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The Law School
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Symposium

Professor Louis Henkin: The First Thomas Jefferson Lecturer

Former University of Pennsylvania Law School Professor Louis Henkin returned during the week of February 21–25 as the Law School's first Thomas Jefferson Lecturer.

Professor Henkin, a foremost expert on the laws related to foreign relations and to the U.S. Constitution and presently a Professor at Columbia University Law School, delivered a series of lectures on human rights entitled "The Age of Rights" during his weeklong visit. Individual lectures in that series addressed the topics: "The Idea of Rights" and "The Law of Rights".

Mr. Henkin also attended Law School classes and conducted a seminar in addition to meeting informally with the students.

The Thomas Jefferson Lectures were initiated to attract leaders in the field of law to spend an extended period of time in residence at the School. The Lecture Series is funded in part by a grant from the Philadelphia firm of Spector, Cohen, Gadon & Rosen.

New Gift to Benefit Legal Writing Program

The Raynes, McCarty, Binder, Ross and Mundy Legal Writing Instructorship has been established by that Philadelphia law firm to be used annually to support the Law School's legal writing fund. It is fashioned after the Arthur Littleton Fund, which was founded by the lawyers of Morgan, Lewis and Bockius to honor their late partner, Arthur Littleton, '20.

Arthur G. Raynes, in announcing the Raynes, McCarty, Ross and Mundy Legal Writing Instructorship said "our firm is pleased to be associated with this Program, and we would be doubly pleased if our gift serves to enlist other firms to follow our example."

Thomas J. Eicher, '83, is the first Raynes, McCarty, Binder, Ross and Mundy Legal Writing Instructor.

The I. Grant Irey Memorial Fund

To honor the memory of I. Grant Irey, Jr., '60, the Law School has created a Fund "the income of which will permit the expansion of curricular offerings in the field of Business Law including, particularly, offerings related to financial institutions, by providing funds to attract lecturers who have had substantial experiences in the practice." The Fund shall also be used to support research and writing in the area of Business Law.

During his illustrious legal career, Grant Irey, a partner in the Philadelphia firm of Pepper, Hamilton & Scheetz, was a distinguished counselor to corporations and banks. The I. Grant Irey Memorial Fund will best reflect Mr. Irey's interest in the law, and his affection for and pride in the University of Pennsylvania Law School.

TRANSITIONS AND NEW FACES

Geraldine Higgs, the Law School's new Admissions Officer replaces Frances Spurgeon, Assistant Dean for Admissions. Ms. Higgs, a twenty-year employee of the University of Pennsylvania, has worked in the Admissions Office of the Graduate School of Education and has been Assistant to the Chairman of the History Department since 1975.

Gloria Watts, former Assistant to Vice-Dean Margo P. Marshall, is the Law School's new Assistant Registrar, replacing Registrar Gary Clinton.

WATCH FOR YOUR INVITATION TO THE PENN LAW ALUMNI RECEPTION TO BE HELD DURING THE AMERICAN BAR ASSOCIATION MEETINGS IN ATLANTA, GEORGIA—JULY 28–AUGUST 4, 1983
The Annual Judges' Reception
The Board of Managers of the University of Pennsylvania Law Alumni Society presented its eighth annual Reception on November 30, 1983 for University of Pennsylvania Law School students and Philadelphia Court of Common Pleas Judges and their law clerks at City Hall.
The event, organized and hosted annually by Judge Doris May Harris, offered Penn Law students the opportunity to meet informally with members of the Philadelphia Trial Bench and to become acquainted with the clerkship program available after graduation.

Students attending Judges' Reception converse with Judge Kendall H. Shoyer, left center, and Judge George J. Ivins, right.

The Dean Becomes a Phi Delta Phi
Dean Robert H. Mundheim was initiated into the Penn Chapter of Phi Delta Phi Legal Fraternity in February, 1983. Serving as Chancellor of the Bench was Associate Professor and Associate Dean Stephen B. Burbank. The Gibson-Alexander Inn of Phi Delta Phi was reactivated in 1981 after a 47 year absence from the Law School. Last year’s Honorary Initiates included Professors Covey T. Oliver and Clyde W. Summers, and Dr. Sadie T. M. Alexander, '27.

Quinquennial Reunion Weekend—October 15–16, 1983
Beginning on Saturday morning, October 15, all of the reunion classes will gather for a light breakfast to be followed by a program featuring Law School Faculty and Alumni. A luncheon at the University’s Faculty Club will be held after the morning activities. In the evening, each class will convene separately and celebrate at area restaurants and hotels of their choices. To complete the weekend’s festivities, Sunday brunch will be offered at Eden, a restaurant on campus.
The officers of each Quinquennial Class already have been contacted by the Law School’s Alumni office and reunion plans are in progress. Watch the mails for specifics!

Exhibit Featuring Women Displayed in Great Hall
"100 Years of University of Pennsylvania Law School Women", an extraordinary exhibit researched and prepared by Biddle Law Library Reference Librarian, Nancy Arnold, is on view in The Great Hall of the Law School. Of special note are the portrait/posters of Alumnae Carrie Burnham Kilgore, 1883, and Margaret Center Klingelsmith, '1898, which appear in the showcases at the School’s entrance.

The Women’s Law Group at the University of Pennsylvania sponsored a day-long conference on Saturday March 5, 1983 on the impact of labor and employment laws on working women. The recent influx of women into the labor force has raised many new issues relevant to both women and men. These issues have generated legal controversies and some of these issues, such as sexual harassment that were once outside the scope of the legal process, are now being recognized as legal problems with legal solutions.
The Conference explored the many developments in labor and employment statutes, regulations, and judicial decisions with the purpose to understand the implications for working women and their attorneys. Participants were drawn from a variety of backgrounds and perspectives including practicing lawyers, law school professors, law students, management and union representatives, and government officials.
Carol Bellamy, President of the New York City Council, presented the opening address on Saturday morning. For the rest of the day, nine workshops...
were available to participants: Organizing Working Women, Comparable Worth, Women's Health and Safety in the Workplace, Women's Issues in Collective Bargaining, Sexual Politics, What is an "Equal Opportunity Employer"?, Labor and Employment Legislation, Litigation Strategies for Labor and Employment Lawyers, and Employment Policies and Law: An International Perspective. The panelists, representing the academic community, government agencies, corporations, and labor unions, made brief presentations on the specified topic based on their experiences and research, and then opened the forum for discussion to the audience.

Among the contributors to the Conference were University of Pennsylvania Law Professors Drucilla Cornell, Virginia Kerr '76, Edward Sparer and Clyde Summers; and University of Pennsylvania Law Alumni Peggy Browning, '82, Wendella P. Fox, '76, William Whiteside, '54, Stephanie Middleton, '81, Julie Shapiro, '82 and Paula Markowitz, '52. Also participating was Professor Fujo Hamada, who is on a Fulbright Commission grant at the University of Pennsylvania Law School and is a professor of labor law at Kobe University in Japan.

The Conference was sponsored by the University of Pennsylvania Women's Law Group, the National Lawyers Guild, the United Auto Workers, the Bell Telephone Company of Pennsylvania and the America Federation of State, County and Municipal Employees.

The Second Annual Conference on Public Interest Law

The Law School's annual Public Interest Law Conference entitled "New Approaches to Law in the Public Interest" was held on March 25-26, 1983. This year's conference featured numerous important legal academics and practitioners, as well as individuals from other disciplines and experiences. Its focus was geared toward developing a definition of "public interest law" and an understanding of the conditions necessary for the practice of law in the public interest. Another important aspect of the two-day conference was to enable law students to interact with practitioners in order to discuss, explore and appreciate the problems and joys facing those involved in the practice of public interest law.

Father Robert F. Drinan, former member of the U.S. House of Representatives and now Professor of Law at Georgetown University Law School, delivered the keynote address. Law School Faculty participants included Professors Regina Austin, C. Edwin Baker, Paul Bender, Drucilla Cornell, Robert Gorman, Courtney Howland, Seth Kreimer, Stephen Schulhofer, Ralph Smith, Edward V. Sparer, and Clyde Summers.

Other eminent participants were Dean Derrick Bell, of the Oregon Law School; Professor Howard Lesnick, of the CUNY Law School at Queen's College; Professor Sylvia Law of the New York University Law School; Professor Barbara Underwood of the Yale Law School; Professor Rand Rosenblatt of the Rutgers-Camden Law School; and Professor Karl Klare of the Northeastern University Law School. Alumni taking part in the various panel discussions were: David Kairys, '71, David Ferleger, '72, Eleanor Myers, '75, John Parvensky, '79, Howard Gittis, '58, Benjamin Lerner, '65, Howard L. Shecter, '68, and Holly Maguigan, '72.

Community organizations were represented at the Conference by Richard Weishaupt, an attorney with Community Legal Services; Louise Brookins, President of the Welfare Rights Organization; Karen Burstein, Executive Director of the Consumer Protection Board of Pennsylvania; Margaret Fung of the Asian-American Legal Defense and Education Fund; John Pettit, Director of Tri-County Neighbors Association, Inc.; Juan Sanchez, organizer of Hispanic Farmworkers in Eastern Pennsylvania; Jack Zucker of the Gray Panthers; Dan Burt, President of the Capital Legal Foundation; Jerry Balter, Director of the Public Interest Law Center of Philadelphia; Antonia Hernandez, Associate Counsel of the Mexican-American Legal Defense Fund; Lowell Johnson of the NAACP Legal Defense and Education Fund; Sara Rosenbaum, Senior Health Specialist, Children's Defense Fund; Jody Smith, Executive Director, National Legal Aid and Defender Association; Elizabeth Schneider, who is with the Constitutional Law Clinic at Rutgers-Newark Law School; and Sherman Kreiner, attorney and Executive Director of the Philadelphia Association for Cooperative Enterprises. Additional contributors to the conference were practitioners from the Philadelphia area engaged in public interest law were: Robert Sugarman, David Rudovsky, Judy Chomsky, Thomas McGill, Pat Pierce and Greg Sleet. Sylvia Brown, a member of the University of Pennsylvania Law School Class of 1984, moderated at one of the workshops.

The subjects of the Conference's debates and panel discussions included "Social Purpose of the Law", "Legal Education and the Public Interest: Law and Society", and "Public Interest Law: Race, Class and Sex". The workshops under the broad heading of "New Approaches to Public Interest Law" included: Solo and Small Firm Practice, Alternative Delivery Mechanisms, Private Bar Pro Bono Work, A New Look at Traditional Public Interest Law Practice, Criminal Justice Practice and How Do Community Organizations Look at Lawyers?
Judge Phyllis W. Beck Addressed Woman's Law Group

Judge Phyllis Beck, former Vice-Dean of the University of Pennsylvania Law School for the years 1976-1981 and, presently, the first woman to sit on the Pennsylvania Superior Court bench, spoke with members of the Women's Law Group on February 4, 1983. In her message, the Judge traced her life experiences prior to attending law school (as a writer and, later, the mother of four children); her subsequent careers as a practicing lawyer (working both part- and full-time), as a law professor (the head of the Temple University Law School's Clinical Program for two years), and as a Law School Administrator (the Vice-Dean of the University of Pennsylvania Law School for five years); and, finally, her "journey to the Pennsylvania Superior Court bench", for which she is seeking reelection in the May 17th primary contest.

Judge Beck described how she was able to successfully manage both a career and a family—an issue of great moment to many of the women law students assembled and, in the Judge's opinion, "a problem that has not been addressed sufficiently by women and the women's movement". The Judge suggested that today's career-minded women must decide "whether or not they wish to marry and/or whether or not they want to bear children", then be ready to accept the attendant responsibilities built into the task of child-rearing. Women who opt for such a lifestyle might want to try the route of the part time employee in a law firm; few firms, however, have exhibited the willingness to be flexible in such situations. In addition, part-time employees, once accepted into a firm, are less likely to rise in a firm's power structure.

Following her provocative and stimulating presentation, Judge Beck entertained comments and questions from the group.

Cyrus Vance to be 1984 Roberts Lecturer

The 1984 Owen J. Roberts Memorial Lecture will be delivered on February 23, 1984 by Cyrus R. Vance, former U.S. Secretary of State. The Winter 1983 Law Alumni Journal erroneously announced Mr. Vance as the 1984 Thomas Jefferson Lecturer.

Chief Justice Roberts is Third Alumni Luncheon Forum Lecturer

Chief Justice Samuel J. Roberts, '31, of the Pennsylvania State Supreme Court, will deliver the third lecture in this year's Philadelphia Region Alumni Luncheon Series at 12:00, Wednesday, April 27, 1983 at the PNB Concourse, Broad and Chestnut Streets. Chief Justice Roberts' speech is titled "Reflections".

Irving S. Shapiro, the Chair of the Law School's Board of Overseers and the first of this year's lecturers, spoke on "The Mid-East Peace Proposal: A Personal View" in November 1982. The second lecture was delivered in February, 1983 by Penn Law Professor Clyde W. Summers, whose address, "Municipal Employees and Strikes", appears in this issue of the Journal.

The Dean's Calendar

Dean Robert H. Mundheim looks forward to meeting and becoming better-acquainted with Alumni at the following scheduled Alumni events, Law Alumni Society functions and Bar Association and professional meetings:

- January 7, 1983...Alumni Breakfast at Meetings of American Association of Law Schools, Cincinnati
- February 1...Law Alumni Society Alumni Second Luncheon Forum, Philadelphia
- March 1...Northern New Jersey Alumni Dinner
- March 3...Southern New Jersey Alumni Dinner
- March 30...Los Angeles, California Alumni Luncheon
- April 9...Black Law Students Union Alumni Program and Dinner
- April 11...Allentown, Bethlehem, Easton Alumni Reception
- April 12...World Affairs Council Circle—Law School
- April 19...Law Alumni Day
- April 22...New York Alumni Luncheon at New York Bar Association Meetings
- April 27...Law Alumni Society's Third Alumni Luncheon Forum, Philadelphia
- April 29...Law School Class of 1931 Dinner honoring Chief Justice Samuel J. Roberts of the Pennsylvania Supreme Court.
- May 4...Law Alumni Reception at the Pennsylvania Bar Association Meetings, Hershey, Pennsylvania
- May 11...Akron-Cleveland, Ohio Law Alumni Luncheon
- May 12...Chicago Alumni Luncheon
- May 13...New Jersey Alumni Reception at the New Jersey Bar Association Meetings, Atlantic City
- May 20...Washington, D.C. Alumni Luncheon during ALI Meetings
- May 23...Law School Commencement
- July 28-August 4...ABA Meetings—Atlanta, Georgia
- October 15-16...Quinquennial Reunion Weekend
Where are These Lost Alumni?

We have no record of the whereabouts of the following Alumni. Would anyone with information on the law firms and/or home addresses of these lost classmates (and/or other listed Alumni) please write to Lost Alumni, c/o The Alumni Office, The University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia, PA 19104 or call (215) 898-6321?

'28 Maurice W. Kail
  John J. K. Smith

'29 Joseph R. Applebaum

'30 Horacio Casasus
  H. G. Lowenstein
  Charles Nelson Moffett
  Andrew J. Schroder 2nd

'31 Nathan Agran
  Alexander Katzin
  Phillip A. Sheaff Jr.

'32 Mr. William L. Carranza
  Edward Hartzell
  Dorothea Burns Lamb
  Bernard S. Magen

'33 Sidney H. Kanig
  Milton Kunken
  Cpl. Benjamin J. Lipetz
  Anthony J. Sweeney Jr.

