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Law School Record Editors

# The Law School Record

The University of Chicago Law School Volume 32, Spring 1986

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Volume 32, Spring 1986



## ARTICLES



## DEPARTMENTS



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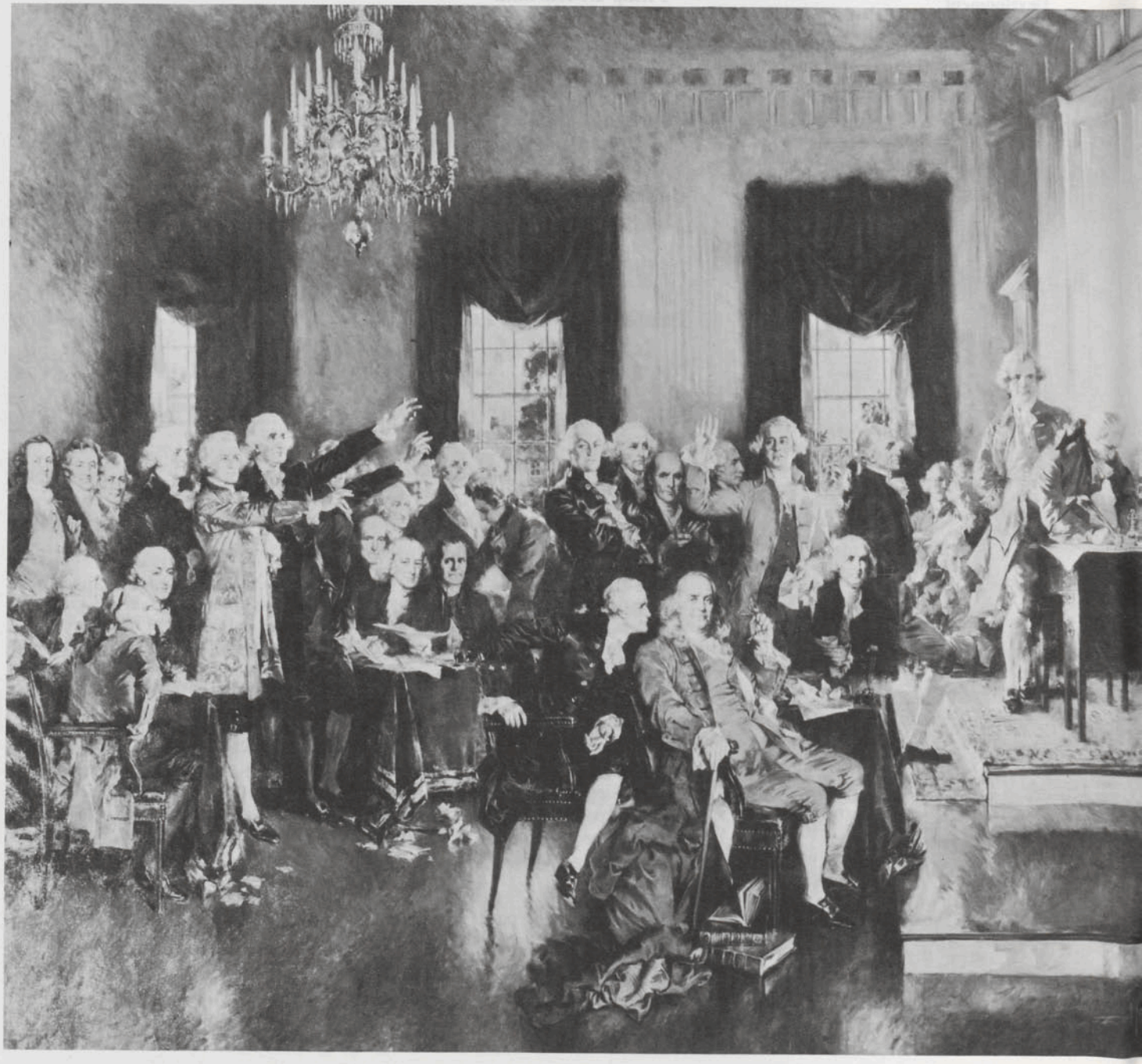
# Of Meese and



Philip B. Kurland

# (The Nine Old) Men

At the end of the 1984 Term, the Supreme Court of the United States handed down several opinions in which it purported to apply the provisions of the religion clauses of the First Amendment. These cases immediately evoked a great deal of adverse commentary from the usual sources: editorial and television communications, law reviews, the pulpits, and the floors of various legislative bodies. Such an effect, of course, is not at all an uncommon reaction to a Supreme Court decision. These critical panjandrums always know all the proper answers to everything and not least to the issues presented to the Supreme Court for resolution. What might be considered unusual this time, however, was the reason for the challenges. Essentially the complaint was that the Court had adhered to stare decisis and followed its own precedents.

The argument of the critics was that the Court should have abandoned the heresies it had perpetrated in its earlier readings of the First Amendment and substituted what the critics claimed to be the "original intention" of the Framers. The tone of criticism was somewhat reminiscent of Martin Luther's demands for a return to the Bible and away from perversions of truth committed by the Pope.

Much of the critics' feelings may be explained by disappointed expectations. In earlier terms, immediately prior to 1984, the Court had been moving away from its former concept of "separation" of church and state toward a form of concordat that it labeled "accommodation." (The movement had really begun with the accession of Mr. Chief Justice Burger and had been accelerating throughout his tenure.) In these 1984 opinions, the Court had betrayed the promise implicit in earlier judgments that soon the state would be allowed to succor the churches or at least their educational branches. Ironically, this anticipation of change rested originally not so much on Mr. Meese's call for "original intention" as on Mr. Justice Brennan's position that "when Justices interpret the Constitution they speak for their community, not for themselves. The act of interpretation must be undertaken with full consciousness that it is, in a very real sense, the community's interpretation that is sought." I am not sure that the good Justice appreciated that he was resounding the words of Lord Bryce in his *American Commonwealth,* written late in the 19th century, when he said: "By placing the Constitution above both the National and the State governments, [it] has referred the arbitrament of disputes between them to an independent body, charged with the interpretation of the Constitution, a body which is to be deemed not so much a third authority in the government as the living voice of the Constitution, the unfolder of the mind of the people whose will stands expressed in that supreme instrument."[1] The judiciary's current critics may well be right when they read our society's present values as

*Philip B. Kurland is William R. Kenan, Jr., Distinguished Service Professor in the College and Professor of Law.* *This speech was originally given at a University of Chicago Law School Loop Luncheon on Tuesday, January 21, 1986.*

[1]At 348.

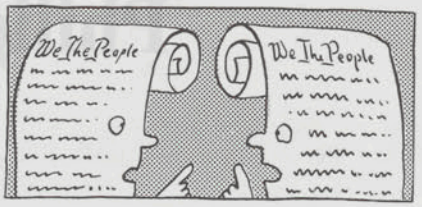
those once etched with acid by Sinclair Lewis. For surely we live again in the milieu of the George Babbitts and the Elmer Gantrys and—I may add—the Charles Foster Kanes.

The question that the critics wanted the Court to answer in the cases that triggered the controversy was not the biblical one of what man owes to God and what to Caesar, but rather what does Caesar owe to God. And, as even the arch-disciple of the Age of Reason, Thomas Jefferson, acknowledged, this nation owes its very existence to "Nature's God". Certainly then it behooves government, at the very least, to supply the force and the funds to bring the American public to engage in religious worship. Perhaps, to follow the mood of the people, we should substitute for the motto of the Great Seal of the United States, which reads

**"It was not originally intended for the Bill of Rights to be applied to the States."**

*Novus Ordo Seclorum,* the more appropriate words from the shield of Harvard University. I do not mean *Veritas,* but what Learned Hand called "the other legend": *Christo et Ecclesiae*. Never mind that all efforts to invoke the deity in the preamble and elsewhere in the Constitution met with clear and convincing rejection at the 1787 Convention and in the proposed amendments in 1789. That is a part of our history that does not interest our new historians.

I do not propose to examine the First Amendment's origins further except to say that the Meese position is certainly not devoid of substance. Particularly valid is his argument that it was not originally intended for the Bill of Rights to be applied to the States. Whether they were not to be applied to the States because the States already had their own such guarantees or because the Founders did not want the States under restraints enforceable by national courts is not so readily answered. Nor can I go into the question to what degree the principles if not the




language of the First Amendment became applicable to the States through the Fourteenth Amendment. Those looking for answers to such a question will find one in Crosskey's *Politics and the Constitution.* Not much shorter but different responses may be discovered in the views of Black and Frankfurter and Rutledge in *Adamson v. United States.* But I should warn you that Black, Frankfurter, and Rutledge are already under indictment for heresy for their readings of the religion clauses, particularly in *Everson v. United States.*

The current call for a return to the meaning intended by those who wrote the words of the Constitution is, as the publicists have recognized, not confined to the First Amendment. The phrase "original meaning" has simply replaced "strict construction" as the rallying cry for those who want a revamping of constitutional law to bring it into closer conformity with their own political philosophy. The "strict constructionist" meant strict construction only some of the time. I never heard them argue that corporations are not protected by the due process clauses because they are not really "persons." So, too, I doubt that the "original intent" school would restrict the protections of the privileges and immunities, due process, and equal protection clauses of the Fourteenth Amendment to blacks, for whose sole benefit that amendment was clearly intended by its authors.

As Learned Hand wrote over forty years ago:

> *Here history is only a feeble light, for these rubrics were meant to answer future problems unimagined and unimaginable. Nothing which by the utmost liberality can be called interpretation describes the process by which they must be applied. Indeed if law be a command for specific conduct, they are not law at all; they are cautionary warnings against the intemperance of faction and the first approaches of despotism. The answers to the questions which they raise demand the appraisal and balancing of human values which there are no scales to weigh.*[2]

Throughout American history, since the adoption of the 1787 Constitution, one or both of the political branches of government have often been in fundamental disagreement with the judicial branch over the propriety of its exercise of the power of judicial review. The frustrations of the first two branches, whose members come and go every two, four, or six years are aggravated by the life tenure awarded the Justices of the Supreme Court for the very purpose of protecting the judges from the political machinations of the elected branches. (In our 198-year constitutional history, we have had only 102 Justices.) Perhaps it should be noted, if only incidentally, that if the Founders clearly intended to assure the independence of the judges, it is not quite so certain that they meant to confer broad powers of judicial review of the kind exercised. The language of independence that was chosen—tenure "during good behavior"—would certainly be found by a strict constructionist not to mean unconditional life tenure. A historian could readily show that the phrase was derived from an English statute pursuant to which English judges remained removable by petition of both houses of Parliament, among other devices. But ever since Jefferson tried the impeachment route with Mr. Justice Samuel Chase and failed, the political branches have been reduced to fulminating against the Court while awaiting the use of the appointment process to cure the evils it perpetrates. The present Court, even including the young lady, is older than the Nine Old Men when they were attacked by Roosevelt.

The present complaint is not different from that penned by Thomas Jefferson in his autobiography in 1821 when he proposed a solution that was never to be found acceptable. He wrote:

> *It is not enough that honest men are appointed judges. All know*

[2]SPIRIT OF LIBERTY 160-61 (3d ed. 1960).

*the influence of interest on the mind of man, and how unconsciously his judgment is warped by that influence. To this bias add that of the esprit de corps, of their peculiar maxim and creed that "it is the office of a good judge to enlarge his jurisdiction," and the absence of responsibility, and how can we expect impartial decision. . . . We have seen too that, contrary to all correct example, they are in the habit of going out of the question before them, to throw an anchor ahead and grapple further hold for future advances of power. . . . I repeat that I do not charge the judges with wilful and ill-intentioned error; but honest error must be arrested where its toleration leads to public ruin. As, for the safety of society, we commit honest lunatics to Bedlam, so judges should be withdrawn from the bench, whose erroneous biases are leading us to dissolution. It may indeed injure them in fame or in fortune, but it saves the republic, which is the first and supreme law.*[3]

The behavior of the legislative and executive branches over time in trying to curb the Court may be described as volcanic. These mountains constantly rumble, but break forth in strong attacks only periodically and usually after a case or series of cases triggers the eruption. Then the Court's detractors selfrighteously wrap themselves in the Constitution and seek popular support by taking to the hustings or stating their cause through the media. The formula was stated by Professor Felix Frankfurter in a letter to President Franklin Roosevelt dated December 27, 1938, where he made some suggestions for improvement of a presidential text. Frankfurter wrote: "Be good enough to consider [the suggestions] in the light of their aim—to say everything you have said to educate the laity and (in the words of my great master Holmes) 'calculated to give the brethren pain,' but at the same time give the scavenger profession nothing to feed on. . . . I also suggest . . . that throughout you should appear as the real guardian of the Constitution adequate to the needs of the nation if only judges would be obedient to the majestic powers of the Constitution."[4]

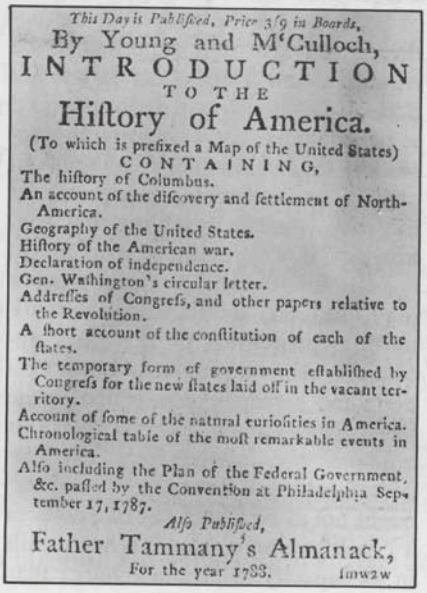
One advantage of such form of attack was that the enemy did not shoot back. The Justices themselves usually adhered to their implicit vow of silence not to speak about their functions except in the course of rendering opinions. And so the arguments on their behalf had to be made through surrogates. It is true that early in our history, during the lengthy battle waged by the Jeffersonians against the Marshall Court, two distinguished Virginian jurists, Spencer Roane and William Brockenbrough, vented their spleen at length against the opinion in *McCulloch v. Maryland* through the good offices of friendly Virginian newspapers. But they did so under pseudonyms. And when Marshall himself undertook equally lengthy replies in the press, he, too, did so pseudonymously. Until very recent years, Justices did not reply to attacks on the Court or its product. Lately, through law school speeches and articles—of which the Brennan talk in this controversy was one—and particularly in talks at the annual American Bar Association meetings, the Justices, too, have entered the fray. But they have never lacked for apologists and defenders both in the ranks of the press and in academia. Even lower court judges have entered the fray. The great Learned Hand in his book *The Bill of Rights* let loose at the Court for its free-wheeling creative writing exercises. Judges J. Skelly Wright and Robert Bork of the District of Columbia Circuit, among others, have spoken their minds on opposite sides of the subject. For myself, I think judicious judicial silence speaks louder for judicial independence and integrity than do these occasional forays into the public area.

Probably nothing Charles Evans Hughes ever wrote as a jurist has met with such general approbation as his extra-judicial pronouncement: "The Constitution is what the judges say it is."[5] Its validity depends on an equation of the Constitution with constitutional law. When Chief Justice John Marshall for the first time pronounced a law of the United States to be unconstitutional, thereby legitimizing a judicial power not specified in the Constitution, he seemed more accurate. He wrote: "It is emphatically the province and duty of the judicial department to say what the law is."[6]

Constitutional construction, like statutory construction, has always invoked both more and less than the words of the text. And the intent of the authors, assuming it can be ascertained, has never been the exclusive tool for construction. Certainly the Constitution is the foundation on which constitutional law is built; but the two are not the same. The very few thousand words that the fundamental document contains are not adequate to resolve the myriad of legal issues calling for resolution by judicial action. Constitutional law consists not only of the text but of fundamental principles inherent in that document. It includes as well its aspirations for a representative government assuring majority rule while protecting minority rights. Thus, constitutional law consists of constitutional principles and of constitutional precedents, of the pressures of the needs for practical answers to practical problems, and, to varying degrees, even of the personal predilections of the possessors of power who sit in the Marble Palace at the very apex of Capitol Hill in Washing-

[3] THE FOUNDERS' CONSTITUTION 297 (Kurland & Lerner eds. 1986).

[4] M. FREEDMAN, ROOSEVELT AND FRANKFURTER 471-72 (1967).


This Day is Published, Price 3/9 in Boards,
By Young and M'Culloch,
INTRODUCTION
TO THE
History of America.
(To which is prefixed a Map of the United States)
CONTAINING,
The history of Columbus.
An account of the discovery and settlement of North-America.
Geography of the United States.
History of the American war.
Declaration of independence.
Gen. Washington's circular letter.
Addresses of Congress, and other papers relative to the Revolution.
A short account of the constitution of each of the states.
The temporary form of government established by Congress for the new states laid off in the vacant territory.
Account of some of the natural curiosities in America.
Chronological table of the most remarkable events in America.
Also including the Plan of the Federal Government, &c. passed by the Convention at Philadelphia September 17, 1787.
Also Published,
Father Tammany's Almanack,
For the year 1788. lmw2w

[5] C. E. HUGHES, ADDRESSES AND PAPERS 139 (1908).

