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The objectives of The ADVOCATE are to publicize the activities and outstanding achievements of the Law School and to present articles by students, faculty and guest writers on timely subjects pertaining to the law.

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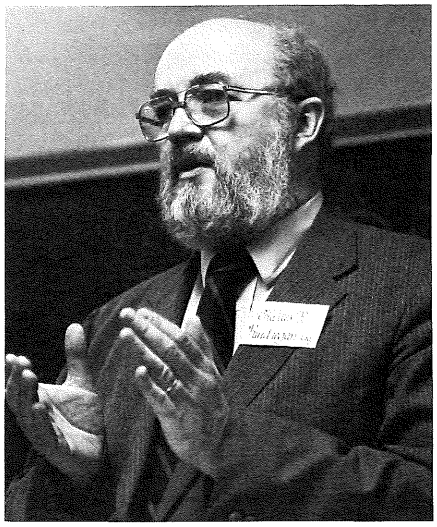
The Challenge of Bioethics: Family Law Meets the Biological Revolution



***Professor Kindregan** has taught Family Law at Suffolk University Law School for fifteen years. He is the former Chairman of the American Bar Association Committee on Law and Family Planning and Vice Chairman of the Committee on Genetics. This article is based on a paper he delivered at the Conference on Law and Biology sponsored by the Franklin Pierce Law Center on March 20, 1982.*

Mankind today stands at a revolutionary point in history. This may sound overly dramatic; it almost certainly sounds hysterical. A race which has been evolving for over a hundred thousand years is hardly able to cite any moment in its history as truly revolutionary. Nevertheless I think this is such a moment.

A race which, in the words of nobel peace laureate Sean MacBride controls the "signpost of oblivion"[1] in the form of nuclear weapons which could destroy us all in a few minutes is hardly able to discern a revolutionary moment in the scientific developments which are taking place in our biology laboratories. But discern it we must. For if man does survive, he will have at his command a greater power, for good or evil, than was ever previously in the control of any being on this planet. This is nothing less than the power to direct the evolution of human life itself.

A decade ago I wrote an article in a law review[2] in which I suggested that "in respect to the private values of family, sex and human reproduction we will be forced to strike a balance between the needs of the individual and the community. In the coming decades the right of the individual to live, love and procreate will be put in issue as never before in human history . . . the biological revolution will create new powers for man."[3]

Ten years after I wrote those words we have moved yet closer to the era when man will have the power to change not only his physical, psychological and even genetic being—but he will also possess the opportunity to rethink and restructure the basic values by which human society has always been organized. We face this age as human beings—but the magnitude of this undertaking is so great that I suggest we should begin to examine it on a smaller scale. By this I mean we should start by examining the biological revolution in the light of our own national identity, and specifically within the framework of American law and policy.

In the words of our national Congress, used in the Technology Assessment Act of 1972:

> It is essential that, to the fullest extent possible, the consequences of technological applications be anticipated, understood, and considered in determination of public policy on existing and emerging national problems.[4]

Our law and our technology have witnessed remarkable developments in the last decade. While the basic familial, social, and legal values which have characterized our national policies are still intact we should undertake to ask ourselves where we are going, and why.

Just ten years ago the United States Commission of Population Growth and the American Future presented a report which seemed so out of kilter in relation to our basic values that the President even refused to accept a copy of it—almost as if holding a printed version would somehow give the words validity. The Commission's study contained many interesting ideas. I would like to focus on just one set of ideas which were contained in the Commission's research reports. This was the commentary of Kingsley Davis. Mr. Davis asked us to consider the role of the family, which he referred to as "a particular way of assigning responsibility."[5] He asked us to consider the proposition that the family is really a very arbitrary kind of social institution, and suggested that the biological revolution may give us the perspective we need to re-think the role of the family.

Davis asked us to consider why it is that a couple who engender a child must be assigned legal responsibility for its upbringing. He gave five examples, and I find it fascinating in the light of the ten years which have elapsed since both Davis and I wrote on the subject to take these five examples and measure them against the events of the last decade.

EXAMPLE ONE: Davis asked us to imagine a society in which children are reproduced in a test tube. Now this may have seemed like "Star Wars" stuff even before "Star Wars," but *in vitro* fertilization is a fact today. In both the United States and England children have been conceived in a test tube, and are

" . . . The New York Times has reported a survey of surrogate mother volunteers which suggests that while the majority of such women found their previous pregnancies to be pleasant experiences, most of them minimized any feelings of expected loss in having to give up the babies after birth."

now living, breathing babies. A hospital in Boston, of all places, is proposing to create an *in vitro* fertilization unit.

We Americans are just beginning to face the underlying value issues inherent in the use of such a procedure to create human life. In 1979 the Ethics Advisory Board of the Department of Health and Human Services recommended an increase in non-human private research in this area, recommended that human embryos conceived by *in vitro* fertilization not be used for research purposes beyond 14 days, and suggested the need to develop a model law on the legal status of children conceived in a test tube.[6]

" . . . For if man does survive, he will have at his command a greater power, for good or evil . . . this is nothing less than the power to direct the evolution of human life itself."

Inevitably, when something new gets started there is a lawyer around who begins to see possibilities in it. Often that lawyer specializes in torts! Almost as soon as the first test tube baby headlines were splashed across the cover of the National Enquirer and People Magazine a lawyer tried a case in New York asking damages against a doctor, and his hospital, who had spilled a test tube containing his client's fertilized ovum. A federal court ruled that the defendant were liable in damages for destroying the genetic materials which were being kept in connection with the *in vitro* fertilization of a married woman.[7]

Whatever their shock value may be for many people, the use of *in vitro* fertilization, or even *in vivo* fertilization,[9] seem like relatively modest advances to medical and biological experts. But they are not so modest in terms of their ramifications for the way we think about the parent-child relationship, the values we attach to human reproduction and human pregnancy, and the concept of the family's reproductive function.

EXAMPLE TWO: Kingsley Davis' second example involved the possibility of using professional childbearers to carry children to term rather than the traditional pregnant wife. Incredible? Well there have been a number of reported incidents of surrogate mothering around the country in the last decade! Indeed, the inevitable lawyer was right around the corner, and surrogate motherhood again reached the courts about the same time it reached the headlines in the newspapers stacked up by the supermarket checkout line. In Michigan a court heard a declaratory judgment action brought by a husband, a wife, and woman who volunteered to serve as a surrogate mother for their child. This trio sought to obtain court approval for a contract under which the husband and wife would pay the woman $5,000 to carry a child in her womb which was conceived by artifical insemination, using the husband's sperm. The woman, in turn, would consent to the adoption of the child by the husband and wife. The court rejected the request for a declaratory judgment, ruling that the contract was prohibited by a statute which made it illegal to accept a fee in connection with consent to an adoption.[9]

More recently, the Attorney General of Kentucky issued an opinion in response to several reports of surrogate motherhood contracts in that state. He also ruled that such agreements are illegal and he also sought an injunction against a professional surrogate motherhood agency which was operating in Louisville.[10]

These legal developments, which focused on very narrow and technical legal questions, leave untouched some of the really vital issues involved in bringing a third party into the family to participate directly in its reproductive function.[11] The press has published a few news items which suggest that there is much lurking just below the surface in this matter. For example, the New York Times has reported a survey of surrogate mother volunteers which suggests that while the majority of such women found their previous pregnancies to be pleasant experiences, most of them minimized any feeling of expected loss in having to give up the babies after birth.[12] Does this mean that there are a number of women who feel strongly about the experience of pregnancy, but not about children? What significance, if any, does this hold for the family life of such women, or for the problem of child abuse?

On the other hand there is one report of a surrogate mother who attempted to blackmail a couple by threatening to abort the pregnancy unless they paid her $7,500.[13] Are there cases where surrogate mothers have either aborted the pregnancy, or decided to keep the child after birth?

Other developments relating to surrogate motherhood include a clinic in Chicago which specializes in the sale of human ova. The development of artificial embryonation, i.e., the insemination of a donor female, followed by the removal and transplantation of the fertilized ova in return for a fee, has no doubt been accomplished.[14] There are reports (unconfirmed as far as I know) about on-going research on the use of non-human mammals to act as surrogate mothers to carry human embryos.

EXAMPLE THREE: Kingsley Davis, next suggested that child rearing should be unrelated to parenthood and that children could better be raised in association with age-mates rather than with siblings.

As the concept of the traditional family's function of child progenetor begins to be called into question (and even today more than 10% of all newborns in America are born illegitimate and outside the traditional nuclear family), as divorce rates soar (and perhaps half the children in America now experience family disruption in the form of divorce or separation) we find more and more interest in re-thinking the traditional role of the family in child-rearing. The fact of biological parenthood no longer invokes the automatic response of respect for parental rights that it once did. *The Philadelphia Inquirer* for March 13, 1982 reported (page 3-B) that a judge in Delaware had awarded a baby-sitter custody of a child even though the parents were not unfit. Mrs. Smith had been injured in an automobile accident, and hired Mrs. Marx to baby-sit her newborn child. Judge John T. Gallagher of the Delaware Family Court ruled that since Mrs. Marx had become the "psychological parent" by her close association with the child she should be awarded custody over either the father or mother (who were separated). Although the parents were described as "immature" the court did not find them unfit.

A decision of the Supreme Court of Iowa held that a father can be deprived of the custody of his son after the death of the

boy's mother (father, mother and child were all living together when the mother died unexpectedly) because the court believed that the father's lifestyle was "unstable, unconventional, arty, Bohemian, and probably intellectually stimulating." The court noted that the father was "either an agnostic or an atheist," that he was a "political liberal," and that he was an artist who lived in an arty atmosphere in California! The father was deprived of custody even though he loved his son and was not legally an unfit parent.[15]

In the field of family law the concept of the "wanted child," the "psychological parent," and the need to go beyond the mere best interests of the child now play a role in evaluating whether a child should be left with his biological parents or placed in a different situation.[16] The introduction of medical techniques by which even the biological processes of procreating a child no longer depend on the nuclear family may still further stimulate this development.

EXAMPLE FOUR: Davis suggested that the institution of inheritance would disappear, because the concept of parenthood would no longer be related to blood-line or family.

Well, this has not happened. In one sense, the relationship between family and inherited wealth has been made stronger in this country with the adoption of the Tax Reform Act of 1981, which substantially reduces federal estate taxes and enables a family to transmit its wealth to family members more easily.

But we must also note that the traditional nexus between inheritance and the nuclear or legal family has been diminished over the last decade. A straw in the wind may be the Supreme Court ruling that illegitimacy is in and of itself unrelated to the right of inheritance.[17] Thus a legitimate or legal family is no longer the exclusive institutional basis for inheritance.

The concept of legitimacy itself has undergone some re-thinking in the last decade. The Supreme Court of the United States has ruled that the father of an illegitimate child can prevent the adoption of his illegitimate child under certain conditions[18]—a direct attack (and I think a proper one) on the concept of bastardy. We now accept as obvious the proposition that the custodial father of an illegitimate child has procedural rights before his children can be taken from him.[19] This is an obvious and modest step under the due process clause—but what we haven't considered is at what point there no longer is any legal distinction between the legal family relationship and the extra-legal or illegitimate family relationship. The grafting of rights and privileges once considered to flow from the legitimacy of the legal family onto other social arrangements may suggest some loss of legal status for the traditional nuclear family.

EXAMPLE FIVE: Kingsley Davis suggests that in time the sex lives of individuals will become irrelevant to human reproduction; he related this in part to the increasing use of artificial insemination and the possibility of compulsory sterilization.

Obviously sex as a means of reproduction is still a pretty viable concept—perhaps I should say it is still a pretty common practice. Maybe it will always be so! But there are some straws in the wind which suggest that the separation of sex from reproduction will find some acceptance. The most important such straw is the interest in biological research by which new techniques can be applied to change or improve human reproduction by use of alternative methods instead of traditional sexual reproduction. Another such straw may be the growing demand for legalization of homosexual marriages. Courts have already been confronted with this issue.[20] One writer has gone so far as to suggest that the ideal child-raising unit of the future may be the lesbian family, in which one of the members would use the donated sperm of male homosexuals to impregnate herself through artificial insemination. I happen to think that heterosexuality is safe from extinction, but we are bound to see greater demands for child-bearing and child-raising rights by non-married persons and by homosexual communities. The recent spate of child custody cases involving lesbians suggests as much.

A very interesting case in New Jersey involving artificial insemination introduces us to another aspect of this matter. A sperm donor brought suit to assert his parental rights. A single woman who wanted to have a child was refused services at several artificial insemination clinics. She then asked a male friend of hers to donate some sperm, and he did. She used the sperm to impregnate herself, and bore a child. After the birth of the child the sperm donor claimed visitation rights. The New Jersey court ruled that since he was the biological father he was entitled to visitation.[21] Then there is the suit in Michigan against the state university medical clinic which allegedly refused to provide some women with artificial insemination services.[22] I would suggest that we are going to see a lot more litigation on issues relating to artificial insemination in the future as more and more people find it a desirable or acceptable method of reproduction.

A major development in the last decade was the United States Supreme Court decision in *Roe v. Wade,*[23] in which the Court examined the claim that an unmarried pregnant woman had the right to make her reproductive choices free of any state interference. In that case, the Court ruled that Ms. Roe enjoyed a constitutional right to decide for herself if her pregnancy would be aborted or if she would carry it to term. Clearly this constitutional right of privacy encompasses the decision as to whether she will become pregnant in the first place. But if there was any doubt on the question the Court dispelled it in 1977 when, in the *Carey* case[24] it ruled that unmarried minors under the age of 16 enjoyed a constitutional right to purchase contraceptives without the undue restriction by the state.

"Other developments relating to surrogate motherhood include a clinic in Chicago which specializes in the sale of human ova."

Now the issue of compulsory sterilization, mentioned in connection with Davis' fifth point, may not seem very significant today. The Supreme Court of the United States told us in 1927 that it is constitutional for a state to forcibly sterilize an imbecilic woman whose mother was an imbecile and whose daughter was alleged to be an imbecile. In the not very elegant phrase of the author of that opinion, Justice Oliver Wendell Holmes, "three generations of imbeciles is enough."[25] But since

then we have noticed a gradual but significant retreat from the practice of compulsory eugenic sterilization in this country. Maybe the decline relates to a decision at Nurenberg to put German physicians in jail for the same practice. Or maybe we have just come to fear the exercise of such a power by a government which can use it against races or classes which government bureaucrats view as undesirable. Thus, although courts in this country have continued to uphold the legality of compulsory eugenic sterilization, the Supreme Court of the United States did strike down a state practice of forcible sterilization which operated only on racial minorities.[26]

The issue of state power to sterilize an incompetent person will not seem to go away. It no longer arises so often in the context of the state-mandated eugenic procedure as it does on a case-by-case petition basis. Thus, a New Hampshire court ruled in 1980 that it would authorize the sterilization of an incompetent person if all procedural due process requirements are met.[27] But more recently the Supreme Court of Wisconsin reached a contrary view.[28] I suspect that this question will continue to come before our courts-but more frequently.

You are probably asking yourself at this point if there is a point to all of this. A great number of developments have taken place in the last decade. So what? I would be less than honest if I did not admit that I am not certain what the point of all this is. But I am certain that there is a point-and that each of us should pursue it to the best of our ability.

Since the Supreme Court discovered the doctrine of privacy in the United States Constitution in 1965 when it upheld the right of a married couple to use contraceptives free of state interference,[29] the Court has consistently upheld the value of individual choice as the basis of family life and human reproduction. Based on the doctrine of privacy the Court has ruled that a man and woman are free to marry without undue state restriction,[30] that an unmarried person has the right to purchase contraceptives,[31] that a woman has the right to abort a pregnancy without her husband's consent,[32] that a man can't be prevented from marrying because the state deems him not to be financially responsible,[33] and that a minor can obtain an abortion without the consent of her parents.[34] By the standards of American family law of the previous century this is all pretty heady stuff—the age of sexual freedom, the age of reproductive freedom, and the age of individual choice in family matters—all proclaimed as part of our Constitution from the highest judicial body in the land.

Our courts have also held that freedom on individual choice in these areas extends far beyond what we might have even imagined a few decades ago. Thus, a parent who bears a defective child can sue the doctor who failed to advise her about amniocentesis—the theory being that the procedure would have revealed the genetic defect and allow her to abort the baby.[35] And a woman who forgoes contraceptives can, in the name of her child, compel support from a man who she induced to have sex with her under a fraudulent representation that she was using a contraceptive,[36] even if the woman told others in advance that she intended to become pregnant by this artifice. And courts have ruled that a couple who choose to be sterilized can compel the physician who negligently performs the sterilization to support a child later born to them under a theory of "wrongful life."[37] The courts have ruled that life forms created in the laboratory can be patented,[38] and ultimately this suggests that free choice in the use of such life forms in relation to human reproduction will operate within the traditional framework of American free business enterprise.

We could go on. My point is that the power to control human reproduction is the power to change both our society and our way of thinking about our most important society—the family. As this happens our courts and our legislatures, our national commissions and our other legal and political institutions will have to start making some hard policy choices about where we draw some lines—or if we draw any lines at all.

Today the focus of our line-drawing seems to be focused on biological research. What research do we fund? Which do we merely tolerate? Which do we outlaw? How do we protect the subjects of research? How do we limit the application of biological research? In general I think we should maximize the opportunities of biological research on human reproduction, although this will inevitiably raise legal and ethical questions. But somewhere on this planet the research will be done, and I think it best that it be done in a society which is both ethically sensitive and willing to consider the legal consequences of its application.

But I also suggest that the biological research of the future is likely to produce far greater difficulties for our law, for our concept and treatment of the family, and for our socialization of the parent-child relationship. I think it will also have a direct and significant impact on our notion of the role of government in controlling, managing and developing populations. Certainly recombinant DNA research holds far more potential for man-made, man-directed human evolution than such primitive techniques as embryo transfer, artificial insemination, abortion, sterilization, or *in vitro* fertilization. We are coming closer to having control over not just our world—but over ourselves, and over our generations yet unborn. Everything we have seen so far is insignificant by comparison.

Developments in biology, and their medical and social applications, will test the ability of man to control his own destiny. It will also test his ability to govern himself while maintaining his individual liberty. The greatest development in family law over the past decade has been, as I suggested previously, the promotion of free choice and individual liberty in family and reproductive matters, under the doctrine of privacy. But the promotion of individual liberty and freedom, especially in regard to human

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reproduction, will face a great challenge in the existence of governmental power to manipulate reproductive choices. The potential of genetic engineering, the need for governmental involvement in setting policy of population growth, and other pressures will combine in the future to present us with both an unlimited opportunity and excessive danger.

The governments of this world will inevitably take steps to become involved in the application of genetic engineering to social engineering. The problem of population growth presents an initial opportunity for government involvement. So does the movement which would limit medical application of biological research by governmental regulation. The deemphasis on the concept of nuclear family, which I think I have shown to be a discernable trend, combined with the need for legal regulation of alternative social groups by which human beings channel their sexual and reproductive desires, point in the direction of more government—not less. Even in conservative societies such as China and India, where the nuclear family is accepted by most as the norm, there has been compulsive government action designed to inhibit and limit individual choice.

I do not suggest that greater government involvement in human reproduction is necessarily wrong, but I think it holds certain dangers of which we should be aware. I think I have shown that the courts in this country have continued to assert the primacy of individual choice in the area of family and human reproduction. But the biological revolution cuts in the opposite direction by making available to government the means of influencing and even controlling the genetic quality of human life. The idea of mass sterilization, compulsory abortion and licensed child-bearing may seem remote to those of us who live in a climate of human freedom—but they are possible in a world tortured by overpopulation, starvation, and totalitarianism. Yet even these possibilities pale as against the power to control and direct human genetic selectivity. The idea of eugenically pure reproduction was first proposed by the Englishman Galton a century ago, was first put into practice by the American states which adopted compulsory eugenic sterilization laws, and then was first attempted on a mass scale by the Nazi party in Germany. The death camps for those who were viewed as eugenically impure, the camps for selective breeding of a pure master race, *etc.* will hopefully never be seen on this earth again. But those who would exploit the biological advances for reasons of racial theory, economic superiority, social theory, or national advantage will have other and more sophisticated tools at their fingertips.

As lawyers we should begin to consider this in earnest. Ten years ago I tried to formulate the basic issue as I saw it; I believe that the formulation still holds.