'34 John E. Boland
  Aaron Eisenstein

'35 Samuel H. Kaplan

'36 Joseph Kaufman
  M. Philips Nathanson
  John M. Smith Jr.
  Leonard R. Tittelman

'37 Gene A. Bortz
  Mr. Charles J. Donohue
  Walter L. Osikerko
  Harry K. Wampole

'38 Harvey L. Panetta

'39 Ruth Bonnelly McMahon
  Harry Richman

'40 Thos M. H. Broomall
  Maurice H. Kirshner
  Henry Larzelle
  Albert E. Turner Jr.

'41 Leon W. Gore
  Darthea Speyer

'42 Norva T. Cummings
  Mr. Dennis J. Lane
  Robert L. Miller

'43 James G. Moore

'48 Robert F. Conrad
  Charles B. Selak Jr.

'49 Alex L. Fricke
  Irvin J. Good
  Hugh H. Howard
  Warren M. Jones
  Morton Kaplan

Douglas H. Kiesewetter
  Martin Price

'50 John J. Dailey
  Norvin Nathan

'51 Robert I. Goldman
  Harry A. Ruber
  J. Dallas Shepherd
  Raymond G. Simkins
  Maj. John Teselle
  William F. Trappe

'52 Joseph J. Hennessy

'53 Edwin C. Bradford
  R. R. Johnson, Jr.
  Philip Schuchman

'56 Shirley S. Bitterman
  Dr. Simeon N. Ferrer*
  Hubert G. Francois*
  Robert J. Williams

'57 Stylaros Nestor*
  Juan C. Puig*

'58 Irwin Albert
  Arthur M. Dolin
  Dr. Muhammad H. Elfarra*
  Baron E. Kessler
  James A. Loughran
  Lt. Col. James A. Mounts, Jr.
  Mr. Howard I. Oken
  Y. Evan Synnestvedt
  Howard H. Ward

'59 Jose D. Concepcion*
  Margaret Adam Halsby
  Charles H. Harris
  Carl V. Kapp
  Albert W. Lalsy
  Joseph R. McFate 2nd

'60 H. Chester Grant
  C. Zachary Seltzer*
  Charles M. Stonehill
  Michael F. Walsh

'61 Neil J. Auspitz

'62 Michael Barkow

'63 Jonathan B. Baker
  Michael M. Becker
  Edward A. Comerton*
  Cesar L. Coronado*
  Mahmood A. Faruqui*
  Guido Fienga*
  John M. Flackett*
  Michael A. Grean
  Robert C. Littman
  Bernard Raoul Yochim

'64 Linda Ridi*
  Gordon D. Simonds

'65 Paul R. Braccotti
  Vincent A. Carbonar
  Gustavo A. Gelpi
  James H. Johns, Jr.
  John E. Kolotoflias
  Harihar A. Patel
  David P. Ross
  Peter V. Savage

'66 Lung Fong Chen*
  P. V. Crimaldi
  Diedre Mummery Davies*
  Peter B. Dublin
  Morton J. Goldfeln
  John P. Howland
  Robert M. Rosenbloom
  Albert F. Watters, Jr.

'67 James N. Albert
  Jeffrey L. Dow
  Franklin D. Grabill
  Frederick G. Hilmers*
  Takashi Maeda*
  Shibru Sefu
  Marvin M. Witosky

'68 Michael P. Friedman
  Hugh P. Glukhens
  Norman L. Goldberg
  Alan R. Goodman
  Romer Holleran
  David N. Kunkel

'69 Lesley Frost Behrendt*
  Herbert Beigel
  Henry R. Cooper*
  John B. Galus
  Richard George
  John F. Hayes*
  James C. Lahore*
  Frank L. Langhammer
  Ellen E. Mosen
  Alice Graham Rhodes
  Peter K. Speert
  Krishna M. Vempaty*
  Douglas M. Yorke*

'70 William A. Bachmann
  James A. Burke
  Kenneth L. Fredrickson
  Samuel M. Glasser
  Harry C. Jackson
  Walter M. Lowney*
  Susan G. Marion
  Christopher Norall

Richard M. Stone
  Robert K. Vincent, Jr.

'71 Richard E. Beeman
  Mirza A. M. Beg*
  Jules E. Bernard III
  Karl W. Beckman
  James R. Magee
  Joel W. Messing
  Steven P. Rapoport
  Joel P. Sternfeld
  Robert M. Washburn*
  Geoffrey A. Wilson*

'72 Andrew J. Duell
  Elizabeth M. Freedman
  Stephen J. Mills
  John M. Myers
  Dr. Ayala Procaccia*
  Dr. Uriel Procaccia*
  Richard W. Sherman
  Richard A. Siegal
  Peter J. Tobin
  Fisseha F. Yimer

'73 Michael J. Kalison
  Margaret D. McCaughey

'74 Leslie G. Dias
  Martin J. Genauer
  Hollis T. Hurd

'75 Lodewijk A. Briet, Jr.*
  Willie L. Dawkins
  James A. Young III

'76 Cheryl A. Crandall
  Charles M. Deese
  Edward J. Vairo

'77 John Y. C. Beckwith
  Richard Boydston
  Nemeico E. Lopez, Jr.

'78 Robin F. Hollington*
  Michael C. Kwang*
  Albert D. Woodward

'79 Saul Mandel
  John H. Palmer, Jr.

'80 Kyung J. Park*

'81 Linda R. Fannin
  Edwin Montes
  Jose R. Paz Padilla*

* Denotes LL.M. graduate
Featured Events

Professor Mishkin is 1982 Roberts Lecturer

Paul J. Mishkin, Emanuel S. Heller Professor of Law at the University of California School of Law, Berkeley, and former Professor of Law at the University of Pennsylvania Law School, delivered the Owen J. Roberts Memorial Lecture on October 21, 1982. Mr. Mishkin’s Lecture, The Uses of Ambivalence: Reflections on the Supreme Court and the Constitutionality of Affirmative Action, will appear in its entirety in The University of Pennsylvania Law Review, Volume 131 No. 4 April 1983.

Professor Mishkin joins the cadre of illustrious former Roberts Lecturers which include distinguished Judges Felix Frankfurter, Henry J. Friendly, William H. Hastie and Arthur Goldberg; eminent scholars Arthur L. Goodheart, Herbert Wechsler, Covey Oliver, Erwin Griswald, Paul Freund; renowned diplomats Paul Henri Spaak and Abba Eban; and esteemed practitioners Anthony Lester, Q.C. and Sidney Kentridge, S.C.

The Owen J. Roberts Memorial Lecture Series is sponsored by the Pennsylvania Chapter of The Order of The Coif, the University of Pennsylvania Law Alumni Society and The Law School. Support for the series is provided by an endowment given by the Philadelphia firm of Montgomery, McCracken, Walker and Rhoads, in memory of their founding partner, U.S. Supreme Court Justice Owen J. Roberts.

Professor and Mrs. Mishkin, center, with Alumni including the Honorable Norma L. Shapiro, '51.

Professor Mishkin, center, with Bernard Borish, '43, left; President of the Law Alumni Society, and Dean Robert H. Mundheim.
The 1982 Edwin R. Keedy Moot Court Competition

The final argument of the Edwin R. Keedy Cup Competition was held on November 12 at the University of Pennsylvania Museum. The distinguished 1982 bench included Judge John J. Gibbons, United States Court of Appeals for the Third Circuit, presiding; Judge Dolores K. Sloviter, '56, United States Court of Appeals for the Third Circuit; and Judge Murray M. Schwartz, '55 United States District Court for the District of Delaware. Former Supreme Court Justice Potter Stewart, originally scheduled as one of the 1982 judges, canceled his commitment due to illness.

The 1982 case for argument, Lucius Claiborne v. State of Montabama, involved a conviction under a state statute which required a mandatory ten-year prison sentence and a fine of $25,000 for persons trafficking large quantities of drugs. The state attorney, however, could move the sentencing court to reduce or to suspend the sentence if the person convicted provided substantial assistance in the identification, arrest or conviction of any of his accomplices, accessories, co-conspirators or principals. The defendant in the case contended that to escape the statute's mandatory penalties, he was forced to give up his privilege against self-incrimination.

The Keedy finalists, all members of the Class of 1983, were Marc E. Alterman, Julie R. Fenster, Thomas A. Isaacson and Andrew D. Schau. The arguments presented by both sides were acclaimed "of high quality" by the judges, but the team of Isaacson and Schau, who argued for the appellee, emerged the victors.

Professor Ralph S. Spritzer, the Moot Court Faculty Advisor, developed the case which was based on a Florida statute that had been reviewed by the U.S. Supreme Court.
Louis B. Schwartz, '35, joined the Faculty of this Law School in 1946. In June, he will retire from his teaching responsibilities at the University of Pennsylvania after thirty-seven years, and will continue his work at Hastings College of the Law in San Francisco, California.

Mr. Schwartz is a legend—a University of Pennsylvania Law School institution. Since most of the School's living Alumni have experienced him as their professor of criminal law and/or economic regulation and/or professional responsibility, his skills as a distinguished, vital and demanding educator are already well-known.

Over the years, many Penn Law Alumni have benefitted from Mr. Schwartz's personal interest. As friend and mentor, he adopts an almost parent-like pride when touting an Alumnus' recently published novel or fascinating career change or newly-acquired editorship or elevation to a high position in government or in business.

Lou Schwartz is the quintessential Renaissance man—musician, bread-baker, gadfly/philosopher, book reviewer, gardener, author, photographer, and legal scholar/specialist in two areas—criminal law and economic regulation.

My tenure as JOURNAL editor began in 1975 and, from that time to the present, Mr. Schwartz has been the publication's chief "idea-person". Lou's frequent and welcome memos offering suggestions that THE JOURNAL explore "what members of the Penn Law Faculty do during summer vacation", or that it consider articles on the "following Alumni" whose careers and lives might make fascinating copy, were always worthy of investigation and implementation. The flow of Lou's fresh and unique ideas was endless, and his departure will result in the lose of one of THE JOURNALS major creative sources.

Last autumn, Professor Schwartz was guest speaker at the 25th Anniversary Reception and Dinner celebration of the New York City Alumni Regional Club. At that event, in inimitable Schwartz-style, he delivered an assessment of his career—including the failures as well as the triumphs. Presented here is that appraisal "of-the-man-by-the-man" on the occasion of his retirement as Benjamin Franklin and University Professor of Law, The University of Pennsylvania.
The Reek of Success:
Notes of Caution on the Occasion of Eulogies

by Professor Louis B. Schwartz

Standing on this platform with Dean Robert Mundheim's encomia ringing pleasantly in my ears, I cannot suppress a perverse impulse to balance the picture with a report on the failures in my life. It is part of the duty of a professor, is it not, to expound the truth, the whole truth, and the chiaroscuro of light and shade that characterizes real as opposed to idealized biography.

No one could stand here without sniffing the reek of success that pervades this 25th anniversary occasion. You are successes—partners and associates in powerful law firms and in great enterprises. As you have heard from Dean Mundheim, the Law School is a great success, with ever-increasing multitudes of applicants requesting admission. The Dean himself reeks of success. Leaving behind a splendid interlude at the highest levels of government, Bob Mundheim takes charge at the Law School with confidence and urbanity.

In the light of the attributes and good wishes that many of you—classmates, former students, colleagues—have privately extended to me, I have no alternative but to acknowledge that I also must reek of success. Academe has been very good to me. It has provided almost unfailing stimulation (faculty meetings apart, Mr. Dean), freedom and independence (from clients, patrons, bosses), opportunities for tax-deductible travel throughout the world, the chance to stay young by constant encounters with the young and the bright, and the leisure time and money to build a glorious retreat down-East in Maine. Nor has it cut me off altogether from the profitable practice of law.

When I count my successes, they go beyond the public gratifications: my publications, my work for the American Law Institute as Reporter for the Model Penal Code, my participation in the National Commission to Study the Antitrust Laws, my directorship of the National Commission on Reform of the Federal Criminal Laws. My "private" successes, on which I set great store and immodestly list before going to the failures which are my original theme, include the following: In 1963, I persuaded the Faculty to establish the Law School Honorary Fellow Program whereby each year at commencement we honor a lawyer who, at the risk of his/her career, participated in courageous vindication of civil rights, justice for the poor, and resistance to oppression. These Fellows, whose photographs and citations are on permanent
display in the Law School Lobby, serve as models to our students today.

I inaugurated the program of bridge-building between the Law School and the fine arts, arranging for showings of paintings and sculpture by students in the University’s Graduate School of Fine Arts. This year, my suggestion to organize an art show featuring members of the Law School Community and their families came to successful fruition. Many others, also, have followed these initiatives and, today, the Law School is unique in its presentations of art and music.

I count among my private accomplishments the gracing of our professorial offices with lush and exotic plantings, my cue having been taken from Harvard Professor, Lon Fuller, a colleague with whom I taught while at that institution in 1964.

Now for my failures, which are impressive. The greatest, undoubtedly, was the collapse of the movement for reform of the federal criminal laws. Directing the National Commission, chaired by former Governor Pat Brown of California, was a job for which much of my early career in the United States Department of Justice, at the American Law Institute, and in the teaching of criminal law had uniquely prepared me; the need was urgent and the political sponsorship favorable. The high-water mark was reached in 1977 when Senator Ted Kennedy shepherded the reform bill through the Senate by a vote of 74-15. It was all the more agonizing to have the reform effort frustrated by those who were normally my political allies, particularly the American Civil Liberties Union which followed a policy of all-or-nothing, and opposed the reform because it did not incorporate every advance that could be envisioned.

Another disappointment that should help dispel the “reek of success” was my failure to get the essential fourth vote for certiorari in the case of Schwartz and Segal v. The Defender Association of Philadelphia, PA. 353, 307 A.2d 906,414 U.S. 1079 (1973), where I had sought to establish as a constitutional principle the complete independence of public defenders from domination by mayors and city councils affiliated with the police and the district attorneys. This disappointment was exacerbated by a sneaking feeling, possibly experienced by all losing counsel, that I was partly responsible for the defeat. In this situation, my error was in overarguing the case in the petition for certiorari so that a Justice who was so inclined could prematurely disagree with me on the merits, rather than simply recognize that an important issue was presented.

A nagging sense of inadequacy which, for the first time I now publicly avow, relates to my Supreme Court “victory” in Palmer v. Ashe, 342 U.S. 134 (1951). Appointed to represent the prisoner Palmer, who had been railroaded into a forty-year sentence for a petty burglary charge without benefit of counsel, I prevailed with my pre-Gideon argument that the record showed substantial prejudice to Palmer’s due process rights in view of the seriousness of the case, and to his youth, inexperience, and limited intelligence. When Abe Fortas soon thereafter got the Court to accept the rule that trial of a serious criminal case without counsel was ipso facto a denial of due process, Gideon v. Wainright, 372 U.S. 335 (1963), I asked myself whether my friends on the Supreme Court had not meant to tender me the great opportunity, which I had passed up, in the view that my single client’s best interest lay in bringing him within the established rule, however unsatisfactorily.

What shall I say of the great “liberalization” of the law of abortion which I brought about in the Model Penal Code of the American Law Institute? Imagine my chagrin when the Supreme Court thereafter, in Roe v. Wade, 410 U.S. 113 (1973), held that my rule was unconstitutionally restrictive of women’s rights to choose at least during the first trimester of pregnancy. With much difficulty I persuaded the majority of the pundits of the Institute to go as far as decriminalizing abortion where the pregnancy resulted from rape or incest, or where continuance of the pregnancy would threaten the life or health of the mother, or where the offspring would suffer from serious physical handicaps. Think how a liberal’s pride suffers when his reform is held unconscionable in a decision backed by such conservative stalwarts as Burger, Blackmun and Powell!

