1996

The Advocate, Vol. 26, Spring 1996

Suffolk University Law School

Follow this and additional works at: https://dc.suffolk.edu/ad-mag

Recommended Citation

This Magazine is brought to you for free and open access by the Suffolk University Publications at Digital Collections @ Suffolk. It has been accepted for inclusion in The Advocate by an authorized administrator of Digital Collections @ Suffolk. For more information, please contact dct@suffolk.edu.
What it Takes

to Build a Law School
Volume 26, Spring 1996

the Advocate

Message from the Dean

Faculty News

Law School News

Law Alumni News

Calendar News

Cover Story:
What it Takes to Build a Law School

Class Notes

Advocate Articles

26 Power of Attorney: Legal Writing for the Practitioner
Dr. Martha Siegel

30 The Beacon Hill Institute: Applying Economic Methods to Taxes and Regulation
Ellen. F. Foley

32 Send Lawyers, Guns and Money or Thoughts on the Case of the Missing Head
Steven Ferrey

38 The National Conference of Commissioners on Uniform State Laws
Carter G. Bishop

42 The Suffolk Chapter of the Federalist Society
Robert Harvey, '97

44 Curriculum Reform Comes to Suffolk—A Personal Perspective
Charles E. Rounds, Jr.

48 Kronman's the Lost Lawyer: A Celebration of the Oligopoly of the Elite Lawyer
Gerard J. Clark

54 The Supreme Court: Revolution and Counterrevolution
Joseph D. Cronin

70 Recent Practice-Oriented Acquisitions
Sonia Ensins

78 The Role of Career Services at Suffolk University Law School
James Whitters

© 1996 Suffolk University
Message from the Dean:

The most exciting news from the Law School this spring is our new building. In this issue of the Advocate, we give you a behind-the-scenes look at the complex planning, design, and approval process that we have been engaged in for the past several years. The location and design of the Law School’s new home has garnered wide support throughout the city — from its legal and business communities to the guardians of its history, landscape and architecture.

The new building is going to be stately, imposing and beautiful. It will be highly visible, a fitting tribute to you — our fine alumni, as well as to our outstanding students and faculty. It will give us the space and the technology that we will need well into the next century. And, by freeing up the Donahue Building for other uses, it will give the rest of the University the expansion room it needs to continue its growth.

When I look at the plans for our new building, I am filled with pride at how far the Law School has come in 90 years. I am particularly proud of our alumni — your successes and the contributions you are making to our profession continually add to the stature of our School. One of my greatest pleasures as dean is the chance to meet and talk with our alumni. If you are ever in the area, I hope that you will call me and stop by to share your latest achievement and to learn about new developments here at the Law School.

By staying involved with the Law School, you can also help us realize our dream of a new building. We are now in the planning stages of a major capital campaign. I hope that you will respond generously when you are asked to contribute to the new building. You will be helping to ensure that your alma mater continues to flourish, and you will be contributing to the vitality and growth of our city.

I look forward to celebrating our 90th anniversary with you!

John E. Fenton, Jr.
Dean
Carter G. Bishop, visiting professor for the 1995-1996 academic year, is teaching courses in contracts, corporate tax and state and local tax. He comes to Suffolk from William Mitchell College of Law in St. Paul, Minnesota, where he is professor of law as well as founding director of the graduate tax program. Bishop is counsel to the firm Lindquist and Vennum in Minneapolis. He is also a highly published author of tax-related articles and has co-authored several books and treatises.

Anthony Polito has joined the Law School as an assistant professor of law. He will teach in the areas of antitrust, federal tax and tax of international transactions. Prior to joining Suffolk, he was a tax associate at Wilkie Farr and Gallagher in New York. He also served as judicial clerk to the Honorable Jack B. Jacobs, vice chancellor of the Delaware Court of Chancery.

Elizabeth M. McKenzie (photo not available) has been appointed Law School library director and associate professor of law, effective June 1996. She comes to Suffolk from St. Louis University School of Law where she was head of reader services and associate professor for legal research. McKenzie is a member of both the Kentucky and American Bar Associations, and has published numerous library-related articles. She is also listed in the 1995 edition of The World Who's Who of Women.

Cheryl Conner has been named assistant internship director/public interest advisor at the Law School. A former assistant U.S. attorney in the Civil Division of the U.S. Attorney's Office, she has over thirteen years of litigation, program development and policy experience, primarily in the public sector. She also served as counsel to the Commerce and Labor Committee with State Senator Lois Pines. Her previous teaching positions include Northeastern University Law School and Boston University School of Law.
Faculty Publications and Activities


Alvan Brody will publish a supplement to Brody & Brody, Massachusetts Tort Law later this year. Co-authored with Betty Brody, JD '71, the supplement contains two chapters on fraud; one on misrepresentation and the other on M.G.L. c. 93A. A third chapter deals with defamation.


Steven Ferrey presented the keynote speech on the deregulation of electric power at the annual meeting of the North Carolina Coal Institute in Raleigh-Durham, NC. He spoke on the same topic to the Massachusetts Building Owners and Managers Association in Boston. Ferrey also recently published Law of Independent Power, a legal treatise covering all of the complex laws and regulations affecting the kind of sector of the electric power industry. The treatise is written for counsel involved in independent energy production, state regulators, developers, financiers and utilities confronting the legal characteristics inherent in independent power and cogeneration development.

Dwight Golann moderated a program for the annual meeting of the American Financial Services Association in Washington D.C. on the "Contract with America." He also conducted a program on mediation for corporate counsel held recently in New York City.

Clifford E. Elias co-authored a text on medical liability which will be published in August by West Publishing. His speaking engagements in the medical field include presentations to the Health Law Society on the topic of advance directives, and to nursing home administrators on patient treatment decisions.

Charles P. Kindregan was recently elected a fellow of the Massachusetts Bar Association. In November 1995, he was the lead presenter at the first two-day retreat for Massachusetts Probate and Family Court judges, which dealt with current cutting-edge topics in family law. His article on the amendments to the bankruptcy code affecting family law will appear in a forthcoming issue of the Suffolk University Law Review. He has also completed a chapter in a book to be published by the American Bar Association on the settlement of cases.


Thomas J. McMahon presented a paper on Massachusetts Auto Insurance at Suffolk University Law School's Advanced Legal Studies program held in November 1995. The program, "Uncovering the Coverage," dealt with selected insurance law issues.

Bernard Ortwein was a contributing author/annotator in "Law and Literature: An Annotated Bibliography" which is forthcoming in Spring 1996.


Charles E. Rounds, Jr. co-authored with Eric P. Hayes, the 1996 edition of Loring: A Trustee's Handbook. The one-volume handbook, published by Little, Brown and Company, updates current trends in trusts, including life insurance, grantor and structured settlement trusts. Rounds was also voted to be a fellow of the American College of Trustee and Estate Counsel. The action came at the group's meeting in Arlington, VA in October 1995. The College is comprised of more than 2,650 of the top estate planning and estate administration lawyers in the nation.

Michael Rustad was a panelist in a program on tort reform in American society which was presented by the Rutgers School of Law and Newark Rutgers Law Review at the Newark campus of Rutgers, the State University of New Jersey.

Robert Wasson co-authored a three-volume treatise entitled, "The History of Legal Education in the United States," which was recently accepted for publication. In addition to his writing, he has been selected to serve as a discussion leader on teaching, tenure and scholarship strategies for the Northeastern People of Color Legal Scholarship Conference scheduled for March 1996. He was also selected for inclusion in Marquis' Who's Who in the East.
Forty Years at Suffolk

Catherine T. Judge, longtime professor of law, was honored for forty years service to Suffolk at the annual Deans' Reception. Judge, who began her career at Suffolk as the Law School registrar, has spent most of her years teaching contracts and equity in the Law School. A diligent teacher, she has been the recipient of two awards presented to her by the Student Bar Association: the Frederick A. McDermott Award named for the late dean, and the Cornelius J. Moynihan Award named for the Superior Court judge.

Hallisey Receives Master of Judicial Studies Degree

Retired Superior Court Justice Robert J. Hallisey, an adjunct faculty member in the Law School and of counsel at Bingham, Dana & Gould, is the first judge in Massachusetts to receive a master of judicial studies degree.

He was awarded the degree in May from the University of Nevada-Reno in conjunction with the National Judicial College. The subject of his thesis was “Experts on Eyewitness Testimony in Court — A Short Historical Perspective.”

Hallisey, who holds bachelor of arts and bachelor of laws degrees from Harvard University, teaches trial advocacy at the Law School.

“High Tech” at the Law School

Technology has become an integral part of our lives, and legal education at Suffolk University is no exception. Dean Fenton has identified high technology law as a priority in the Law School's curriculum. During the 1995-1996 academic year, we offered fifteen high technology law courses, with many more planned for the future.

To support the academic program, the Law School administration has added significant resources to both the library's technological evolution and to the Law School Computer Resource Center (CRC). The CRC is an important part of each law student's life. The Center is directed by Gina Gaffney with Judi Scalley as the assistant director and Jose Gonzalez as a computer assistant.

The CRC has two microcomputer labs. The first is the Archer Third Floor Computer Lab & Classroom located in Room 333, which is open from 8 a.m. to 11 p.m. daily. The second is the Mugar Library Lab located behind the Mugar Reserve Desk on the Donahue fourth floor, open from 8 a.m. to 11 p.m. as well.

The CRC oversees all 150 computers operating in the Law School including the personal computers within each Law School faculty and administration office. Thirty personal computers, four Macintosh computers, and three laser printers for student/alumni use are distributed between two computer labs. The personal computers are connected to a Novell Network server through an Ethernet card which in turn connects to the University mainframe for access to E-Mail and Internet via a T-1...
line. Students and alumni can sign up in advance for computer times.

The Computer Center supplies white Xerox paper and free laser printing. The Student Bar Association has contributed bond paper and envelopes to students and alumni.


Training is available daily in WordPerfect, E-Mail and Internet/Netscape. Sign up for training in Archer Room 333. In addition, the Computer Center distributes instructional materials on the basis of WordPerfect including formatting, merging, endnotes/footnotes and macros. The E-Mail and Internet handouts include: logging into E-Mail, sending and receiving messages, file transfer protocol, logging in from home and basics on browsing the World Wide Web.

Dan Greenwood, a graduate of the class of 1995, recently assisted in creating the Suffolk University Law School Internet site on the World Wide Web. The web site includes a high volume of interesting and important information about the Law School for current and prospective students, faculty, staff and alumni. The entire curriculum of the Law School, as well as library and specialization information is now available online. The web site also includes information about all the faculty members, departments and administration.

Prospective students will appreciate the electronic request for an application which is available at the admissions area of the Law School web site. Those visitors to the School's Internet site who are not yet familiar with Boston and our proud legal history will enjoy a pictorial tour through the city. In the future, we expect to offer a full and robust information area tailored for our alumni.

As is customary, the School web site also hosts a number of links to other sites on the Internet. For instance, part of the library research area of our site includes a large number of links to commercial law related sites that mirror the commercial law offering in our curriculum. There are plans for more information, services, and interactive capabilities to be made available over the Suffolk University Law School Internet site in the future - so stay tuned. The address of our site is http://www.suffolk.edu/law.

The Computer Resource Center is located in the Archer Building in Room 333 and is open from 8 to 5 p.m. weekdays, it can be reached by phone at 617-573-8352.

This past academic year saw the addition of many new and exciting courses at Suffolk University Law School, particularly in the area of high technology law. In the past decade, high technology innovations and the information superhighway have changed the way companies communicate and do business. Numerous organizations and enterprises have developed which before now were non-existent. This expansion of technology, and the current trend of new developments, create many new challenges to the legal profession. Educating law students to work, live and master the concepts behind these new technologies is a necessary component of today's law school curriculum. The Law School is proud of its 1995-96 course offerings in the area of high-tech law and is looking forward to the enhancement of these course as well as the addition of new ones.

Practicum, Licensing Intellectual Property Right, Litigating Technology Disputes and Practice Before the U.S. Patent and Trademark Office. This enrichment of course offerings in the high-technology law area situate Suffolk University Law School as a national leader in the teaching and researching of intellectual property law, high technology law and the law of the new information technologies.

Courses in Biomedical Technology are being considered as part of the expanded Law and Technology Curriculum. The biotechnology (biomedical technology) field is rapidly expanding in the New England economy. It encompasses not only the traditional biotechnology industry, but also the health care sector of the economy as well. Growth in this industry, including laboratory development, capital formation, international programs and multi-national development, is extraordinary. We are also considering courses in the areas of public policy, regulatory process, legislation, constitutional and common law.

Another area in which we intend to expand our focus and offerings is the field of investment and management regulation. Boston is a leading center of the financial service industry in general and the mutual fund industry in particular. We expect to offer courses that will expose our students to this important and emerging area of law.

New Addition to Joint Programs with the Sawyer School of Management

For many years the Law School and the Sawyer School of Management have collaborated to offer unique programs combining the educational experiences of both schools. A recent addition is the Juris Doctor/Master of Science in Finance (JD/MSF), which brings the number of SSOM and Law School degree programs offered by Suffolk to four. The JD/MSF, scheduled to begin this fall, is geared toward professionals who want to excel in today's intensely competitive financial and legal market.

The forerunner of the joint programs, the JD/MPA, blends the framework of the Juris Doctor program with the Master of Public Administration program. Offered by the University since 1986, this program integrates professional education in law and public administration for those seeking to obtain the skills and concepts necessary for public and non-profit sector management.

Out of the popularity of the JD/MPA, came the JD/MBA. This program combines law and master of business administration courses designed to fit the needs of individuals who wish to pursue careers in either senior management or law and/or positions that traverse business, law, and public policy. It prepares graduates with legal, management, leadership and teamwork skills, and provides them with a multifunctional perspective that all employers value in the current competitive business environment.

The Juris Doctor/Master of Science in International Economics degree program (JD/MSIE), which the University began offering in the fall of 1995, combines the study of law with that of international economic institutions, markets and trends. It was developed for students who expect to practice law in fields requiring an understanding of the global economy.
50th Donahue Lecture Held

A treasured tradition since it began in April 1980, the Frank J. Donahue Memorial Lecture Series recently held its 50th lecture with an address given by Daniel R. Coquillette. Held on March 7 in the Law School's Pallot Library, the lecture provided an overview of Coquillette's upcoming Law Review article entitled "First Flower — the Earliest American Law Reports and the Extraordinary Josiah Quincy, Jr. (1744-1775)."

Professor Coquillette teaches Legal Ethics and English Legal History at Boston College where he had also served as Dean of the Law School from 1985 to 1993. He is chairman of the Massachusetts Bar Association Committee on Professional Ethics and chairman of the Task Force on Unauthorized Practice of Law.

The Donahue Lectures for 1995-96 academic year also included addresses by the Honorable Sonia Sotomayor, U.S. District Judge for the U.S. District Court for the Southern District of New York, and the Honorable Bruce M. Selya, U.S. Circuit Judge for the First Circuit.

Judge Sotomayor's lecture provided an overview of her upcoming Law Review article "The Majesty of the Law: A Modern Approach," which she co-authored with Nicole Gordon, executive director of the New York City Campaign Finance Board. In her lecture, Sotomayor addressed the professional responsibilities that lawyers owe to their clients, the profession, and the public.

Before her appointment to the bench, Sotomayor was a member of the board of directors of the Puerto Rican Legal Defense and Education Fund and of the State of New York Mortgage Agency, and was a member of the New York City Campaign Public Finance Board. Currently, she serves as a member of the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts.

Federal Judge Selya's lecture addressed the rising tide of neofederalism and its impact upon the relationship between federal and state courts, specifically in the context of federal judicial certification of state law questions to the courts.

Selya, who has been in his current position since 1986, previously served as vice-chairman of the Committee on Intercircuit Assignments and now serves as a member of the Committee on the Judicial Branch. He also currently chairs the Rhode Island State/Federal Judicial Council and serves on the board of directors of the Federal Judicial Center. In addition, Judge Selya is director of the American Judicature Society, is adjunct professor of law at Boston College Law School and Boston University Law School, and is a trustee emeritus at Bryant College.

During his remarks to the Suffolk community, Selya said, "I am honored to speak at an institution of the caliber of Suffolk Law School, and I am honored by the list of my fellow lecturers in the Donahue Series. Most importantly, I am honored to pay homage to Frank Donahue, who to many of us was a legendary figure."

The lectures were instituted to commemorate the Honorable Frank J. Donahue, former faculty member, trustee, and treasurer of Suffolk.
University. Donahue, a 1921 graduate of the Law School, served as an Associate Justice of the Superior Court of Massachusetts for forty-two years, the longest term in that court's history. The lecture series brings outstanding authorities in various fields of the law to Suffolk University. Managed by the Law Review staff, the lectures provide the basis for lead articles to be published in the Suffolk University Law Review. Over the years, speakers who have taken part in the series have included Supreme Court Justice Stephen Breyer, former U.S. Attorney General Edwin Meese, Consumer Advocate Ralph Nader and numerous judges and law school professors from throughout the United States.

Law School News

Law in the Public Interest

A lawyer who chooses to practice in the "public interest" or in a field of public law must be prepared to chart a varied, non-linear path. She must be willing to risk stability in favor of adventure and personal satisfaction. So claimed a panel of four Suffolk alumnae speaking about their public law careers to an enthusiastic student audience in January. The event was sponsored by the Suffolk Public Interest Law Group and supported by the Women's Law Caucus and the Student Bar Association.

The four alumnae personify the Suffolk University Law school tradition of professional achievement and public service. Their sparkling enthusiasm for the rewards of the public law career path was contagious.

Catherine Triantafillou, Councillor for the City of Cambridge, simultaneously maintains a thriving law partnership, Triantafillou and Guerin, in Cambridge. After three years in the Massachusetts Senate, Senator Cheryl Jacques has risen to a leadership position as chair of the Senate Post-Audit Committee and a member of the Senate Steering and Policy Committee.

Merita Hopkins, the corporation counsel for the City of Boston, oversees a sixty-person law office that represents the city in general litigation and business matters. Patricia McGovern, now associated with the Boston firm of Goulston and Storrs, served as Senate Chair of the Ways and Means Committee in the Massachusetts Legislature, and continues to influence health and urban policy issues for the City of Boston.

All four women advised students to drop any preconceptions about "how or where" to be a lawyer and remain open to the numerous opportunities that arise from a law degree. Triantafillou realized her dream of serving women and the gay and lesbian community by creating a number of political grassroots organizations. Through these initiatives, she was exposed to the legislative process and a broad array of supporters. She noted that then-Mayor of Cambridge, Alice Wolf, approached her with the notion of running for city councillor. Triantafillou was open to the suggestion and proceeded to gather the skills and support necessary to run for the office and win.

Every speaker urged students to follow their hearts and create lives they truly wanted to live. Merita Hopkins described her decision to become a special agent for the U.S. Federal Bureau of Investigation. She reported that she would make the same decision today. Hopkins described a career that included prosecuting public corruption and narcotics trafficking cases in the District Attorney's Public Protection Bureau, starting her own law practice and serving as corporation counsel for the City of Boston.

The women urged students to take risks without fearing the consequences. Sen. Jacques decided one day to challenge the incumbent Senate Minority leader, and won. Patricia McGovern entered the race for the Massachusetts Senate from Lawrence, when it was a "long shot." But she was delighted to be the victor.
and to serve in the Massachusetts Senate, where she worked on issues ranging from judicial reform to health care accessibility. "I won, so I had these incredible opportunities. I could have lost, and been just another unemployed lawyer in Lawrence. You have to take chances."

The panelists all felt that they developed significant legal expertise during their public service. Both Ms. Hopkins and Sen. Jacques raved about the excellent litigation and lawyering experience provided by working as prosecutors in the District Attorney's Offices. Former Senator McGovern praised the benefits of the experience she received in the Committee for Public Counsel Services, where she defended juveniles and others in criminal matters. In an era before clinical programs, she described learning on the spot, with no on-the-job training; it was "extraordinary."

And, Corporation Counsel Hopkins extolled the value of her nine years of investigatory experience in the F.B.I. "Law schools undervalue the importance of factual development as a lawyering skill; if you can develop and present the facts, you can represent any client exceedingly well."

The four women articulated a shared passion for the unique satisfactions of public service. As a successful proponent of legislation to protect women and children from domestic violence, Catherine Triantafillou said "It was a thrill to change the face of the law in Massachusetts on domestic violence... If you have the passion to change people's lives and to help the people that most need it, do it."

Senator Jacques thrives on first hand lawmaking in the Senate. As freshman Senator and chair of the Judiciary Committee, she brought her public litigation experience to bear on fashioning policy on judicial administration and law enforcement. In her third year in the Senate, she was appointed chair of the Post Audit Committee, where she has access to powers to investigate waste, corruption and crime in state government. Senator Jacques is excited about the prospects of putting the investigative powers of the Committee to good use. Senator McGovern spoke vividly about her philosophy of public service. She believes in the strength and integrity of our legal system while remaining passionate about the need for constant improvement.

The panel was available to students within the Law School's Internship Program and the general student body. This semester, 100 Suffolk law students work in non-profit and governmental agencies for academic credit and without pay. As part of the program, students are supervised at the law school by 13 Suffolk law faculty and in the field, by lawyers who have volunteered to provide our students with an educational experience consistent with the program's objectives. The law school based component of the programs includes faculty supervision, and classroom or small group experiences which include lectures, panels, experiential self-assessment and simulations. If any of our readers would like further information about the Internship Program, please contact Suffolk University Law School, Professor Gerard Clark, program director, or Cheryl Conner at 617-573-8131.
The Many Faces of Suffolk University Law School —
Students add lively diversity to both classroom and community

Suffolk University law classrooms hold some unexpected surprises. In addition to law students, you might also meet aspiring sports agents or a former union organizer. Despite the recent national decline in law school applications, Suffolk University continues to attract students who are not only academically outstanding, but who are also contributing some unusual talents, fascinating life perspectives, and tremendous vitality to the School community.

Dylan Carson ’97: A life-long sports enthusiast, Dylan is preparing for a career in sports and entertainment law. He has worked in the public relations departments of Sports Illustrated and CBS Sports. He also helped revive the Law School’s Sports and Entertainment Law Society, bringing lawyers and executives from the Celtics, Red Sox, Patriots and National Hockey League to the School as panelists and guest speakers and has interned for the Pittsburgh Penguins hockey team. In addition to his studies, Dylan is a member of the Suffolk Law Review, heads the Sports and Entertainment Law Society, writes for Dicta, plays intramural basketball and captained his volleyball team to the championship. Dylan has also participated in the Second Year Mock Trial Competition and the ABA Negotiation and Client Counseling Competitions.

Catie Butt ’96 is a cum laude graduate of Ohio Wesleyan University. At Suffolk University Law School, she helped to found The Forum, a student organization dedicated to bringing nationally recognized figures to Suffolk Law School to discuss contemporary issues of social and legal importance. Catie has been an executive member of the Student Bar Association for three years and has created a very successful first year student orientation program. She is currently the co-chair of the Graduation Committee. Upon graduation, Catie hopes to practice law in the private sector.

Lisa Fisher ’96, has worked for two international unions as a union organizer. Seeing the struggle of workers to obtain dignity and fairness in the workplace spurred Lisa to study the law. Besides compiling an excellent academic record, Lisa is the chair of the National Lawyers Guild at Suffolk Law School. In that capacity, she organized an academic convocation, held at the School on March 9, 1996, at which students from a variety of law schools presented scholarly papers on issues of legal significance. Lisa hopes to pursue a career as a criminal defense attorney or a labor lawyer working on behalf of unions.

Michael Lartigue ’96, the nephew of former NFL great Earl Campbell, is preparing for a career as a sports agent. During his third year at Suffolk Law School, Michael has taken the first steps towards setting up his own sports agency. Michael has been an ambassador of good will, assisting the Admissions Office in recruiting students. And as president of the SBA, he instituted a number of innovative efforts and programs, including bringing such speakers as Alan Dershowitz, Christopher Darden, and law professor and journalist Laurie Levinson to campus, as well as a number of writers and producers associated with television shows based on the law.
Edward Masterman: A Life of Activism

For Edward I. Masterman, a Boston lawyer and former president of the Mass. Bar Association, the years 1946-1950 spent at Suffolk University Law School were formative. It was during this time that he laid the foundation for a life of activism, not only in the legal community, but also in the Jewish community and the worlds of politics, diplomacy and education.

Reflecting on those years recently, Masterman remembers them as challenging. He commuted to classes at Suffolk from his home in Dorchester. When his classes had finished for the day, he went to work in the family business on Salem Street in Boston's North End. In the evenings, he devoted himself to studying.

Masterman also remembers discovering in himself during those years a fervor to make a difference. "I had served with the Army Air Force Communication System during World War II," Masterman said. "I was stationed in Calcutta, India. When I returned to the States, I met up with several of my classmates who had also been in the service. It was easy to pick us out: we were five to ten years older than the average student.

"But there was something else that set us apart," Masterman said, "and that was the fact that we had deep feelings about who we were and what we wanted our city and our country to become."

At Suffolk University Law School, Masterman remembers being inspired by Judge Frank Donahue, Dean of the Law School Frank L. Simpson, And Professor Samuel Abrams. Masterman's classmates included Lawrence O'Donnell, whom Masterman remembers for his "passionate pursuit of justice," and who has since gone on to a distinguished career in the law.

"Several of us in the law school were active in the 1948-1949 organization called Students with Hynes for Better Government," Masterman recalled. "When we weren't in class or studying or working at our jobs, we were knocking on doors in the city's neighborhoods, trying to rally support for John Hynes. It was through our efforts supporting him that Hynes was able to defeat Mayor James Michael Curley."

Masterman graduated from Suffolk in 1950, the year Hynes was elected. He took a position with the City of Boston as an assistant in the corporate council office and later went on to start his own practice. He remains in that practice today — Masterman, Culbert and Tully — on Boston's Lewis Wharf.

In addition to practicing law, Masterman has been active with Beth Israel Hospital and the Huntington Theatre Co., as well as being trustee at Boston University. He served for nearly two decades as Boston's honorary consul general to Austria, resigning in protest of Kurt Waldheim's election as president during the late 1980s.

Masterman credits his family's influence with guiding him toward taking an active role as a philanthropist. His mother, he said, was involved in fund raising in the Jewish commu-
nity when he was growing up, and Masterman continued that family tradition through an involvement with State of Israel Bonds. At Suffolk University, he established the Edward I. and Sydell Masterman Scholarship Fund and has given funds for the law school's student lounge, which was dedicated in his name in 1982. He was also awarded the Outstanding Alumni Award by the Law School Alumni Association in December, 1983. He was awarded an honorary LLD degree in 1990.

In his office facing Boston's busy waterfront, Edward Masterman looked affectionately through his Suffolk University yearbook.

"They were particularly intense years," he said, reflecting on the time he spent in scholarship, at work, and in collegial debates with his classmates. "Yet they were terrifically rewarding years, too. When I think of Suffolk University, I often say, 'If not for Suffolk... because it gave me the opportunity and the preparation to pursue my calling in the law.'"

Kim Wright — Family Advocate

Their faces stare out at us from subway posters: "Wanted: Deadbeat Dads." In law journals, advertisements from medical firms promise to prove paternity by DNA analysis taken from blood or tissue samples "with 99.9% certainty." Last year paternity complaints exceeded divorce petitions as the Commonwealth of Massachusetts continued to place a priority on finding and prosecuting men who have either abandoned their families or reneged on their child care payments.

In Essex County, Mass., efforts prosecuting "deadbeat" dads are succeeding, due in part to the efforts of Kim J. Wright, JD '85, assistant register at the Essex Probate and Family Court in Salem.

As an advocate for families, Wright would like to see more financial resources made available to help counsel children on their rights during a time of family crisis. "The funds available for this cause right now are limited," Wright said. "But we need to establish more funds so that attorneys could be appointed to focus on the children's lives. Children do not have their own constituency. If I sense a calling for myself, it is to become a stronger advocate for children."