> [N]o government could (or would) leave to the pure scientists the work of establishing the goals of planned genetic evolution and the means of achieving it. For a state to leave in the hands of private parties the power of radically altering the genetic quality of the population would require an act of political restraint of a character unknown in human history.[39]

Notes

1. Sean McBride: Twentieth Century Lawyer, 11 The Advocate (No. 2) 3 at 16 (1980).
2. Kindregan, State Power over Human Fertility and Individual Liberty, 23 Hastings Law J. 1401 (1972).
3. *Id.* at 1425.
4. 2 U.S.C.A.§471 (b).
5. Davis, Constants: The Underlying Principles of the Family, in Report of the Commission on Population Growth and the American Future, Research Reports, Vol. I, page 241 (1972).
6. 44 Fed. Reg. 35044 (June 18, 1979). See, also, Hubbard, Test-Tube Babies: Solution or Problem?, Technology Review (March-April 1980) page 5; Ramsey, *On In Vitro Fertilization* (1979).
7. Del Zio v. Presbyterian Hospital, S.D.N.Y., 1978 (Docket No. Civ. 74-3588).
8. *In vitro* fertilization refers to the fertilization of an ovum in an artificial environment, such as a dish or test tube. *In vivo* fertilization refers to fertilization in the womb with the intent to remove it after fertilization either to an artificial environment or to the womb of another female.
9. Doe v. Kelley, 1979–81 RPTR. H.R.L. II-B-15 (Jan. 1980).
10. See 1979–81 RPTR. H.R.L. II-A-9 (Feb. 1981).
11. See, for example, Note, Surrogate Motherhood; Medical Reality in a Legal Vacuum, 8 J. Legislation 140 (1981).
12. Surrogate Mothers: Why Women Volunteer, New York Times, Style Section, June 29, 1981.
13. See, Keane and Breo, *The Surrogate Mother* (1981).
14. These and similar developments are reported in Andrews, Embyro Technology, Parents Magazine (May 1981) page 63.
15. Painter v. Bannister, 258 Iowa 1390, 140 N.W.2d 152 (1966).
16. See, generally, Goldstein, Freud, Solnit, *Beyond the Best Interests of the Child* (1973).
17. Trimble v. Gordon, 430 U.S. 762 (1977).
18. Caban v. Mahammed, 441 U.S. 380 (1979).
19. Stanley v. Illinois, 405 U.S. 645 (1972).
20. See, for example, Singer v. Hara, 11 Wash. App. 247, 522 p. 2d 1187 (1974).
21. C.M. v. C.C., 152 N.J. Supp. 160, 377 A2d 821 (N.J. Juv. & Dom. Rel. Ct. 1977).
22. Smedes v. Wayne State University, E.D. Mich. 1980 (Docket No. 80-72583).
23. 410 U.S. 113 (1973).
24. Carey v. Population Services, Int'l., 431 U.S. 678 (1977).
25. Bell v. Buck, 274 U.S. 200 (1927).
26. Skinner v. Oklahoma, 316 U.S. 535 (1942).
27. In re Penny, 414 A.2d 541 (N.H. 1980).
28. Guardianship of Eberhardy, 307 N.W.2d 881 (Wis. 1981).
29. Grisword v. Connecticut, 381 U.S. 479 (1965).
30. Loving v. Virginia, 388 U.S. 1 (1967).
31. Eisentadt v. Baird, 405 U.S. 438 (1972).
32. Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52 (1976).
33. Zablocki v. Redhail, 434 U.S. 374 (1978).
34. Bellotti v. Baird, 443 U.S. 622 (1979).
35. Berman v. Allan, 80 N.J. 421, 404 A.3d 8(1979).
36. In re Pamela P., 1979–81 RPTR. H.R.L. III-B-32 (Sept. 1981).
37. Anon. v. Hospital, 35 Conn. Supp. 112, 398 A.2d 312 (1978).
38. Diamond v. Chakrabarty,—U.S.—, 100 S.Ct. 2204 (1980).
39. Kindregan, Note 2, *supra* at 1413.

PROFILES: Alternative Career Choices for the Attorney

Not everyone who has a law degree or contemplates receiving one, is unquestioningly planning to practice law. Nor is it so unlikely that once practicing, the lawyer will be married to the profession for life. Career-switching is much more common than it used to be only a few years ago.[1] *It is more practical now than ever before to switch careers, due to the general affluence of our society, the two-income family, the decline in the birth rate (resulting in less pressure to support children), and social programs such as unemployment insurance. More basically, these lifestyle changes have, for many of us, changed the meaning of work. It is no longer a question of basic subsistence, an unquestioned necessity to support day-to-day existence. Many are looking for an occupation that is personally satisfying, challenging and varied, as well as one that will allow for private values and activities.*[2]

Two recent examples of attorneys who felt they needed a change from practising law and did something about it were noted in The American Lawyer *(January 1982, p. 38), and in* The National Law Journal *(January 18, 1982, p. 39). The first was a young woman attorney who was bored with "drawing up contracts" and within one year established her own office as a headhunter, or lawyer placement service. The second was a partner in a large law firm who left to produce a comic strip, "Sally Forth," which now appears in over 100 newspapers nationally. He notes that the announcement in his firm brought about a favorable response from many of the older attorneys who had other activities that they would be doing if they did not practice.*

The realities of private practice often force the individual to give way, too, to the idea of autonomy, and personal achievement and respect.[3] *Lee Taylor, in* Occupational Sociology, *states that traditionally the idea of professionalism (and this seems especially true in law) was "characterized by extreme occupational control on the part of practitioners." This was brought about by their education (the special body of knowledge, training technique, and qualifications required), the motivation of service to society, and a commitment to ideas.*[4] *This is the ideal characterized perhaps by the concept of the sole practitioner in a community of lay persons to whom the lawyer is a counselor, mediator, and interpreter of the law. In reality, if the ideal ever did exist, it is becoming more difficult for the "country lawyer" to maintain that special body of knowledge, or for the large law firm attorney as part of an organization to remain committed to personal ideas and to carrying them out in practice. Nor is the respect of the community at large any longer an encouragement to practitioners.*[5] *There are too many of them, the media has shown that they are, indeed, as imperfect as any other group, and the legal system which they represent is daily shown to be ineffective in solving society's problems.*

The level of acceptance of alternatives appears to increase as the idea of career switching becomes more widely known, or as social scientists might observe, there is a contagious effect in the visibility of a cohort group. Whether examples of alternative careers are merely informative, thought provoking, or encouraging, they should be made known to assist in career evaluation and re-evaluation.

Notes

1. World Future Society, The Future: The Occupational Outlook, *The Hammond Almanac,* 1982, p. 15.
2. Ellis, *Career Choice and Attitudes Towards Work Among Professionals-In-Training* (Yale University, Philosophy dissertation), December 1977, p. 9.
3. Sarason, *Work, Aging, and Social Change—Professionals and the One Life-One Career Imperative,* The Free Press, 1977, p. 159.
4. Taylor, *Occupational Sociology,* Oxford University Press, 1968, p. 131.
5. Zemp, Turned-Off Lawyers, *Student Lawyer,* vol. 10, no. 3 (Nov. 1981), p. 23.

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3. Bolles, *What Color Is Your Parachute?* A Practical Manual for Job Hunters and Career Changers. Ten Speed Press. 1981.
4. Ellis, *Career Choice and Attitudes Towards Work Among Professionals-In-Training,* Yale University, Philosophy dissertation, December 1977.
5. Gatto, Upwardly Mobile Executives Collect Degrees Like Baseball Cards, *The Boston Globe,* 2/14/82, p. A22.
6. New Law Librarian: An Interview with Morris Cohen, 28 *Yale Law Report* 12 (Fall 1981), reprinted in *Law Librarians of New England News,* vol. 3 no. 1 (January 1982), p. 12.
7. Rozen, Headhunters, *The American Lawyer,* January 1982, p. 38.
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TONY LARUSSA: BASEBALL MANAGER

Jeremy Silverfine

Payne Park in Sarasota, Florida is a small grey baseball stadium, the kind you would expect to find in many cities boasting minor league clubs. In fact, it is used by several minor league teams competing in the Gulf Coast League. To the Chicago White Sox, however, Payne Park is home until the team migrates north for the start of the baseball season. A couple of hundred feet behind the wooden first base bleachers, surrounded by a chain link fence, stands a brand new clubhouse. It was built in 1981 by the Sarasota Sports Committee. A large blue and white emblem of a baseball batter is painted next to the entrances. Three bold blue letters spell out who the beneficiaries are—SOX.

The clubhouse entrance is through two, darkly tinted plexiglass doors. As in

many situations in life, an outsider cannot see in, but once inside there is no difficulty in looking out. A vacant players' locker room is off to the right. The office door to the left marked "manager" is wide open. No one is inside. At the far end of the office is the coaches' room. Two men are seated opposite each other on green benches. One of them has his baseball cap turned around backwards like a catcher's. The other gentleman looks familiar. He is casually dressed in a tee-shirt, shorts, and white canvas shoes. His hair is well styled and his wire sunglasses appear expensive.

"You're Mr. (Ken "Hawk") Harrelson."

"That's right."

Immediately, I explain that I am from Boston and will be interviewing White Sox manager, Tony LaRussa, for The Advocate.

"The fans in Boston are sure going to miss you," I mumble, searching for something intelligent to add.

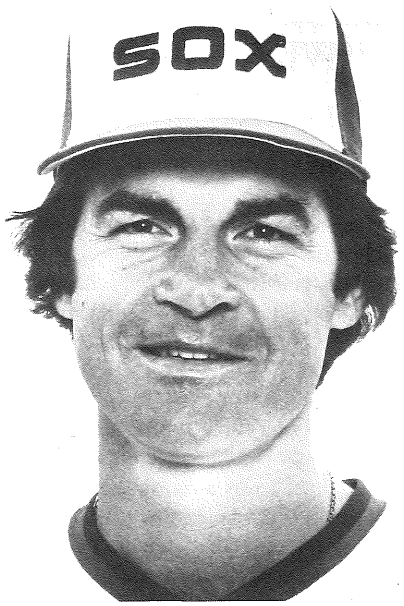
"I'm going to miss them, too," he says, as if recalling some of the pleasurable moments he spent in Boston before changing the color of his broadcasting sox from red to white.

"Who are you going to be working with . . . ?"

"[Don] Drysdale."

Harrelson stands up to leave. He does not seem as tall as he appears to be on television, although he is broader.

Left alone in the clubhouse, I wander over to the players' locker room . . . A boyhood fantasy come true . . . The locker room is spacious with training and shower facilities. In the center lies a large Nautilus weight machine brought in from Chicago. Directly behind the Nautilus are two tables. A juice dispenser is on one of them. Boxes of Bazooka bubble gum and Red Man chewing tobacco are on the other. This is the big time, the major leagues. Those words had always sounded so magical. "The major leagues." It is the ultimate athletic accomplishment. Yet, somehow, being in this room feels very comfortable. I examine the names taped to the players' stalls. Luzinski . . . a lot of spikes in his locker . . . five gloves—what does he need five gloves for? Rubber-like shirts . . . he must be trying to lose weight. Kooz. Jerry Koosman . . . vivid childhood memories of the 1969 Mets . . . the pitching staff of Seaver, Koosman, Gentry, McGraw, Ryan. Leflore. Fisk. 72 Fisk. That's right, Fisk works here now . . . so used to seeing him in that Boston



Red Sox uniform. Baumgarten. Trout. Burns. Good young arms. Hill. Kemp. Kemp . . . just traded for—he's getting some bucks to play. Hey, this club is spending some money on its players. I wheel around to absorb the setting. I almost feel as though I am supposed to come in, pick up my mail, have a cold drink, and sit down at my cubicle after the day's workout.

Outside, two men pop out of a sporty black Mercedes. One of them is Ron Leflore, an extremely well developed athlete. It was not too many years ago that he was incarcerated at a state penitentiary. A couple of minutes later Jerry Koosman, Ross Baumgarten, and Steve "Rainbow" Trout stroll by. They all say hello and continue to kid each other, using language peppered with profanities.

Suddenly, I realize why the entire scene is so familiar. I am in a locker room with teammates. The teammates are not mine and the Payne Park clubhouse is much better equipped than any I had ever used as a high school and college athlete. But the feeling is the same. The purposely slow walk back to the locker room after a sweaty practice, the jokes, the cursing.

The next day was the first official day of spring training for the Chicago White Sox. The players present were mainly the pitchers and catchers. I had the opportunity to saunter amidst the players and coaches during the practice. The squad was loose as they went through their drills. Inside moves . . . an infielder telling another the reason why the Major League Players' Association president, Phil Niekro, wanted an ear flap on all batting helmets this year. While the batters would voluntarily wear the flaps (either out of fear or respect) facing either Nolan Ryan or Goose Gossage, none of them would wear flaps batting against Niekro (not well known for his fastball). If the rule passed, ALL batters would be required to wear the ear flaps against Niekro as well. Thus, instant respect!

Competitive edge. Veteran catcher, Marc Hill, needling a rookie catcher who was trying to impress the manager by throwing the ball as hard and as accurately down to second base as he could.

"What's the matter, kid," Hill shouted, "you got a sore arm or something?"

Enthusiasm and promise were in the players' voices. A symphony . . . Carlton Fisk taking "bp" (batting practice). Every time he hit one deep into the outfield he would sing out (somewhat) melodiously, "you know you nice!" A coach, along the first base line, responding in turn "you know, YOU nice!"

Tony LaRussa was born in Tampa, Florida in 1944. Most of his professional baseball career was spent as an infielder in the minor leagues. LaRussa did play in a total of 132 major league games. His lifetime batting statistics, while playing for the Kansas City (later the Oakland) A's in the American League, and Atlanta and Chicago in the National League are as follows:

G	BA	SA	AB	H	2B	3B	HR	RB1
132	.199	.250	176	35	5	2	0	7

LaRussa was hired in 1979 to manage the Chicago White Sox. He is presently the only lawyer-manager in the major leagues. He is also one of the youngest.

There were two other lawyer-managers

"Those words had always sounded so magical. 'The major leagues.' It is the ultimate athletic accomplishment."

in the major leagues—Monte Ward and Hughie Jennings. Both are in the Hall of Fame.

"What's the matter, kid," Hill shouted, "you got a sore arm or something?" "

Question: The first question that I have for you is on your educational background. I know you went to Florida State Law School. What college did you attend?
Tony LaRussa: University of South Florida, Tampa.
Q: How did you complete your undergraduate degree? Did you go to college full-time and still play professional baseball?
TL: No, as a matter of fact, I signed my first pro contract graduation night out of high school. So, what I would do is during the off-season of baseball, I got my undergraduate degree. It took me seven off seasons.
Q: Seven off-seasons, was that all during the winter?
TL: Yeah. I'd go to school . . . I'd get there in late September and go until the first of March. At that time, they had trimesters. So, I'd get in two trimesters and it would be time to go to spring training.
Q: What was your major at the University of South Florida?
TL: Industrial management.
Q: Industrial management. It took you five years to earn a law degree, is that correct?
TL: Uh-Huh. Same way.
Q: All at night?
TL: No, no. As a matter of fact, I only went at night when there was something I wanted to take. I'd got, in fact, the same thing as undergraduate school. I started around late September, the middle of September for law school. I'd sometimes . . . miss a week or two because the season was running long. But, I'd finish up. I'd get in two quarters in a year.
Q: Was Florida State Law School cooperative in that sense?
TL: Outstanding. Outstanding in that way. They were very cooperative. It was on me to do the work . . . But, they didn't penalize me for being late a week or two. Otherwise, I generally tried to get there on time because you can't afford to miss that much.
Q: Did you have to make any special arrangements with your professors?
TL: Sometimes. Rather than starting school late, I had more of a problem in the second quarter when it was time to go to spring training, because the quarter would not usually end until the latter part of March. So, sometimes I'd take on early finals or sometimes I'd write a paper instead of a final and other times I'd have to come back from spring training to take finals.
Q: Were you considered a special student? For example, at Suffolk Law School there are full-time day students and part-time evening students. Were you afforded any special status as far as that goes?
TL: No, I don't think so. It was just that I had to go through the readmitting process all the time. I was a full-time student and then I'd drop out of school at the beginning of the second quarter. Then the next year I'd apply for readmission. There were some schools that I'd talk to before I had made applications . . . and they indicated that basically once you decided to go to law school, that's going to be your career. So, you go three years full-time, like everybody else does. . . They [Florida State] were very receptive and I'll be in their debt forever.
Q: Did you have any difficulty studying or concentrating during the year? Especially when spring training was coming up? You have to prepare for the season, study for exams, sometimes—as you mentioned—leave town for a week or so.
TL: Well, there was . . . I think the toughest thing . . . there were a couple. One is that during school . . . during the winter I'd built up pretty good study habits and then all of a sudden I'd leave to play the season. And I'd have to start fresh the next September. And try to learn . . . the way to learn is to brief cases and stuff like that. So you'd lose it, that knack.

A lot of guys I'd started school with, would go three years and sometimes would go summer school to get through in two and a half. You get pretty stale, so I was always fresh coming in. So it's kind of a tradeoff.

. . .More of the problem is that during the winter . . . there's a hell of a premium now-a-days on the player's off-season training. . . .I wasn't free to go out there and practice like these guys were, like work weights and get sharp. So I tried to compromise. I'd tried to do some working out and I wouldn't be able to sacrifice my studies. So I really didn't do either one of them as well as I should.
Q: Were there any times where you thought of quitting law school? Where you thought it was too long a road, too difficult?
TL: No. The hump that you get over, maybe it's the same for other people, but for me the hump was that first winter . . . I started as a freshman, like I know they put it on freshman . . . do a lot of work, try to weed people out. . . It was a tough grind and I had been out of school since '69. I started in '73, so it was a four or five year period there where it was tough for me to get back into it.
Q: That in itself is difficult, to return to school after being out (in the working world) for a number of years.
TL: That's right. What I did was just work my butt off . . . to try and make it work. Once I got through my first two quarters and didn't fail. . . After that . . . I thought it was. . . At that point, see, you have to understand. At that point, I was still a player and I was assuming that I'd quit playing and become a lawyer.
Q: In other words, you were always a [baseball] player first, is that what you're saying?
TL: Yeah, well you see (lowers his voice) the reason I started law school in the beginning was that I could see that my playing career was coming to an end. So you got to do something else. So I thought I'd try the law. So . . . there was that motivation to keep you in law school because I figured well, I'm going to stop playing one of these days and I'll become a lawyer. But (raises voice) what happened in about the middle of that five year period. . . I started getting interested in managing and it was actually . . . only until right at the end of law school that I started to manage. So there's always the motivation to go to school. If I'd have been a big league manager, for example, making decent money then it might have been . . . maybe that motivation would have been gone. But, I felt like it was something I'd do for a career at that time.
Q: Were you employed at all during the off-season, besides baseball, while you were still in law school?
TL: I did it one time only. One year . . . it's a long story, I won't make it very long. I played in Denver one year, it's 1975 . . . My wife and I liked it very

much. Had a pretty good year, met some nice people. Turned out one of the owners of the ballclub was one of the partners in an outstanding law firm in Denver called Hughes and Dorsey. So we thought about maybe living in the Denver area. So we stayed that winter. I clerked for the Hughes and Dorsey firm and I attended the University of Denver, at that time, as a visiting student. Then if we'd gone ahead and moved to Denver . . . I would have transferred . . .They were under the quarter system, too. So it was kind of neat. But what happened was that it was a White Sox farm club in '75. In '76, the farm system . . . the farm arrangement went back to Des Moines, Iowa. So, I had to move back to Des Moines and that ended the Denver connection there. But, I did clerk for that firm in '75 and every other year it was too tough. . . I mean trying to work out for baseball, to stay in shape. Trying to do law and trying to work. I couldn't handle it.

Q: Did your law school classmates look at you differently or treat you differently from the other classmates?

TL: I don't know. It's hard for me to say. I don't think so. I found that like every place you go there are a lot of baseball fans who got something a little special out of being able to talk inside baseball. But I wasn't given special treatment in any way. I made friends with everybody I think.

Q: How about the players' view towards you as a manager-lawyer? Do they approach or look at you any differently?

TL: Well, I know when I was playing and the guys knew I was in law school . . . I think that it gave me a certain credibility with the players. When I was a player, a lot of guys would tell me—'when you get out of school, if you get into player representation . . . I'd like to be one of your guys. You could take care of me.' But, when I became a manager (lowers voice again) . . . I don't know, you'd have to ask the players. I don't know if they see me any differently. There's some real good managers in our league and nobody's a lawyer. Earl Weaver sold cars (raises voice) and Billy Martin . . . does other things. So, I don't know the players say hey, this guy's a . . . lawyer, therefore he's going to be a good manager or a bad manager. The only thing I do believe is that I think it's helpful to the extent that players know that I'm here because I want to be here. Sometimes I know, as a player, I didn't get a real good feeling about my manager when I thought he was the kind of career man, who this was the way he made his living. His security is here. I think I get a certain edge sometimes because the guys know, hey, if this thing ever got too much . . . or didn't work out, I could do something else. That helps. I think it helps.

Q: As far as management is concerned, do they look upon you differently or do they treat you differently (more tenderly perhaps)?

TL: . . .There are certain differences. One is . . . our new owners, Eddie Einhorn and Jerry Reinsdorf, both lawyers. Well . . . one of them is a lawyer . . . but both law school graduates [Northwestern Law School]. So I think any time you see somebody who went to law school you have a certain feeling about them. You've gone through what they went through. So it helps.

The other thing is that I think there's no reluctance to talk to me about some of the problems in the game, because the game has gotten very oriented towards agreements. Difficult, technical kind of stuff that . . . I see the baseball man of ten, fifteen years ago and . . . you want to look at the contract and interpret some of the language today. Law school training is pretty damn useful. So, I think it helps me get into conversations sometimes with them.

I was also very lucky that the first owner of the White Sox who hired me, Bill Veeck, was as well read as anybody around and I think that might have made an impression on him. In fact, he's told me that made an impression on him. The fact that I would go to law school and get a license to practice law.

Q: You were talking about the skills required in law school. Do you think that the skills taught in law school are applicable to other areas or are they just good for teaching students how to be a lawyer?

TL: I don't think there is any question in my mind that . . . and here again, I don't want to be misunderstood. I'm not saying that you have to go to law school to learn these skills. You can learn other places . . . obviously other people do. But, law school does a real good job, in my opinion, of teaching you a couple of skills that are very useful no matter what you do. One is, like in baseball, you learn the importance of the attention to detail. The value of hard work and preparation. . . .If I'm going against you in a case and I do a much better job of preparing my case down to the finest detail . . . I got a better chance to beat you. Well, that kind of hard work and that kind of attention to detail has been very helpful in trying to run a major league club, because in baseball you're looking for the edge. So, it's the same in law and in other business. You're looking for the edge and one way to get it . . . it just doesn't happen . . . you just don't sit here and get the seat of the pants of inspiration. Basically it comes from hard work and pouring over a bunch of material.