[6] *Marbury v. Madison*, 1 Cranch 137, 177 (1803).

ton. For they earn their keep by the exercise of judgment. Constitutional law is also politics, in the best sense of the word, when it means making policy. Alas, at times, constitutional law also means politics in a lower sense of the word, a partisanship reflecting the interests of what Madison disdained as factions. Constitutional law is a rule of decision; the Constitution is a frame of government.

*"Constitutional law is a rule of decision; the Constitution is a frame of government."*

The rules of decision have often had a deleterious effect on the frame of government. In the beginning, for example, was the great contest between national and state power that the Court helped ultimately to resolve in favor of centralism, negating the fundamental concept of federalism that was surely one of the principal objectives of the framers of the Constitution. The Court was less successful in its efforts to preserve slavery, an issue that the original Constitution refused to face, because to do so in the Convention of 1787 would have made the formation of the United States an impossibility. It took a civil war, the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, and a century of judicial effort thereafter to eliminate slavery and its incidents as lawful elements of constitutional government. But if the Court led the way for the nation to conform to the Constitution in 1954, progress toward that goal was almost wholly dependent on the efforts of the legislative and executive branches which really did not begin until the second Johnson's presidency. The words of the original document and its twenty-six formal amendments provide only some, not all of the answers to the questions that are posed for judicial resolution. Even so, they are only what Madison called "parchment barriers" unless and until given life by the three branches and endorsed by the people.

*"The basic function of the Supreme Court . . . continues to be the maintenance of the rule of law in our society."*

The basic function of the Supreme Court has been and continues to be the maintenance of the rule of law in our society; the rejection of arbitrariness of governmental action; the prevention of agglomeration of power in any governmental functionary or institution; the avoidance of the kind of "corruption of the constitution" that called forth the American Revolution. The constitutional demand for reasoned and justifiable assertions of authority by government is not to be found in any particular words of the Constitution, unless it be the due process clauses. The meaning of these clauses has been left largely to the Court to determine and the Court has left it indeterminate.

The Court's deficiency is to be seen in its persistent and recurrent failure to apply the same demands to itself that it purports to apply to other parts of government. It is a failure to recognize that its principal role is a judicial one, that is, the resolution of a particular case or controversy on the basis of the facts adduced. It is not supposed to be a legislature establishing general rules of behavior for the people of the nation. Even less is it supposed to be issuing a new Decalogue or another Sermon on the Mount. It is supposed to be a judicial body determining, according to law, whether A is to prevail over B, or vice versa, in a particular litigation. And in resolving that controversy, it is supposed to state cogent reasons for its choice. Those reasons may, indeed, be based on constitutional principles or text, on precedents, even on pragmatic considerations and personal predilections. And those reasons ought to be stated in its opinions, not only cogently, but fully and openly and honestly. The Court ought not to be a huckster of causes or a "great communicator." When it fails in its capacity to persuade rather than to command—the distinction drawn by Mr. Justice Brandeis—it fails its commitments to the maintenance of the rule of law which is its constitutional obligation. And the remedy is not for it to shift from espousing one set of political creeds in order to embrace another.

Perhaps these remarks are but the maunderings of one academic lawyer which can be of no interest to the real world of law and government. Certainly, they seem to have no appeal to most of my academic colleagues who, like the Justices of the Supreme Court and the Attorney General, have seen "the Truth" and are prepared to share it or impose it on those not equally blessed. But I think that I ask for very little when I ask that the Court confine itself to its function and say only what it means and mean only what it says. Nor do I suggest that such behavior is easy of accomplishment. I do think that it would prove a better endeavor than chasing the will-o'-the-wisp of "original intention," as the Attorney General would have us do, or than becoming the transmitter of the public will, as Mr. Justice Brennan suggests.

*"The Justices . . . make lousy historians."*

History as a guide to original constitutional meaning can, at best, afford the perimeters within which choices can be made. It can describe the controversies that gave rise to the language—often vague language of compromise—and the arguments on the different sides of the question. Seldom can we discover a specific intent; we are more likely to learn about connotations than denotations. And if the past decisions of the Court are any guide, the Justices, like the lawyers and law clerks on whom they primarily depend for their history, make lousy historians. They tend to use history the way they use precedents, selecting the bits and pieces that support their conclusions. The capacity to read into history what they want to read out of history is no better demonstrated than in the most catastrophic decision the Court ever rendered: *Dred Scott v.*

*Sanford.* Or, if you want a more recent example, with perhaps more congenial effects, look at the Court's deconstruction of constitutional history in the "one person-one vote" cases. Of course history can and ought to be an important element in reading the Constitution's meaning, but only when it is not law-office history, when it is an honest search for what the authors were debating and resolving and not merely another tool of partisan advocacy. And it is to be remembered that, at best, history is no more scientific than law.

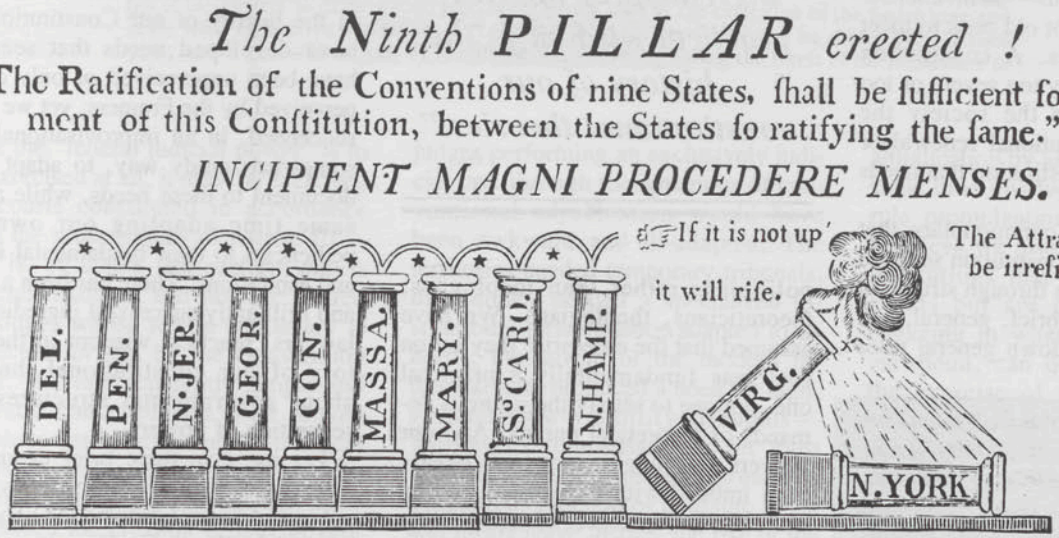
On the other hand, the Supreme Court as the reader of current constitutional commands of the American people—as distinguished from those encapsulated in the text—is an even less reliable guide to decision. If the Court believes that it is engaged in reflecting the will of the populace, it is deluded. If it is bemused by the compliments it once received for being the "conscience of the nation," it is simply on an ego trip. The glass into which it looks for such answers is in fact neither a microscope nor a telescope but only a mirror. Here, even more than with the case of history, it will find what it wants to find.

Neither the Attorney General nor Mr. Justice Brennan affords a formula for resolving the ambiguities inherent in the cases that are to be governed by the periphery of the Constitution. It must be remembered that the cases brought to the Court for adjudication are not those where a constitutional mandate is plain and clear. Those cases are readily disposed of by memorandum decisions. The ones that must be decided by the High Court are almost always those with solid arguments on both sides of the issue which the Court must choose between on the basis of legal reasoning. That it frequently has not afforded reasons for its conclusions in the past is not justification for failing to do so now or in the future. Certainly the answers are not likely to be found in any formula, such as Roosevelt's "back to the Constitution," or Nixon's "strict construction," or Meese's "original intent," or Brennan's "will of the people." Judges, too, should recognize the constitutional limits of the judicial function and perhaps take note that the Constitution, in specifying what constituted the "supreme Law of the Land," did not include judicial decisions, but only "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made . . . under the Authority of the United States. . . ." If they are to be true to the spirit of 1787, they will recognize that ideally judicial controversies ought to be resolved by articulable reasons, of which history may be one and the findings of current market surveys none.

It was almost ten years ago, as we were celebrating the bicentennial of the Declaration of Independence, that Paul Freund came to the Law School to speak under the auspices of the Department of Justice. The Attorney General at that time was our close friend and mentor, Edward H. Levi. The title of Freund's lecture was: "The Constitution: Newtonian or Darwinian?" Times have certainly changed. We are now on the eve of celebrating another bicentennial, that of the Constitution itself. But the question that Freund addressed remains the same as it was then. He said then:

> *Is the Constitution a mechanism or an organism? Does it furnish for the American community a structure or a process? You will doubtless not be surprised to hear my answer—it is both. This geniality exposes me to the kind of treatment meted out by Professor T. R. Powell to the Honorable James M. Beck in a famous review of Beck's book on the Constitution. "It makes you see," Powell said, "how marvelous the Supreme Court really is when it can be a balance wheel at the beginning of a chapter and a lighthouse at the end." But after all, if light can be viewed as both wave and particles, depending on which analysis is the more serviceable for a given problem, why cannot the Constitution be seen as both a mechanism and an organism, a structure and a process?*

But I risk here entering the debate over creationism and evolution, which is one of the issues of church and state that was at the root of the current imbroglio in the first place. There certainly can be no reason for going around that course again. ■




***From* The Independent Chronicle and Universal Advertiser, *Boston, June 26, 1788.***

# The Constitution and the Art of Practical Government

**Paul M. Bator**

I would like to look at the current culture of our constitutional law, at what might be called our constitutional style in dealing with questions of separation of powers. A major problem of constitutionalism is: how can a society have a stable and lasting constitutional structure—one that is not constantly being tinkered with by amendment—and, at the same time, be capable of institutional innovation, adaptability, creativeness? A good constitution must, in part, be architectural: it must define the major political institutions of the society and allocate powers and duties among them. But changing circumstances will lead a politically healthy society—one that is creative and ingenious—to invent new institutions and adapt old ones to meet unanticipated needs. A constitution that is architecturally too severe or too rigid either denies the society the possibility of institutional renewal or soon becomes a constitution that needs constant tinkering.

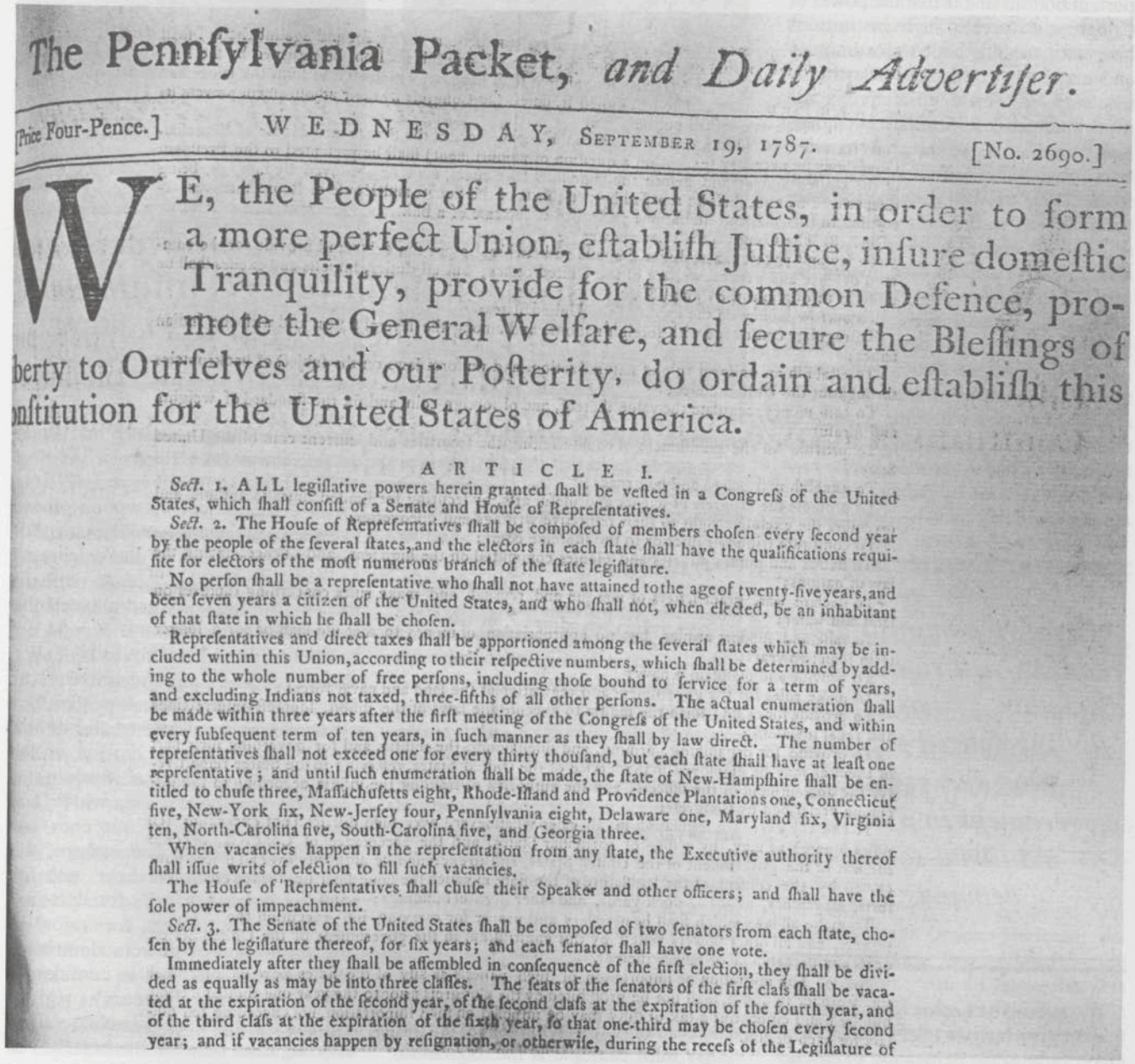
It is of course a commonplace that the United States Constitution seeks to answer this problem through structural provisions that are brief, general, and unspecific, laying down general rules and aspirations rather than detailed code-like regulations. Somewhat less generally remarked is the fact that our dominant tradition has been to interpret these provisions—the basic separation of powers and checks and balances machinery of our Constitution—in a manner that is fundamentally pragmatic, undogmatic, and adaptive. We have mostly assumed that the Framers were practical politicians rather than ideologues, theoreticians, theologians. We have assumed that the enterprise they set on foot was fundamentally a practical one, not one to satisfy the rigorous demands of theoretical purists. And our lawyers and judges, too, have mostly been imbued with the special, saving salt of common sense, of a peculiarly American spirit that refuses to insist on theoretical purity and that grasps that adaptability and flexibility and ingenuity are as much needed for the survival of the political as of the biological species. If we look at our Olympus of great jurists—Holmes and Brandeis, Hughes and Learned Hand, Marshall and Jackson and Frankfurter—there is an intensely pragmatic strain that unites them. And, of course, European jurists never tire of pointing out how illogical, even incoherent, are our constitutional theories of separation of powers and checks and balances.

*"There has been a huge and brilliantly successful ingredient of lawyers' practical wisdom in the history of our constitutional theories."*

This saving sense of the practical has, I believe, been a critical component of our ability to interpret our constitutional provisions in a manner that permits institutional innovation and experimentation. Time and again in the history of our Constitution we have developed needs that seem to have been unperceived or only dimly perceived by the Framers; yet we have succeeded, in an improvisational and somewhat untidy way, to adapt their document to these needs, while at the same time adapting our own expediencies to their fundamental ideals and aspirations. There has been a huge and brilliantly successful ingredient of lawyers' practical wisdom in the history of our constitutional theories about governmental structures and separation of powers.

Let me give three brief examples. The first lies in a branch of my own subject of federal jurisdiction. The text of Article III of the Constitution appears to contemplate that if what it

*Paul M. Bator is John P. Wilson Professor of Law at the University of Chicago Law School. He originally presented this talk as a dinner speech at the Law Club in Chicago, on February 5, 1986*



The Pennſylvania Packet, *and Daily Advertiſer.*

[Price Four-Pence.] WEDNESDAY, SEPTEMBER 19, 1787. [No. 2690.]

WE, the People of the United States, in order to form a more perfect Union, eſtabliſh Juſtice, inſure domeſtic Tranquility, provide for the common Defence, promote the General Welfare, and ſecure the Bleſſings of liberty to Ourſelves and our Poſterity, do ordain and eſtabliſh this Conſtitution for the United States of America.

ARTICLE I.

*Sect.* 1. ALL legiſlative powers herein granted ſhall be veſted in a Congreſs of the United States, which ſhall conſiſt of a Senate and Houſe of Repreſentatives.