While new paternity statutes in Massachusetts have been successful on cracking down on "deadbeat" dads — and, in some cases, "deadbeat" moms — what's really missing, according to Wright, is a strong sense of advocacy for children. "As a society, we do a poor job of taking care of children," said Wright. "We don't allocate enough resources. While the child is not present in the courtroom during many of these painful battles, the repercussions of what the court decides affects his or her life. We've got to take this into account."

Wright, who worked as a teacher and counselor in her native Lawrence while attending Suffolk University at night, has seen first-hand what she terms "the state of crisis" many families with children go through.

"I attended Suffolk because of its reputation for public service programs," she said. "This commitment to assist others was already ingrained in me when I started my studies. While at Suffolk, those motivations to work within the system to create change became my central focus."

Wright divides her time between courts in Salem and in Lawrence. "I have always had an interest in family law," she said. "Periodically I ask myself if I should make the change and go into private practice. But then I resist the temptation. There is a great deal of work to be done, and I find the work in public service really compelling."
Paul R. McLaughlin, JD '81
June 29, 1953 - September 25, 1995

On September 25, 1995, Assistant Attorney General Paul R. McLaughlin, a distinguished public servant and member of Class of 1981 at Suffolk University Law School, lost his life to an assailant as he headed home from work. An outstanding prosecutor who dedicated his life to crime-fighting, Paul became a casualty of Boston city streets — the streets that he fought to protect.

Paul was well-liked and admired by his friends and colleagues. He was kind, compassionate and generous to others, and was known for his wonderful sense of humor and his strong loyalties to friends and family. A hard worker who was fair in his judgments, he was both ethical and diligent in his pursuit of justice and served as a role model for others in public service.

A graduate of Boston Latin School and Dartmouth College, Paul earned his JD, cum laude, from the Law School in 1981. In 1983, Paul was hired as an assistant district attorney in Middlesex County where he prosecuted hundreds of cases at both the District and Superior Court levels. In addition, Paul served for two years in the Public Protection Bureau of the DA's Office.

In 1991, Paul became an assistant attorney general and founding prosecutor for the Urban Violence Strike Force. As part of the unit, Paul focused on priority prosecutions involving gang-related activities, particularly targeting drugs, weapons and violent crimes. In 1995, Paul asked to be reassigned to join the Safe Neighborhood Initiative in the Grove Hall section of Boston, a model crime-fighting and neighborhood revitalization project designed to battle escalating violence and improve the quality of life.

In his years as a prosecutor in Suffolk Superior Court, Paul obtained an extraordinarily high rate of convictions — 98 out of 134 defendants. Paul was also the lead prosecutor for the first phase of Operation Greed, a joint law enforcement initiative conducted by Attorney General Scott Harshbarger, District Attorney Ralph Martin, Suffolk County Sheriff Bob Rufo, JD '75, and the Boston Police Department. The operation resulted in the apprehension of fugitives wanted for a variety of serious offenses, including assault with intent to murder, gun possession and drug trafficking.

Throughout his adult life, Paul was interested in politics and local civic affairs. Somewhat shy by nature, Paul was not a true politician although he served as a former staff member of the Democratic State Committee and as a member of the Democratic Ward Committee (Ward 20) in his local area. Paul was an active member of the American Cancer Society, including past director of the Central Boston Unit and past president of the Arboretum Unit. He was co-president of the West Roxbury Library Association and active in the West Roxbury Historical Society. Paul took a leadership role in these and many other civic activities. Recently, he was posthumously awarded "Prosecutor of the Year" for 1995-1996 by the Massachusetts Association of District Attorneys, the highest honor bestowed by this organization.

As a tribute and memorial to his life, an endowed fellowship fund in Paul's name was established in the fall of 1995 at Suffolk University Law School through the contributions of hundreds of friends, loved ones and admirers. The Paul R. McLaughlin Memorial Fellowship Fund supports an internship for a qualified Suffolk Law student who is interested in pursuing a career in criminal law in the public sector. The student selected will work in either the Attorney General's Office, the Suffolk County District Attorney's Office, or within another government office of the criminal justice system in the Commonwealth of Massachusetts.

To help build the fellowship fund in Paul's name, the first annual Paul R. McLaughlin Memorial Golf Tournament is being planned by a committee consisting of Paul's colleagues and classmates. The tournament (including dinner and auction) will be held on July 1, 1996 at the Ponkapoag Country Club in Canton. Anyone interested in being a sponsor, playing golf or volunteering for this event may contact the Tournament Committee at 617-277-7879. If you wish to make a direct donation to the Paul R. McLaughlin Memorial Fellowship Fund, please contact Phoebe O'Mara at 617-573-8029 in the Suffolk University Development Office.
Gillis Elected Alumni-Trustee

The Board of Trustees recently welcomed Michael K. Gillis, JD '82, as a new member. Elected by fellow alumni, he will represent the Law School on the Board as an alumni-trustee for a three-year term of office, which begins this April.

Gillis is a member of the Massachusetts Academy of Trial Attorneys, the American Trial Lawyers Association, Massachusetts and Norfolk County bar associations, and the Catholic Lawyers Guild. He has been a lecturer for both MATA and ATLA and an author for MCLE. He is a 1979 graduate of Boston College, where he received a bachelor of science degree and was active in varsity hockey and lacrosse.

"Being an alumni-trustee is a natural extension of what I already enjoy doing for Suffolk, which is serving the school and its alumni," said Gillis. "Through personal involvement and dedication to the school, my primary goal will be to build the best new law school possible. These next three years will greatly determine the school's future, and I'm glad to be an integral part of that."

Gillis is a partner in the firm of Gillis & Bikofsky, P.C., is in his sixth year as a director of the Suffolk University Law School Alumni Association and has held the offices of clerk, vice president and president. He has had a longtime commitment to the efforts of the University — he has been involved with alumni reunions, the Annual Law School Alumni Dinner, the Annual Fund, scholarship dinners and the Barristers Committee. He is currently president of the Suffolk University Alumni Council. As a law student he served as president of the Student Bar Association and earned the Wyman Prize for Outstanding Civic Achievement.

"Being an alumni-trustee is a natural extension of what I already enjoy doing for Suffolk, which is serving the school and its alumni," said Gillis. "Through personal involvement and dedication to the school, my primary goal will be to build the best new law school possible. These next three years will greatly determine the school's future, and I'm glad to be an integral part of that."

Michael K. Gillis, a partner in the firm of Gillis & Bikofsky, P.C., is in his sixth year as a director of the Suffolk University Law School Alumni Association and has held the offices of clerk, vice president and president. He has had a longtime commitment to the efforts of the University — he has been involved with alumni reunions, the Annual Law School Alumni Dinner, the Annual Fund, scholarship dinners and the Barristers Committee. He is currently president of the Suffolk University Alumni Council. As a law student he served as president of the Student Bar Association and earned the Wyman Prize for Outstanding Civic Achievement.

"Being an alumni-trustee is a natural extension of what I already enjoy doing for Suffolk, which is serving the school and its alumni," said Gillis. "Through personal involvement and dedication to the school, my primary goal will be to build the best new law school possible. These next three years will greatly determine the school's future, and I'm glad to be an integral part of that."

As a result of Dean Fenton's visits with law alumni throughout the nation, we learned that alumni enjoy the opportunity to meet other Suffolk Law alumni in their regions. Following the lead of Alumni Association of Metropolitan Washington, D.C., Inc., the Law School and Development Office began to launch a widespread alumni chapter program. We have already recruited several chapter presidents, and will be adding more in the months to come.

The following is a list of chapter presidents currently building alumni committees in their areas. These groups will plan several alumni events each year. If you'd like to find out more about the program and meet your fellow alumni, please call Kristen Z. White, associate director of development at 617-573-8514. Please refer to the calendar on page 19 for the dates of upcoming alumni chapter events.

1995 - 1996 Alumni Chapter Program Areas and Presidents:

**Massachusetts:**
North Shore, William R. Di Mento, JD '71
South Shore, Robert H. Gaughen, Jr., JD '74
Metro Boston, Anthony K. Stankiewicz, JD '87
Merrimack Valley, Peter J. Caruso, JD '75
Worcester, Robert E. Longdon, Jr., JD '75

**Rhode Island:**
Robert D. Parrillo, JD '74

**Greater Philadelphia/Southern New Jersey:**
Francis J. Martin, JD '85

**Northern Connecticut:**
Thomas A. Gugliotti, JD '75

**Metro Washington D.C.:**
Ann E. Hagan, JD '76

**Broward/Palm Beach Counties, Florida:**
Edmund C. Sciarretta, JD '70

**Northern California:**
Christine N. Garvey, JD '72

**Southern California:**
Hon. Ellen M. Koldewey, JD '82 and Donald J. Wynne, JD '80

Meet your fellow alumni, please call Kristen Z. White, associate director of development at 617-573-8514. Please refer to the calendar on page 19 for the dates of upcoming alumni chapter events.
Massachusetts Alumni Chapter Areas

<table>
<thead>
<tr>
<th>Western MA (1)</th>
<th>Worcester Area (2)</th>
<th>Metro West (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams</td>
<td>Hatfield</td>
<td>Acton</td>
</tr>
<tr>
<td>Agawam</td>
<td>Heath</td>
<td>Ashburnham</td>
</tr>
<tr>
<td>Alford</td>
<td>Hinsdale</td>
<td>Ashby</td>
</tr>
<tr>
<td>Amherst</td>
<td>Holyoke</td>
<td>Athol</td>
</tr>
<tr>
<td>Ashfield</td>
<td>Howley</td>
<td>Auburn</td>
</tr>
<tr>
<td>Becket</td>
<td>Huntington</td>
<td>Ayer</td>
</tr>
<tr>
<td>Belchertown</td>
<td>Lanesborough</td>
<td>Barre</td>
</tr>
<tr>
<td>Bernardston</td>
<td>Lee</td>
<td>Berlin</td>
</tr>
<tr>
<td>Blandford</td>
<td>Lenox</td>
<td>Blackstone</td>
</tr>
<tr>
<td>Buckland</td>
<td>Leverett</td>
<td>Bolton</td>
</tr>
<tr>
<td>Charlemont</td>
<td>Leyden</td>
<td>Boylston</td>
</tr>
<tr>
<td>Cheshire</td>
<td>Longmeadow</td>
<td>Brimfield</td>
</tr>
<tr>
<td>Chester</td>
<td>Ludlow</td>
<td>Brookfield</td>
</tr>
<tr>
<td>Chesterfield</td>
<td>Middlefield</td>
<td>Charlton</td>
</tr>
<tr>
<td>Chicopee</td>
<td>Monroe</td>
<td>Clinton</td>
</tr>
<tr>
<td>Clarkburg</td>
<td>Montague</td>
<td>Douglas</td>
</tr>
<tr>
<td>Colrain</td>
<td>Monterey</td>
<td>Dudley</td>
</tr>
<tr>
<td>Conway</td>
<td>Montgomery</td>
<td>East Brookfield</td>
</tr>
<tr>
<td>Cummington</td>
<td>Mount Washington</td>
<td>Fitchburg</td>
</tr>
<tr>
<td>Dalton</td>
<td>New Ashford</td>
<td>Gardner</td>
</tr>
<tr>
<td>Deerfield</td>
<td>New Marlborough</td>
<td>Grafton</td>
</tr>
<tr>
<td>East Longmeadow</td>
<td>North Adams</td>
<td>Hardwick</td>
</tr>
<tr>
<td>Easthampton</td>
<td>Northampton</td>
<td>Harvard</td>
</tr>
<tr>
<td>Egremont</td>
<td>Otis</td>
<td>Holden</td>
</tr>
<tr>
<td>Erving</td>
<td>Palmer</td>
<td>Holland</td>
</tr>
<tr>
<td>Florida</td>
<td>Pelham</td>
<td>Hopedale</td>
</tr>
<tr>
<td>Gill</td>
<td>Peru</td>
<td>Hubbardston</td>
</tr>
<tr>
<td>Goshen</td>
<td>Pittsfield</td>
<td>Lancaster</td>
</tr>
<tr>
<td>Granby</td>
<td>Plainfield</td>
<td>Leicester</td>
</tr>
<tr>
<td>Granville</td>
<td>Richmond</td>
<td>Leominster</td>
</tr>
<tr>
<td>Great Barrington</td>
<td>Rowe</td>
<td>Lunenburg</td>
</tr>
<tr>
<td>Greenfield</td>
<td>Russell</td>
<td>Mendon</td>
</tr>
<tr>
<td>Hadley</td>
<td>Sandisfield</td>
<td>Millbury</td>
</tr>
<tr>
<td>Hampden</td>
<td>Savoy</td>
<td>Millville</td>
</tr>
<tr>
<td>Hancock</td>
<td></td>
<td>New Branttree</td>
</tr>
<tr>
<td></td>
<td></td>
<td>New Salem</td>
</tr>
<tr>
<td></td>
<td></td>
<td>North Adams</td>
</tr>
<tr>
<td></td>
<td></td>
<td>North Brookfield</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Northborough</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oakham</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Orange</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oxford</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Paxton</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Petersham</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Phillipston</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Princeton</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If you live or work in the following areas, you will be invited to all events sponsored by the Area Chapter.
Advanced Legal Studies

An Introduction to § 1983 Litigation: Law School for Practicing Lawyers
Friday, May 17, 9:00 a.m. - 5:00 p.m. Suffolk Law School, Donahue Building, Room 218
Tuition: $179, for alumni admitted after 7/92 and members of The City Solicitors and Town Counsel Association - $143. For course book only - $69
This seminar is intended for those attorneys with little or no familiarity with civil rights litigation. It offers a clear step-by-step introduction to litigation under § 1983.
Faculty: Michael Avery, private practice attorney specializing in civil and police misconduct litigation; Karen Blum, Suffolk University Law School professor; Joseph W. Glannon, Suffolk University Law School professor; Robert Kline, adjunct professor, Suffolk University Law School and School of Management; Bernard M. Ortwein, JD '72; Suffolk University Law School Professor Richard M. Perlmutter; Robert D. Parillo, JD '74, of the law firm Hodosh, Spinella & Angelone in Providence, RI; and Carol A. Zangari, JD '78, partner in the Providence law firm of Anderson, Zangari & Bossian.

Sex, Lies and Negotiations: Ethics & Tactics
Wednesday, June 12, 1996 4:30 - 6:30 p.m.
Tuition: $149, $121 for alumni admitted after 7/92. For course book only, $69. Holiday Inn, 21 Atwells Ave., Providence, RI
This program looks at ethical issues raised in the context of a highly charged and often sensational negotiation subject: sexual harassment in the workplace. Through the use of a fact pattern and a simulated negotiation the panel and the participants will have the opportunity to review and comment on the negotiation techniques and to consider if they have conducted themselves according to the best standards of the legal profession and in the best interest of their client.
Faculty: Suffolk University Law School Professor Bernard M. Ortwein, JD '72; Suffolk University Law School Professor Richard M. Perlmutter; Robert D. Parillo, JD '74, of the law firm Hodosh, Spinella & Angelone in Providence, RI; and Carol A. Zangari, JD '78, partner in the Providence law firm of Anderson, Zangari & Bossian.
Nothing But Net Programs

Learn to harness the power of the Internet in our upcoming series of three Nothing But Net programs. There’s a wealth of information available online, and we can give you the tools to sift through it all. You’ll also discover the tricks and traps of doing business in cyberspace. If you plan to take advantage of the world’s cutting-edge information technology, you can’t afford to miss these programs.

Unleashing the Power of the Internet — A Guide to Legal Research
Thursday, April 25, 8:30 a.m. - 12:30 p.m. Suffolk Law School, Donahue Building, Room 218
Tuition - $149, alumni admitted after 7/92 - $121, Includes The Lawyer’s Guide to the Internet, G. Burgess Allison, ABA.

The course helps you to hone research skills online. The experts guide you through a research problem giving you the tools to find your way through the amazing array of legal resources.

Faculty: John B. Nann, Brooklyn Law School; Professor R. Lisle Baker, Suffolk University Law School; and Professor Stephen M. McJohn, Suffolk University Law School

Hands On/Online
Friday, April 26, 8:00-9:30 a.m. or 10:00-11:30 a.m.; or Saturday 27, 8:30-10:00 a.m., or 10:30-12:00 noon, or 1:00-2:30 p.m.
Suffolk University, Fenton Building, Lab Room 338B
Tuition - $149, alumni admitted after 7/92 - $121, Includes The Lawyer’s Guide to the Internet, G. Burgess Allison, ABA.

If you’re already doing business on the Internet then you need to know how to avoid liability. The uncharted territory of Cyberspace calls for a sophisticated understanding of legal issues. This course will provide you with the latest legal and technological developments, and will give you the information you need to compete successfully and protect your company in the electronic age.

Faculty: David R. Friedman, Palmer & Dodge; Michael S. Baum, vice president of practices and external affairs, VeriSyn, Inc.; John Doggett, director of applied technology, Bank of Boston; Robert Duggan, Palmer & Dodge; Robert W. Hamilton of Jones, Day, Reavis & Pogue, Columbus; Vivian Hsu, private practitioner; Henry W. (Hank) Jones, III, Andersen Consulting and Arthur Andersen in Chicago; Harold H. Leach, Jr., Legal Computer Solutions, Inc.; A. Jason Mirabito, Wolf, Greenfield & Sacks and adjunct faculty, Suffolk University Law School; Professor Michael L. Rustad, Suffolk University Law School; and Margaret K. Seif, vice president — legal affairs for AT&T’s News Media Services Division.

For further information on Advanced Legal Studies courses and programs contact ALS Director Carole Wagan or Kimberly Hogan at 617-573-8627.

Undergraduate Program Starting Saturdays This Summer
Do you know someone who could benefit from Suffolk University’s ABA approved Paralegal Program? There are Certificate, Associate and Bachelor degree options, day and evening classes, full or part-time possibilities, and new fast track program on Saturdays. Please call Undergraduate Admission at 617-573-8460.
Calendar events:

4/28 Sunday, April 28
Law School Alumni Reception
Willard Inter-Continental Hotel
Washington, D.C.
6:00 p.m.

7/8 Monday, July 8
Alumni Golf Day
Spring Valley Country Club
Sharon, MA
125.00 per person

4/29 Monday, April 29
U.S. Supreme Court Bar
Admissions Program
U.S. Supreme Court
Washington, D.C.
Luncheon in conjunction with
U.S. Supreme Court Bar Program
La Colline
400 N. Capitol Street
12 noon

7/17 Wednesday, July 17
Alumni Red Sox Night
vs. New York Yankees
Fenway Park
5:00 p.m. buffet, 7:05 p.m. game
Tickets: $34, includes buffet and
grandstand ticket

5/14 Tuesday, May 14 (tentative)
Law School Alumni Association -
South Shore
Sheraton Tara Braintree
5:30 - 7:00 p.m.

6/6 Thursday, June 6
Networking and Cocktails
Grill and Cue
Boston, MA
5:30 p.m.

6/21 Friday, June 21
Alumni Evening at Pops
Symphony Hall
8:00 p.m.
Ticket: $42, $53, $58
Reception to follow

For more information on alumni events, contact the Alumni Relations Office at 617-573-8457.

Save the Date!
Saturday, October 19, 1996
Law School Reunions 1996
Classes of 46, 51, 56, 61, 66,
71, 76, 81, 86, 91
Sheraton Boston

Law School Alumni Reception:
New York City, January 26, 1996

(Left to right) Joshua L. Milrad, JD '95, Donna Firk, Stewart R. Firk,
JD '71, Law School Dean John E. Fenton Jr., Lewis L. Heller, JD '71,
and Margaret Heller
What it Takes to Build

1 Drawing of Law School
2 View down Tremont Street from The Commons
3 Architectural model of Law School
A bold vision

It began in 1990. President David J. Sargent, the Trustees, and the Law School administration were concerned: It was becoming clear that the Law School facilities in the Donahue building would no longer be adequate by the end of the century. The School was rapidly running out of space to accommodate the growing numbers of full-time and adjunct faculty, the many active student organizations, the public events hosted each year for members of the legal community, and the increasingly popular continuing education programs. The School's award-winning Moot Court teams needed larger, improved facilities as well. And the age and basic structure of the building made it prohibitive to create widespread access to the national and international electronic databases that had become a necessary component of legal practice.

The answer was clear: The Law School needed a new home, and the University needed more space. But more than a new home, the Law School needed a new, technologically sophisticated building designed for legal education in the 21st century; a building that would reflect the growing national and international stature of the School.

Location, location, location

An important building needs an important site. After an exhaustive search, the University decided upon the corner of Tremont and Bromfield Streets, the very beginning of the Freedom Trail. Close to this site were located the institutions that gave birth to the judicial system of Massachusetts — the basis for the judicial system of the United States. From
1692 to 1892, the state's highest court occupied five different buildings — The Townhouse, the Old State House, the Queen Street Court House, the Bulfinch Court House, and the Willard Court House — all of which were located within three hundred yards of the planned new building.

"If you love Boston and its rich history, this part of Tremont Street can be thrilling," says David Owens of Tsoi/Kobus and Associates, the Cambridge architectural firm that is designing the building. The new Law School will be located just a few blocks from the United States District Court, the Massachusetts Supreme Judicial Court, all of the Commonwealth's appellate courts, and many of its trial courts. Across the street is Park Street Church, where William Lloyd Garrison gave his first anti-slavery address on July 4, 1829. Adjacent to the Church is the Old Granary Burying Ground, set aside from the Boston Common in 1660. Buried here are three signers of the Declaration of Independence: John Hancock, Samuel Adams and Robert Treate Paine. Also nearby is the African Meeting House, the home of the earliest school for African-American children in the area.

In July 1993, then Mayor Raymond Flynn joined University and City officials at the site to announce that Suffolk University had agreed in principle to purchase the property. On December 31 of that year, the purchase was completed, an event that was termed "great news for Tremont Street and great news for the revitalization of downtown" by an official of the Boston Redevelopment Authority.

An acclaimed design

"This is not a conventional project, choosing this site took boldness and vision," says architect David Owens. "It is a rare opportunity and a big responsibility to design a new building located in an area of such historical significance." Owens and his colleagues visited law schools all over the country to analyze their use of space and its effect on the educational process. They talked at length with Suffolk University law faculty, students and administrators, and they immersed themselves in three hundred years of Boston's history. The process resulted in a design that has achieved near universal acclaim.

"[The design] is everything you'd want in a building on a street like Tremont," commented Brian Delorey of the Boston Redevelopment Authority.

The new building will be equipped with technological innovations, from classroom work spaces wired for laptop computers to Moot Court Rooms equipped with advanced media capabilities. The library will give its users instant access to worldwide databases; a legal clinic will provide the public with pro bono services; faculty offices will encourage collegiality; and comfortable, private areas will be reserved for alumni and members of the legal profession who wish to continue their education.

"But the technology is only part of the story," says Owens. "The building will connect to the past as well as the future." The building will rise seven
stories — 108 feet — above the street. It is designed in a classical 20th century style, but with elements that are reminiscent of Boston's architectural heritage.

The front of the building curves outward, reaching out to greet the visitor at street level. This treatment echoes the bay-windowed townhouses of Back Bay. Inside, a four-story inner court creates a unifying Great Hall, similar to the hall in the Massachusetts State House. "We have created a 'vertical campus,'" says Owens, "in which spaces like the library, cafeteria, administrative offices, and legal services clinic are all located within the building, above and around a Great Hall — an appropriate design for an urban law school."

Views of the surrounding neighborhood abound, whether from the bay entryway or the 5th-floor library reading room, which sits on top of the bay, surrounded by windows curved to catch the afternoon sun. At night, a beacon will shine from the roof, and the building itself will glow with the comings and goings of students attending night classes or studying late. "The building will infuse vitality into the downtown business district 18 hours a day," says Bethany Kendall of the Downtown Crossing Association. "We believe that the Law School's new location will spur business and be an asset to the area."

**Suffolk as good neighbor**

With the preliminary design completed, a lengthy and important approval process began. At this point, the Suffolk project team consisted of architects, city planners, lawyers, and engineers. Their job was to meet with city officials, neighborhood

---

**Trustee Hession on the Law School — Past and Present**

"When I think about Suffolk Law School I feel a sense of pride. I am proud that I am a graduate of a school that has accomplished so much in its 90-year history," says University Trustee Jeanne M. Hession, JD '56. "I remember the one small building on Derne Street that housed so many who were determined to learn. Now, it has grown to become one of the best law schools in the country."

Hession sees the new building as imperative. "I was in school at a time when there were no computers, elevators, or modern transportation," says Hession. "The School's current location makes it difficult to keep up with constantly changing technology. The new building will offer our students a high-quality, state-of-the-art learning environment. We must keep up with the needs of our students."

A year after she graduated, Hession joined the Boston Safe Deposit and Trust Co., at a time when most major companies were hiring Ivy League graduates. She retired in 1992, having served as vice president and associate counsel of the company. She has been a member of Suffolk's Board of Trustees since 1973 and was awarded an honorary doctor of judicial science degree in 1974.
groups, historical societies, business associations, abutters, and anyone else interested in what was happening on Tremont Street. "The design was evaluated from every perspective: from how it sits on the site to how it relates to traffic, air quality, shadows, and its historic surroundings," says Catherine Donaher, a city planning consultant who served on the project team. "We met with many groups, all of whom have a strong and abiding interest in how the city gets built. Every building that goes up affects both the image of the city and its quality of life."

The process, according to Donaher, has worked. "There is very strong support for the design. The building has presence. It claims its place on the street."

The momentum builds

"The new building will provide needed space not only for the Law School, but will ease crowded conditions throughout the University," says John C. Deliso, associate dean of the Law School.

City planner Catherine Donaher has another perspective. "This building will be immediately visible from almost everywhere in the area, from the Boston Common to the subway entrance," says Donaher. "Tourists, residents, everyone will see this impressive building in their daily movements throughout the city. Think how this increased visibility will add to the stature, reputation and prominence of the Suffolk University Law School."

Excitement about the new building is gathering momentum, both within Suffolk University and throughout the city. "The enthusiasm generated by our Board of Trustees is contagious," says President Sargent. "Not only have the Trustees made significant financial contributions to the building, they have also contributed their time, energy and ideas. We are all eagerly anticipating our Campaign kickoff in September of 1996 — Suffolk's 90th anniversary — and the Law Building ground-breaking ceremony in 1997."

For information about the new building, or to learn about ways you can contribute, please contact Marguerite J. Dennis, Vice President for Development and Enrollment at 617-573-8440.

Buying the Property — A "Win-Win" Deal for Suffolk and the City

The acquisition of such historic property goes back several years to when the University first expressed interest in buying the abandoned buildings and land at 110-120 Tremont Street. In 1992, University President David J. Sargent began the complex negotiations with local officials that resulted in a purchase agreement that was beneficial for both Suffolk and the City of Boston. The University, the City, and several local preservation groups reached a consensus for using the site in a way that would enhance the City's treasured historic traditions.

As part of the purchase plan, Suffolk University agreed to contribute funds that would be used to benefit seven historically significant properties in the area. "This is a win-win situation," says University Vice President Francis X. Flannery. "We have demonstrated the University's continuing commitment to the people of Boston while adhering to our planned construction schedule for the new building."

This past March, Mayor Menino announced five recipients of Suffolk University's contributions totaling $300,000. They are King's Chapel, Congregational House, the Old Granary Burying Ground, Park Street Church and the Boston Common. "These grants are funding important improvements and protecting some of our most treasured sites," said the Mayor.

In the meantime, as of April 1996, the University has raised some $8 million in capital funds. "And we haven't even formally kicked off the fund-raising Campaign yet," says Vice President for Development Marguerite J. Dennis. "With the enthusiastic support of our Board of Trustees, alumni, and friends of the University, I have no doubt we will be breaking ground in 1997 as planned..."
the Advocate

Volume 26  Spring 1996
Power of Attorney: Legal Writing for the Practitioner

*If We Grew Up on Alphabet Soup, What’s Wrong With IRAC?*
Even as some legal writing teachers praise IRAC and its prolific progeny, others argue that both the original and its offspring mislead students by seeming to offer a "quick-fix."

