miller has been named associate counsel for the Ameritrust Company in Cleveland.

Richard A. Naegele received an award from the American Institute of CPAs and the Ohio Society of CPAs as the outstanding instructor of CPA continuing education courses in Ohio in 1988-1989.

Thomas M. Parker has been elected to the Akron school board.

James A. Sennett has become a partner with Johnson, Hoffman, Fanos & Campbell in Cleveland.

1980

New partners in Cleveland law firms: **John M. Gherlein** and **Hewitt B. Shaw, Jr.** at Baker & Hostetler, and **James A. Goldsmith** at Ulmer & Berne.

Lewis S. Hastings, Jr. has been elected to the Parma (Ohio) Board of Education.

From **Jack L. Litmer**: "Still with the BP America law department, practicing in the environmental area. My family and I will move to Anchorage, Alaska, with BP Exploration for the next two to three years. While I was in Anchorage last December the temperature was +35°F, and in Cleveland it was 15°F. Anchorage—a tropical paradise! I hope my luck holds out!"

At the Statewide Drug Summit in Columbus, Ohio, **Peter M. Sikora**, judge of the juvenile court, Cuyahoga County, moderated an "Intervention Strategies" workshop which examined community-based programs.

Lynn B. Simon has formed the new law office of Simon, Blair & Associates, located in Beachwood, Ohio.

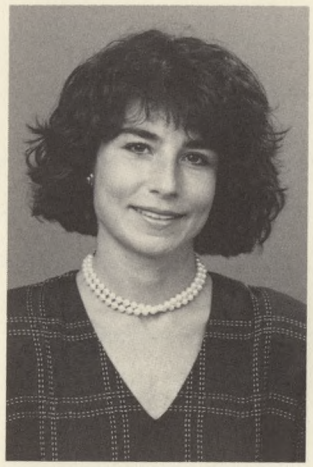
Steven M. Weiss has become a partner at the firm of Weiss, Kwait & Associates in Cleveland.

1981

New partners in Cleveland law firms: **Virginia S. Brown** and **Stephen F. Gladstone** at Thompson, Hine & Flory, and **James E. Phillips** at Arter & Hadden.

We received this from **Steven A. Rosenberg**: "In February, I assumed the position of deputy district counsel at the New York District Office of the Office of Thrift Supervision, Department of the Treasury."

1982



New partners: **Stephanie Pax Flanigan** (photo above) at the Boston firm of Goldstein & Manello; **Edward W. Moore** at Calfee, Halter & Griswold in Cleveland; **John D. Robinett** at Schottenstein, Zox & Dunn in Columbus, Ohio. Robinett was also recently elected president of the Board of Trustees of the Ohio Hunger Task Force.

We received this from **Christine Manuelian**: "I recently accepted a position as an assistant United States attorney in Baltimore, Maryland."

Craig A. Marvinney spoke before the Ohio House of Representatives' Civil and Commercial Law Committee to give the Ohio State Medical Association's views on the issue of physician-patient privilege.

1983

Gregory Hatcher was recently appointed traffic referee of the Hamilton (Ohio) Municipal Court. He still maintains a private practice involving personal injury litigation and domestic relations.

David L. Lester has been named partner at Banik & Bell in Cleveland.

Paul A. Meyer has joined the Washington, D.C., firm of Graham & James. He will be specializing in litigation, corporate, and commercial law.

1984

Kirk C. Katchen has joined Hazel, Thomas, Fiske, Weiner, Beckhorn & Hanes in Washington, D.C., as an associate in their insolvency section.

John E. Schiller has become associated with the Cleveland firm of Rosenzweig, Schulz & Gillombardo.

1985

Gregory J. DeGulis sent us this: "After 4 1/2 years in Manhattan, I've returned to Cleveland to work at Janik & Bell. My practice includes environmental work for corporations and insurance companies. I was recently published in *ABA Tort & Insurance Law Journal* and *Environmental Claims Journal*.

David W. Leopold wrote an article for the Cleveland *Plain Dealer* entitled "8,000 Wait for Refugee Approval" based on his experiences representing Soviet Jewish refugees before the U.S. Immigration and Naturalization Service in Rome, Italy. He also wrote a piece entitled "Move to Moscow Will Further Limit Soviet Jewish Refugees" in the *Cleveland Jewish News*.

Jules D. Silberberg writes: "I separated from active service with the Air Force in order to accept an appointment as a foreign service officer with the Department of State."

From **Donald L. Sugg**: "As of January, I have entered the new partnership of Koopman, Coppolino & Sugg. We are a general practice law firm, serving mid-Michigan with offices in Bridgeport and Frankenmuth."

We received this from **Frederic M. Wilf**: "In the past two years my partner and I merged with another firm and then emerged. The firm is now Elman & Wilf in Media, Pennsylvania. We practice patent, trademark, copyright and business law, and litigation, including computer and biotechnology matters. With Gerry Elman, I co-authored a chapter on trademark law as it applies to computer software for L. J. Kutten's legal treatise, "Computer Software." I also serve as the organizer for the CORPLAW conference on ABA/net, the ABA's computer network.

Every year Harry Jaffe '33 invites his fellow CWRU law alumni judges of the Court of Common Pleas and the Ohio Court of Appeals to have lunch with the dean of the law school. This was the group that assembled in January. Standing: Thomas O. Matia '50, Robert M. Lawther '53, Francis J. Talty '46, Frank J. Gorman '48, John V. Corrigan '48, Leo M. Spellacy '59, James J. Carroll '41. Seated: John J. Carney '43, Lillian J. Greene '74, Stephanie Tubbs Jones '74, Dean Peter M. Gerhart, Blanche E. Krupansky '48, Harry Jaffe '33, and William E. Aurelius '55.