Q: Did you ever think about attending law school earlier (at a younger age), for example in high school, or did the thought occur to you only when you were playing minor league baseball and you realized you wouldn't have a long career?

TL: I think I was so involved with becoming a baseball player when I was a young man that any idea that I had of the law or things I wanted to do . . . was really just fleeting . . .

Q: Were you always a serious student in high school and college?

TL: Yeah, that's one thing . . . I've always done pretty well. I got into the honor society . . . at South Florida. I graduated with honors from law school. . . .But I'll tell you something . . . I'll admit something . . . and I know it's true. Whether the teachers or professors ever figured out, I don't know. Right now, if you looked at my diploma—law school—it says with honors. So, I'm proud of it. But, the reason I graduated with honors is not because I'm especially smart or especially . . . that I had a gift for the law. Purely and simply, the thing that gets me going . . . in this game . . . competition. It just bothered the heck out of me that on grades' day there, I'd look at those boards and there's a guy who had better grades than I did.

" 'At that point I was still a player and I was assuming that I'd quit playing and become a lawyer.' "

Q: An article in *The Chicago Tribune* (4/13/80) quoted you saying that this competitive instinct kept you going in school.
TL: That's true!
Q: That kept you going?
TL: Yeah. As a matter of fact it does.
Q: Competition?
TL: Yeah. So, like I'm saying . . . and everything you say . . . and I can see just the way it's going to be written or can be written and I've seen it written. Sometimes it doesn't read right. I'm not saying the study of law is not interesting, so I don't get a lot out of it. Of course not. But, it is challenging in a lot of stuff. But instead of going to bed at midnight when you read the material through and you prepare for a test. . . Staying up until three and nailing the material down. . . To me the reason I stayed up the extra three hours was not to just nail that material down for the sake of learning the law. It was for the sake of beating somebody. And, that was just what motivated me because I know when you get to a school and when you get to the practice of law . . . you have to reread all that law whenever it becomes appropriate. So, some guys you get the grades because you want to try and maybe have a better chance at a better firm. The better your class grades, the better chance you have to get a job. All that's fine and I understand that. I'm not putting anyone down. I'm just saying, for me personally, the reason I stayed up the extra three hours was to beat, was to get as competitive a grade. It's just like what gets me going in baseball. I don't want to get beat. You play racquetball with me, I don't want to get beat.
Q: What did you particularly like about law school?
TL: Well, I liked the fact that it was at Florida State, as a matter of fact. I felt overall it was a good faculty. . . The reason I say I liked it was because I used to like to go to classes many of the times. I didn't particularly like all the assignments. . . But, generally the professors there were really conscientious guys who tried to make the class interesting. . . They just didn't read . . . what you read and throw it back at you. They tried to prepare their lectures. So I liked that part of it. I talked to other guys and that's not always true at every place. I think some guys can get pretty lazy about that. I like the way the law teaches you to critically examine stuff that you're given. Whatever fact of life . . . you're taught that you don't accept things at face value. You're taught to look at it . . . be critical . . . examine it and that's . . . I liked that . . . and very useful.
Q: Any dislikes?
TL: I had some dislikes. But I think the major part of the dislikes were more personally oriented. If I didn't think a professor was doing a real good job of presenting the material. Or if the material itself was just dull and was not going to be likeable. But, I can't really say . . . that would ring a bell . . . There's nothing on my mind.
Q: How did you pay for law school? Did you have to take out loans?
TL: Yeah, I took out a loan. . . But I was also earning a salary as a professional baseball player. I was very fortunate in that regard. I was earning enough so that in the winter it wasn't as necessary for me to go out and work. Some students . . . just don't have that luxury.
Q: Did you find that you had a strong support system (e.g. friends and family) who encouraged you to finish law school while you were still playing baseball?
TL: I got real good support at home from my parents. . . My mother has always been interested in my education. My dad has been very interested in athletics and they're both interested in the other. It's kind of always like I've been encouraged to study. But, the real star, as far as I was concerned, was when I started law school. I just . . . shortly thereafter . . . got married and . . . that's not a real honeymoon . . . During the season we play baseball. Half the time . . . you're going to be away from home. Half the time you're at home, you're at the ballpark a great deal. So during the winter where traditionally ballplayers take it easy and make up for lost time, I was going to law school and putting in long hours. . . My wife, Elaine . . . I got considerable amount of support from her. I didn't catch the crap that some guys catch.
Q. Are you allowed to practice law at all now (during the season? off-season?)? Does either the league, or the White Sox put any restrictions on you?
TL: You know I'm licensed in the state of Florida. [Admitted to the bar in 1980].
Q: You were, at one time, talking about taking the Illinois bar.
TL: I thought about it at one time, especially when I spent one winter in Chicago. I thought I'd be spending more time there. But I haven't done that and now that we live down here [Sarasota] I spend more time here. So, I'm just licensed here and I have no immediate plans to take the Illinois bar.
As far as restrictions . . . I have not been told by anybody ever, by the league office, commissioner's office, our team . . . not to do this. I'm with a firm . . . Thorp, Reed, Conley, and Dooley that I'm very happy with. It's a local Sarasota-Brandenton firm. I joined them last January [LaRussa is listed as an associate in the Martindale-Hubbell Law Directory]. Basically, the restriction is the time constraints. It used to be that a manager's off-season was an off-season. But, now they run you around a lot trying to promote the club. The other [restriction] is that there are certain ethical . . . certain conflicts of interest that you want to be sure you don't even suggest the appearance of.
Q: So, for example, can you represent players now?
TL: Well, I think that the firm could, but I wouldn't. The firm . . . at this point they have some, not baseball players, but they have some [clients] in other sports.
Q: Are you talking about the [American Bar Association's] Code of Professional Responsibility?
TL: Yeah, as far as conflicts of interest.
Q: What kind of work do you do for the firm?
TL: Well, our arrangement is very flexible. When I'm in town I get in there when I can and that translates to . . . once or twice a week. I try to get in there and what I try to do is . . . you can't get

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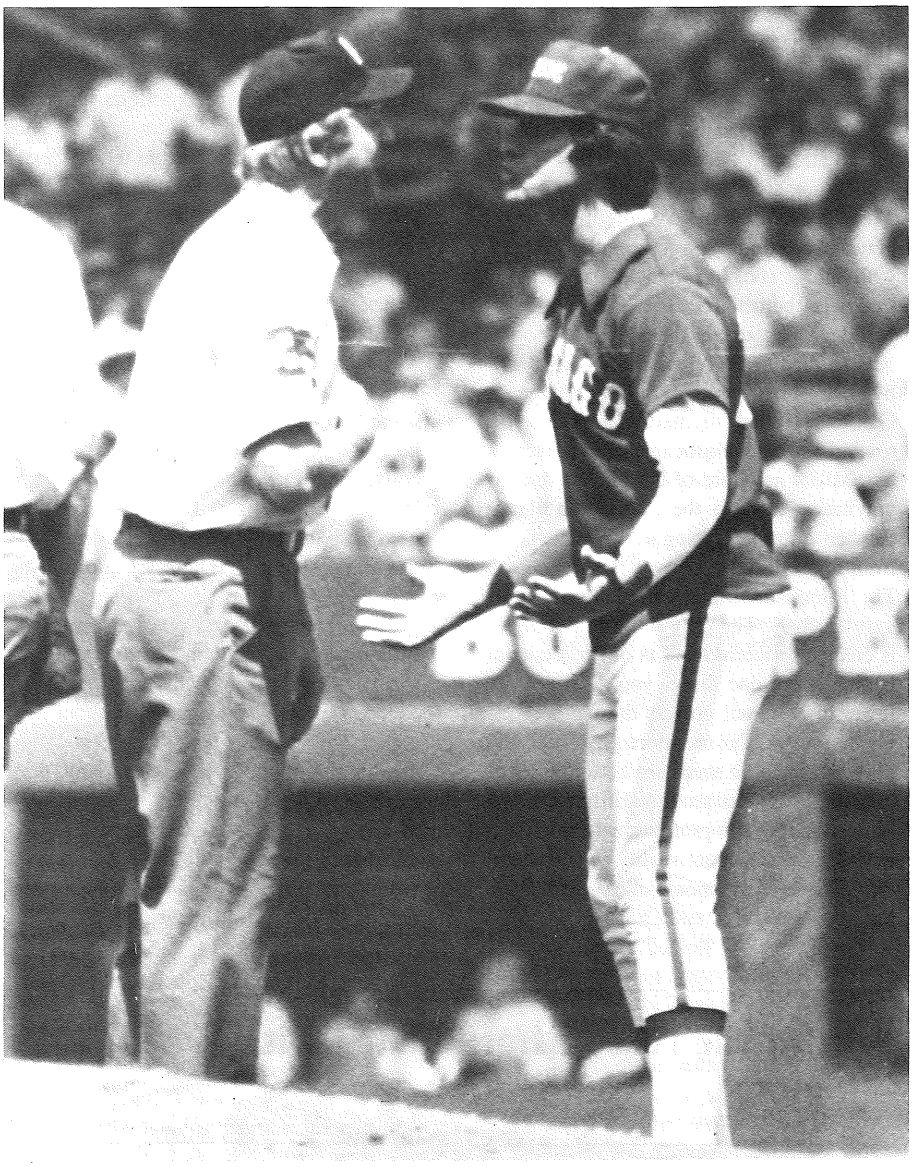


involved in any serious long term projects. You just can't stay with it. I try, as much as I can, this may sound like propaganda but . . . these guys in the law firm are excellent . . . so I get a lot (out of) watching . . . go to the courtroom and watch them. They gave me some basic things that can be done quickly; but, frankly, we've been surprised that there's been this much time during the winter to do baseball-type things. There really has not been much time to practice law as I would've thought. . . . I have people that I run across that need legal work. I'll go in the office with them. It's tough for me, I would have to spend ten hours to do something simple. So, the other partners be sure they get the good quality work and I sit in and watch them.

Q: So, in that sense you're currently restricting your activity to baseball. Do you plan to work with them [the firm] full-time if you're ever . . .

TL: Bounced?

Q: Bounced. Or if things don't work out?

TL: Yeah. I would be satisfied. More, more than satisfied working for Thorp, Reed, Conley and Dooley. I like the people so much. I also think that Sarasota's a great area.

Q: Would you consider being a player's agent?

TL: I think that I'd strongly consider it. Look, there's a million lawyers out there. Whatever the figure is . . . and a lot of guys have edges over me that put me at a disadvantage. I would have the disadvantage that I'd be fairly old, starting out to build a practice. . . . One edge I would have over everyone else would be the fact that this is my twenty first year of professional baseball. So, I'd have to strongly consider using that.

Q: In the *Chicago Tribune* article, you said that at that time [1980] you felt that being a player's agent was too easy. You indicated that the way you possibly wanted to go then was to negotiate for management. It "is the bigger challenge." Do you still feel that way?

TL: Well, yeah . . . put it this way. I think that the balance that you'd seek at one time was definitely in favor of the owners. So, it's a thing you can afford to sit here and talk about. Of course, you're not having to earn a living doing it. . . Well, now it kind of has gone the other way, where players have a lot of things going for them. . . So you kind of like to get that equal because for my interest baseball is better off when both sides are balanced.

But . . . to negotiate for management . . . it's difficult to be an attorney working out of a private practice. . . . You basically have to become part of the organization, an organization, you got to work for the commissioner's office or something. So, it would be easier if I wanted to have a private practice . . . to work with players and that probably will be the way that I'd like to go.

Q: Would you consider working in the front office (for some organization) or as an arbitrator?

TL: Yeah. That's a yes.

Q: But you're not working now towards that direction. You're working more towards private practice.

TL: I don't have the time to sit here and wonder about the future. I mean the future is the White Sox in 1982. So, what I spend 99% of my time thinking about is our ballclub and playing the '82 season. So, I really don't think about down the road that I might want to practice law. I can't afford to think about that.

Q: I'm just thinking in terms of a few years ago when you were in the minor leagues. You were thinking up ahead and realized that you didn't have a future as a player, so you went to law school. Now, as a manager—the saying goes "managers are hired to be fired."

TL: True.

Q: In that sense, you have to consider (the alternatives) . . . You have a family, a wife. You have to consider the future.

TL: No, you're 100% right. And its those times that I think, OK that if something did happen, I think that I would have some options available.

Q: How much time do you spend working on the White Sox? Do you spend all of your waking hours on the Sox?
TL: Yeah. The way it comes down . . . maybe I'm not one of these other guys. I don't know how they do it. I just know how I do it. I spend time with my family and when it's not my family, it's the White Sox. And . . . I love to read. In fact, that's why I thought I might try law. Because I know you have to read.
I *love* to read. But, I have not seriously read for leisure. It's just everytime I'd get a paperback I say 'son of a gun', I could be learning more about the Royals or I could be learning more about the (Oakland) A's and I pick up something else and read it.
Q: What are your thoughts about today's sports attorneys and player agents?
TL: *The Chicago Sun Times* called me one time during Christmas and said if you had two wishes. . . They were doing a thing on certain people . . . related to law and we'd like to get you in this thing. They had some judges, some lawyers. . . So, you get two wishes. . . One, I'd tried to be funny and I said something about how I wish umpires were more like judges . . . where you'd have a chance once in awhile. But, the other thing I said seriously. . . . I wish that all player agents were attorneys. There are a lot of them out there that are not attorneys. . . There's been some talk at one time or another about Marvin Miller [Executive Director of the Major League Player's Association] putting something, some ethical code to be sure. . . Attorneys are bound by the Code of Ethics. But, some of the other guys are doing some unethical things to get clients and once they have clients. Yeah, that bothers me because one thing, a player that's not represented well—I feel for him. I like to see him represented well. He deserves it. He's putting himself at their mercy . . . The part more important than that is the game. The game . . . cannot afford to be bothered or hurt by something as correctable. And . . . I'm not saying . . . that all agents that are not attorneys are doing a bad job . . . I know some that do a good job even though they are not attorneys, because personally they're committed enough. But, there are enough bad examples in baseball and other sports where something should be done and if they were attorneys that'd be something in the right direction.
Q: Do the players go to you for advice as to who to see (attorneys, agents) or for advice on contract negotiations?
TL: I get some inquiries once in awhile. To this day I've never recommended a person over another one. I just couldn't do that.
Q: Do you ever say, I think you should see an attorney vs. seeing an agent? Does a law degree afford some kind . . .
TL: I think you get, if you're a player . . . better protection. You may find a lawyer who does a poor job for you also . . . But, you'll get better protection. You get a better sense going in there because . . . he's studied some things, he's bound by some things.
Q. Do you think the national trend toward advanced education has affected baseball? . . . More of the players are gravitating towards the colleges to play baseball instead of going to the minors from high school.
TL: I don't think that national trend has hurt baseball. The only thing it's done is change different aspects of professional baseball. For one thing, you do see fewer high school players drafted and playing now. You see more guys will go to play ball because there are better college baseball programs around. Ultimately those guys all get to the professional ranks anyway. So . . . you might see . . . the lower minors have more college players than they used to.
Another change is that it creates a difference for the manager whether it's the minor league manager, big league manager, coach. It creates a difference for him and how he goes about his job because you are getting players that have been exposed to more education . . . They have been taught to ask why and expect a decent answer. Sensible answer. I think the day of sitting here and shutting your door and saying, 'Hey, there's the lineup. I'm not going to answer any questions.' They're gone. I expect and I'm prepared to answer questions.
Q: Will the college baseball programs ever replace the minor league system?
TL: No, no. I don't think it could possibly happen because there are still too many kids that can play out of high school and either . . . don't want to go to college, are not able to go to college for whatever reasons. And they have to have a chance to play baseball someplace. I don't see that happening. I think you'll see just a continuing improvement in the college programs. . .
Q: Is there a stigma attached to a college athlete? A few years ago, it seemed that if you played college baseball instead of going to the minors there was a knock against you (as far as your baseball career). Is that still true?
TL: No. There was a feeling just like there was a feeling about training with weights. You talk about weight training with some baseball people well they'll . . . just kick you out the door! You talk about college and they would say what the heck, if a guy wants to play ball . . . he can go ahead and play ball. But, I think that's definitely changed. There are more college guys coming out. You see a college guy come out here and . . . he's every bit as tough as Ty Cobb was and you see guys working with weights.
. . . Let me tell you something about this game. This game is ready to accept anything that works. If you can play, you can change any concept that's established in this game and you can change it to a different way of doing it. If your way works, the game will change to accommodate it. . . It's no different than any other enterprise. So, like right now we say that pitchers should have a certain throwing program in spring training. If you could prove that you could start here opening day and pitch effectively without going to spring training . . . we might cut spring training out.
Q: Do you think fan violence is on the rise? For example, in Chicago, the Dennis Martinez incident or Disco Demolition Night. [Baltimore pitcher, Dennis Martinez, was struck in the eye by a beer bottle thrown from the Comiskey Park stands. Disco Demolition Night involved a White Sox public relations promotion that backfired. The evening's main attraction was a local Chicago disc jockey blowing up a pile of disco records in centerfield. A fan riot ensued.] Are the fans having problems relating to the players making a lot of money, or even the lawyer-manager?

"But the reason I graduated with honors . . . competition . . ."

TL: Well, taking the last one first . . . I don't think anybody gets mad at me for thinking 'Hey, he's overpaid.' I think they get mad at me because . . . I'm the easiest person in the ballpark for the fan to think 'Hey, I can do what he does. . . ' So then you boo the manager. I'm not out there playing. I'm just out there thinking. So . . . if they think they know the game . . . they're going to boo you. 'Hey, he's getting paid that much money to do that!' They're going to boo ya because they think they could do your job better or you should be doing your job better.

Now, the players probably face some resentment over their salaries. If you're getting a ton of money and you're not playing like a ton of player . . . the fans are . . . it's timeless . . . that's time's expression for showing displeasure, so they're going to boo you. It makes sense to me that the tougher our economy gets and the more players are making, the bigger the discrepancy there is between the fan and the player, the less tolerance the fan is going to have for a player who is struggling. So you might get more of that. Now . . . lastly that violence stuff. . . Fans have been pretty tough over the years. In some places it's almost a characteristic of that crowd. In certain cities you don't get that problem. Chicago is overall, it's a really a good-time, enthusiastic crowd. Occasionally, you'll get some people who have too much to drink, maybe, and lose their senses. Some minority of people will leave a bad impression, like the Dennis Martinez case. That night, that crowd was actually a heck of a crowd and was in good spirits. But, one guy went nuts and pretty soon, "Jesus, White Sox fans." . . . I'm not getting on the band box for White Sox fans, although I would. . .

Q: Are there certain ballparks where you are concerned about your players' (safety)?

TL: Yeah, there is some . . . where, for example, the bullpens are pretty far removed from the dugout. They're kind of out there in no-man's land.

Q: How about Fenway Park?

TL: I have a lot of respect for the Fenway fans. The Red Sox fans have been real good fans. They're knowledgeable fans. It gets a little hectic out there in the bullpen, if you're out there listening to some of the stuff that's said or yelled at you.

Q: Will we ever see something similar to what happened in the New York Ranger–Boston Bruins hockey game [several Boston players climbed into the stands to fight the fans] . . . could that happen in baseball?

TL: Yeah. Sure.

Q: Is it likely?

TL: Well, I don't know. I'd hate to predict it. Hey, it happened a little bit in San Francisco. Reggie Smith (then with the Los Angeles Dodgers) went into the San Francisco stands and had to be pulled off. . . I mean there are certain limits that I don't care if it's a baseball park or whatever. For example, if your family . . . your mother, your wife, your daughter. . . I mean there are certain limits and that can happen at anytime. Might happen ten years from now. Might happen ten days from now.

Q: Did it ever happen to you as a player?

TL: Yeah. You know, a word was said. . . I never physically put a foot into the stands but I went up to the railings a few times. Basically . . . my upbringing . . . I think other people are brought up this way, too. But nobody gets on my family. I know last year we had some crap that (White Sox broadcaster Jim) Piersall getting on players' wives in general. . . I don't care who it is. Nobody gets on my family. Period! They can call me a bum. They can call me a fag. They can call me whatever they want to. But nobody's going to say anything about my mother, my wife, or my daughter. I'm not going to have it.

Q: How are the White Sox going to do this year?

TL: We're going to win it.

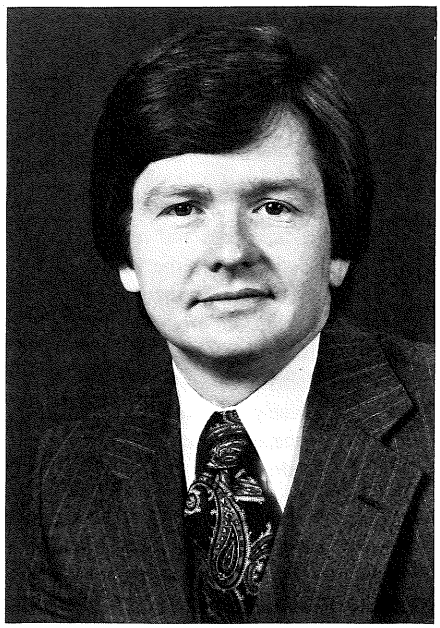
DAN REA: BROADCAST JOURNALIST

Frederick Watson

As co-anchor of a news program on WBZ-TV entitled "Live On 4," Dan Rea presents the news to over a half-million television viewers in and around the Boston area. Unlike most journalists, however, Dan Rea is also a practicing attorney.