IRAC is one of many mnemonics legal writing professionals use to teach law students the basics of legal analysis. While legal analysis can never be codified or reduced to a universally applicable formula, IRAC captures the structure of the syllogism in a convenient package. Even as some legal writing teachers praise IRAC and its prolific progeny, others argue that both the original and its offspring mislead students by seeming to offer a "quick-fix." The debate continues, and this review will give everyone an opportunity to join in the discussion.

The first task requires us to recognize the language of the debate. Can you identify any or all of these terms? (A good legal dictionary will be of no help.)

IRAC IRAAC CRPAC
IRAAPC CRAAAP IREXAC
PREEC CRAAP REAC
IRAAAAPC RAFADC IRRAAC/IRRAAPC
CRAC (QfrFR)+IRAC IEC
IGPAC TRRAC

For the alphabetically-challenged, the following explanation is the first step to understanding.

The ancestor of this all is IRAC, a mnemonic which reminds a legal writer that the reader generally expects to see certain information presented in a conventional order. IRAC stands for: Issue, Rule, Application, Conclusion. In an objective Office Memorandum, for example, the reader immediately needs an overview of the topic, controversy, or issue. [Issue] Next, the reader logically wonders what existing rules, if any, apply. This includes statutes, regulations, and case law. For verification, the writer also supplies a citation. [Rule] Next, the reader wants to know about relevant complexities: Is the applicable standard evolving? Is a trend emerging? Do minority and majority positions exist? Here, the writer defines terms and elements, paying particular attention to all disputed, material terminology. [Analyze Law]

Now well acquainted with the applicable law, the reader wonders about how the applicable law applies, or does not apply, to the specific facts in controversy. To help the reader, the writer discusses both similar and dissimilar situations and how courts have applied the applicable rule to those cases. The writer aids the reader by explicitly analogizing and distinguishing examples. This discussion helps best if it considers facts, legal results, and judicial reasoning. [Analyze/Apply Law to Facts] At this point, the reader finally wants to know what to expect. The writer now predicts and explains the likely legal outcome and, perhaps, tenders specific recommendations. [Conclusion] Each issue or sub-issue presented receives the same treatment.

In a persuasive brief, the general sequence is identical, but the “tone” is different. For example, a lawyer does not “predict” what a court will do. Rather, the lawyer exhorts, persuades, and convinces a court to adopt the course of action that favors the client.

I have adjusted IRAC to a form that I find better explains the sequence to students and adapts equally well to objective, persuasive, or scholarly formats. I call this PREEC: (What’s your) Point?!? Rule, Explain the Law, Explain the Facts, Conclude. It is similar to IRAC with one advantage: the question, “What’s your Point?!?” I found that when I taught the term “issue,” most students wrote: “The first issue is....”

“What’s your point?!” adapts equally well to an objective Office Memorandum, an Appellate or Trial Brief, and a scholarly article. The last example in each set conforms to “point” drafting.

Office Memo
“The first issue is whether Able states a cause of action for the intentional infliction of emotional distress.”
“Able does not state a cause of action for the intentional infliction of emotional distress because....”

Brief
“The first issue the court must consider is whether Able states a cause of action for the intentional infliction of emotional distress.”
“The court must grant Defendant’s Motion for Summary Judgment because, as matter of law, Able does not state a cause of action for the intentional infliction of emotional distress because....”

Scholarly Article
“A major concern of recent tort law is the issue of whether to expand liability for the intentional infliction of emotion distress.”
“A survey of the extent to which courts have expanded or broadened the definition for “intent” in cases of the intentional infliction of emotional distress demonstrates....”

Beyond IRAC and PREEC, other useful versions exist. For the truly interested, the Glossary spells out what each of the listed terms means.

These tongue-twisters, however, have several things in common: (1) they were invented by legal writing teachers in various law schools; (2) they are loved and defended by some; (3) they are disliked and dismissed by
others; and (4) they represent, in simpler terms, the classical syllogism, the bedrock of deductive reasoning. The debate arises, in good faith, as law teachers struggle to help students master and implement a dynamic process of analysis—a fluid ability to reason to a conclusion, resolution, or prediction based on facts.

The Task of Teaching How To “Think Like a Lawyer”

Lucidly brilliant in its best moments and incomprehensibly obscure in its worst, legal reasoning seems intuitive to some. Many apprentice-lawyers (our law students) find the process intimidating and worry whether they were “meant to be lawyers.” They, and we, need to remember that most students are overwhelmed, confused, trying very hard, sleep-deprived, malnourished, nervous, anxious (two separate afflictions), and trying to figure out the rules and processes of a foreign country—despite the fact that they are spoken to and expected to reply in a foreign language they have never before spoken or heard. As one Director put it: “Legal reasoning is like a foreign language. You can shout it. You can say it very s-l-o-w-ly. None of this helps. Our students need a translator!”

Based on my experience, few are looking for just “the answer” or a quick-fix. Rather, like a milkweed in the wind, they want roots. In my favorite image, they are like toddlers learning to walk. Each child must assimilate the multiple and complex coordination required to put one foot in front of the other. But, in front, behind, and alongside of each child is a bevy of delighted family members and friends, shouting, cajoling, helping, advising, cautioning—and and cheering, applauding, and praising.

No parent presents a toddler with a long fiberglass pole, points to a thin bar, 16 feet in the air, and says, “Run down this path, stick the pole in the ground, and clear that pole!” Similarly, we should not expect apprentice-lawyers to organize logically, craft elegantly, and dazzle intellectually while they still struggle to navigate from one end of a legal analysis to the other.

The IRAC-Alphabet-Soup is like toddling. It helps the student get across a room, minimally competent. Teachers and directors of legal writing who use one of the many formulations seldom present it as the end, but only as the means to another end. To learn “to think like a lawyer” is a life-long enterprise. IRAC helps the student begin, even if that student cannot immediately qualify for the Olympic Medal in the pole vault.

Those Who Defend IRAC

I join those teachers and directors who defend IRAC because I see it as a way to “jump-start” students on the path to increasingly advanced techniques of legal reasoning and writing. If properly taught, students understand that IRAC is neither a formula nor a straightjacket. Rather, it is a checklist, a way to ensure that a document, whether objective analysis or persuasive advocacy, comprehensively covers all that those in the profession expect to find when they read it—and in a sensible order.

In its numbing variety, the list of consonants and vowels symbolizes how much effort and concern legal writing professionals invest in figuring out how to teach a process. While this list cannot ever capture a skill that is essentially dynamic, it does describe the inventive creativity of those dedicated to helping their student-toddlers make their first, imperfect trek across the room.

Those Who Dislike IRAC

Most of the teachers and directors who dislike IRAC and its progeny look at the complex task of promoting independent, problem-solving skills in their students and reject anything that may reduce, or threaten to reduce, open-inquiry. These equally committed teachers and directors worry that, if a student learns to rely on an extrinsic structure of analysis, that student will never master the intellectual flexibility required to survive the rough and tumble of today’s legal practice.

To continue the metaphor, these professionals believe that, if a student does not internalize and “own” the process of walking, that student will lack the resources not only to vault the pole, but also to anticipate the unseen rock in the path or to respond effectively to the ever-present variables that make lawyering what it is.

IRAC is Really a Syllogism

In many ways, learning “to think like a lawyer” centers on deductive reasoning. Deductive reasoning utilizes and applies the classic Aristotelian syllogism. For any who long for a deductive proof that IRAC and its progeny are classic syllogisms, I offer the reassurance that Aristotle himself would recognize IRAC. To illustrate, using the familiar proof of Socrates’ mortality:

**Major premise:** All men are mortal.
**Minor premise:** Socrates is a man.
**Conclusion:** Therefore, Socrates is mortal.

One may also expand the major premise to show the two-step assumption that underlies it.

**Major premise:** If a person is a man, then that person is mortal.
**Minor premise:** Socrates is a man.
**Conclusion:** Therefore, Socrates is mortal.

To review, IRAC stands for Issue, Rule, Application (or Analysis), Conclusion. The syllogism concerning Socrates’ mortality can be set up on the IRAC template as follows:

**Issue:** What is Socrates?
**Rule:** If a person is a man, then that person is mortal.
Lucidly brilliant in its best moments and incomprehensibly obscure in its worst, legal reasoning seems intuitive to some. Many apprentice-lawyers (our law students) find the process intimidating and worry whether they were “meant to be lawyers.”

**Application/Analysis:** Socrates is a man.

**Analyze Rule:** Begin by defining person, man, and mortal. Cite authority to support these definitions. Analogize to relevant examples, other data, and facts. Quote experts, if needed. Explain any issues related to the rule. For example, the term “man” means “humankind” and, therefore, despite its facial connotation, it also includes women. Cite. Quote. Cite. Analogize.

**Analyze Facts:** Socrates is a bipedal, upright walking mammal with opposable thumbs, capable of speech, supported by an internal skeletal system, etc. Accordingly, Socrates is a man. A witness has observed one man who died (is mortal); another witness has observed another man who dies (is mortal); etc. Collecting enough data, one generalizes that bipedal, upright walking, etc. creatures die (are mortal).

**Apply Rule:** Facts: Compare, contrast, and distinguish as necessary. Cite when appropriate.

**Conclude:** Socrates is mortal.

Plainly, then, the following equation makes sense:

Major Premise = Rule
Minor Premise = Application/Analysis
Conclusion = Conclusion

Accordingly, based on this demonstration and in a structure even Aristotle would understand, I conclude:

**Major premise:** If IRAC is a structure with a major premise, a minor premise, and a conclusion, then IRAC is a syllogism.

**Minor premise:** IRAC is a structure with a major premise, a minor premise, and a conclusion.

**Conclusion:** Therefore, IRAC is a syllogism.

With IRAC, just like a syllogism, however, when the middle drops out (the minor premise which includes the analysis and application of law to fact), the student-lawyer is left with: “Is Socrates mortal?” (Issue) “Socrates is mortal.” (Conclusion). This is conclusory analysis and unacceptable in legal writing, legal analysis — or the practice of law.

The problem with IRAC is not in its alphabet. The problem is in its execution. The essence of legal reasoning, whether by IRAC or by Aristotle, is in the vast middle — the analysis. By any name, legal reasoning without analysis is just banana skin. Garbage.

**Glossary**

| IRAC | Issue, Rule, Application, Conclusion |
| PREEC | (What’s your) Point?! Rule, Explain the Law, Explain the Facts, Conclude |
| CRAC | Conclusion, Rule, Application, Conclusion |
| CRPAC | Conclusion, Rule, Prove the Rule, Application, Conclusion |
| IRAAC | Issue, Rule, Analyze the Law (or Rule), Analyze the Facts, Conclude |
| IEC | Introduce, Explain, Conclude |
| RAFADC | Rule, Authority, Facts, Analogize, Distinguish, Conclude |
| TRRAC | Thesis, Rule, Rule (explained), Application, Conclusion |
| IREXAC | Issue, Rule, Explanation of rule, Application, Conclusion |
| IRIR | Issue, Rule, Reasoning, conclusion |
| IRAAAC | Issue, Rule, Reasoning, Application of facts for one side, application of facts for the other side, Conclusion |
| IGPAC | Issue, Rule, General Rule, Precedent, Application, Conclusion |
| IRAAPC | Issue, Rule, Application of the rule to the facts, Alternative analysis, Policy, Conclusion |
| IRAAAPC | Issue, Rule, Authority Synthesis, Apply the authorities to the facts of my case, Alternative analysis, Policy, Conclusion |
| CRAAP | Conclusion, Rule, Authority Synthesis, Apply the authorities to the facts of my case, Alternative analysis, Policy |
| CRAAAP | Conclusion, Rule, Authority Synthesis, Apply the authorities to the facts of my case, Alternative analysis, Policy |

\[ (QfrFR) + IRAC: (Question, facts and rules (any and all relevant), Facts and Rules (specifically relevant to the Issue) + IRAC [The parenthetical analysis must precede and, therefore, form the basis for the IRAC analysis.] \]

CRPAC: Conclusion, Rule, Prove the Rule, Application, Conclusion

---

1 This article summarizes and analyzes the excellent collection of opinion on the value of IRAC that appeared in The Second Draft, a publication by the Legal Writing Institute, volume 10, no. 1, November, 1995. Please refer to the original for proper attribution of any original terms.

2 Thanks to Mary Beth Beazely, Director of Legal Writing, Ohio State. My apologies if I missed her exact words, but I surely have captured the essence of her point.

Copyright © 1996 by Dr. Martha Siegel. All rights reserved. No part of this document may be reproduced by any means without the express written permission of the author.
The Beacon Hill Institute:

Applying Economic Methods to Taxes and Regulation

by Ellen F. Foley
A tenet of the institute is that the complicated must be made understandable. “It’s easy for economists to put people to sleep. Not everyone wants to know about regression models and R^2s. People want to know how their jobs and pocketbooks will be impacted by policy changes,” Tuerck says.

Since 1991, Suffolk University has been home to the Beacon Hill Institute for Public Policy Research. In that time, the institute has emerged as one of the nation’s leading state-based economic think tanks. “There are many think tanks,” says BHI executive director David G. Tuerck, “and there are many that do economic research. But to my knowledge, we are the only one that has produced a sophisticated state econometric tax model. There are other models, but they are poorly suited to analyzing state tax policy. It’s like trying to use an airplane engine to run a race car.”

The institute is located within the Department of Economics at Suffolk. “We apply state-of-the-art statistical and economic methodology to the policies we examine,” says Tuerck, who also chairs the department. BHI analyzes the effects of federal, state and local economic and fiscal policies on Massachusetts citizens and businesses. “Our agenda covers a broad array of issues, from welfare and tax reform to the costs of septic-tank regulation.”

As part of Suffolk University, BHI has the advantage of employing university researchers. “The result,” says Tuerck, “is that the institute produces an outstanding product while faculty and students get a valuable opportunity to do research. Our state tax analysis model is the work of a team of faculty and graduate students enrolled in the Master of Science in International Economics program.” The model permits BHI to identify the effects of state tax law changes on employment, capital spending and revenue. Using the model, BHI is able to show how proposed cuts in state income taxes would create thousands of new jobs.

A tenet of the institute is that the complicated must be made understandable. “It’s easy for economists to put people to sleep. Not everyone wants to know about regression models and R^2s. People want to know how their jobs and pocketbooks will be impacted by policy changes,” Tuerck says. “You must have the solid, technical back-up, but your conclusions must be clear.”

The BHI FaxSheet series is distributed by fax to media in Massachusetts and, occasionally, in other parts of the country. The format for this series is direct and concise, preferably one page in length, but not longer than two or three pages. Recent titles in the series include, “Corporate Proposal Would Mean More Jobs, Higher Wages for Massachusetts Workers,” “Ensuring More Jobs for Massachusetts,” and “BHI Predicts $81 Million FY-96 Tax-Revenue Shortfall.”

The institute’s policy studies develop topics more fully. The December 1995 study, Giving Credit Where Credit is Due: A New Approach to Welfare Funding, proposes the creation of a 100-percent federal credit for contributions to private, nonprofit charitable organizations that provide means-tested welfare services. The 200-page study is the first to provide a rigorous, statistical analysis of the effects of tax credits on giving and voluntarism. It is also the first BHI study dealing with a federal issue. David Tuerck and William O’Brien, both economics professors, and James Angelini, Sawyer School of Management associate professor of accounting, wrote the study. Howard Wright, Suffolk alumnus and BHI research economist, assisted in the study.

“We’ve had calls from around the country requesting copies of the study,” says Wright. BHI has appeared in the local print and electronic media more than 350 times. The tax credit issue adds a new level of exposure at the national level.

The institute does its own fundraising. Gifts to the institute receive recognition as gifts to Suffolk University.

Future plans? “We are currently exploring ways to work with Law School faculty and students,” says Tuerck, who has taught Law and Economics at the Law School. “Issues involving property rights, welfare reform and tort law offer a natural opportunity for collaboration.”
Send Lawyers, Guns and Money

Or Thoughts on the Case of the Missing Head

An Interview with Steven Ferrey, Professor of Law
Steven Ferrey, Professor of Law, recently has advised an international organization in Sri Lanka amidst a well-publicized civil war. He took time to talk with the Advocate about what he's doing there, as well as about changes in technology and the law.

**The Advocate:** There is a song by Warren Zevon entitled "Lawyers, Guns and Money." We understand that you've been advising the World Bank in Sri Lanka, which appears from news accounts to be the Bosnia of Asia, engaged in a brutal civil war. In our book, this seems to constitute "lawyers, guns and money."

**Professor Ferrey:** That song is a very hip reference for the Advocate. I didn't know it was up on popular music.

**The Advocate:** We try to stay au courant. So what is it like flying into a war zone?

**Professor Ferrey:** Well, you have to understand that by the time one gets to Sri Lanka, you have been on a variety of airplanes through various airports, for 35 straight hours. You have watched the in-flight movie, Bill and Ted's Excellent Adventure, at least three times. It's a welcome relief just to get back to reality — regardless of what it is.

**The Advocate:** And...?

**Professor Ferrey:** Sure, the hostilities do cross your mind as your plane is approaching the runway in Sri Lanka. You arrive and leave at 3 a.m., descending into total darkness. In the weeks just before my second trip to Sri Lanka at the beginning of July, the rebels had taken two planes out of the air with ground-to-air missiles. A matter of days before this trip, the rebels had driven a van full of chemical explosives like those used at the federal building in Oklahoma City into the airport and parked it next to the terminal building. In this case, the detonator went off, blowing the front off the van, but the explosive payload in the back of the van failed to ignite — so there was still an airport when I got there. But as you might imagine, it resulted in an interesting parking ban thereafter at the airport. It's an interesting place to spend the Fourth of July.

**The Advocate:** Was the level of security quite extensive?

**Professor Ferrey:** There was an extraordinary security presence. In a country at war, the security is provided by the armed forces, more than by the civil police. The armed forces in Sri Lanka had suffered a series of ambushes and attacks at the hands of the rebel forces. That tends to make one serious about security.

Security was quite tight. There were machine guns pointed at us from time to time. It adds a whole new dimension to claiming your luggage at Carousel 'B' at the airport. But the very fact that I was on my way to Sri Lanka even caused a lot of security hassles when I changed planes at the airport in Frankfurt, Germany.

**The Advocate:** What was the German angle?

**Professor Ferrey:** For reasons that I don't understand, the Germans found it very peculiar that I was changing planes in their country on my way to Sri Lanka. They provided me the memorable experience of walking across the airport tarmac in the fog and pouring rain to identify my luggage, and explain to them why I had chosen to change planes in Frankfurt. Because of the fog, it reminded me a little bit of the final scene in Casablanca without Bergman and Bogart of course, but with these authorities interrogating you on the runway in the rain. At the end, I wanted to tell the woman who was interrogating me: "We'll always have Frankfurt." But I wasn't sure whether the reference would translate very well.

**Go to the Equator and Turn Left**

**The Advocate:** Orient us as to where Sri Lanka is, why it takes 35 hours to get there, and why this all happens at 3 a.m.

**Professor Ferrey:** Sri Lanka is the former island of Ceylon, off the southeastern lower tip of India. It is the most populous Buddhist country in the world. It was a British Colony, and is now independent as a Socialist Republic. This means that it has elections for president and Parliament, which in turn selects a prime minister. It is socialist in that the government formerly nationalized most industries.

You are very aware that this is an island, isolated from much of the rest of the vibrant Asian subcontinent. You are in the Northern Hemisphere, but if you travel South, there is nothing for thousands of miles until you arrive at Antarctica. It is the only country of which I am aware that is one-half hour off the time of the rest of the world. Sri Lanka is nine and one-half hours in front of Boston. You truly know that this is an island unto itself. It is not a major economic
power, and it is off the beaten path. Airplanes stop in Sri Lanka on their way to more important capitals in Asia and Europe — where they want to arrive and depart at normal business hours. Thus, the stop-over in Sri Lanka occurs in the middle of the night.

the Advocate: What are the circumstances of Sri Lanka?

Professor Ferrey: This is a very poor country of about 17 million persons. Median per capita gross domestic income is about $400, putting it economically in the same category as Haiti. However, significant elements of the population are extremely literate.

Although Sri Lanka is the world's largest producer of tea, under a socialist regime, tea production has lost money. Those laborers who work the tea plantations effectively are indentured workers. They and all of their off-spring have jobs and care for life from the tea estates. Over several generations, the number of tea plantation workers born to the calling has swelled to 20,000, vastly more than required. As a consequence of this surplus labor, the industry has not mechanized, nor under the Socialist regime has there been much replanting of the tea trees. The result has been a dwindling production per acre, at more than necessary labor cost.

the Advocate: And the capital?

Professor Ferrey: The capital is Colombo.

the Advocate: Like the yogurt?

Professor Ferrey: Like the yogurt. Compared to other thriving Asian capitals, in the words of Gertrude Stein, there is "no there there." The city has changed very little architecturally in the last hundred years. Most of the buildings are two to three story masonry buildings, that look like they are right out of a Merchant-Ivory movie about the decline of the British Empire at the end of the nineteenth century. There is only one "high-rise" building in town, and that has an intriguing history.

Keeping Your Head

the Advocate: The war in Sri Lanka has filled the newspapers over the last year, perhaps with coverage only second to the wars in Bosnia and Rwanda. What is the nature of the Sri Lankan war?

Professor Ferrey: The Sri Lankan civil war has raged for 12 years, resulting in somewhere between 50,000-100,000 dead, many of those civilian noncombatants. The government is controlled by the Sinhalese Buddhist majority. The rebels are the Liberation Tigers of Tamil Eelam, a group of the Hindu Tamil minority, which constitutes about 15% of the population of this small country. The rebels claim that they suffer discrimination at the hands of the majority, and have been fighting for a division of the country into two. Until recently, they controlled Jaffna, the second largest city in the country. The conflict is both ethnic and religious.

The politics of the country are denominated by political assassination and ambush. The current President, Mrs. Bandaranaike Kumaratunga, took over after her husband was assassinated by the Tamil rebels. Her father, in turn, was assassinated years ago. Suicide bombings, where one straps plastic explosives to one's body, walks into a crowd, and self-detonates taking out everyone and everything around, have become a modus operandi for the rebels.

the Advocate: How do they know that a suicide bombing is the work of the rebels?

Professor Ferrey: I am told that when one detonates plastic explosives strapped to one's body, that it lifts the person's head off her body intact, and sends it spinning like a top onto an adjacent rooftop. Nothing much remains of the rest of the person after the explosion. The police search the roofs of apartments until they find the head of the bomber. Do you want to know more?
It is amazing how quickly one adjusts to what is extraordinary.

The answer is contextual: The backdrop of tension — whatever that is — becomes the norm, and human beings adjust. People can function day-to-day in situations that are extreme.

the Advocate: I think that answers the question. We don’t want to lose our PG rating, here. Do you take any particular precautions?

Professor Ferrey: These things do cause you to rewrite your will and think through the meaning of life, but in the context of your question, the answer is “no.” It is amazing how quickly one adjusts to what is extraordinary. It answered a question that I have always had about how people lead normal lives in areas with chronic violence. The answer is contextual: The backdrop of tension — whatever that is — becomes the norm, and human beings adjust. People can function day-to-day in situations that are extreme. I did have a friend who kept telling me where to buy a Kevlar vest in greater Boston before I went over.

the Advocate: Did you buy the Kevlar vest?

Professor Ferrey: No. But on second thought, you never know when it would come in handy in the classroom.

Tastes Great, But Less Filling

the Advocate: What was your favorite “human interest” observation?

Professor Ferrey: The beer strike. When I was there on the first trip, there was a strike at the local brewery. Now understand, you are in the tropics, it is blistering hot all day, and you can’t drink the water. Even the locals can’t drink the water. With the strike, a cold beer became very difficult to come by. You needed the right connections. The alternative was Sri Lanka’s major export, tea. But it is not always a perfect substitute, as economists would say.

the Advocate: What are your images of the Sri Lankan war?

Professor Ferrey: The hostilities are serious. The Tamil Tigers are alleged to be responsible for the assassination of Rajiv Ghandi, the Prime Minister of India, and son of Indira Ghandi. Every few meters along the downtown streets of Colombo are fatigue-clad soldiers with machine guns up and at the ready — and this is on a normal day with no immediate threats.

While life goes on quite normally, there is a constant undercurrent of the war’s reality. Let me give you an example. One evening at the home of a colleague who lives in Colombo, I was shown the stone fence in front of the home. There were machine gun bullet nicks in the stone, where a political leader’s car had been ambushed. It was just by chance that the individual was assassinated in front of his house, and one wonders how this colleague explains all of this to his two young children, who are the same age as my own children, and for whom there has never been a period in their lives without war.

Changing the System

the Advocate: So what took you to Sri Lanka?

Professor Ferrey: I was asked to go over for the International Bank for Reconstruction and Development, commonly known as the World Bank. The World Bank engages in multilateral lending to developing nations. Much of this lending is for financing major infrastructure development — roads, electric power facilities, gas distribution systems, ports, etc. In Sri Lanka, as in most developing countries, the electric power system is state owned, and therefore not accountable to internal economics as would be an unsubsidized private industry, nor accountable to customers because of a lack of consumer choice.

More than half the population has no electricity. Electricity has proved to be a critical engine of modernization. Without electricity, you don’t have modern schools, children cannot do homework at night without illumination, modern industry cannot locate and develop. The information revolution is transported electrically. Electricity is an essential resource.

I was the legal and regulatory advisor to the World Bank on privatization of the Sri Lankan electric system. I worked along with a regulatory economist from Thailand, who also advised the World Bank on this project. My job was to understand the structure and regulation of the electric system, to understand the environmental problems and environmental regulation at the federal and local levels, to understand the restriction on foreign private investment, to understand the electric transmission system of the
nation. After reviewing the system, I was responsible for making recommendations and devising documents to affect privatization of the electric system in Sri Lanka.

the Advocate: What sort of power are we talking about?

Professor Ferrey: In the case of Sri Lanka, the privatization coming out of our work will promote the development of renewable resources. This is not only appropriate for a country without petrochemical resources, but has an important contribution to make to the world environment. As you may be aware, there is significant scientific concern about the so-called "Greenhouse effect" leading to global warming, and the consequent melting of polar ice caps and dramatic shifts in world agricultural patterns, accompanied by the destruction of many plant and animal species. The primary culprit for suspected global warming is the build-up of carbon dioxide in the atmosphere. While one-third of this build-up is the result of destruction of trees and vegetation which naturally recycle CO₂, the remainder is caused by the massive increase in the burning of fossil fuels (coal, oil, natural gas) in electric power plants. The primary area of increase in the burning of fossil fuels during the next 20 years is forecast to occur in Asia. This is the type of environmental issue that is truly global. CO₂ produced anywhere becomes a factor in the international environment. Therefore, where there is an opportunity to foster economic development through use of renewable energy sources, it is an important tool to deploy. My work in Sri Lanka does this to the extent compatible with local conditions.

the Advocate: What renewable energy sources will be used in Sri Lanka?

Professor Ferrey: Primarily hydroelectric power, capturing the kinetic energy potential in flowing rivers and streams for the production of electricity.

the Advocate: How are these recommendations implemented?

Professor Ferrey: The World Bank accepts these recommendations and through negotiation with the government, requires them as a condition of future loan assistance by the World Bank to Sri Lanka. These recommendations will standardize the entry of private power into the country, and promote the development of renewable energy resources in the country. In this way, we are promoting the use of indigenous non-polluting resources. The use of indigenous resources also is extremely important for a developing nation, as a means to deploy power resources over which it has control — minimizing reliance on imported oil. Our recommendations, once implemented, should transform the electric system and make it more efficient, cleaner, and more available to the population.

the Advocate: Why should a developing country privatize its electric sector?

Professor Ferrey: Developing countries have major pressing demands for investment in education, health care, social welfare, and electric energy. And they have very limited financial resources to finance this large list of needs. If one can successfully privatize one or more of these major sectors, private funds can be attracted to this endeavor, allowing the limited government resources to be concentrated on the remaining non-privatized priorities. Now, it is difficult to get the private sector to underwrite education, social welfare, or health care in a country with minimal per capita income, because it is very hard to charge and collect for these services. However, it is different with electric energy. Electricity is an essential commodity that can be metered and that people will pay for the opportunity to use. Privatization of electric power not only makes for a more efficient electric system, but also frees up government and foreign assistance capital for other essential services. It is a "win-win" situation.