My failures in academic reform were the hardest to bear. Having stimulated the creation at the Law School of a “Committee on Teaching” to address the problem of widespread student alienation and anti-intellectualism, I bumped my head against a number of stone walls. Projects for an integrated rational curriculum were defeated. As I told my colleagues, perpetual curricular revisions here as at other schools represent no coherent philosophy of education, but only a negotiated multilateral treaty among professional mandarins intent on defending their particular turf. New subjects are added but never at the cost of corresponding contractions elsewhere in the curriculum. Consequently, the feeling was that “electives” multiply and people graduate with glaring omissions in their training. Grading systems are installed on the principle that nearly half the students will be graded merely “pass.” The avowed purpose is to obscure the notable failures of a small percentage of the class. Nobody is fooled—neither fellow-students, nor prospective employers and, most notably, not the bar examiners whose pitiless scorings almost unerringly pick out our “bare passes” and make the School look bad as a training ground. The only effect of misplaced solicitude for a small minority is to prejudice a substantial portion of the class whom prospective employers cannot discriminate from “bare passes”. My proposed reform, to reestablish a “bare pass” category such as exists at peer schools and elsewhere in the University, went down to defeat.

At the University level, there were dreary episodes when seemingly uncontroversial proposals for improvement foundered on bureaucratic inertia. That was the fate of my project for upgrading the approaches to the University by systematic policing to stop slum-lord neglect and trash-littering. It was the fate, likewise, of my earnestly advanced proposal to extend the University’s physical planning conception to make the neighboring historic and beautiful Woodland Cemetery a meaningful part of our physical environment.

Such croppers! Such heartaches for an “achiever”! But I must go no further. Already, I see tears of sympathy coursing down a cheek here and there. Is that a strangled sob I hear? I must not cause you further distress on so happy an occasion. Be assured, however, that notwithstanding the dolorous tales I have to tell, I really do not find the reek of success unbearable.
Municipal Employees and Strikes

by Professor Clyde W. Summers

I recognize that no person with moderate sense and minimum caution would enter the cross-fire of debate over the right of public employees to strike. One would be lucky to escape undamaged, much less make any useful contribution. But so much of the debate seems to me to skirt the central issues, that I will run the risk with the incurable optimist and present a different perspective and method of analysis of the problem.

The arguments opposing and supporting the right of public employees to strike run in matched pairs. On the one side, there are those who oppose the use of strikes by public employees describing them as violations of the state’s sovereignty—a form of insurrection. On the other side, the matched argument is of equal profundity, offering an equal lack of logic—that there is a constitutional right to strike. These arguments, of course, solve nothing, for the problem is not of whether the prohibition of strikes is constitutional but of whether they should be allowed.

In another matched pair of arguments, those who oppose public employee strikes project a picture of disaster when government closes its doors and public services cease—anarchy reigns. Those on the other side point out that a strike on a commuter rail line is no different if it is owned by SEPTA (The Southeastern Pennsylvania Transit Authority) or if it is owned by the Pennsylvania Railroad; or, to use another example, that a strike by public school teachers is no different from a strike by parochial school teachers or teachers at Girard College.

The argument that strikes bring undue pressure on government and distort the political process is matched by the argument that strikes must be available to make collective bargaining work. Finally, the argument that the law should not attempt to prohibit strikes...
because such laws cannot be enforced is matched by the argument that what we need is better laws and the determination to enforce them.

Running throughout the entire debate and through a part of each pair of arguments—sometimes submerged and sometimes on the surface—are assumptions and assertions as to whether public employment is similar to private employment, whether the law and practice in the public sector should be the same as that in the private sector. The important question, however, is not one of comparison or transplantability between the public and private sectors but rather what procedures are appropriate terms and conditions of employment for public employees, and whether the strike is a proper part of those procedures. It is this question which we should confront directly.

The starting point, I would suggest, is a fundamental principle that is so evident that it ought not need articulation. The central and simple truism is that public employees are employees of the public; the public is the employer. And who is the public? The public consists of the citizens and taxpayers who demand the services of their employees who pay their wages. The public employer is not the mayor, not the city council, not even the city as an abstraction. The public employer is the collectivity of citizens, users and taxpayers.

Citizens, the taxpayers and users of services—the members of the public—behave much like all other employers. What they want from their employees is more production at lower costs. They want more police protection, better schools, smoother streets and prettier parks—and they want lower taxes. They want more service for less money—both at the same time. Because payroll costs make up 60% to 70% of a normal city’s operating costs, there is always pressure to get more work out of public employees and to pay them lower salaries. That is where the service/tax combination pinches most. When public employees strike, they strike against those who demand the services and who pay the wages.

The second fundamental principle to be recognized is that the determination of terms and conditions of employment for public employees is a political decision. Economic forces, including the labor market, influence those who make the decisions. The questions of how many shall be hired, what tasks they shall be assigned, and what they shall be paid, are ultimately made through the political process, particularly through the budgeting and taxing process. That process is politically answerable to those who use the services and pay the taxes.

The function of a strike by public employees is to influence the outcome of the political process. It is to induce the employers—the taxpayers and the users of public services—to be willing to pay more to their employees than they might otherwise pay. It makes the costs of the union’s demands more politically acceptable by making refusal of those demands more politically unacceptable.

The instructive reaction to this perspective is to label a strike by employees a “political strike” and, by attaching such a label, to cease all further thought. This, however, is but the beginning of inquiry. The question still remains—if we are to be slaves to semantics—is it appropriate for economic pressure to be used in the making of this particular class of political decisions?

I would remind you that economic considerations and, indeed, economic pressures enter into many political decisions. Businesses often bargain with city officials for tax concessions or other benefits in return for the promise to locate or remain situated in a city. Zoning decisions are shaped, if not dictated, by economic pressures as are a wide range of taxing and budgeting decisions. Economic pressure is no foreigner to the political process, and few pressures are as forthright and visible as the strike.

Also, no one questions that public employees can individually withhold their services if the terms of employment are not acceptable—the 13th Amendment guarantees that right. Our intuitive labeling of strikes by public employees as political strikes is a response to our fear of concerted action. But I would remind you that such concerted action directed toward influencing decisions of private employers was once considered an intolerable interference with market processes. Now the concerted action of the strike is permitted as an exception to the legally required “normal” market process of open competition. With this lesson from history, we should hold open the question of whether concerted economic action is appropriate for influencing decisions in public employment. Our intuitive fear of concerted economic action influencing political decisions may have healthy roots. I believe that it does. But there still may be room for an exception permitting public employees to withhold their services in order to influence the political decisions of their employer as to their terms and conditions of employment.

It is worth noting that public sector strikes have a certain distinctness of confrontation which, in schematic terms, gives them a special rationality and appropriateness not found in private sector strikes. When public employees strike, they confront their employers—the taxpayers and users—directly with the declaration, “You will not have our services until you meet our demands.” The taxpayers and users can respond, “We would rather do without.” Not only is the confrontation direct, but the costs of settlement are direct. The decision is controlled by those whose services are involved and who ultimately pay for the settlement.

Contrast this with the private sector strike. If steelworkers strike, the impact puts autoworkers out of work, but the autoworkers have no voice concerning the continuation of the strike or the settlement. The settlement affects the price of steel, and the purchase of a car helps pay the price, but the consumer has no voice in either the strike or its settlement. The decision is made by the United Steelworkers and the steel companies. If maritime workers strike, it is the shippers who do not get moved; but the shipper has no voice in the dispute. If the union and the shipping companies decide to settle, the cost of increased wages is borne by the shippers, those who buy the product, and the government which provides subsidies. None of these has a voice in the decision. But when teachers or garbage workers or any other public employees strike, the ones who bear the burden of the strike and who pay for the settlement are the users and taxpayers. They have the ultimate voice throughout the political process. There is schematically a direct confrontation of economic interest and participation by those affected in the decision-making.

Public employee strikes do not always provide the perfect confronta-
sion for those who bear the burden of the strike, pay the costs of settlement, and control the outcome. When school teachers strike, the primary burden is on the parents and the children; however, many of those who pay the teachers' salaries are taxpayers who may have no children in school. Even so, the confrontation is much more direct than in a strike of steelworkers, longshoremen, truckdrivers or carpenters.

The usefulness or propriety of public employee strikes, however, cannot be judged simply by the elegance with which it matches opposing interests and allows each side to weigh the costs of continued conflict against the costs of settlement. The crucial question is whether the decisions to terms and conditions of employment should be influenced by the pressure brought on by a strike, or whether they should be determined free from those pressures. As citizens, users and taxpayers, we would of course like to be able to decide free from such pressures. Like all employers, we would like not to be subject to economic pressure. We might persuade ourselves to pay more because it is painful not to pay more, and we do not want to bear the pain.

The case of the argument against public employee strikes is that public employees have sufficient political influence to protect their interests without the strike, and the strike then gives them too much political power. The assumptions behind this argument need to be examined. When public employees have no right to strike, the decision as to their terms and conditions of employment gets made through the normal political process. In this process, however, public employees are a distinct minority, and those arrayed against the public employees are those who want the services and do not want to pay the taxes. Politically, public employees are always outnumbered. To be sure public employee unions are often highly effective political organizations, but the fact remains that what the public employee gains must be paid for either in reduced services or increased taxes. The people who pay always have the largest potential political voice. It is commonplace that collective agreements negotiated by political officials are rejected by voters, and tax increases to pay for wage increases trigger taxpayer revolts. In thousands of school districts, collective agreements or the money to fund them are voted down by voters in the districts.

There was a time when this was not the case. Officials acted as if tax resources were unlimited, and that illusion continued in some cities considerably past the time when reality was apparent. But, in the last ten years, the pressures of tax burdens and the prevalence of taxpayer revolts have meant that public employees have had great difficulty bringing adequate political pressures through the normal processes to protect their interests. They simply do not have the votes.

The strike obviously increases the political influence of public employees, but it is easy to overestimate the effectiveness of a strike. We can readily conjure images of a strike closing down a city or a segment of government; as a result, political resistance to the union's demands will collapse and politicians will sign an agreement leading to fiscal disaster. I would be the last to deny that this can and sometimes does happen, but it need not and normally does not happen since most public employee strikes are singularly ineffective.

What is the impact and effectiveness of strikes by public employees? In the first place, we can live without most public services for a substantial period of time without serious consequences. Some few functions such as police and fire protection are obvious exceptions. But if teachers go on strike at the beginning of the school year, what are the consequences? For parents, the consequences are that they must take care of their children for another month—September is like August. For the children, September is also like August, but the time lost is made up by rescheduling classes. Vacations and holidays are shortened or eliminated and school continues on into June until the required number of class days have been provided. The effect of the strike is simply to shift the scheduling of the school year, unless the strike continues for more than a month or six weeks. There are costs and dislocations caused by the changed scheduling, but those are easy to exaggerate.

If the public works employees responsible for repairing streets strike, we ride over the same potholes for a few more weeks. (Holes which have been there since February will get repaired in September instead of August.) If the parks employees strike, in some cities there would be no noticeable difference; and if the city hall employees strike, most people would not even know it. To be sure, public employee strikes have costs and inconveniences to the public, but they seldom place intolerable pressure on the public to settle at any price.

On the employees' side, a strike causes them to lose all of their wages. Their incomes are cut off and few can get outside jobs to help make up for their lost incomes. When the strike is over, public employees seldom receive a lot of overtime pay to work off the accumulated backlog, which is unlikely to occur in many private sector strikes. For public employees, the strike means a total loss of earnings. At the same time, the city continues to collect taxes, its income is not interrupted, and it collects for services not remedied. Indeed, it is not unknown for public officials to secretly welcome a strike as a device for balancing the budget. Some teachers unions have learned this painful lesson when they strike in a school district facing budget problems. In public employee strikes, there may be pleasure rather than pain for the employer at the tax and budget level. This is, of course, directly contrary to the consequences of private sector strikes. The private employer loses production, loses sales, and may permanently lose customers. In sum, a strike by public employees, on the whole, is less effective than a strike by private employees.

The crucial question is whether the political process is capable of resisting the limited pressure exerted by a strike. What is the political position of public officials who negotiate and approve the settlements? If public officials embrace and cultivate the fear that a strike will cause the city to collapse or that children will grow up unschooled, then they can create a real or imaginary panic. This panic situation will justify their signing a costly contract which is beyond the necessities of the situation or the fiscal capacity of the city or school district. But public officials have another alternative by making clear to the public what is ultimately at stake—their public services and their taxes. They can say, "The union's demands will require reducing garbage collection from once-a-week to once every two weeks," or "Giving in to the union will mean a six mill in-
creas in taxes.” When the voters see that the union’s demands will cost them money, they may be willing or even anxious to endure the inconveniences of a strike.

If public officials possess the wit and the will to make use of the potential political resource interest in the situation—that public employees are greatly outnumbered at the polls—then the political pressures of strikes can be resisted. The danger that public employee strikes will lead to over-generous contracts comes at least half from dimwitted public officials who cannot or will not see their obvious political strengths. The remaining half of the danger comes from public officials who do not want to resist the strike. They want the sense of panic because they want the public to surrender. The union is thereby pacified and the public feels relieved that it escaped disaster. All that is needed in order to deal with public employee strikes is responsible public officials and voters who will hold the public employees politically responsible for their settlements. If we must choose between having public employees in the politically weak position of having to resort only to the normal political channels or allowing them to strike in order to exert added pressure in the political process, then I would prefer the latter.

There is, of course, a third alternative—arbitration. This is the method used in Pennsylvania and in some other states for resolving disputes with police and fire department employees. Arbitration has an immediate appeal because it is seen as providing a fair result without disruption of public services. However, we ought not be too easily seduced for arbitration has certain questionable characteristics. First, arbitration is wrong in principle because the decisions to be made are political decisions which involve political values. Those decisions should be made through the political process. Arbitration often delegates the authority to make decisions to one who has neither political responsibility nor political sensitivity. Further, arbitration is wrong in principle because it enables those public officials who should have the authority and be politically responsible, to get “off the hook.” They refuse to take responsibility for making an agreement and push the decision off to an arbitrator. When the arbitrator grants a wage increase, the public officials disown any responsibility for the resulting tax increase, proclaim that they are powerless and, thus, rest the blame on the arbitrator. Arbitration, in my opinion, is an escape mechanism for timid and irresponsible public officials.

Second, arbitration carries the potential for political fraud on the public. It is not unknown for public officials, who should be making the decisions and bearing the political responsibility, to let the arbitrator know by direct or indirect means that they are willing to accept more than they offered at the bargaining table. Through arbitration, elected officials may in fact give benefits to the union—sometimes for a political quid pro quo—while proclaiming to the public that it is all the arbitrator’s fault. This danger is plainly visible in Pennsylvania’s arbitration of police and fire department disputes. It is commonplace that, in these proceedings, the city’s member on the three-member arbitration board indicates subtly or openly that an award substantially above the city’s offer will be accepted. The “neutral” arbitrator is not likely to insist that the award be for less and may accept that the city’s arbitrator will file a dissent so that the city officials can disclaim all responsibility.

Third, the arbitrators who make the decisions may have limited competence to deal with the problems involved. Decisions as to public employee wages and benefits involve fundamental tax and budget problems. Those decisions are more closely connected with city finance than with labor relations, and they involve considerations totally foreign to collective bargaining in the private sector. The expertise of many of the arbitrators, however, is in private sector labor relations not in public finance. Many have no knowledge of the complexity of taxing structures or of the difficulty of comparing tax burdens. They are unable to penetrate even the most superficial disguises of hidden funds in a municipal or school district budget, and are being asked to make decisions which have components beyond their comprehension.