From **David L. Engler**: "I recently left the firm I had been with for two years to go into business on my own with offices in Youngstown and Boardman, Ohio. I also was elected the City of Youngstown's fifth ward councilman. I'm a Democrat!"

Robert K. Jenner has been named principal of the Washington, D.C., firm of Freeman & Richardson.

1986

David L. Blackner sent us this: "I have left Squire, Sanders & Dempsey's Phoenix office and returned to Salt Lake City, where I have joined a newly formed litigation firm, Morgan & Hansen. Although there is much to miss about Arizona, it's great to be back in Utah so close to the mountains and skiing!"

Robert Bucklew tells us: "After my clerkship ended with federal district judge Alvin Krenzler '48 in August 1989, I went to the Cleveland Law Department. I work in the Office of Consumer Affairs and additionally represent the city before the Public Utilities Commission of Ohio."

News from **Ari H. Jaffe**: "I have recently become an associate with the law firm of Dinn, Hochman, King & Melamed. My work will be in the areas of litigation, real estate, corporations, and health care law. I also have two articles printed in the *Cuyahoga County Bar Association Journal* and *Health Law Journal of Ohio* on organ transplantation and coordination of health care benefits with Medicare."

From **Paul A. Williams** we got this note: "After three years as tax services manager for a financial planning firm, I have opened my own practice here in Shaker Heights concentrating on tax preparation and planning, probate and estate planning, and fee-based investment counseling."

1987

We received this from **Debra M. Hughes**: "I'm happy to report that as of January 1, 1990, I am now an assistant federal defender for the Northern District of Ohio."

1988

Helen Bell was named a Geauga County (Ohio) assistant public defender. She is the first woman to hold that position in the county's history.

Timothy D. Mara has been named associate of the litigation department of Fox, Rothschild, O'Brien & Frankel in Philadelphia, Pennsylvania.

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Law Alumni Association

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Vice President
Stuart A. Laven '70

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Dallas, Texas

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.

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Norman Finley Reublin

Class of 1942
Peter H. Behrendt
William Bradford Martin

Class of 1943
David J. Winer

Class of 1947
George J. Dynda

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

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

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Oliver Fiske Barrett, Jr.

Class of 1951
Robert L. Quigley
Donald Edward Ryan

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Allan Arthur Riippa

Class of 1956
Ray James Roche

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

Class of 1967
Paul H. Oppmann, Jr.
Donald J. Reino

Class of 1969
Gary L. Cannon
Howard M. Simms

Class of 1970
Marc C. Goodman
John F. Strong

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
Glen M. Rickles
John W. Wiley

Class of 1976
Curtis L. Bentz
A. Carl Maier

Class of 1978
Lenore M. J. Simon

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

Class of 1980
John J. Bennett
Lewette A. Fielding

Class of 1981
Peter Shane Burleigh

Class of 1982
Heather J. Broadhurst
Mark A. Ingram
Stephen A. Watson

Class of 1983
Alayne Marcy Rosenfeld

Class of 1984
Mark Andrew Holland

Class of 1987
Edward M. Aretz

Class of 1988
Gregory H. Collins
Joseph Williams

Class of 1989
James Burdett
Bruce L. McDermott
Jeffrey J. Mueller
Robert Marc Neault
Lisa R. Schwartz
Gwenna Rose Wootress

IN MEMORIAM

Henry L. Haner '27
February 21, 1990

James C. Gruener '28
January 10, 1990

Ben M. Dreyer '29
December 13, 1989

William K. Watson '30
February 27, 1990

Gordon C. Nichols '31
March 7, 1990

Harold Fallon '33
Society of Benchers
December 27, 1989

Bernard C. Moloney '33
December 4, 1989

Clyde K. Wiley '33
December 3, 1989

King A. Wilmot '33
November 3, 1989

Frank D. Emerson '40
January 24, 1990

Russell J. Folise '40
December 10, 1989

Valentine B. Deale '42
December 9, 1989

John S. Zarka '42
June 12, 1989

Harold J. Craig '48
October 29, 1989

Roger W. Nelson '50
January 14, 1990

Richard M. Harmody '60
February 4, 1990

Robert C. Bouhall '87
March 7, 1990

Laura Carelli Bouhall '88
March 7, 1990

Calendar of Events

Thursday, May 17–5 p.m.
OHIO STATE BAR ASSOCIATION
Alumni Reception–Dayton
Convention Center, Room 206
Everyone welcome! No reservation necessary.

May **20** Commencement Day
Ruggero J. Aldisert, Law School Speaker
U.S. Court of Appeals, Third Circuit

Jun **1 & 2** American Society of Law and Medicine
Health Law Teachers Conference (see page 6)

Friday, August 3–5:30 p.m.
AMERICAN BAR ASSOCIATION
Alumni Reception–Chicago
Hyatt Regency Hotel, Wrigley Room
Everyone welcome! No reservation necessary.

Aug **12** CWRU Alumni Event
Blossom Music Center

23 & 24 Orientation for Entering Students

Sep **15 & 16** Law Alumni Weekend
Class Reunions

For further information: Office of External Affairs
Case Western Reserve University
School of Law
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