Penn Law Journal

A Day in the Life of the Law School

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*A clock in honor of Gary Clinton. See page 9.*

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Alumni Weekend May 13 and 14, 1994

Top Left
The Class of 1989 celebrates their 5th Reunion at the Palladium on campus.

Middle Left
Dean Colin Diver chats with John T. McCartney and Gordon W. Gerber during the Class of 1949's Reunion at the Pyramid Club in Philadelphia.

Bottom Left
Paul and Rose Astor and Hon. Edward Blake combined their efforts to produce a fun-filled fest for the Class of 1954's 40th Reunion at the Locust Club.

Above
At the Alumni Weekend '94 Luncheon, Dean Diver poses with Hon. Norma Levy Shapiro '31, the 1994 recipient of the Distinguished Service Award.

Top
During the Class of 1974's 20th Reunion in Tanenbaum Hall, Manny Sanchez leads a lively discussion while Helen and David Pudlin (seated) listen in.

Congratulations to Barton E. Feirst '44, Morris M. Shuster '54, and Robert G. Fuller, Jr. '64 who each received an Alumni Award of Merit during Alumni Weekend's State of Penn Law Meeting.
The academic year just completed has been a year of extraordinary events — the Dedication of Tanenbaum Hall with Janet Reno, endowed lectures by Antonin Scalia, John Rawls, Arthur Liman, and Roger Fisher, conferences on law, science and technology, criminal law theory, and complex litigation.

In a year of such “extra-ordinary” doings, it’s easy to lose sight of the “ordinary,” daily struggles and triumphs that make this Law School truly — and lastingly — great.

So, we decided, in this issue of the Penn Law Journal, to celebrate the everyday life of the Law School. Through words and photographs, we try to convey a sense of the amazing variety and vitality of daily life at 3400 Chestnut Street.

For most of us, a typical day at the Law School begins with a cheerful greeting from the security guard in the new entrance to Tanenbaum Hall and a quick look at the daily messages on the “white board” around the corner.

Around 8:00 a.m. the student lounges begin to fill up with first-year students clutching coffee cups and dog-eared casebooks. Lights go on in the administrative offices, revealing once again the unfinished business of the previous day, stacks of forms and files, rows of blank-faced computer monitors ready to spring to life.

As the morning wears on, classrooms fill with intense faces, sounds of nervous laughter, awkward silences, frantic note-taking. In some smaller classes, television screens flicker, overhead projectors hum, students engage in mock interviews and arguments.

Throughout the day, Biddle Law Library hums with activity. At a long central table, researchers punch commands into computers, while the card catalog stands stiffly nearby, a silent symbol of looming obsolescence. At the reference desk, staff field questions from bewildered students and faculty. Circulation staff unpack and catalog the day’s shipment of books and periodicals. Students disperse into the upper reaches, in search of a treatise on Sales or a quiet corner to study Tax.

Wandering through the hallways on a typical afternoon, one may catch a glimpse of a professor in a cluttered office lost in thought or huddled over his computer, another engaged in an intense discussion of Chapter II with a group of her students, a third heading briskly to a committee meeting or faculty workshop. In the journal offices, students gather for an editorial meeting. In the lounge, students promote wares ranging from ecological awareness to the BAR-BRI Bar Review. In the basement, lockers clatter open and shut, and students retreat to the comraderie of student-group offices.

As evening approaches, lawyers and judges who teach late afternoon seminars field last minute questions from the knots of students who form around them at the end of class. Members of moot court teams practice their arguments before panels of faculty and alumni. Writing instructors drill their charges on citation form or briefing structure. Faculty drift home with briefcases filled with manuscripts.

The life of the Law School is, of course, not limited to life in the Law School. On any given day, Penn law students can be found at dozens of venues around town — attending classes at Wharton or studying at the Furness Library, working on an externship at the U.S. Attorney’s Office, arguing a motion in the Court of Common Pleas under the watchful eye of a clinical instructor, teaching law to a class at the University City High School for public service credit, or perhaps advising clients in the West Philadelphia Food Stamp Clinic. Likewise, faculty can be found shuttling across town or across country to deliver a lecture to a bar association group, serve on a governmental advisory board, or perhaps participate in the annual symposium of a learned society.

So, as we return to “ordinary” life following the Year of the Dedication, we present this modest tribute to the thousands of little things that make Penn a truly extraordinary place every day of every year.
SYMPOSIUM

APPOINTMENTS

Faculty
Visiting Professors

The Law School's Appointments Committee is pleased to announce that five visiting professors will enhance Penn's course offerings during the 1994-95 academic year.

The Law School will welcome Aaron Kirschenbaum as the Caroline and Joseph S. Gruss Visiting Professor of Talmudic Civil Law for 1994-95. Dr. Kirschenbaum is currently a Professor of Jewish Law at Tel Aviv University. He completed his undergraduate degree at Brooklyn College, and then earned M.A. and D.H.L. degrees at the Jewish Theological Seminary of America and a Ph.D. in Roman Law at Columbia University. Dr. Kirschenbaum will teach a course in Jewish Law.

Lisa Bernstein will be a Visiting Associate Professor during the spring term. Bernstein recently completed a clerkship for the Honorable Mark L. Cabranes of the United States District Court for the District of Connecticut and working as an associate at the New Haven firm of Wiggin & Dana. Dailey joined the faculty of the University of Connecticut Law School, where she is currently an Associate Professor. She will teach Feminist Legal Theory at Penn.