Fourth, even when the arbitrators are competent, they may not be given the information necessary to make a responsible decision. The experience in police and fire arbitration is that the parties seldom provide more than the most sketchy and meaningless fiscal data. The arbitrator can do little more than make an uninformed guess, or split the difference between what the other two arbitrators indicate is acceptable. The arbitrator’s lack of informed judgment is concealed by his not writing an opinion justifying the award.

Arbitration of limited sectors such as police and fire is tolerable and is probably preferable to the other two alternatives. By comparing wage levels or wage increases in a particular case with those of police and fire departments in other cities, arbitrators do have some guidelines. This may result in a boot-strap process of arbitrators relying on awards of other arbitrators and may lead to the spiralling of wages for these two categories of employees. Arbitrators may also use as a guide the wage levels or wage increases of other employees in the same city. If these wages are established by collective bargaining within the political process, then arbitration of police and fire may reflect political decision-making. If the police demand 15% and other city employees have obtained only 5%, the arbitrator can recognize that what the police demand is out of line. The political process can provide a guide for arbitration, but if arbitration is relied on generally or for a dominant sector of employees, it has no such guide but instead establishes the pattern for all public employees. The political process is thereby totally displaced or is seriously distorted by arbitration.

Despite its superficial, seductive appeal, arbitration seems to me the least attractive alternative for determining public employees’ terms and conditions of employment. It is at most suitable for resolving disputes in those sectors where strikes are genuinely intolerable. Although strikes in other sectors have costs and inconveniences which should be avoided, as employers—users of services and taxpayers—might like to be able to dictate the terms of our employees, free from the pressures of the strike. But it seems to me that fairness to our employees requires that they be allowed to use the limited effectiveness of the strike to protect their interests. As taxpayers and users of public services, we want more services for less money. We have the overwhelming majority at the polls. Our employees need the strike as a countervailing measure in the political process.
The Insanity Plea: A Modern Dilemma

Editor's Note: The following articles have been adapted from lectures delivered by Dr. Richard G. Lonsdorf, Dr. Robert L. Sadoff, and Professor Louis B. Schwartz at the Noyes Memorial Conference on November 4, 1982, Norristown State Hospital, Norristown, PA.
The Insanity Plea: A Plea for Reason

By Richard G. Lonsdorf, M.D.

Before examining the background and history of the Insanity Plea, I want to comment on the current attacks which have been made on that defense and some of the proposals which have been put forth to alter or to abandon it. Let me state at the outset that I do not feel the insanity plea to be the most pressing problem at the interface between the criminal justice and the mental health systems today. Problems concerning competency to stand trial or sentencing or the delivery of proper physical and mental health care in our prisons are certainly more urgent in terms of the numbers of people affected, and they should command more of our attention. None of these problems, however, is as intriguing as the insanity controversy nor do they evoke the emotional response that is stirred by the plea and all of the philosophical and practical problems swirling about it.

Each time a sensational trial takes place (as in the John Hinckley case) a great deal of writing, discussion and debate on the insanity plea surfaces, much of it shrill and short-sighted, some of it probing and profound, but all of it questioning society's ultimate social values and beliefs on this troubling issue. The insanity plea provokes a deep-felt sense of outrage in people who perceive this as another example of the failure of the criminal justice system either to provide justice in a proper fashion or to make society secure from people who mean to do harm. The ultimate questions the insanity plea addresses are who is to be held morally responsible and who is not, who is to be held blameworthy and who is not, and who truly has free will and who is so mentally deranged that he has none. ALL of these issues can be easily lost in the heat of the furor.

There are many who question whether or not an insanity plea is necessary, and many who feel that it should be abolished. I think not. The rationale for the plea and the notion that there are people so mentally deranged that they cannot be held morally blameworthy, lies deep within not only our Anglo-American system but within virtually every civilized system of law. To eliminate this concept would do an enormous disservice to the laws which have been developed so arduously and carefully over centuries of time.
Criminal law must be based on the individual’s being responsible for his actions. Violators of our laws are found to be guilty, which is another way of saying that the individual has committed not only the act of which he has been accused, but that he is morally responsible and thus blameworthy and thus punishable. To punish those who cannot be held morally responsible because of the extent of their mental derangement, would only undermine the moral integrity of the law. We uphold the rule and validate the law by acknowledging the exception.

Today, however, there are many who feel that too often people are “getting off by copping a plea”—and the plea that they are copping is the insanity plea. In the past, those found not-guilty-by-reason-of-insanity were maintained, often for their lifetimes, in institutions called hospitals for the criminally insane. Through this confinement our sense of humaneness was indulged, and we were certain that the objects of our humanity would be confined for lengthy periods of time in places called hospitals, even though these hospitals were and are very difficult to distinguish from prisons. Once removed from society, these people were no longer the subjects of our concern or of our interest.

All of this has changed and for a number of reasons. Certain courts, for example, have begun to take the “not guilty” aspect of the plea very seriously. To say that these people are “not guilty” means that they have been acquitted and, if this is the case, how are they different from other non-convicts whom we seek to commit to mental institutions? Shouldn’t they be given equal due-process protections? How long should they be retained in custody? How long may they be retained and under what conditions? The problem is clearly one of dispositions. What does one do with these people once they are found not-guilty-by-reason-of-insanity? This is a complex problem which I will touch upon later.

I want to get back to the current concern of whether those found not-guilty-by-reason-of-insanity are very difficult to obtain. There are only scattered reports. The states of Michigan and New York and cities like St. Louis and Louisville have some of the only fairly decent records available. If one looks only at the truly serious crimes (murder, rape, aggravated assault, kidnapping, etc.)—about one of every 1,000 of those accused and indicted chooses to plead not-guilty-by-reason-of-insanity. In roughly 25% of those cases, the plea is successful. In short, it is not quite accurate to say that the insanity plea is “as rare as a snakebite in Manhattan”. It is not that rare—but it is certainly not frequent and even less frequently is it successful.

It is true that in recent years there has been an increase in the number of persons pleading NGRI who are charged with less serious crimes. But it is not true that many people pleading NGRI are not seriously disturbed. One study indicates that almost 90% of those pleading NGRI are diagnosed as having very serious mental disorders of psychotic proportions with over half of these having a history of prior hospitalization for that disorder.

Nor do most NGRI cases create the circus-like battle-of-the-experts atmosphere which characterized the Hinckley trial. A far more typical scenario is for the defense to raise the issue of whether or not the accused is competent to stand trial. That person is then hospitalized and the hospital is asked to make an assessment of both competency and criminal responsibility. In many instances, the report is accepted by both sides. The determination of NGRI is plea-bargained far more often than it is determined by trial. Eighty per-cent of the findings of NGRI are plea-bargained without any of the fanfare that occurred in more notorious cases like Hinckley or with the “Son-of-Sam” murders. In most of these instances, the clinical finding of psychosis is decisive and determinative of the outcome accepted by the prosecution whose own experts may well be telling them the same things.
What happens to those people found NGRI? The statistics are shaky but the best evidence is that they spend roughly the same length of time in institutions as they would have spent in prison had they been found guilty as originally charged. Some evidence suggests that they may spend somewhat less time after the verdict but, when the time spent in confinement before trial is also counted, the NGRI acquittees spend just about the same time confined as those found guilty as charged.

It should again be emphasized that insanity is a legal concept, not a psychiatric one. This point needs emphasis. It must be understood that psychosis and/or any other psychiatric diagnosis can never be equated with insanity. The legal determination ultimately made by a judge or jury is just that—a legal determination from which certain consequences will flow. To be convicted of most crimes two elements must be proved. It must be established not only that the person committed the act but also that he had the proper kind of mind set mens rea before the accused can be convicted. For instance, over a period of centuries, we have distinguished four different levels of homicide: first-degree murder, second-degree murder, manslaughter, and negligent homicide. All of which have different mens reas, the necessary elements which must be proved by the state beyond a reasonable doubt if the accused is to be found guilty of the crime charged. Many of the proposals that would do away with the insanity defense, most notably those raised by the Reagan Administration, would permit only a defense which negates the mens rea.

But beyond a mens rea defense there are certain so-called affirmative defenses (self-defense, accident, duress, etc.)—which totally excuse the accused from responsibility for his acts, but only when very strict conditions have been met. Whether insanity is an affirmative defense or whether it is simply a finding that negates the mens rea, has been a subject of considerable debate, discussion and argument for a long time. The importance of deciding which choice to make lies in whether the government or the defense carries the burden-of-proof. If it is not an affirmative defense but merely a negation of the mens rea, it becomes the government's obligation, once the issue has been raised, to prove sanity beyond a reasonable doubt. That is exactly what happened with the Hinckley trial. The Hinckley jury did precisely what it was told. It was told that the government had the burden of proving beyond a reasonable doubt that Hinckley was not insane. The simple fact of the matter is that while everyone knew what Hinckley had done, the government did not meet its burden, and Hinckley was found not guilty-by-reason-of-insanity. If insanity was regarded as an affirmative defense and had Hinckley the burden-of-proof placed on him (as is true in about half of our states), there might have been a rather different outcome.

Historically, the insanity plea goes back to early Hebraic, Roman and Greek Law which provided that certain classes of persons (deaf mutes, idiots, minors, etc.) were not held responsible or punishable for their actions. The sources of the modern Anglo-American system can be traced to the thirteenth century. In 1278 there was a case in which a man convicted of hanging his daughter was released in the custody of twelve men who were to keep him from harming himself or anyone else. The reason given for this result was that "he committed the act while suffering from madness". Thus, more than seven centuries ago, there were circumstances in which society would not call people blameworthy even when it was abundantly clear that they had committed the act of which they were accused. The issue then became what had to be demonstrated in the trial. In 1582, the test was "if a man is a natural fool or a lunatic in the time of his lunacy or a child who apparently has no knowledge of good or evil doth kill a man, this is no felonious act, for they cannot be said to have any understanding will." The 1724 test provided for exculpation if the defendant "doth not know what he is doing no more than a wild beast".

Lord Matthew Hale, the Chief Justice of the Court of the King's Bench, published a work in 1736 that explained the insanity defense as being rooted in the fundamental moral assumptions of the criminal law: "The consent of will is that which renders human actions either commendable or culpable. Where there is a total defect of the understanding, there is no free act of the will. The test, the best measure I can think of, is whether or not the accused hath yet ordinarily as great understanding as ordinarily a child of fourteen years hath."

The most famous of these early cases was the McNaughton case which caused as great a public outrage and outcry as did the Hinckley case. McNaughton believed that the Tories of his native city compelled him to do certain things, were persecuting and prosecuting him, were following him and were making life very difficult for him. He felt that the only way out of his problem was to kill the leading Tory, Sir Robert Peale, the Prime Minister of Great Britain. McNaughton set out to kill Sir Robert but entered the wrong carriage and, in fact, killed Edward Drummond, Peale's secretary. The case attracted an enormous amount of attention and notoriety. Queen Victoria, who had been the subject of at least three assassination attempts (one of her would-be assassins was found not-guilty-by-reason-of-insanity), was outraged when McNaughton was found NGRI. The Queen responded by summoning the House of Lords "to take the opinion of the judges on the law governing such cases." Fifteen judges of the common law courts were called in, an extraordinary session under a not-too-subtle atmosphere of pressure. They produced the McNaughton's Rules, the same rules under which we still try insanity cases in Pennsylvania and in twenty other states. McNaughton's Rules state that the jury should be told that every person is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved to their satisfaction. Secondly, it must be clearly proven that, at the time of committing the act, the accused party was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing; or, if he did know the nature and quality of the act, that he did not know that what he was doing was wrong. One can assume that this was meant to be a cognitive test and, while the law has
never defined exactly what was meant by “know” or “defect of reason” or “nature and quality” or “right or wrong”, most commentators believe that “know” was to be defined in the straightforward, simple, cognitive sense of the word. For example, if one knows that pulling the trigger will cause the bullet to be projected which, if it hits someone will do that person harm, one has sufficient knowledge to fail the test. No sooner were the McNaughton Rules pronounced than they were intensely attacked as being too strict and too narrow. Dr. Isaac Ray, the most famous forensic psychiatrist of the time, criticized them roundly stating that far more was known about behavior than could be testified to under the McNaughton Rules, and added that the mind does not operate in such highly restrictive narrow compartments as the Rules implied. In order to meet such criticism, many American jurisdictions joined an “irresistible impulse” addition to the Rules. This defense called for the jury to acquit the defendant if he could not control his conduct “even if a policeman were at his elbow.”

By far the most interesting experiment in devising a new test to substitute for the McNaughton Rules was done by the Court of Appeals of the District of Columbia in 1954 when Judge David Bazelon wrote the Durham decision. If any single theme can be said to have pervaded the Durham decision, it was that of encouraging the fullest possible range of psychiatric testimony. Judge Bazelon hoped to encourage the psychiatrist “to present the court and the jury with all of the information that could be provided to answer the question of why the defendant did this terrible thing.” The ultimate test was to be that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. What followed was an eighteen-year history of legal and psychiatric frustration as psychiatrists tried to fit their constructs and testimony into what they believed the law to be. The confusion was great in part because there never was clear understanding of how the two disparate disciplines were to mesh. Psychiatrists testified that persons suffered from mental disease using psychiatric standards and then attempted to transfer these standards into what they thought the law meant when it used the words “mental disease”. The courts assumed that the concept of mental disease was a clearly-defined one to the psychiatrists and so they allowed such testimony. Both the court and the psychiatrists acted as though the concept of mental disease was well-understood and well-established—but by the other side. The first indication that the emperor had no clothes was revealed in a famous “weekend-shift” decision. In 1957 on a Friday, a psychiatrist testified that a particular defendant was a sociopath—a person without mental disorder. Over the weekend, a conference was held by the psychiatrists at St. Elizabeth’s Hospital and the staff concluded that they had been testifying incorrectly and that sociopathy was indeed a mental disease. After all, the psychiatric diagnostic manual said that sociopathy was a mental disease. So the same patient, the same accused, the same psychiatrist and the same diagnosis which were declared no mental disease on Friday were declared mental disease on Monday. Lawyers were outraged.

What eventually became obvious, however, was that the practice of a psychiatrist transferring his constructs into a totally different system really did not work well at all. Attempts to remedy this intolerable set of circumstances were tried, definitions were offered, the psychiatrists were told exactly how they should testify, but tinkering with the Durham decision did not correct the problem. Eventually, the same court overturned the Durham decision and joined every other Federal jurisdiction (and over half the rest of the states) in embracing the ALI standard.

The American Law Institute produced its insanity defense rule in draft form in 1954 and finally adopted it in 1961. As adopted in the District of Columbia to replace the Durham rule, the ALI standard states that “a person is not responsible for criminal conduct if, as a result of mental disease or defect, which is defined as an abnormal condition of the mind which substantially affects mental or emotional processes and impairs behavioral controls, all of which have to be present at the time of the conduct, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.” The ALI standard obviously transcends the relatively restrictive cognitive test found in McNaughton and rather embraces the notion of volitional control as well. When the combination of the ALI Rule in the District of Columbia and the placing of the burden-of-proof on the government to prove non-insanity beyond a reasonable doubt came together and produced the Hinkley decision, the public and many legislators were outraged and demanded an immediate and final solution to the problem.