Sitting in his Center Plaza law office, overlooking the Suffolk County courthouse, the Boston State College and Boston University Law School graduate spoke about his reasons for seeking a legal career and how he became a broadcast journalist.

"I felt at the time that an undergraduate degree was insufficient for entry into the work force. An undergraduate degree was not going to distinguish me from many other students with undergraduate degrees. My degree was in a classic liberal arts field—English, and I believed a law degree and a legal education would be beneficial no matter what I did, whether I practiced law or did something else," he states openly.



In retrospect, Rea's greatest criticism of legal education is that most law students are not exposed to the courtroom or the actual legal process.

"The failure of law school, if one can call it a failure," he states cautiously, "is that the student is exposed to theory, but the theory becomes abstract in the concrete practice of law."

Referring to the recent Harvard study raising serious questions about the present system of legal education, Rea stated that he would side with those who believe there should be more clinical programs. He said it is like attending medical school and never stepping foot in a hospital.

Although Rea did not work in a law office or participate in any clinical legal programs during his law school tenure, he considers himself fortunate to work with fellow attorneys who assist him.

"I work in a law office with several other attorneys who have been practicing for many years and they are great. If I run into a problem, I have the opportunity to rely on them for advice and this is a great advantage for me," he states.

"One thing a young lawyer is going to have to learn," Rea advises, "is to be prepared to ask questions. For the most part the young lawyer will find that the people involved in the court system in the various governmental agencies are very helpful."

Unlike his legal career, Rea's entry into broadcasting occurred more by chance than by design. While attending Boston University Law School, a fellow student suggested that he apply for an opening on the university's radio station—WBUR-FM. Although he was busy writing a weekly column for the Boston Globe, Rea applied for the job and was soon the host of his own one-hour talk show.

"Even though I was not paid, it was great therapy doing something a little different in order to get out of the law library once a week," he says.

After one year at WBUR, Rea received his first professional broadcasting job as a talk show host on WBZ Radio.

Following his graduation from law school in 1974, WBZ-TV offered Rea a job as legal editor on a new pre-6 o'clock news program entitled "First 4 News."

"Although in retrospect I probably did not have much expertise," Rea humbly admits, "I was pretty abreast of the developments in the law and I had the opportunity to put together a piece each week with the help of many attorneys in the Boston area."

After his exposure to television, Rea found himself comfortable in front of a television camera and promptly asked WBZ-TV if he could be a weekend news reporter. Rea could not have chosen a more exciting time to be a television news reporter. The summer of 1976 happened to be a summer in which there seemed to be a major story every weekend: America's Bicentennial Celebration, Queen Elizabeth's visit to Boston and the arrival of the "Tall Ships." After a few weeks of weekend reporting, Rea became a full-time news reporter where he had the opportunity to cover a wide range of stories all over the country—from presidential elections and inaugurations to the smallest town meetings. Currently, Rea can be seen each week night at 5:30 p.m. as co-anchor with Gail Harris on "Live On 4," which is the successor of "First 4 News." He also reports for the 11 o'clock news.

As both an attorney and a broadcast journalist, Rea certainly is a rarity. He estimates, that including himself, there have only been two or three broadcast journalists over the years in Boston who have also been attorneys. On the national news level, Rea mentioned Fred Graham of CBS News.

"Referring to the recent Harvard study raising serious questions about the present system of legal education, Rea stated that he would side with those who believe there should be more clinical programs."

Notwithstanding the small number of lawyer/journalists, Rea firmly believes his legal education helps him as a journalist.

"It is a great help because so many stories I deal with concern questions of legalities, whether it is a trial of two state senators, which was one of the first stories I covered, or an arrest for a violent street crime. We are constantly involved with the court process," he states.

In addition, Rea firmly believes there are two other aspects of law school that help him: 1) the legal training itself, and 2) the discipline of law school.

"The legal training—synthesizing facts, focusing on the issues and coming to a conclusion is similar to the job of a broadcast journalist who must assess a set of facts and find out what the most important issues are," he relates.

Rea explains that the issues must be presented clearly, logically and rationally to an audience in a one minute and fifteen second segment. Since the segment is comprised of no more than 200 words, Rea compares it to briefing a case.

He continues, "the discipline of law school which is greater than an undergraduate course of study, has to help you in broadcast journalism because you must face discipline every night. In the newspaper business, one has the ability to hold the presses for a half-hour. One cannot hold the 11 o'clock news, it goes at its appointed hour."

As a broadcast journalist for a major television station in the nation's fifth largest market, Dan Rea has had many opportunities that he would otherwise not have if he only practiced law.

"I have the opportunity to talk to people in and out of government at the highest levels . . . the opportunity to sit down and ask questions of experts, scholars, criminals, police officials and people on the street," he states.

According to Rea, one of the things he enjoys as a broadcast journalist is the luxury of doing something different each day. One day he goes to work and he might be placed on a jet to a distant city, whereas on another day he might arrive at the studio only to be placed on a helicopter to fly over some disaster.

"It gives me the opportunity to see things first-hand that other people only see on television. It's one thing to see a plane crash on TV, its another to smell the burning fuel," he relates.

Rea best summarizes his career as a broadcast journalist as having "the opportunity to be at for the most part, one of the most interesting events of every day . . . of any day . . . every day."

In a world where most of us find it difficult to work just one job, it is difficult to imagine a person coping with two high-pressure careers such as law and broadcast journalism. Yet, Rea is able to do so by budgeting his time and keeping his priorities in order.

"I spend 40 hours a week or more at WBZ-TV," he states, "since I have a contractual commitment and moral obligation which takes precedent over my law practice. Because my schedule is 3-11 PM," he continues, "I have an opportunity to spend most mornings practicing law with some very competent and qualified attorneys."

Attendant to Rea's dual obligations to law and journalism is the difficult issue of conflict of interest: loyalty to your audience versus loyalty to your client. Thankfully, he has never found himself in a position of conflict.

According to Rea, there all sorts of potential conflicts of interest that may arise. For instance, he served as a member of the board of trustees for Boston State College before it was absorbed by the

" ' . . . legal training . . . is similar to the job of a broadcast journalist who must assess a set of facts and find out what the most important issues are . . .' "

University of Massachusetts in the much criticized and highly publicized state college merger. During that time, Rea "assiduously" avoided covering stories concerning Boston State College because he did not think he could objectively report on the story "in the minds of the viewers." Also, Rea added that he would not represent a client in a criminal law case that he might end up reporting.

"You have to look at what actually is a conflict and what is just a process of living in society. If you are intelligent, you can anticipate potential conflicts, while those conflicts you cannot anticipate must be confronted when they do arise. There has to be disclosure to your client and you have to tell the TV station that you wish to be taken off the story," he concludes.

One issue Rea feels strongly about is the use of cameras in the courtroom. As both an attorney and a broadcast journalist, Rea has some insight on the issue. He believes cameras have the right to be present in courtrooms.

"Although when the Founding Fathers spoke of public and open trials they did not anticipate the electronic advances of the 20th century, newspaper reporters were traditionally allowed to attend trials," Rea states, adding, "however, the presence of TV cameras cannot interfere with the legal process."

Commenting on the Massachusetts Supreme Judicial Court's experimental program allowing TV cameras in courtrooms, Rea believes the experiment is going well and will probably result in the permanent allowance of TV cameras in Massachusetts courts.

As far as his own law practice is concerned, Rea works with several other attorneys who are experts in various fields of law. Although the firm's practice is general, Rea is particularly interested in the field of sports law and athlete representation, an interest fueled by his own participation in high school and college sports.

"I consider myself a genuine sports fan," he states enthusiastically. "It is nice when you can weld the interest that you may have personally with the area of expertise which you are trying to develop."

According to Rea, professional athletes are people who often have a shorter earning career than most people and make relatively large amounts of money at an early age. Consequently, they are in need of legal and financial advice so that the money they do earn is paid to them in such a way so as to maximize their benefits and to minimize the amount of taxes they legitimately owe.

Working in the somewhat related field of television—which like professional sports, is also a career that in many cases is not lifelong and is a career that may have financial rewards at an early age, Rea identifies with the needs of professional athletes.

"I have a great deal of empathy for professional athletes who, again, have to be wise enough in their early years to take advantage of their earning situation so that in their later years, they will be able to live just as comfortably," he admits.

"They really are the same as any other client. They have the same estate planning and tax problems and the same financial management problems that any small businessman could have," he adds.

It is somewhat ironic that Rea represents professional athletes—people considered public persons, since Rea, himself, is a public person due to the exposure he receives on television everyday. Consequently, Rea is in need of legal advice when his own contract with WBZ comes up for renegotiation.

Referring to the old maxim: "Any lawyer who represents himself has a fool for a client," Rea believes "it is critically important when negotiating a personal service contract to consult with separate counsel so that you can get a second view of your situation."

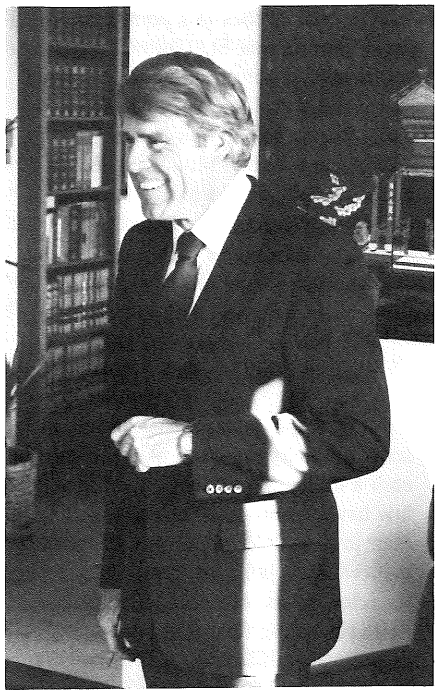
"You need separate counsel to sit down and look at your situation objectively," he adds.

BARRY REED: AUTHOR

Beth McIntosh

Boston lawyers . . . Hollywood movie sets . . . an unlikely scenario. But Boston lawyer Barry Reed became intimately acquainted with the entertainment world when producers David Brown and Richard Zanuck purchased the movie rights to Reed's 1980 book *The Verdict*. The film, which is scheduled for release in December, 1982, will star Paul Newman, Jack Warden, James Mason and Charlotte Rampling. And when Paul Newman, director Sidney Lumet and a film crew came to Boston early in February to shoot a scene for *The Verdict*, they attracted a great deal of attention for Reed.

The film, like the novel, revolves around Frank Galvin, Esq., and the opportunity he seizes for career revival . . . a case stemming from the serious injury of a young woman during delivery of her child. In the course of trying the case, Galvin challenges one of Boston's largest Catholic hospitals and incenses the Boston legal community by flaunting his mistress.



Galvin is fiction, yet his philosophy is autobiographical of Reed. Reed, a California native, came east to attend Holy Cross and Boston College Law School and settled into a law firm that specializes in legal medicine. "Writing was sort of a delayed vocation," says Reed, who even

back in his high school days wanted to be a lawyer and secondly a writer. Reed, who composed the novel between 5 and 7 a.m. before work, drew upon characters he knew, cases he tried and the names of boyhood Californian friends.

Although Reed hardly looks like the scruffy, semi-alcoholic Galvin, he obviously relates to the fictional lawyer. He describes himself as a "maverick," Reed's extrication from the American Bar Association 10 years ago "for its failure to reflect the rights of the people," exemplifies this. "The message of *The Verdict*," espouses Reed, "is of inequality under the law. And I try to show that this is the practical world of give and take."

Reed, who wrote the book for the general community at large, took great care to break down the legal and medical terminology. The lawyer in Reed, however, hopes that "the book will go a long way to having the system reassess itself." "Cronyism exists in the law," admits Reed. And he feels that "this is the problem with the law. It isn't just confined to Boston."

The book has stirred controversy among female attorneys all over the country who feel Reed's is a chauvinistic novel. And Reed concedes this point concerning the role of Donna St. Laurent, an attorney and femme fatale of the novel. He maintains, however, that the movie script is much worse. Reed, who is acting as a consultant to the film is very enthusiastic about his movie experiences thus far. It has taken two years, three directors, three screen writers and at least two stars to start the production. Robert Redford was originally signed to star in the role now being played by Paul Newman.

Reed, who originally thought Redford "a natural" for the role now believes that the actor was going to portray Galvin as a crusader on a white horse rather than a disheveled, disillusioned lawyer making his last stand against inequality.

For the past 10 years Reed has practiced malpractice law and now finds he has more clients, which he attributes to the book. Reed feels that writing has put his law practice into a sharper focus and made him more understanding of his clients. "Every young lawyer starting out," advises Reed, "should develop something else they can fall back on. Without it (writing) I would go bananas. There is something more to life than wearing a 3-piece suit and carrying a briefcase," says Reed.

Although Reed considers himself a lawyer rather than a writer, a second novel, *The Price*, is in the offing. He is also the author of two text books on legal medicine. In addition, he teaches forensic medicine at Suffolk Law School. In his spare time, he flies planes.

Yet time is a problem for Reed who just returned from 2 days on the set in California. Reed, who moves at a hectic pace, says that he loves writing but would not consider becoming a full time author right now. "I love the law," states Reed, "I don't know what else I would do."

CHARLES BROWN: PSYCHIATRIST

Edmund A. Williams

Most people who graduate from law school initially intend to use their degree to earn a living. Those who do not practice law have various reasons for not using their professional training. Some become disenchanted with the law after practicing for a few years, or find alternative careers more rewarding financially or in terms of personal fulfillment. A few, however, go to law school knowing they will never use the degree for either financial gain or career advancement.

Dr. Charles Brown, a psychiatrist at the Veterans Administration clinic in Boston, is a lawyer and member of the Massachusetts bar. He does not practice law. He never intended to use his law degree in the traditional manner after earning it at Boston University Law School in 1974.

"I wasn't going to law school for economic motives," explains Dr. Brown. "Physicians are highly paid."

Nor was he going because of a disenchantment with the medical profession. He is keenly aware that along with the financial rewards available to doctors, there are personal satisfactions involved in the medical field that cannot be matched by any other.

"Medicine is still a field in which it is perhaps easier than any other to do well while doing good. You can make money and have fun at the same time," says Brown, a man who obviously realizes his good fortune at being able to make a living doing something he loves.

What then prompted a successful psychiatrist to attend law school at a time when there was no apparent reason to do so? Patients rights, professional responsibility, and the influences of the law on medicine were all concerns of his, and he attended law school due to his interest in the law as a subject of study rather than a desire to change professions.

"As a psychiatrist I have to be aware and acknowledge that there are levels of reason and motivation," says Dr. Brown, referring to his decision to go to law school after having spent several years going to medical school and serving as an intern and resident on both east and west coasts. "At the conscious level I was concerned with patients' rights, specifically their right to know their diagnosis and the meaning of the labels that we were applying to them."

When Dr. Brown began practicing psychiatry, patients were not usually informed of their psychiatric diagnosis. He believed then, as he does now, that a patient should take responsibility for managing his own health, which includes knowing the reasons for his illness as well as the names and effects of the drugs that are prescribed for him.

There were other reasons for going to law school as well. He was interested in getting to know more about the regulation of medicine, an area which seemed destined to be influenced primarily by those not in the field. The influence of the law on medical practices has been significant, and Dr. Brown feels that doctors could not afford to entrust their professional futures to outsiders. As a lawyer he has access to information and an understanding of the law which can help him assess the effects of regulation on medicine.

Finally, Dr. Brown realized that there were interesting conflicts between law and medicine, especially in instances where doctors were called as witnesses in criminal trials. The responsibility of the lawyer in questioning the witness is, at times, not compatible with the responsibility of the physician. If things are done according to the rules of the court, the physician is forced to distort the value of his expertise, according to Brown. If the physician is allowed to completely and accurately answer the questions asked of him, the law might not be able to use his expertise.

"Lawyers put questions to physicians in categorical form," explains Dr. Brown, "but physicians are incompetent if they are forced to give categorical answers. We

can give dimensional answers, but lawyers want a definite yes or no. Physicians have to abandon fidelity to their own profession to satisfy the lawyer's anxiety.''

An example of this occurs when a psychiatrist testifies at a murder trial. The state may want to know if the defendant is responsible for his actions according to the law, and treats the matter as a black or white, an issue ''simply'' of sane or insane. Often the information possessed by the psychiatrist is not conducive to an either/or analysis.

''The issue of 'bad' or 'sick' is usually not an either/or question, but one of degree. To the law it is yes or no. When medical people are forced to answer questions, they should not answer categorically.''

The biggest problem occurs when a psychiatrist has to draw the line between what is ''bad'' and what is ''sick.'' Dr. Brown points out that there are three components to every human act. The biological, psychological, and social aspects of every human event interact in such a way that it is often impossible to determine which is the primary motivation for a certain act. Where sickness ends and evil begins is never as clear as it should be for legal ends. While lawyers may be satisfied that the system provides for the fairest and truest determination of the issue, Brown and others are disturbed that a psychiatrist's opinion may not be competent if viewed from the perspective of a physician. The law is willing to take as certainty something a psychiatrist can only speculate about. It is the only way the legal system can operate, but does not allow a doctor to give the dimensional answers that Dr. Brown suggests are necessary.

And what kind of courses does someone with no interest in practicing law take when he goes to law school?

''I took a lot of sociology-and-law type courses, and was really interested in language and the law. I enjoyed a course called Law and National Development in Ethiopia, and a course on Chinese criminal law.''

''I had some problems with professors . . . I was over forty years old at the time, and expected problems because of the tensions between law and medicine. The interplay between professors and older students with graduate degrees was interesting.''

The differences between law school and medical school were very apparent to Dr. Brown.

''Professors in medical school know what they want to say. They are more interested in your mastering the material than having you bug them with debate. Medical school is much more authoritarian.''

''Medical school is physically hard and demanding. Your presence is absolutely required. There's lots of lab work, clerkships in clinics during your third and fourth years, and if you don't show up for work, others have to do it. So there's peer pressure as well.''

''Law schools look to exams for grades, but in medical school, class standing depends on the daily observation of the professors as much as the final exam. This allows for greater value to be placed on the physical work, attendance, and how you treat patients. The pecking order is arrived at in a more subtle way than in law school.''

Dr. Brown was asked if he thought it was more difficult for a lawyer to get into medical school than it was for a doctor to get into law school, all things being equal.

''There's no doubt in my mind, as a personal opinion, that medical school faculties are extremely selective, and regard people with previous training, especially law school, with a little bit of paranoia.''

Brown's criticisms of the legal profession are philosophical in nature, concentrating on what he perceives to be misdirected values. He feels a coherent value system is lacking in the law, and that contentiousness is exalted for itself rather than used in favor of a consensus, or higher moral value.

''The whole business of the law is that the rich man wins. When the important spiritual imperative of the time is to redistribute the wealth, the law prevents this. That's the idea of law and order. Keep the money where it is.''

He does not, however, regret his legal training. In fact, it can even be valuable in the practice of psychiatry. Contentiousness, something routine to any lawyer, is alien to many psychiatrists, and Dr. Brown feels it can help in certain instances.

''The sovereign model in psychiatry is exploration. We debate, discuss, and analyze, but at intervention most psychiatrists are not good. Psychiatrists, for the most part, love to accumulate information but hold off in making conclusions. It's a deliberate approach, not a decisional one, which delays both confrontation and gratification. In this sense legal training has helped. As a psychiatrist, contentiousness helps both in individual and group therapy.''

There have been only a few times over the past eight years when Dr. Brown has ever considered practicing law, since the medical profession has more to offer him as an individual. There is the special gratification available to him as a psychiatrist, not to mention the fact that it is a ''seller's field,'' with ''too much work to go around.'' He has made money and has had fun doing it, so there is no reason for him to consider a change of profession. Yet, while it is true he did not intend to practice law when he decided to go to law school, he received more than a degree when he graduated. He became a member of a legal fraternity, a membership he found difficult to swallow.

''I used to tell people, 'I am a physician and I have a law degree.' I've come to think of myself more as an attorney. Now I say 'I am a physician *and* an attorney' . . . or to put it another way, an attorney who chooses not to practice law.''

LAW LIBRARIANS

Professor Edward J. Bander holds the position of Law Librarian at Suffolk. Professor Bander says he entered Boston University Law School with some ''vague ideas about politics rather than private practice and some G.I. credits to use up.''

> When I graduated from law school, job opportunities were few and far between. I considered myself fortunate to get a poorly paid job in Boston with a couple of lawyers who shared space at 294 Washington Street. Frankly, I didn't get much satisfaction from the work. In the stratum I was in — I figured it would take me 15 or 20 years to build up a practice, too great a price for the distasteful things I might have to do and the awesome responsibility (i.e., you lose and your client can go to jail). Of course, there were other factors not relevant to career choices.

Fortunately for Suffolk, Mr. Bander got into library work accidentally. ''It was a job. I found I enjoyed the work. Opportunities knocked.'' At this point, Mr.

Bander returned to Simmons College to get his Master of Library Science.

To those considering the field, Mr. Bander says that the skills taught in law school have been extremely valuable in the law library field, but that he also considers library training essential. "I would prefer to hire library trained people rather than those with only a legal background," (though law school did help him to develop an enjoyment for writing which he often uses now). In fact, he suspects that "whatever success I have achieved in the field comes from 1) getting published and therefore noticed and 2) valuing good rapport with students and faculty."

When asked what his career offers that was lacking in the practice of law, he answered, "I happen to get great satisfaction from what I am doing. Would I recommend it as a career choice? That's much too personal a choice to recommend to anyone. I suspect that people who want it will find it. I also suspect that a good many people who are librarians will go to law school to improve their status. Law librarianship pays much better (at least at the top) than librarianship generally . . . but I still wouldn't go in it for the money."