The Law School will also welcome Visiting Professor Meade Emory in 1995. He holds B.A. and LL.B. degrees from George Washington University, and an LL.M. degree from Boston University Law School. In addition to his distinguished career in private practice, he has held several high-level government positions. Emory has served as the Assistant to the Commissioner of the Internal Revenue Service and as Legislation Counsel to the Congressional Joint Committee on Internal Revenue Taxation. He has also taught tax-related courses at a number of law schools across the country, including Duke, Tulane, and UCLA. Emory will teach Federal Income Tax and International Tax.

Manfred Weiss, who was a Visiting Professor at the Law School in the spring of 1991, will return for the spring 1995 term. A professor of labor law and civil law at the J.W. Goethe University in Frankfurt, Germany since 1977, Professor Weiss will teach a course on the European Economic Community and will collaborate with Professor Clyde Summers on a seminar in Comparative Labor Law.

Administration
Assistant Dean of Admissions

Janice L. Austin has been appointed Assistant Dean of Admissions and Financial Aid. She will assume her new duties in July 1994. Austin has worked in law and business school admissions for thirteen years. She served as an Admissions Assistant and Admissions Officer at Columbia Law School from 1981 to 1988, then as the Assistant Director of Admissions at the Columbia Business School from 1981 to 1988, then as the Assistant Director of Admissions at the Columbia Business School from 1981 to 1988. Since 1990, she has been the Director of Admissions at the University of California Hastings College of Law in San Francisco. At Hastings, Austin is credited with establishing a responsive and professional admissions staff, enhancing recruitment efforts, improving law school marketing literature, increasing the volume of applications, and processing these applications expeditiously. In addition, she gained a reputation for running a "user-friendly" admissions office and maintaining close
ties with admitted students after they enrolled. Austin was selected through a nationwide search conducted by a committee chaired by Professor Seth Kreimer and comprised of Professor Elizabeth Kelly, Assistant Dean Gary Clinton, and students Ari Burstein '94 and Chuck Connolly '95.

LECTURES AND CONFERENCES

Second Annual Edward B. Shils Lecture in Arbitration and Alternative Dispute Resolution

Roger Fisher, the Director of the Harvard Negotiation Project and the Williston Professor of Law Emeritus at Harvard Law School, presented this year’s Shils Lecture at the Law School on January 25, 1994. Fisher’s lecture, “Tools of Negotiation: Domestic and International,” drew upon his extensive and distinguished experience in negotiations. Fisher has taught and advised corporate executives, labor leaders, attorneys, diplomats, and military and government officials on settlement and negotiation strategy in contexts ranging from the release of Iranian-held American hostages in 1981 to the Camp David negotiations between President Sadat of Egypt and Prime Minister Begin of Israel. Fisher is the author of the influential book, Getting to Yes, as well as numerous other works.

The Shils Lecture Series and the Shils Chair in Arbitration and Alternative Dispute Resolution were established by friends, family and colleagues of Dr. Shils, the George W. Taylor Professor Emeritus at the Wharton School. Dr. Shils holds both a J.D. (1986) and an LL.M. (1990) from the Law School.

Dean Diver joins Roger Fisher and Edward Shils '86, LL.M. '90 after Professor Fisher presented the Shils Lecture.

Gruss Lectures in Talmudic Civil Law

Professor Arnold Enker presented this year’s Caroline Zelaznik Gruss & Joseph S. Gruss Lectures in April. A Professor of Law at Bar Ilan University in Ramat Gan, Israel, Professor Enker presented three lectures: “Foundations of Jewish Criminal Law;” “Self Defense and Abortion in Jewish Law;” and “May One Separate Surgically Conjoined Twins Born With a Single Heart, Thereby Killing the One to Save the Other?”

The Gruss Lectureship was established in 1987 by Joseph S. Gruss through a bequest from his wife Caroline’s estate. The Gruss gift has enhanced the Law School’s curriculum and the University’s Jewish Studies Program. In addition to the Lectureship, Gruss has given generously to establish a Talmudic Law collection in the Biddle Law Library.
David L. Bazelon Conference in Science, Technology, and Law

On April 1 the Law School hosted the Bazelon Conference, which honors the memory of Judge Bazelon and his lasting contribution to the legal framework for regulating technology and incorporating science into public policymaking. Judge Bazelon authored a series of groundbreaking opinions that shaped the fields of environmental, administrative, and regulatory law during his 35 years as a Judge of the United States Court of Appeals for the District of Columbia and 16 years as Chief Judge of that Court. In 1987, Judge Bazelon's family donated his professional papers to the Biddle Law Library. This year's Bazelon conference featured presentations by seven of the nation's foremost legal scholars, all former law clerks of Judge Bazelon, with commentary by members of the Penn faculty.

Irving R. Segal Lectureship in Trial Advocacy

Distinguished trial lawyer Arthur L. Liman presented this year's Irving R. Segal Lecture on February 8. Liman, who lectured on "Joys of Advocacy," has served as counsel in many of the most notable judicial and legislative proceedings of recent years, including the trials of Michael Milken, Robert Vesco, and John Zaccaro, the Pennzoil-Texaco litigation, the investigation of the Attica prison riots, and the Senate's Iran-Contra investigation.