Privatization of Infrastructure

the Advocate: Is this privatization a wide-spread phenomenon?

Professor Ferrey: It is. Developing countries around the globe are considering privatization of electric power production as a means to attract private international capital and to modernize the provision of infrastructure services. This is a significant global trend. Privatization of power generation and electric deregulation also is now occurring in several states in the U.S. — led by New England. Electric power is the most capital intensive sector of the entire economy. More dollars in capital investment are devoted to electric power than to autos, steel, or telecommunications. The repercussions of these investments are huge. I find it a very exciting area of the law.

the Advocate: How did you get involved in this project?

Professor Ferrey: I was involved in a similar project for the World Bank in Indonesia during 1993-1994. The World Bank contacted me originally for that project, in part, because one of my books, The Law of Independent Power (New York: Clark Boardman
Electricity cannot be economically bottled and stored in large quantity, despite what the Energizer Bunny might wish. With so many dispersed islands, there is no ability to interconnect the utility grid in Indonesia to move power between islands.

Callaghan, 7th Ed. 1995) is the treatise that tracks deregulation and privatization of the power industry world-wide.

the Advocate: How was the Indonesia project different than the one in Sri Lanka?

Professor Ferrey: No one was threatening to shoot at me in Indonesia. Beyond that, Indonesia is the fourth largest country in the world in population, after China, India and the U.S. It is the world's largest Muslim nation; Sri Lanka is Buddhist. Sri Lanka is a single island nation, whereas Indonesia is an archipelago of 13,000 islands — 3,000 of them inhabited — stretching across an area the size of the U.S. Electricity cannot be economically bottled and stored in large quantity, despite what the Energizer Bunny might wish. With so many dispersed islands, there is no ability to interconnect the utility grid in Indonesia to move power between islands. One has to deal with many dispersed and unique systems, as well as 32 different languages and many more subcultures. It poses very different and unique challenges.

the Advocate: Where will privatization lead in the United States?

Professor Ferrey: Within perhaps 18-36 months, consumers in Massachusetts, California, New York, New Hampshire, Rhode Island and several other states will be able to select their electricity supplier like we now select our long-distance telephone provider. In other words, you will decide whether you like the service that Candace Bergen or Whoopi Goldberg is selling.

the Advocate: Do you mean that there will be a “Friends and Family” program for electricity?

Professor Ferrey: Something like that. It sort of gives a whole new meaning to the term “nuclear family” doesn’t it? But unlike phones, where there are only a handful of major long-distance providers, with electric deregulation there will be dozens of companies competing for business. Also realize that electricity, unlike most commodities, cannot be economically stored for more than a nanosecond before it dissipates. Therefore, it will be a major departure from business-as-usual to have competition in the provision of so elusive, so dangerous, and ultimately so essential a service.

the Advocate: Who should be thinking about this now?

Professor Ferrey: Every major commercial or industrial user of electricity should now be contemplating options for its supply of various energy sources that it uses.

the Advocate: What is the role of lawyers in a deregulated or privatized energy market?

Professor Ferrey: It will be a very vigorous area of practice during the next decade. As competition replaces regulation, private contract will replace government oversight in the operation of these markets. There is a need for legally trained persons who understand the utility industry to handle the many contractual combinations and sales that will result. The entire realm of “technology law” of which electric deregulation is a part — how the law adapts to create legal and market structures to accommodate technological innovation and change — is a very challenging and fascinating area.

the Advocate: In closing, are you recommending Sri Lanka as a travel destination?

Professor Ferrey: Well, it suits the bill if you want to go somewhere where there will be absolutely no other American tourists. I do note that the Bosnian War correspondent for the New York Times recently recommended Sri Lanka as a comparatively quiet vacation spot: Deserted beaches; nice people. It all depends on your frame of reference.

the Advocate: What’s next for you?

Professor Ferrey: Well, I have just finished a book on Environmental Law for Little, Brown and Company that should be out by the end of 1996. It is a soft-bound low-cost “hornbook” of sorts. I am updating and republishing The Law of Independent Power twice annually to keep up with the torrid pace of legal change in the utility industry. I also plan some additional law journal articles. And I’m enjoying spending time with my kids and family.

the Advocate: Thank you for filling us in on your activities abroad.

Professor Ferrey: My pleasure.
The National Conference of Commissioners on Uniform State Laws

*National Uniformity of State Laws*  
*Without Displacing State Courts*

by Professor Carter G. Bishop
What do Bogert, Brandeis, Pound, Prosser, Llewellyn, Rehnquist, Rutledge, Woodrow Wilson, Williston, and Wigmore have in common? For one thing, they have all served as Commissioners of the National Conference of Commissioners on Uniform State Laws.

It has been my privilege to serve as the Reporter for two uniform law projects undertaken by this prestigious Conference — the Uniform Limited Liability Company Act and the Limited Liability Partnership Act amendments to the Revised Uniform Partnership Act (1994). Every lawyer is intimately acquainted with the work of the Conference because of basic familiarity with a particular uniform law. However, few lawyers have any understanding of the origins, organization, and operation of the Conference. It is a fascinating story and, given the importance of the Conference's work to all lawyers, one worth understanding.

As stated by William H. Rehnquist, Chief Justice of the United States, on the occasion of the 100th anniversary of the Conference in 1991:

I think the real genius of the Conference's "founding fathers," and of the men and women who have succeeded them, was to create and maintain an organization which could deal with the need for national uniformity of laws without displacing the state courts. Congress can achieve national uniformity in a particular area of the law by passing a federal statute, but the dominant voice and the interpretation of such a statute is that of the federal courts. With a uniform law it is otherwise; the supreme courts of the states retain their authority as to what a state uniform law means, but they have every incentive to interpret it to conform to the holdings of other courts construing the same law.

Origin of the Conference
The Conference has its 1891 roots in the legal profession and the American Bar Association which itself was organized only slightly earlier in 1878. The first judicial reference to uniformity appeared in 1840 when Chief Justice Shaw wrote for the Supreme Judicial Court of Massachusetts:

Nothing is more important to a commercial community than to have all questions relative to the rights and duties of holders, and all other parties to negotiable bills and notes, definitely settled. And it is throughout all the States of the Union, which, to many purposes, constitute one extended commercial community, the rules upon this subject should be uniform.

In 1881, Alabama created this first official committee of lawyers to examine the law in order to make recommendations regarding the uniformity of law among the states. In 1889, the ABA, whose constitution provides that one of its objectives is to promote "uniformity of legislation throughout the Union," passed a resolution constituting the Committee on Uniform State Laws. At the first meeting of the Committee, which was held in Chicago, Illinois, on the 18th of February, 1889, the following resolution was passed:

The Nature of Conference Work
The Conference is unique in the current federal system of government and in American Law. The laws of the United States are actually a complex legal matrix comprised of fifty separate and potentially different state laws overlaid by federal law. This complexity is mitigated by "Uniform State Law," the work of the Conference.

As the concluding article of the Bill of Rights, the Tenth Amendment reserves to the states "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states...." Because of this important Constitutional limitation nearly all private law and most criminal law matters are defined and regulated by the legislatures of the several states.

After the Civil War, the need for a common, predictable, national legal system became critical as the country industrialized. Two possible methods for unifying the state legal systems existed. The first included a preemption of state law by the Federal Government either through the repeal of the Tenth Amendment or by expansive interpretation of the commerce clause and other express powers delegated to Congress. The alternative was for the states to create a forum and vehicle to develop uniform legislation on important subjects of common concern which each state could then separately and voluntarily adopt.

The Conference was conceived and organized in 1891 to follow the latter state-based path. Since then, it has produced laws that have been adopted by nearly all the states and have had an enormous impact on the work of all lawyers. Monumental works include the Uniform Partnership Act, the Uniform Commercial Code, the Revised Uniform Limited Partnership Act, and the Reciprocal Enforcement of Support Act, to name just a few.
urging all states to create committees or commissions like the one in Alabama. In 1890, New York created the next committee.

In 1981, an ABA Committee on Uniform State Laws was created to study the matter. The Committee sent letters to its members, to the judges of the highest state courts, and to interested lawyers posing the following questions:

1. What steps, if any, have been taken in your state (territory or district) towards a Commission on Uniformity of Law?
2. In what respect, if any, in your judgment, is greater uniformity in the laws of the various States and Territories desirable?
3. If greater uniformity is desirable, how far is it practicable?
4. What special evils or inconveniences, if any, result in your State from the present want of uniformity?
5. Could these inconveniences be adequately or considerably remedied by other methods?

The response was remarkable, reflecting nearly unanimous support for the following points:

1. The variant and conflicting laws produce in all states the special evils or inconvenience of perplexity, uncertainty, and confusion, with consequent waste, a tendency to hinder freedom of trade and to occasion unnecessary insecurity of contracts, resulting in needless litigation and miscarriage of justice.
2. The greater uniformity is desirable and most urgently needed in matters affecting directly the business common to and coextensive with the whole country, such as the enforcement of contracts, the collection of debts, the transmission of property, the nature, validity, negotiability, and construction of commercial paper, and the formalities of all legal instruments and the proofs of their authenticity.
3. That sudden, radical, and fundamental changes in the laws of divorce, descent, and distribution, however desirable, would meet with the greatest difficulty, and in most States changes would be more likely to be adopted, if at all, after the general advantages of uniformity in commercial matters had been demonstrated by experience.
4. That the desired uniformity could be secured best by concurrent legislative action in the various states.

As a result of the early ABA study and prodding, there were enough state committees by 1892 to convene the first “conference” of such committees. By 1912, the spirit of the 1889 ABA resolution had inspired lawyers from every state to be involved in the annual Conference.

With this background, the work of the Conference began with its first meeting on August 24, 1892, immediately prior to the Annual Meeting of the American Bar Association at Saratoga Springs, New York. Indeed, even today the Conference’s annual meeting always precedes the ABA annual meeting, and most Uniform Acts are presented to the ABA for approval, reflecting the close cooperation between these two organizations.

At the first meeting, twelve representatives or Commissioners from seven states — Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania — met for three days in the parlor of the Massachusetts Commissioners in the Grand Union Hotel, Boston, Massachusetts. Portions of the minutes of that first meeting foreshadow the future of the Conference:

It is probably not too much to say that this is the most important juristic work undertaken in the United States since the adoption of the Federal Constitution.

In the more than one hundred years that have elapsed since that time, there has been no official effort to obtain greater harmony of law among the States of the Union; and it is the first time since the debates on the constitution that accredited representatives of the several states have met together to discuss any legal question from a national point of view.

Conference Membership

The Conference is necessarily composed of members or Commissioners representing all the states and it is the composition which helps to assure that its work product will ultimately be proposed and often adopted by the several states. In most states, three Commissioners are appointed by the Governor pursuant to express legislative authority. The Conference itself has prepared a Model Act relating to the designation of Commissioners. In those states without express legislative authority, the appointment is made by general executive authority. The terms of appointment vary but usually are for three years. All Commissioners serve without compensation and in many instances bear some or all of their own expenses.

The Operation of the Conference

Uniform and Model Acts are initially drafted by special drafting committees of the Conference. Uniform Acts are those where state uniformity is both practicable and desirable (a particular reason why uniformity is helpful in this area). The subject matter of a Model Act does not directly affect the relationship among the states; therefore uniformity is not desirable.

The drafting committees are often grouped in sections dealing with various general areas of the law. A drafting committee is often composed of several Commissioners, a reporter, and several advisors and observers. The committee meets several times during the
As a result of the early ABA study and prodding, there were enough state committees by 1892 to convene the first "conference" of such committees.

year to prepare, debate, and review working drafts prepared by the reporter. Although the debate is inclusive, only the Commissioners have an official vote relating to the particular contents of the draft.

Normally, an act must be presented to the Conference as a whole at two annual meetings. The Conference as a whole considers the proposed act section by section. After debate, the act is finally voted upon by each state. Each state has a single vote even though represented by several Commissioners. In order for an act to be adopted, a majority vote of the states present is required but in no case less than twenty states. Each uniform act adopted by the Conference must then be approved by the ABA, acting through its House of Delegates.

An act that survives this process is shaped by the debate and critical input from a broad range of perspectives. Most important, the Commissioners from all states have had an ample opportunity to shape the act, either through participation on the drafting committee or by floor debate at the annual meeting. This consensus building process has within it the seeds of universal acceptance by the state legislatures.

Presentation of Model and Uniform Acts to the States

Once the Conference adopts a Model or Uniform Act, a process must exist for the individual states to consider adoption of the acts. As a practical matter, no matter how uniform the laws of the several states, the courts may interpret them differently to interrupt the uniformity. Therefore, each act contains a provision that it "shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it." To aid this process, the Uniform Law Annotated service shows how the courts have interpreted various provisions of the acts.

Once an act is adopted, the Commissioners are charged with the obligation of procuring "the enactment by the legislature of the state (of their appointment) of such acts recommended by the National Conference as are deemed by the Commissioners suitable and practicable for enactment therein." The Conference is therefore both a drafting and lobbying organization.

Also, the lobbying incentive rests with the states themselves since they are the financial support for the Conference. Another Commissioner function is to obtain legislative funding from their state for that state's share of defraying the expenses of the Conference. The expenses are apportioned among the states based on their size and financial ability but normally ranges from $600 to $2,750 annually. In addition, the ABA makes a yearly $10,000 contribution. The Conference's annual budget is therefore very modest considering the magnitude of its work.

Conclusion

The work of the Conference has a profound effect on the work of nearly every lawyer. Through my service as a reporter for two business organization acts, I have developed a healthy respect for not just the final work product of the Conference, but also the people and process that produces it.

1 The author has borrowed heavily and liberally from the following sources in the preparation of this Article: Walter P. Armstrong, Jr., A Century of Service: A Centennial History of the National Conference of Commissioners on Uniform State Laws (West Publishing Co. 1991) and Allison Dunham, A History of the National Conference of Commissioners on Uniform State Laws, 30 Law & Contemporary Problems 233 (1965).
The Suffolk Chapter of the Federalist Society

by Robert Harvey, '97
The Federalist Society for Law and Public Policy Studies is a national organization, established in 1982 by law students upset at the liberal bias in law schools. The Society seeks to promote discussion of conservative and libertarian views towards government through its 130-plus law school chapters and 70-plus lawyers chapters in cities across the U.S., including Boston. After a few false starts, two second year students, Craig Donais '96 and Michael Williams '96, started the Suffolk Chapter in the fall of 1994. Currently, President Robert Roughsedge '97 leads the Society, with a membership over 40 students strong.

Our Activities

In order to foster discussions about conservative and libertarian legal perspectives within the Suffolk community, the Suffolk Law School Chapter has developed several programs, including a speakers program which has brought numerous speakers, including Chester Darling, the attorney who argued the veterans' position before the U.S. Supreme Court in the Boston St. Patrick's Day parade case, and David Tuerck, Chairman of the Beacon Hill Institute, who support retention of the flat tax in Massachusetts. We are always looking to schedule additional speakers, especially attorneys and judges, on prominent and upcoming legal issues which might escape coverage in the mainstream media.

In addition, the Suffolk chapter has arranged monthly written debates with groups who take alternative positions; most notably, the Suffolk chapter of the National Lawyer's Guild on various legal and political issues in Dicta, the student newspaper. Several other Society members write regular pieces for Dicta, and the Society plans to publish a semesterly newsletter containing articles written by our members. We will then distribute the newsletter to the Society's alumni and friends.

This past fall several Society members wrote a brief to the Massachusetts Attorney General advocating a particular state constitutional law interpretation. Subsequently, many of our members have become involved in several pro-bono cases in Boston through local attorneys and through national groups. Although participation in these cases is not an officially endorsed Society activity, the Society encourages members to gain valuable legal experience in cases affecting public policy. Our members participate in as many cases as possible while still balancing school demands. If you need assistance on a case involving principles our members might support, we can assist in placing students in touch with you.

A Brief Outline of the Society's Principles

The Federalist Society's most fundamental belief is simply that Americans should be free to decide how to live their lives, and it is only when those decisions interfere with other people's right to live as they choose that government should interfere with these decisions. When government must become involved, local and state government is best suited to handle most of these conflicts. State and local governments are more democratic and more responsive to people's changing circumstances and needs than the massive and distant federal government. As Andrew Jackson noted, government closest to the people governs best.

The federal government was created first and foremost to guide foreign policy, provide for the common defense and to establish a free trade zone among the states. Our nation's founders recognized that local issues are best dealt with on the local level and created a federal system to keep those issues local. The federal government harms this important Constitutional principle when it takes responsibility for local issues away from state and local government.

After thirty years of ever expanding and intrusive liberal government, it is time to accept the fact that federal bureaucrats cannot raise children, solve drug dependency or stop crime through handouts. The "Great Society" has created only massive debt, a decaying infrastructure, a declining economy, rising crime rate, a permanent welfare class and, for the first time in American history, a declining standard of living. The Society believes that individuals, acting on their own behalf and through participating in their community organizations such as churches, neighborhood groups, and those helping the less fortunate, can better provide for individual needs.

The Society opposes judicial legislation. It is a central element of the division of power within our system and Article I of the Constitution that the people's elected representatives in the legislative branch alone create the law, not politically appointed judges with life terms and no accountability to the people. We believe the courts must stop exercising their own will instead of their judgment when interpreting the law.

Contact Us

In order to advance these conservative/libertarian ideals of individual liberty and limited government, the Federalist Society hopes to engage in informative debates, schedule enlightening speakers, and assist student placements in legal projects. If you are interested in being placed on our newsletter mailing list, seek student assistance on a case, would like to address our membership with a legal issue, or would just like to connect with some conservative and libertarian law students at your alma mater, please write to the Federalist Society, Student Bar Association, 41 Temple Street, Boston, MA 02114.
Curriculum Reform Comes to Suffolk
A Personal Perspective

By Professor Charles E. Rounds, Jr.
At a marathon meeting held in December of 1994, the Suffolk Law School Faculty voted to modify the content and format of the second year required curriculum. Corresponding changes were made in the evening required curriculum as well. Modifications will be fully phased in by the fall of 1996.

Graduates will remember that Business Associations (3-3), Wills and Trusts (2-3), Commercial Law (3-3), Evidence (4) and Equitable Remedies (3) were components of Suffolk’s required curriculum, along with Criminal Law, Property, Civil Procedure, Torts, Contracts, Constitutional Law, LPS, and Professional Responsibility. As a result of the faculty votes of December 1994, Wills and Equitable Remedies were downgraded to elective status. Corporations (4) (formerly Business Associations), Commercial Law (3), and Evidence (4), along with Administrative/Regulatory Law (3) and Federal Income Tax (3), were made one-semester “menu items.” This means that a student must elect to take at least three out of the five sometime before graduation.

What about trusts? Trusts and the agency component of the old Business Associations have been combined in a two credit, one semester required course entitled “Fiduciary Relations.” Day division students must take the course in the first semester of the second year. Evening division students must take the course in the spring of their second year. Fiduciary Relations is essentially a stripped down version of the trust component of what was, until the Spring of 1995, Suffolk Law School’s required 5 credit Wills and Trusts course, with some time devoted to formal instruction in the fundamentals of agency as they relate to the fiduciary relationship.

In the agency component of the course, students are also introduced to the common law power of attorney, the Durable Power of Attorney, the investment management agency agreement, the guardianship, and the health care proxy. The agency aspects of the attorney-client relationship and the corporation are also touched upon.

In the trust component, the following topics are covered: trust creation; property and title in the trust context; powers of appointment; the Rule Against Perpetuities; termination, modification, resulting trust and merger; the equitable property interest; the spendthrift trust; the discretionary trust; the reserved right of revocation; creditors rights, spousal rights and welfare eligibility/recoupment; trustee powers; types of trusts including the employee benefit trust, the nominee/realty trust, commingled trust funds and charitable entities; the resulting trust; the constructive trust; trustee duties; the Prudent Man Rule and the Prudent Investor Rule; trustee liabilities. The course concludes with a discussion of the distinctions between the agency and trust and the following legal arrangements: the bailment, the debtor/creditor relationship (e.g., the bank account), and the 3rd party beneficiary contract (e.g., the life insurance policy). Its a tall order for a two credit course but it seems to doable.

There are few if any other law schools in this country that now make formal exposure to the agency and trust relationships a precondition of graduation. In my presentation before the Law School Faculty in December 1994 I made a number of arguments as to why Suffolk ought not to follow the crowd. I suggested that fiduciary concepts are marbled throughout the common law. If Suffolk Law School does nothing else, it must teach its students the common law, not about the common law. The five traditional common law disciplines are agency, contracts, trusts, torts, and property (legal interests). Everything else either fills in gaps in the common law (e.g., wills), is in derogation of the common law (e.g., Code of Professional Responsibility, Consumer Protection, the Health Care Proxy, the Durable Power of Attorney) or embellishes the common law (e.g., ERISA). Knowledge of the common law arms the attorney with the ability to diagnose; it is what distinguishes the lawyer from the paralegal.

I noted that the five common law disciplines are interrelated; yet each offers a unique and indispensable perspective of the common law. They are facets of the same gem; they are the prerequisites for every specialty and concentration; they make up the periodic table of the law. Trusts can be looked at as an intensive agency or as an advanced property concept. A breach of fiduciary duty is in the nature of a tort. Torts requires an understanding of contracts. Many contractual rights may be the subject of a trust (e.g., insurance). In the world of finance an entity is likely to be acting as a principal (e.g., Goldman Sachs), an agent (e.g., PaineWebber), or a contract creditor/debtor (e.g., Bank of Boston). The agency is the most basic of the fundamental relationships (e.g.,
the power of attorney) and the trust is the most sophisticated (e.g., the mutual fund, the employee benefit plan, the charity, the realty trust). Thus, because of the interrelationship of these five fundamental disciplines, to make some required and some elective is to make artificial and inappropriate distinctions.

I went on to note that the attorney/client relationship is an agency. Most of Boston’s commercial real estate is held in trust, Suffolk is a trust, more than half of the marketable securities in this country are held in employee benefit trusts and other such arrangements to name just a few real life examples of how pervasive these common law relationships are. Moreover, only if Suffolk Law School is satisfied that a student is grounded in the common law, and thus trained as a “generalist”, should it be comfortable in allowing a student to commit to a concentration which, for whatever reason, the student ultimately may not pursue as a career. A two credit required Fiduciary Relations course would be a small price to pay in order to close the common law loop.

I urged the faculty to assign Fiduciary Relations required status because most law students will not have had sufficient practical legal experience to appreciate why a mastery of the agency and the trust is fundamental to an understanding of the law; whereas every layman will have some understanding of how the will and the divorce, for example, fit into the scheme of things. With agency and trusts it is a chicken and egg problem. One needs to master the concepts in order to understand why they are fundamental. From 1990 to 1993 students were polled at the end of each academic year on the subject. Time and time again on average 50% of the members of any given class confessed that out of ignorance they would not have elected to take trusts. Just as a student of chemistry ought not to be allowed to forego learning about the periodic table (or the student of anatomy about the skeleton), so the student of the law ought not to be allowed to forego mastering all the building blocks of the common law, namely: agency, contracts, trusts, torts, and property (legal interests).

Why do other law schools no longer require that their students take a course in agency and trusts? I suggested that the reason that trusts have become marginalized in the national law school curriculum is because, at some point, trusts (a common law concept) became inappropriately linked with wills (a creature of statute). With Wills and Trusts (or Trusts and Estates) having been joined in one course, it is easy to see how the course then became confused with a specialty course like estate planning. The prestigious American College of Trusts and Estates Counsel (“ACTEC”) is beginning to focus on the problem and is holding Suffolk University Law School up as a “beacon” for how things should be done.

I concluded by making the point that Fiduciary Relations would also be a values course that is politically and ideologically neutral.

Cardozo said it best:

A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the “disintegrating erosion” of particular exceptions.

At the December 1994 meeting, faculty opposition to making Fiduciary Relations a required course remained strong throughout and after my presentation. There were those who felt that it was more important that students be given the freedom to design their courses of study than that they graduate with a full exposure to the fundamentals. It was suggested that the fiduciary relationship is adequately covered in a course on the Code of Professional Responsibility; that Fiduciary Relations deserves no higher status than Federal Income Tax; that a student could easily pick up a working knowledge of the fiduciary relationship by spending a few hours alone with the Restatement of Trusts; that fiduciary concepts could easily be woven into a course on evidence; that no one else is requiring it... especially the prestigious institutions. One put forth the proposition that the concept of the trust is passé, that to require that our students be exposed to it is a “step backwards.” Most students would elect to take a course in agency and trusts in any case, and so forth. In the end, the faculty voted to make Fiduciary Relations a required course by the narrowest of margins.

And how is curriculum reform at Suffolk going so far? In my opinion, pretty well...on balance. As far as the new Fiduciary Relations course is concerned, I am quite pleased. Almost 500 students have taken it to date and the general level of examination performance has been remarkably high, especially considering that the course is only two credits. A third credit might have been nice considering the enormous amount of information that is being purveyed. But as noted above, we have proven it can be done with two. As it is, 149 students have been sufficiently stimulated to go on to Advanced Trusts (Prof. Sandoe’s new elective course, given for the first time in the Spring of 1996, that is designed to pick up where Fiduciary Relations leaves off.) Another plus is that students are now exposed to trusts a semester earlier than in pre-reform days. That now gives the day students who develop an interest in estate planning, for example, a full three semesters to get the appropriate tax courses under their belts.
There are few if any other law schools in this country that now make formal exposure to the agency and trust relationships a precondition of graduation.

And there are other pluses, as well. It is my sense that one semester courses will be seen as an improvement over the two-semester format. After all, the intensity of a student's focus and attention is directly proportionate to the distance in time from an examination. The closer to total immersion the better. The required Evidence course has been a one-semester course for several years, now, and the reports back on the new format have been positive, both from faculty and students alike. I also view it as a step in the right direction that Federal Income Tax and Administrative/Regulatory Law have been elevated to quasi-required status. The more tax the more marketable the graduate.

As for the negative aspects of the ongoing curriculum reform process? In my opinion it is unfortunate that a student may now graduate from Suffolk Law School without having taken Corporations, Commercial Law, Wills, Family Law, and Equitable Remedies. Already the word this year from the Registrar's Office is that only 17% of the second year day and third year evening students have elected to take Wills and less than 10% of the second year day students have elected to take Equitable Remedies. The vultures may be circling around Commercial Law as well. The course enrollment numbers bear close watching in the years ahead.9

Whether some faculty publication explaining the importance of learning the fundamentals can (1) make up for the lack of first-hand knowledge on the part of most students as to what goes on in a real world law practice, (2) counteract the natural and very human temptation to gut and forum shop, and (3) adequately warn that not everyone will realize his or her law school dream of practicing entertainment or sports law remains to be seen. The word from the Registrar's Office is that a greater percentage of evening students than day students have elected Wills this year and will probably be electing to take those basic courses that heretofore have been required. It should also be noted that in recent years 80% to 90% of our students have been electing to take Family Law. We need, however, a sense of the type of student who eschews the basics? Where is he on the food chain? Is he elevating or bringing down Suffolk's bar pass rate?

In other disciplines there can be no meaningful analysis without data, no sustainable theory that is divorced from the facts. Can one be taught to think like a lawyer without having been exposed to a healthy dose of basic substantive doctrine as it currently exists, without having been exposed to the periodic table as it were? Other law schools have leapt head first into the experiment. I am pleased to report that Suffolk has not done so. Suffolk is wading in. Because the process has been incremental, innovations that turn out to be ill-conceived should be reversible without undue dislocation. Those that have merit can only serve to enrich the academic experience for all concerned. Certainly "feedback" from Suffolk alumni as to what reforms seem to be working, and what seem not to be working, would be helpful and should be addressed to the Curriculum Committee.