*Sect.* 2. The Houſe of Repreſentatives ſhall be compoſed of members choſen every ſecond year by the people of the ſeveral ſtates, and the electors in each ſtate ſhall have the qualifications requiſite for electors of the moſt numerous branch of the ſtate legiſlature.

No perſon ſhall be a repreſentative who ſhall not have attained to the age of twenty-five years, and been ſeven years a citizen of the United States, and who ſhall not, when elected, be an inhabitant of that ſtate in which he ſhall be choſen.

Repreſentatives and direct taxes ſhall be apportioned among the ſeveral ſtates which may be included within this Union, according to their reſpective numbers, which ſhall be determined by adding to the whole number of free perſons, including thoſe bound to ſervice for a term of years, and excluding Indians not taxed, three-fifths of all other perſons. The actual enumeration ſhall be made within three years after the firſt meeting of the Congreſs of the United States, and within every ſubſequent term of ten years, in ſuch manner as they ſhall by law direct. The number of repreſentatives ſhall not exceed one for every thirty thouſand, but each ſtate ſhall have at leaſt one repreſentative; and until ſuch enumeration ſhall be made, the ſtate of New-Hampſhire ſhall be entitled to chuſe three, Maſſachuſetts eight, Rhode-Iſland and Providence Plantations one, Connecticut five, New-York ſix, New-Jerſey four, Pennſylvania eight, Delaware one, Maryland ſix, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the repreſentation from any ſtate, the Executive authority thereof ſhall iſſue writs of election to fill ſuch vacancies.

The Houſe of Repreſentatives ſhall chuſe their Speaker and other officers; and ſhall have the ſole power of impeachment.

*Sect.* 3. The Senate of the United States ſhall be compoſed of two ſenators from each ſtate, choſen by the legiſlature thereof, for ſix years; and each ſenator ſhall have one vote.

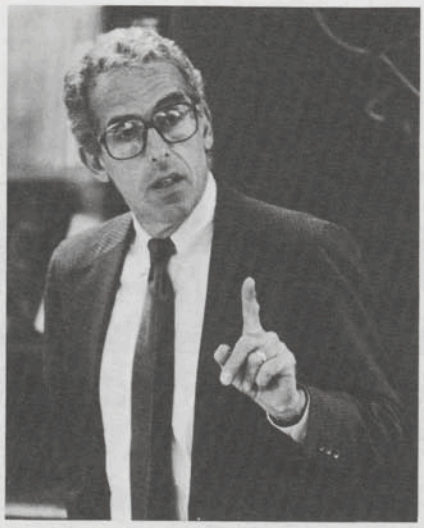
Immediately after they ſhall be aſſembled in conſequence of the firſt election, they ſhall be divided as equally as may be into three claſſes. The ſeats of the ſenators of the firſt claſs ſhall be vacated at the expiration of the ſecond year, of the ſecond claſs at the expiration of the fourth year, and of the third claſs at the expiration of the ſixth year, ſo that one-third may be choſen every ſecond year; and if vacancies happen by reſignation, or otherwiſe, during the receſs of the Legiſlature of

calls the "federal judicial power" is to be exercised at all, it must be exercised by courts constituted in accordance with the prescriptions of Article III—that is, by courts that perform *only* a judicial function, and that are staffed by judges whose tenure and salary is protected for life by the Constitution itself. But this apparently simple and majestic contemplation soon proved unable to withstand the test of practical needs. Since the beginning of our constitutional history circumstances have demanded the creation of special and/or temporary and/or specialized tribunals for which the use of life-tenured judges performing an exclusively judicial task through the apparatus of conventional adjudication would have been awkward and ill-adapted. The territories needed temporary tribunals; the military needed a specialized institutional jurisprudence adapted to its needs; the advent of the modern industrial state produced a need for high-volume, low-visibility tribunals—workmen's compensation is the most obvious example—using informal and expeditious procedures to assure quick and inexpensive justice; the rise of the modern administrative state has led to experimentation with administrative adjudication by agencies that are at the same time involved in policy-making, rule promulgation, and enforcement. How can we justify this huge array of institutions that are not Article III courts but are nevertheless busily engaging in what, from a functional viewpoint, can only be described as the exercise of the federal judicial power—that is, are busily deciding cases and controversies arising under federal law? Over some two hundred years the United States Supreme Court has struggled with this question and has made it into one of the most arcane and unruly branches of constitutional

law that you can imagine. But the important bottom line is that the power of Congress to create such institutions has, until recently, been unanimously and massively confirmed. The theory has been extremely unsatisfying and murky; much of it satisfies George Kaufman's crack about a learned book, that it fills a well-deserved gap in the literature. But the practical subtext has been triumphantly successful. A hundred experiments with special and temporary adjudicative institutions of all kinds have been undertaken, while at the same time the *central* political function of Article III has been amply safeguarded through the technique of a powerful doctrine of judicial review that assures that the legality of the power exercised by these tribunals will be controlled by the regular courts staffed by independent life-tenured judges.

***"Creative administration requires vast rule-making discretion . . . to generate the specialized expertise that successful government in a modern industrial setting demands."***

My second example comes from administrative law. In every modern society, large-scale delegation of discretionary law-making authority to the executive has been a necessary and powerful engine for the creation of the modern administrative state. Indeed, "delegation of law-making power is the dynamo of modern government."[1] In our country, too, from the beginning, the purist notion that the legislature is to make the law, while the executive is simply to carry it out, has been submerged in the greater reality that creative administration requires vast rule-making discretion to adapt, to experiment, to generate the specialized

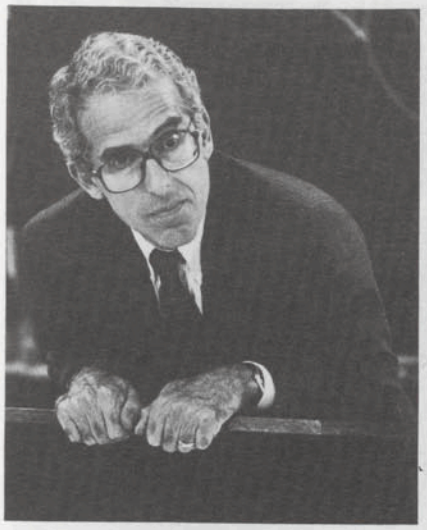


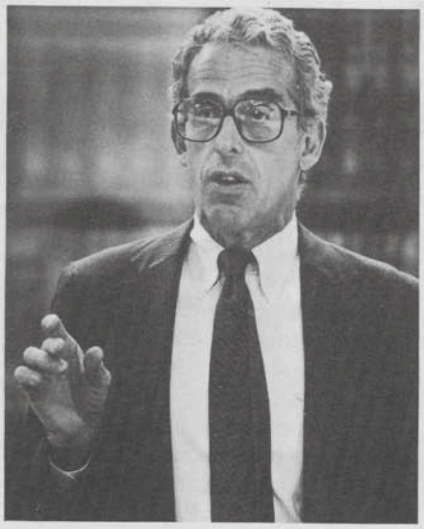
expertise that successful government in a modern industrial setting demands. Here again, our constitutional doctrines regarding the delegation of law-making power to the executive have, in any opinion, been brilliantly successful from a practical standpoint. Huge delegations of law-making power to the executive departments and agencies have been consistently upheld as valid, notwithstanding the purist injunction that only the Congress may make law. At the same time the court has, in one or two celebrated limiting cases, insisted that the Congress provide a sufficient minimum of perceivable standards and guidelines to assure legality. Again, the theory has been untidy and not very satisfying. But, as in Mark Twain's crack about Wagner, the music is better than it sounds; and the result has been a stunning showcase of creating constitutional space for innovation and adaptation.

My third example is the most notorious. The Constitution does not seem to contemplate "independent" administrative agencies. The job of faithfully executing the law is given, by Article II, to the President; the notion that Congress has the power to insist that the execution of the law be *protected* from the "political" influence of the President appears extra-constitutional. Nevertheless, in the first half of this century, the country wished to experiment with the notion of independent, non-political agencies that were to be protected from the tides of party politics and therefore free to develop an *expert* science of administration. The result was the creation of agencies that for fifty years were important centers of policy-making authority that stood outside the normal chains of political accountability and responsibility. From a theoretical viewpoint, these agencies were and are problematic; but the Supreme Court, in the celebrated *Humphrey's Executor* case, upheld their constitutionality and allowed the experiment to go forward.

Where do we stand today? We should not just congratulate ourselves for a job well done. I perceive a change in our legal culture, a shift that I fear may lead to an erosion of the saving grace of practical wisdom, of lawyers' common sense, which has been characteristic of our constitutional history. From *both* sides of the political spectrum we hear with increasing frequency calls for doctrinal and theoretical tidiness, for "rigor" in our separation-of-powers doctrines, for insistence on what is confidently stated to be the Framers' original vision of a rigid and absolute set of dividing lines between the branches of government. We are, with increased stridency, told that various creative institutional accommodations—some generations old, some still on the drawing boards—are absolutely forbidden to us, because they "invade" the powers of the President or unconstitutionally delegate the power of Congress or otherwise upset a purist vision of powers absolutely separated. Many of these assertions are thinly supported and woodenly reasoned, marked by a depressing ignorance unredeemed by the virtues of innocence. Nevertheless, unhappily, these calls are not falling on deaf ears. Supported by a curious alliance between left-liberal activist lawyers and con-

[1] JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 33 (1965).





servative constitutional purists, the calls for separation-of-powers rigidity have begun to have an effect on the courts.

Here are some straws in the wind. Three years ago, for the first time in our two hundred years of constitutional history, the Supreme Court, in the *Marathon Pipe Line* decision, invalidated an Act of Congress that gave special tribunals—in this case, special bankruptcy courts—the power, subject to judicial review in the Article III courts, initially to adjudicate a special category of cases arising under federal law. The partial invalidation of the bankruptcy courts was a historic event. It is characteristic of this field that no opinion commanded the votes of a majority of the court, and the case may be a fluke, a narrow and special invalidation that will prove to be without generative power. But I regard the case as an ominous portent. If its reasoning becomes pervasive, our ability to experiment with new sorts of specialized tribunals and our flexibility to invent new forms of administrative adjudication will be sorely crippled. The constitutional power of the federal government to participate in the "alternative forms of dispute resolution" movement will be hobbled. For two hundred years we have managed to accommodate the spirit of Article III without trapping ourselves in doctrinal prisons that destroy our freedom to innovate and prevent us from creating new adjudicative institutions. It would be a grave mistake to close ourselves into such a prison today.

Straw in the wind number two is the celebrated *Chadha* decision, which invalidated the legislative veto. The textual case against the validity of the legislative veto was, I must avow, quite powerful. Nevertheless, the case seems to me to be devoid of practical wisdom. The legislative veto is an ingenious political device designed to maintain some semblance of legislative control and supervision in an environment where huge delegations of discretionary legislative power to the executive are routine. Once these delegations are themselves upheld as valid—as they have been—it seems to me oddly pedantic—a search for an innocence long lost—to invalidate this modest countervailing checks-and-balances device. In any event, it seems to me an extremely happy accident that for some fifty years we were allowed to experiment with various forms of legislative veto, and that invalidation came after we had learned a great deal about the uses and abuses, benefits and disadvantages of this device.

Straw in the wind number three is the litigation, not yet decided, challenging the validity of the Federal Trade Commission on the ground that the Commission's "independence" from presidential control violates the Constitution. Let us assume for the moment that the theory of *Humphrey's Executor* may be flawed and that the notion of the nonpolitical expert agency as an independent source of public policy may be unreal. And it is true that we have not created new independent agencies for a long time and are spinning some of the old ones back into the regular departments. Nevertheless, it seems to me that it would have been a serious mistake if the country had been told at the *beginning* of the historical experiment with the independent agency—in 1890 or 1915—that it could not proceed with the experiment; if the Constitution had been interpreted from the beginning to prevent the country from experimenting with an ICC, an FTC, an FCC. Ex post, some of these agencies may seem flawed; but there are some (SEC, Federal Reserve) that count as quite remarkable successes. In any event, should we not have the opportunity to *try things out?* If the country wants to experiment with the notion of scientific non-political administration, should it be told that the Constitution simply prohibits the experiment from being set on foot? Progress depends to some extent on learning from failures, or, more accurately, from the mix of successes and failures that innovation tends to generate. In my view, the twentieth-century experiment with the independent agencies has been a fruitful and enriching experience, one that our Constitution should not be read as disabling us from undertaking.

***"Gramm-Rudman is an important and innovative political experiment."***

I come, finally, to the current controversy about Gramm-Rudman, the budget-balancing law adopted by the last Congress. You all know that this has been challenged in the courts. It is said that the Constitution is violated by Gramm-Rudman because under the statute the Comptroller—an official appointed but not removable by the President—plays a big role in making the findings relating to national income and expenditure that in turn will trigger the automatic spending cuts required by the Act. The statute is also under attack because specific spending cuts and levels dictated by the statute are not voted by the then-sitting Congress but are mandated by pre-existing formulas. Interesting theoretical arguments can be formulated on both sides of this constitutional debate. But the point I want to make is that the issue is not one merely of constitutional theory. Gramm-Rudman is an important and innovative political experi-

ment designed to dissolve a problem on which the political system has managed to achieve gridlock. It is sniffed at by some on the ground that it is cowardly and evasive—that it uses the escape hatch of automatic formulas to force action that the political system does not have the courage to take. This criticism seems to me overly severe, even sanctimonious. It asserts that it is wicked to sugarcoat a pill, that strategic maneuvers designed to counterbalance and mitigate our own lack of courage are ignoble and despicable. My opinion is to the contrary. In personal life as well as in political life, it is wise and important that we can sometimes borrow courage by resorting to stratagems and formulas and tricks that will make it easier to do what is right. Who does not sometimes say, "I don't have the courage and the will to do this now on my own, but I will enter into a sort of scheme or bargain that will in effect force me to do it later"? Why should countries disable themselves from likewise fortifying their courage? It seems to me that Gramm-Rudman is an ingenious tactical experiment, a creative institutional gamble to make it possible to swallow the bitter but necessary pill.

What strikes me as absolutely unacceptable and crazy is that the country should be told, at the very inception of this experiment, that it is not permissible, because the Constitution *must* be interpreted rigidly to require that every official who participates in the making of findings that will trigger automatic budget cuts must not only be appointed by the President but must also be removable at his pleasure. Why, suddenly, are we engaging in this riot of pedantic separation-of-powers purity? Why are we being nagged to interpret the Constitution in this masochistic fashion? Benjamin Franklin and Madison and Hamilton would be astonished and offended by this pettifogging. They understood quite clearly that separation of powers must be understood "as the expression of a general attitude rather than an inexorable table of organization."[2] If some exact form of separation is taken as a literal prescription, the processes of government will be strangled.

Our genius and style as a constitutional democracy have always included a deep notion that the necessities of the time constitute an important element in public policymaking. Our interpretation of the constitutional provisions defining separation of powers—provisions that, after all, do not define individual rights, but are the elements of an organic architectural design—has always been informed by this notion. During Watergate, we invented the device of the independent prosecutor to investigate the President, rejecting the unwelcome and constraining assertion that it is flatly unconstitutional to give a federal prosecutor independence from presidential control. It would have been a great historical disaster if we had been told we could not do that. My plea, in sum, is for us to maintain a measure of the American tradition that the art of government must be seasoned with a solid dose of what might be called practical ethics.