The Segal Lectureship was established by Irving R. Segal, a graduate of the Law School and a trial lawyer with Schnader, Harrison, Segal & Lewis. Segal has argued extensively in state and federal appellate courts and has lectured widely on the techniques and strategies of trial and appellate practice.

Thirteenth Annual Edward V. Sparer Public Interest Law Conference

Law students, alumni, and the general public attended this year's successful Sparer Conference, entitled "Human Rights in Urban America." Law School Professor Ralph Smith, who is the Director of the Children's Network, presented the keynote address. Panel discussions featuring academics, legal service providers, and social service providers explored issues including environmental racism, welfare reform, police brutality, and the Norplant controversy. Professor Regina Austin '73 was one of the featured panelists.

The Sparer Conference is organized by law students and is offered free of charge to all participants.

Institute for Law and Economics Distinguished Jurist Lecture

On April 13, Supreme Court Justice Antonin Scalia addressed an auditorium packed with law students, alumni and others on the subject of constitutional interpretation, advocating a textualist or originalist approach. In Scalia's view, the Constitution should be interpreted consistently with the framers' intent at the time of its adoption. He criticized the "living Constitution" approach, under which the Constitution is construed according to evolving, contemporary standards, as leading to fragmentation that will ultimately destroy the Constitution. The "living Constitution" approach, Scalia stated, has limited the Constitution's ability to protect the minority against the majority by placing the authority for constitutional interpretation in the hands of the Supreme Court rather than Congress. For example, the Supreme Court now rules on issues that might formerly — and in Scalia's opinion, appropriately — have been resolved by Congress through a constitutional amendment. Scalia argued that his originalist view fosters stability and the protection of minority interests. Students and faculty enjoyed the opportunity to meet the Justice at a reception following the lecture.
Penn Law's Public Service Program, directed by Judith Bernstein-Baker, and the Program's student participants received much acclaim during the past academic year.

Penn was named one of the top ten law schools for public interest in a national survey conducted by *The National Jurist*, a magazine for law students, in conjunction with the National Association for Public Interest Law.

Three Public Service participants recently won highly competitive public interest fellowships. Stephanie Gonzalez '94 won a Skadden Fellowship to continue her work on a holistic approach to representing victims of abuse. She is developing a model of representation in the Latino community which provides assistance not only in stopping abuse but also with ongoing issues of child custody and child support. Kam Wong '94 received a New York IOLA Legal Services Fellowship, funded by the New York Interest on Lawyers' Account Fund. Wong will develop methods of representing the underserved population of immigrants in detention in New York. John Grogan '93 was named an Echoing Green Fellow to develop a public interest law practice in Camden.

Penn law students' commitment to public service was also honored at the University level. Gonzalez and Wong shared the University-wide Women of Color award, which was presented at a luncheon at the Penn Tower Hotel, and Mike LiPuma '94 received the top graduate student award from Penn's Volunteers in Public Service for his work with Penn Advocates for the Homeless.

The Public Service Program hosted another successful Public Service Fair in January. This popular annual event provides an opportunity for students to meet with prospective public service placement sponsors representing over fifty of Philadelphia's public interest legal services providers. The Fair also serves as a celebration of the Public Service Program's efforts to foster public interest in the law.
Service Program, as the Law School thanks those organizations who sponsor students while students experience the diversity of the city’s public interest community and plan their participation in public service activities.

The Public Service Program receives weekly calls from other law schools that wish to enhance or institute similar programs. Representatives of Columbia Law School and Southern Methodist University Law School have recently planned visits to Penn.

**BOARD OF OVERSEERS MEETING**

At this spring’s Board of Overseers meeting, Dean Diver expressed the Law School’s gratitude to four Overseers who are leaving the Board after years of dedicated service. Leon C. Holt, Jr., ’51, Samuel F. Pryor III ’53, S. Donald Wiley ’53, and Marvin Schwartz ’49 were honored for their contributions to the Law School. Schwartz will serve as Overseer Emeritus. Each departing Overseer received a photograph of the Philadelphia skyline viewed from a window in Lewis Hall as a gift from the Law School. Justice Antonin Scalia informally addressed the Board and was presented with a Penn Law sweatshirt.

**BLSA ALUMNI DINNER**

This year’s Sadie T.M. Alexander ’28 Alumni Dinner honored Dr. Alexander’s daughters as well as two notable alumni. Mary Alexander Brown and Dr. Rae Alexander-Minter were honored for their commitment to establishing the Raymond Pace Alexander and Sadie T.M. Alexander Term Chair in Civil Rights. Walter A. Gay, Jr., ’29, the Law School’s oldest living African-American alumnus, received a Lifetime Achievement Award, and the Hon. Curtis C. Carson ’46 of the Philadelphia Court of Common Pleas received the Judicial Excellence Award. Renee Chenault ’82, co-anchor of WCAU-TV’s daily noon
Dean Diver presents Overseer Leon C. Holt, Jr. with a commemorative photograph at the Board of Overseers meeting.

H. Robert Fiebach '64 receives the Alumni Award of Merit from Dean Diver during the May 11 reception in Philadelphia.

Hon. Arlin Adams '47 receives the University's Alumni Award of Merit from Jack Reardon, General Alumni Society President.

newscast in Philadelphia, served as mistress of ceremonies. Professor Lani Guinier was the keynote speaker. The dinner helped to raise money to support the Alexander Chair.