Interview — 2/23/82
Richard E. Ducey
Age: 29
Education: Western Connecticut State College 1973 A.B. (History), New England School of Law 1977 J.D., Simmons College M.L.S. in progress.

Employment: During law school he worked part time in the law library. After receiving his J.D. he tried to get a job with the federal government but instead found employment with Michie/Bobbs Merrill law book publishers as an editor in their state codes division. He then was offered the position of readers' services librarian at New England School of Law and has worked there since 1979.

Reasons for attending law school: His high school guidance counselor suggested that he gear himself toward a profession such as law since he had a strong interest in history. The idea stuck in his head and he fell into the trap of having nothing better come along. It was an easy choice after college to just continue in school. Also, he felt that his concerns for social reform might be translated into more effective results if he was a law school graduate.

Once in law school he realized that he couldn't be as effective as he thought in social change. He was very disillusioned already by the end of his first year when he discovered that the equality of justice he had expected to exist was not a reality. After law school he even considered joining the FBI to make that organization more socially oriented, but became convinced that such a career would change him, not that he could change the agency.

Law Librarianship: A lot of law students that he deals with ask him why he doesn't practice law, and if he really feels like a lawyer. He responds with the analogy that M.D.s don't always practice; some go into research and their status as doctors is not diminished. Ducey feels that he contributes significantly in the training of law students. (He teaches computerized legal research and assists in the general legal research course that all law students must take). He is much more effective in his job with a law degree. The wide range of interests in a university law library, he feels, require a law degree to give effective assistance.

As to why he chose law librarianship over the practice of law, he answers that, although he misses the money that he might have made as a successful large firm attorney, he would not be happy with knots in his stomach at night. He wanted something more relaxed than dealing with the frustration of trying to solve clients' problems through the legal system. Since he loves research, enjoys looking for and finding answers to difficult questions, he feels that he has found the profession where he can be most effective and personally satisfied.

Interview — 2/19/82
Leo McAuliffe
Age: 30
Education: Holy Cross 1973 (History), Suffolk U.L.S. 1976 J.D., Simmons C.S.L.S. 1981 M.L.S.

Employment: went directly to law school from college.

In law school — worked with Suffolk County District Attorney's appellate division office; also, was a prosecutor in Suffolk's clinical program in Norfolk County district courts.

Also, worked part time for a single practitioner (defense attorney).

After law school — worked in the office of the defense attorney with whom he was employed during law school, where he did research and appeared in court mainly defending in criminal proceedings against prostitutes and drug dealers.

In 1978 he quit practicing and wrote briefs independently for attorneys while also working on a Colonial Records project federal grant sponsored by the Social Law Library; in 1979 he began working full time at Social Law.

Reasons for Attending Law School: His liberal arts education was professionally oriented in that although it didn't prepare the student for a particular occupation, it did direct and encourage further education in a profession. He enjoyed educational pursuits, got reinforcement from his scholastic achievement, was intellectually curious and thought that law school would be challenging and stimulating. He had two older brothers who attended law school and although that didn't compel him, it probably did direct his career goals to some extent.

Law school did prove to be intellectually stimulating with great opportunity to debate the issues. Although the education was not practice-oriented, his outside employment provided some contact with the actual practice of law.

Experience in practice: However, the same aspects that initially attracted him to the study of law—the sharpening of the intellect and an opportunity to debate the issues—soured when they were applied to the day-to-day life of the lawyer. The adversary nature of the system turned out to be the most distasteful aspect. Although the practice of law involves the solving of a client's problems, the barriers to solving those problems proved to be too frustrating. First, in the adversary process, the other attorney attempts to prevent the obtaining of a solution to your client's problems. Second, the delay in the courts—both in scheduling and in actual court time—was another barrier to efficient problem solving. Also, the system was deceitful, or at least witnesses and adversaries were deceitful. All of these factors united to stand in the way of those seeking solutions to problems. Even the potential for a favorable result in the end was not worth the struggle.

Other aspects of the practice of law were disheartening, although they might not apply to all types of practice. The judges were not as impressive, either because they weren't prepared or didn't demonstrate the intellectual acumen of those appellate judges whose opinions are found in law school case books. Although there is opportunity to be exposed to scholarly discussions in law school, in actual practice this does not carry over. When practicing in a small firm there is little opportunity for discussion, encouragement,

and interaction with one's associates. It is a lonely existence. The hours, both late night and weekend, are long, so that one's profession becomes one's whole life. That which appeared so stimulating before and during law school later seemed distasteful and disillusioning.

Law librarianship: Although he did not choose librarianship, but gradually and by chance made his way into that field, he is happy with his present career direction. The reasons for his happiness are many and he waxes eloquent in discussing the benefits of his present position over his past efforts.

The sense of failure is not so painful. Although you don't get the same exhilaration, either, as from winning a case, there is no major frustration in the job. Patrons are generally pleasant to deal with and are appreciative of your efforts, so that results in more immediate gratification. A task is accomplished quickly and the results are evident. You meet a variety of patrons and in the short time you spend with them you both learn from each other—you give directional assistance and they come back to let you know the results.

There is the ability to concentrate on the more intellectual part of research skills. You need not necessarily do all the reading, updating, digesting, shepardizing and concluding. Your patron does this and comes back with the substantive results of their search in which you have guided them.

You are removed from the rough and tumble, but still get to see the results of your efforts. At Social Law you assist both sides in preparing a case and also deal with the judicial clerks who are working on the case and who later come back to discuss its disposition. (This is similar to watching the highlights of a sporting event in which all the tedious parts have been removed.)

There is the opportunity to read law to satisfy your own intellectual curiosity and to keep current with all the latest developments in the law. Very few lawyers have the resources at their disposal that a large library such as Social Law has.

Status: Lawyers are more often identified with their profession than are librarians—it's more of a total lifestyle. Although he has been an active librarian for three years, he is still introduced socially as a lawyer. This may also be related to the public's and the legal profession's view of librarianship and its ranking below that of the practice of law in status.

One observation he makes is that the research function in firms of any size is delegated to law clerks and young lawyers whose research skills are comparatively weak. Once they become fairly good at it, they are taken out of that function and move on to what they consider higher level tasks. Due to this widespread practice, there are no good long-term researchers. Librarians without law degrees are not able to handle sophisticated legal research, and attorneys who have the substantive knowledge and have developed their research skills are consequently 'promoted.'

McAuliffe believes that this is a mistake; that firms should recognize this skill as a specialty and realize the economic advantages of such a position.

Interview — 2/22/82
Cornelia Trubey
Age: 35
Education: University of Michigan 1968 (English) A.B., Harvard Law School 1973 J.D., Columbia University 1974 M.L.S.

Employment: The only thing available for an unemployed English major was a secretarial position at M.I.T. After the unit in which she was working was dissolved, she was placed in one of the M.I.T. libraries, which she enjoyed. She thought that she could do a better job than the librarian was doing at the time, but realized that she needed a professional degree to get a responsible position. She thought she would prefer a high level academic library position rather than working in a school or small public library. After a false start of two years working in another secretarial position at Harvard Medical School (hoping to get some exposure to a medical library) she applied to Simmons College Graduate School of Library Science for acceptance into their program, but was rejected for not fulfilling their modern language requirement.

At that time she dated a law student and found out about that field by attending a moot court presentation at Harvard. She thought that she could do better than those students and considered applying to the law school. The Harvard Law School librarian discouraged her from taking that approach to law librarianship, thinking that once she got her degree she would want to practice law. She applied to and was accepted at Harvard even though she was earlier rejected at Simmons. At the end of her second year at Harvard she decided that she'd have to find out if she really liked law libraries so she got a summer job at Harvard's Law Library. The work was indeed enjoyable and provided ego reinforcement from her successes in helping the users of the Library. She never considered practising law, even though fellow students enjoyed their summer experiences in firms, because she knew that she had a different kind of personality.

After Harvard she got her library degree at Columbia and worked at the University of Pennsylvania Law School Library for three years in acquisitions. It was a big library with good resources and a large unionized staff. Here she learned how to work together with other staff members, rather than working in isolation as is the rule in law school.

Her next job was as assistant librarian at Boston College Law School from 1977 to 1980 where she was responsible for a variety of administrative tasks. Although her subject competency wasn't utilized directly on a day-to-day basis, it was helpful to have her J.D.

Her present job is as head librarian for the law firm of Ropes and Gray in Boston. She was tired of academia and the money constraints that were always present. She realized that her last position was a dead end job and that she had been shortsighted in writing off a major segment of the legal population—practitioners. Although there were double-degreed librarians in certain areas of the country, especially in Washington, D.C., she became the first one in Boston.[1]

Law Librarianship: It is true that law librarians do not have the professional recognition that attorneys do. But attorneys have the immediate responsibilities on their shoulders, they're risk takers and Trubey does not want to be one. Besides, she thinks that the status of librarians will improve in firms as more professions, such as economists, CPAs, and managers, are added to the staff. She finds her job at a firm especially enjoyable because of the good support structure not found in academia. There are messengers, telecommunication devices, efficient word processing equipment, accounting personnel and other managers to provide the support necessary to aid in her effectiveness. There

[1] See Tuke, The Great Debate: What's a J.D. Worth to You?, 4 PLL Newsletter (AALL), No. 2, Oct./Nov. 1981, p. 18, which indicates that there are only 24 JD/MLS firm librarians nationwide.

are not the money constraints found in law school libraries either: if items are needed, they are purchased. There is a satisfaction for her in developing a clientele, knowing their needs, being responsive and anticipating requirements. This doesn't happen as much in a law school, because the relationship of librarian to user becomes an adversary relationship due to the large numbers to be served, the rules and the security systems.

The career directions she sees developing from law librarianship in firms are: centralized managing of staff and information networks in corporate law departments, teaching legal research, or straight management of a law firm (which requires an MBA or some financial background, probably).

The skills needed to be a successful law librarian are: interpersonal skills, teaching ability, flexibility and inventiveness, and ability to delegate. If you don't have or don't want to develop their qualities, and don't love books and research, you ought to consider using your J.D. in business rather than in librarianship. It does take a special kind of person to be a good law librarian. If you want to be marketable in the near future, you should get experience in a law library and also get some training in computers. These specialties will soon be required by large firms, especially in the person of consultants.

CONSULTANT

Interview — 3/1/82
John P. Crimmins
Age: 30
Education: University of North Carolina, Chapel Hill 1974 A.B., Harvard Law School 1978 J.D.

Work Experience: He practiced in a large firm for two years after getting his J.D. Since then he has worked as a consultant for Bain and Company.

Reasons for going to law school: He had studied East Asian studies in college and thought he'd like to go into international law.

Likes/Dislikes in attending law school: He enjoyed the intellectual challenge and friendships with fellow students, but the whole process was too long and much of the subject matter seemed irrelevant.

Likes/dislikes in practicing: It was enjoyable to work with the people in the firm, but the work was too detailed to interest him personally. It didn't seem relevant to his life. He wanted to be involved in making business decisions and found that clients had already made the decisions when they came to the lawyer to help them carry out those decisions.

Consulting: Consulting work is challenging, fast paced and more business-oriented than the practice of law. Crimmins gets to work with top executives who need his assistance in making major decisions. His legal training is helpful in his present position in that it prepared him to organize random data into coherent patterns, something that business executives are not all able to do well. The organization of thought, the ability to sort out and order information in solving problems, is a skill that law school strengthened for him.

Although he feels that law practice is a "safety net" in terms of job stability and future, he prefers the business of consulting in which he presently works long, hard, but satisfying hours.

NEWSPAPER EDITOR

Interview — 3/2/82
Paul E. Lamoureux
Age: 35
Education: Holy Cross 1967 A.B. (English), Boston College 1968 M.A. (English), Boston College Law School 1971 J.D., Harvard University 1978 PhD. (English), Simmons College M.L.S. in progress

Reasons for attending law school (and others) In college, he thought he either wanted to teach college English or become a doctor, the former because it was a subject interest, and latter for status and family approval. He went to graduate school to think things over. This was at about the time of Robert F. Kennedy's assassination and be began to think that he could do more social good by going to law school and practicing law.

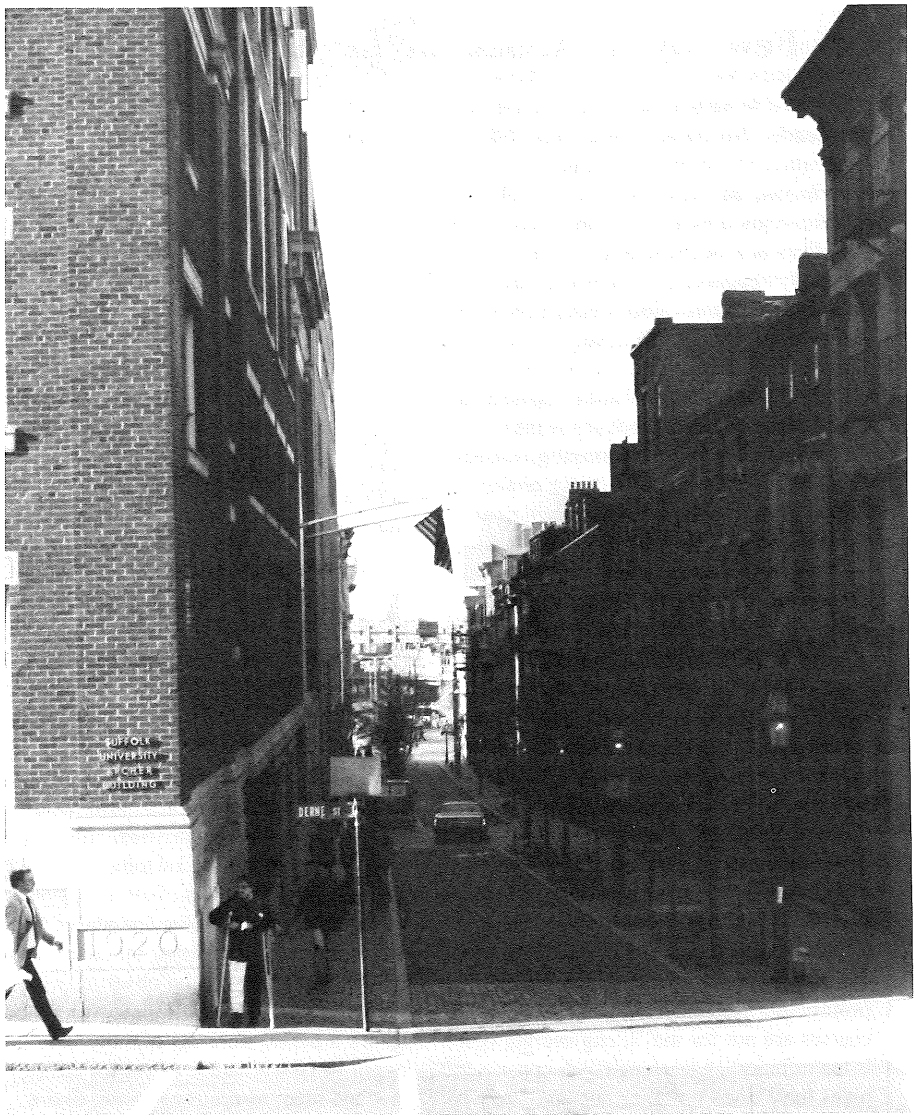
While in law school, he found the human interest courses (such as torts and contracts) interesting, but was put off by the case method of study which he felt to be a tremendous waste of time. There were never any answers, but always another case to put forth another theory. The combative attitude of the professors, those who put people on edge and browbeat students, was distasteful and unnecessary, he thought.

Realizing that he loved literature at least as much as the law, he applied to Harvard as a lark to see if he could get money to go to graduate school in English. He thought, "I've got my whole life to be a lawyer, but the chances of getting into graduate school and doing something I really enjoyed, might not arise again." While at Harvard he did some teaching and also practiced law part time to get some taste for that career option, mostly doing wills and real estate transactions in a small town practice.

After graduate school he applied for teaching jobs since he felt that he always had the option of practicing law. There weren't any desirable teaching positions at the time, but he did happen upon a position with Massachusetts Lawyers Weekly, a legal newspaper, and felt that he could use his writing skills to make known changes in the law while still practicing law part time. Eventually his position as opinions editor grew until he was forced to make the decision to give up practicing law for a time. He is now opinions editor for two weekly legal newspapers, a contributing editor to a national legal newsletter, and editor of a series of court reports.

Newspaper editing vs. the practice of law: He finds his work stimulating: he enjoys working with the rest of the staff, writing, and keeping himself informed of all the new state court decisions and national trends in the law. His present job is more varied than his part time small town law practice was, it has a regular income to recommend it, and it allows him to work in a large city as well.

He did enjoy his law practice since there was the day-to-day contact with clients and the satisfaction of getting results for them—whether he was settling an estate or helping in the purchase of a home. Yet there was a repetitiveness to that practice, and it was very limited in that he didn't feel that he had the proper manner required for the exciting life of a criminal lawyer. He felt that he didn't want the monotony of a country practice for his whole life, that he might want to do something entirely different some day. Since he liked books and libraries, he entered Simmons to get his Masters of Library Science, thinking that he might some day want a career that was less high-powered. He thought of it as a kind of insurance for when he was older. But then, again, he may still want to build up that insurance policy with a term in medical school.



A Few Myths About the Legal Profession (And A Few Facts Too . . .)

**Reprinted in part from an adaptation in Bar Leader, November–December, 1981, a publication of the American Bar Association, and from an article by David R. Frazer, an attorney with the Phoenix Law Firm of Lewis and Rocca, which originally appeared (10/18/80) in the Saturday Magazine of the Scottsdale Daily Progress, Scottsdale, Arizona.*

One of the greatest fallacies imposed on unsuspecting college graduates is the theory that a law school education is superior training for a business career or for other professions. It is not certain how this thought evolved, but it is evident that it has been perpetuated by uninformed counselors, ambitious parents and law schools that fail to explain the facts of economic life to law school applicants.

After four years of college, a large number of graduating seniors have not determined their life's work. Undergraduate education, though broadening and providing general tools to cope with a society that is increasingly complex, in many cases does not produce the spark which creates a commitment to a specific career or profession. On the other hand, a college education often does serve to eliminate in the mind of the graduate, a number of professions—medical school (''science courses are not for me''); engineering (''it is too technical''); teaching (''job opportunities have dried up''); or nursing (''pay is not commensurate with the dedication required'').

What, then, does a college graduate do after spending $15,000 to $30,000 attending a college or university? Unfortunately, a popular answer over the past 15 years has been to enroll in law school. While the study and practice of law is fascinating and presents a marvelous career for those seriously committed to the profession, it is not a proper place for those who enter law school as a form of post-graduate education, intending to branch into other fields after becoming a member of the bar.

For the most part, these expectations do not materialize. Worse yet, three years of questionable time has been expended, another $15,000 to $25,000 has been spent, and the graduating law student may be right back where he was three years earlier—looking for a suitable career.

The idea that a law school education will be a substantial benefit in a business career is a gross oversimplification of a complicated subject. Law today is highly specialized, and without day-to-day involvement and periodic attendance at continuing legal education seminars, a law school education may be obsolete two years after graduation. It would be far better for a person desirous of a business career to take a course or two in business law and then, as a businessman, find a highly competent attorney or law firm to solve his legal needs.

It is indeed a poor commentary on our educational system that we encourage a great number of our brightest and most highly motivated young people to go into the wrong profession. Fortunately, there are alternatives, but they do require making a decision, as opposed to drifting into law school as the course of least resistance. These include choosing a field of interest, taking one or two years of graduate school and then seeking employment in the field; or choosing a field of interest and attempting to find employment immediately.

Either of these options is less costly than law school and will place the student one to three years ahead of his law school friends. If these choices do not work out satisfactorily, and the student subsequently does develop a serious interest in law, the law schools still will be standing and anxious to review the candidate's application.

A career in law is intellectually stimulating, exciting and emotionally satisfying, but it demands long hours with severe time pressures. For the successful, it is financially rewarding. What it is not is some kind of vague training for other professions. Law school should be a place for serious students of the law—those who are committed to pursue a legal career.*

Non-Smokers' Rights: Protection Against Involuntary Smoking in the Workplace

The Missouri Court of Appeals, in Smith v. Western Electric Company, *is faced with the issue of whether a tobacco-sensitive employee can compel his employer to restrict or prohibit the smoking of cigarettes on the job where such smoking presents a serious threat to the health of this employee.*

Professor Brody, a staunch advocate of non-smoker's rights, recently submitted an amicus brief to the Missouri Court on behalf of the Clean Indoor Air Foundation of Massachusetts and the Environmental Improvement Associates of New Jersey, in support of the plaintiff in the case. This brief is reprinted in part below.

> The inhalation of tobaccombustion products from smoke-filled atmospheres by the nonsmoker . . . is, in a sense 'smoking' because it provides exposure to many of the same constituents of tobacco smoke that voluntary smokers experience. It is also 'involuntary' because . . . [it is] an unavoidable consequence of breathing in a smoke-filled environment. (U.S. Dept. of H.E.W., Pub. Health Serv., *The Health Consequences of Smoking: A Report to the Surgeon General* (1975).

The issue in this case is whether the appellant may have equitable relief against the respondent, his employer, from forcing him to smoke at work. From the denial of relief in the lower court on the ground that his complaint fails to state a claim upon which relief may be granted, he has appealed. This amicus brief is submitted, with leave of the court, by the Clean Indoor Air Foundation of Massachusetts and Environmental Improvement Associates of Salem, New Jersey, on behalf of the appellant and on behalf of all persons similarly situated.