There have been many suggestions as to how the problem should be solved. First, there is the suggestion that the insanity plea be abolished altogether. The states of Idaho and Montana have done so already. Second, there is the suggestion that the verdict should be changed and reworded from “not-guilty-by-reason-of-insanity” to “not-criminally-responsible-by-reason-of-insanity” thereby clarifying exactly what an insanity decision means and, thus, hopefully relieving the public of its sense of fear that one can commit a serious crime and get away with it. Third, the burden-of-proof might be shifted from the government to the defense—perhaps by using “clear and convincing” as the standard of proof and thus making the defendant’s task somewhat more difficult while, at the same time, relieving the government of the all but impossible task of proving someone not insane beyond anyone’s reasonable doubt. Fourth, the expert might be prevented from testifying in ultimate terms. In other words, allow the psychiatrists and psychologists to discuss schizophrenia, neurosis, psychopathy—any diagnosis in their diagnostic manual—allow them to draw legal conclusions and, especially, do not allow them to testify as to their opinions of the defendant’s sanity. This remedy is accepted and encouraged by the American Psychiatric Association “because it is clear that psychiatrists are experts in medicine, not the law.” Fifth, one could eliminate the volitional aspects of the ALI and take a more strictly interpreted cognitive McNaughton approach. Sixth, an entirely new verdict could be adopted and added to those now available. One that is presently
popular (it has become law in eight states including Pennsylvania) is the guilty-but-mentally-ill rule. There are many philosophical and practical objections to such a rule; these objections have proved conclusive enough that at least three major investigations of the insanity defense (those of the American Bar Association, the American Psychiatric Association and the National Mental Health Association) caution against such an approach. Seventh, one might adopt a proposal best-expressed in Senator Strom Thurmond's suggested rule that says: "it shall be an affirmative defense only if the mental disease has destroyed entirely the ability to understand." This proposal, which has considerable support, would virtually destroy the insanity defense as we have come to know it—insisting, as it does, that a defendant would qualify for acquittal only if he thinks he is shooting at a tree when he is, in fact, shooting at another person, or when he thinks he is squeezing a lemon when, in fact, he is choking someone else. All of these proposals deserve far more time and far greater depth than can be given here.

The largest pragmatic problem of all is that of disposition. What does one do with these people? Must we, under legislative criteria for civil commitment, release individuals because they have been found "not guilty", and then be unable to hold them without a finding of present imminent danger to themselves or to others? Can we not determine that these people are different—that they have, in the recent past, committed acts which, but for the acuteness and severity of their mental disorders, would have been serious enough to find them blameworthy and thus criminally responsible and thus punishable. Can we not erect different but constitutionally permissible procedures that would allow us to hold these people in custody until they can demonstrate, by clear and convincing evidence before a court of law, that they no longer pose a threat.

As of 1980 there were twenty states which allowed persons found NGRI to be released to the community on the authority of the mental health system without the necessity of a court hearing. Surely this is societal madness of some degree. It offers far too little process to protect the public and far too great a burden to be placed on mental health professionals.

We cannot go back to the time when the key was thrown away. It must be recognized that there are people who do improve and recover under good medical care in good hospitals. There does come a time when these unfortunate people do remit stably enough to permit release. The time does come, however, when a risk must be taken and their liberty gradually must be restored. Surely it is not beyond us to devise plans which will both protect the civil rights of the NGRI acquitted and, at the same time, satisfy the public that justice has been done and that their safety and their sensibilities have been given full account.

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**The Insanity Plea: The Role of the Psychiatrist**

*by Robert L. Sadoff, M.D.*

**Editor's Note:**

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A Fellow of the American Psychiatric Association, Dr. Sadoff is a member and Chair of that Organization's Manfred Guttmacher Award Board, their Task Force on the Right to Treatment (1974–1976), and their Committee of Abuse/Misuse of Psychiatry in the United States. He is also past-President of the American Academy of Psychiatry and the Law.

Dr. Sadoff sits on the Board of Directors of the American Board of Forensic Psychiatry and the American Board of Law in Medicine. In addition, he is on the Board of the Center for Rape Concern, Philadelphia; was a member of the Pennsylvania Governor's Task Force for the Mentally III Offender, Farview State Hospital in 1977; and since 1977 has been Consultant to the Maximum Security Hospital, Trenton Psychiatric Hospital, Vroom Building, Trenton, New Jersey.

In 1979, Dr. Sadoff was the recipient of the Earl Bond Award for Outstanding Teaching in Psychiatry at the University of Pennsylvania. He has authored and co-authored seventy articles which have appeared in professional journals, and is the author, co-author or editor of three books of which one is Forensic Psychiatry: A Practical Guide for Lawyers and Psychiatrists, Chas. C. Thomas, Springfield, IL, 1975.
Psychiatrists are called upon by lawyers and judges to evaluate individuals in a number of different legal situations, both civil and criminal. Psychiatrists involve themselves in assessments of individuals and families with regard to custody battles in domestic relations cases, in commitment procedures, in personal injury actions, and in the evaluation of competency for various purposes. Psychiatrists may be called upon in criminal matters to assess the defendant's state of mind at any stage in the proceedings from the point of arrest until sentencing and, even afterward, for the evaluation of the individual with regard to parole or probation.

Most of these assessments involve the evaluation of the state of mind at the time of the examination, i.e. present mental status. The forensic psychiatrist may then apply his medical findings to the legal situation at hand. Is the person mentally competent to stand trial? Is he or she competent to be sentenced? Is the individual disabled as a result of mental disorder?

The role of the psychiatrist involved in insanity cases differs in that the assessment is for a state of mind at a time prior to the examination. The psychiatrist must then determine from all sources available what the defendant's particular state of mind was at the time he or she became involved in a particular act. This is a very difficult assessment to conduct and may not be completed on the basis of a psychiatric examination or interview alone. That examination is necessary, but not sufficient. The forensic psychiatrist, assessing an individual's state of mind at a prior time, must have access to all medical records, hospital reports, police reports and statements by others present at the time who can give valid observations of the defendant's behavior, attitude, composure, and appearance at the time of the alleged offense or as close to it as possible. Often the defendant is not a reliable informant and the psychiatrist must rely upon information or data collected from other sources. Often the defense attorney has an investigator who is able to collect this information and provide it for the psychiatrist and often the district attorney or prosecutor has access to other information that may be obtained through discovery procedures.

When the forensic psychiatrist has the opportunity to conduct a thorough and complete examination including interviews of family members, police officers and others, as well as multiple examinations of the defendant with the use of special testing when indicated, such as neurologic examination, psychological testing, electroencephalogram, CAT scan, sodium amytal interview, he is in a better position to assess the state of mind of the defendant at the particular time of the alleged act. We know from newspaper accounts and interviews of psychiatrists involved in the Hinckley case that countless hours were spent evaluating outside materials and interviewing other individuals. In addition, multiple hours were spent with Mr. Hinckley. The psychiatrists on both the defense and the prosecution teams conducted what appeared to be thorough and comprehensive evaluations, examinations and assessments. Why then did these psychiatrists differ in their conclusions about Mr. Hinckley not only with regard to the ultimate question of insanity but also with respect to his diagnosis? The defense psychiatrists labeled Mr. Hinckley as schizophrenic or psychotic, therefore having the requisite mental state necessary for insanity at the time that he shot the President and three other men.

The psychiatrists for the prosecution, however, after their comprehensive evaluation, concluded that Mr. Hinckley was not suffering from schizophrenia but was labeled as having a number of personality disorders which were not far from "normal". They concluded that he was not, therefore, insane at the time of the shooting.

The question has been asked and should be asked again: why did the psychiatrists called by the prosecution line up in the manner in which they did, and why did the psychiatrists for the defense see Mr. Hinckley in a different light? They all had access to the same material, to the same individual and, presumably, to the same skills at interviewing, evaluating, assessing and collecting data. One does not know whether other psychiatrists were called upon by the prosecution or the defense to assess Mr. Hinckley and, then, were not called to testify. It happens fairly frequently that a psychiatrist is called by the defense to examine a particular defendant and then tells the defense counsel that his client is not mentally ill or was not insane, in his opinion, at the time of the alleged criminal act. It is most unlikely that defense counsel would call that particular psychiatrist to testify at the trial because his testimony would not help his client; rather it would harm him if the insanity defense were to be raised. Conversely, if the prosecution has requested a psychiatric examination and their expert concludes that the defendant was mentally ill and fit the legal test of insanity in that jurisdiction, the prosecution is more likely to call the experts who conclude that the defendant was sane to the witness stand. This is a process of screening controlled by the attorneys, not by the psychiatrists.

Another factor that enters into the final decision about the expert witness psychiatrist is the track record he or she may have in testifying in previous cases. Some psychiatrists are labeled as "prosecution-oriented" or "defense-oriented" and are called more frequently by the attorney whose case most closely fits the philosophy and orientation of the psychiatrist. If a psychiatrist acquires a reputation among attorneys and judges as being either prosecution or defense-oriented, his credibility suffers since the court will be able to predict that psychiatrist's conclusions even before his assessment begins. It may seem unfair to prejudge particular psychiatrists and even label them as "hired guns" but, in the real world of forensic psychiatry, this is exactly what occurs. Thus, it behooves the forensic psychiatrist who is interested in maintaining credibility with lawyers and judges, to remain as neutral in his orientation as possible and to be available for examination and assessment for whichever side requests his professional services. There are some attorneys, both in civil and criminal cases, who want an honest professional opinion and respect the psychiatrist whose conclusions may differ from their own needs and who can provide sufficient evidence or data to support their conclusions. This is helpful to the attorney since it aids in pointing out the weaknesses of his case, helps him to prepare his witnesses and, also, can prepare his cross-examination of the experts on the other side.

Beyond philosophy lies the realm of hard reality and, beyond the Hinckley-type cases which are relatively rare "battles of the experts", lie the more usual insanity cases wherein the experts on both sides agree on the diagnosis and very often agree on the legal conclusions.
of insanity or culpability. Many insanity cases are negotiated when the experts on both sides agree. These cases are not remarkable and rarely hit the headlines of our newspapers. It is in a case such as Hinckley and in those like it, where psychiatric experts differ and where public questions are raised about the validity and reliability of psychiatric diagnostic criteria and psychiatric testimony.

It should be pointed out that psychiatrists have no formal training in the evaluation of a defendant for the insanity defense. The training consists of skills at interviewing and diagnosing mentally ill people. The application of the medical findings to the legal test is an individualized, often subjective application which is not standardized and is most vulnerable to attack on cross-examination. Even if the psychiatrists for defense and prosecution agree that the defendant is schizophrenic, they may disagree that he was insane. It is important to distinguish clearly, for the jury and for others, between mental illness and legal insanity. All psychotics are not insane and all individuals found to have been legally insane at the time of a particular act may not have been psychotic.

It should also be pointed out that there are differences in examining a defendant for defense counsel as opposed to examining for prosecution especially in Pennsylvania. The defendant likely will be more cooperative with his own attorney's consultant or expert than he will with the psychiatrist working for the District Attorney's Office. There are also more special tests that can be performed when working as a defense expert such as the use of sodium amytal, hypnosis or polygraph, in order to ascertain various data which may not be utilized by the psychiatrist consulting with the prosecution. On the other hand, the prosecution's psychiatrist has access to policy reports, police interviews and police investigation data long before it becomes available to the defense psychiatrist. In Pennsylvania, the prosecution psychiatrist may not conduct a complete psychiatric examination of the defendant if defense counsel prohibits it. Pennsylvania is one of the last remaining states that recognizes the defendant's right to protect against self-incrimination under the Fifth Amendment when interviewed by psychiatrists for the prosecution to whom they may give incriminating statements during the examination. In some cases, the defendant has been ordered by the court to appear for examination by the prosecution psychiatrist but has been allowed not to answer questions he/she does not wish to answer.

These distinctions highlight the difference between the general psychiatrist and the forensic psychiatrist working in insanity cases. The general psychiatrist treats mentally ill people. These are people who need help and come to the psychiatrist because they are in emotional pain and want to be relieved of their distress. They are likely to be cooperative, honest and open with their treating psychiatrists. On the other hand, the forensic psychiatrist is not a treating psychiatrist but an evaluator. Defendants do not come to him because they are hurting, but because someone else has requested the evaluation. They are not likely to be as open or as honest with the examining psychiatrist. Thus, it is necessary for the forensic psychiatrist to utilize special skills in his interviewing techniques to obtain sufficient, valid information in order to make reliable and valid conclusions. How does the forensic psychiatrist know if his patient is being honest with him and if what the patient is saying is true? The psychiatrist does not always know and that is why outside sources of verification must be utilized rather than taking the defendant's word for it. For example, the defendant will tell the psychiatrist that he does not remember what has happened at the time of the alleged offense. Very often, rather than reflecting a true amnesia, such statements are self-serving and reflect the defendant's wish for the psychiatrist not to know. In such an instance, without entering the issue of guilt or innocence, I may use a polygraph just to determine whether the defendant is lying about not remembering.

Ethics in forensic psychiatry are developing but are not yet standardized. There are differences between the examining psychiatrist and the treating psychiatrist. The treating psychiatrist always represents his patient or is the agent of his patient when treating him. The forensic psychiatrist, on the other hand, always represents the person who calls him for consultation. This may be defense counsel, prosecutor or judge. During the assessment and evaluation phase, the forensic psychiatrist must recognize to whom he owes allegiance in the event of an apparent conflict. For example, suppose the defendant tells the defense psychiatrist information he does not wish that psychiatrist to pass on to his lawyer. The psychiatrist may feel that this information is important and cannot promise the defendant that he will not reveal it to his attorney who is there to help him legally.

When conducting an examination for the District Attorney's Office, the psychiatrist must alert the defendant of his role, explaining whom he represents, what he will do with the information he collects, and how this information will affect the defendant. These are the so-called "psychiatric Miranda warnings" that psychiatrists must present to defendants and other individuals who are examined during forensic situations. In my opinion, it is not ethical for a psychiatrist to conduct an examination without first explaining to the person being examined about the procedure and how it will affect him or her.

Another ethical issue in criminal assessments revolves around the question of whether a prosecution psychiatrist may examine a defendant before the defendant is represented by counsel. In my opinion, it would be unethical for a psychiatrist representing the prosecution to obtain information that may be harmful to the patient before the defendant has an opportunity to discuss the examination with his attorney and prepare for the examination. The psychiatrist working for the prosecution, after all, is not there to trick the defendant or trap him or her into giving incriminating statements that may be obtained in a more legitimate fashion.

Recently, following the Hinckley case, there has been a hue and cry to modify the insanity defense or to eliminate it. After much emotional pressure, cooler heads have prevailed and the recommendations by both the American Bar Association and the American Psychiatric Association have retained the insanity defense and both have recommended to eliminate the
The Insanity Plea: 
The View of a Professor of Criminal Law

by Louis B. Schwartz
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Professor Louis B. Schwartz is Benjamin Franklin and University Professor of Law at the University of Pennsylvania Law School. Prior to his joining that Faculty in 1946, he was a member of the staff of the United States Department of Justice. Mr. Schwartz's publications in the area of Criminal Law include: The Model Penal Code of the American Law Institute (1962), co-reporter with Professor Herbert Wechsler of Columbia University Law School; A Proposed Federal Criminal Code with Commentaries (1971), prepared as Director of the National Commission on Reform of Federal Criminal Laws; and Law Enforcement Handbook: Police in the Criminal Justice System (West Publishing Company, 2nd ed., 1980). Mr. Schwartz has served on advisory committees for the American Law Institute and the American Bar Association, and has also served as consultant to various federal agencies and congressional committees in the field of Criminal Law.