Alumni Events

The Law Alumni Society hosted several alumni receptions this year, providing alumni with the opportunity to strengthen and maintain their ties to the Law School. On January 20, Dean Diver and Professor Elizabeth Warren visited northern New Jersey alumni at the Racquets Club of Short Hills. Professor Warren discussed Chapter II issues, and Deborah Poritz '77, Attorney General of New Jersey, informally addressed the group. This reception was hosted by Clive S. Cummis '52, Joel D. Siegel '66, Pamela Laudadio '77, and Victor Boyajian '85. In February, Dean Diver and Assistant Dean Peter Rood attended alumni receptions in Los Angeles and San Francisco. On March 3, the Law Alumni Society held a reception at the University Club in New York City. Dean Diver brought alumni up to date on Law School news, and

Professor Michael Schill discussed his research in housing law and policy. Philadelphia alumni enjoyed a reception on May 11, which was held in conjunction with the Annual Meeting of the Pennsylvania Bar Association. Professor Curtis Reitz '56 spoke, and H. Robert Fiebach '64 received the alumni award of merit. On May 18, the Law Alumni Society hosted a breakfast in conjunction with the Annual Meeting of the American Law Institute in Washington, D.C. Professor Geoffrey C. Hazard, Jr. addressed the group, and Gilbert Casellas '77 received the alumni award of merit.

Hon. Arlin Adams '47 receives the Alumni Award of Merit from Jack Reardon, General Alumni Society President.

New Clock Honors

Gary Clinton

A tall case clock commissioned by Donald M. Millinger '79 in honor of Gary Clinton, Assistant Dean for Student Affairs, was installed in the new student lounge on April 11. The clock was designed by Dale Broholm and is shown on the contents page of the Journal. In addition to a clockface on each of its four sides, the clock features engraved glass panels showing Tanenbaum Hall, the scales of justice, the seal of the University, and the Goat.

Hon. Arlin Adams '47 Receives the University's Alumni Award of Merit

Jack Reardon, president of the General Alumni Society, presented the Hon. Arlin Adams '47 with the University's Alumni Award of Merit at Founder's Day ceremonies on January 15, 1994. Judge Adams was honored for his professional achievements and his service to the University and the Law School.
Calendar

AUGUST

Monday, August 8, 1994
Law Alumni Society Reception in conjunction with the American Bar Association’s annual meeting
New Orleans

OCTOBER

Monday, October 24 and Tuesday, October 25
Annual Giving Phonathons

Friday, October 28, 1994
The Law Alumni Society’s Parents & Partners Day for members of the Class of 1997 and their families
The Law School

NOVEMBER

Wednesday, November 9, 1994
Annual Giving Phonathon
New York City

Tuesday, November 15, 1994
Annual Giving Phonathon
Washington, DC

Wednesday, November 16, 1994
Law Alumni Society Breakfast
Washington, DC

DECEMBER

Tuesday, December 6, 1994
Law Alumni Society Luncheon
Wilmington, Delaware

JANUARY

Friday, January 6, 1995
Law Alumni Society Reception in conjunction with the annual meeting of the AALS
New Orleans

Monday, January 16, 1995
Keedy Cup Final Moot Court Argument
The Law School

FEBRUARY

Tuesday, February 7, 1995
Law Alumni Society Reception
Miami

Tuesday, February 21, 1995
Law Alumni Society Reception
Los Angeles

Thursday, February 23, 1995
Law Alumni Society Reception
San Francisco

For information on these and all other Law School events, call Alexandra Morigi, Director, Alumni Office, at (215) 898-6303.
What happens on an ordinary day at the Law School?

Perhaps you can recall what you did on a typical day as a law student. You may have been called on in class and surprised yourself with your response. You may have hunted down sources for a journal article that you had to edit. Maybe you spent the afternoon relaxing with friends, drinking coffee in the Goat, and then spent the evening studying in the library. You may have worried about your summer job plans. You may have finally begun outlining Civil Procedure. However you spent the day, you were surrounded by the activity of faculty, administrators, staff, and other students who together contributed to your Penn Law experience.

April 6, 1994 was an ordinary day at the Law School. There were no special lectures or events, no exams, no boathouse party or happy hour or softball game. While everyone at the Law School simply went about his or her routine on this spring day, we asked two photographers to roam the school and record what was happening. Their photographs will reacquaint you with familiar faces and places and introduce you to new ones. You will see that some things have changed at the Law School, as students and faculty make themselves at home in Tanenbaum Hall. Other things have stayed the same: the rituals of classes and studying, courses taught by favorite professors. We hope that these photographs will fill you with warm memories of the past and with enthusiasm for the future of Penn Law.

The Law School day begins at 7:30 am when security guard Paul Yuzuk arrives and unlocks the main entrance to Tanenbaum Hall. Yuzuk makes his morning rounds and then monitors Law School entrances and exits via closed-circuit television cameras. He greets all visitors to the Law School with a smile, joking with students and faculty and directing visitors to their destinations.
In the early morning hours, the housekeeping staff busily cleans and tidies up the Law School. The School is abuzz with the sound of vacuuming and washing. Furniture is dusted, trash removed, and windows cleaned. Dave Thomas cleans the glass door outside room 213, with Tanenbaum Hall in the background.