***"I do not think that we are free to read into the Constitution whatever our current desires dictate."***

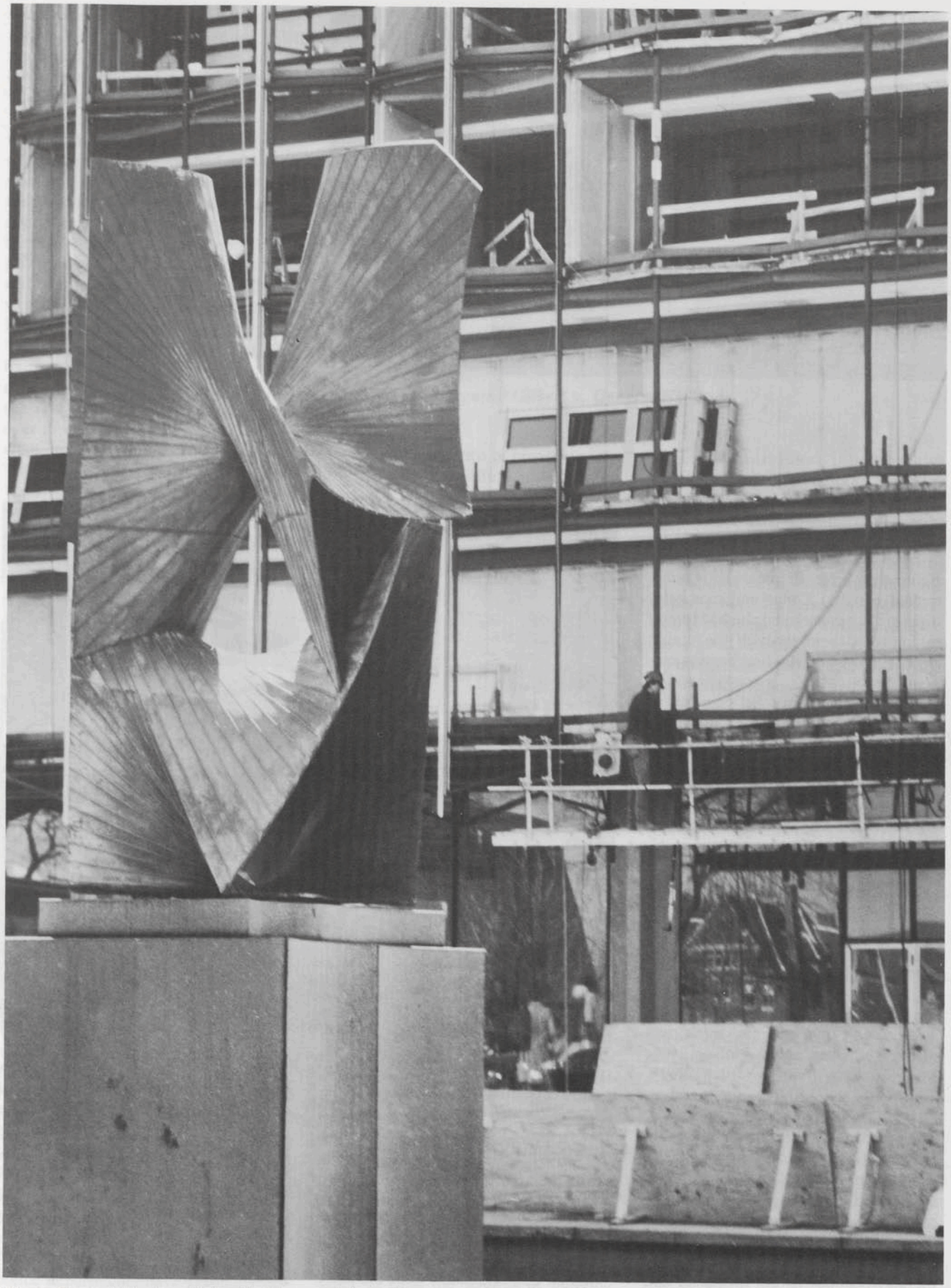
I realize, of course, that what I am advocating may take me into dangerous waters. I do not think generally that mere expediency is a touchstone for constitutional adjudication. I am not one of those who believe that the intentions of the Framers do not count; I do not think that we are free to read into the Constitution whatever our current desires dictate. How, then, can I justify the proposition that a practical sensitivity to the necessities of the time should be an important ingredient in interpreting the constitutional provisions respecting separation of powers?

The matter is, I must admit, highly problematical, and I do not have a complete answer. My submission is that a rigid reading of the separation-of-powers provisions is wrong as a matter of interpretation; that it was, precisely, the intention of the Framers that these provisions be understood as setting out very general guidelines rather than as defining a rigid table of organization. Indeed, if we look at the Constitution as a whole, we see that its fundamental genius, its most pervasive institutional tactic, is not separation of powers at all; rather, it is checks and balances—a mixing of functions rather than a rigid separation among them. The President participates in many important ways in the process of legislation; the legislature has important on-going supervisory powers over executive appointments and policies; the courts can trump the executive and legislative branches, but their jurisdiction and personnel are subject to regulation. I could go on giving a hundred examples to show how untidy and undoctrinaire our Constitution is in this respect. In such a setting, it seems to me *bad* interpretation to make a rigid separatist dogma out of the few sparse words, vesting the legislative and executive and judicial powers in the three branches, that constitute the basic allocation.

Finally, one slightly different point. Until about twenty years ago, institutional experimentation was greatly facilitated by the fact that various justiciability doctrines guaranteed judicial restraint by making it difficult to challenge the validity of the experiment. Doctrines of standing, ripeness, and political question were available to avoid or postpone constitutional adjudication. The experiment thus proceeded even though the courts had not upheld its validity. It seems to me regrettable that the weakening of these justiciability doctrines has made inevitable *immediate* judicial intervention at the *start* of every institutional innovation. Indeed, nonjusticiability doctrines themselves can be characterized as reflecting the virtues of practical and prudential wisdom that have historically imbued our public law over the years.

In any event, my principal aim has not been to debate constitutional doctrine. It is a plea about constitutional *style*. We have learned a great deal from the influx of theoretical rigor that has infused our academic study of law in the past fifteen years. But, as a society, I hope we do not swallow wholehog the love affair the professors are having with issues of theory and methodology. The American style of pragmatic common sense has been a saving solvent in the history of our constitutional development. I hope we do not abandon it. ■

[2] *Id.* at 29.



*Renovation of the Law School's glass curtain wall*

# Courage, Patience, and Driving Energy: A Portrait of Ruth Weyand

"All men are created equal. . . ." ***Ruth Weyand*** (J.D. '32) has spent a lifetime fighting to have all men and women treated equally. Labor and race relations are her causes and she has fought to improve them through the courts since 1933, when she first began practicing law.

Now the Equal Pay Act counsel for the Equal Employment Opportunity Commission, she is at the peak of a successful career. But Ms. Weyand has herself met prejudice and discrimination along her way, starting with her entry to the Law School in 1929. She described her efforts to be admitted.

"In those days there were no advance applications for admission, no pre-admission exams, none of the steps which now must be taken to get admitted. The procedure was to arrive on registration day with transcript from an accredited college in hand. I arrived with duly certified transcripts of courses taken at the University of Minnesota, William Jewell College, and Louisiana Polytechnic Institute, all then fully accredited institutions. The personnel at the Law School table [in the field house where all the schools registered] told me that the faculty did not want young women in the Law School because they wasted the professors' time, that the faculty regarded young women as coming to the Law School to get husbands and not as serious students. There was no suggestion that I lacked any qualification except male sex. Someone at the table showed an awareness of the high caliber of my college record by telling me I should not ruin my good academic record by flunking out of law school. It was suggested that I attend the School of Social Service Administration which was registering at a nearby table."

When she registered with the SSA she was told that the Law School had agreed to let Social Service students have a certain number of law school slots. So she signed up for all the courses that entering law students took: contracts, personal property, common law pleading, and torts. "No one questioned my presence in the classes. I participated actively in classroom discussions."

She took examinations and got grades with no further challenges and ended the first quarter with the highest

average in the class. There were no further objections to her status. She registered as a law student in subsequent quarters, and finally graduated with honors.

Discrimination again followed her in a search for a job, as doors that were opened to similarly qualified men were slammed in her face. With the help of the Dean of the Law School, ***Harry A. Bigelow,*** she found employment with the firm of Gardner & Carton in Chicago, but the firm kept her under wraps and did not admit to clients that a woman was working on their cases. Briefs she submitted with her name "Ruth Weyand" on them kept coming back "R. Weyand." Clients who accidentially saw her were told that she was just a messenger to take briefs over to the court. At that time women were never let into court, anyway.

In 1938 Ms. Weyand joined the National Labor Relations Board. Always an advocate for the underdog, she had a nine-for-nine winning record in oral argument before the U.S. Supreme Court in such landmark cases as *Medo Photo Supply v. NLRB,* 321 U.S. 678 (1944), in which the Court first recognized that a union designated by a majority of workers speaks for the whole bargaining unit.

Ms. Weyand worked as a volunteer with the National Association for the Advancement of Colored People from 1939 to 1965. From 1945 onwards she was a formal member of the Association's national legal committee. She helped write the brief for the plaintiffs in *Shelley v. Kraemer,* 334 U.S. 1 (1948).

In 1947 Ms. Weyand defied the conventions of her day and married a black man, Leslie Perry, a lawyer who was head of the NAACP's Washington bureau. The marriage was kept secret for three years. Within months of its becoming public, in 1950, her house was set on fire, with her small son inside it. Friends and neighbors helped put out the fire and no one was hurt. Ms. Weyand had wanted to call the fire department but was told it was a waste of time as all the firemen were white and would not bother to put out fires at any black person's home. She was shocked at the realization that black people did not have access to the services that whites took for granted. Over the past thirty years fire and police departments have gradually become integrated. Ms. Weyand sees this not only in terms of providing jobs but also in providing protection to blacks.

***Ruth Weyand arguing Gilbert v. General Electric.***

When it became known she had married a black, Ms. Weyand was also asked to leave the NLRB, although she had risen to the position of assistant general counsel in charge of U.S. Supreme Court litigation.

After leaving the NLRB Ms. Weyand entered the Washington law offices of Chicago's Clifford D. O'Brien and later joined the International Union of Electrical, Radio, and Machine Workers as associate general counsel. Here she suffered her only defeat in a case argued before the Supreme Court, which reversed a decision in a lower court and held that a company did not discriminate because of sex when it offered temporary benefits for all disabilities except those related to pregnancy (*Gilbert v. General Electric,* 429 U.S. 125 [1976]). Ms. Weyand and her colleagues took their defeat as a challenge and drafted a bill proposal to amend Title VII of the Civil Rights Act. Within two years the amendment was adopted by Congress.

Ms. Weyand's latest victory is the EEOC's action against the Teachers' Insurance and Annuity Association, in which she and other counsel argued successfully that under Title VII gender-based actuarial tables could not be used to justify lower monthly annuity payments to women.

In spite of so much personal experience of injustice in her life, Ruth Weyand has not seen herself as a crusader to right the wrongs of individuals. She says that she sublimates her anger at individual injustice and attacks the social conditions underlying the injustice. She chose the fields of labor and race relations deliberately because she believes the type of law developed in these areas is crucial to the building of an orderly and humane society. Ms. Weyand modestly disclaims personal glory in the cases she has argued and credits her success to teamwork: the creation of a network of knowledgeable lawyers and related experts for each issue, who together work out the cases to be filed, the positions to be taken, and the goals to be reached.

Today Ruth Weyand shows no signs of slowing down her active life. Every morning she is up at dawn and runs for half an hour along the Chesapeake Bay beach with her two dogs. If the weather permits, she plunges into the water and swims a mile up the bay and back again, as she has done for the past forty years. "I have never worked harder in my life," she says of her job at the EEOC. And yet, looking back on her life, Ruth Weyand says that she never worked. "It was all a great adventure—the call of the wild. Just as before World War II I gloried in renting a 45-horse power Piper Cub, climbing to 10,000 feet and doing aerobatics, and still feel physical rapture in swimming in waves much too rough for common sense, so too I am having a great and glorious adventure in the wilds of human relations—the uncivilized sector within our own borders." For fifty years she has fought social injustice. And she is ready to meet the next fifty. ■

## *Student Profile*

# Collins for Congress

Many students at the Law School know before the beginning of the third year where they will be working after graduation. By the beginning of the Winter Quarter, in January, 98 percent of students have accepted clerkships with judges or positions with law firms or other employers. One member of the Class of 1986, however, will not know his post-Law School fate until next November. ***Shawn Michael Collins*** (J.D. '86) is the Democratic candidate to represent the fourth Congressional District of Illinois.

Shawn and a number of his classmates have added some excitement to their third year by organizing an aggressive challenge to George O'Brien, a seven-term Republican incumbent, in a swing district which includes Joliet, Aurora, and southern portions of Cook County. An interesting wrinkle was thrown into the campaign when two supporters of Lyndon LaRouche were nominated for statewide offices in the March Democratic Primary.

While conceding that it is a bit unusual for a twenty-eight year old law student to be running for Congress, Collins points out that graduation from the Law School provides a convenient opportunity to campaign for public office before embarking on a more traditional career. "It's much easier to run now than to pull up stakes in five years." Those at the Law School who know Collins and his background were not at all surprised to see him seek public office at this time. Joan Ruttenberg, Shawn's instructor in the first year research and writing program, gave a typical response when she heard about the campaign: "I knew it all along. It was written all over him."

*"Graduation from the Law School provides a convenient opportunity to campaign for public office before embarking on a more traditional career."*

Shawn Collins was born in Hinsdale, Illinois and grew up in nearby Lisle where he attended the local high school. Next came four years at Notre Dame on an honor scholarship awarded by the Notre Dame Club of Chicago. While pursuing a demanding double major program in accounting and philosophy, he was actively involved for four years in a variety of student government positions at Dillon Hall, a residence hall for four hundred students. In his senior year he was Vice-President of Dillon Hall, a panelist on a campus-wide affirmative action program, and a participant in the Volunteer Income Tax Assistance program organized on college campuses by the IRS. In 1980 he received his degree from Notre Dame with highest honors.

After college Collins worked for three years as a public accountant in the Chicago office of Peat, Marwick, Mitchell and Company, While there he earned his Certified Public Accountant credentials and was promoted to increasingly more responsible positions in the audit division.

When he applied to the Law School in the fall of 1982, Shawn submitted a personal statement with his application. There is nothing unusual about that. What is unusual is the extent to which his statement, entitled "My Journey to Public Service," accurately foretold his activities in Law School and his present campaign. His application and subsequent interview so impressed the Admissions Committee that he was awarded a three-year S.K. Yee Scholarship by the Law School.

In his first year at the Law School, Collins organized a political discus-

*This is the first of an occasional series of articles profiling individual students or groups of students currently attending the Law School. Their activities and goals highlight the broad spectrum of interests represented at the Law School.*

sion group involving about fifteen members of his class. Inspired in part by "The McLaughlin Group" discussions on public television, Shawn took the typical Green Lounge political debate and gave it a structure and weekly agenda of topics. Many of his classmates now involved in the campaign, including ***Mark Turner*** (Issues Director) and ***Nancy Dorf*** (Press Secretary), came from this Saturday afternoon group.

In 1984, Shawn directed Paul Simon's Senate campaign in the congressional district he now seeks to represent. That campaign gave him exposure in the district and brought him into contact with the local state senator, George Sangmeister. When Sangmeister organized the McCormick Place cost overrun investigations in the summer of 1985, he picked Collins to be the chief investigator. Shawn managed that activity along with a more traditional summer clerkship at Mayer Brown and Platt.

The Collins campaign successfully faced its first political test in last March's primary when Shawn received 56 percent of the vote in a three-candidate field. George Sangmeister, however, was defeated by Mark Fairchild, a Lyndon LaRouche supporter, in his bid for nomination as the Democratic candidate for Lt. Governor. The absence of Sangmeister's name on the November ballot in his own district is viewed as a substantial disadvantage by those involved in the Collins campaign. At the time this is written the Illinois Democratic Party and the Party's November candidates have not yet settled on a strategy to cope with the presence of "unwelcome" candidates on the ballot.

The primary was not the only test that Collins faced in March. The Winter Quarter examination week coincided with the primary and an important meeting in Washington. Since the State would not change the primary date, Collins was permitted to reschedule one of his examinations.

Although the Collins campaign will lose some of its staff in June when classmates disperse to various parts of the country to prepare for bar examinations, Shawn has worked out a permanent arrangement with one of his strongest supporters. One week after graduation he will marry Meg Goerner, a Notre Dame graduate who works as a flight attendant for American Airlines. Many friends from the Law School will be watching the election returns in November to see whether Meg and Shawn will be based in Washington or in Chicago next year. ■

# Publications of the Faculty

A selection of recent publications by Law School faculty members is briefly described below.

***Albert W. Alschuler***

*"Close Enough for Government Work": The Exclusionary Rule after Leon,* 1984 Sup. Ct. Rev. 309.

In *United States v. Leon* the Supreme Court restricted the scope of the Fourth Amendment's exclusionary rule. Mr. Alschuler characterizes this limitation by the Court as a requirement that a judge ask "whether a police officer could have believed reasonably that a magistrate could have believed reasonably that a person could have believed reasonably that a search would uncover evidence of a crime." He suggests that a single reasonableness standard would have been enough and that the Court should have addressed as an issue of substantive law what it instead treated as an issue of remedy. Moreover, Mr. Alschuler finds fault with both majority and dissenting Justices for "bottom-line collectivist empiricism," the substitution of assessments of the typicality of injustices for attempts to express appropriate principles for dealing with these injustices, however frequently they arise.

***Mary E. Becker***

*La propriété privée et le droit des contrats,* 1985 Revue de la recherche juridique, droit prospectif 891.

Originally presented at a conference in September 1983 at the University of Aix-Marseille, this essay discusses the functions of contract law in a system of private property. For example, property law defines certain bundles of rights as property, but through contract law individuals are able to create new and useful combinations of rights as new circumstances and needs arise. In addition, contract law facilitates transfers of property rights over time and the efficient transfer of information about the quality of property.

***Walter J. Blum***

*The AILJ Enduring Principles for Tax Reform* (coauthor Willard H. Pedrick), TAXES—The Tax Magazine, February 1986, at 100-107.