---

1 The 1994/1995 academic year was the last year that Wills and Trusts was offered as a single course at Suffolk Law School. Effective August of 1995, Wills was delinked from trusts and assigned elective status. Advanced Trusts was offered for the first time in the Spring of 1996. It is for students who successfully complete the Fiduciary Relations course and then seek exposure to those sophisticated trust concepts they are likely to encounter in practice. There is now no Trusts course, as such. The Fiduciary Relations course, however, will cover all material subject to testing in the trust component of the bar examination.


3 Perhaps some thought should be given to basing class rank only on courses that are fully required and to making elective courses pass-fail. This might dampen the incentive on the part of students to gut shop and on the part of faculty to respond by inflating grades. The conscientious students who opt for the rigorous technical courses would then not be penalized. Or some thought might be given to an internally-prepared multiple-choice proficiency exam which must be taken and passed before graduation. The grade would be factored into the computation of one's class rank. The concept of a required common law/statutory survey course in the third year (day) and fourth year (evening) covering family law, wills, corporations, bankruptcy, and commercial law might also be worth considering.
Kronman's *The Lost Lawyer:*

*A Celebration of the Oligopoly of the Elite Lawyer*

*by Gerard J. Clark, Professor of Law*
Kronman adopts the Aristotelian description of the statesman as the ideal for the American lawyer and labels it the lawyer-statesman.

To a long time teacher of professional responsibility, the book looked exciting. The subtitle, the failing ideals of the legal profession, is something I think about all the time. Anthony Kronman, in addition to being the Dean of Yale Law School, had wowed me at an AALS Conference a couple of years ago.

I was disappointed. In spite of having an interesting central premise, the book is arduous to read. It lacks unity; it is myopic; it glorifies the past; it engages in armchair scholarship. But worst, it suffers from delusions of grandeur about the corporate elite of the profession.

Summary of the Book

In summary, Kronman boldly asserts the existence of a unified model of professional excellence accepted among elite lawyers, the model of the lawyer-statesman. This individual was educated at the nation's elite law schools and then joined large corporate law firms. There he apprenticed under an older lawyer-statesman, and after ten or fifteen years, he became imbued with the requisite practical wisdom to join the ranks. From there, he often dedicated his unique lawyer-statesman services to high level government. These services have been crucial to the guidance of the country in the twentieth century.

However, the last thirty years have witnessed a demise of the lawyer-statesman. Alas, the law schools no longer teach practical wisdom. Law firms are losing business to corporate law departments and lawyer loyalty to the firm that hired them out of law school has been weakened. Judges can no longer exercise practical wisdom because of court congestion and dispersion of the decision-making function caused by the addition of resources to the courts.

Law Schools

Good judicial opinions perhaps best exemplify the exercise of practical wisdom and thus cases should be diligently studied by the would-be lawyer-statesman. One would expect Kronman to be happy about American legal education where the case method still reigns supreme. According to Kronman, however, the dominant strains of legal scholarship for the last thirty years, indeed, the last one-hundred years have undermined the development of lawyer-statesmen. In a long and at times rambling chapter, Kronman reviews the history of the American legal academy beginning with the days of Langdell. He is critical of essentially all of it, causing one to wonder where the lawyer of thirty years ago got his crucial instruction in practical wisdom. The law and economics theory, "the
single most important change in legal education in the last twenty-five years," is hostile to the ideal of the lawyer-statesman because it is "incapable of acknowledging the phenomenon of incommensurability" and thus equates judgment with calculation.

Likewise, critical legal studies judges all law from its perspective of conflict between an ethic of self-reliance and an ethic of sharing. Duncan Kennedy's work is more interested in questions of rhetoric and the patterns of meaning and signification in legal argumentation, drawing its inspiration from literary criticism. Both of these schools contain the basic fallacies of scientific realism, which hold that proper critique of the law should make use of the methods of the social sciences.

Essentially the only academic who had it right according to Kronman is Karl Llewellyn in The Common-Law Tradition: Deciding Appeals, which sought to "stabilize the law by placing it within a larger framework of more-basic values extrinsic to the legal order." Llewellyn claimed that discovery of the law could occur through specific traditions of work and by habits of thought and perception that can only be gained by immersion in the traditions of the common law. To this extent he shares the stage with Bentham and Austin, and obviously Kronman.

Somewhat contradicting his own description of the fallacies in mainstream legal education, Kronman asserts that until thirty years ago law schools understood that in preparing their students for the practice of law, they had to introduce the student to the "craft traditions of their profession" which helped "to acquire the habits that they will later need in practice." Further, law schools introduced the student to the "culture of the profession," and assisted the student to shape his "professional self-conception."(269) Legal education today, however, under the guise of legal science relegates practical wisdom to "obscurantism," which will lead to "professional suicide."

**Corporate Law Firms**

After graduation, the new lawyer is still far from his goal of lawyer-statesman. The training must continue for many years. That training will occur in an elite corporate law firm. These firms are “elite institutions,” which attract the best graduates, which possess the greatest clout within the profession, and dominate professional culture and ideals over “all those that stand below them in the hierarchy of power and prestige.” As such they are the sole repositories of lawyer-statesmen and the “principal standard bearers...in the sphere of private law.” Distinguished lawyer-statesmen dominated their firms and led them into a culture of public service. Accordingly they not only shaped the New Deal, and led the country’s war effort but have since been the “principal architect of the new world order that followed.”

Kronman bemoans the loss by corporate firms of business to in-house competition and the loss of a sense of law firm loyalty. The members of the law firm of forty years ago shared a culture which expressed itself in many ways including “the clubs they joined, the hobbies they pursued, the charities they supported, the schools they sent their children to and the neighborhoods they chose to live in.” But now, Kronman suggests, increases in firm size “make it more difficult for lawyers to identify with the firm in a more personal way,” which in turn weakens the “large firm's institutional solidarity.” Life-long commitments to the firm one joins after law school apparently deepens the instruction in practical wisdom. Assumedly, any interruption of the “extended apprenticeship in judgment” or shifting of instructors destroys the experience.

Concerning in-house competition, Kronman cites the obvious fact that “many corporations today do more of their own routine legal work than before and increasingly rely on outside firms only for those unusual matters requiring special intellectual or other resources.” One would have thought that this phenomenon would free the lawyer-statesman at the big firm to limit his work to tasks that merit the exercise of his gift for practical reason. Not so, because these “transactional” tasks are performed by teams on which lawyers of necessity “occupy positions performing repetitive and ministerial tasks-tasks that neither challenge nor excite.” Just why the deprivation of routine corporate tasks solves this problem is unclear. Regardless, the lack of common contacts with the client will cause the lawyer's judgment to be thinner and more abstract. Further, the true practical wisdom can not be afforded by house counsel because he has not had the long apprenticeship with the lawyer-statesman of the elite firm.

**The Courts**

Predictably, Kronman loves common-law adjudication. It is a deliberative activity “in an especially pure form,” which is fact-based, requiring sympathy and detachment, presenting incommensurability and the need to find results in conformity to political fraternity. However, increase in the caseloads of courts have overwhelmed judges, giving them insufficient time to deliberate in a fashion required by practical wisdom. Worse, the courts have been bureaucratized. Judges become managers of larger judicial staffs. They farm out decisions to alternative dispute resolvers, and they rely more heavily on their law clerks. Too often the judge is deprived of real contact with the flesh and blood dispute and reads “monocular” summaries of some other decision-maker, who assumedly is not a practitioner of practical wisdom.
As Aristotle uses the term, practical wisdom is the rare character trait that informs the lawyer-statesman and places him in a superior position to all others...

Critique

As stated earlier, there is very little in this part with which I agree. Aristotelian practical wisdom provides a useful description of the process of choice when one is presented with indeterminate courses of action. And I suppose that training in the habits of practical wisdom, including sympathetic detachment, calculating costs, evaluating prior experience and future consequences improves a person’s ability to judge. It is also useful in describing the cognitive process by which a lawyer formulates an analysis of a legal problem. I would add, however, the need for affective, behavioral and normative considerations before the judgment is truly wise.

As Aristotle uses the term, practical wisdom is the rare character trait that informs the lawyer-statesman and places him in a superior position to all others in making the whole range of public judgments. Thus our lawyer-statesman could assume to help us with the difficult issues of the day such as how to balance the budget, control medical costs, reduce drug abuse, crime and domestic violence. Specific knowledge of the field in question is not necessary. Certainly, Kronman is correct that Cyrus Vance, Dean Acheson and John McCloy came out of corporate law firms and had stellar careers as great public servants. But here is where the myopia sets in. Ex-corporate lawyers did not play the major role in the public life of the nation that Kronman claims. And since we are describing statesmanship and its attributes, how does he account for all the non-lawyer statesmen who have guided the country? While he never says so, he leaves the impression that an elite legal education plus big firm apprenticeship is the sole path to statesmanship of any kind whatsoever. Does this exclude Eisenhower, who came out of the military, Kennedy, who was a career politician and Oppenheimer, who was a scientist. Further where did the great statesmen of the past, like Jefferson, Webster and Lincoln get their crucial training?

Further, practical wisdom is an inherently conservative cognitive process which is incapable of generating the kind of quantum leaps in public perception that people like Martin Luther King have supplied. The creativity of artists, inventors and business people has provided more leadership to modern America than corporate lawyers.

The assertion of the dominance by the corporate elite of the profession’s culture and ideals is demonstrably false at least for about half of the profession. The Heinz and Laumann study of the Chicago bar, entitled The Chicago Lawyers, found that the bar is stratified into two distinct hemispheres according to client served: individual or institutional. In popular and professional culture, the proto-typical lawyer is the defender of the individual from the injustices of the system. Nationally, state bar associations are probably like the Massachusetts Bar Association: dominated by the lawyer for individuals.

Two segments of the bar, the 400,000 lawyers that serve individuals and the 100,000 that serve the government are curiously absent from this book, presumably because they could not have achieved the status of lawyer-statesman (I might add that women and minority lawyers also seem absent). The 400,000 that represent individuals practice as solos or in small firms attending to the problems of individuals including family, personal injury, real estate, estate planning, administrative, tax and small criminal. The 100,000 lawyers that work for federal, state, and local government practice in every area imaginable. Kronman claims that this work is less prestigious and he is probably right. But, if the measuring rod is the need for the exercise of practical wisdom, I would judge there to be a greater call upon this quality in the life of the servant of individuals and government than the servant of business. Family law issues like abuse and custody strike me as some of the most difficult that a lawyer can face. Criminal and juvenile law, personal injury, poverty and pro bono practice all call for the frequent exercise of practical wisdom. Certainly many experienced general practitioners can impart practical wisdom regardless of their law school or background. Likewise, counsel for a public agency is often presented with problems that require a heightened exercise of practical wisdom that takes into account the additional factors of politics, public budgetary concerns and spin control. Further, how can Kronman exclude all government law offices from the list of places where one can work with a lawyer-statesman mentor? Certainly a recent graduate can gain the requisite training in large numbers of public agencies, including some divisions of the Justice Department, the SEC, and innumerable state and local agencies that have reputations for excellence like the Massachusetts Attorney General’s Office.

In comparison, corporate law seems almost mundane. The goal of profit maximization and risk minimization is always clear and the lawyer-technician counsels about corporate structure, accounting and tax. Even the largest
of corporate deals like the multi-billion dollar R.J.R. Nabisco merger present questions that are measurable and goals clearly articulated by a sophisticated client. The lawyer is, in large part, the technician who prepares and files the proper documents.

Why is this so prestigious, other than that there is a lot of money involved? True, the lawyer-scrivener gets paid a lot, he went to an elite law school, he did a grueling and uncertain seven or eight year apprenticeship where he may have worked for sixty or seventy hours doing research and often working on minutiae. He may have learned that part of the Internal Revenue Code that deals with corporations and is now qualified to counsel on the tax aspects of mergers and acquisitions.

I also disagree with Kronman with respect to what has happened in the law schools over the past thirty years. He claims that the rise of the law and economics and critical legal studies movements is so complete as to have swallowed up the case method of the fifties and sixties. In my view the core of what law school is about has not changed for one-hundred years. Casebooks and a modified socratic style in a large classroom are still very much with us. Here his argument has wide gaps and just why the Harvard-model case method of instruction instills practical wisdom escapes me, especially in light of Kronman’s critique of Langdell, the founder of the case method, as in search of a “latent geometry” in the common law. If any kind of education were going to be successful in teaching practical wisdom it would seem to me to be clinical education where the student learns that no legal problem comes without context, that facts are ever-shifting and where client goals are indeterminate. Dewey suggests that immersion into customs, methods and working standards is what is crucial in education. Simulations and problems approaches might attempt to replicate the real world. But appellate cases are distant indeed from the true exercise of practical wisdom.

Concerning the courts, Kronman very much sounds like the armchair intellectual. A passage in this chapter demonstrates the Dean’s writing style:

Thus if the ideal of lawyer-statesman has lost much of its authority in our law schools and large firms, that is, perhaps, not so puzzling after all. For in each there is a built-in conflict between this ideal and the other forces, intellectual and material, that challenge it directly. But there is another branch of the legal profession that is free to provide a hospitable environment for the values embodied in the figure of the lawyer-statesman. I have in mind the adjudicative branch of law, by which I mean the work that judges do deciding disputes in those formal institutional settings we call courts. p. 317.

Relying mostly on the works of others, he bemoans the use of surrogate judges and alternative dispute resolvers, the increase in the size of the staffs of the courts and court congestion, as undermining the exercise of practical wisdom on the part of judges. As a result modern judicial opinions “contain stylistic features [that] reflect the combination of hubris and self-doubt,” and thus gone are the good old days when judges were lawyer-statesmen. However, how all of these judges (derogatorily speaking, lawyers who knew politicians) and those that preceded them thirty years ago gained their practical wisdom if perchance they have a sub-elite legal education or missed out on elite firm mentoring is never explained.

A Comment

Critiques of the profession are of course as old as the profession itself. Plato in Gorgias wonders whether advocacy of another’s cause is ever an honorable way to act. More recently, Marvin Frankel in Partisan Justice suggests that the lawyer’s role in the adversary system which, of course, at times, requires the obtusation of truth and the frustration of justice, undermines just and efficient adjudication. Jerold Auerbach in Unequal Justice claims that the professional elite have always pursued their own self-interest in codes of professional responsibility and elsewhere, much to the detriment of non-elite lawyers and the public. Derek Bok rues the massive diversion of exceptional talent into the practice of law that adds little to the growth of the economy, the pursuit of culture or the enhancement of the human spirit. Mary Ann Glendon in her Nation under Lawyers claims that lawyers are undermining the very rule of law for their own purposes.

But where does the truth lie? Are we social parasites? Are we lost? Are our professional ideals dead? In 1986, the ABA Commission on Professionalism adopted Roscoe Pound’s definition of a profession: a group pursuing a learned art as a common calling in the spirit of public service. However, when closely parsed, the definition seems wanting for the lawyer of 1996. A calling seems to assume the existence of a caller who has chosen the individual for some special work. A synonym familiar to Catholics would be the word vocation, which is used to describe a decision by God to call an individual to the religious life to minister to the spiritual well-being of God’s flock on earth. Kronman invokes this idea when he suggests that calling implies a means to achieve “salvation” or at least its secular equivalent of affording meaning to the life of the person called. But does the law afford meaning to the life of the lawyer more than other sources of meaning such as religion or family or nationality? Do lawyers gain more meaning from their workplace activities than a business person, an artist or a police officer?

Pound also suggested that the calling be common. Is there a strand of unity which ties lawyers together? Heinz and Lauman suggest not: that there is almost no
What is common between the lawyer employed by the IRS to audit tax returns and the solo practitioner in a small rural town? They both went to law school and hold a license from the highest court of their state, but in non-unified bar states, like Massachusetts, that is the extent of their commonality. I suspect that the sense that the whole bar is common is dead forever, if it ever lived at all. In its place are smaller associations that are directed at the specialties like ATLA, the Patent Law Association and the Federal Bar Association.

Pound called a profession a "learned art." The learned part gets more difficult every day. The sheer volume of the law seems to continue to expand exponentially. So to be learned today requires more effort than when Pound spoke in 1953. Art is used to distinguish it from science and to signal its indeterminacy and its need for its manipulation by the practitioner on behalf of the client.

What about the spirit of public service? Law is, by its nature, public. But if this is all that is meant by public service, the phrase is reduced to a tautology. Certainly many lawyers serve their communities as elected or appointed officials. The codes have always asserted an obligation to do pro bono work, but this has generated an uneven response from the bar. The ABA's MacCrate report and the preamble to the Model Rules of Professional Conduct assert a responsibility of lawyers to enhance the capacity of law and legal institutions to do justice. But how does the individual lawyer do this? Does he file legislation? Certainly the history of court reform in the United States would not encourage an individual lawyer to be optimistic about the viability of his or her individual court reform efforts. But public service also appears alive and well among public sector lawyers and many private practitioners who do political work, who staff local boards and commissions, who serve charitable organizations and who do pro bono work. And what of the suburban solo practitioner who does a good job at reasonable prices for a clientele of individuals who generally seek adjustment of private arrangements like deeds, divorce decrees and corporate charters. Are they less the professional because of the lack of public service on their resume?

Finally, many others, in addition to the three classical professions of law, medicine and clergy, now claim the title professional, including the accountant, the architect, the teacher as well as the investment advisor, the social worker and the personal trainer. Has the term, either as defined by Pound or otherwise, become meaningless? If so, does it necessarily mean we are lost?

Kronman's answer is yes. But his argument focuses narrowly upon the exercise of practical wisdom in the big firms and courts. It is weak and impressionistic. The whole premise of the book, that for seventy years corporate firms exclusively were populated by lawyer-statesmen and now they are not, is far from proven. Most of the recent developments that he complains about are a loosening of the monopolistic tendencies of thirty years ago and have occurred because the community of clients demanded them. The fact that there are more uses of alternatives to adjudication is a good thing; more staffing for the courts (although not particularly apparent in the Massachusetts state courts) is also a good thing. To assert that these developments have frustrated the exercise by judges of practical wisdom is far from proven and in my opinion wrong. Further, as a long-time reader of published court opinions, I do not feel that what I am reading today is inferior to the product of 1960. The facts that large law firms are less monolithic and that in-house counsel are now doing work at a fraction of the cost which used to be farmed out to law firms are good things. The claim that, as a result, less practical wisdom is being practiced is elitist, unproven, and again, wrong in my opinion. The client, who gets very little attention in this book, is better served.

So again, are we lost? Clearly, the codes of professional conduct are no help. The preamble of the 1983 Model Rules states that the rules impose obligations or prohibitions that form "a basis for invoking the disciplinary process," unlike its predecessors, the 1969 Code and 1908 Canons of Ethics, that stated aspirations that lawyers should attempt to achieve. Llewellyn's definition of the professional demands that he or she put service ahead of all other goals including personal well-being. I suspect that, at least for the 550,000 lawyers ignored by Kronman, the ideal of learned service is alive and well. The degree to which any given lawyer lives up to the ideal is unknowable. But, by way of anecdote, the majority of the alumni of our law school strike me as successfully engaged in fascinating, productive work. I asked my one hundred and fifty interns from last year, working in the public and non-profit sector to observe and report their assessment of the competence, commitment and job satisfaction of their lawyer-supervisors. Most report that their supervisors love their jobs. Many of them have probably achieved the status of lawyer-statespersons. Their practical wisdom appears in tow. They have achieved Kronman's true humanism: "a reverence for the variety of irreconcilable human goods and the genius of unprincipled invention that has made it possible for people to live together despite the incompatibility of their conceptions of what is valuable in life."

Whether a life in the law is thus a calling, and therefore a source of salvation, depends upon the individual lawyer, but for the many who serve their public or private clients well and who understand the true nature of their fiduciary obligation, I suspect that it is.
The Supreme Court: Revolution and Counterrevolution
"...expansive post-1937 view of the commerce clause has seemed durable, almost uncontroversial. In 1995, however, another note was sounded."

The year 1937 has provided endless fascination for scholars of the Constitution. Before that year the Supreme Court invalidated much socio-economic legislation, state and federal, including pivotal New Deal legislation, as a result of its interpretation of due process and also its grudging interpretation of the power of Congress under the commerce clause. In 1937 came the change. Statutes that seemed likely candidates for invalidation based on recent precedent now were upheld. At first it was by narrow five-to-four majorities with only an apparent change of heart by Justice Roberts to explain the result. Did Roberts change? If so, why? Did the threat of President Roosevelt's Court Packing Plan intimidate him? These issues have been debated ever since. In any event President Roosevelt, who had had no appointments to the Supreme Court during his first term, soon had several and eventually nine, counting the promotion of Harlan Fiske Stone to Chief Justice.

The Supreme Court seemed permanently remade. In particular the Court's interpretation of the power of Congress to regulate commerce rapidly became anything but grudging. Indeed, it soon became extraordinarily expansive, to the point where it seemed to be only a slight exaggeration to say that if the question is whether something is interstate commerce, the answer is yes. In addition this expansive post-1937 view of the commerce clause has seemed durable, almost uncontroversial. In 1995, however, another note was sounded. The Supreme Court by a vote of five-to-four invalidated under the commerce clause the Gun-Free School Zones Act of 1990. United States v. Lopez, 115 S. Ct. 1624. Time will tell whether this is an isolated case or the beginning of a significant retreat in regard to the commerce clause.

Also, time will tell whether Justice Kennedy is emerging as the Justice Roberts of the current Court. The recently concluded term of the Supreme Court yielded two pivotal cases, both decided five-to-four. Lopez is one. U.S. Term Limits, Inc. v. Thornton, 115 S. Ct. 1842, the case in which the Supreme Court struck down state attempts to impose congressional term limits, is the other. Four of the Justices — roughly the "conservatives," Chief Justice Rehnquist, Justices O'Connor, Scalia and Thomas — voted to invalidate the Gun-Free School Zones Act but would have upheld term limits. Four other Justices — roughly, the "liberals" — Stevens, Souter, Breyer and Ginsburg, dissented in the school zones case but were in the majority in the term limits case. The remaining Justice was Justice Kennedy who in effect controlled the result in the two cases by voting with the "conservatives" in Lopez and the "liberals" in U.S. Term Limits. The two cases were very different, of course, but the theme of reserved states rights permeated both. The conservatives would have vindicated the state interest in both cases. Justice Kennedy, who has the seat on the Supreme Court for which Robert Bork was nominated, was alone in not being a member of a bloc in these two cases.

If Justice Kennedy is the Court's resident fence-sitter the same is not likely to be said of Justice Thomas. The cliché has been that Nino has two votes. This understates Justice Thomas who has emerged not only as the most conservative member of the Court but as the author of energetic and thought-provoking opinions.

The remainder of this essay will have two parts. Part One will be a review of an excellent recent book on the Supreme Court by William E. Leuchtenburg, The Supreme Court Reborn, The Constitutional Revolution in the Age of Roosevelt. (Oxford University Press, 1995). This book provides fresh insights on the era surrounding the events of 1937. It is, as the subtitle of the book proclaims, the chronicle of a revolution in constitutional law. Part Two of this essay will examine whether Lopez, the school zones case, is an aberration and only a small brake on Congress or whether it signals the beginning of at least a minor counterrevolution with a states rights theme. The scope of the 1937 revolution can be assessed with relative ease because we have the perspective of the intervening decades. Whether, on the other hand, Lopez will lead to a significant backing off from the Court's post-1937 commerce clause jurisprudence depends in part on events that have not yet occurred, notably future Supreme Court appointments. What we have for now is the opinions in Lopez — an opinion of the Court, two concurring opinions and three dissenting opinions. An appropriately cautious reading of the opinions suggests that Lopez may be more of a symbolic than substantive drag on the power of Congress. Nevertheless, as Justice Souter wrote in his Lopez dissent, "not every epochal case has come in epochal trappings."
The Supreme Court Reborn

William E. Leuchtenburg is William Rand Kenan Professor of History at the University of North Carolina at Chapel Hill. The book is actually a collection of essays. Much of it is based on papers presented at prestigious gatherings and much has been published before in different form. For this reason each chapter can be read as a free standing essay or the book can be read in its entirety. Although it can be read cover to cover with generous reward, it is, as the author acknowledges, somewhat repetitive because the various essays are designed to stand independently.

The first chapter in particular stands quite apart from the theme of the rest of the book. It is sufficiently unrelated to the Supreme Court-New Deal controversy that occupies most of the rest of the book that one would regret its inclusion were it not so penetrating and fascinating a study of a Supreme Court case. The chapter has the daring title *Mr. Justice Holmes and Three Generations of Imbeciles.* Even casual students of Constitutional Law will recognize the phrase “three generations of imbeciles” from the famous (infamous?) epigram of Justice Holmes in his opinion of the Court in *Buck v. Bell,* 274 U.S. 200 (1927). “Three generations of imbeciles are enough.”

In *Buck v. Bell* a Virginia statute provided for “the sterilization of mental defectives” in state institutions. Leuchtenburg first puts *Buck* in the context of the eugenics movement of the era and the related issues of restricting immigration on an ethnic basis and antimiscegenation statutes. The author’s main focus, however, is on the extraordinary opinion of Justice Holmes.

The opinion was brief, harsh and dismissive. Rejecting a challenge to the substance, not the procedures provided by the statute, Holmes seemed not just deferential to the legislative judgment but enthusiastic about its product. Leuchtenburg was not impressed. “In truth, *Buck v. Bell* shows the revered ‘Yankee from Olympus’ at his worst: his disdain for facts (he made a point of never reading newspapers), his contempt for views divergent from his own, his indifference to citing legal precedent, his reliance on quips, and his allegiance to elite attitudes.” (p. 19).

Leuchtenburg cites subsequent scholarship concluding that Carrie Buck, who was sterilized, was not an imbecile and that indeed: “There were no imbeciles, not a one, among the three generations of Bucks.” In one way this subsequent discovery is unfortunate because it distracts from the real problem in *Buck.* The procedures under the statute were adequate and indeed unchallenged. Factual correction at the Supreme Court level cannot be expected. As a matter of constitutional law the result was certainly arguable in the context of the times and perhaps even now. What is not excusable about *Buck,* even allowing for historical context, is the tenor of the Court’s opinion. “I purposely used short and rather brutal words,” Holmes later revealed. Even the one dissenter, Pierce Butler, dissented without opinion.

It is fashionable today to decry Supreme Court opinions, to say that they are too long, too numerous, overly footnoted, too much like law review articles, too much the product of inexperienced law clerks, contain too much hair-splitting, etc. These charges are made with such frequency because in large measure they are justified. Critics of the current Court in addition call for a return to the opinions of such as Holmes. Brief opinions, straightforward, not freighted with unnecessary citations. Before we buy into this call for a return to the past, let’s reflect on cases such as *Buck v. Bell.*

The modern Court pays us the compliment of taking its work seriously. Perhaps a modern day *Buck v. Bell* opinion would come festooned with more intellectual ornaments than some would desire, unlike the opinion of Holmes, which cited one case. It would, however, be thorough and it would be reflective of sensitivity to those adversely affected by governmental action. And dissenters would have their say. I do not know, for example, whether or not Justice Blackmun was correct in his dissent in *Bowers v. Hardwick* but the opinion was a powerful and sensitive expression of a point of view. The modern Court certainly needs critique but some of their predecessors may have been overrated.

If the first of Leuchtenburg’s nine chapters was peripheral to the theme of the book, this is even more true of the final chapter entitled *The Birth of America’s Second Bill of Rights.* This chapter is based on “a paper delivered in the French Senate in Paris in 1986 on the occasion of the centennial of France’s gift of the Statue of Liberty to the United States.” Given the occasion and the audience a sophisticated knowledge of American Constitutional Law was not presumed. This chapter tells the story of the incorporation of the Bill of Rights against the states which, in so far as it has occurred, took place largely during the 1960s. While Leuchtenburg’s effort was well adapted to the occasion readers familiar with the incorporation problem will find little new. Leuchtenburg presented factual background about some of the older cases in an interesting and even humorous way but basically this is familiar ground.
The modern Court certainly needs critique but some of their predecessors may have been overrated.