At 8:00 am, people begin to arrive at the Law School. Raymond Trent enters, followed by Judge Louis H. Pollak. Trent is a senior clerk at Biddle Law Library with responsibility for book binding. A Law School employee for thirty years, Trent has also compiled the Raymond Trent Collection on the Black Lawyer, which is housed at Biddle and available to students and scholars. Judge Pollak, a former Dean of the Law School, taught a course on the Supreme Court’s 1993 term this spring.
It is 8:15, and first-year students gather in the new student lounge to drink their morning coffee and prepare for class. The new lounge has added much-needed space for informal student gatherings throughout the day. Philip Bronner '96, Olga Petrovic '96, Halley Finkelstein '96, and Wendy Mirsky '96 compare notes.

Students enjoy the morning sun in the Law School courtyard, looking from Tanenbaum Hall toward Lewis Hall.

Morning classes are in full swing by 10:00.

First-year students took the traditional curriculum plus one elective. This year, upper-class students chose from forty-seven courses and thirteen seminars, as well as numerous clinical and co-curricular programs. Always accessible, the faculty routinely meet with students informally before or after class, at office hours, or over lunch.

After class, Professor Susan Sturm discusses employment discrimination issues with David Cahn '95.

Professor Leo Levin teaches Judicial Administration in one of the new, state-of-the-art classrooms in Tanenbaum Hall.

Professor Lesnick lectures on Legal Responses to Inequality.
Labor Law students pose a question to Professor Summers.

Professor Hurd lectures on the “actus reus” in Criminal Law... while students take notes manually or electronically.
Lunchtime in the new Stern Dining Commons. This facility in Tanenbaum Hall is the setting for many a breakfast, lunch and dinner hastily grabbed as a study break or leisurely spent discussing classes and classmates. Sean Carr '95 makes a purchase, while Pei Loh '95, Hanley Chew '95, and Mitra Mehr '96 enjoy their lunch.
The student-run journals have moved into spacious new quarters in Tanenbaum Hall. Andy Zeitlin ’94, the outgoing editor-in-chief of the Comparative Labor Law Journal, meets with Leslie Braginsky ’95, the journal’s new book review editor. In a neighboring office, Chuck Connolly ’95 assumes his duties as the editor-in-chief of the Journal of International Business Law.

1:10 pm

A Penn Law education does not take place only in the classroom.

The Public Service Program sends students into the community where they perform law-related work under the supervision of an attorney or a member of the Law School’s faculty. Penn Law students can be found throughout Philadelphia, in law offices, soup kitchens, schools and courtrooms. On this afternoon, we found the following students at work.

RIGHT
Melissa Weiss ’95 interviews a parent at the Custody and Support Advice Clinic. CASAC, a student-founded project, assists indigent parents in representing themselves in child custody and support matters. The project is supervised by attorneys with Community Legal Services. In the two years since CASAC was founded, Penn students have worked with over 700 clients.
Stefan Jackson '95 (middle) and Ayanna Minor '95, members of the Black Law Students’ Association Bartram School for Human Services Project, teach a law-related educational curriculum to Bartram High students. Here they discuss “gangsta rap” and the first amendment.

The First-Year Legal Writing Program provides first-year students with an invaluable foundation in research, writing and advocacy skills, while the third-year students who serve as Legal Writing Instructors gain teaching experience. From the minutiae of “bluebooking” to the excitement of a mock appellate argument at the federal courthouse, the Legal Writing course exposes first-year students to a realistic range of lawyering tasks.

Mike LiPuma '94 counsels two soup kitchen guests who are seeking legal information. Mike coordinated Penn Advocates for the Homeless, which worked with fourteen first-year students to provide legal information and referrals at area soup kitchens.

Personal conferences are a hallmark of Legal Writing. Instructor Debbie Rogow '94 reviews a brief with Stacy Broad '96.
The Clinical Programs enable students to engage in front-line legal work in actual cases under faculty supervision. Students enrolled in the Civil Practice Clinic, for example, represent clients of the Penn Legal Assistance Office in a variety of civil disputes. Students develop lasting practical skills by interviewing and counseling clients, negotiating with opposing parties, and handling hearings.

Sandy Yoo '94 researches legal issues on line before conferring with a client.

Ringing telephones, piles of mail, and a non-stop stream of visitors—students, faculty, administrators, and others—characterize the busy atmosphere of the administrative offices.

Rae DiBlasi, Assistant to the Dean/Special Projects, plans another law school event.

On this typically busy day Dean Diver has met with administrators and students, interviewed a candidate for a faculty appointment, attended an alumni luncheon in Center City, and met with the Building Committee. On his way to a budget meeting, Dean Diver consults with his assistant, Isabelle Johnston.
The Admissions Office received about 4100 applications this year — an increase of 14% over last year's figures. The task of limiting this pool to yield a class of approximately 240 is a daunting one, involving the thoughtful review of each application. After being admitted, applicants were contacted by current Penn Law students who answered questions and provided a student perspective on the Law School. Each admitted applicant also received a letter from Dean Diver. Two open houses for admittees, including one that coincided with Justice Scalia's visit to the Law School, provided a chance to visit the School and meet students and faculty.

The admissions office is awash in applications, recommendations, transcripts, and financial aid forms. Denise McGarry, the Associate Director of Admissions and Financial Aid, reviews applications with Professor Kreimer.

Down the hall, the Registrar's Office keeps track of course scheduling and enrollment, exams, grades, commencement arrangements, and numerous other details of student life. Registrar Gloria Watts keeps everything running smoothly.