Twenty-one years ago a mythical organization was founded by Walter J. Blum and Willard H. Pedrick. It was given the commanding title of the American Institute of Legal Jurimetrics (AILJ), not to be confused with the American Law Institute (ALI). Over the years the AILJ has now and then offered off-beat reflections on developments on the front of federal tax reform. Although the founders have always written only for their own enjoyment, some readers also seem to detect vague signs of attempts at humor. The founders maintain, however, that if there is anything funny going on, it resides in happenings in the tax world and not in their literary productions. Be that as it may, various aspects of tax reform in the last two decades are worthy of smiles, if not laughter. In this latest release from the land of the AILJ, the founders take a searching look at the current tax reform scene. The bottom line in this unbalanced presentation is the Rosetta stone for understanding the plot that many observers believe lies at the back of the entire tax reform saga. "When the proverbial tax sage thumbed through the latest reform proposal, his exclamation perhaps best summed it all up for the practitioners: 'I have seen the future and it's work!'"

***Richard A. Epstein***

*Takings: Private Property and the Power of Eminent Domain* (Harvard University Press, 1985).

Mr. Epstein offers a comprehensive interpretation of the eminent domain clause of the Constitution. In so doing, he identifies the four questions that any such theory must answer: When is private property taken? When is that taking justified under police power? When is that taking for public use? When has the state provided just compensation? His central thesis is that the answer to these four questions necessarily imposes substantial limitations on the power of the state. He argues first that all forms of taxation, regulation, and modification of liability rules constitute takings, for which compensation is prima facie required. He then argues that even though the benefits of these broad programs properly count as compensation for the losses that they inflict, many forms of government action necessarily impose net losses on some individuals or groups of individuals. These are properly understood as undercompensated takings, which the Constitution prohibits. He concludes that while the eminent domain in no way limits the power of government to maintain order, and to provide public goods and prevent overexploitation of common pools, it does contain powerful prohibitions against the redistributive programs characteristic of the New Deal (many of which cannot be undone because of the extensive reliance interests that they have spawned).

***R. H. Helmholz***

*Select Cases on Defamation to 1600* (vol. 101, Seldon Society, 1985).

This is a collection of cases, with a lengthy introduction, relating to the English law of defamation before 1600. Mr. Helmholz has selected the cases from among the manuscript records of the ecclesiastical courts, local and manorial courts, and the royal courts of King's Bench and Common Pleas. His object is to show the variety of remedies available to litigants, and so to give a more accurate picture of the history of libel and slander than that provided by looking exclusively at the common law courts. The introduction interprets the evidence found in the records. It attempts to show the general congruence of remedy in local and royal courts, to prove the influence of canon law in shaping secu-

lar remedy, and to assess the reasons for the jurisdictional boundaries between courts. The overall purpose of the introduction is to illustrate something of the mechanics by which legal change occurred and to suggest reasons for the emergence of rules of law that legal commentators have sometimes regarded as incomprehensive or silly.

***John H. Langbein***

*The German Advantage in Civil Procedure,* 52 U. Chi. L. Rev. 823 (1985).

Mr. Langbein shows how a Continental civil procedural system can function without those attributes of American procedure that, Langbein claims, "disgrace our civil justice"—excessive levels of discovery, litigation-biased experts, and coached witnesses. Langbein argues that the growth of American managerial judging is causing our procedure to drift toward the Continental, but without adequate safeguards of the Continental sort. In that sense, he maintains, we are taking for ourselves the worst of both worlds.

***Michael W. McConnell***

*Accommodation of Religion,* 1985 Sup. Ct. Rev. 1.

Current doctrine under the establishment clause, especially the three-part test of *Lemon v. Kurtzman,* appears to leave little room for government actions designed to facilitate the free exercise of religion, even though such actions have frequently been upheld, and even required, by the Supreme Court under the religion clauses of the First Amendment. Mr. McConnell explores the theoretical and doctrinal basis for accommodating religion and proposes an approach for distinguishing between permissible accommodations of religion and unwarranted benefits. Using this approach, Mr. McConnell concludes that moments of silence in the public schools and laws preventing employers from discharging employees who refuse to work on their Sabbath, both of which were held to be unconstitutional during the Supreme Court's 1984 term, should have been sustained.

***Geoffrey Miller***

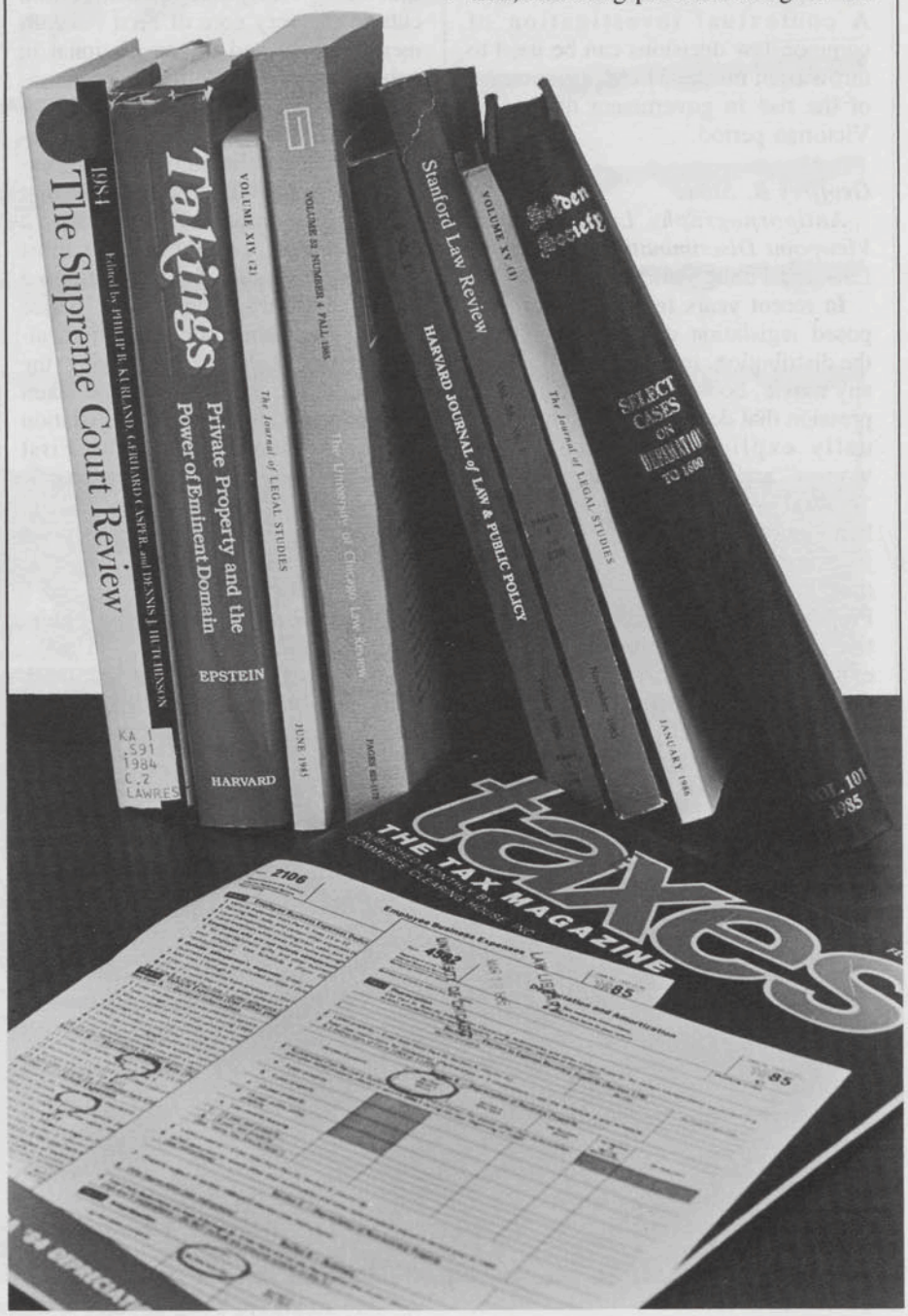
*An Economic Analysis of Rule 68,* 15 J. Legal Studies 93 (1986).

Mr. Miller discusses the controversial "offer of judgment" provision of the federal rules of civil procedure. This rule is said to promote settlements by imposing a sanction on plaintiffs who reject settlement offers that turn out to be reasonable. Mr. Miller demonstrates that Rule 68 is not effective at promoting settlements. Instead, its primary effect is to increase the welfare of defendants and reduce that of plaintiffs. The article has a direct bearing on recent proposals to amend Rule 68 in order to increase the number of cases settled in federal court.

***A. W. B. Simpson***

*Quackery and Contract Law: The Case of the Carbolic Smoke Ball,* 14 J. Legal Studies 345 (1985).

This article explores the historical background and significance of the case of *Carlill v. Carbolic Smoke Ball Co.,* decided in 1893 by the English Court of Appeal. Long regarded as a leading case in the history of both the conception of a unilateral contract and the theory of contractual intention, this case has not previously been investigated as a historical event. Much material survives that is used to enhance an understanding of the litigation, including patent drawings of the



ball itself, family traditions regarding the reasons for the litigation, records of the two Carbolic Smoke Ball Companies, much fuller accounts of the case than appear in the law reports, and even pictures of Mrs. Carlill herself, who died, ironically of influenza, in 1942. More generally, an attempt is made to relate the case to the history of quack medicine and its conflicts with the legitimate medical profession and with the law. It is suggested that common law, developed through court decisions, was not sufficiently adaptable to exercise adequate control over the quacks. The consequence was eventual legislative regulation of the trade. A contextual investigation of common-law decisions can be used to throw light on the whole phenomenon of the rise in government during the Victorian period.

***Geoffrey R. Stone***

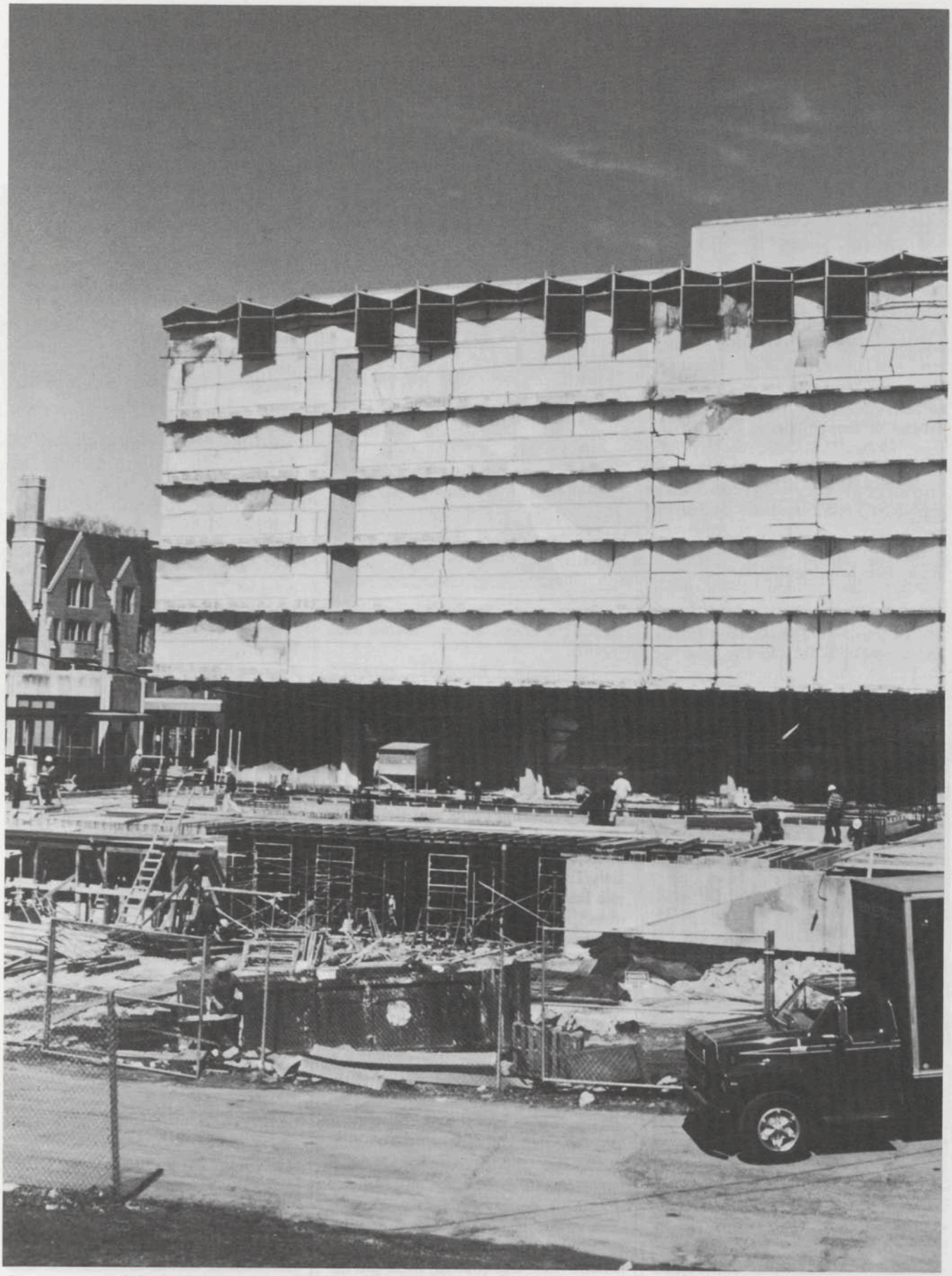
*Antipornography Legislation as Viewpoint Discrimination,* 9 Harv. J. Law and Public Policy 701 (1986).

In recent years feminists have proposed legislation designed to restrict the distribution, exhibition, and sale of any movie, book, or other form of expression that depicts "the graphic, sexually explicit subordination of women" and also presents women as "sexual objects who enjoy pain, humiliation or rape," or as "sexual objects for domination, conquest, violation, exploitation, possession or use." Proponents maintain that such legislation is necessary because the restricted expression, termed pornography to distinguish it from the more traditional concept of obscenity, perpetuates the social and economic subordination of women, causes rape and other sexual abuse of women, and often involves the coercion and exploitation of women performers. Mr. Stone concludes that antipornography legislation, of the sort just outlined and enacted in cities such as Indianapolis, constitutes a form of prohibited viewpoint discrimination. That is, such legislation restricts graphic, sexually explicit speech only if it "subordinates" women. Speech that portrays women in positions of equality is permitted, no matter how graphic the sexual content. Mr. Stone explains that such viewpoint discrimination cuts to the very core of First Amendment concern and is constitutional in only the most extraordinary of circumstances. He then examines a number of arguments that might be made in defense of the legislation. It prohibits expression of the disfavored viewpoint only by one means of expression; it passes muster under even the most stringent standards of viewpoint-based review; it restricts only "low" value speech. Mr. Stone concludes that, although the problems underlying the legislation are real and must be taken seriously, antipornography legislation cannot be squared with the First Amendment and is not an appropriate—or constitutional—way to deal with those problems.

***Cass R. Sunstein***

*Interest Groups in American Public Law,* 38 Stanford L. Rev. 29 (1984).

Mr. Sunstein attempts to link three areas of public law theory: Madison's theory of representation; the understanding of politics that emerges from modern equal protection law; and the conception of government that underlies modern efforts to control federal administrative action. It is argued that Madison attempted to ensure that national representatives would not simply do what their constituents wanted, but would instead deliberate about what the public good required. The original constitutional system of national representation was thus intended, above all, to respond to the problem of factional power, now thought of as "interest group politics." Mr. Sunstein contends that modern equal protection law reflects a similar understanding, attempting to invalidate measures in which powerful private groups have usurped governmental processes. Modern administrative law, according to the article, consists of many variations on the same theme, as courts attempt to ensure that administrators have not promulgated, or failed to promulgate, regulations simply because of the pressures imposed by well-organized private groups. Mr. Sunstein attempts to justify the Madisonian understanding of politics, in part against economically-oriented theories of politics. He also makes a series of proposals for reform of public law so as to move the legal system in the direction of conformity with Madisonian principles. He concludes that in the modern era it is especially important to ensure that legislation does not merely reflect existing private preferences, but that representatives and citizens subject those preferences to critical scrutiny.



*Construction of the Law Library's extension is making good progress.*

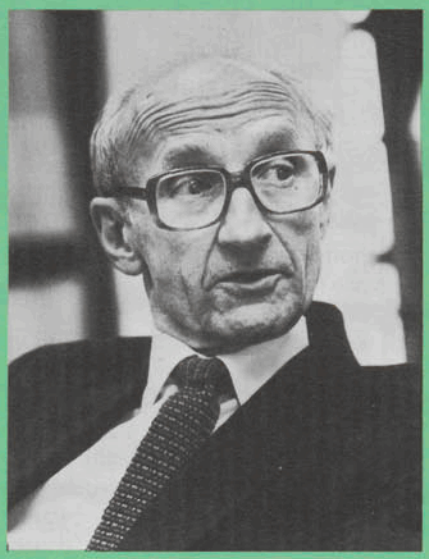
# Memoranda

## APPOINTMENTS

### Blum Appointed to Distinguished Service Professorship

President Hannah H. Gray has appointed ***Walter J. Blum*** to the Edward H. Levi Distinguished Service Professorship. This chair was created by an anonymous gift from a University Trustee in recognition of ***Edward H. Levi,*** former U.S. Attorney General, who was Dean of the Law School and Provost of the University before being appointed President of the University in 1968.