STATEMENT OF FACTS

I. The setting.

Paul Smith (the plaintiff or Smith) is an engineer employed by the Western Electric Company (the defendant or the company) at its plant in Ballwin, Missouri. Smith, who once smoked but quit for health reasons, has been working at the company's Ballwin plant since 1967. His job is to write specifications for telephone offices.

Professor Alvan Brody. *A graduate of Harvard Law School, Professor Brody has been a member of Suffolk's faculty for twenty years. Before coming to Suffolk, he taught at Louisiana State University and Western Reserve University.*

Smith's desk is located in an area of the plant that is approximately 1000 cubic meters. The area is partially enclosed on two sides, nearly enclosed on a third side, and totally enclosed on the fourth side. Smith shares the area with fifty to sixty other people. The co-workers' desks are adjacent one to another, row upon row, and are separated by partitions five-and-a-half feet high. The windows in the work area do not open. The ventilation system is off a portion of each day, apparently to save energy. Twenty-seven of the employees in the plaintiff's work area, including those immediately next to him, smoke. Among the smokers are two chain smokers of cigarettes, three cigar smokers, and two pipe smokers.

Smith's co-workers have submitted affidavits describing the air quality as "foul, obnoxious and highly polluted" and "typically smoke-filled".

In testimony before the County Circuit Court, Smith also described the air as "typically smoke-filled." Evidence submitted by James Repace, a senior staff member of the Environmental Protection Agency, estimated that the density of smoke created by the twenty-seven employees, exceeds the Federal Air Pollution Emergency level for outdoor air.

II. What tobacco smoke is and what it does.

In the court below the plaintiff introduced considerable evidence about what tobacco smoke is and what it does to nonsmokers who breathe it. Only some of that evidence is repeated here.

Most studies that have examined the effects of involuntary smoking have examined its effects on relatively healthy people (Surgeon General's 1975 Report). "An exposure that is harmless for someone who is healthy may have a very different effect on someone with heart or lung disease or hypersensitivity to substances found in smoke." (*Ibid*). According to the Census Bureau, 16.1 million people in the United States have their activity limited by chronic heart conditions (Statistical Abstract of the United States, U.S. Dept. of Commerce, Bureau of the Census (1980); the U.S. Public Health Service reports that there are 15½ million people in the United States with chronic lung problems; and by one estimate, eight million persons in the United States are clinically sensitive to tobacco smoke. Among the affidavits submitted in behalf of the plaintiff is one by Dr. Irving Kass, a specialist in pulmonary and respiratory

". . . only equity can vindicate the plaintiff's right not to be forced to inhale tobacco smoke."

" '[The plaintiff] inquired of the Federal Information Center and was told 'no mandate exists by any federal agency to control smoking in the workplace.' "

disease and Regent Professor of Medicine at the University of Nebraska College of Medicine. Dr. Kass's affidavit recites (in part):

> Anyone who has had to try to care for these individuals is impressed with the degree of suffering that . . . [they] go through unnecessarily simply because there are smoking workers around them.

III. The effects of tobacco smoke on the plaintiff.

In 1974 or 1975, the plaintiff first began noticing that tobacco smoke was affecting him. Tobacco smoke irritates his eyes and throat. On exposure to tobacco smoke, he feels "like . . . [he has] been poisoned" and he gets "severe chest pains" excruciating pain — "an immediate response," and "a delayed response . . . pain [that may last] two . . . or three . . . days." An affidavit from Dr. Thomas G. Randolph, who examined the plaintiff in June, 1980 at the Environmental Control Unit of the American International Hospital in Chicago states that Smith has "a clinically documented adverse reaction to cigarette smoke." In Smith's words:

> I don't experience a happy, normal life unless I'm away from tobacco smoke.

When someone next to him smokes, he must leave. The effects are cumulative; the chest pain gets worse after an hour or two of exposure. The effects of the smoke abate when he is away from work for a period of time:

> . . . by Friday I'm sick. Sometimes by Sunday I'm feeling fine.

IV. The plaintiff's efforts at remedy.

When, in 1976 the plaintiff "was breathing smoke with every breath" because he was "in the same proximity . . . [to] a very heavy smoker," he asked to have his seat changed. His seat was changed, but to a worse location, one near another heavy smoker. Starting in 1975, the plaintiff complained to every level of the defendant's plant management, that tobacco smoke was making him sick. He appealed to the engineer personnel relations manager, to department chiefs, to his general manager. He used the company's anonymous complaint procedure ("Comm-Line") to complain. He made formal requests that the company separate smokers and nonsmokers. On one occasion he sought a transfer to the Bell lab, Western Electric in San Antonio, which he had visited and found had "virtually clean air."

In addition to seeking remedy within the company, the plaintiff wrote letters asking for help and filed complaints with a number of agencies, government and private. He inquired of the Federal Information Center and was told "[no] mandate exists by any federal agency to control smoking in the workplace."

On one occasion, he filed a handicapped person form with a state agency, although "I don't consider myself handicapped unless I'm in the presence of smoke." He appealed to the County of St. Louis Health Services, to the Health System Agency of Greater St. Louis, to the St. Louis Heart Association. He appealed to the American Lung Association, to the American Cancer Society, to various nonsmokers' rights groups—Action on Smoking and Health, Environmental Improvement Associates, Group Against Smoking Pollution.

V. The company's responses to the plaintiff.

The company's early responses were to move the plaintiff about, to different locations, in each of which there is smoke; the moving about did not result in any improvement in the situation. In January, 1978, the defendant told the plaintiff not to submit any more "Comm-Line" forms regarding smoking because it would not process them. It refused to consider the plaintiff's suggestion that it separate smokers and nonsmokers.

On January 16, 1979, an investigator from NIOSH conducted "a limited health hazard evaluation survey" of the facility. The investigator handed out "medical questionnaires" to eighty employees. Sixty-six responded. Of those, twenty-four (or 36%) had complaints. Thirty-seven percent of the exsmokers and forty-two percent of the nonsmokers who had "never smoked" had complaints about the smoky air. The NIOSH investigator was "surprised to find:"

> that thirty percent of the employees who smoked complained of excess smoke in the work area.

The NIOSH investigator tested for the presence of eight chemicals. (There is nothing in the record to indicate whether employees maintained the same smoking patterns during the tests.) His report, made in March, 1979, indicated that he had obtained positive results for one chemical, carbon monoxide, which it found to be present at a maximum of eight parts per million (8 p.p.m.) The E.P.A. Federal Air Quality Standards for outside air limit concentrations to an average of 9 p.p.m. Applying its standards for "occupational exposure," NIOSH did not identify "any airborne concentrations of toxic

"The negligence principle has not heretofore been applied to one in control of premises who permits an invitee to be exposed chronically and against his will to the hazards of tobacco smoke . . . "

substances that could be considered a hazard to employees . . . " but found that "environmental conditions [in the premises] may upon occasion be potentially toxic for those employees who may be more sensitive to environmental conditions, and recommended that "[a] 'policy on smoking' be established . . . [and that] [t]he establishment of non-smoking areas . . . be considered.

Fourteen months later, in April, 1980, the defendant adopted a "smoking policy." It provides, in part:

> 1) It is the policy of Western Electric to protect the rights of both smokers and non-smokers by providing accommodations for both employee groups.
> 2) Except in areas designated as non-smoking, supervisors should make a reasonable effort to separate in work areas, employees who smoke from those who do not smoke. This, of course, is subject to normal business needs, which is the controlling factor.
> 3) "No Smoking" areas will be designated in all areas devoted to the storage and use of combustible materials and which by the quantities involved and the manner handled will present or create a fire hazard.

The defendant required the plaintiff to get medical documentation of how tobacco smoke affects him and in June, 1980 the plaintiff underwent three weeks of testing at the Environmental Control Unit of the American International Hospital in Chicago. Dr. Randolph's report was the result. Randolph's report concluded "Mr. Smith . . . evidences a clinically documented adverse reaction to tobacco smoke," and "should avoid its contact wherever and whenever possible."

The defendant, on the plaintiff's request, gave him a respirator to wear and put him in a room to the back of the building, in a more isolated area, with one smoker, whom it asked to cooperate. The respirator proved ineffective in preventing the chest pains and the other effects. The defendant provided him with a second respirator, which also proved ineffective. (Additionally, the plaintiff "felt very silly wearing this thing." The defendant offered the plaintiff a job in the computer room (where it does not permit smoking), but because the job meant a reduction in the plaintiff's pay of $500 a month, he refused it. The defendant has steadfastly refused to prohibit smoking in the plaintiff's work area.

POINTS RELIED ON

The county circuit court erred in dismissing the plaintiff's petition for failure to state a claim. The petition, with its supporting affidavits and the testimony elicited at the hearing on the motion, document the harm from involuntary smoking and its long-term risks, as well as the harm it is doing to the plaintiff. The harms and risks are physical and substantial. Since smoking is not a necessary by-product of the defendant's business, they are also unnecessary. The allegation and supporting evidence also establish that the defendant has had ample notice of these effects, and that it has, by a deliberate policy, permitted its employees to smoke in the area where the plaintiff works. The defendant has thereby violated its common law obligation, long recognized under Missouri law in other contexts, to use due care to protect persons lawfully on its premises from harm it has reason to anticipate. (Citations omitted.) The defendant has also violated its common law duty, also recognized under Missouri law in other contexts, and by other jurisdictions in the same context as (citations omitted). Neither Congress nor the Occupational Health and Safety Administration has preempted a Missouri Court from acting. (Citations omitted). The plaintiff has exhausted all other avenues of redress, and should be given equitable relief. Equitable relief is both simple and practical.

" 'Anyone who has had to try to care for these individuals is impressed with the degree of suffering that . . . they go through unnecessarily simply because there are smoking workers around them.' "

ARGUMENT

I. The defendant, by permitting smoking in the area where the plaintiff works, is exposing the plaintiff to unnecessary risks of serious bodily harm, thereby violating its common law duty to use ordinary care to protect the plaintiff from such risks.

A. The Defendant has a Common Law Duty to Protect the Plaintiff from Harm from Third Persons which, in the Exercise of Ordinary Care, it Should Anticipate and Can Prevent.

One who is in control of premises has a duty to use ordinary care towards business invitees. Restatement, Torts 2d §343. The duty is well established under Missouri law, and protects a person every time he gets on a bus, or goes to a hotel, or shops in a store, or lawfully walks or works on telephone company property. (Citations omitted).

This duty includes an obligation to use ordinary care not to expose business invitees to unreasonable hazards, including hazards emanating from third persons. A party in control of premises who knows or ought to know that actions by a third party pose a danger of unreasonable harm to someone lawfully on the premises, must use ordinary care to prevent such harm.

The duty applies whether the hazard stems from third persons' intentional acts, or from their negligence. Under Missouri law, it applies to employers.

An employee working on his employer's premises is a business invitee and is entitled to the protection of one. The reason for imposing the duty is, of course, that the defendant is in control of the premises and can act to protect the plaintiff, while the plaintiff normally cannot.

The negligence principle has not heretofore been applied to one in control of premises who permits an invitee to be exposed chronically and against his will to the hazards of tobacco smoke, probably because the evidence about the harmful effects of tobacco smoke is recent. This court should recognize the legal implications of the medical evidence on involuntary smoking by recognizing that the hazards of involuntary smoking constitute legally cognizable harms, worthy of judicial protection against. To grant relief would not require the court to establish new principles of law; it would

only require that the court apply some of the most well established principles.

One of the most basic of these principles is the right to the inviolability of one's body. 1 Restatement, Torts 2d §18. Intrusions far more limited in scope have evoked judicial response in a wide variety of contexts. Even if the hazards of second-hand smoke were trivial, the court should still protect against them. It should make no difference whether third parties give a plaintiff black eyes or red ones. As Mr. Justice Cardozo observed in another context:

> It is of no concern of ours that the controversy at the root of this lawsuit may seem to be trivial . . . To enforce one's rights when they are violated is never a legal wrong . . .

To measure the defendant's conduct by the usual test of negligence, the court need only consider

> the likelihood that . . . its conduct will injure others, taken with the seriousness of the injury if it happens, and balanced against the interest which . . . [it] must sacrifice to avoid the risk.

In the case at bar, the defendant's conduct exposes the plaintiff and the other nonsmokers in the work area to a variety of hazards: some transitory and comparatively minor; others, long term and exceedingly serious. Of the transitory harms, perhaps the least significant is the distinctive and offensive odor to which involuntary smokers are subjected, created at least in part by the ammonia and pyridine in the smoke. Because the smoke is drawn to people like iron filings are drawn to a magnet, particulates in the smoke cling to clothes and hair. Other comparatively minor hazards include eye, nose and throat irritation, headache and dizziness. Seventy percent of people exposed to tobacco smoke are likely to suffer eye irritation. Thirty percent are likely to suffer nasal symptoms, and significant numbers are likely to suffer cough, sore throat, hoarseness or wheezing. Carbon monoxide in the smoke displaces oxygen in the blood thus impairing the blood's ability to transport oxygen; then, depending on the duration and intensity of exposure, some may suffer headaches or dizziness and, on sufficient exposure, impairment of psychomotor skills and cognitive function. Secondhand smoke may impair the functioning of nonsmokers' cilia in removing inhaled dust particles and bacteria.

To persons with existing health problems, the short-term effects of exposure to tobacco smoke are potentially more serious. (Twelve percent of the 66 participating employees in the defendant's plant have health problems that make them particularly susceptible to airborne contaminants.) The NIOSH investigator's report noted that several of the nonsmoking employees complained of periodic shortness of breath and chest pains from the existing smoke.

Potentially more serious are the effects of chronic long-term exposure. One of the effects of chronic exposure to tobacco smoke at work, one study has found, is a significant reduction in small-airways function: the study found that the small-airways function of nonsmokers who had worked twenty years or more in an enclosed area where smoking was permitted or existed was

> not significantly different from . . . that of light smokers.

Another more serious effect of chronic long term exposure to second-hand tobacco smoke may be the risk of lung cancer. Of the three recent studies of a possible link between involuntary smoking and lung cancer, two found a statistically significant relation between a husband's smoking and the risk to his wife of developing lung cancer.

In absolute terms the risk is small, an increase of about thirteen deaths per 100,000 (New York *Times,* Jan. 16, 1981, A 1 Col. 1), but as one court has said:

> We see no reason why an actor engaging in conduct which entails a large risk of small damage and a small risk of other and greater damage, of the same general sort, from the same general forces, and to the same class of persons, should be relieved of responsibility for the latter simply because the chance of its occurrence, if viewed alone, may not have been large enough to require the exercise of care.

Petition of Kinsman Transit Co., 338 F. 2d 708, 725 (2d Cir. 1964).

But the risk, even if viewed alone, is significant enough to require the exercise of care. The harm, if it materializes, is, of course, devastating. Of the estimated 122,000 Americans who will be told this year that they have lung cancer, only about 10% will live another five years or longer (New York *Times,* Jan. 16, 1981, A 1, col. 1).

Not the least of the harms from involuntary smoking is the impairment of the plaintiff's right to decide for himself whether to undergo the risks of smoking. A smoker, weighing the risks, may decide to take them and continue to smoke. If that is his right, it is the plaintiff's right to choose not to smoke. Indeed in this case, Smith, an ex-smoker, gave up smoking because of the damage it was doing to his health. The defendant's policy of tolerating smoking in the work place forces the plaintiff to smoke. Indeed, if the [studies are] correct, he is smoking, by breathing other people's tobacco smoke, the equivalent of from one to ten cigarettes a day.

"The fundamental fallacy of the defendant's 'smoking policy' is its assumption that smoking employees have a 'right' to smoke at their desks . . . "

Balanced against the likelihood and seriousness of harm a defendant's conduct creates is "the interest the defendant must sacrifice to avoid the risk." There are no legitimate interests the defendant must sacrifice to avoid the risk.

B. The Defendant has Breached its Duty of Care to the Plaintiff.

When the plaintiff first went to work for the defendant its policy prohibited its employees from smoking at their desks. Thereafter, the defendant changed that policy and permitted employees to smoke at their desks. It does not appear from the record when the change came about. It

may have come about before the dangers of involuntary smoking were widely known. However, the defendant put in writing its policy of permitting smoking, in April, 1980, fourteen months after the NIOSH investigator's report and long after it had been abundantly educated to the risks (by the plaintiff's requests alone, if not otherwise). At that time, it knew or ought to have known of the harms and risks of involuntary smoking.

The "smoking policy" it enforces — which, incidentally is evidence of its control — is a breach of its duty of ordinary care to the plaintiff. The stated purpose of the policy is:

> to protect the rights of both smokers and non-smokers by providing accommodations for both employee groups. (1) by designating as no-smoking areas "all areas devoted to the storage and use of combustible materials . . . , [r]estrooms . . . [m]ailrooms . . . [k]itchen and food preparation areas . . . [m]edical areas . . . [f]acilities for storage of Class A material (e.g., stationery storage rooms, vault, libraries, etc.) . . . [a]reas within five feet of duplicating equipment . . . [c]omputer rooms, including tape storage libraries or rooms . . . " and (2) by making "a reasonable effort to separate in work areas, employees who smoke from those who do not smoke . . . of course, subject to normal business needs, which is the controlling factor." f. 27–28.

The fundamental fallacy of the defendant's "smoking policy" is its assumption that smoking employees have a "right" to smoke at their desks, even if it means smoking into the air other employees nearby must breathe. Where does this "right" come from? It is not conferred by the common law or by statute. On the contrary, the common law from its earliest origins established a contrary principle — that everyone has a right to the integrity of his body, a right not to have his body unnecessarily intruded upon by others. Under basic common law principles a smoker's "right" to smoke stops when his smoke intrudes upon another's body without his consent or acquiescence. As Bernard Shaw observed, "A smoker and a nonsmoker cannot be equally free in the same railroad carriage".

The "right to smoke" in the case at bar does not come from the common law or from any statute; it was bestowed by the defendant's "smoking policy." That policy, which attempts to accommodate both groups, "subject to normal business needs," has already accepted the potential offense of the smoker as a "right" worthy of accommodation vis-a-vis the health and the right to bodily integrity of the nonsmoker. That policy has already subordinated to the conferred "right," the right of the nonsmoker not to be smoked on.

"Under basic common law principles a smoker's 'right' to smoke stops when his smoke intrudes upon another's body without his consent or acquiescence."

Ironically, the defendant's "smoking policy" also appears to be aimed in significant part at protecting its equipment and supplies, rather than its nonsmoking employees. Apparently, in the defendant's scale of values, the plaintiff is not "Class A material".

The defendant's policy is flawed in another respect. Segregation of smokers and nonsmokers "of course is subject to normal business needs, which is [sic] the controlling factor." Smoking, however, is neither necessary to, nor an incident of, the defendant's business. The defendant is in the communications business, not the business of testing tobacco. Unlike other businesses, where pollution may be a necessary incident to an industrial process, nothing in the making of communications equipment requires, to any degree, the smoking of tobacco. The "normal business needs" to which the defendant refers means nothing more than the need for nicotine of a minority (and probably a dwindling minority) of the defendant's employees.

To satisfy those needs, the defendant has, at one time or another, proposed that the plaintiff should (a) accept a demotion (to the computer room), (b) wear a gas mask (in a back room), (c) wait for a state clean air act to be passed. These alternatives are patently unreasonable. The defendant's duty is not met by measures which imply that the plaintiff is peculiar and should be isolated. The smokers are in the minority and initiate the offense; they, not the plaintiff, need special attention. And, certainly, moving the plaintiff next to a smoker did not meet the defendant's duty. Indeed a California court has held that being moved next to a chain cigar smoker is "good cause" for resigning, entitling the employee to unemployment compensation benefits.

The issue is, of course, not whether the defendant's smoking employees can smoke. The issue is where they may do so. The defendant assumes that permitting smoking only in areas away from the plaintiff's work area would waste time and decrease productivity. The assumption is dubious for several reasons. The defendant's smoking employees no doubt take breaks for many purposes other than smoking and could no doubt combine at least some of those purposes with smoking. Second, there is no necessary relation between productivity and the number of work breaks. Roethlisberger, F. J. & Dickson, W. J., *Management and the Worker, an Account of a Research Program Conducted by the Western Electric Company, Hawthorne Works, Chicago,* Harvard University Press, Cambridge, Mass. 1939 (1970 ed.), Chap. III, Experiment with Rest Pauses, pp. 40–59. Finally, a no-smoking-at-the-desk rule would discourage people like the plaintiff, who, when they come to work for the company do not smoke, from taking up smoking, and would encourage smokers to quit or, at least, to cut down on their smoking.

But even if the defendant's assumptions were correct, the defendant's premise is that initial griping by some smokers and an assumed incremental loss in productivity are more important than incremental impairment of the health of its nonsmoking employees. Put another way, the defendant's "smoking policy" is, at bottom, that the interest of those employees who have become accustomed to smoking at their desks should be catered to by putting the plaintiff and the defendant's other nonsmoking employees at risk of their health.

If some of the defendant's employees started pinching other employees, or slapping them on their buttocks, or spitting on their sleeves, or spraying ammonia about in small quantities, and the defendant knew of the practice and knew that the victims objected to it, surely the defendant would not be talking about pinchers' rights, or slappers' rights, or spitters' rights or sprayers' rights. It would put a stop to such practices, and quickly. Smoking is equally as offensive and the harm it does vastly exceeds any harm conceivable from the posited practices. If every day the defendant's employees released from canisters the exact chemicals they are now releasing from their cigarettes, the defendant would not defend their "right" to pollute the air, but would act to protect the plaintiff. Its failure to do so here is unreasonable, and is a violation of its common law duty to protect the plaintiff from harms from third persons which it can anticipate and prevent.