The rest of the book concerns from different angles the constitutional crisis of 1937 — the older substantive due process clause cases and especially the commerce clause cases that were an impediment to economic reform; the abrupt shift on the part of the Court in 1937 and the issue of its relationship to the re-election of President Roosevelt in 1936 and Roosevelt's ill-starred proposal to reform the federal judiciary in 1937; the appointment of then Senator Hugo Black to the Supreme Court in 1937 and the story of Black's connection with the Ku Klux Klan.

Leuchtenburg’s chapter three, The Case of the Contentious Commissioner, the story of Humphrey’s Executor v. United States, 295 U.S. 602 (1935), seems on the surface to be another chapter unrelated to the theme of the book. It is true that in terms of subject matter it is unrelated since Humphrey’s Executor simply held that the President does not have unlimited authority to remove FTC Commissioners. The Court distinguished the earlier Myers case as involving a “purely executive” official. The Court’s doctrine in this area has been significantly affected by its decision in a case not referred to by Leuchtenburg, Morrison v. Olson, 487 U.S. 654 (1988), the case that upheld the validity of the Independent Counsel statute against various constitutional challenges. Justice Scalia’s memorable dissent in Morrison v. Olson is especially perceptive in delineating the impact of Olson on the president’s removal power.

In any event the substance of the removal power dispute is not the point of Leuchtenburg’s essay concerning the Contentious Commissioner or at least not the reason for its inclusion in this book. Rather, the case, minor in itself, was apparently part of the motivation for President Roosevelt’s later effort to “pack” the Supreme Court. The problem was not the result in Humphrey so much as the opinion in which the Court shifted position without admitting it.

The Court in Myers, through Chief Justice Taft, wrote very broadly in favor of presidential power in the removal area. President Roosevelt had reason to believe he was acting within his authority. Indeed, Leuchtenburg reports that Stanley Reed, the new Solicitor general, chose Humphrey as his first case because he was confident that he could win it. The Court’s shift in Humphrey and especially the way the opinion was written angered Roosevelt.

Sutherland’s objection to presidential supremacy in 1935 when he had accepted Taft’s assertion of that very doctrine in 1926 raised the suspicion that the main difference in the two cases lay less in their nature than in the fact that FDR was now in the White House. The Humphrey ruling went far to persuade the President that, sooner or later, he would have to take bold action against a Court that, from personal animus, was determined to embarrass him and to destroy his program. (p. 79).

Thus, Humphrey was a lesser case that has been to an extent doctrinally superseded by Morrison v. Olson. It’s significance is that it contributed to President Roosevelt’s attitude towards the Supreme Court that culminated in what is usually referred to as the “Court-Packing Plan” of 1937. The Court-Packing controversy is, of course, another area well-trodden by scholars. Nevertheless, Leuchtenburg’s two chapters, together comprising nearly one-third of the book, present a fresh and thorough look at the topic.

Roosevelt, strengthened by his striking and, to some, unexpected electoral success in 1936, proposed a reform of the federal judiciary, which in essence, as it applied to the Supreme Court, would have authorized the President to appoint additional Justices when Justices over the age of seventy declined to retire. Under the plan the Court could be expanded to a maximum of fifteen. Thus the President would receive up to six new appointments. President Roosevelt’s frustration arose in part from the fact that, unusually, he had not had any Supreme Court appointments during his first term, although he certainly made up for it later.

During 1935 and 1936 the Court decided a number of cases invalidating core New Deal programs such as NIRA and AAA. These cases, restricting the power of the federal government to deal with economic problems, resulted from among other things a narrow definition of the commerce clause. This would have been bad enough had it simply left authority in the states but at the same time in the Tipaldo case the Court struck down state minimum wage legislation under the due process clause of the Fourteenth Amendment.
Roosevelt had had enough of what he called the "horse and buggy definition of interstate commerce," (p. 90) and, no doubt emboldened by his electoral success in 1936, decided on a course of action. There were various proposals at the time to restrict the authority of the Court by statute or by constitutional amendment. The route of constitutional amendment, never easy because of the super-majority requirements both at the proposal stage and the ratification stage, was even more of a problem in that era “because malapportioned state legislatures overrepresented conservative interests.” (p. 110). Some have said that FDR missed his chance by not campaigning against the Court in 1936 and getting a mandate against it but Leuchtenburg notes that this is hindsight because the scale of Roosevelt’s victory was not generally anticipated and even that he would win at all was not universally conceded. (p. 107).

Why was the Court Plan defeated and what were the consequences of the defeat? First, while the Court plan was pending the Court did a dramatic turn around, upholding the NLRA and the Social Security Act, as well as reversing field on state minimum wage legislation. This famous shift by the Court and the still disputed role of Justice Roberts is discussed further within.

Second, Justice Van Devanter retired. Whether intended or not this had the result of putting another pin in the Court plan balloon. Finally, Senator Joseph Robinson, the Senate Majority Leader, died during the final days of the Court fight. His role was crucial and his death ended Roosevelt’s hopes for getting even a compromise version of the Court bill. Robinson’s death also connects with the appointment of Justice Black to the Supreme Court. It seems that Roosevelt had promised the first vacancy to Robinson and that he rather than Black would have succeeded Van Devanter had he lived. Perhaps Black would have gotten a later appointment but obviously there is no way to know.

As to the consequences of the Court fight, Leuchtenburg takes an apocalyptic view. “It helped blunt the most important drive for social reform in American history and squandered the advantage of Roosevelt’s triumph in 1936.... The Court squabble deeply divided the Democratic party.... Because of the Court dispute, the middle-class backing Roosevelt had mobilized in the 1936 campaign ebbed away...The Court issue produced divisions among reformers of different types.... It undermined the bipartisan support for the New Deal.... The Court dispute affected Roosevelt’s conduct of foreign affairs.” (pp. 157-160).

What should Roosevelt have done? In retrospect it is easy enough to say he should have bided his time since he had numerous appointments to the Court soon enough and the reconstituted Court took a much different view of the power of legislation in the socio-economic area. But from Roosevelt’s perspective there was no guarantee that the Conservative Justices could not wait him out, old as they were. Also, Roosevelt, given the two-term tradition, presumed that he would be leaving office in January of 1941 and had to consider the possibility that he would be succeeded by a conservative Republican. In addition, the economic plight of the country was desperate. It would have been extraordinarily difficult for FDR to stand by while his New Deal program was dismantled.

Nevertheless, President Roosevelt simply wasn’t holding any picture cards in that fight. A constitutional amendment was not politically practical, especially in a short period of time. Attempts to limit by statute the jurisdiction of the court or its power of judicial review would have been clumsy and constitutionally suspect. The Court Packing Plan itself was disingenuous because Roosevelt really didn’t care how old the Justices were as long as they voted to sustain New Deal legislation.

The real problem facing Roosevelt was that the American people, like the framers of the Constitution, fear concentrated power above all. No doubt popular opinion was with the President on the New Deal legislation. But the people and Congress recoiled from what they perceived as an executive assault on the judicial branch. Even at the time FDR perhaps should have known that he had no choice but to wait for the opportunity to remake the Court with new appointments or for at least one of the Justices to shift his position. As we will see next, one of the Justices, Owen Roberts, did memorably shift his position, the so-called “switch in time that saved nine.” Whether that switch was totally independent of Roosevelt’s court proposal is disputed to the present day.

**West Coast Hotel v. Parrish**

Once again Leuchtenburg has a snappy chapter title: *The Case of the Wenatchee Chambermaid. Parrish* involved a statute providing for minimum wage for female employees. The Court in upholding the statute overruled the *Adkins* case, decided in 1923. More astoundingly the Court overruled *Tipaldo*, which had been decided only a matter of months before. True, the Court purported to explain *Tipaldo* with the claim that in that case the
issue had been whether Adkins was distinguishable, not whether it should be overruled. This basis for side-stepping Tipaldo has generally received a skeptical, even derisive response. As Robert H. Jackson observed in The Struggle for Judicial Supremacy, page 208, written shortly before he was appointed to the Supreme Court, “This doctrine that the Court would apply bad constitutional law to a case unless the lawyers asked it specifically to correct itself was a bit of face-saving for the Court which it soon abandoned, when it changed a century old doctrine on its own motion without even hearing argument of the point.” [Citing Erie R. Co. v. Tompkins.]

The real problem was not that Adkins was overruled and Tipaldo effectively overruled when the ink had barely dried but that Parrish and Tipaldo were both five to four decisions with the difference in outcome arising from the changed vote of Justice Roberts.

The motivation of Justice Roberts continues to be debated. The contemporary interpretation was that the shift was obviously political, resulting from the threat of Court reform perhaps combined with the margin of Roosevelt's victory in 1936. Later came the realization that the conference vote in Parrish, as distinguished from the date the decision and opinions were released, was before Roosevelt announced his Court bill. There were later decisions, however, in which Roberts also switched and where his vote was crucial.

Leuchtenburg does not appear to take a firm position on the reason for the change by Roberts. A recent article cited by Leuchtenburg, however, very definitely does take a position. See Ariens, A Thrice-Told Tale, or Felix The Cat, 107 Harv. L. Rev. 620 (1994). In this extraordinary study Ariens argues that the original, “political” interpretation of the Roberts switch prevailed until Justice Felix Frankfurter turned it around in an article published in the University of Pennsylvania Law Review. In his meticulous, Lt. Columbo-style investigation into the background Ariens concludes that Frankfurter acted not so much out of a desire to protect Roberts, who was long off the Court and then recently deceased, as out of a desire to vindicate the Supreme Court's reputation for neutrality and impartiality, a reputation needed particularly at that time because of its recent decision in Brown v. Board of Education. Ariens concludes that Frankfurter succeeded in imposing his view of the events of 1937 on the academic community but that he did not deserve to succeed.

Although the Ariens study is remarkably thorough, if polemical, there may have been less at stake here than Ariens and perhaps Frankfurter believed. The premise of the article is that Frankfurter acted as he did because he believed that the Court's judicial review authority would be fatally undermined, with specific reference to the then recent Brown case, if the received “political” interpretation of the Roberts switch went unchallenged. This may overestimate the extent to which the willingness of the American people to tolerate judicial “veto” of arrangements arrived at through the political process depends on the Supreme Court's being publicly perceived as impervious to public opinion and political events.

Chief Justice Rehnquist is more realistic:

I was recently asked at a meeting with some people in Washington, who were spending a year studying various aspects of the government, whether the justices were able to isolate themselves from the tides of public opinion. My answer was that we are not able to do so, and it would probably be unwise to try. We read newspapers and magazines, we watch news on television, we talk to our friends about current events. No judge worthy of his salt would ever cast his vote in a particular case simply because he thought the majority of the public wanted him to vote that way, but that is quite a different thing from saying that no judge is ever influenced by the great tides of public opinion that run in a country such as ours.

William H. Rehnquist, The Supreme Court 98.

Thus the motivation attributed by Ariens to Frankfurter may rest on a false premise. If there is anything today that undermines public confidence in the pronouncements of the Supreme Court it is the proliferation of five to four decisions (with the five often not agreeing on a rationale) on social issues of magnitude. Adarand Constructors Inc. v. Pena, the Court's most recent foray into the affirmative action quagmire, is a recent unhappy example. 115 S. Ct. 2097 (1995). Consider also two cases from 1992: Lee v. Weisman, 112 S. Ct. 1649 (invocations at public school graduations invalidated on establishment clause grounds) and Planned Parenthood of Southeastern Pennsylvania v. Casey, 112 S. Ct. 2791 (Roe v. Wade more or less reaffirmed). In both of these cases the role of Justice Kennedy was pivotal.

If the Court expects the country to acquiesce in its interpretation of the Constitution in such red meat areas as affirmative action, prayer in the schools and abortion, (and in Casey it made an explicit call for such acquiescence), it is not too much to ask the Court to reach some consensus as to result and rationale. There must be some middle ground between the dearly purchased clarity of Buck v. Bell and the festival of hair-splitting that the current Court often provides.
For a counter-example consider the impact of the Court's unanimous decision in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, decided in June 1995. In *Hurley*, which concerned the exclusion of certain marchers from the annual St. Patrick's Day Parade in South Boston, the Court unanimously reversed the Supreme Judicial Court of Massachusetts and upheld the right of the parade organizers to exclude marchers whose message the parade organizers judged to be inconsistent with the theme of the parade. The public reaction to the decision, as reflected in the media, was striking. While there is abundant evidence that the political dispute over the parade will continue, the legal dispute came to an immediate screeching halt. It seems clear that that was principally because the Court, first, was unanimous and, second, issued a single opinion treating it as a straightforward first amendment case. The Court in effect simply said: we are not taking a position on the wisdom or moral propriety of the exclusion but the parade organizers have a legal right to exclude marchers whom they believe have a message that contradicts the theme of the parade.

What if there had been four dissenters and the newspapers had a passionate dissent to quote? What if the majority was splintered, with Justices relying on different theories? Would the immediate public acquiescence in *Hurley* as settling the legal issue have occurred, particularly since the Court was reversing a state supreme court that had been nearly unanimous the other way? This is not to suggest that the Court should artificially suppress dissent or overlook subtleties in constitutional issues but, as *Hurley* illustrates, the Court is more likely to be accepted as the living voice of the Constitution if it achieves some consensus and clarity. The lack of consensus and clarity is a much more significant obstacle to the Court's prestige than is any perception that it is not totally immune to the tides of public opinion.

Living up to a high standard for provocative chapter headings Leuchtenburg chooses *A Klansman Joins the Court* as the title of his essay on the appointment of Justice Black to the Supreme Court. As the title makes plain the connection of then Senator Hugo Black to the Klan was the source of controversy. The Senate confirmed Black by a vote of 63-16, not a particularly good showing considering that he was a sitting Senator.

During the confirmation process Black's Klan connection was discussed but did not loom large. After the confirmation, however, a series of articles in the Pittsburgh Post-Gazette provided previously undiscovered information. This included the revelation that Black had been a member of the Ku Klux Klan and that even after he resigned from the organization he had received "a special life membership, a gold 'grand passport.'" (p. 192). There was an uproar and Justice Black delivered a radio address to the nation. This received mixed reviews but, of course, Justice Black survived to take his seat on the Court. Whether he could have been confirmed had the newspaper series appeared earlier is another question.

The broad outline of the Black controversy is familiar to anyone with a background in Supreme Court history but there were two interesting points in particular that were new (at least for this reader). First, one might have supposed that a consideration against nominating Black in Roosevelt's thinking would have been that he would have been losing an important ally in the Senate, something he could ill afford after the death of Senator Robinson. Leuchtenburg reveals, however, albeit buried in a reference note in the back of the book, p. 309 n. 85, that Senator Black, who would be up for re-election as a United States Senator from Alabama in 1938 was in political jeopardy. Thus Roosevelt may have believed that the Supreme Court appointment would be a graceful exit for a friend who perhaps would be leaving the Senate one way or another. Thus, it may be paradoxically true that Black would not have been appointed to the Supreme Court if his political standing in his home state had been more secure. A further paradox, and a reflection on the state of politics in Alabama in that era, is that while Black was in hot water nationally for the Klan connection he was increasingly in trouble in Alabama for being too "liberal."

Justice Black proceeded to serve on the Court for thirty-four years. He was, indeed, generally classified as a liberal although perhaps he is more properly regarded as a textual literalist and an originalist. However classified, Justice Black was certainly influential, in part, of course, because he served so long. His single-minded crusade to have the Court interpret the Fourteenth Amendment as incorporating the Bill of Rights largely prevailed and for that alone he would be regarded as a Justice of singular influence.

The other revelation about Black (once again, a revelation to this reader, at least) is that Black regretted having joined the Klan but on the surprising ground that it cost him the vice-presidential nomination in 1944 and therefore, of course, the presidency. For this proposition Leuchtenburg cites Mr. Justice and Mrs. Black, the joint memoirs of Justice Black and his wife, Elizabeth.
There must be some middle ground between the dearly purchased clarity of Buck v. Bell and the festival of hair-splitting that the current Court often provides.

Whether Black would have been FDR's running mate had it not been for the Klan unpleasantness we (and presumably Hugo Black) would have no way of knowing. It does not seem implausible, however. The story is much told that FDR expressed a willingness to run with either Senator Truman or Justice Douglas, with the argument still raging about whom he preferred. See, e.g., Doris Kearns Goodwin, No Ordinary Time 527 (1994). Perhaps, apart from the Klan issue Hugo Black would have been on that list. He had both Truman's Senate credential and Douglas's Court credential. He had been a loyal political ally of FDR. Presumably, we will never know.

The Supreme Court Reborn is an excellent and informative book. Despite that, before this year readers conversant with Constitutional Law might have asked: Do we really need another book on the Court crisis of 1937? United States v. Lopez indicates that the story of 1937 is not as quaint as it may have appeared. We are not likely to see the hands of constitutional time revert to 1937 but there is a struggle on the Court now analogous to the struggle of that era. Also, as Lopez reveals that struggle once again includes the power of Congress under the commerce clause. To Lopez we now turn.


In the Supreme Court Reborn Leuchtenburg tells the story of a revolution that was won — won by the good guys. Lopez suggests that the battle may not be over. Will we soon be reading references to the Nine Old Persons?

Recent terms of the Supreme Court have been relatively quiet both in numbers of cases decided and controversy generated by those that were decided. This term was different, not in the number of cases but in the Court's willingness to confront important and controversial issues. Missouri v. Jenkins (restricting remedies for school desegregation); U.S. Term Limits, Inc. v. Thornton (striking down state imposed term limits for members of Congress); Miller v. Johnson and Adarand Constructors Inc. v. Pena (restricting racial classifications in state redistricting plans and government contracts) have attracted particular attention.

Lopez certainly belongs in that category as well because Lopez repudiated the widely accepted (if cautiously articulated) view that for all practical purposes Congress has a national police power when legislating pursuant to the commerce clause. In Lopez the Court invalidated the Gun-Free School Zones Act of 1990 as in excess of the power of Congress under the commerce clause. The Court divided five to four with Chief Justice Rehnquist writing for the Court. Justice Kennedy, joined by Justice O'Connor, wrote a concurring opinion stressing a narrow interpretation of Lopez. Justice Thomas, on the other hand, wrote an expansive concurring opinion calling for a re-examination of the Court's post-1937 commerce clause jurisprudence and a return to original intent. There were four dissenters.

Since four Justices rejected Lopez and two others stressed a narrow reading, whereas only one Justice openly called for a commerce clause rollback, the most natural reading of Lopez is that the powers of Congress under the commerce clause are still extraordinarily broad — but, contrary to what may have been thought previously, there are limits. This interpretation may be vindicated by events. Events may show, however, that Lopez was but a circumspect first step that the Court will build upon. At the least it will have an attitudinal effect, signalling that the era of casual transfer of authority from state to federal level is over.

Alfonso Lopez was a high school student who was arrested for possession of a handgun and bullets in school in San Antonio, Texas. He was charged under Texas law but those charges were not pursued when there was a federal complaint under the Gun-Free School Zones Act of 1990, which generally forbade possession of a firearm on or within 1,000 feet of the premises of a public or private school. The federal act did not preempt state law in this area and, of course, there is no federal constitutional bar to consecutive state and federal prosecutions for the same conduct. Bartkus v. Illinois, 359 U.S. 121 (1959); Abbate v. United States, 359 U.S. 187 (1959).

Presumably, few think that it is a good idea for students to have guns in school. That was not the issue. Most states have statutes, as Texas did, governing the problem of firearms in schools. The others deal with the
problem with more general laws and school discipline measures. For a post-Lopez example of state law dealing effectively with the problem of weapons in schools, see Doe v. Superintendent of Schools of Worcester, 421 Mass. 117, 653 N. E. 2d 1088 (1995). In Doe a ninth grade student was expelled for possession in school of "an ordinary-sized lipstick knife which, when twisted open, revealed a pointed, single edge, one and one-quarter inch blade." School authorities acted pursuant to the Education Reform Act, adopted in 1993, which makes "It easier for school officials to expel students who possessed a weapon at school or school-related functions." The court held that the expulsion did not violate state or federal constitutional law and that the school authorities had no obligation to provide the student with an alternate education. The student was readmitted a year later.

The issue in Lopez was whether Congress had the authority under the commerce clause to enact such a federal criminal statute. It is certainly a red herring to analyze this case in terms of whether the Court is being soft on guns in schools. The Justices in the majority in Lopez are the "conservatives," those who are generally least inclined to rule in favor of criminal defendants. States can and do regulate the matter. The existence of state laws does not automatically cause the problem to disappear but that is equally true of federal laws. The need for federal legislation is not obvious and even if it were that would not trump the issue of constitutional authority. Instead of congratulating Congress for legislating against guns in the schools perhaps we should seek to analyze the breakdown of order in the schools that has occurred in recent years and to consider what the federal government, including the federal courts, may have done to contribute to that breakdown. The spectacle of chaos in the schools may be an argument for less federal intervention, not more. Why has there been a breakdown in discipline in the schools during the past generation? Is it because the federal government has intervened in the local schools too little?

Lopez submitted to a bench trial on stipulated facts in order to preserve the constitutional issue. He received a sentence that included imprisonment for six months. Although, as a twelfth-grader caught with a firearm in school, Lopez might not appear to be a likely object of sympathy, the respondent's (defendant's) brief portrays a somewhat different picture.

The presentence report revealed that Lopez had no prior record, either as a juvenile or adult.... Lopez told the probation officer that he had been asked to hold the gun for others because he was a good student and rarely incurred disciplinary problems.... School records later submitted to the court showed that Lopez had no disciplinary problems.... Although Lopez was expelled from high school as a result of this incident, he was allowed to continue his education at an alternative education center and received his diploma on June 6, 1992.

The presentence report also showed that in August 1991 before his senior year in high school, Lopez had enlisted in the U.S. Marine Corps.... At the sentencing hearing, Lopez's Marine recruiter testified that Lopez had enlisted in the Corps' delayed-entry program, passed the physical and preliminary requirements, and was to report to boot camp before August 1, 1992.... The recruiter said Lopez would make a good Marine, and if Lopez did not "have an opportunity to go to basic training, I think it's going to be the Marine Corps' loss, I really do."

In its discussion of the facts the opinion of the Fifth Circuit in Lopez noted: "After being advised of his rights, Lopez stated that 'Gilbert' had given him the gun so that he (Lopez) could deliver it after school to 'Jason', who planned to use it in a 'gang war'. Lopez was to receive $40 for his services." 2 F. 3d 1343, 1345 (1993).

The Fifth Circuit held that the Act was invalid under the commerce clause. Since there was a split in the circuits, see United States v. Edwards, 13 F. 3d 291 (9th Cir. 1993), the Supreme Court granted certiorari. The Supreme Court did not address whether Lopez was a more or less innocent victim of events or even whether as a prudential matter federal legislation concerning guns in schools was desirable. The stark issue was one of constitutional power: does the commerce clause provide a constitutional basis for the Gun-Free School Zones Act? Five Justices said no, four said yes. The five who said no were Chief Justice Rehnquist (who wrote for the Court), joined by Justices O'Connor, Scalia, Kennedy and Thomas. As noted above Justice Kennedy, joined by Justice O'Connor, submitted a concurring opinion that has the practical effort of softening Chief Justice Rehnquist's opinion of the Court because without their votes it would not have been an opinion of the Court. The dissenters were Justices Stevens, Souter, Breyer and Ginsburg.

Thus, the Court in this case (and perhaps generally) appears to have a precarious "conservative" majority, with Justices O'Connor and Kennedy nudging that majority towards the center. See N.Y. Times, July 2, 1995, §4 (Week In Review), at 1, 4, col. 1:

During the term that began last Oct. 3 and ended June 29, the Court issued opinions in only 82 cases. That was the lowest number since the 82 opinions issued during the 1955-56 term. In the early 1980's, the Court was deciding nearly twice the number of cases.
Sixteen of the cases, or 20 percent, were decided by 5-to-4 votes, and these were often the ideological battlegrounds. Justices Kennedy and O'Connor, whose participation was usually the key to victory in these cases, were in the majority more than any other Justice: 13 out of the 16 cases for Justice Kennedy and 11 cases for Justice O'Connor. The Stevens-Souter-Ginsburg-Breyer group voted together 10 times in these cases: four times in the majority, when they gained the support of either Justice Kennedy or Justice O'Connor, and six times in dissent.

Taking as a rough measure of the Court's ideological polarities the 35 cases in which Chief Justice Rehnquist and Justice Stevens were on opposite sides, the alliances of the other Justices were as follows: Justice Thomas, 33 times with the Chief Justice and twice with Justice Stevens; Justice Scalia, 31 times with the Chief Justice and four times with Justice Stevens; Justices O'Connor and Kennedy, both 24 times with the Chief Justice and 10 times with Justice Stevens; Justice Breyer, 16 times with the Chief Justice and 18 times with Justice Stevens; Justice Souter, 14 times with the Chief Justice and 20 times with Justice Stevens; and Justice Ginsburg, 11 times with the Chief Justice and 23 times with Justice Stevens. (Not all Justices voted in all the cases).

The Opinions

1. The opinion of the Court

Much of what was written in the opinions in Lopez was commonplace and inevitable. The opinions traced the expansive interpretation of the commerce power set forth by Chief Justice Marshall in Gibbons v. Ogden through the narrower interpretation that prevailed in the earlier part of the twentieth century, and once again through the extraordinarily generous interpretation that erupted suddenly in the late thirties and seemed unassailable before Lopez.

The Court in Lopez, on the surface at least, does not seem to mount a fundamental challenge to this most recent phase of the Court's commerce clause jurisprudence. It seems only to say in effect: "Enough is enough. The commerce clause (even when considered with the necessary and proper clause) has limits. It does not give Congress a de facto national police power."

The problem is: If the Court fundamentally accepts the post-1937 cases and merely concludes that they are not unlimited (it does not purport to overrule any of these cases), what precisely was the problem with the Gun-Free School Zones Act? We will see that the dissenters have the mirror image problem. They too reject in the abstract the notion that the commerce clause gives Congress a police power but as the Justices in the majority repeatedly emphasize the dissenters seem unable to identify any limits to the commerce clause.

The Court determined that the commerce clause, however broad, could not support the Gun-Free School Zones Act. Since this statute does not involve regulation of the channels or instrumentalities of interstate commerce, "the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce." 115 S. Ct. at 1630. Given that the Court purported to restate rather than change the current test, and that under existing law the Court has upheld Congressional regulation of home grown wheat because of its effect on interstate commerce, regulation of intrastate extortionate credit transactions (loan shark ing) because of its interstate effect and forbidding of racial discrimination by restaurants on the theory that because of the discrimination they used fewer products that move in interstate commerce, what was the problem with the Gun-Free School Zones Act?

The Court identified three flaws. First, the Act "is a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define these terms." 115 S. Ct. at 1630-31. The idea is that although the familiar cases noted above may seem like something of a stretch, at least they really do involve commercial regulations. For example, in Wickard v. Filburn, the home-grown wheat case, Congress sought to prop up the price of wheat. Home-grown wheat was part of the equation because this wheat had a potential for flowing into the market or at the least would satisfy the needs of someone who would otherwise make purchases on the market. The regulated event - wheat grown for use on the farm - is intrastate but has an impact on interstate commerce which, when aggregated with other similar events, can be substantial. The regulation itself is of a commercial nature, having to do with the price of wheat. The Act in Lopez in contrast is not of a commercial nature.

This does not mean that Congress must have commercial motivation. In Heart of Atlanta and McLung, the cases in which the Supreme Court upheld the Public Accommodations Title of the Civil Rights Act of 1964 under the commerce clause because racial discrimination had an effect on interstate travelers and the amount of produce that moved in interstate commerce, the Court certainly knew that primarily Congress had a civil rights motivation. Indeed, that was the title of the Act. But Congress really did regulate commerce. In Lopez, according to the Court, this Act is simply not a regulation of commerce at all.
The Court's second objection is that the statute "contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." At 1631. Apparently it would be a different case if the statute required a showing that the firearm or its components moved in interstate commerce. If this would make a decisive difference the defect in the statute could be easily cured. See Brief of 16 Members of the United States Senate and 34 Members of the House of Representatives as Amici Curiae In Support of Petitioner:

It is also significant that virtually all guns travel in interstate commerce. The House Judiciary Committee recently issued a report to accompany H.R. 3098 acknowledging the fact: "The Congress finds and declares that...even before the sale of a handgun, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce." H.R. Rep. No. 389, 103 Cong., 1st Sess., at 1 (1994).