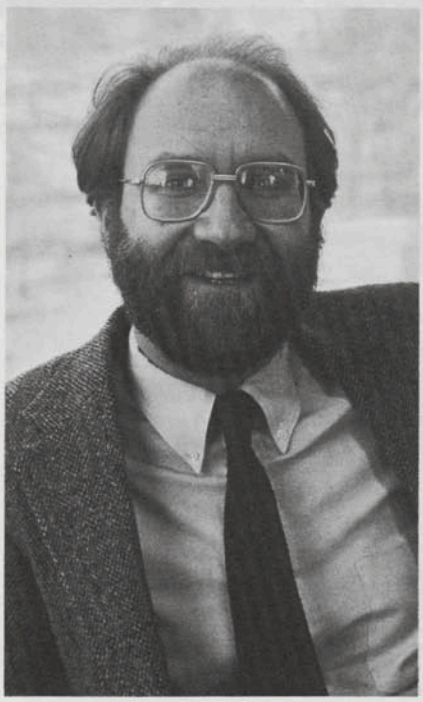
Professor Blum is a native Chicagoan, like Levi, and graduated from the University in 1939, obtaining his J.D. from the Law School in 1941. He was editor-in-chief of the *Law Review* and was elected to the Order of the Coif and to Phi Beta Kappa. After law school, Blum worked in the General Counsel's Office of the Office of Price Administration until 1943, when he



joined the armed forces, serving until 1946.

After the war Blum was appointed to the faculty of the Law School as Assistant Professor. He was promoted to Professor in 1953 and was named the Wilson-Dickinson Professor of Law in 1975. Since 1948 he has served as legal counsel to the *Bulletin of Atomic Scientists*. He is a consultant to the American Law Institute's Federal Income Tax Project and has also served as consultant to the Treasury Department, the Department of Transportation, the Internal Revenue Service, and the Administrative Conference of the United States.

Walter Blum is an authority on federal taxation and also teaches in the field of corporation finance. He has written many articles in the fields of taxation, insurance, corporate finance, and bankruptcy. His best-known works are *The Uneasy Case for Progressive Taxation* (1953) and *Public Law Perspectives on a Private Law Problem* (1965), both written with Harry Kalven, Jr., and *Materials on Reorganization, Recapitalization and Insolvency* (1968) and *Corporate Readjustments and Reorganizations* (1976), both with Stanley Kaplan.

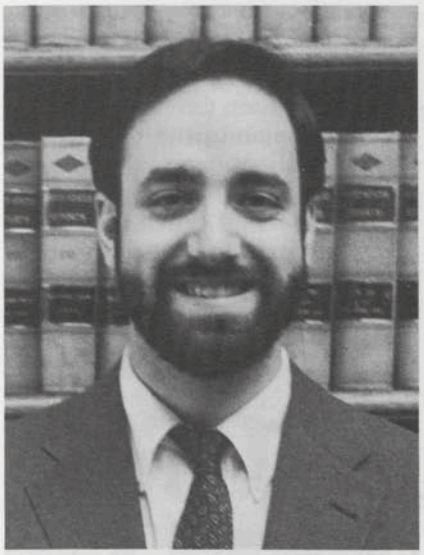


***Stephen J. Schulhofer***

***Stephen J. Schulhofer*** has been appointed the first Frank and Bernice J. Greenberg Professor of Law. Mr. Schulhofer's appointment is effective July 1, 1986. Mr. Schulhofer has been the Ferdinand Wakeman Hubbell Professor of Law at the University of Pennsylvania. He graduated *summa cum laude* from Harvard Law School in 1967 and was the developments and Supreme Court editor of the *Harvard Law Review*. After clerking for two years for Justice Hugo Black of the U.S. Supreme Court, Mr. Schulhofer practiced with Coudert Brothers in Paris for three years, before joining the Pennsylvania faculty in 1972. He has written extensively in the field of criminal justice and is the author, together with Sanford Kadish and Monrad Paulsen, of *Criminal Law and Its Processes*.

The Frank and Bernice J. Greenberg chair was established through the generosity of ***Frank Greenberg*** (J.D. 1932). Mr. Greenberg, who died in 1984, was a former President of the Law School Alumni Association.

***Larry B. Kramer*** has accepted an appointment at the Law School as Assistant Professor of Law, effective July 1, 1986. Mr. Kramer obtained his J.D. from the Law School in 1984, where he was comment editor of the *Law Review*. His undergraduate degrees, in psychology and in religious studies, were obtained at Brown University, from where he graduated in 1980. He also spent a year at Moscow University in the U.S.S.R., 1973-74, and a year at the Hebrew University in Jerusalem, 1978-79. After graduating from law school, Mr. Kramer was clerk for one year to Judge Henry Friendly of the United States Court of Appeals for the Second Circuit, and is spending this year clerking for Associate Justice William J. Brennan of the United States Supreme Court.



***Larry B. Kramer***

***Alan O. Sykes*** will join the Law School faculty as Assistant Professor of Law, effective July 1, 1986. Mr. Sykes obtained a B.A. in economics, *summa cum laude,* at the College of William and Mary in 1976 and gained an M.A. (1977) and an M.Phil. (1978) in economics from Yale University. He has just completed a Ph.D. in the same subject at Yale. He graduated from Yale Law School in 1982, where he was articles editor of the *Yale Law Journal*. After leaving law school, Mr. Sykes lectured on the economics of law at the University of Pennsylvania Law School and from 1983 has practiced law, principally in the area of international trade, at the firm of Arnold & Porter in Washington, D.C.

***Alan O. Sykes***

***Richard B. Stewart,*** currently Byrne Professor of Administrative Law and Associate Dean at Harvard Law School, will be a Visiting Professor for the academic year 1986-87. Professor Stewart graduated *summa cum laude* from Yale University in 1961, and *magna cum laude* from Harvard Law School in 1966, where he was editor of the *Law Review*. From 1961-63 he was a Rhodes Scholar at Oxford University. His interests include administrative law, environmental law, regulation, and the legal profession.

***William D. Andrews,*** of the Harvard Law School faculty, has been appointed a Visiting Professor for the Fall Quarter 1986. He is a 1952 graduate of Amherst College and in 1955 graduated from Harvard Law School, where he was a member of the *Law Review*. He practiced law for several years before joining the Harvard faculty in 1961, where he is now the Eli Goldston Professor of Law. His primary interests are federal taxation and contracts. Mr. Andrews has written the leading casebook on individual income tax, now in its third edition. He has also written numerous law review articles. Two of the best known are "Personal Deductions in an Ideal Income Tax" and "Consumption-Type or Cash-Flow Personal Income Tax," both of which appeared in the *Harvard Law Review*.

***Mary Ann Glendon*** will be returning as a Visiting Professor for the Fall Quarter 1986. Professor Glendon previously visited in 1983 and 1984. She has recently accepted a professorship at Harvard Law School and also serves on the executive committee of the Association of American Law Schools. The author of many publications, Professor Glendon's best known works include *The New Family and the New Property* (1981) and *State, Law, and Family* (1977). She is currently editor-in-chief of volume IV of the *International Encyclopedia of Comparative Law*. Professor Glendon is a graduate of the University of Chicago (B.A. 1959, J.D. 1961, M.C.L. 1963) and practiced with the firm of Mayer, Brown, & Platt in Chicago before joining the Boston College faculty. While at the Law School, she will teach a course in family law.

***Mary Ann Glendon***

***Stanley M. Johanson,*** who holds the Bryant Smith Chair at the University of Texas, will be visiting in the Spring Quarter 1987. A graduate of Yale College, Mr. Johanson attended law school at the University of Washington, where he was editor-in-chief of the *Law Review*. He has taught at Texas since 1963 and is the coauthor (with Dukeminier) of *Family Wealth Transactions*. His subjects of interest include decedents' estates and real property.

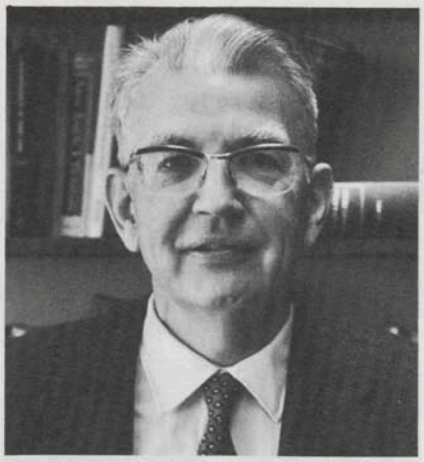
## FACULTY NOTES

***Albert W. Alschuler***

***Albert Alschuler,*** Professor of Law, Russell Baker Scholar, and Acting Director, Center for Studies in Criminal Justice, currently serves on the American Bar Foundation's Research Review Committee, on House Speaker Michael Madigan's Criminal Justice Advisory Committee, and the Local Arrangements Committee for the Annual Meeting of the Law and Society

Association. In November 1985 he spoke to the Law School Visiting Committee on "Oliver Wendell Holmes and the Decline of Rights." His informal paper, "Shortchanged in the Bargain," appeared in the winter 1986 issue of the *Compleat Lawyer*.

***Douglas G. Baird,*** Professor of Law and Associate Dean, gave a talk on the teaching of legal ethics in law schools to a group of law school deans at the American Bar Association's Midyear Meeting in Baltimore in February. His article, "The Uneasy Case for Corporate Reorganizations," appeared in the January issue of *The Journal of Legal Studies*. He also participated in a symposium on bankruptcy law at Duke University in April. His paper for the symposium, "A World without Bankruptcy," will appear in a forthcoming issue of *The Journal of Law and Contemporary Problems*.



***R. H. Coase***

***R. H. Coase,*** Clifton R. Musser Professor of Economics, Emeritus, gave a lecture on "Economic Analysis of Institutions" during the fall at Washington University in St. Louis. In September he presided at the last session of the meeting of the French Association for the Study of the History of Economics in Montpellier, France and gave a talk in French. In December Mr. Coase took part in a session of the American Economic Association meeting in New York.

In December ***Richard A. Epstein,*** James Parker Hall Professor of Law, addressed the Illinois State Judges Association on the law of defamation, and in January 1986 he addressed a policy forum at the Cato Institute on the law of eminent domain. He presented his paper, "Taxation in a Lockean World," at Washington University in January, and again in March at a public symposium held at the University of Michigan Law School. He attended a faculty conference devoted to his book *Takings: Private Property and the Power of Eminent Domain,* held at the University of San Diego Law School. Also in March Professor Epstein spoke on "The Theoretical Importance of Content-based Distinctions under the First Amendment" at the annual meeting of the Federalist Society, held at Stanford Law School.

***R. H. Helmholz,*** Ruth Wyatt Rosenson Professor of Law, has spent a good deal of time over the past few months chairing panels on various aspects of legal history. The first was in October 1985 at the annual meeting of the American Society for Legal History in New Orleans. In November he participated in a conference in Frankfurt, Germany, on the law of family property and succession and in December he chaired a panel at the annual meeting of the American Historical Association in New York. In January he was back in New Orleans for the annual meeting of the American Association of Law Schools and in April he chaired a meeting of the British Legal Manuscripts Conference in Chicago.

***Gareth H. Jones,*** Visiting Professor of Law, has been appointed a Queen's Counsel by the Crown. The usual practice for "taking silk" (Q.C.s wear a silk gown) is by application, from junior counsel in practice for fifteen to twenty years. The Lord Chancellor, after taking advice from the Lord Chief Justice, the Master of the Rolls, and others, then makes a selection from among the candidates. Occasionally, however, the Lord Chancellor will submit the name of an academic to be "called within the Bar." Although this is an appointment honoris causa, there is no distinction between the two patents and Mr. Jones is entitled to argue cases in the courts as a Q.C.

***Gareth H. Jones***

***Philip B. Kurland***

***Philip B. Kurland,*** William R. Kenan, Jr., Distinguished Service Professor in the College and Professor of Law, gave the keynote paper at a Department of Justice conference on federalism, at Williamsburg, Virginia, on January 24. On February 9 he gave a speech on judicial review to the National Conference of Bar Presidents in Baltimore, Maryland, and visited Macalester College in St. Paul, Minnesota on March 20-21, where he gave a speech on "Original Meaning."

***William M. Landes,*** Clifton R. Musser Professor of Economics, presented a paper entitled "Trademark Law: An Economic Perspective," written together with ***Richard A. Posner,*** at a Law and Economics Seminar at Harvard Law School on March 19. In April he presented the paper twice: at Yale Law School's Civil Liability Seminar and at a Law and Economics Seminar at Columbia Law School.

***John H. Langbein,*** Max Pam Professor of American and Foreign Law and Russell Baker Scholar, is serving as Visiting Professor of Law at Stanford Law School for the 1985-86 academic year. In December 1985 he spent two weeks in Australia, gather-

ing data on the Australian experience of operating a rule of harmless error to excuse blunders in the execution of the Wills Act, a reform that Mr. Langbein has been urging for American law for many years. An article based on this research is forthcoming. Mr. Langbein was appointed a member of the Joint Editorial Board for the Uniform Probate Code. The Board is composed of members from the American Bar Association, the American College of Probate Counsel, and the National Conference of Commissioners of Uniform State Laws. The Board oversees revision and amendment of the Uniform Probate Code. In December Mr. Langbein was elected an Academic Fellow of The American College of Probate Counsel. The College is an international association of lawyers, whose purposes include improvement of the standards of persons specializing in wills, trusts, and probate, and the modernization of the administration of tax and judicial systems in this area. Membership, which is a post of honor and a recognition of outstanding qualification, is by invitation of the Board of Regents.

*John H. Langbein*

***Michael W. McConnell,*** Assistant Professor of Law, gave the commencement address at Michigan State University on December 7, 1985. His talk was entitled "On Interpreting the Constitution." Also in December he debated with Professor Laurence Tribe of Harvard Law School on the Senate, the Courts, and the Constitution, at the Georgetown Law Center in Washington. The debate was sponsored by the Center for National Policy. In January Professor McConnell presented a paper entitled "Political and Religious Disestablishment" at a conference on religion clauses of the First Amendment, at Brigham Young University Law School, and in March he delivered a talk, "Separating the Separationists," at a Federalist Society conference on the First Amendment, at Stanford Law School. The Third Annual Bill of Rights Symposium at Marshall-Wythe School of Law, College of William and Mary, was held in April on the theme of religion and the state. At the symposium Professor McConnell delivered a response to Professor ***Philip Kurland***'s paper on "Historical Derivations of the Religion Clauses."

*Michael W. McConnell*

***Gary H. Palm,*** Professor of Law, has been elected Chair of the Section on Clinical Education of the Association of American Law Schools for 1986. He led a group discussion on improving the status of clinical teachers at the Midwest Clinical Teachers Conference in Minneapolis in March. Mr. Palm was a member of the Planning Committee for the Clinical Teachers Conference, held in Boulder, Colorado in May, and served on the faculty.

***Geoffrey R. Stone,*** Harry A. Kalven, Jr., Professor of Law, delivered a lecture on November 8, entitled "Attorney General Meese, the Constitution, and the Supreme Court," as part of the University's Downtown Luncheon series. On December 6, he and ***Richard Epstein*** addressed the Illinois Judges Association on the topic of libel and the First Amendment. Mr. Stone was Halle Scholar-in-Residence at Case Western Reserve Law School on January 20-21, 1986. During his visit he addressed the faculty on "Feminism and Pornography," taught classes in civil rights law and constitutional law, and delivered a lecture to the students on "Original Intent, Constitutional Interpretation, and the Supreme Court." He participated in a Federalist Society Symposium on the first Amendment, held at Stanford Law School on March 7-8, where he delivered a paper entitled "The Burger Court and the Political Process: Whose First Amendment?" Professor Stone spoke on the free exercise clause at a symposium on religion and the state at the Marshall-Wythe School of Law, College of William and Mary.

*Cass Sunstein*

***Cass Sunstein,*** Professor of Law, was a principal speaker at the November 1985 conference on the 250th anniversary of the John Peter Zenger trial, sponsored by the Philadelphia Bar Association and the University of Pennsylvania. His topic was "Government Control of Information." The written version is to be published in a *California Law Review* symposium on the First Amendment. In November Mr. Sunstein spoke at the annual meeting of the Association of Public Policy and Management, on deregulation, and also took part in a discussion of administrative law before the Social Science Council in New York. In January he was a panelist at the annual meeting of the Association of American Law Schools, in New Orleans, and spoke before the Administrative Law Section on social regulation. In February he participated in a Liberty Fund Conference on private property and the Constitution, held in San Diego. A pro-

posal of which he was coauthor, on the role of the President in regulation, was endorsed by the American Bar Association. Professor Sunstein spoke at the legal theory workshop at Yale Law School in February; the topic for discussion was legal interference with private preferences.