Assistant Dean Gary Clinton counsels two students.
After classes, students pour into Biddle Law Library to study. An atmosphere of light and quiet, along with comfortable seating and climate control, have contributed to everyone's enthusiasm for the new facility. The library provides a variety of study environments, ranging from long tables in the light-filled atrium to carrels on the mezzanine that provide an aerial view of the comings and goings below to private study rooms that can accommodate from two to six students. Students may be found in a group simulation room, videotaping a mock negotiation or deposition to be critiqued. In a single viewing room, a student may practice and tape an oral argument, or a professor may view an interactive videotape on law teaching. Computers abound, providing ample access to on-line research services, CD-ROM databases, and the Internet.

**TOP LEFT**
Juan Llambias, LL.M. '94 and Felipe Montejo, LL.M. '94 on their way to the library. This year's LL.M. program welcomed thirty-four international students from twenty-one countries.

**MIDDLE & LOWER LEFT**
The circulation and reference librarians offer assistance to students.
Is there life after law school?

The Career Planning and Placement Office, headed by Assistant Dean Jo-Ann Verrier '83, ensures that there is by providing counseling and placement services to students and alumni. Fall on-campus recruiting for second-year students continues to be highly successful. Currently, there are 270 employers scheduled to participate in September, and this number continues to increase. Other employers visit the Law School throughout the year. Despite the recent economic downturn, Penn's placement statistics remain impressive: by February 95.5% of the class of '93 were employed. Alumni continue to provide valuable assistance in locating job opportunities for students. Alumni who have jobs or other assistance to offer should call Career Planning at (215) 898-7493.

Above

Alumni contributed their time and expertise to this year's successful mock-interview program for first-year students. First-years polished their interviewing skills in preparation for the search for a summer job. Lester Lipschutz '91 interviews Vincent Willis '96 in a library study room.

Above Right

Helena Reid assists a caller.

Right

The Career Planning and Placement Office maintains a library that includes up-to-date job listings for students and alumni, as well as clerkship information. Students review job binders in Career Planning's new Tanenbaum Hall office.

http://scholarship.law.upenn.edu/plj/vol29/iss2/1
The Office of Development and Alumni Affairs coordinates fundraising, alumni events, reunions, and related activities.

**ABOVE**
Assistant Dean Peter Rood plans his next trip to meet with alumni.

**RIGHT**
Alexandra Morigi, Director of Alumni Affairs, plans an alumni reception.
... the hour for seminars, when students meet with renowned faculty in intimate classes that foster the exchange of ideas.

Nervous first-year students, their Legal Writing Instructors, and alumni who will serve as judges converge at the federal courthouse for mock oral arguments.

Elbert McQuiller '96 and John Mastando '96 prepare to face their opponents and the judges.
The quiet of Biddle Law Library is punctuated by the rustling of pages, the squeaking of highlighters, and the tapping of computer keys as students work into the night.

The Reserve Reading Room houses current journals.

Corinne Karlin '96 amid Federal Reporters.

At work in a private study room.
The day ends as it began, with the turn of the security guard's key.

The Law School after dark.

Below

Ed Lytle completes his rounds and locks up the Law School.
In his recent presentation to the Philomathean Society of the University of Pennsylvania, Professor William Ewald echoed the nineteenth-century jurist Rudolf von Jhering’s remark that Rome conquered Europe three times: once with her legions, once with her Church, and once with her laws. The conquest of Europe by Roman Law has endured longer than the other two, Professor Ewald noted, and in a sense continues to the present day. There were in fact two conquests of Europe by Roman Law. The first came during classical times in the wake of the conquering legions, when Roman laws and Roman government spread across Europe, only to disappear as soon as the legions withdrew. The second conquest came in the Middle Ages and in early modern times, roughly from 1100 A.D. onwards. In this excerpt, Professor Ewald discusses these two conquests of Roman law, first describing how Roman Law developed in the period of the Roman Republic, and then explaining one of the strangest stories in the history of the law: the way in which Roman Law vanished, was rediscovered, and ultimately became the foundation for modern European law.

To explain how law developed in classical Rome, it will be best to start with an account of the Roman civil trial. The central administrative figure was the Urban Praetor, who was elected to a one-year term of office, and who was responsible for administering justice in civil suits between Roman citizens.

At the beginning of his year the Praetor would announce his Edict — in effect, a statement of the laws and remedies he proposed to enforce. In theory he was free to depart from the Edicts of his predecessors, but in practice the Edict would largely be carried over from the previous year.

Now, if a dispute arose between, say, Marcus and Julius over a piece of land, the two parties would come before the Praetor, who would consult with them and draw up the formula of the case. The formula was roughly equivalent to modern pleadings; it was in essence a command from the Praetor to the judge, telling him to decide for Marcus if certain conditions were met, and otherwise to decide for Julius.

The formula having been prepared, a judge for the case was then selected from a list of prominent laymen. The index (as he was called) was given the formula. He proceeded to hear evidence from both sides, and then to decide the case in accordance with the Praetor’s instructions. The index had wide discretion, and in the end simply announced a
The important point to notice is that both the Praetor and the iudex were laymen. They had no training in the law; and if the administration of justice had been entirely in their hands the Romans would have possessed, not so much a system of law, as a mechanism for the ad hoc resolution of disputes.