This is not the first time that Members of Congress have recognized that nearly all guns, or at least their component parts, have at one time moved in interstate commerce.

Finally, the Court notes the absence of legislative findings in connection with the Gun-Free School Zones Act. After the Fifth Circuit invalidated the Act in part because of absence of findings, Congress amended the Act to include after the fact findings. 115 S. Ct. at 1632 n. 4. The government did not rely on these findings, not only because they were after the fact, but also perhaps because they were conclusory. See 115 S. Ct. at 1656 n. 2 (Souter, J., dissenting).

The Court conceded that in general Congress does not have to make legislative findings. Indeed, Congress does not have to invoke its source of constitutional authority. Nevertheless, the absence of findings is significant. "But to the extent that congressional findings would enable us to evaluate the legislative judgment that the activity in question substantially affected interstate commerce, even though no such substantial effect was visible to the naked eye, they are lacking here." 115 S. Ct. at 1632. Unless this argument is makeweight it implies that the presence of findings could have made a difference.

In summary, this part of the opinion relies on three points. One, the regulated event, possession of a gun in or near a school is not a commercial activity. Two, the Act does not require a jurisdictional nexus element on a case by case basis, that is, a requirement that the particular gun was connected with interstate commerce. Three, Congress did not support the Act with legislative findings.

The problem is that these three arguments do not combine logically and two of them can easily be cured by an amended statute. Suppose Congress passes a new statute with detailed findings concerning the effect of gun possession in school zones on interstate commerce. Guns in school affect the quality of education and thus the productivity of workers. They also affect the willingness of individuals and businesses to relocate to areas that have such problems. The government made such arguments and the opinions in Lopez addressed them. It would not be hard for Congress to come up with the appropriate legislative history.

Congress could also insert a jurisdictional element. Since, as noted above, almost all guns or their components move in interstate commerce this would complicate proof at trial but would not materially affect the reach of the statute. If these two changes would save the statute Lopez reduces to a drafting problem. If they would not, the Court's first argument would be the reason. Namely, earlier cases concerning the reach of the commerce clause, however expansive, dealt with the regulation of events that were on their face commercial and that is not true of Lopez.

Whatever the technical explanation for the result in Lopez the Court apparently wished to repudiate the notion that the commerce clause gives Congress a de facto police power. The federal government has limited and enumerated powers. Quoting Gibbons v. Ogden, the Court noted: "The enumeration presupposes something not enumerated." 115 S. Ct. at 1633.

Although this aphorism may seem to have a Yogi Berra — like obviousness, it is at the heart of the dispute in Lopez. The logic of the earlier commerce clause cases, together with the necessary and proper clause, suggests that Congress can regulate just about anything. But the fundamental structure of the Constitution, including the tenth amendment, contradicts such a notion. The Court has recognized that the tenth amendment is tautological — that which is given, is given; that which is retained, is retained. "If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." New York v. United States, 112 S. Ct. 2408, 2417 (1992).
Nevertheless, the tenth amendment radiates an attitude. Something is retained or, once again, as the Court has put it: "The enumeration presupposes something not enumerated." If the Lopez Act were constitutional what indeed is not enumerated? The Amicus Brief of the National Conference of State Legislatures et al. hypothesizes a federal criminal statute against double parking. "If, as the United States argues, Congress need only be capable of rationally concluding that particular activity 'can be expected' to affect the functioning of the national economy'...then every crime could be federalized. Indeed, Congress could well make double parking a federal offense." Cf. South Dakota v. Dole, 483 U.S. 203 (1987) (partial withholding of federal highway funds from states that have a drinking age of less than twenty-one is constitutional.)

Conditions On Federal Funds

Dole is relevant to Lopez in another way. In Dole the Court ruled that the statutory condition was valid under the spending power regardless of whether Congress had direct regulatory authority. "[W]e find this legislative effort within constitutional bounds even if Congress may not regulate drinking ages directly." 483 U.S. at 206. Such conditions have to be germane to the purpose of the spending but the Court in Dole, without pausing to define the strictness of the germaneness requirement, found that it was satisfied in that case. 483 U.S. at 208 n. 3. If Congress were concerned merely that there be adequate state legislation providing for gun-free school zones it could simply achieve this by a condition on federal funds. The Fifth Circuit in Lopez adverted to this issue but concluded that it had no relevance to the statute as drafted. "Section 922(q), which expressly extends to 'private and parochial' as well as 'public' schools, does not even mention federal funding, and applies whether or not such funding is received." United States v. Lopez, 2 F.3d 1342, 1367 n. 50 (5th Cir. 1993). In his weekly radio address President Clinton criticized Lopez. "And he offered a possible solution of his own, saying Congress could encourage states to bar guns from school zones by linking federal aid to the enactment of school-zone weapons bans." Boston Globe, April 30, 1995, at 2.

2. The Concurring Opinions

When there is a five-to-four decision that has an opinion of the Court with uncertain implications for the future interested readers naturally look to concurring opinions for guidance. Bear in mind, however, that the Rehnquist opinion in Lopez was an opinion of the Court, not an opinion announcing the judgment of the Court. In Lopez there were two concurring opinions.

A. Justice Kennedy, joined by Justice O'Conor.

In his opening paragraph Justice Kennedy strikes a note of caution, writing that the history of the commerce clause gives him "some pause about today's decision." He then refers to the limited holding of Lopez. Although the rest of the opinion is lengthy most of it traces the evolution of the Court's commerce clause cases and provides a précis of federalism and separation of powers in our constitutional system. The explanation of why Justice Kennedy concludes that the Lopez statute is unconstitutional but that the Court's holding is limited is actually brief and straightforward. First, the opinion invokes stare decisis. "[T]he Court as an institution and the legal system as a whole have an immense stake in the stability of our commerce clause jurisprudence as it has evolved to this point. Stare decisis operates with great force in counseling us not to call in question the essential principles now in place respecting the congressional power to regulate transactions of a commercial nature." 115 S. Ct. at 1637.

Why then is the Lopez statute invalid? Justice Kennedy stressed one aspect of the Court's analysis: the statute does not regulate activity that is itself commercial. "[N]either the actors nor their conduct have a commercial character, and neither the purposes nor the design of the statute have an evident commercial nexus." At 1640. Although Justice Kennedy also notes that education is traditionally a matter of state concern, the noncommercial character of gun possession in school seems to be the key.

The real meaning of Lopez for the future (insofar as it can be divined at all) must lie at the intersection of the Rehnquist and Kennedy opinions. That point of intersection is the emphasis on the lack of commercial character of the proscribed act. That is, as long as
Congress regulates activity that is commercial the Court will accord extraordinary indulgence on the issue of interstate effect. But the regulated event must be in some fair sense commercial. This appears to be the real meaning of *Lopez*.

B. The concurring opinion of Justice Thomas

What appears above is not meant to slight Justice Thomas. His opinion will provoke thoughtful discussion of the commerce clause but for now at least he is isolated. Clearly he supports the other two opinions of the Justices in the majority as far as they go but equally clearly he wants to revisit the question of the power of Congress under the commerce clause in a way that none of the other eight Justices seem inclined to embrace.


In summary Justice Thomas’s view is as follows. We should be guided by original intent. *Gibbons v. Ogden* has been misinterpreted. The Founding Fathers did not intend manufacturing and agriculture to be regarded as part of commerce. Nor did they intend a substantial effects test. Otherwise many of the other powers of Congress (e.g., concerning bankruptcies) are superfluous. Also, if there is to be a substantial effects test for the commerce power then why not for other powers of Congress? While the conventional view is that the Court repudiated an aberration in 1937, Justice Thomas concludes that the real aberration is the commerce clause cases of the post-1937 era.

After calling for a thorough reconsideration of the commerce clause and a return to the original understanding Justice Thomas then seems to get cold feet. “Although I might be willing to return to the original understanding I recognize that many believe that it is too late in the day to undertake a fundamental reexamination of the past 60 years. Consideration of *stare decisis* and reliance interests may convince us that we cannot wipe the slate clean.” 115 S. Ct. at 1650 n. 8.

It is hard to know what to make of all of this. One view might be that the opinion is an intellectual romp, that Thomas thinks that the Court’s current commerce clause approach is historically wrong but knows perfectly well that nothing can be done about it. Taken more on its face Justice Thomas seems to be calling for a partial rollback. His invocation of *stare decisis* should be distinguished from that of Justice Kennedy. Justice Kennedy would apply *stare decisis* to the Court’s whole post-1937 approach to the commerce clause. Justice Thomas hints at something more selective. This may be an invitation to jurisprudential chaos. The Court has chosen one of two quite different approaches to the power of Congress under the commerce clause. It cannot now say that approach was wrong but we will preserve fragments of it while we repudiate the rest. Cf *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S. Ct. 2791 (1992) where the Court discarded much of *Roe v. Wade* and preserved the rest in the name of *stare decisis*. The Court must choose and indeed it has chosen. The 1937 issue is water over the dam. That does not necessarily mean that *Lopez* was wrongly decided but that if *Lopez* is to be justified it has to be without dismantling post-1937 commerce clause law.

3. The Dissenting Opinions

There were three dissenting opinions in *Lopez*. Justice Stevens wrote a brief opinion for himself alone. Justice Souter wrote a substantial opinion but also for himself alone. Justice Breyer, joined by Justices Stevens, Souter and Ginsburg, wrote the principal dissent. Since the Breyer opinion appears to present the views of the dissenters comprehensively and was joined by all the dissenters only this opinion will be discussed here.

Justice Breyer opens with a table setting paragraph that is firm and unapologetic.

“The issue in this case is whether the Commerce Clause authorizes Congress to enact a statute that makes it a crime to possess a gun in, or near, a school. [Citation omitted] In my view, the statute fails well within the scope of the commerce power as this Court has understood that power over the last half-century.” 115 S. Ct. at 1657 (emphasis added).

Despite the discipline involved in writing an opinion that would attract the support of his dissenting colleagues, Justice Breyer managed to state his position at the outset in confident and unqualified language. Recall, by way of contrast Justice Kennedy, who had “some pause” about the “limited holding” in *Lopez* and Justice Thomas, who advocated reconsideration of the entire commerce clause power in some future case but apparently recognizes that *stare decisis* would be a bar to much coming of it.
In support of his assertion Justice Breyer reasons as follows. The “cumulative effect” of gun possession near schools has a “significant effect” on interstate commerce. Justice Breyer prefers the word “significant” to “substantial” on the theory that it is more consistent with the broad power of Congress recognized in the cases but the difference between the two is by no means clear. Further, although the Court “must judge this matter independently,” the Court should defer to congressional judgments that have a “rational basis.” “Courts must give Congress a degree of leeway.” The absence of congressional findings is not a problem in itself but “at most, deprives a statute of the benefit of some extra leeway.”

Applying this deferential attitude to legislative judgments Justice Breyer adverts to various studies that document the effect of guns in schools and indirectly on interstate commerce. Justice Breyer lists many such studies in an Appendix to his opinion. The Appendix runs six pages in the form in which it appears in the Supreme Court Reporter. These studies document points that are to an extent obvious. Guns in schools have an adverse effect on education. If our people are less educated we will be less able to compete in international markets. Families are less willing to settle and firms are less willing to locate in neighborhoods beset by violence in the schools.

Of Slippery Slopes

All of the above seems reasonably persuasive, particularly considering the wide berth accorded Congress in earlier cases. The problem is that the logic of those cases and of the dissent in Lopez seems to have no ascertainable limit. Could Congress prescribe a national school curriculum or dictate a national code of family law under the commerce power? This is the slippery slope problem familiar to the law school classroom. When Father Robert F. Drinan was asked recently whether a line of reasoning was leading him down a slippery slope he answered: “I like slippery slopes.” Boston College Magazine 38 (spring 1995). This was a good quip for the classroom but Justice Breyer had to confront in a more serious way the argument that his interpretation of the commerce clause would undercut the central premise of our constitutional architecture that the federal government has only limited and enumerated powers.

Justice Breyer seems to deny the slippery slope without really refuting it. He refers to “the immediacy of the connection between education and the national economic well-being.” The problem with this emphasis on immediacy of connection is that the dissenters rejoice in the Court’s repudiation of pre-1937 formulas such as the distinction between direct and indirect effects on interstate commerce. The immediacy of effect criterion seems to be the same distinction in slightly different verbal raiment. In the end the dissenters decline the invitation of the majority to give an example of something that under their interpretation of the commerce clause “the States may regulate but Congress may not.” In defense of the gun-free statute Justice Breyer is content to observe: “It must surely be the rare case, then, that a statute strikes at conduct that (when considered in the abstract) seems so removed from commerce, but which (practically speaking) has so significant an impact upon commerce” 115 S. Ct. at 1662.

Even accepting the Court’s argument that there must really be a regulation of a commercial transaction for the statute to be valid the dissenters conclude that “schools fall on the commercial side of the line.... In 1990, the year Congress enacted the statute before us, primary and secondary schools spent $230 billion....” 115 S. Ct. at 1664. This misconceives the Court’s point, however, which seems to be not that running schools is noncommercial but that gun possession is noncommercial.

The dissenter’s final objection was that the Court’s holding “threatens legal uncertainty in an area of the law that, until this case, seemed reasonably well settled.” 115 S. Ct. at 1664. Justice Thomas, in his concurring opinion turned that argument against the dissent, observing that the only reason commerce clause law as interpreted by the dissenters is clear is because under their interpretation the power of Congress is unlimited. “The one advantage of the dissent’s standard is certainty: it is certain that under its analysis everything may be regulated under the guise of the Commerce Clause.” 115 S. Ct. at 1650.

One final question is why the federal government should be able to prescribe drugs but not guns in schools, particularly since the connection between the two seems obvious. The Brief of 16 Members of the United States Senate and 34 Members of the United States House of Representatives as Amici Curiae noted: “A final striking way in which possession of guns in and around school implicates interstate commerce is the connection between gun possession and drug sales. According to the Center to Prevent Handgun Violence, 18 percent of all weapons in school incidents are drug – or gang-related.... Congress’s power under the commerce clause to regulate activities related to the possession and sale of drugs is well recognized. [citations].” page 79.
The Supreme Court surprisingly did not concern itself with this argument but the Fifth Circuit did address it. First, [the government] urges that 922(q) “is not fundamentally different from the ‘schoolyard statute,’ 21 U.S.C. § 860, which provides greater punishment for drug offenses occurring within 1000 feet of a school.” However, this statement ignores the fundamental difference that all drug trafficking, intrastate as well as interstate, has been held properly subject to federal regulation on the basis of detailed congressional findings that such was necessary to regulate interstate trafficking.... Thus, section 860 is not a regulation of schools but of drugs, and its jurisdictional foundation is the now unchallenged federal authority over intrastate as well as interstate narcotics trafficking.

_United States v. Lopez_, 2 F. 3d 1342, 1366-67n. 50 (5th Cir. 1993).

Lower court refinements of _Lopez_ await us but there are already signals that _Lopez_ may be difficult to apply. _United States v Wilks_, 58 F. 3d 1518 (10th Cir. 1995) is an early post-_Lopez_ case. Wilks upheld a federal statute that generally proscribed the possession of machine guns. The Supreme Court would probably agree, but how is _Lopez_ distinguishable? The _Wilks_ court addressed this question:

Whereas 922(q) [the _Lopez_ statute] sought to regulate an activity which by its nature was purely intrastate and could not substantially affect commerce even when incidents of those activities were aggregated together,...922 (o) regulates machine guns, which by their nature are “a commodity... transferred across state lines for profit by business entities.” [citation omitted] The interstate flow of machine guns “not only has a substantial effect on interstate commerce; it is interstate commerce.”

As an attempt to distinguish _Lopez_ this passage is puzzling. Are we to believe that the flow of machine guns is interstate commerce but the flow of pistols is not? _Wilks_ also concludes that 922(o) was designed not simply to forbid possession of machine guns “but rather, to control their interstate movement by proscribing transfer or possession.” To the extent _Lopez_ is different, this implies that in the _Lopez_ statute the problem was that Congress forbade too little. Apparently, under this view, Congress can forbid possession of machine guns generally and that will be regarded not just as a regulation of possession but as instrumental in the control of interstate trafficking in machine guns. In _Lopez_, however, possession of firearms is forbidden not generally but only in a certain context, i.e., in or near schools.

A case that may test the impact of _Lopez_ is _United States v. Wilson_, 880 F. Supp. 621 (E.D. Wis. 1995). _Wilson_ declared unconstitutional as in excess of the power of Congress under the commerce clause the portion of the Freedom of Access to Clinics Entrances Act (“FACE”) “which prohibits the non-violent physical obstruction of entrances to reproductive health services clinics.” _Wilson_ was decided before the Supreme Court decided _Lopez_ but after _certiorari_ was granted. Although District Judge Randa in his opinion in _Wilson_ acknowledged that all previous reported decisions (he cited one circuit and four district court cases) had upheld FACE under the commerce clause, he dismissed those cases in a completely perfunctory way. At. 626n. 8. He did, however, rely on the opinion of the Fifth Circuit in _Lopez_. At 625, 633. Before the decision of the Supreme Court in _Lopez_ the _Wilson_ opinion might have been regarded as audacious, at the least, especially in light of its easy dismissal of the unanimous authority arrayed against it. After _Lopez, Wilson_ seems in line with the Supreme Court’s majority view of the commerce clause.

See also _United States v. Pappadopoulos_, 64 F. 3d 522 (9th Cir. 1995). Arson prosecution under 18 U.S.C. § 844(i) is precluded, applying _Lopez_, “where the sole source of the interstate commerce connection is the receipt by a private home of natural gas from a company that receives some of that gas from an out-of-state source....” “This is a simple state arson crime. It should have been tried in state court.” The Sixth Circuit upheld the same statute (post-_Lopez_) in _United States v. Sherlin_, 67 F. 3d 1208 (6th Cir. 1995) (arson of college dormitory).

The federal carjacking statute, 18 U.S.C. § 2119 has been challenged in post-_Lopez_ cases. The Ninth Circuit rejected the challenge with a minimum of ceremony in _United States v. Oliver_, 60 F. 3d 547 (9th Cir. 1995) but the Third Circuit upheld the statute only after elaborate analysis and over a lengthy and energetic dissent. _United States v. Bishop_, 66 F. 3d 569 (3d Cir. 1995). This, despite the fact that _Lopez_ seems readily distinguishable: The carjacking statute has a jurisdictional element – it applies only to cars that have at some point moved in interstate commerce. Also, cars, unlike guns, are themselves instrumentalities of commerce.

Conclusion

_The Supreme Court Reborn_ was a celebration of congressional triumphalism. But it was federal power that was reborn, not the Supreme Court. Congress (and therefore the President through the veto power and his informal influences on the shaping of legislation) has the authority to deal with a wide range of problems that states couldn’t or wouldn’t adequately address. Leuchtenberg and other commentators regarded the issue as settled and settled correctly by the events of 1937.
Whether Lopez turns out to be harbinger or eccentricity may well depend on how events unfold in this broader politico-social context. For now, however, the narrow reading of Lopez seems the prudent bet.

Now Lopez rings the caution bell. Is Lopez destined to be a footnote case or the beginning of a counterrevolution? Lopez does not exist in a vacuum. Today, we hear of term limits, unfunded mandates, item veto, flat tax (or perhaps consumption tax) among other things. These are rollback issues, particularly rollback of the federal government. Whether Lopez turns out to be harbinger or eccentricity may well depend on how events unfold in this broader politico-social context. For now, however, the narrow reading of Lopez seems the prudent bet. It is certainly all that is justified by what the opinions actually say as opposed to what some readers may hope or fear.

Lopez also raises one possible future development. As the Lopez dissenters note with concern, when the Court of the 1930s repudiated the narrow interpretation of the commerce power it also repudiated the Lochner, which involved judicial assessment of the substantive reasonableness of economic legislation, interpretation of due process, which had resulted in disabling even the states from dealing with many economic problems. Lochner is now routinely reviled. If Lopez caused alarm in some quarters, wait till Lochner, the King Kong of discredited Supreme Court cases, shows signs of bursting its chains.

Lopez does not suggest such a connection. Nevertheless, commentators have sometimes opined that when the Court abandoned the Lochner era practice of second-guessing legislatures it may have overreacted by appearing to abandon the field altogether. Henry Kissinger once observed that the lesson of his generation was Munich, the lesson of the younger generation was Vietnam; and that both may have learned their lessons too well. In a similar way perhaps the repudiation of pre-1937 commerce clause law may have gone too far and a minor (at least) course correction is warranted. Similarly some course correction in the repudiation of Lochner could be in the offing. It is even less likely that such a correction would be far reaching, however, because, whereas Lopez affects only the power of Congress and does not disturb the authority of the states, a Lochner-like due process theory invalidates even state legislation.
Recent Practice – Oriented Acquisitions

by Sonia Ensins, Reference Librarian, Suffolk University Law Library
Listed below are a selection of the practice-oriented materials recently acquired by the Suffolk University Law Library. The titles are arranged alphabetically by subject and include the call number. To locate the books in the Law Library use the call number and the location designation preceding the call number. If the designation is "L-LEAF" or "State Material" the material is on the fifth floor of the library. "Reference" or "Reserve" indicates the material is on the main floor of the library. If the call number is not preceded by a designation, the book can be found on 3 Lower in the circulating collection. Circulating books may be checked out with an updated Suffolk University Law School I.D. for a period of one month.

These are only a selection of the practice-oriented materials in the Law Library's collection. For the complete holdings of the Law Library, please consult our online catalog, which can be accessed from terminals in the library or by dialing into the catalog. For more information on dialing into the Law Library catalog, please call the Reference Department at 573-8199.

The Law Library is open from 8:00 a.m. to 11:00 p.m. Monday through Friday, and from 9:00 a.m. to 11:00 p.m. Saturday and Sunday. Changes in Library hours are posted at the main library entrance.

If you need assistance, the Reference Librarians are available to help you from 9:00 a.m. to 5:00 p.m. Monday through Thursday, from 9:00 a.m. to 6:00 p.m. on Friday, and from 9:00 a.m. to 5:00 p.m. on Saturday and Sunday. You may reach the Reference Department at 573-8516 (Reference Desk) or 573-8199 (Reference Office).

AGED-LEGAL STATUS, LAWS, ETC.-UNITED STATES
This volume discusses the problems in identifying facts about elder injuries, counseling the client and preparing the elderly client as plaintiff. It also has several chapters on evaluating various injuries such as motor vehicle, pedestrian, medicine-related, medical device, consumer product, nursing home and other kinds of injuries.

ANTITRUST LAW
This monograph analyzes "the special rules and defenses that have been developed to address the sovereign actions of foreign governments and their effects on competition and on private parties seeking to comply with the realities of international business and the dictates of U.S. antitrust law." It includes case law, government guidelines, policy issues and commentary.

ARB ITRATION AND AWARDS

BANKING LAW

"The Revised Edition continues to emphasize drafting tips, compliance guidelines, and litigation strategies. (It) analyzes in detail the interplay among statutes (such as the UCC), regulations, and judicial decisions." (from the Preface)
BIOTECHNOLOGY
Patent law and litigation, U.S. and international regulations, and financing Biotech companies are among the topics discussed.

CAREER DEVELOPMENT
This volume includes chapters on business development strategies, management skills, building a legal practice, marketing, and many other topics.

CIVIL PROCEDURE
This two volume set covers the basics of civil litigation practice from drafting a complaint to post judgement practice.

CODE OF MASSACHUSETTS REGULATIONS
WEIL'S INDEX TO THE CODE OF MASSACHUSETTS REGULATIONS, 1995. Located on the 5th floor of the library with the Massachusetts materials.

COMMERCIAL LEASES
This volume is part of the "Drafting Real Estate Documents Series" and includes sample leases.

COMPUTER CONTRACTS-UNITED STATES
"The overall structure of the book consists of text conveying general and specific technical, business, and legal information; approximately 100 annotated forms; a quick-reference guide to national and international laws, rules, regulations, and treaties; tables and illustrations... and an extensive table of cases and glossary." (from the Preface)

CONSTRUCTION CONTRACTS

The two chapters of this MCLE publication are Negotiating and Drafting Construction Loan Documents and Introduction to Construction-Related Assignments; many forms are included.

CORPORATION LAW
Securities law, environmental, financial and tax issues are among the topics covered in this MCLE publication.

This MCLE publication covers loan agreements, capital structures tax issues, raising private capital, reporting requirements of the Federal Securities laws, equity incentives for employees, mergers and acquisitions and how to read a financial report.

CRIMINAL LAW
This two-volume MCLE publication covers a wide range of motions such as motions to dismiss, pre-trial discovery motions, and motions to suppress. It also includes motions for different types of cases such as sexual assault, narcotics, and insanity/diminished capacity.
DIVORCE
This volume discusses Massachusetts divorce practice and procedure.

This MCLE publication contains many articles on psychological issues for divorcing couples, psychological testing and developmental issues in child custody.

This guide takes you through the steps of a divorce case and includes exhibits and forms.

Some of the topics discussed in this MCLE publication are trial preparation and planning, direct and cross examination, expert opinion, financial statements and tax returns.

DOMESTIC RELATIONS
This two volume set covers many aspects of family law including: divorce, annulment, adoption, paternity, change of name, and cohabitation. It also includes many forms.

EDUCATIONAL LAW AND LEGISLATION
The second edition of this nutshele covers attendance, freedom of speech, the instructional program, religion in schools, student publications, search and seizure, student discipline, racial segregation, disabled children, sex discrimination, student testing and student records, teacher employment, and constitutional rights of teachers.

Several aspects of the Education Reform Act of 1993 are discussed along with chapters on racial discrimination and individuals with disabilities.

EMIGRATION AND IMMIGRATION LAW
IMMIGRATION LAW BASICS. Alan M. Pampanin, Cochair,...[et al.] Boston, MA: MCLE, c1994. RESERVE KF 4819.3 .146 1994
The basics of immigration law are discussed in this volume. It also includes a useful bibliography for immigration law practice.

The author's "objective is to describe the planning tools and techniques which are necessary to solve specific estate planning problems frequently encountered by the estate planner. The book is not concerned with drafting, but only with planning." (from the Preface)

Jeffrey N. Pennell is a professor at Emory University School of Law and serves as Director of Emory's Graduate LL.M. Program in Taxation. In this MCLE publication he discusses recent wealth transfer tax developments.
GOVERNMENT LIABILITY
GOVERNMENT TORT CLAIMS: AN OVERVIEW AND
RECENT DEVELOPMENTS. Michelle Kaczynski,
chair...[et al.] Boston, MA: MCLE, c1994. RESERVE KFM

HANDICAPPED – EMPLOYMENT – LAW AND
LEGISLATION
MAKING THE WORKPLACE ACCESSIBLE: LAW AND
LOGISTICS. Jane K. Alper...[et al.] Boston, MA: MCLE,
The chapters in this volume include a comparison of Title
I of the ADA with the Massachusetts Fair Employment
Practices Act and with other employment laws, the law
and logistics of making the workplace accessible, the duty
of reasonable accommodation, universal design in the
workplace and a list of resources on the ADA.

HAZARDOUS WASTES
G.L. CHAPTER 21E: A PRACTICE PRIMER. Felicity
RESERVE KFM 2780 .H39 G5 1994
The table of contents: The Role of the licensed site
professional; Getting your client’s site through the
Massachusetts Contingency Plan; Response action out-
comes and activity and use limitations; Government
enforcement powers under Chapter 21E; Private cost
recovery actions under Chapter 21E; An analysis of
Massachusetts law on key issues affecting insurance
coverage for liabilities under M.G.L. Chapter 21E.