The volitional aspect of insanity. This exists in the American Law Institute Model Penal Code wherein the defendant has lacked "substantial capacity to conform his conduct to the requirements of the law." Many have argued that psychiatrists cannot predict such behavioral or volitional matters and should stay with the cognitive concept of wrongfulness of the act, which exists in the other arm of the ALI test and in the McNaughton test for insanity.

In my opinion it really does not matter what test is used if the jury is sympathetic with the defendant. Insanity is a means of exculpation for a number of reasons. The defense of insanity is designed to give the jury a means of exculpating the defendant. There are a number of cases in which insanity was pled for that reason and the jury responded accordingly. Some related to euthanasia and others to criminal behavior which was questionable in the eyes of the jury.

A word about testimony in insanity cases. Prior to court appearance, the expert is the agent of the side that calls him. On the witness stand, the expert is the agent of the court and must not become an adversary witness. He may advocate his point of view and his opinion, but must recognize that any psychiatric testimony can be effectively attacked by good cross-examination. His role, in my opinion, is to teach rather than to advocate. He is called as an expert because he has training and experience beyond that of the average intelligent lay-person.

I support the adversary system and would not want a jury of psychiatrists to determine insanity. There are too many differences and too many pressures within the profession. The psychiatrist going into court must learn to play by the rules of the game and must not use the forum of the courtroom to advocate changes of substance.

Finally, what is to be done with a person who is found not-guilty-by-reason-of-insanity? The major criticism following Hinckley was that persons found NGRI would get out early and would terrorize the community.

Statistics have shown that this is not the case and that those found NGRI may be confined longer than those convicted of comparable crimes. There are two models that have been recommended for treating the person found NGRI. One is the Oregon Committee which follows the individual through the hospital and into the community. Decisions are made by a committee composed of psychiatrists, lawyers and parole officers. The other model, employed in the state of New Jersey, is that of the gradual release from maximum security confinement to the community after careful consideration following a hearing by the court.

The role of the psychiatrist in insanity cases is a complex one and should not be taken lightly and should not be undertaken by the inexperienced psychiatrist. Those psychiatrists who wish to work in this field should obtain training and experience through fellowship programs, through involvement in courses at the APA and the American Academy of Psychiatry and the Law, and then should strive for certification by the American Board of Forensic Psychiatry. This Board is a certifying organization which promotes excellence in the field. If we continue to conscientiously upgrade the quality of our care, we will continue to improve our consultation to the legal system which requires our services.
I want to place the problem of the insanity plea in proportion. Actually, it is a peripheral problem of law enforcement and public security today. The plea is not entered often, few people succeed when it is entered and, if one does succeed with the plea, the alternative sentence to a mental hospital is very tough. Hence the question is raised: Why does the subject of the insanity plea rouse such passion? To me the answer is that there is something wrong with the press or, if there is such a thing, with the public's psyche. Psychiatrists ought to be throwing some light on why so much relative attention is given to a phenomenon that is related so little to the security of the general public. There are few people who escape and fewer who can count on escaping. The plea has nothing whatsoever to do with the main purpose of the criminal law system, which is based on deterrence primarily, in order to make some people behave more in conformity with generally accepted norms.

I would like particularly to discuss the goals of the criminal law since they are so distinct from the goals of therapy. Therapy, if the word has any meaning, is an effort to help the person in need of psychiatric treatment; the criminal law sometimes is said to include the aim of rehabilitation for those who have gone astray. We live, however, in an era of considerable skepticism about the ability to achieve such a rehabilitative goal under the circumstances of prisons or juvenile detention facilities. Another goal which does throw light on this passion—this public press hysteria on the subject of insanity as a defense—is retribution. I speak respectfully of the goal of retribution in criminal law. It was, for a long time, quite disrespected. More recently, "an eye for an eye and a tooth for a tooth" has been recognized as a taming of that basic and pervasive retributive instinct which could claim lives for relatively minimal offenses. Ages ago, forms of torture were devised, like boiling in oil, branding, chopping off limbs, etc.—in order to vindicate either the retributive or the deterrent goal. Against this background, a measured retribution—"an eye for an eye"—was an ameliorative reform in the criminal law. It still serves the function of maintaining a certain proportionality between what was done by the criminal and what is about to be done to him or to her. I do not wish to sponsor the notion that we are entitled to be as violent to the criminal as the criminal was to his victim. We are or pretend to be better people than the accused. We are deliberately and, as a social body, choosing instruments that are harsh at best to serve social goals, and we would like to minimize suffering, even the suffering of those who have violated our norms.

There is another goal posited for the penal law and that is incapacitation. That goal is hardly impaired by any regime that is adopted for the defense of insanity. There is going to be incapacitation of people found to be dangerous by the civil commitment route or by the prison route. I cannot generate a passion in myself about the decision of which route to go because there are so few cases which have surfaced in which the insanity defense has been raised. I feel that one of the important penal code goals is that everyone be tried fairly—that they be tried by the same laws, and that the potentials of their convictions and acquittals be fairly well-described so that the matter is not left at-large to juries or even, for that matter, to judges. The idea that people are tried by general norms in our society has a few consequences. One is that there is not a special status for psychiatrists, who are often outraged that they have to bring their expertise to bear in very strange situations in which cross-examination often unfairly makes them appear like fools. They are often confronted with colleagues who have opposing opinions, some of whom have not examined the defendant. It is true that there have been excesses in cross-examining and other treatment of psychiatric testimony. It is not true, however, that psychiatrists for that reason should be exempt from cross-examination or be exempt from explaining their assessment of human beings, although it may be a complicated and esoteric explanation. Nor should we toy with the idea of abandoning the jury system. There are many experts who might say, "What do those twelve dumb jurors know about this?", especially when the jurors have been confused by the confrontations of psychiatrists possessing the same degrees and the same qualifications. There are experts in metallurgy who testify on airplane accidents; there are experts in pathology who testify to the cause of death and have differences of expert opinion in that area; there are engineers who testify that the design of the automobile was or was not as safe as could reasonably be expected. So I do urge that psychiatric testimony not be looked upon as an unique conflict of law and expertise in a related profession, but as an unavoidable circumstance of a legal system.

I would like to address some alternative rules of responsibility besides the McNaughton Rule and the ALI Rule. Two proposals were laid before the American Law Institute and illustrate how unavoidably inconclusive any of the rules have been. The first of them was advanced by my colleague and co-reporter on the Model Penal Code and went as follows: psychiatric testimony should not be constrained by McNaughton's Rules, or should not be limited to the question of whether the defendant ultimately knew what he/she was doing and knew that it was wrong, but should fully describe the situation or the state of mind at the time of the act as well as it could be reconstructed. Then, according to this criterion, the jury would be told to convict the accused if it seemed "just" to do so. Although that rule was advanced by a very able, discerning, sensitive man, I opposed it. What might be thought of as "just" by a jury—twelve different people chosen ad hoc—would be a function of their particular sensitivities and, more especially, their view of the horror of the crime. In other words, if the crime were bad enough, many jurors would say, "I don't care how crazy he was, he ought to go to jail for this!" Psychiatrists, on the other hand, might well regard the very aggravating circumstances of the crime as a symptom of the inability to control.

There is another perhaps more subtle, law-related point. In the structure of the court and jury in our legal
system, the jury has the final word but the court tells them the rules of the game. Although juries are not controlled, that is about as far as we can go to regularize the matter. Some jurors do disregard charges; however, I think that more often than not they take seriously what the judges tell them. Therefore, I see it as a total abrogation of the legal system to throw up our hands and tell the jury to convict the accused if it thinks conviction is "just". The law exists to guide juries in determining when it is just or unjust. Although I disapprove of this rule, there are very good people in the legal universe who think it the correct way to handle the problem.

There are also many good people who think that the repeal of the insanity defense is the right way, although I do not. I do not because I relate guilt and culpability. If someone is indeed seriously ill, I concede that the function of the criminal law should not be to threaten that person or other persons in similar situations. In other words, if we are attempting to deter people by means of the criminal justice system, then it should be recognized that some people are sufficiently ill as to be undeterrable, i.e. beyond the reach of that system. It does not make sense to put such people on the criminal law track; rather they should be put on the hospital track. Secondly, insofar as the criminal justice system is retributive, we all know that the feeling of retribution against someone who is obviously ill is ordinarily less. Retributive feelings are diminished for persons who are very young, for persons whose circumstances tend to lead them to commit crime and, also, for persons who are seriously mentally ill. The retributive impulse in these cases is lessened, and there is no reason not to give in to the impulse of mercy—the correlative of retribution—when the effect upon the deterrent force of the system is absolutely unimpaired. The generality of those who commit crimes is not going to be encouraged (unless by the crazy press), by the occasional acquittal of a Defendant, to steal lost articles or to discharge a person from a hospital because all of the beds are occupied and because more people are being admitted than are being released.

Finally something could be done to shift the burden-of-proof on the issue of insanity. Although criminal law properly requires the state to prove every element of the offense "beyond reasonable doubt", I do not feel as strongly about the defense of insanity as I do about other elements like—did the defendant purposely take life? That clearly goes to culpability. I see the defense of insanity not so much as an element of the offense as a delineation of the limits of the criminal justice system. It is a kind of jurisdictional issue. Therefore, it would not bother me too much if the burden of coming within this "defense" were placed to some extent on the defendant.
"Looks like old Roberts decided to take it with him."

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We want “all the news that’s fit to print” about you—professionally or otherwise. The Journal’s Alumni Briefs Section is the perfect forum for keeping in touch with classmates and Alumni. Information as well as your informal photographs are welcome. Please use the space below and return to the Law School in the attached envelope.

Name and Class:_______________________________________

What’s New:
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Professor Paul Bender was Distinguished Visiting Lecturer in Law at the University of Alberta Law School in Edmonton, Canada, in January 1983. He lectured on the new Canadian Charter of Rights and Freedoms, which became part of the Canadian Constitution in April 1982. During the past year, Mr. Bender has given a paper on the Canadian Charter at conferences at Dalhousie University Law School, Halifax, Nova Scotia, and at the University of Western Ontario Law School, London, Ontario. This summer (and for three summers past), he will lecture on the United States Bill of Rights and the Canadian Charter at a Seminar for Canadian Lawyers conducted by the Canadian Human Rights Foundation.

Professor Bender's article on the United States Bill of Rights and the Canadian Charter is scheduled for spring 1983 publication by the McGill Law Journal.

During this past semester, he taught a course to University of Pennsylvania undergraduates in the Equal Protection Clause. The course was part of the University's general honors program given primarily to Benjamin Franklin Scholars.

Associate Professor Henry Hansmann has written an article (coauthored by John M. Quigley) on "Population Heterogeneity and the Sociogenesis of Homicide" for publication in the September 1983 issue of Social Forces. Mr. Hansmann presented a paper, "The Current State of Law and Economics Scholarship" at a conference on The Place of Economics in Legal Education in Denver, Colorado in October 1982. The paper will be published in the June 1983 issue of The Journal of Legal Education.

Professor George L. Haskins has returned to regular full-time teaching following a sabbatical research leave during which he completed three articles to be published in 1983. The articles relate to "Inconvenience and the Rule For Perpetuities" (written for Festschrift honoring William Franklin Fratcher); "Lay Judges: Magistrates and Justices in Early Massachusetts" (written for History of the Massachusetts Legal Profession); and "Sources of the First Laws of Pennsylvania". Mr. Haskins was also working on the jurisdiction of English ecclesiastical courts and their influence on colonial laws in New England.

In connection with the celebration of the 100th Anniversary of Dalhousie University in Halifax, Nova Scotia, Mr. Haskins has been invited to give an address on sources of the early laws of the maritime provinces in Canada.

Professor Louis B. Schwartz moderated a panel discussion on the Victim and Witness Protection Act of 1982 in March. The discussion was presented as a "video teleconference" by the Federal Judicial Center (Professor A. Leo Levin, Director) as part of its education and training program for federal judges, prosecutors, defenders, probation officers and others involved in criminal justice. Emanating from Washington, the panel discussion reached centers throughout the United States where interested officials gathered to follow the discussion and to put questions back to the panelists.
Professor John O. Honnold is the Arthur Goodhart Professor of the Science of Law at Cambridge University, England, for the year 1982–83. What follows is the letter sent by Mr. Honnold at holiday time to his friends at the Law School, which best explains his experiences.

Dear Friends,

After only three months here, America seems so far away! If I tell you a little of how things are here, maybe you will send some news to help us get back into touch. But I can’t say that we’re lonesome. Life has been too busy and delightful!

This is the fifth week of the Fall (“Michaelmas”) Term, and already I almost feel at home teaching in the remarkable garment that is prescribed for this and other rites—a flowing black “thing” with “sleeves” (sewn up at the ends) that dangle below the knees. (There are slits at the elbow where the arms come out.) I give one of 26 year-long courses (“papers”) for graduate (LL.M.) candidates. The lectures—two hours a week—are traditionally designed to point the way for independent study; the chance to choose only 3 or 4 out of 10 to 12 questions on the exam provides leeway for independent study. (Isn’t that a good idea?) I have 30 or so students, a relatively large group. Most are from abroad—a cross section of the old empire, with 8 to 10 from the U.S.A.

I have prepared “Cases & Materials” (mostly Commonwealth) to use as problems under the 1980 Sales Convention. In spite of warnings that there might be resistance to a problem-discussion approach, I feel good about the start we have made.

The deepest mystery is: Where is the “law school”? The only tangible center is a 3’ round oaken table in the University “combination” (lounge) room that happens to be connected to the Squire Law Library. Each morning at 11 (as Clarence [Morris] will recall) those few who are nearby gather around this little table for tea, and engage in a strange activity called “conversation”—the cheerful sharing and development of ideas.

Don’t get the idea that the Law Library is the “law school.” For it has no classrooms and there are no offices for administration (Parkinson’s law doesn’t apply here) or faculty. Three of us are developing prescriptive rights in small tables.

What is the secret? The COLLEGES, where the Dons receive colleagues and students in great living-rooms with fireplaces and bookshelves. But how can one do intensive research without a base in the library? So far I have no idea. (My college, Clare Hall, is small, modern, confined to graduate students and research scholars, receptive to wives and a complete delight!)

There is so much to tell, but I must close. Our house and garden are just beautiful. Partridges and pheasants visit us although we are only a 15 minute bike ride from the center of the University. The bike path goes alongside, and sometimes through, pastures with cows and horses. In our little red English Ford Fiesta we have made ever-widening ventures into the flat but charming countryside of East Anglia. Colleagues and other friends have been so kind as to leave us breathless.

Annamarie joins in warm greetings. We would love to hear from you. How are you?

As ever, 

[Signature]

Alumni Briefs

'27 Philip Werner Amram of Washington, D.C. received the first prize of the Section of International Law and Practice of the American Bar Association for his work in private international law, particularly for his services at the Hague Conferences and with the State Department’s Advisory Committee.

'28 Burton R. Laub of Carlisle, Pennsylvania was honored at ceremonies held at the Dickinson School of Law on March 5, 1983. He was Dean of that school from 1966 until his retirement in 1974. Before going to Dickinson, he was a county prosecutor and judge in Erie, Pennsylvania. Mr. Laub was a member of the Judicial Advisory Committee of the Pennsylvania Council on Crime and Delinquency, was vice-Chairman of the Supreme Court Criminal Procedural Rules Committee and was a member of the Pennsylvania State Board of Law Examiners.

He has written numerous articles for Keystone—Lawyer’s Desk Library of Practice. He was also instrumental in the establishment of the Commonwealth Court of Pennsylvania and served as its first reporter.