II. By permitting smoking in the area where the plaintiff works, the defendant is violating its common law duty to provide the plaintiff a safe place in which to work.

The defendant, as the plaintiff's employer, also has a common law duty to provide him with a safe place in which to work. (Citations omitted.)

The duty of an employer to provide a safe workplace has been applied specifically to a work place made unsafe by an employer's refusal to prohibit smoking. *Shimp* v. *New Jersey Bell Telephone Co.*, 145 N.J. Super, §16, 368 A.2d 408 (1976). The New Jersey court in *Shimp* found that a workplace where smoking is permitted is not a safe place in which to work. The court said:

> There can be no doubt that the by-products of burning tobacco are toxic and dangerous to the health of smokers and nonsmokers generally and to this plaintiff in particular. (145 N.J. Super. at 526, 368 A.2d at 413, f. 34).
>
> The evidence is clear and overwhelming. Cigarette smoke contaminates and pollutes the air, creating a health hazard not merely to the smoker but to all those around her who must rely upon the same air supply. (145 N.J. Super. at 530, 368 A.2d at 415, f. 36).

In the case at bar, were it not for the NIOSH investigator's limited survey of January 16, 1979, there is little doubt that Smith's workplace is not a "safe place in which to work." The plaintiff's testimony about the quality of the air in the area where he works was corroborated by co-workers. One describes it as "foul, obnoxious and highly polluted;" another as "typically smoke-filled." "The air where we work is sometimes so bad you have to force yourself to breathe." Twenty-seven of the 50 to 60 people there smoke. Among the smokers are two chain smokers of cigarettes, three cigar smokers, and two pipe smokers. James Repace, a senior staff member of the E.P.A. estimated that pollution levels under such conditions would exceed the E.P.A.'s outdoor standards.

The investigator's conclusion that he had not identified "any airborne concentrations of toxic substances that could be considered a hazard" should not be dispositive for several reasons. First, the evaluation was "limited" both in time and scope. It was done in one day (January 16, 1979), and the smokers were probably aware of the investigator's presence and may well have modified their behavior as a result of that knowledge.

Second, as will be argued in argument III of this brief, OSHA standards are oriented to industrially-produced hazards and are not directed at tobacco smoke: those standards when applied to tobacco smoke are, therefore, fragmentary and inadequate. In the case at bar, the NIOSH investigator did not, for example, test for particulates or measure their likely effect on the capacity of the nonsmokers' cilia to cleanse their air-passages. Nor did he measure the long-term effect the second-hand smoke may be having on the nonsmokers' small-airways passages. Nor did he test for dimethylnetrosamine or benzo(a)pyrene (the powerful carcinogens in tobacco smoke, for acrolein or acetaldehyde (eye irritants), for hydrogen cyanide (the poison that attacks respiratory enzymes and that is found in tobacco smoke at levels 160 times that considered dangerous). Of the thousands of constituents in tobacco smoke, the investigator measured only for eight of them.

Third, certainly the air around the seats next to the smokers, and particularly the air around the seats next to the chain smokers is unsafe, and someone has to sit next to the smokers.

Fourth, safety, like negligence, is a relative concept. There are degrees of safety. One can accept the investigator's findings and reject his conclusion. Air that is contaminated enough with tobacco smoke to produce headaches, eye and throat irritation, cough, and in some of those who have to breathe it, shortness of breath and chest pains, is, (as the NIOSH investigator's report itself acknowledges), to that extent, potentially not "safe." Air contaminated with tobacco smoke which on chronic exposure to it will impair one's small airways passages is, potentially not "safe." And air contaminated with tobacco smoke which on chronic exposure may double one's risk of dying from lung cancer is potentially not "safe."

If safety is regarded as a relative matter, then clearly Smith's workplace is not safe, for safety is not a matter of one or two parts per million. The defendant's obligation to provide the plaintiff a safe workplace, like the defendant's obligation to use due care to protect the plaintiff from anticipatible harm from third persons, measures the utility of the defendant's conduct against the risks it entails. Since the defendant's conduct in this instance serves no legitimate purpose, there is no need to tolerate as safe one unnecessary part per million of carbon monoxide, one inert particulate that may lodge for days in someone's lungs, one iota of benz(a) pyrene or one iota of dimethylmetrosamine from which there is even the remotest

"A party in control of premises who knows or ought to know that actions by a third party pose a danger of unreasonable harm to someone lawfully on the premises, must use ordinary care to prevent such harm."

possibility of getting lung cancer.

To argue, as defendant does, that the plaintiff's workplace is not unsafe, because the smoke affects relatively few people and affects only the plaintiff drastically, is wrong for three reasons. (1) All nonsmoking (and smoking) employees inhale the constituents of the smoke and their bodies react to them. The fact that some employees may not notice the effects does not mean that they are not being affected. Everyone is affected by smoky air—some more seriously or sooner than others. (2) The defendant's argument is a variant of an argument that seeks to blame the victim for his own wrong. It blames the plaintifff for being one of its employees who is affected earlier and more seriously. The plaintiff is merely one of an estimated eight million people in the United States who are clinically sensitive to tobacco smoke. (3) Even if only a few people were affected seriously, the workplace is for that reason alone unsafe. A substantial part of the population suffer from preexisting diseases (heart disease, chronic asthma, chronic obstruction lung disease) that make involuntary smoking particularly hazardous. As the investigator's questionnaire demonstrated, the same is true at the defendant's plant: of those responding to the questionnaire, 12% suffered from such diseases. Even if the defendant were meeting its duty to the majority of employees, it is surely not meeting its duty to the others, including the plaintiff.

III. Equitable Relief is Appropriate

A. Equitable relief is the plaintiff's only remedy.

The wrong to the plaintiff is a continuing one. It occurs every work day the defendant permits smoking in the plaintiff's work area. It occurs each time the defendant's permitting smoking causes the plaintiff chest pain, or headache, or dizziness; it continues all the while the defendant's permitting smoking puts the plaintiff at risk of even more serious injuries. Injunctive relief is appropriate where the injury is a recurring one or the risk a continuing one. Here, although the plaintiff can show injury and may well have an action at law, such an action would compensate him for past pain and suffering, but only equity can afford the plaintiff complete relief. Only equity can eliminate the source of that suffering. The plaintiff should not have to wait to be disabled, or to bear the risk of it, before getting redress. Only equitable relief would also obviate a succession of lawsuits. And since only equity can also compel the defendant to act, only equity can vindicate the plaintiff's right not to be forced to inhale tobacco smoke.

The plaintiff has no administrative remedy; he has no remedy under OSHA. He has exhausted all possible avenues of relief. He has sought relief through company procedures; he has sought redress from every manner of agency, both governmental (federal and state), and private. Surely he need do no more to qualify for the court's help. (citations omitted).

Equitable relief has often been granted to protect physical safety in nuisance cases involving adjoining landowners. Equitable relief is not less appropriate when the smoke is released inside, rather than outside, realty.

B. Equitable relief is practical.

Requiring the defendant to extend its nonsmoking rule to the plaintiff's work area is practical. Since there is no right to smoke on others and no legitimate commercial interest of the defendant to be served by such a practice, there is no need for half-measures. On the contrary, it is impractical to compromise the plaintiff's rights, as the defendant has done here, adjusting the remedy according to nice calculations about density of smoke and concentrations of its toxic components. Smoke expands; its components condense out and cling; it triggers other smokers to smoke. A rule that would curtail, but not eliminate smoking in the plaintiff's work area would unnecessarily create a set of smoking rules open to interpretation and debate. Such rules are much more difficult of enforcement than is a smoking ban.

A smoking ban would be direct and simple. No special administrative or legislative expertise would be required. There is no need to balance risks and benefits here since there is no benefit from the defendant's concession to its smokers at the plaintiff's expense. A ban would not require expensive ventilation systems or longer operation of systems that may be in place. (Indeed, it is doubtful that ventilation, particularly because the air in the defendant's plant is recirculated, eliminates the risks).

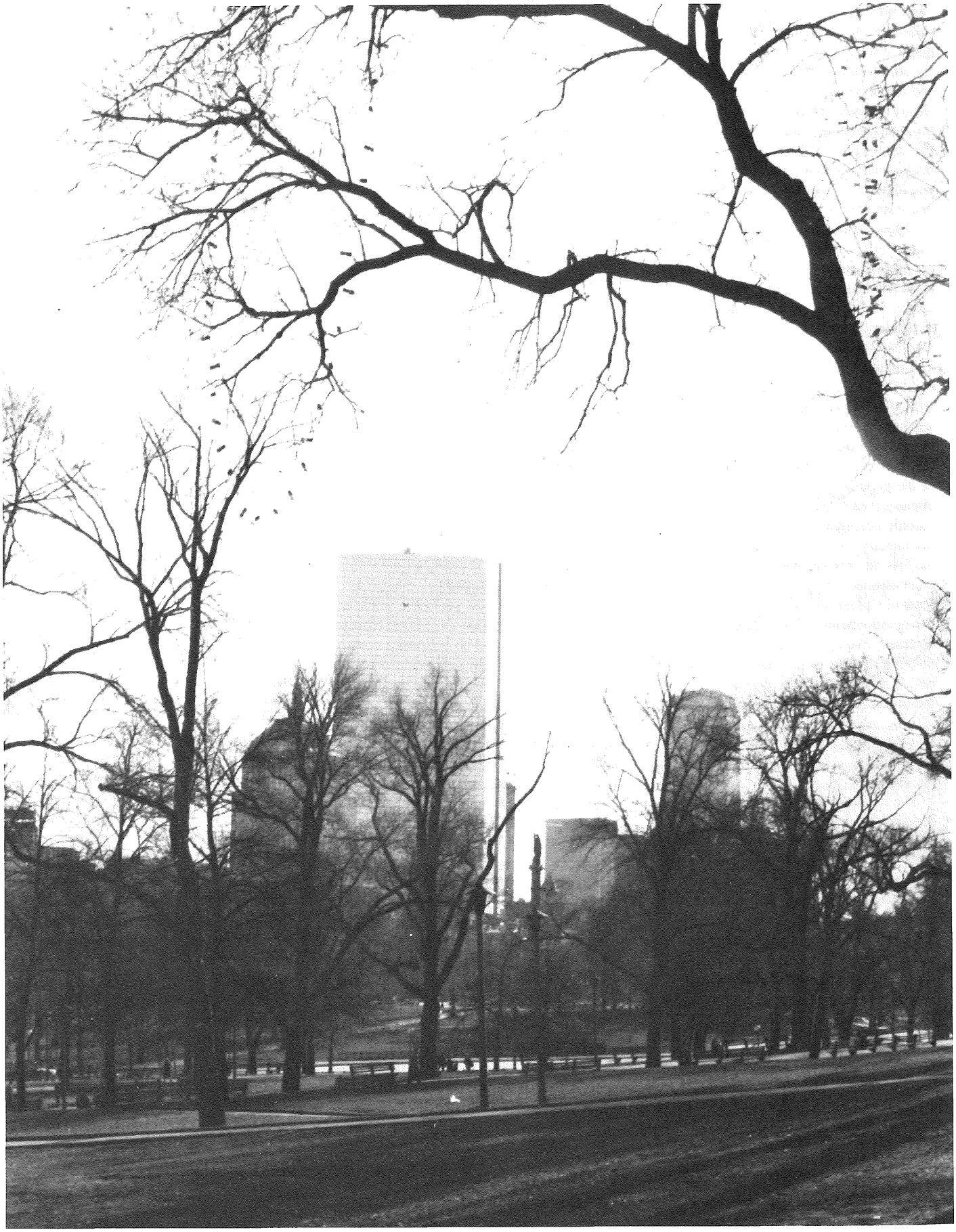
A court-ordered no-smoking rule would be easy to enforce. Some smokers may grumble initially, partly because the defendant has taken their side. But smoking bans have worked, apparently without incident, in many enclosed places of employment and among employees who must spend long hours at their work. Apparently a smoking ban works in the defendant's own computer room and elsewhere within the defendant's plant.

Smoking is a habit, indeed an addiction, but it is not a "social" habit, as the defendant contends, *except* as it affects others. No rule of law exempts behavior from the civil liability merely because a number of people participate in that behavior.

C. The plaintiff is suffering irreparable harm as are others similarly exposed.

The plaintiff is suffering irreparable harm, but slowly. Forced to breathe smoke contaminated air at work, he can look forward over time to irreparable impairment of small-airways functions and other potentially serious bodily harm, and backward to a life unnecessarily marred by ill-health. Equity ought to prevent the defendant from continuing to permit smoking, a practice which in effect singes the lungs of the plaintiff and others. Unlike damage to the defendant's computers and Class A materials, damage to the plaintiff's lungs cannot be repaired.

This suit is not the doing of the Clean Indoor Air Educational Foundation or of Environmental Improvement Associates. It arises from a continuing wrong to plaintiff. That thousands of other people suffer the same wrong as does the plaintiff, to lesser or greater degrees, and that the court's decision will have significance to their everyday lives and well-being are not reasons not to do justice to him.



Book Review

Edmund A. Williams

The Man Who Owned New York.

By John Jay Osborn, Jr.
Houghton Mifflin Co., 234 p. (1981)

John Jay Osborn, Jr. has had phenomenal success writing about law students and aspiring young lawyers. His latest novel, however, has as its protagonist an experienced lawyer who has already achieved both financial and professional success at the age of thirty-six.

The Man Who Owned New York is an informative and entertaining look at a supposedly atypical partner in a prestigious Wall Street law firm. Atypical, that is, in the sense that his mind seems to be on everything except the law.

Robert Fox had taken all the right steps for the first thirty-five years of his life. Prep school, Harvard, law school, Wall Street, and partnership all fell neatly into place. Relationships with family and friends were a bit more difficult, but Fox had never really stopped on his way to the top to think about that. He is just beginning to question the voids which had been created in his life. The reason for this, unbeknownst to him, is that the subconcious fears he had successfully suppressed while achieving his goals are beginning to emerge.

Osborn, author of *The Paper Chase* and *The Associates,* has fashioned a story that is part mystery, part law, and part romance. Fox, junior partner in the firm Castle and Lovett, is faced with the task of finding over three million dollars that is missing from the estate of one of his former clients. At the same time, Fox has several other things that are competing for his attention. He is intent on persuading a beautiful, neurotic art appraiser to marry him. He has taken on the responsibility of looking after Gauder, an elderly former partner of the firm, who reports to work each day and falls asleep at his desk each night. In addition to all of this, Fox is faced with the prospect of seeing himself as he once was in the person of the associate that is assigned to him. Not only are all these things happening at the same time, but they are happening at a time when the psychological barriers Fox has erected since childhood are threatening to collapse.

The search for the missing money brings Fox into contact with all segments of New York society. The deceased, Mrs. Belinda Meechum Sifford, had mortgaged a property thirteen years before her death for 3.2 million dollars, but there was no record of the money ever being in the estate. She had enough money that her only known living heir did not care whether the money was found or not. Her husband had disappeared around the time the mortgage was given on the property, and no one had any clues as to his whereabouts. Her banker, personal secretary, and former tenant who was now the wealthiest real estate developer in Manhattan, all professed ignorance as to any knowledge of what Mrs. Sifford had done with the money. With the aid of his associate, Fox learns that all of these people did, in fact, possess knowledge as to what happened to the money. Each had a reason for not disclosing anything to Fox. His job was to uncover what the secret was and to get the money back as quietly as possible.

The mystery alone is reason enough to read this book. The reader gets the clues at the same time Fox does, but he always seems to be one step ahead. His instincts are almost always unfailingly accurate, a result of the education he received as an associate working for Gauder. Fox is a lawyer, not a detective, but in order to serve his client he must unravel the mystery of the missing money without the press or police getting wind of the scandal.

While the search for the money is going on, Fox is involved in two subplots, each of which contributes to making this more than just a mystery. He is in love with Kim Hartman and wants desperately to marry her. Kim loves him, but has a seventeen year old son who hates him. She refuses to call Fox by his first name, Robert, because her father, ex-husband, and son are all named Robert, and she has had problems with each of them. She refuses to marry Fox, which he thinks is going to drive him crazy. The main reason for her refusal is that she is aware of the turmoil going on inside of Fox. That turmoil is apparent throughout the story, but neither Kim nor the reader finds out its cause until near the end, when a rather unsurprising event causes Fox to unleash years of penned-up emotion.

Another relationship affected by Fox's psychological confusion is the one between Fox and the associate working for him, Jackson. At the outset Fox is contemptuous of the younger lawyer. This is due not to his intellectual shortcomings, but to his coldly efficient execution of every task Fox assigns him. He recognizes that Jackson is dedicated to one thing, a partnership, and it is a reflection of Fox himself a few years before. He mocks Jackson throughout the early part of the story, but as they work together to solve the mystery of the missing money an understanding develops between the two men. Jackson, we find out, is not as cold as he appears, and Fox's seemingly cruel taunts are recognized as attempts at drawing the younger man out. He is curious as to whether Jackson is merely playing an organizational game, or whether he is as insensitive as his computer-like personality suggests. He finds out that Jackson is indeed human, and the two are able to establish a rapport that ultimately helps them both professionally and personally.

The Man Who Owned New York is a story about lawyers, money, power, greed, and love. It deals with finding out about themselves and others. Most of all, it focuses on one man's attempt to cope with what he is and what he wants to be. If you enjoyed Osborn's previous work, you won't be disappointed in his latest effort. He has written a superb suspense yarn that will keep you guessing until the very end. And best of all, he has once again done it with the same wit and insight that has made reading his novels such a pleasurable adventure.

The Rat on Fire.

By George Higgins
Alfred A. Knopf, Inc., 183 p. (1981)

Jerry Fein has a problem. He has a few old apartment buildings that are costing him a bundle of money, and he needs to pay off the people who hold the notes on those buildings. A sale would be nice, but the apartments are worth a lot less now

than they were when Fein bought the property. A fire would be nice too. By destroying the property, Jerry would have enough insurance money to pay his creditors; he may even have a little left over with which he could take a long-needed vacation. The problem with fires though, is that they usually start when you don't want them to, but hardly ever start when you really need one. In fact, the odds against an accidental fire coming to Jerry's rescue are so great that he decides to hire Leo Proctor as "fire insurance." Leo's job is to make sure that there is an accidental fire at Jerry Fein's rental property. Little does Jerry know that he is about to have a more serious problem, a problem that insurance proceeds cannot cure. Jerry should know — he's a lawyer.

Fein's problem and his solution to it form the basis of George Higgins' latest novel, *The Rat on Fire,* a cynical captivating, and sometimes witty look at police, lawyers, politicians, and the business of arsons-for-hire. If you have never read Higgins, a simple description of the plot and characters cannot convey what makes his work so interesting. Scenery, theme, and character development are all accomplished through the use of dialogue. Virtually everything we learn comes from the mouths of Higgins' characters, (and much of it is obscene, illogical, or a combination of the two). Yet hardly any of it is irrelevant, and that is the key to Higgins' success in telling a story. His characters may ramble, and you may think that they are never going to get to the point, but along the way they reveal themselves so completely that by the end of the book you know them as well as if they were real friends or enemies. Even the most innocuous comments seem to tell us something about the character.

The Rat on Fire has a crooked lawyer, a crooked fire marshall, and a crooked carpenter conspiring to solve a problem the lawyer has with his apartment buildings. Unfortunately for the lawyer, he decides to have his building torched at the exact time the Massachusetts Attorney General has decided to crack down on arson-for-profit schemes that have been plaguing Boston. As a result of the crackdown, the carpenter (Proctor) who Fein hires to do the job is under heavy police surveillance due to his propensity for playing carelessly with matches. The fire marshall Proctor is also under suspicion for past instances of having attributed the cause of various kerosene drenched, gutted remains to "faulty wiring." These three appear to be doomed from the start, but their past histories show them to be survivors.

While watching them plan the fire we learn of their vices, virtues, personal problems, and opinions on the society in which they live. They are not likable people, and there is a certain revulsion in listening to them; yet, they are interesting in their own perverse sort of way. They are prejudiced, unethical cynics, who are funniest when they least mean to be.

Higgins has a way of making the most unappealing character an almost pitiable figure. There are so many personal flaws in his characters, and they have so many problems as a result of those flaws, that they are constantly in trouble. What complicates matters even more is that they insist on getting out of jams by using their intelligence and cunning, which usually serves to worsen the particular situation.

The Rat on Fire is set in and around Boston, the dialects are decidedly Bostonian, thus at times hard to follow. But one gets acclimated rather quickly to Higgins' style of writing, which translates thoughts into conversation in a stream of consciousness-type dialogue. Higgins' characters are really stereotypical examples of the improper Bostonian. Often what appears to be an attempt at humor comes across as cheap, ignorant, and tasteless, and shows more about the character speaking than the target of his abuse. It does serve to contribute to the character development though, and the tastelessness should come as no surprise to the reader. *Nothing* the two major characters (Fein and Proctor) do should come as a surprise due to the complete picture Higgins has painted. We know them so well that it is fairly easy to anticipate how each will react in a given situation.

The police involved have problems of their own. Long hours, short money, and political pressure make their job difficult. This is, however, an almost classic example of a good guys vs. bad guys story, and the police do their job with a cynical professionalism. Their moral code is the antithesis of that of their opponent, though they are seen less often than Proctor and Fein. As a result, the emphasis is almost totally on the villains, with the police serving as obstacles and standards against which the conduct of Fein and Proctor can be measured. There are no profound philosophical theories at work here. Everyone has problems, and they either deal with them within the bounds of the law or with whatever means is considered most expedient. The latter includes almost anything, be it immoral, illegal or irrational. If there's a moral to the story, it is that proven losers should never resort to expedient means.