LET’S MAKE A DEAL ON DIRTY PROPERTY: HOW TO
CREATIVELY STRUCTURE REAL ESTATE TRANSACTIONS
INVOLVING CONTAMINATED PROPERTY. Gregor I.
RESERVE KFM 2526 .Z9 L48 1994

INTELLECTUAL PROPERTY – UNITED STATES
INTELLECTUAL PROPERTY PRACTICE BASICS: COPY-
RIGHT, TRADEMARK, TRADE SECRET AND PATENT
LAW. Bruce D. Sunstein, chair...[et al.] Boston, MA:

INTERNET
This book is a directory to legal resources on the Internet.
It includes information on bar associations, federal courts
and government, law firms, law schools, online discus-
sion groups, state courts and government. The material is
arranged alphabetically by legal topic starting with abor-
tion and ending with world constitutions. There is a brief
overview of the Internet including descriptions of online
providers.

JUVENILE COURTS – MASSACHUSETTS
JUVENILE LAW BASICS. Jay Blitzman...[et al.] Boston,
These two volumes cover many aspects of law concern-
ing juveniles. Arrest, arraignment, detention, Miranda
rights, bail, ethics and client relations are among the
issues discussed.

LABOR LAWS AND LEGISLATION
LABOR AND EMPLOYMENT LAW BASICS: SPOT THE
ISSUES AND STEPS TO TAKE TO PROTECT YOUR
CLIENT. Nancy S. Shilepsky, chair...[et al.] Boston, MA:
This volume covers the Fair Labor Standards Act,
National Labor Relations Act, wage and hour law, health
and safety law, Family and Medical Leave Act of 1993,
privacy in the workplace and many other topics.

LAW – MASSACHUSETTS – PERIODICALS
THE BEST OF MCLE JOURNAL: SELECTIONS FROM
MCLE SEMINAR MATERIALS AND BOOKS. Boston:
Massachusetts Continuing Legal Education. Suffolk Law
Library has Volume 7, 1995 to present, ISSUES ARE CUR-
RENTLY AT THE RESERVE DESK.
The journal is published quarterly and covers topics such
as civil litigation, criminal law, employment, estate plan-
ing, business and commercial law, practice management
and many other topics.

LAW AND ART
LAWYERING FOR THE ARTS. Cassandra
RESERVE KF 3020 .Z9 138 1994
Copyright, trademark, first amendment, cultural non-
profits, alternative dispute resolution, negotiating a pub-
lishing contract, and entertainment contracts for chil-
dren are among the many topics discussed.

LAW OFFICES – UNITED STATES
BECOMING COMPUTER-LITERATE: A PLAIN-ENGLISH
GUIDE FOR LAWYERS AND OTHER LEGAL PROFESSIONALS. Carol Woodbury. Chicago: American Bar
This book discusses why you should become computer-
literate and how to do it. It includes information on how
computers work, how to buy a computer and how to
organize your law practice with a computer.

This model of a law office staff manual covers many policies and procedures including employee compensation, termination, client relations, supervisory responsibilities, billing, filing, supplies, and payroll.

LAWYERS – MALPRACTICE – MASSACHUSETTS

LAWYERS – UNITED STATES – MARKETING

This MCLE publication discusses how to get clients and keep them.

LEGAL COMPOSITION

According to the authors, novice attorneys sometimes have a difficult time switching from objective to persuasive writing. This volume contains practical information and exercises to help new lawyers and others who want to improve their persuasive writing skills.

MEDIATION

This text covers pre-mediation strategies and issues, logistics of mediation, the various phases of mediation, and ethical considerations.

MENTAL HEALTH LAWS – UNITED STATES

This primer “tries to address primary areas of concern, the major issues, the principal constitutional, statutory, and case law developments, as well as additional sources of assistance or information.” (from the Preface)

MORTGAGE LOANS

This MCLE publication is part of the Drafting Real Estate Documents Series and discusses promissory notes, loan agreements, mortgage and security agreements, and assignments of leases, rents, permits and contracts.

NONPROFIT ORGANIZATIONS

PARTNERSHIPS – UNITED STATES

Some of the topics covered in this MCLE publication include: transfer tax and non-transfer tax reasons why families are creating family limited partnerships, use of partnerships in planning for life insurance, use of a reverse freeze partnership with charitable giving, and drafting and funding considerations in the creation of family limited partnerships.

PATENT SUITS – UNITED STATES – LEGAL RESEARCH

This guide tells you how to research mechanical patent law by describing the best sources and discussing primary sources and secondary sources.

PATERNITY

The five chapters in this volume are: How to Process a Paternity Case under M.G.L. Chapter 209C, A Practical Approach to Paternity Establishment, Representing Parties in Contested Paternity Actions, Relationship of Paternity to Divorce Law, and Paternity Litigation Involving Presumed Versus Putative Fathers.

PRACTICE OF LAW
Professor Kindregan’s goal is to challenge “the reader to place the principles of ethical legal practice in a realistic setting which would assist the lawyer, the judge and the law student in developing an understanding of how ethical standards are actually applied and enforced.” He cites and discusses relevant ethical codes and nearly a thousand cases. He also includes a bibliography for further reading.

This MCLE publication provides information on how to build a legal practice.

The author has developed a system for assessing the quality in a law practice to identify areas that need improvement. The first part of the book discusses the need for evaluation, the second part shows the reader how to do an evaluation and includes tips on improving the law practice.

The author gives advice on how to maintain good relations with clients.

Chapters include: Acquisition of commercial real estate, including choice of entity and purchase and sale agreements; Due diligence concerns including title, survey and title insurance; Environmental issues, including oil and hazardous materials and state permitting procedures; Financing the acquisition and developments and the closing.

Chapters include: Acquisition of commercial real estate, including choice of entity and purchase and sale agreements; Due diligence concerns including title, survey and title insurance; Environmental issues, including oil and hazardous materials and state permitting procedures; Financing the acquisition and developments and the closing.

The author explains why public relations is key to long-term success and how to develop a public relations strategy.

The author gives advice on how to maintain good relations with clients.

Chapters include: Acquisition of commercial real estate, including choice of entity and purchase and sale agreements; Due diligence concerns including title, survey and title insurance; Environmental issues, including oil and hazardous materials and state permitting procedures; Financing the acquisition and developments and the closing.

Chapters include: Acquisition of commercial real estate, including choice of entity and purchase and sale agreements; Due diligence concerns including title, survey and title insurance; Environmental issues, including oil and hazardous materials and state permitting procedures; Financing the acquisition and developments and the closing.

Chapters include: Acquisition of commercial real estate, including choice of entity and purchase and sale agreements; Due diligence concerns including title, survey and title insurance; Environmental issues, including oil and hazardous materials and state permitting procedures; Financing the acquisition and developments and the closing.

Chapters include: Acquisition of commercial real estate, including choice of entity and purchase and sale agreements; Due diligence concerns including title, survey and title insurance; Environmental issues, including oil and hazardous materials and state permitting procedures; Financing the acquisition and developments and the closing.

Chapters include: Acquisition of commercial real estate, including choice of entity and purchase and sale agreements; Due diligence concerns including title, survey and title insurance; Environmental issues, including oil and hazardous materials and state permitting procedures; Financing the acquisition and developments and the closing.
The Role of Career Services at Suffolk University Law School: Moving Into the 21st Century and Developing a Shared Vision with Administration, Faculty, Students and Alumni

by James Whitters
In an age where most students are burdened with large educational loans in a very difficult and often times discouraging employment market, I have never ceased to be impressed, in general, by the resilience and unspoiled attitudes of the students as they doggedly seek that elusive job.

After more than twenty-five years of practicing law in two Boston firms, Gaston & Snow and Peabody & Brown, I made a decisive career change on February 1, 1995, to become Director of Career Services at the Law School. My motivation to do so was derived from a long-time desire to participate in the education and career choices of young women and men within the legal profession. After one year, I can report that working with and advising Suffolk students and alumni on a daily basis is a source of extraordinary joy and fulfillment. At a time when most students are burdened with large educational loans in a very difficult and discouraging employment market, I never cease to be impressed, in general, by the resilience and unspoiled attitudes of the students as they doggedly seek that elusive job.

The purpose of this writing is to share with you my vision of the Office of Career Services insofar as we should participate in the educational mission of the Law School and therefore must work with and share the responsibility of teaching and preparing our students to be effective practitioners in the legal community as well as vital participants in the community at large. I believe that such a vision necessitates the integration of the Office of Career Services into the larger Law School community - administration, faculty, students and very importantly, alumni. Such an integration would result in the on-going development of a shared vision with respect to the responsibility of the Law School to provide a career education for our students that would be increasingly incorporated into the academic program.

Shortly after I arrived at Suffolk an Assistant Dean at a prominent Midwestern law school made the following statement which I believe succinctly states the importance of the Career Services Office in the modern law school:

The career services office - to a degree far greater than any other student service program in the law school - impacts a law graduate's entire career, his or her career satisfaction, earning power and consequently, satisfaction with legal education and loyalty to the law school. Students look to the career services office for guidance and desperately need one-on-one counseling in order to plan and construct an appropriate job search strategy. Alumni are seeking the support of the law school career services office in record numbers and need assistance in assessing their career goals and organizing a job search strategy. The career services office is a frontline marketing vehicle for the school and has the potential to influence future administrations, development, school reputation, and a host of other important realms. When the career services office is understaffed or underbudgeted and thus unable to fulfill all of the roles that are essential to its function, the entire law school is at risk.

In late 1993, Suffolk's Office of Career Services consisted of one career counselor and one staff member. By mid-1995, the Office included four counselors, as well as a Recruitment/Marketing Manager, and a Recruitment Coordinator. As a result of this significant improvement in the number of active personnel, our Office is now able to be more responsive than ever before to Suffolk's 1,700 students as well as begin to devote time to the creation of an innovative and visionary strategic plan to anticipate the requisite career education for currently enrolled students as well as those who will be entering law school in the future. I anticipate that career education must be integrated into the academic life of the Law School so that the administration (especially Admissions, Financial Aid, and the Alumni Office) and faculty (especially clinical and internship faculty) will play an increasingly active role, together with the members of our Office, toward new curricula and ever-improving methods of instruction to meet the needs of a changing legal employment market. Furthermore, the need for increasingly more alumni involvement in mentor programs, networking guidance and job information under the aegis of alumni organizations in numerous cities and states, supervisors of internship programs and participation on career-related panels and in workshops is and always will be one of the primary foundation stones upon which any successful career placement effort will rest. In fundamental agreement with the above-quoted statement, I perceive my role, and the role of each individual in our Office, is to encourage all of the members of the Suffolk Law School family to become more conscious of the role of Career Services in meeting the needs of the students and alumni and participating in the educational mission of the institution. The aim is to have all of us working together toward a common goal: assist, educate, guide and mentor our students (and alumni, which we are seeing in increasing numbers) in their search for employment. Success attained by our students in the legal employment market will result in the
further enhancement of the Law School’s excellent reputation and the sense of fulfillment and meaning that happens when we make a contribution, large or small, to the realization of a job by a student.

In recent months this Office has achieved a number of accomplishments that we believe have improved the career education offered to the students. The Mentor Program, initiated in 1994, increased eight-fold to approximately 400 participants (alumni and students) in 1995. A completely new handbook, “Charting a Course for Success,” was drafted, published and distributed in the autumn of 1995, and has received a very positive response from the students. We have just completed the draft of an all-new marketing brochure which will be mailed to approximately 6500 employers in March 1996, in anticipation of the large number of autumn recruitment programs, both on and off campus. We have obtained agreements from firms that historically have not come to Suffolk during the recruiting period to interview here in 1996. We have successfully initiated an increasingly ambitious mock interview program to assist students in preparing for either private or public employment interviews. We are continuing to develop fellowships with the assistance of the University’s grantwriter to provide more public interest and pro bono employment opportunities. Through our Office, the Law School is a founding member (with Harvard, Boston College, Yale, Boston University, et al.) of Pro Bono Students America/New England, which will participate in a national network of law school pro bono and public service programs designed to encourage and facilitate law student community service, professional responsibility, public interest career development and legal training. Also, we are involved in providing support to numerous student organizations and programs. For instance, we are utilizing our resources (networking and technology) to support the newly-formed Suffolk chapter of Internships and Studies Abroad in International Law (ISAIL) which will allow our students to participate in an exchange program with law students from 40 countries and will include the involvement of Boston law firms and companies.

An integral part of the career education of our students will be the involvement of alumni. At this time we have the enthusiastic assertion from Ann Hagan (’76), Andrea Bernardo (’87), and others in the Washington, D.C. club that they are willing to provide advice and names of alumni who are employed in the District of Columbia to students and alumni in an innovative effort to assist in the job-search process. We are currently developing a procedure whereby our students will be able to communicate directly with club members and receive the requisite information to be able to make valuable contacts within the D.C. employment market. This procedure will marshal Suffolk alumni to utilize their acumen, contacts and positions to better serve the needs of students. We hope that our experience in working closely with the Washington club will result in the establishment of a model that ultimately will be utilized by other clubs throughout the United States. In essence, the increase in alumni involvement in the employment aspirations of our students can only result in a higher percentage of graduating students being hired at an early date. Each alumnus in private or public practice who is or becomes conscious of our students’ employment needs can make a difference through mentoring and providing networking advice and contacts, including taking an interest in and furthering the cause of Suffolk students in those all-important hiring meetings that occur each year in one’s firm, company or organization. By consciously making a difference, each alumnus will make a major contribution to the Law School.

I am pleased to report that under the able and caring leadership of Dean Fenton this Office is enjoying a rejuvenation that is directly related to the need to provide increasingly better career education during a period when the recession in the legal employment market has become evident to all. Most significantly, I hope that the vision that I am sharing with you in this writing will result in the achievement of a shared goal – that the Law School’s educational mission will include career services education involving the administration, faculty, alumni, students and our Office and that our students will be prepared, as best as possible, to define their career aspirations and thereafter proceed steadily down the path toward success in finding employment commensurate with those aspirations.
Class notes:

1954
Nicholas Macaronis of the Macaronis law firm in Lowell has been certified as a member of The Million Dollar Advocates Forum. Membership is limited to trial attorneys who have demonstrated exceptional skill, experience and excellence in advocacy by achieving a verdict or settlement in the amount of one million dollars or more. There are approximately 300 members in the United States.

1955
William F. DiPesa, senior partner of DiPesa & Company, certified public accountants in Boston, has been chosen as ‘Humanitarian of the Year’ by Triangle, Inc., an organization which assists people with disabilities.

1965
John J. Twomey has become associated with the law firm of Singer & Singer in Medford.

1968
Mark I. Berson was appointed to a five year term on the Client’s Security Board by the Massachusetts Supreme Judicial Court. He is president of the firm, Levy Winer, P.C. of Greenfield.

Robert P. Laramee, a Rockport attorney, has been named a life fellow of the Massachusetts Bar Foundation.

1969
Carmine M. Bravo has been accepted as a member in the Association of Family and Conciliation Courts. Bravo is an attorney and certified mediator with a law office in Longwood, Florida.

1970
Theodore A. Schwartz participated in a symposium, “Consumers in the Civil Justice System: A New Audit,” held at Suffolk University Law School. He is the immediate past president of the Pennsylvania Trial Lawyers Association.

John E. Martinelli, was elected to his first full term as a Probate Court judge by the Providence, Rhode Island city council.

1971
Edward G. McCormick, a partner in the law firm of McCormick, Murtagh, Marcus and Smith, received the Good Scout Award from the Great Trails Council Boy Scouts of America.

1972
Mary Ann Gilleece has been elected president of the National Contract Management Association, Washington, D.C. chapter, and first vice president of the American Defense Preparedness Association, Washington, D.C. chapter. A partner in the law firm of Gadsby & Hannah in Washington, D.C., she was also elected to the board of directors of the USO of Metropolitan Washington.

1973
Don L. Carpenter has been sworn in as an associate justice of the Barnstable First District Court.

Edward F. Hennessey, LLD (Honorary), former chief justice of the Massachusetts Supreme Judicial Court, has been awarded the 1995 Public Service Award of Common Cause Massachusetts.

1975
Joseph J. Fischer has been appointed area vice president for Comcast Cable Communication’s New York market cable television systems.

Thomas J. Furlong Jr. has joined First National Bank in Portsmouth, New Hampshire as the director of investment management and trust services.

1976
Esther A. Hopkins, deputy general counsel of the Massachusetts Department of Environmental Protection, received the 1995 Boston University Alumni Award for Distinguished Service.

Edward P. Ryan has been elected secretary of the Massachusetts Bar Association. He is a partner in the Fitchburg law firm of O’Connor & Ryan.

1977
Vince Amoroso joined the Boston law firm Peabody & Arnold as a partner specializing in litigation, professional liability and securities.

Unless otherwise indicated, all cities and towns listed are in Massachusetts.
1978

Curtis C. Pfunder has opened a law practice in Boston concentrating in civil litigation.

Vincent Tentindo has joined the Boston law firm Peabody & Arnold as a partner specializing in workers' compensation and civil litigation.

William A. Wise, corporate counsel to Analog Devices, Inc. of Norwood, was appointed to a three-year term on the town of Hingham personnel board.

1979

Mark Decof was named a fellow of the International Academy of Trial Lawyers. He is a partner with the Providence, Rhode Island law firm of Decof & Grimm.

Eileen M. Donoghue was elected to the Lowell City Council.

Daniel J. Gilmore has been elected vice-chair of the board of trustees of Dean College in Franklin. A founding partner and president of the law firm of Gilmore, Rees & Carlson, P.C., he was also named a fellow of the American College of Trust and Estate Counsel.

1980

Dale Coggins has joined the Boston law firm Peabody & Arnold.

Diane E. Moriarty is president of the Massachusetts Federation of Republican Women.

1981

James J. Burke, a partner in the Peabody law firm of Antico, Barrett & Burke, received the 1995 Harry Ankeles Community Service Award given by the Peabody Chamber of Commerce.

Thomas L. Campoli was re-elected to the board of governors of the Massachusetts Academy of Trial Attorneys.

Mark E. Morse has been named president of the MMA Consulting Group, Inc. in Boston of which he served as vice president and founding partner.

Jonathan S. Tryon was appointed director of the Graduate School of Library and Information Studies at the University of Rhode Island. He recently published a book, Librarian Legal Companion.

1982

Anne T. Hiltz was recently honored by the Norton Public Library board of directors with the dedication of the board's conference room in her name. Hiltz, who served the board for 18 years, was recognized for her contributions toward building the new town library.

Elizabeth Keeley has been named chief trial counsel for the office of Suffolk County District Attorney Ralph C. Martin, Ill.

1984

Frederick Connelly has joined the Boston law firm Peabody & Arnold as a partner specializing in litigation, arbitration, insurance, and tort law.

Anne W. Hulecki, a corporate lawyer with the Boston firm of Kotin, Crabtree & Strong, conducted a seminar on copyright law and multimedia licensing at the Seybold Seminars in San Francisco, California. She has also recently lectured to the Massachusetts Computer Software Council and the New England Corporate Counsel Association.

1985

William R. Prescott has joined the law firm of Downs, Rachlin & Martin in Burlington, Vermont specializing in the laws of federal and state taxation.

1986

Janette A. Bertness, associate judge at Rhode Island Workers' Compensation Court, was elected president of the Rhode Island Legal/Educational Partnership.

Robert A. Connolly was appointed trust fund commissioner for the town of Braintree. He is assistant vice president at Fleet Investment Services of Boston.

Christine M. Gravelle, an associate attorney with the Lawrenceville, New Jersey law firm of Markowitz and Zindler, lectured on the recent trends and issues that affect women business owners to the Princeton Ivy League Chapter of the American Business Women's Association.

1987

Daniel J. Lemire has been appointed assistant vice president and contract administration manager at Center Capital Corporation, the equipment leasing subsidiary of Centerbank in Meriden, Connecticut.

Sergio L. Mendez was named to the Florida Bar Grievance Committee for the 11th circuit. He has also recently lectured on mortgage foreclosures at the County Judicial Conference.

William M. Bulger, LL.D (Honorary), has been named president of the University of Massachusetts.
Kevin G. Kenneally served as co-editor of the third edition of *Traps for the Unwary*, published by the Massachusetts Bar Association. He is associated with the Boston law firm of Burns & Levinson.

Stephen N. Lander was appointed adjunct professor of law at Suffolk University Law School.

Owen P. McGowan has joined the Boston law firm Mitchell, Heinlein & DeSimone as a partner specializing in insurance defense.

Elizabeth A. Olivier was promoted to a member of the law firm Preti, Flaherty, Beliveau & Pachios with offices in Augusta and Portland, Maine.

Karen R. Ristuben, a partner at Meehan, Boyle & Cohen, has been appointed a member of the board of governors for both the Massachusetts Academy of Trial Attorneys and the School of the Museum of Fine Arts.

1988

Robert M. Duffy of Cumberland, Rhode Island has joined with Gardner, Sawyer, Gates & Sloan to form a new firm of Sloan, Duffy, Sweeney & Gates with offices in Providence, Rhode Island and Boston.

Christine Hasiotis has joined the Boston firm Peabody & Arnold.

Michael T. Palmer, lieutenant commander and officer in charge, Naval Legal Service Office Southeast at Naval Station Mayport, Florida, has been selected as the Outstanding Young Military Lawyer for the U.S. Navy by the American Bar Association.

Donna G. Quinn is an attorney with Allied Claim Services Inc. in Cheektowaga, New York, representing insurance carriers and self-insured employers in workers' compensation law.

Michael P. Rainboth has opened a law practice in Portsmouth, New Hampshire.

1989

Dawn-Marie Driscoll, JD '73, LL.D (Honorary), president of Driscoll Associates in Cape Coral, Florida, has been elected to the board of governors of the Investment Company Institute, the national association of all mutual funds. She is an independent director of several Scudder, Stevens & Clark mutual funds. Her new book, *The Ethical Edge: Tales of Organizations That Have Faced Moral Crises*, was published in February 1996 by Master Media. She is also an executive fellow at the Center for Business Ethics at Bentley College.

Douglas M. Evans has joined the West Hartford, Connecticut law firm of Kroll, McNamara & Vasington, of counsel.

1990

Thomas P. Curran has been promoted to regional sales manager of Metropolitan Life Insurance Company's Boston region.

Carole E.M. Echanis has joined the Burlington, Vermont law firm of Paul, Frank & Collins as an associate.

Brian A. Joyce was promoted to assistant counsel and elected assistant secretary of the corporation for Boston Mutual Life Insurance Company.

Stephen P. Maio has been appointed as the attorney on the Wakefield Zoning Board of Appeals.

Joanne Marchi was named an associate specializing in workers' compensation at the Boston law firm Peabody & Arnold.

Kathleen A. Ryan has joined the law firm of Hinckley, Allen & Snyder in Providence, Rhode Island as an associate focusing on estate planning.

1991

Thomas R. Curran Jr. has become a shareholder in the law firm of Howard & Howard specializing in business, international and antitrust law in their Bloomfield Hills, Michigan office.
David J. Flanagan is a member of the religious studies department at Bishop Guertin High School in Nashua, New Hampshire.

Deborah J. Klein, manager of Morphine, a Boston indie-label band, has started her own Boston-based record label, Cosmic.

Joy V. Riddell has joined the law firm of Sheehan Phinney Bass & Green in its Manchester, New Hampshire office.

1992

Jeanne Argento was appointed deputy regional counsel in the Bureau of Waste Site Cleanup at the Massachusetts Department of Environmental Protection.

Jorel V. Booker is one of two lawyers practicing in Raymond, New Hampshire and teaches criminal law at Stratham Vocational Technical School.

Kristin Garner, has joined the Boston law firm Peabody & Arnold as an associate.

Lillian M. Jacquard has relocated her law office from Newport, Rhode Island to Middletown.

Brenna B. Jordan has joined the law firm of Hinckley, Allen & Snyder in Providence, Rhode Island as an associate practicing real estate law.

1993

Sean J. Cleary has joined the law firm of Graham & Albano, P.C. of Hadley, as an associate.

Elizabeth A. Daly and Theresa Finn Dever have been named associates in the Boston law firm of Perkins, Smith & Cohen.

Alex J. Martinez was one of the first alumni to be honored by The Center for Academic Programs at the University of Connecticut for contributions to the community.

Kathryn Murphy joined the firm Murphy, Hesse, Toomey and Lehane in Quincy as an associate. Her work in the area of labor law emphasizes criminal and administrative enforcement of Massachusetts labor laws including wage and hour, public construction, health and safety, unemployment taxation and workman's compensation.

David B. Paganore, MPA'93, has been appointed chief legal counsel for the city of Chelsea.

Stephen H. Rogers has opened a law practice in Andover.

1994

David M. Ianelly and Timothy W. Mungovan have joined Bowditch & Dewey in Worcester as associate attorneys.

Leslie B. Muldowney has joined Hinckley, Allen & Snyder as an associate specializing in real estate and commercial lending.

1995

John G. Balboni has joined the Boston law firm of Day, Berry & Howard as an associate in the general business department.

Russell C. Carey was appointed assistant district attorney for the Northwestern district of Massachusetts.

John Mark Dickison is an associate with the Boston law firm of Lawson & Wiltzen.

Robert Stanton Dodge is a clerk for the Colorado Court of Appeals in Denver.

Dorothy E. Graham is a staff attorney with the New Hampshire Public Defender's Office.

Laura A. Pisaturo has joined the firm of Hinckley, Allen & Snyder as an associate in the litigation practice group.

Moujan Walkow joined the Boston law firm Peabody & Arnold as an associate specializing in general liability litigation.

Dean G. Zioze is an associate in the corporate department of the Manchester, New Hampshire law firm of McLane, Graf, Raulerson & Middleton, P.A.
We want to hear about you! If you recently began a new job, earned a degree, married or celebrated the birth of a child, or have any news to share with your fellow alumni, please fill out this form and send it in. We’ll include your news in the Class Notes section of the next issue of Suffolk, the magazine of the Suffolk University Community.

Please Print:

Name
Former Name
Home Address
City State Zip
Phone

News

Mail to:
Class Notes, Suffolk University Law School
Development Office, 8 Ashburton Place,
Boston, MA 02108-2770

You may also e-mail letters to
alumni@admin.suffolk.edu.
(When corresponding by e-mail,
please include your name and phone
number so that we can confirm this
information with you.)

Suffolk University expresses sympathy to the families and friends of these alumni.

In Memoriam

Dimitry G. Romanow, JD ’31
Robert B. Mannings, JD ’31
Harold T. Bowker, JD ’31
Vinton D. Bowen, JD ’32
William J. Galvin, JD ’32
William P. Fuller, JD ’33
Alphonse J. Alminas, JD ’40
Ara H. Tashjian, JD ’41
John Ciol, JD ’49
John E. Clark, JD ’49
Lawrence P. Hemingway, JD ’49
Leonard Fine, JD ’50
Manuel S. Lato, JD ’50
George R. Brownell Sr., JD ’52
Carter R. Benjamin Sr., JD ’61
John Prigopoulos, JD ’67
Roland A. Merullo, JD ’70
John J. Labanara, JD ’71
Raymond M. Beck, JD ’73
Edward J. White, JD ’76
Thomas M. Maguire, JD ’83
Ronald R. Chretien, JD ’84
Ena S. Squires, MPA ’86, JD ’90

Professor Thomas J. O’Toole

Thomas J. O’Toole, a professor at Suffolk University Law School for 16 years, died on January 5 at the age of 74. Until his retirement in 1978, O’Toole who specialized torts and constitutional law. During a distinguished academic career, he also taught conflicts of law and labor law. Before coming to Suffolk, he was dean of Northeastern University Law School for four years. He also taught at Villanova and Georgetown University law schools.

Born and raised in Newton, O’Toole was an Army veteran of World War II. He graduated from Harvard College and Harvard Law School.

“Professor O’Toole was a nationally acclaimed legal educator and highly respected Suffolk University Law School Professor,” said Dean John E. Fenton, Jr. “Our deepest sympathies are expressed to his wife, Patricia and their five children.”