*Diane P. Wood*

***Diane P. Wood,*** Assistant Professor of Law, served as a commentator on the subject of antitrust and economic regulation at the Hofstra University Conference in November on the sixteen years of the United States Supreme Court under the leadership of Chief Justice Warren E. Burger. In January she was one of three principal speakers at the American Association of Law Schools' Civil Procedure Section, discussing the implications for class action personal jurisdiction of the Supreme Court's decision in *Shutte v. Phillips Petroleum Co.* On February 22 Cornell Law School hosted a conference entitled "Approaching the Twenty-first Century: Law and the Changing Roles of Women." Ms. Wood spoke at this conference on pending and upcoming Supreme Court decisions of interest to women. In April Ms. Wood attended a conference on conflicts of jurisdiction at Duke University Law School, at which she offered oral and written comments on two papers, one on Antitrust and Export Cartels, and the other on Antitrust and Industrial Policy.

Ms. Wood is currently on leave of absence at Cornell. She will return to the Law School on January 1, 1987, after service as special consultant to the Antitrust Division of the United States Department of Justice for the revision of the 1977 guidelines for international operations.

## LAW SCHOOL NEWS

### Helmholz Awarded Guggenheim Fellowship

The John Simon Guggenheim Memorial Foundation has awarded ***R. H. Helmholz,*** Ruth Wyatt Rosenson Professor of Law, a Fellowship for the academic year 1986-87. Mr. Helmholz will spend the time as a Visiting Fellow at Trinity College, Cambridge, researching into the history of canon law and the church courts in England. During the Lent Term, Mr. Helmholz will deliver the Maitland Lectures, an occasional series of five lectures on legal history.

*R. H. Helmholz*

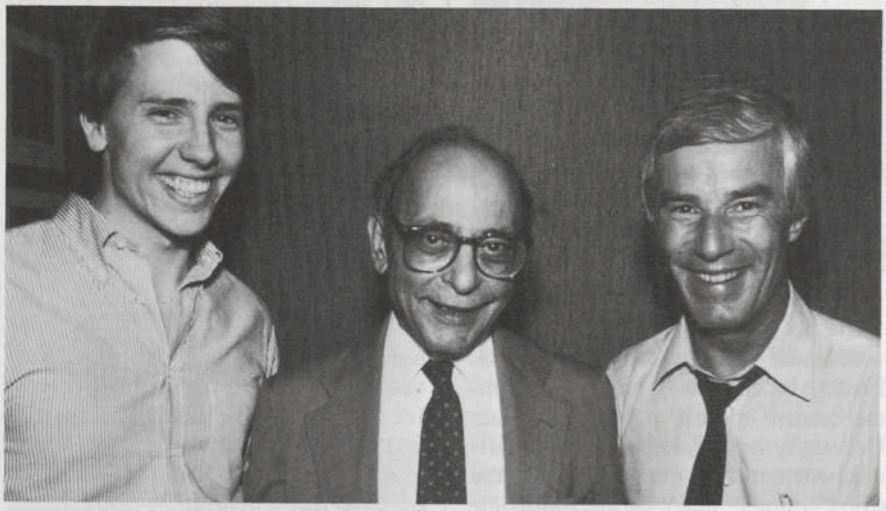
### Wilber G. Katz Lecture

***David P. Currie,*** the Harry N. Wyatt Professor of Law at the University of Chicago, gave this year's Katz Lecture on November 12, 1985 in the Weymouth Kirkland Courtroom at the Law School. His topic was "Positive and Negative Constitutional Rights." The lecture will be published in the summer issue of the *University of Chicago Law Review,* volume 53, number 3.

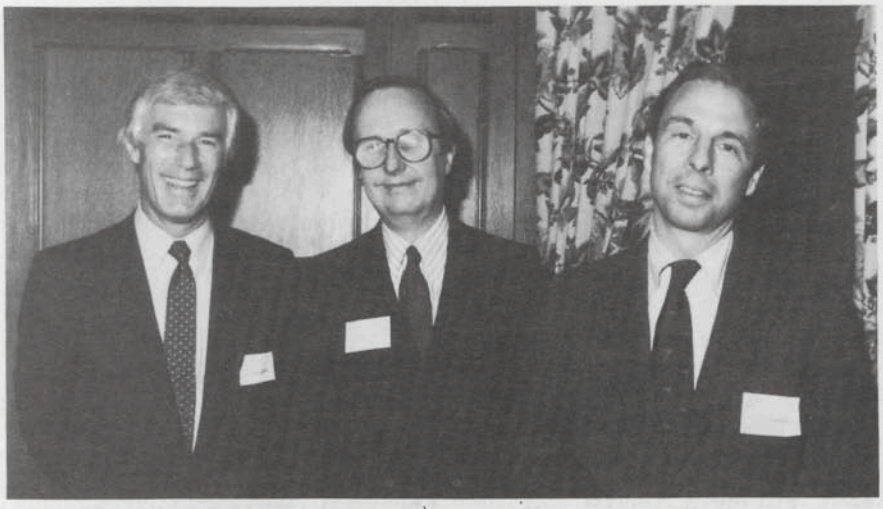
*David P. Currie*

### Award to Mandel Legal Aid Clinic

On Tuesday, December 3, 1985, the National Bar Association, Region VII, presented an award to the Mandel Legal Aid Clinic and Professor ***Gary H. Palm*** for "Outstanding Contributions to the Development of Black Chicago." Approximately thirty individuals and groups were honored on this occasion.



***Professor Bernard D. Meltzer, flanked by Dean Casper and Richard Cordray, editor-in-chief of the* Law Review, *at a party celebrating Meltzer's attainment of Emeritus status. The winter issue of the* Law Review *contained articles in tribute to Professor Meltzer.***



*Dean Casper, Judge Arnold, and Professor Helmholz*

## Crosskey Lecture

The Honorable Morris S. Arnold, of the United States District Court, Western District of Arkansas, gave the seventh William Crosskey Lecture in Legal History in the Weymouth Kirkland Courtroom on April 3, 1986. His talk was entitled "Towards an Ideology of the Early Common Law of Obligations." The lecture was given in conjunction with the Conference on British Legal Manuscripts, sponsored by the Newberry Library Center for Renaissance Studies and held April 3-5, 1986. Judge Arnold was a Professor of Law at the University of Pennsylvania and is a former dean of the University of Indiana at Bloomington. He is an expert on the history of English law. He has written two books on this subject and a third on the legal history of Arkansas, when it was part of the Louisiana territory.

## Schwartz Fellow Visit

Jack Greenberg, Director-Counsel of the NAACP Legal Defense and Educational Fund, was this year's Ulysses S. and Marguerite S. Schwartz Fellow. Mr. Greenberg spent two days at the Law School, February 19 and 20. While he was here he gave a seminar on law and social change and, together with Judge ***Frank H. Easterbrook,*** judged the semi-final round of the moot court competition. He also met and talked with students on several occasions, at which quantities of coffee and donuts were consumed.

Mr. Greenberg has worked for the cause of civil rights since his graduation from Columbia University Law School in 1948. In 1954 he was one of the lawyers in *Brown v. Board of Education*. Since then he has argued great numbers of cases against segregation, racial discrimination, the imprisonment of civil rights protestors, and the death penalty.

## Campaign for the Law School

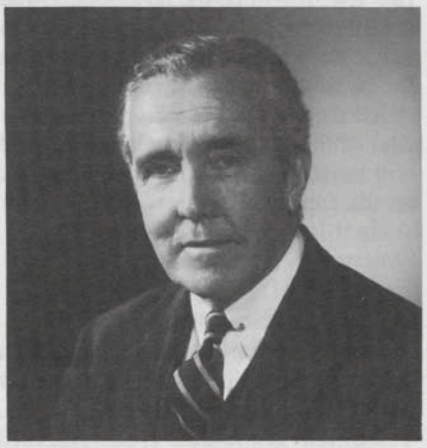
Several major gifts have recently been made to the Law School Capital Campaign.

The Ameritech Foundation has given $100,000 for The Ameritech Law and Economics Fund. The fund will underwrite research, writing, and scholarship in the Law and Economics Program.

The Lynde and Harry Bradley Foundation has contributed $150,000 to further the research work of the Law and Economics Program over the next two years. The Bradley Foundation is a major supporter of cultural and educational activities.

Mr. and Mrs. Lee (Brena) Freeman have committed $100,000 toward The Brena D. and Lee A. Freeman Faculty Research fund. The endowed fund will underwrite faculty research during the summer quarter. Mr. and Mrs. Freeman established the Lee and Brena Freeman Professorship at the Law School in 1977. Mr. Freeman is a senior partner at the law firm of Freeman, Rothe, Freeman & Salzman in Chicago.

Mr. ***Frank H. Detweiler*** (J.D. '31) has contributed additional funds to a charitable remainder Unitrust agreement he recently established at the University. Assuming no change in the value of the trust principal during the lifetime of the designated beneficiary, the portion accruing to the Law School will be approximately $175,000. Mr. Detweiler is a retired partner of the New York law firm of Cravath, Swaine & Moore.



***Frank H. Detweiler***

Mr. ***Robert H. O'Brien*** (L.L.B. '33) has funded a $100,000 annuity trust agreement for the benefit of the Law School. Mr. O'Brien, now retired, has been Commissioner of the Securities and Exchange Commission

***Robert H. O'Brien***

and, more recently, President and Chief Executive Officer of Metro-Goldwyn-Mayer, Inc.

Mrs. Moses (Dorothy) Levitan has given $50,000 to create The Moses and Dorothy Levitan Scholarship Fund. The fund, established in memory of her husband, ***Moses Levitan***

(J.D. '13), will provide support for worthy and deserving students. The first Moses and Dorothy Levitan Scholar will be named during the 1986-87 academic year.

The Kellstadt Foundation has contributed $100,000 to establish The Kellstadt Foundation Law Library Fund, in honor of ***Leo J. Arnstein*** (J.D. '28). This gift will establish a new fund to support library acquisitions in the area of business and corporate law. It will be the largest endowed fund for the Law Library presently in existence and will be a major factor in future library acquisitions.

All these gifts contribute to the success of the Law School Campaign and will have an immensely positive effect on the future of the Law School.

## John M. Olin Fellows

***David Friedman*** has been appointed a John M. Olin Visiting Fellow in Law and Economics for 1986-87. Mr. Friedman graduated from Harvard University with a B.A. in Chemistry and Physics in 1965 and went on to the University of Chicago where he obtained an M.S. degree in Physics in 1967 and a Ph.D. in Physics in 1971. He is currently a Visiting Associate Professor at Tulane University's Graduate School of Business, on leave from the University of California at Los Angeles, where he is Assistant Professor of Economics. He has taught courses on the principles of economics, law and economics, economics of transportation, money and banking.

***Fred S. McChesney*** will be the second John M. Olin Visiting Fellow in Law and Economics for the 1986-87 academic year. Mr. McChesney graduated *magna cum laude* from Holy Cross College and obtained his law degree, *cum laude*, from the University of Miami Law School, where he was also a member of the *Law Review*. He obtained a Ph.D. in economics from the University of Virginia. Mr. McChesney was law clerk to Judge Alfred T. Goodwin, U.S. Court of Appeals for the Ninth Circuit for one year before entering law practice, chiefly in the areas of antitrust, administrative law, and international trade. From 1981-83 he was Associate Director for Policy and Evaluation in the Bureau of Consumer Protection at the Federal Trade Commission. He currently holds the post of Associate Professor of Law at Emory University where he teaches in the areas of corporations, economics, and finance.

***Fred S. McChesney***

## Annual Tax Conference

The Law School's 38th Annual Tax Conference was held in 1985 on the usual dates—the last Wednesday, Thursday, and Friday of October. The conference was built around the theme of "Pitfalls and Opportunities" in structuring various types of financial and business arrangements. The talks and discussions were directed to an audience composed of lawyers and accountants with a high level of knowledge and experience in tax matters. Among the conference speakers were two Law School alumni: ***Stephen J. Bowen*** (J.D. '72) and ***Herbert W. Krueger, Jr.*** (J.D. '74).

## Tuition Increase

Tuition for the 1986-87 academic year has been set at $11,700, a 7.1 percent increase over the present level.

In announcing the University's tuition increase, President Gray said, "The costs of building and maintaining state-of-the-art laboratories, libraries, and classrooms and of supporting an outstanding faculty are the costs of achieving the excellence in education to which this University is committed. We are holding down spending in non-essential areas, but necessary spending in critical areas continues to rise. Unfortunately, tuition also must increase in order to pay its share of the costs."

In a memorandum to the current student body, Dean ***Gerhard Casper*** said that neither this nor other law schools have been able to rely primarily on increased giving from alumni, endowment income, and grants, in order to meet necessary increases in expenditure levels. "While the Capital Campaign is proceeding on schedule, income from new funds will often not be available until many years later."

## Law Review and Legal Forum

The Managing Board for volume 54 of *The University of Chicago Law Review* are: ***Lisa E. Heinzerling,*** Editor-in-Chief; ***Thomas C. Berg,*** Executive Editor; ***Eric Webber,*** Articles Editor; ***Wendy E. Ackerman,*** Articles and Comments Editor; ***Diane F. Klotnia,*** Managing and Book Review Editor; ***James D. Kole,*** Topics and Comments Editor; ***Lindley J. Brenza, Bradley M. Campbell, Jonathan M. Gutoff, John Janka,*** and ***Charles F. Smith,*** Comment Editors.

The new Managing Board for volume 2 of *Legal Forum* are: ***Eric D. Altholz,*** Editor-in-Chief; ***Peggy-Jean Harari,*** Managing Editor; ***Jeffrey Chasnow,*** Research Editor; ***Edward J. Janger,*** Senior Comment Editor; ***Gregory Koltun,*** Symposium Editor; ***David Joseph Sales,*** Articles Editor; ***Gregory Corbeill, Gregory Garner, Susan Lidstone,*** and ***Elizabeth Wittenberg,*** Comment Editors.

# STUDENT NOTES

## Legal Forum

*The University of Chicago Legal Forum,* the new student-edited journal at the Law School, held its first annual symposium on Saturday, February 8 at the Law School. The symposium, attended by over 100 students, lawyers, and academics, was the first major discussion of the legal, political, and economic problems posed by current efforts to liberalize trade in professional services within the industrialized world. The papers presented at the conference will be published in the *Legal Forum*'s first volume, along with student comments on a variety of related topics.

Symposium participants included Geza Feketekuty, Senior Assistant

**Law Review** *Managing Board 1986-87. Back row, l. to r.: Lindley Brenza, Thomas Berg, James Kole, Jonathan Gutoff, Eric Webber. Front row: John Janka, Wendy Ackerman, Lisa Heinzerling (Editor-in-Chief), Diane Klotnia, Bradley Campbell, Charles Smith.*

**Legal Forum** *Managing Board 1986-87. Back row, l. to r.: Edward Janger, Gregory Garner, David Sales, Gregory Koltun, Jeffrey Chasnow, Susan Lidstone. Front row: Gregory Corbeill, Elizabeth Wittenberg, Eric Altholz (Editor-in-Chief), Peggy-Jean Harari.*

U.S. Trade Representative for Trade Policy Development and Coordination; Andreas Lowenfeld, Professor of Law, New York University; John Barton, Professor of Law, Stanford University; Jagdish Bhagwati, Professor of Economics, Columbia University; Frank Rossi, Managing Partner, Arthur Andersen & Co.; Isaac Shapiro, Partner, Milbank, Tweed, Hadley & McCloy; and Sydney Cone III, Partner, Cleary, Gottlieb, Steen, & Hamilton. The meeting was covered by reporters from the New York Times, Bureau of National Affairs, and Chicago Sun Times.

Mr. Feketekuty, who has primary responsibility for the development of a U.S. policy on trade in services, established the framework for discussions with an initial presentation on the U.S. government's approach to service trade. Mr. Feketekuty explained that many governments have traditionally been hostile to direct U.S. investment, seeing it as a one-way street draining critical resources from their economies and benefiting only the U.S. For this reason, he explained, a primary U.S. negotiating goal has been to frame discussion of services in trade terms generally viewed more favorably outside the U.S. To this end, the U.S. trade representative has worked to separate discussion of trade in services from that of investment, immigration, goods, and other controversial but related issues. While the U.S. policy position today is to try to formulate an entirely new agreement on services, rather than simply including services within existing international trade accords, such as the General Agreement on Tariffs and Trade (GATT), GATT is clearly relevant precedent and the ultimate negotiating issue will be how such a document will relate to the GATT.

Other symposium participants followed Mr. Feketekuty's remarks with analyses of the government's initiative in the service trade area. Isaac Shapiro and Sydney Cone III contrasted the government approach with existing initiatives within the legal profession to liberalize trade in legal services between the U.S., Japan, and the EEC. They analyzed a draft bill, recently approved by the board of governors of the Japanese Federation of Bar Associations, to permit foreign lawyers to practice in Japan under limited conditions. Agreeing that licensure and admission to practice requirements are major barriers to international trade in services, they entered into discussions with Frank Rossi of Arthur Andersen & Co., in an effort to isolate the specific barriers which currently hinder trade in legal and accounting services.