The fundamental task of stating and developing and commenting on the law fell to a third class of people, the professional jurists. These jurists were in a sense gentlemen-amateurs: aristocrats who studied the law and gave legal advice, not for money, but for the honor and respect they earned in the process. They were not involved in the decision of cases, and seem to have looked with a scholar’s disdain on the lowly practitioners. (Something of this tradition survives in modern Europe, where in general judges enjoy less prestige than legal scholars—a reversal of the common-law ranking.)

The jurists often held important offices within the Roman administration. Some commanded legions; others became Governors of such provinces as Asia or Nearer Spain. In other words, they were not mere bookworms, but men of affairs with wide experience in government. It was to them that the Praetor and the indices turned for authoritative advice on questions of law; and it was they who, mostly in the first century through the third, built up the great body of juristic writing that forms the backbone of Roman Law.

At the end of classical Roman times (and in fact after Rome itself had fallen) the Emperor Justinian ordered a compilation of these juristic writings, which is known as the Digest; it makes up by far the largest part of the Corpus Juris Civilis, and was promulgated in 533. (The Digest fills some 2,000 large pages of small print; the monumental English translation was published by the University of Pennsylvania under the guidance of Alan Watson, who used to teach at the Law School.) But Justinian was late. The Roman Empire was at an end, and in Western Europe the Corpus Juris Civilis sank from sight.

For the next 500 years the law of Western Europe was Germanic tribal law mixed with elements of Christianity, and the classical Roman Law of the jurists was entirely forgotten. Then, suddenly, Roman Law was rediscovered and spread throughout Europe, becoming the foundation for the continental legal systems. How did this surprising thing happen?

It will be helpful if we divide the reception of Roman Law (as it is called) into two phases.

The first phase begins in about 1100. That is roughly the date when the text of Justinian’s Corpus Juris Civilis was rediscovered in Pisa. The date is important for another reason as well: for this was the time of the struggle between Gregory VII and the Holy Roman Emperor for control of the vast wealth and power of the Church; and if that struggle had not been going on, Roman Law would never have had the impact that it did. In essence, Gregory was poised to establish an international Church bureaucracy, encompassing all of Europe, in which every member of the clergy would ultimately report to the Pope in Rome. To establish such a massive administrative machine required sophisticated legal skills; and Justinian’s Corpus Juris was rediscovered at just the right time.

During this first phase (whose dates are roughly 1100-1400) three things happened. First, Roman Law was taught in universities throughout Europe—in initially in Bologna, and later in great centers of medieval learning like Paris and Oxford. Second, the Church took elements of Roman Law and combined them with the law of the Church to form the system of medieval Canon Law; this system was of great importance for the development of family law and of trial procedure. (For many centuries the temporal courts continued to use trial by battle and trial by ordeal; the Church, in contrast, built on the sophisticated and highly rational procedures of Roman Law.)

Third, and perhaps most important, the medieval scholars applied Aristotelian logic and the scholastic method to Justinian’s text. Strange though it may seem in retrospect, the Romans never reduced their legal rules to a logical and systematic order: the jurists were content to pronounce very specific rules for very specific issues, but never tried to bring them all into a system. It was the medieval Glossators and Commentators who edited the text of the Corpus Juris, reconciling conflicting passages, sought the underlying, abstract principles, and wrote commentaries and analyses of the most difficult legal questions.

Very roughly speaking, the result was that by 1400 or so you had, on the one hand, an orderly, scholarly, sophisticated system of law, in part administered by the Church, and taught in a universal language, in the universities throughout Europe. And, on the other hand, you had the mass of feudal law and local custom that were applied by the temporal courts.

At this point, the second phase of the reception of Roman Law begins. In this phase (and here I must oversimplify wildly) Roman Law in effect moved out of the universities and into the courts of the secular rulers. This development did not happen all at once, and the process varied throughout Europe. Let me tell you about how it happened in the Holy Roman Empire, since that is in many ways the most interesting case.

For much of the Middle Ages, the Holy Roman Empire had what is known as a theoretical reception of Roman Law. The German Emperors considered themselves the heirs of the Romans, and in theory Roman Law was supposed to apply as a kind of subsidiary law in their
courts. But in fact the imperial courts were weak, and this reception was more illusion than reality.

Then, suddenly, in about 1500, Roman Law was received almost in its entirety into the Empire. How did this happen? There are roughly speaking three reasons. First, the Emperor, in an attempt to consolidate his power, established a new imperial court of justice staffed by lawyers trained in Roman Law, and able to administer the highly efficient Roman trial procedure that had been developed by the Church. The idea proved a popular one, and the Imperial subjects began flocking to the Emperor’s courts. The many German princes observed this development. They followed the Emperor’s lead, and established their own courts based on Roman Law models.

Second, now that there was a booming market for Roman lawyers, Roman Law became throughout Germany a genuine subsidiary source of law. If a new statute had to be written, it was written by lawyers trained in the universities — and, of course, since Roman Law was the system they had studied, they used the language and the concepts of Roman Law. Or if a statute had to be interpreted, the lawyers interpreted it so as to diverge as little as possible from Roman Law. In this way Roman Law ideas were rather quickly imported into German law.