Overall, the latest Higgins effort provides entertaining reading. He introduces us to people that most of us have had the pleasure of never meeting, and shows how a criminal act is plotted, hatched, and carried out. Each chapter of the novel is a separate vignette that is interwoven with every other chapter to produce a compelling story. There are twists in the storyline that keep the reader guessing as to what the final outcome will be.

While the book reads easily once the character's speech patterns are mastered, it also demands a certain amount of concentration. Some of the characters may lack polish and sophistication, but the events they are involved in are often new to the reader. Higgins shows a side of society that many have never really considered. Unlike many crime novels, there are no master criminals or supercops here, just average people who have chosen different approaches to solving economic, personal, and professional problems. It is really an old fashioned morality play, with the forces of good and evil squaring off and the battle lines clearly drawn. Even the title, which is ambiguous at the outset, serves as a clue as to with whom the reader's sympathy should lie. Any book that has a "dump rat" as a sympathetic figure must have some reprehensible characters. *The Rat on Fire* has them, but even while the reader is rooting against their plan there is a certain fascination for their convoluted and misdirected attempts at justifying their actions. It is that fascination which makes the story more than just another crime novel.

Notes

Alumni Notes

Edward Doocey, a 1975 Suffolk graduate, was appointed General Counsel of the Massachusetts Commission Against Discrimination. He was formerly Labor Relations Counsel for the State Department of Revenue.

Paul P. Heffernan, Boston Municipal Court Clerk-Magistrate, has been nominated to the Somerville District Court. He previously served as a Probation Officer in the Juvenile Court and Parole Agent in the Department of Youth Services.

John H. O'Neil has been nominated to the District Court of Fall River. He has been a partner in the firm of O'Donoghue and O'Neil since 1970, and prior to that time served for 10 years as Assistant Clerk of the Bristol County Superior Court. Mr. O'Neil is a former City Councillor of Fall River, and a former member of the Judicial Nominating Commission.

Arthur H. Tobin has been named Clerk-Magistrate of the Quincy District Court. He is a former member of the Massachusetts House of Representatives and the State Senate, has served on the Quincy City Council for 10 years, and is Mayor of the City of Quincy.

Joseph P. Hegarty, Jr. has been named a senior vice president of the Alliance of American Insurers. Mr. Hegarty is a Major General in the Massachusetts Army National Guard.

Harold Cohen has been named to the Norfolk County Agricultural School Board of Trustees.

Dr. William E. Hassan, Jr., executive vice president of the Brigham and Women's Hospital in Boston, has been named acting president of the hospital.

Robert J. True is assistant vice president and mortgage officer at the First Essex Savings Bank in Salem, New Hampshire.

Michael A. Gatta is presently serving as assistant clerk-magistrate of the Woburn District Court.

Edward S. Vaughn, Jr. BSBA '68 has been appointed assistant professor of business administration at Stonehill College. He is a former assistant dean of the School of Management of Suffolk University.

Leo A. Sacco, Jr. has been sworn in as a patrolman in the Medford Police Department.

William Geary, who is an adjunct professor in Suffolk's School of Management, is the executive director of the Advertising Club of Boston.

Nancy L. Irwin Schott is an attorney for the Ford Motor Company in Michigan.

Notes — Miscellaneous

During the first semester of each school year, the Moot Court Board of the Law School runs its Client Counseling Competition. This year's winners were Claudia Adams Hunter (Class of 1982) and Maura Sylvester (Class of 1983).

The Client Counseling Competition is a national competition sponsored by the Law Student Division of the American Bar Association. Each year, every ABA approved law school and recognized Canadian law school is invited to enter one team, composed of two law students, which competes in a regional competition. The winning team in each regional competition competes in the national competition in California.

The Client Counseling Competition run at Suffolk University, therefore, is actually a preliminary intra-school competition, designed to determine which two students will have the honor of representing the Law School as a team at the regional level. The competition is open to all second, third and fourth year law students. Each student competes with a partner of his or her own choosing.

This year a record number of sixty-two teams competed in the competition. Six rounds therefore were needed to choose the winning team. The theme of the competition this year was "Child Custody, Child Support," so that in each round the competitors were asked to interview "clients" whose "problems" fell into these areas of the law. The client profiles were developed by the Moot Court Board.

The final round of the competition was held on December 3, 1981. The team of Hunter-Sylvester defeated the team of Steve Oliveira (Class of 1982) and Dave Witman (Class of 1982) — although both teams gave excellent performances in how to interview and advise their "clients." The final round dealt with the issue of visitation rights for grandparents, and the clients' roles were played by Eda Rabinovitz, a Boston actress, and Lenard Corman, an actor with the Boston Shakespeare Company. Both Ms. Rabinovitz and Mr. Corman gave lively and often funny performances as the troubled grandparents.

Suffolk University Law School — 1981 Client Counseling Competition. Left to right; Key participants in the competition were: Claudia Adams Hunter (winner), Monroe Inker, Esq., Dave Whitman (finalist), Jared Adams, Esq., Maura Sylvester (winner).

1982 Clark Moot Court Competition winners and judges. Left to right: Hon. Hugh Bownes (1st Circuit), Raouf Abdoullath, Hon. Levin Campbell (1st Circuit), Charlene Clinton, Professor Lawrence Sager (N.Y.U. Law School).

Judges for the final round were Monroe Inker, Esq. of Crane and Inker, a Boston law firm, and Jared Adams, Esq. of Adams & Smith, also a Boston law firm. The third judge was the Law School's own distinguished Professor Charles P. Kindregan.

As a result of their victory, Ms. Hunter and Ms. Sylvester competed in the regional competition of the Client Counseling Competition, which this year was held during the weekend of March 6th at Boston College.

At the regional competition, the team made an excellent showing, reaching the final round. The team defeated Boston University and Northwestern Law School before losing to University of Connecticut in the finals. The team's faculty advisor is Professor Richard Pizzano, who teaches a course in Interviewing and Counseling at the Law School.

Donahue Lecture Series

The Donahue Lecture Series, instituted in 1980 by the Suffolk University Law Review to commemorate the life and work of The Honorable Frank J. Donahue (1881–1979), presented the fifth through the seventh of its lectures this Spring. The fifth, "Free Speech or Economic Weapon? The Persisting Problem of Picketing," was presented on March 4 by noted labor law expert, Theodore St. Antoine, Professor of Law at the University of Michigan. The sixth Donahue Lecture was presented on March 25 by Professor G. Edward White, who teaches tort law and legal history at The University of Virginia Law School. The lecture was entitled, "Revising History: Revisiting the Marshall Court." The seventh Donahue Lecture, entitled, "Reflections on Statutory Nullification," was given on April 23 by Professor Grant Gilmore of the University of Vermont Law School. Professor Gilmore is best known for his contributions in drafting Article 9 of the Uniform Commercial Code, and as the author of: *The Ages of American Law* (1977), *The Law of Admiralty* (2nd ed., Gilmore and Black, 1975); *The Death of Contract* (1974); *Contracts: Cases and Materials* (2nd ed., Kessler and Gilmore, 1970); and, *Security Interests in Personal Property* (2 vols., 1965).

Suffolk sent two teams to the Mugel Tax Competition in Buffalo. The team of Jim Hayes, J. Patrick Mahoney and Joe McDonald won one and lost one in the qualifying round. The other team of Luci Pillsbury and Cathy Thompson were in the semi-finals. In addition, Luci Pillsbury was awarded the 5th Best Oralist in the competition.

The Suffolk team of Ginny Mayo, Penny Rundle, Paul Tobin and Gerry Zitoli won the Northeast Region Division of the Jessup International Law Moot Court Competition. Congratulations to the team and faculty advisor Stephen C. Hicks.

Obituaries

Edmund Burke, Class of 1936, died at the age of 67 on July 25, 1981. He was an active trial lawyer in Worcester for 45 years, specializing in Worker's Compensation. Mr. Burke also sat as an auditor and master in the Superior Court, an assistant attorney general under the late George Fingold and as special assistant attorney general under Francis X. Bellotti.

Herbert C. Travers, Class of 1940, died at the age of 64 on August 28, 1981. Mr. Travers was a veteran of World War II and served at general headquarters in Japan with the army of occupation. In 1958, he was appointed probation officer of Dorchester District Court. He retired in 1978.

Charles Cochrane, Class of 1928, died at the age of 84 on August 5, 1981. Mr. Cochrane was an attorney with the Gorton Fisheries Inc. of Gloucester and New York City for over 50 years. He also served as Chairman and Member of the Zoning Board of Appeals in Wayland.

Royal L. B. Barrows, Jr., Class of 1941, died on August 24, 1981. He was the inventor of the automatic bowling pin setting machine. He served as chairman of the Middleton Board of Appeals for 22 years and was past Treasurer and life member of the Middleton Historical Society.

Arthur F. Conley, Jr., Class of 1971, died on July 30, 1981. He was employed as counsel for Colonial Penn Insurance Co.

John Doherty, Class of 1932, died at the age of 75 on June 15, 1981. Mr. Doherty served in the State Legislature from 1936–1938. He served on the Boston Board of Assessors as Executive Secretary until 1976.

Joseph Kaplan, Class of 1930, died on September 27, 1981. Mr. Kaplan was a property assessor in Everett and served as Chairman on the Everett Board of Appeals. He also was a member of the Massachusetts State Ballot Law Commission.

Nazzareno Toscano, Class of 1933, died September 11, 1981. Mr. Toscano emigrated to the United States in 1921. After graduating from law school he was appointed Commissioner of the State Industrial Accident Board. He was a spe-

cialist in the field of Workman's Compensation and worked for Armour and Co. and Electric Mutual of Lynn.

Lester B. Morley, Class of 1930, died on August 21, 1981. He served four terms in the Massachusetts House of Representatives from 1938–1946.

Francis E. Kelly, a 1928 Suffolk Law School graduate, died in January, 1982, at the age of 78. He practiced law and had a long and controversial political career in Massachusetts. He was a Boston City Councilman for two terms, Lieutenant Governor from 1937 to 1939, and Attorney General from 1949 through 1953. He successfully argued for: open meetings for the Governor's Council, an eighteen-year-old voting age in Massachusetts, a state bonus for war veterans, and abolition of boss-controlled pre-primary Massachusetts state conventions. He is most noted for his efforts to establish a Massachusetts State lottery for which he campaigned 31 years before finally seeing its creation in 1972.

Faculty Notes

Professor John R. Sherman has been appointed a Visiting Scholar at Yale Law School for the Fall Semester of 1982.

On January 21, 1982, **Professor Marc D. Greenbaum** appeared as a panelist at the Mass. Bar Association's Employment Discrimination Seminar discussing Alternative Remedies for Employment Discrimination.

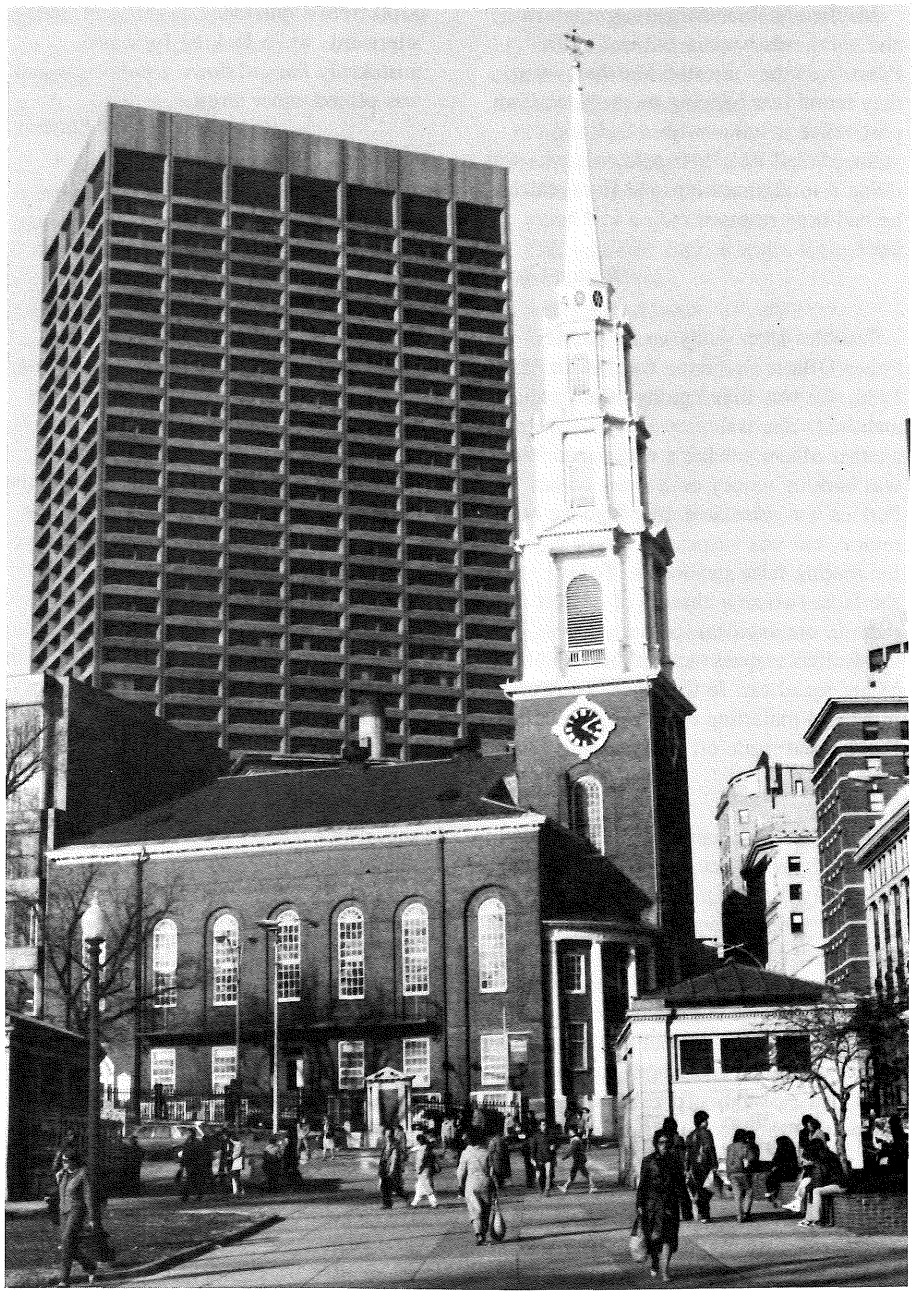
Professor Bernard V. Keenan was recently appointed to a Massachusetts Bar Association Task Force. The Task Force has been formed to review the report and recommendations of the Special Committee on Legal Education. In 1979, the Special Committee was appointed by the Supreme Judicial Court of the Commonwealth.

Professor Joseph D. Cronin published an article in *Massachusetts Lawyers Weekly* (vol. 10, p. 545, February 15, 1982) entitled "Chief Judge Callister and the E.R.A." which concerns the ruling in *Idaho v. Freeman* on the validity of the time extension for ratification of the Equal Rights Amendment, and the right of states to rescind their ratification.

Professor Stephen C. Hicks will present a paper at the XI International Congress of Comparative Law in Venezuela in August of 1982. Recently, he had a Book Review published in *Vanderbilt Journal of Transnational Law,* and his French translation of his article was published in the *Revue de Droit of Sherbrook University* (Canada).

Professor Charles Kindregan presented a paper on the use of video in the courtroom at the meeting of the New England Law Librarians in March 1982.

Betsy McCombs is co-editor of two directories: *Graduate Law Study Programs,* which lists more than 150 advanced law degree programs offered throughout the world; and *Summer Law Study Programs,* which lists more than 125 summer programs offered throughout the world. She is additionally involved in developing and producing a Legal Career Options Directory, which will identify careers available to law graduates who wish to practice outside the law firm setting.



QUOD NOTA

Quod Nota is Latin for a reporter's note in the old books, directing attention to a point or rule. We would like to direct your attention to this compilation of quotes and anecdotes depicting, if not belaboring, the myriad of players embraced by the law.

Maurice Q. Marshall, 21, got his wish and today was back in jail in Seattle. Police said they arrested Marshall when they found him banging on the downtown post office window with a 2x4 and yelling "Call 911." He told police he was doing it to get back into jail from which he had been released only a few hours earlier.

— *Boston Globe*

Troubles keep piling up for Detroit Police Officer Katherine Perkins. In March 1980, she was found guilty of cowardice and fired. She was accused of not helping another officer subdue a naked man who was burning money on a street corner. Perkins was reinstated after a police board review, but was suspended for 10 days for making false statements. Today, she faces two new charges of neglect of duty. In one incident, police said, a handcuffed suspect escaped from the back of her squad car. In the other, a suspect in a child-molesting case overpowered Perkins and made off with her gun.

— *Boston Globe*

A Wisconsin county judge has refused to grant a divorced couple joint custody of the family cat. After the division of all other property was agreed upon, Dane County judge William Buenzli awarded the pet to the woman, who had possession of it at the time. He commented afterward, "They were serious about it, [but] I didn't intend to put the court in the position of supervising custody of a cat. We should devote our time to children."

— *Playboy*

A young Danish man making his debut as an armed robber first was rebuffed by a salesgirl in a goldsmith's shop who simply refused to give him any money. He then went next door and took about $100 from a pharmacy at gunpoint, but afterward, while looking for a taxi, mistakenly flagged down a police car and was placed under arrest.

— *Playboy*

In San Francisco, Bonnie Elliott saw what appeared to be a ticket on the windshield of her car parked at a meter. However, the ticket turned out to be a stamped, self-addressed envelope with a message which said:

"Relax, this is not a ticket. Your meter expired so I put in enough money to get you the maximum time . . . If you appreciate this, I would be pleased to receive a couple of dollars in the envelope provided. I do this to eke out a precarious living. I am a superannuated unemployed U.S. citizen, not on welfare, just trying to keep it together."

Bonnie, who avoided paying a $10 fine, mailed him a fin. Oh, and by the way, the cops in San Fran say it's perfectly legal.

— *Boston Herald American*

A lawyer friend of ours told us about a suburban Chicago couple who went home one day to find that their car had been stolen. They reported the theft to their insurance company and the local police. The next day, they awoke to find their car back in their driveway. In the car, they found a note that said, in essence, "We're sorry we had to steal your car. A personal emergency came up that is too complicated to go into right now, and we needed your car to attend to it. We would have brought it back yesterday, but we saw the police hanging around your house and became frightened. In any case, we took good care of your car, and as a token of our appreciation, here are two tickets to *A Chorus Line*." The couple were very impressed by the thieves' sincerity, and they went into the city to see the musical on the appointed day. When they returned, however, they discovered that their house had been burglarized.

— *Playboy*

"Justice!" shouted the defendant, pounding the witness box. "I demand justice!" "Silence!" ordered the judge. "Are you forgetting where you are?"*

THE TRANSCRIPT, June 1976, reprinted from Modern Maturity

World Affairs: Create a society in which men could enjoy the fruits of their neighbors without interference.*

—*William D. Mohr, U.S. Senate*

Anticipating his death, a captain of finance wrote:

To my wife, I leave her lover, and the knowledge that I wasn't the fool she thought I was.

To my son, I leave the pleasure of earning a living. For twenty-five years he thought the pleasure was mine. He was mistaken.

To my daughter, I leave $100,000. She will need it. The only good piece of business her husband ever did was to marry her.

To my valet, I leave the clothes he has been stealing from me regularly for ten years, also the fur coat he wore last winter when I was in Palm Beach.

To my chauffeur, I leave my cars. He almost ruined them, and I want him to have the satisfaction of finishing the job.

To my partner, I leave the suggestion that he take some other clever man in with him at once if he expects to do any business.*

Courtroom Bloopers*

— Members of the jury, face the Court and pay attention to your oaf. (oath).

— Counsel made an objection to a question posed to his client on the basis that the witness will be bombed (bound) by the answer.

— "But your honor, this is not within the armpit of the Statute!"

Crossed Examination*

Q. Are there any other conditions or doctors that you have either suffered from or been treated by?

Q. Now, did Mr. Brown ever keep any information regarding this transaction secret from you, that you know of?
A. No, not that I know of.

Q. Now, Mrs. Johnson, how was your first marriage terminated?
A. By death.
Q. And by whose death was it terminated?

Q. All right. And how were you aware of the fact that the car in front of you was stopped?
A. It wasn't moving.

Q. Now, officer, on the occasion in question, where were you located, if anywhere?

Q. When you slipped and fell off your oil delivery truck, in which direction did you fall?
A. Down.

Q. Doctor, did you say he was shot in the woods?
A. No, I said he was shot in the lumbar region.

Q. You say she called you some names. What names did she call you?
A. Too dirty to say in front of human beings.
Q. Say them in front of the reporter.
A. Well, she called me . . .

Q. Isn't it true that on the night of June 11, in a prune orchard at such and such location, you had relations with Mr. Blank on the back of his motorcycle?

(There was complete silence for about three minutes; then the wife replied.)
A. What was that date again?

Q. Did you ever stay all night with this man in New York?
A. I refuse to answer that question.
Q. Did you ever stay all night with this man in Chicago?
A. I refuse to answer that question.
Q. Did you ever stay all night with this man in Miami?
A. No.

*Credit: Family Advocate, Summer 1981, permission granted by the American Bar Assoc. and its Section of Family Law.

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