Professors Lowenfeld, Barton, and Bhagwati approached the U.S. initiative in broader terms, analyzing the U.S. trade representative's proposals in light of current legal and economic views of the subject. Professor Lowenfeld considered the compatibility of service sector rules with the existing GATT framework for international trade. Professors Barton and Bhagwati analyzed legal rules in the United States and European Community and the possible economic impact of a service trade accord.

Arrangements are now being finalized for next year's *Legal Forum* symposium, which will examine the negotiation, enforcement, modification, and termination of consent decrees in civil rights, environmental, and antitrust litigation.

## Sports Update

Graduates in recent classes may be interested to know that after repeated frustrating losses in the Men's Intramural Basketball Finals, a Law School team won the University Championship in February. The Women's Touch Football Team, which won a championship in 1984, was defeated in a close title game this past fall. The loss was attributed to the fact that several players missed the game because of call-back placement interviews out-of-town.

## Student Musical

During the Winter Quarter the Law School students staged their third annual musical comedy, titled "Oedifice Lex: A Building So Ugly You'll Poke Your Eyes Out." Over sixty students from the Law School together with two faculty and administration members created and performed the entire show, from original music and sketches to the set building and costumes. The show participants took time out from their beloved studies—a lot of time out—to give the rest of the school a much needed winter laugh.

As the title suggests, the Law School's current library renovation and addition were at the center of the show's plot. Unlike the construction project, however, the show itself was pleasing to both the eye and ear. The plot was startlingly realistic: in order to raise enough money to fund an "honorarium" to an unnamed city official so that the building permit would be issued, the law students had to come up with a profitable musical show in only two weeks. The first act traced the students as they went all over campus, the country, and even to Russia to observe the types of shows other departments and schools were doing, ostensibly to get ideas for their own musical. The first act ended with a visit to Central America where the proper citation form and suggested an alternative that would certainly be an improvement: *The Maroon Book System of Citation*. ***Amy Kossow*** (2d year) sang a beautiful song (with no basis in fact actual or implied) about a student's love for her professor, and in *Ronnie's Prayer* the players lamented the longevity of certain Supreme Court justices. One of the funnier sketches of the second act was *In The Library*, where burly construction workers clad in hard hats performed a delicate ballet. The show closed with a parody of the Live (etc.) Aid concert, where celebrities joined in the worthy cause of finding a home for thousands of unwanted (and we do mean unwanted) books.

**Oedifice Lex: A Building So Ugly You'll Poke Your Eyes Out,** ***the Law School musical, presented on February 28 and March 1. In Act I, Kay Kim, Kevin O'Brien, and Elyn Megargee wait in vain for the Bursar's Office to open.***

"Sandinistas" and "Contras" battled each other musically under the direction of the Founding Father of the Law School Musical, a recent Law School graduate known for being a politico.

The second act was the "actual" Law School Musical. The sketches included a take-off of a game show, entitled *Constitutional Squares*, and a production number singing the often overlooked virtues of a career at West Publishing Company. *Blue Bookin' Blues* was an ode to the tortures of

***In the Finale of the Law School musical Diana Ross (Maureen Kane), Michael Jackson (Steve Wallace), and Stevie Wonder (David Friedman), participate in the Libe Aid concert, raising the glorious total of $1.***

Most of the immediate Law School community attended the show, and although greater alumni participation would have added to the experience, a handful of alumni did manage to make it. The show was thus a great success. The effort and talent involved in the show were truly remarkable, and all agreed that it was worth the long hours and hard work. Some audience members (probably relatives) openly wondered why some of the players were in law school at all. Credit for the show goes to all participants, but especially to ***Mike Salmanson*** (3d year), director; ***Tom Berg*** (2d year), musical director; ***Jana Cohen*** (2d year), choreographer; ***Steve Kurtz*** (2d year), ***Kevin O'Brien*** (3d year), and ***Maureen Kane*** (2d year), writers; and ***Andrew Smith*** (2d year), producer.

## Class Notes Section – REDACTED

*for issues of privacy*

# Alumni Notes

## Events Across the Country

In December Dean ***Gerhard Casper*** was the guest speaker at a luncheon in New York organized by the New York Chapter. His talk was entitled "The Role of Lawyers in China," based on the observations he had made as a member of a delegation of law school deans recently returned from a mission to China at the invitation of the Chinese government.

The Law School hosted a reception on January 6 in New Orleans, attended by graduates teaching at law schools who were taking part in the meeting of the Association of American Law Schools. Graduates living in the New Orleans area were also present.

Alumni living in and around the Bay Area had the opportunity to welcome Dean Gerhard Casper at a luncheon held on March 12 in San Francisco. Fifteen percent of our graduates living in the area were able to attend.

## Chicago Events

The winter Loop Luncheon series opened on January 21 with a talk by Professor ***Philip B. Kurland,*** to a capacity crowd, on the topic "Of Meese and (the Nine Old) Men." This talk is reproduced at the beginning of this issue.

Paul Simon, United States Senator for Illinois, continued the series on Valentine's Day with a report from Washington. Valentine cards were not in great evidence, but Dean ***Gerhard Casper*** did present Mr. Simon with a bow tie during the course of the luncheon.

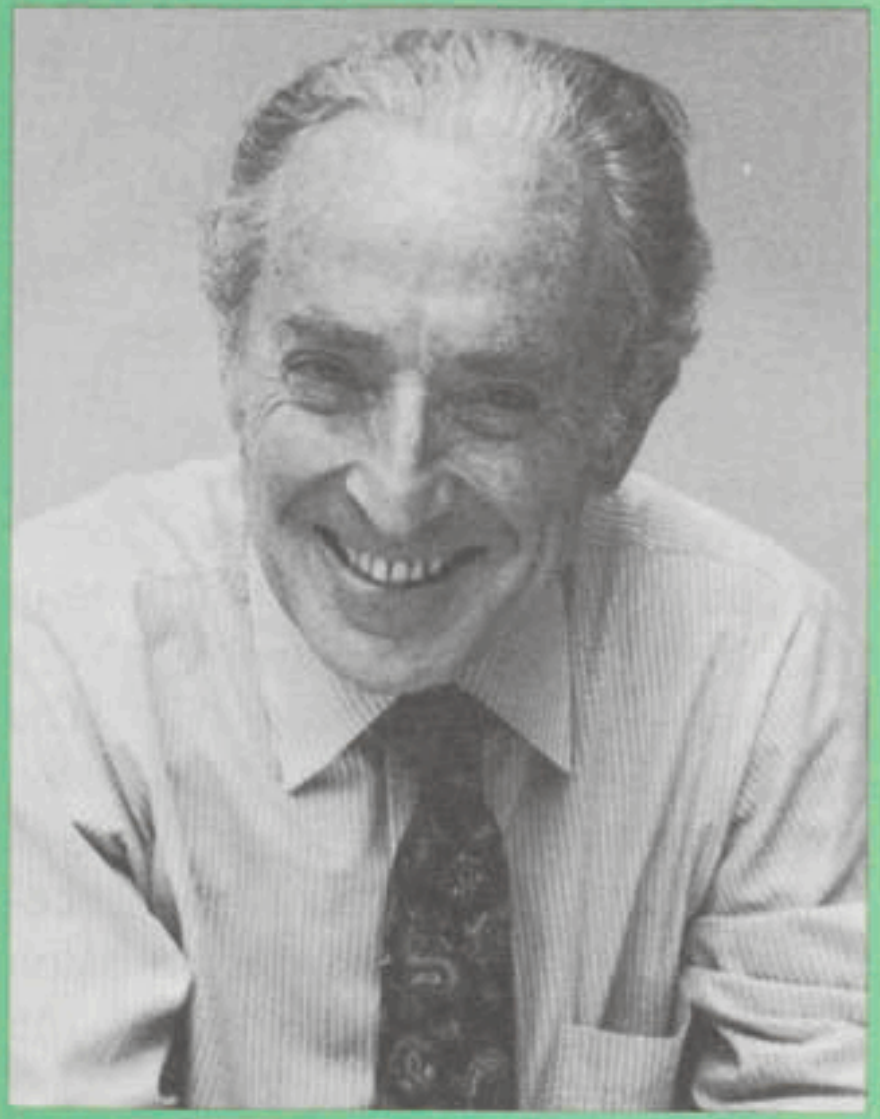
Grace Mary Stern, State Representative from the 58th District of Illinois, rounded off the series on March 13 with a well-received discussion of a worm's eye view of the Illinois legislature.

The lecture series is organized by the Loop Luncheon Committee. Graduates or friends who are interested in participating in the committee's work or who have questions about the series should contact Assistant Dean ***Holly Davis*** (312/962-9628).

An alumnae luncheon, also attended by women students at the Law School, was given on February 24 and featured a talk by Lori Andrews, Project Director of the American Bar Foundation. Ms. Andrews spoke on "The Stork Market: Law and the New Reproductive Technologies."

## Weisberg Appointed Magistrate

***Bernard Weisberg*** (J.D. '52) was sworn in as a United States Magistrate for the Northern District of Illinois, Eastern Division, on November 12, 1985. He was managing editor of *The University of Chicago Law Review* in 1951-52, clerked for Justice Tom C. Clark of the United States Supreme Court 1952-53, then joined the law firm of Gottlieb & Schwartz in Chicago, where he remained until taking up his new duties last October. Magistrate Weisberg is a leading civil rights lawyer who argued the landmark 1964 case of *Escobedo v. Illinois* before the U.S. Supreme Court, that established the rights of suspects to consult a lawyer while in police interrogation. He has been a volunteer general counsel to the American Civil Liberties Union and a member of the Board of Trustees of the Lawyers Committee for Civil Rights under Law.



## Leinenweber Becomes Judge

***Harry D. Leinenweber*** (J.D. '62) has been appointed a Judge of the U.S. District Court for the Northern District of Illinois, filling a newly opened seat on the federal bench. A native of Joliet, Judge Leinenweber began his career in private practice. He later served as special prosecutor for Will County and as attorney for the city of Joliet. In 1973 he was elected to represent the Joliet area in the Illinois General Assembly House of Representatives. He represented his district for ten years, and chaired one of the state House judiciary committees. In 1983 he returned to private practice with the firm of Dunn, Leinenweber & Dunn in Joliet.

Judge Leinenweber is a fifth generation member of a pioneer Joliet family and is married with five children.

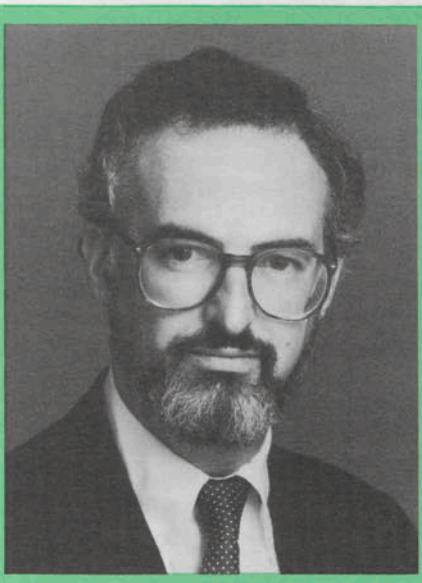
## Boggs Appointed to U.S. Court of Appeals

***Danny J. Boggs*** (J.D. '68) has been confirmed as a United States Circuit Judge for the Sixth Circuit, in a newly opened seat on the bench. Judge Boggs was a member of the *University of Chicago Law Review* and was elected to the Order of the Coif in 1968. After graduation he returned to the Law School as a Bigelow Fellow for one year. A native of Kentucky, Judge Boggs was Administrative Assistant and Legal Counsel to the Governor of Kentucky from 1970 to 1971 and ran for State Legislature there in 1975. He served as assistant to the Chairman of the Federal Power Commission from 1975 to 1977, before becoming Deputy Minority Counsel to the Senate Committee on Energy and Natural Resources. In January 1981 Mr. Boggs was appointed Senior Policy Adviser in the Office of Policy Development at the White House, with responsibility for energy, environment, and natural resources. In September 1983 he was appointed Deputy Secretary of the U.S. Department of Energy, the Department's second highest ranking executive.

## Newman Family Finds Fossil

The Dallas Museum of Natural History has just unveiled its latest inmate: a mosasaur, a swimming reptile that first came into existence around 100 million years ago. Only distantly related to dinosaurs, the mosasaur suffered the same fate of extinction, 63 million years ago. Dallas's mosasaur, now named Stretch, was first uncovered seven years ago by Courtney, the daughter of ***Larry Newman*** (J.D. '72), when the family was enjoying a trip to Lake Ray Hubbard, near the town of Heath. The tip of the mosasaur's snout was seen protruding from the lake's sandy bank. The Newman family pulled it out and took the bone to the Dallas museum for identification. The site was excavated, with the Newmans among the 100 keen volunteers, and gradually the remains emerged: a five-foot-long skull, ribs measuring four feet, and nearly 100 vertebrae, some weighing five pounds each. It has taken several years to clean unwanted rock away from the bones and then to reconstruct the mosasaur, but it is now an impressive exhibit, complete with yawning jaws and flippers, on permanent display in the museum.

***Nancy, Torrey, Courtney, and Larry Newman, with Stretch in the background.***



## Ginsburg is Assistant Attorney General

On September 3, 1985, ***Douglas Ginsburg*** (J.D. '73) was sworn in as the United States assistant attorney general in charge of the Antitrust Division of the Justice Department.

Ginsburg serves as co-chairman of the administration's interagency committee studying antitrust. He places high priority on amending antitrust and patent laws to spur efficient corporate licensing arrangements to improve the nation's international trade performance.

Douglas Ginsburg was articles editor of the *University of Chicago Law Review* in his final year at the Law School. In 1973-74 he was law clerk to Judge Carl McGowen, U.S. Court of Appeals, D.C. Circuit, and in 1974-75 he was law clerk to Justice Thurgood Marshall, U.S. Supreme Court. He joined the Harvard Law School as an assistant professor in 1975 and became a full professor in 1981. He taught courses in the areas of antitrust, banking law, economic regulation of business, and the regulation of broadcasting. In 1983-84 he took a leave of absence from Harvard to join the Antitrust Division of the Justice Department as a deputy assistant attorney general. In July 1984 he was appointed administrator for information and regulatory affairs in the United States Office of Management and Budget.

Excerpted from the *Harvard Law School Bulletin*.

## Baum Honored by Baldwin Foundation

On December 15, 1985, the Roger Baldwin Foundation of the American Civil Liberties Union of Illinois presented the Annetta Dieckmann Volunteer Award to ***Jonathan Baum*** (J.D. '82) in appreciation of his outstanding work on behalf of civil liberties. Mr. Baum relinquished a position as an associate at the law firm of Jenner & Block to work full-time, unpaid, at the ACLU for six months. As he said, "I figured that a public service post would pay me about half what a law firm could, so I decided to try to live for a year on half a year's salary and give the rest of my time to the ACLU."

Mr. Baum contributed legal assistance in several cases, including a case challenging the indefinite detention of minors at the Cook County Juvenile Detention Center, a case involving prisoners' privacy rights, and a class action suit opposing the city's practice of detaining persons for failing to post bond on minor offenses. He also assisted in a study of state shelters operated for adolescents.

On January 7 Jonathan Baum was appointed to the Mandel Legal Aid Clinic as a Staff Attorney and Clinical Fellow. He remains active on the ACLU's legislative committee.

## Deaths

*The Law School Record* notes with great sadness the deaths of:

1918
***Robert R. Humphrey***
July 6, 1985

1922
***Axel J. Beck***

1924
***Lester G. Britton***
In 1983

***David J. Maddox***
March 21, 1986

1926
***Richard A. Harewood***
November 16, 1985

1927
***Kenneth L. Karr***
May 30, 1985

1928
***Stewart P. Mulvihill***
January 29, 1986

***Sidney D. Podolsky***

1930
***Merritt Barton***
July 29, 1983

***M. Jay Weinstein***
October 30, 1985

1931
***Stanley W. Johnson***
January 10, 1985

***Hyrum D. Lowry***
May 14, 1985

1932
***David M. Lewis***
September 24, 1985

1933
***Norman H. Arons***
November 1, 1985

1934
***Edwin H. Cassels, Jr.***
November 3, 1985

***James Ridpath Sharp***
January 17, 1985

1936
***Robert W. Poore***
November 22, 1985

***Robert E. Coulson***
January 11, 1986

1940
***Laurence L. Goldberg***

1942
***Charles Vaill Laughlin***
January 29, 1985

1948
***Ray R. Paul***
December 22, 1985

1949
***Charles S. Woodrich***
September 19, 1985

1950
***Joseph J. Wagner***
January 10, 1986

1955
***Daniel R. Matsukage***
December 27, 1985

1959
***Gerald E. Kandler***
October 7, 1985

1962
***John M. Janewicz***
August 1984

1969
***William B. Shaw***
June 11, 1985

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