'29 Irvin Stander, a Referee in the Pennsylvania Bureau of Workmen’s Compensation, has been appointed a Lecturer in Law in the Graduate Studies Division of the Temple University Law School, where he is teaching a 14-week course on “Pennsylvania Workers’ Compensation Law and Practice.” He also will deliver two lectures to University of Pennsylvania Law School Professor Edward Sparer’s class on “OSHA and Workers’ Compensation.” Mr. Stander is Chairman of the Workers’ Compensation Committee of the Philadelphia Bar Association and a member of the Workers’ Compensation Survey Committee of the Pennsylvania Bar Association.

'31 Jacob S. Richman was elected President of the Mid-Atlantic Region of the Zionist Organization of America. He is a partner in the Philadelphia firm of Richman & Richman.
Honorable Samuel J. Roberts became Chief Justice of the Supreme Court of Pennsylvania on January 3, 1983. In his address on that occasion, Judge Roberts reflected on the enormous increase in the volume of litigation facing the Commonwealth's Court since he first became a judge in 1952. Justice Roberts will deliver the third Alumni Luncheon Lecture on Wednesday, April 27 at the PNB Concourse, Philadelphia.


'36 David Berger, of the firm Berger & Montague, Philadelphia was appointed chairman of a special committee to recommend improvements in the U.S. Supreme Court procedure for the selection of cases. A former Chancellor of the Philadelphia Bar Association, Mr. Berger served a ten-year appointment to the Committee that drafted the Federal Rules of Evidence.

'38 Sylvan M. Cohen, of the Philadelphia firm Cohen, Shapiro, Polisher Shiekmam & Cohen, received the Alumni Award of the University of Pennsylvania on Founder's Day, January 22, 1982.

'40 Frank C. P. McGlinn was recently elected to a three-year term as Councilor of the Philadelphia Historical Society. He is Vice-President of Western Savings Bank, Philadelphia.

Robert W. Sayre received this year's Fidelity Award from the Philadelphia Bar Association and Fidelity Bank. A partner in the firm Saul, Ewing, Remick & Saul, he was active in the creation and development of the Public Interest Law Center of Philadelphia and was cited for "service to the cause of justice in the metropolitan Philadelphia area" and for promoting the provision of "a full range of legal services to community groups traditionally without access to legal assistance".

'41 Bernard M. Borish, President of the University of Pennsylvania Law Alumni Society, was honored as one of the "Special Men of Women's Way" in February, 1983, having devoted his time and talents to the Women's Way coalition, an umbrella organization for numerous Women's service agencies in Philadelphia.

Michael C. Rainone, of the firm Rainone & Rainone, Philadelphia, was elected President of the Lawyer's Club of Philadelphia after serving two years as Vice-President.

'42 Frederic L. Ballard of the Philadelphia firm Ballard, Spahr, Andrews & Ingersoll, was Honorary Co-Chair of An Evening at J. E. Caldwell honoring "Special Men of Women's Way" in February, 1983.

'47 Frank B. Boyle is President-Elect of the Pennsylvania Bar Association. A distinguished practicing attorney for 35 years in York, Pennsylvania, Mr. Boyle will be installed as President at the Pennsylvania Bar Association Meetings in May, 1983.

Robert M. Landis, a partner in the Philadelphia firm of Dechert Price & Rhoads, was recently named 1983 Chairman of the Board of the Federal Reserve Bank of Philadelphia.

Honorable Alfred L. Luongo, Chief Judge of the United States District Court for the Eastern District of Pennsylvania, was honored by the Grand Lodge of Pennsylvania, Order of the Sons of Italy in America, at the Bellevue Stratford Hotel.

Henry W. Sawyer was honored at the First Annual Civil Liberties Award Dinner, sponsored by the American Civil Liberties Union of Pennsylvania and Greater Philadelphia. The noted civic leader and senior litigation partner in the Philadelphia law firms of Drinker, Biddle & Reath also spoke at Naturalization Ceremonies sponsored by the Philadelphia Bar Association in December, 1982. Formerly on the staff of the U.S. Department of State, a Philadelphia Councilman-at-large and a Commissioner on the Delaware River Port Authority, he is now a member of the Board of Trustees of Americans for Democratic Action, the Academy of Music and the Philadelphia Orchestra.

'48 Henry T. Reath, a senior partner in the Philadelphia firm of Duane, Morris & Heckscher, received the American Judicature Society's Herbert Harley Award. The Honorable Arlin M. Adams, '47, presented the award, in recognition of Mr. Reath's efforts "to promote the effective administration of justice." A past Chairman of the Board of Governors of the Philadelphia Bar Association and former member of the House of Delegates of the Pennsylvania Bar Association, Mr. Reath recently served as counsel to several common pleas courts in their efforts to establish more freedom in budgetary determination, and as a guest lecturer at the National Conference of Chief Justices of the State Supreme Courts.

E. Eugene Shelly was named to honorary membership of the Chapel of Four Chaplains in Philadelphia. Active in the Rotary Club and in volunteer services to people of all races and faiths, Mr. Shelly is a partner in the law firm of Fluhrer, Medill and Shelley, York, Pennsylvania.

'49 Honorable Louis J. Carter of Philadelphia has resigned as an Administrative Judge with the Nuclear Regulatory Commission. He served as Chairman of the three-member Atomic Safety and Licensing Board for the ongoing USNRC public hearing on the safety of operations at Units 2 and 3 of the Indian Point Nuclear Power Station near Buchanan, N.Y.

M. Stuart Goldin, a partner in the Philadelphia firm of Isenberg, Goldin & Blumberg, is Co-Chairman of the 1983 Luncheon Lecture Committee of the Professional Education Section of the Philadelphia Bar Association.

Thomas A. McLvor is now practicing in Paris, France. Concentrating primarily on international tax law, he was formerly with the U.S. State Department.

'51 Arthur R. Littleton, a partner in the Philadelphia firm of Morgan, Lewis & Bockius, was elected to a three-year term on the Board of Governors of the Philadelphia Bar Association.

'52 Anthony S. Minisi, of the Philadelphia firm of Wolf, Block, Schorr & Solis-Cohen, was recently elected Vice-Chairman on the Philadelphia Bar Association's Board of Governors.

'53 Honorable Edward J. Bradley, President Judge of the Philadelphia Court of Common Pleas, served as a faculty member during a recent seminar on "Practice in the Philadelphia Court of Common Pleas." The seminar covered the standard practices and procedures followed in handling civil action in the local common pleas court.
Theodore S. Coxe announced the relocation of his offices to 5445 Germantown Avenue, Philadelphia, PA 19144.

'54 Robert Montgomery Scott of the Philadelphia firm Montgomery, McCracken, Walker & Rhoads, was appointed President and Chief Executive of the Philadelphia Museum of Art.

'55 W. Thomas Berrman, of the King of Prussia, Pennsylvania firm of Berrman & Schwartz, was the course planner for the recent seminar on "Physicians and Hospital Relations: Cooperation and Conflict," sponsored by the Delaware Valley Hospital Council and the Pennsylvania Osteo-Medical Association.

John J. McCarty, a member of the Philadelphia firm of Raynes, McCarty, Binder & Mundy, was a featured speaker at the first 1983 "Case of the Month" program sponsored by the Philadelphia Trial Lawyers Association.

'56 George L. Bernstein, chief executive officer of the international accounting and consulting firm Laventhal & Horwath, announced the firm's mergers with CPA firms in Cleveland, Las Vegas and Los Angeles in November, 1982, bringing to 13 the number of mergers concluded in the past 19 months.

Paul D. Guth, a senior partner in the Philadelphia firm of Blank, Rome, Comisky & McCauley, was nominated by President Reagan to be United States representative on the Joint Commission on the Environment established by the Panama Canal Treaty of 1977. Currently a Trustee of the Federation of Jewish Agencies and the Delaware Valley College of Science and Agriculture, he was elected a Delegate to the Republican National Convention in 1980 and acted as Chairman of Philadelphia County for the Committee to Re-elect Governor Thornburgh.

Peter J. Liaouras, the Dean of Temple University Law School from 1972–1983, is the seventh President of Temple University.

'57 Stephen I. Richman of Washington, Pennsylvania is actively involved in work in the area of occupational lung disease law and litigation. Recently, he presented papers to the American Lung Association and to the American Thoracic Society at their Annual Joint Meeting, to a conference on the Federal Black Lung Program sponsored by the Energy Bureau, and to the Annual Joint Meeting of the American Society of Clinical Pathologists/College of American Pathologists. Legal consultant to the Franklin Institute and contractor to the Department of Labor in assisting it in complying with the Black Lung Revenue Act of 1981, he is the author of an article published in the December, 1981 issue of The Annals of Internal Medicine which explores the American systems of Worker’s Compensation for occupational lung disease.

'58 Howard Gittis, a partner in the firm of Wolf, Block, Schorr & Solis-Cohen was elected Chancellor of the Philadelphia Bar Association for 1983. At the Association's annual meeting in December, 1982, he marked as his main objectives for the 8,300-member Association the continuation and acceleration of legal education and community outreach programs.

'59 Alexander A. DiSanti of Media, Pennsylvania was elected President of the Delaware County Bar Association.

Oscar N. Gaskins announced the reorganization of his firm Gaskins & Associates with offices in Suite 1310, the Robinson Building, 42 South Fifteenth Street, Philadelphia, PA., 19102.

Bernard M. Gross, president of the Philadelphia firm of Gross & Sklar, was elected to the post of Supreme Recorder of Tau Epsilon Rho International Legal Fraternity.

Paul P. Oberly, of the firm of Saul, Ewing, Remick & Saul, Philadelphia, was elected a fellow of The American College of Probate Counsel.

'60 Jesse Choper was appointed Dean of Boalt Hall, the law school of the University of California at Berkeley. Dean Choper was featured in the article, "A Sure Bet at Boalt Hall" in the January 10, 1983 issue of The National Law Journal.

John Jakubowski announced the relocation of the office of Smith & Jakubowski to 2001 PSFS Building, Philadelphia, PA 19107, and the opening of new offices at 1330 Easton Road, Abington, PA 19001.

'61 Paul R. Anapol of the firm of Anapol, Schwartz, Weiss & Schwartz, P. C., 1900 Delancey Place, Philadelphia, PA 19103, served as a faculty member for a seminar entitled "Practice in the Philadelphia Court of Common Pleas", which reviewed the standard practices and procedures followed in handling civil action in the local common pleas courts.

'62 Kenneth M. Cushman, of Pepper, Hamilton & Scheetz, Philadelphia, is program co-chairman of the American Bar Association's Fidelity and Surety Law Committee, Tort and Insurance Practice Section which is sponsoring a program with the Forum Committee on the Construction Industry of the ABA entitled "Bankruptcy—Crisis in the Construction Industry".

Richard B. Schwartz, of the firm of Anapol, Schwartz, Weiss & Schwartz, P. C., has relocated his office to 1900 Delancey Place, Philadelphia, PA 19103.

'63 Steven A. Arbittier was a course-planner and moderator at the full-day seminar presented by the Philadelphia Court of Common Pleas, the Pennsylvania State Civil Judicial Procedures Committee of the Philadelphia Bar Association and the Pennsylvania Bar Institute entitled "Practice in the Philadelphia Court of Common Pleas. He is a member of the Philadelphia firm of Wolf, Block, Schorr and Solis-Cohen.

David C. Auten, a partner in the Philadelphia firm of Reed, Smith, Shaw & McClay, was named Chairman of the Board of Stewards of the University of Pennsylvania's Christian Association. Currently serving as the National Chairman of Annual Giving for the University, he was presented with the University's Alumni Award of Merit in 1981.

David H. Maron, Vice-President of Kohn, Savett, Marion & Graf, P. C., Philadelphia, was elected Vice-Chancellor of the Philadelphia Bar Association.
'64 William H. Platt was appointed by former Pennsylvania Supreme Court Chief Justice Henry X. O'Brien to the Court's Criminal Procedural Rules Committee. Presently District Attorney for Lehigh County, a post he has held since 1976, Mr. Platt was formerly Chief Public Defender of Lehigh County. He is Chairman of the Lehigh County Criminal Rules Committee, and acts as state director for Pennsylvania in the National District Attorney's Association.

'65 Harvey Bartie, III, of the Philadelphia firm of Dechert, Price & Rhoads, was named Vice-President of the Philadelphia firm Historical Society.

William H. Ewing, of the Philadelphia firm of Goodman & Ewing, was honored as one of the "Special men of Women's Way" in February, 1983.

Sheldon Sandler, a partner in the firm of Young, Conaway, Stargatt & Taylor, Wilmington, Delaware, was recently designated Chairman of the Third Circuit Lawyers Advisory Committee for 1983 by Chief Judge Collins J. Seitz of the United States Court of Appeals for the Third Circuit. Mr. Sandler is also the first Chairman of the newly-created Delaware State Bar Association Labor and Employment Law Section.

'66 John M. Desiderio has become counsel to the firm of Scolari, Brevetti, Goldsmith & Weiss, P. C., 230 Park Avenue, New York, 10169. His article "Private Treble Damage Antitrust Actions: An Outline of Fundamental Principles" has been published in 48 Brooklyn Law Review 409 (1982). Mr. Desiderio has been elected to the Board of Directors of The Opera Ensemble of New York.

'67 Norman Pearlstine, of Brussels, Belgium, is editor and publisher of the Europe edition of the Wall Street Journal, and is responsible for the creation of that publication. Volume I, Number I of the newspaper appeared on Monday, January 31, 1983. Instrumental in several other overseas operations undertaken by the Journal, Mr. Pearlstine was the first managing editor of the Asian Wall Street Journal, and the first national news editor of the Wall Street Journal in New York.

Alan Spielman was the featured speaker at a lecture on entertainment law presented recently by the Lawyers for the Arts Committee of the Philadelphia Bar Association.

Jonathan Stein has been appointed Acting Executive Director of Community Legal Services, Inc., Philadelphia. An associate with CLS since 1968 and formerly its Chief of Law Reform, Chief of Special Projects and Head of the Welfare and Health Law Unit, Mr. Stein was counsel in the U.S. Supreme Court case establishing the right of resident aliens to receive public assistance, and in the first decision establishing the right of blind teachers to teach in public schools. He was co-founder of the Pennsylvania Judicial Selection Project to increase the numbers of women and minorities on the Bench.

'68 Peter G. Glenn, after a decade as Professor of Law at the University of South Carolina, returned to the private practice of law as counsel to the firm of Jones, Day, Reavis & Pogue, 1700 Union Commerce Building, Cleveland, Ohio 44115, as of May 10, 1983. Professor Glenn was associated with that firm from 1969 to 1972.

David H. Lissy was elected Assistant Vice-President of Gulf + Western Industries, Inc., New York, having joined that organization in February 1982 as an Executive Assistant in the office of the Executive Vice-President. Previously, he was with United Brands Company where he was an Assistant Vice-President. From 1969 to 1976, Mr. Lissy held a number of key governmental positions in Washington, including Special Assistant to President Gerald Ford and Associate Director of the White House Domestic Council.

'69 William G. Adamson has become a member of the Philadelphia firm of Harvey, Pennington, Herting & Renneisen, Ltd., Seven Penn Center Plaza, Fourth Floor, Philadelphia, PA 19103.

The Honorable Margaret Burnham was appointed National Director of the National Conference of Black Lawyers. Judge Burnham was the first Black woman to be appointed to the judiciary in Massachusetts and served for more than five years as a justice on the trial court there. A former staff attorney at the NAACP Legal Defense Fund, and a civil rights and criminal defense practitioner, the Judge received national attention as an attorney on the team which represented Angela Davis in her 1970 homicide prosecution. Judge Burnham joined the National Conference of Black Lawyers in 1969, founded the Boston Chapter of NCBL in 1973, and received the NCBL Judge of the Year Award in 1978.

J. Greg Miller, of the firm of Pepper, Hamilton & Scheetz, Philadelphia, spoke at an American Bar Association program on "Bankruptcy—Crisis in the Construction Industry", co-sponsored by the Forum Committee on the Construction Industry, and the Fidelity and Surety Law Committee of Tort and Insurance Practice Section.

'70 Gary Tilles, former Chief of the Civil Division in the U.S. Attorney's Office, has become associated with the firm of Manchel, Lundy, Lessin & Busacca, Eighth Floor, The Robinson Building, 42 South Fifteenth Street, Philadelphia.

Steven R. Waxman was named Secretary of the Philadelphia Bar Association. He is with the law firm of Bolger & Picker, Philadelphia.

'71 Sheila Taenzler McMeen and E. Ellsworth McMeen, III, '72, are the parents of newborn twins, James Cunningham and Mary Josephine (January, 1983), Jonathan, age 5, and Daniel, age 3. Ms. McMeen is on leave from the New York City firm of Davis, Polk & Wardwell.

'72 Ronald Clayton is a member of the firm of Fitzpatrick, Cella, Harper & Sciiento, 277 Park Avenue, New York, New York 10172.

Mark D. Jonas has withdrawn from the firm of Hamburg, Rubin, Mullin & Maxwel, and has opened offices at Suite 400, One Montgomery Plaza, Norristown, PA 19401.

E. Ellsworth McMeen, III, and Sheila Taenzler McMeen, '71, are the proud parents of Jonathan, age 5, Daniel, age 3 and twins, James Cunningham and Mary Josephine (born January 1983). Mr. McMeen is a partner in the firm of LeBoeuf, Lamb, Leiby & MacRae, New York.

Victor S. Perlman became a member of the firm of Clark, Ladner, Fortenbaugh & Young, 1818 Market Street, 32nd Floor, Philadelphia, PA 19103.
David L. Pollack and Roslyn Goold Pollack, ’73, of Radnor, Pennsylvania, became the parents of Richard Jacob on September 30, 1982. Mr. Pollack was elected to a three-year term on the Board of Governors of the Philadelphia Bar Association.

Melvin R. Shuster, former Assistant Chief of the Economic Crime Unit of the Philadelphia District Attorney’s Office, is associated with the firm of Margolis, Edelstein, Scherlis & Kraemer, 1315 Walnut Street, Fourth Floor, Philadelphia, PA 19107.

Richard Walden, who recently completed a five-year term as Commissioner of the California Health Facilities Commission, is Executive Director of Operation California, is associated with the firm of Margolis, Edelstein, Scherlis & Kraemer, 1315 Walnut Street, Fourth Floor, Philadelphia, PA 19107.

’73 Michael R. Kleckman has opened offices at 501 Fifth Avenue, New York, New York 10017, and is engaged in commercial litigation and general practice.

Roslyn Goold Pollack and David L. Pollack, ’72, of Radnor, Pennsylvania, became the parents of Richard Jacob on September 30, 1982.

’75 Beverly K. Rubman is associated with the Philadelphia firm of Goodman & Ewing, 1429 Walnut Street, Fourteenth Floor, Philadelphia, PA 19102.

’76 Sheryl L. Auerbach, of the Philadelphia firm of Dilworth, Paxson, Kalish & Kaufman, was a faculty member for the seminar “Practice in the Philadelphia Court of Common Pleas”.

Edward H. Merves, a former associate with the Philadelphia firm of Blank, Rome, Comisky & McCauley, was appointed Corporate Counsel and Assistant Secretary of the Industrial Valley Bank, Philadelphia.

Glenn F. Rosenblum, a former Editor-in-Chief of Pennsylvania District and County Reports and a former law clerk to Judge Berel Caesar, ’54, is associated with the firm of Korn, Kline & Kutner, 1521 Locust Street, Fifth Floor, Philadelphia, PA 19102.

’78 Rudolph Ackeret (LL.M.) opened offices at Poststrasse 1, CH-8303 Bassersdorf/Zurich, Switzerland.

William F. Simms, III, is associated with the firm of Oscar N. Gaskins & Associates, P. C., Suite 1310, Robinson Building, 42 South Fifteenth Street, Philadelphia, PA 19102.

Maurice L. White, Jr. became associated with the firm of Oscar N. Gaskins & Associates, P. C., Suite 1310, Robinson Building, 42 South Fifteenth Street, Philadelphia, PA 19102.

’79 Joseph C. Crawford, an associate in the firm of Schnader, Harrison, Segal & Lewis, Philadelphia, is the 1983 Chairperson of the Young Lawyers’ Section of the Philadelphia Bar Association.

Douglas Bern Fox and Deborah Large Fox, ’80, became the parents of Kelly Anne on November 14, 1982.

Donald M. Millinger, an associate with the Philadelphia firm of Wolf, Block, Schorr and Solis-Cohen, has been appointed Adjunct Associate Professor in the College of Humanities and Social Sciences at Drexel University. He will be teaching a course entitled “Art, Entertainment and the Law” for the Master of Science Degree in Arts Administration.

M. Kelly Tillery formed the partnership of Leonard, Tillery & Davison with offices at 1530 Chestnut Street, Fourth Floor, Philadelphia, PA 19102.

’80 Richard D’Avino, an associate with the Washington, D.C. firm of Cohen & Uretz, has been appointed Adjunct Professor of Law at Georgetown University School of Law.

Deborah Davis is presently working in the Litigation Section of The Exxon Company in Houston, Texas.

Paula Dow was previously with the East Texas Production Division of The Exxon Company and is now in Houston, Texas in Exxon’s Litigation Department.

Charles F. Forer became associated with the firm of Goodman & Ewing, 1429 Walnut Street, Fourteenth Floor, Philadelphia, PA 19102.

Deborah Large Fox and Douglas Bern Fox, ’79, became the parents of Kelly Anne on November 14, 1982.

Brian Saunders is employed in the legal department at the Bayway (New Jersey) Refinery, The Exxon Company.

’81 Shinichi Gotoh (LL.M.) and his wife, Mariko, became the parents of Dai-ichi on August 12, 1982.

Catherine Kessedjian Khachikian (LL.M.) joined the firm of Jeanclous, Lussan, Sammarcelli & Wirliath, 37, avenue Kleber, 75116 Paris.

David Loder returned from a University of Pennsylvania-sponsored Thouron Fellowship for study in England. He received an LL.M. degree in international law at the London School of Economics, and is presently with for the firm Duane, Morris & Heckscher, Philadelphia.

Frederick M. Stein became associated with the firm of Fox, Rothschild, O’Brien & Frankel, 2000 Market Street, Philadelphia, PA 19103.

Andre Van Landuyt (LL.M.) and his wife, Myriam, became the parents of Dimitri on December 7, 1982.

’82 Tweklat Menakanist (LL.M.) was appointed a Director of the Graduate Program of the Faculty of Law, Thammasat University in Bangkok, Thailand. He received his masters’ degree in Thailand and recently completed a book entitled Criminal Law and Its Problems which will be published next year.

Helen Milgate (LL.M.) has joined the firm of Herbert Smith & Company, Solicitors, at Watling House, Cannon Street, London, England.

Dale L. Moore, law clerk to Judge Louis H. Pollak of the U.S. District Court for the Eastern District of Pennsylvania, will be teaching next year at Albany Law School, Albany, New York.

Deepest Apologies

The Law Alumni Journal erroneously listed the Honorable Joseph T. Murphy, ’36, on the “In Memoriam” page of the Winter 1983 issue. The incorrect information came from the University’s main office.

Happily we disclaim what, in Judge Murphy’s own words, was “a grossly exaggerated report” and affirm that Judge Joseph T. Murphy, ’36, is alive and well and sitting on the Bench of the Philadelphia Court of Common Pleas.
In Memoriam:

James Harmon Chadbourn, Professor
The University of Pennsylvania Law School 1936–1950

Had Jim Chadbourn’s career ended in 1950 when at age 45 he left Penn, he would have been remembered not only as a leading scholar in his chosen fields—not only as the supreme master of the law professor’s art—but as a teacher who, during the years 1936–50, put a lasting stamp on hundreds of Penn graduates who today are active practitioners, judges and teachers. And yet in 1950, there was so much to come—a decade at UCLA and two decades at Harvard of continued brilliant teaching and of a prodigious outpouring of scholarly writing culminating in Jim’s monumental revision of Wigmore. Jim died at Harvard on September 28, 1982 at the age of 76.

Jim’s powers of mind and intellect were awesome. As a Harvard colleague has accurately noted, Jim was a great teacher precisely because he was a formidable scholar. And with all his magnificent abilities, Jim was a wise, witty, charming, and caring man. Although always friendly and accessible to students and colleagues alike, Jim remained a very private person. Knowing how deep his commitments would be, Jim gave his friendship sparingly. How fortunate and privileged then were we four at Penn—A. Leo Levin, Frederick G. Kempin, Jr., Barton E. Frist and myself—to have been able to call Jim—friend.

Harvard mourns its loss; and Penn mourns too. And in our mourning, I find consolation in knowing that Jim was very happy during his years here. It was because of Jim that my four years as student and instructor at Penn were halcyon days. It was also during his Penn years that Jim married his devoted Erika, and that their two daughters and son were born. In a letter in the Spring of 1976, already stricken with the cancer which he battled till he had completed his labors on the Wigmore revision, Jim wrote:

“One of the iron gates to Harvard Yard is inscribed ‘In Memory of the Dear Old Times.’ I like that. As I look back, my times at Penn were nothing less than ‘dear’, and the fun you and I had occupies a special niche in the memory.

Mine was a law school marriage and, as a demonstration of our very deep affection and admiration for Jim, my wife and I gave our three sons the same middle name—Chadbourn. Thus, we will always celebrate and remember the genius, humanity and joy of this rarest of men.

Morris L. Weisberg, ’47
Partner, Blank, Rome, Comisky & McCauley
Philadelphia, Pennsylvania

James H. Chadbourn graced the Penn Law faculty for fourteen years, from 1936 to 1950. He left behind a host of admirers and friends, former students who felt enriched by his teaching and grateful for the privilege of having known the man. Chad, as we called him, passed away in Cambridge, Massachusetts last September after more than half a century of teaching, writing and changing the law.
There have been many fitting tributes, including an issue of the Harvard Law Review dedicated to his memory. He was indeed an eminent scholar, a luminary who left his mark on the development of the law, primarily in evidence and procedure. But when Chad taught, his primary devotion was to his students. The press of projects and research yielded to his concern for the business of teaching. He spent endless hours honing the hypo, organizing the structure of the presentation, searching for the striking case to make a point. And he wanted the learning to be fun.

I was one of many attracted to teaching by his example and I recall vividly the half-page of advice that arrived shortly before I taught my first class: “Let the students laugh a lot,” he urged, “not only at themselves, but also at you.” It was good advice, particularly when one had the example of the master to try to emulate. And what a master he was! How exhilarating an hour with him, whether at Penn or at U.C.L.A. or at Harvard! Nor did the humor substitute for rigor of analysis, or an understanding of history, or an appreciation of the practical implications of doctrine.

His friendship knew no bounds, as so many have attested. And he left a mark on people that, as another former student-turned-teacher put it, “will yet affect... hundreds who will pass through the... classrooms of his former students in the years to come.”

How rich the legacy!

A. Leo Levin, ’42, Professor of Law, The University of Pennsylvania Law School and Director, The Federal Judicial Center

We hear a good deal these days about the ennui of second and third year law students. Part of the problem, it seemed to me, lies in the methods and quality of our teaching. We tend to assume that what appears to work in first-year classes will work in the later years. That may be, but only if one is as gifted a teacher as was Professor Chadbourn. Few of us are, and yet there are many who teach, or at least teach evidence, because of the profound influence that Chadbourn had on them in the classroom. I am among them. His classes were unconventional. First, he was often late. Second, he paid little attention to the assigned cases. Third, he was amusing. By being amusing Chadbourn engaged his students’ attention. Once he had it, he exposed the absurdities and complexities of the law of evidence with such clarity and relish that ennui was impossible and learning was inevitable.

Late in Professor Chadbourn’s life, I had occasion to correspond with him about a question that had arisen in my research. Kind and helpful as always, he closed his letter: “It is good to know that you are at work at 3400 Chestnut and that you like Philadelphia. I did, too.”

Stephen B. Burbank, Associate Professor and Associate Dean, The University of Pennsylvania Law School, Harvard Law School, ’73

In Memoriam

’21 Joseph Smith Philadelphia, PA December 9, 1982

’22 Franklin Bates Southampton, PA December 13, 1982

’25 Morton Meyers Johnstown, PA December 5, 1982

’29 Stanley B. Cooper Plymouth Meeting, PA January 13, 1983

’36 Reuben Miller Philadelphia, PA December 30, 1982

’38 Harry A. Greenberg Miami Beach, FL December 1, 1982

Harris J. Latta, Jr. Haverford, PA September 8, 1981

’39 Joseph M. Kilgarif Philadelphia, PA February 1, 1983

’42 Mabel Ditter Sellers Ambler, PA February 18, 1983

’48 Robert P. Shoemaker Waynesboro, PA December 6, 1982

’51 Martin S. Goodman Meadowbrook, PA January 4, 1983

’60 I. Grant Irey, Jr. Wayne, PA December 3, 1982
Reflections on Ventman: a moral dilemma

by Mark Kramer, ’85

I never spoke with him, but I thought a great deal about Ventman. His presence was a constant source of disquiet, and spurred me to examine myself and the education I was receiving.

I wanted to speak with him because I was curious, but also because I wanted to acknowledge his dignity as a human being. Yet, I did not speak with him, for the same reason that I would hesitate to feed a stray dog—lest he attach himself to me and, to my embarrassment, I find that I had unwittingly accepted a responsibility for him.

So I discovered that I could walk past a hungry and desolate pariah nearly every day for months and take no action. I began to understand how the average bystander to a crime could let cowardice, embarrassment and the lack of an obvious solution obscure clear moral obligation. I felt trivial emotions outweigh "deep values." And I wondered if I would be able to fulfill the responsibilities of a lawyer to his client and to society. My law school courses seemed inadequate in preparing me for that task. I felt as if I were being taught to use a dangerous weapon with no instruction about when its use was justified or what damage it could do. What I needed was a course on moral courage, and I wondered how many others needed it too.

Ventman’s constant and unaided presence at the Law School was a singularly strong metaphor for the lack of assistance which lawyers give to the needy in general. He was the reminder of a desperate world which we privileged law students will hardly ever face, but which is far more prevalent than our experience would suggest. Although we espouse a responsibility for pro bono work, it is the rare graduate who actually assumes it. Is this the fault of the graduate, or is it also a consequence of the Law School curriculum?

For me, Ventman provided a test of moral quality. In failing it, I feel continuing turmoil. Perhaps it has caused me to be more conscientious about opportunities for public interest work. Of course, my idealism and discomfort will fade, as have other failures and resolutions. But my legal education will be the less for his absence.

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Since its inception seventeen years ago, THE LAW ALUMNI JOURNAL has been published for and sent to University of Pennsylvania Law Alumni at no charge. We want to sustain the high quality of our magazine but, as frugal and tight-fisted as our budget management has been, we clearly are finding its production a costly undertaking.

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Sincerely yours,

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