The third, and perhaps strangest, reason for the practical reception was what is known as the Aktenversendung. The most sophisticated legal talent in Germany at the time was in the universities, whose professors had the greatest mastery of the details of Roman Law. The courts decided to take advantage of this fact, and if a difficult case came to them they would send the entire trial docket to the professors for their collective, learned decision. A university like Heidelberg would decide cases from all over the Empire. The professors had no special expertise in the customary law of the various provinces, and indeed basically regarded that law as primitive and backward. So they naturally decided these cases by invoking principles of Roman Law — all of which worked to make Roman Law the common law for all Germany.

In this way — and in similar ways throughout Europe — you had the gradual development of what is known as the ius commune, a common law, based on Roman Law principles, for all of continental Europe.

And so, over the centuries, the rules of Roman Law have gradually been absorbed and worked over and refashioned to form the basic building blocks for what are today known as the Civil Law countries. The process did not cross the Channel to England, which followed a separate legal development; but the influence of Roman Law rules has spread from the core legal systems of continental Europe — Italy and France and Germany — to Latin America, to Turkey, to large parts of Africa, and as far afield as Japan.

I am afraid I know of no satisfactory way to illustrate the influence of these rules, apart from burrowing into the legal details and trying to show you how they operate in practice. But time is too short for that.

The best I can do is leave you with an analogy. In addition to Roman Law, the Romans made a second great contribution to Western civilization: the Roman arch. And the importance of Roman Law to the law of modern Europe, it seems to me, is like the importance of the Roman arch to the architecture of Rome.

It is not as if the modern city of Rome would still be recognizable to Cicero or Diocletian: clearly it would not. Even the style of the arches themselves is different. There are Brunelleschian arches, and Palladian arches, and Baroque arches — none of them quite like the arches of classical Rome. This is an important fact, and shows that things have not been standing still: each succeeding age has added something new, and has adapted the Roman pattern to its own ends.

The innovations are significant; and if you imagine every arch in Rome scoured of its Baroque trimmings or those from the Renaissance, it is clear that the city would not be the same. Entire districts would be mutilated. But the city itself would still be recognizable; certainly it would not be destroyed. And that is where the Roman arch is different. Knock down the arches themselves, and you have nothing left but a heap of rubble, punctuated by an occasional obelisk.

The same thing, I think, is true of Roman Law. You can go through the French and German codes and scrape away the contributions of the scholastics and the humanists, of the Renaissance and the nineteenth century; the damage would be grievous, but you would still have a recognizable body of law. But take away the contributions of Rome, and European law becomes no better than a heap of rubble.

These remarks are relevant to the future of European law, and it is generally agreed by Civil Lawyers that any unified system of law for Europe will have to be based on a Roman Law model. At this point let me remind you of the prophecy of Anchises which Virgil placed at the very center of the Aeneid. Aeneas is in the underworld, and his father Anchises has just been making prophetic remarks about the city that Aeneas is destined to found. Anchises sums up his view of the Roman mission in words that must have reflected Virgil’s own attitude.

“Remember, O Roman!” he says. “Other nations may surpass you at sculpture and oratory and astronomy. But your task is a different one: to rule over nations. These shall be your
arts: to spare the humble, to do war on the proud, and to consummate peace with law."

A nice thing about prophecies is that they are not subject to any statute of limitations. Anchises's words are all the more remarkable when you remember that Virgil wrote them before the great creative period of Roman legal thought. So as prophecies go this is quite a good one. Certainly for a brief time after Virgil the prophecy held true, and all Europe was united under Roman laws and Roman rule: the only time in history that such a thing has happened.

And what of the future? There are encouraging signs that Europe is drawing together, and that it may once again get a unified system of laws. If it does, those laws will necessarily be based on Roman patterns. (It is no accident that the European Community was created by the Treaty of Rome.) If that should turn out to be what happens — if, as Jhering might have said, we are in for yet another conquest of Europe by Roman Law — then the prophecy of Anchises will once again have come true, but in a sense Virgil could never have anticipated.
In this article, which recently appeared at 15 Cardozo Law Review 987 (1994), Professor Edward Rock discusses the problems of "relational investing," the practice — much touted — whereby investors make large, relatively long-term investments in corporations. Unlike many other commentators, Professor Rock focuses on the problems posed by relational investing and the limited role the law can play in controlling it.

He first divides relational investing into three broad types. In the first type, an investor acquires a large (for example, 9.5%) interest in the firm and then, through patient and wise counseling and "continuous and textured monitoring," improves the management of the firm, profiting along with the other shareholders. This type of investing is "good" or "virtuous" relational investing.

In the second version, an investor acquires a large (for example, 9.5%) interest in the firm at a discount in exchange for protecting incumbent managers from displacement or, more generally, from threats to their autonomy. In this second type, the relational investor profits from providing protection, while the other shareholders lose. In the third type, the relational investor uses its substantial investment not to protect managers or improve management, but to advance its own business, e.g., by securing favorable contracts with the firm. Professor Rock refers to these last two types of relational investing as "bad" or "corrupt" relational investing.

In this excerpt, he examines alternative approaches to controlling corrupt relational investing, focusing both on strategies that one might adopt to prevent the payment of protection money and strategies for indirectly undermining corrupt relational investing by undermining the relational investor's ability to make credible commitments.

Existing legal approaches are fundamentally ill-suited to controlling bad relational investing. Delaware's focus on the bargaining process fails to distinguish between good and bad forms of relational investing: both will likely involve hard arm's length negotiations. The federal disclosure-oriented regulations do not, were not intended to, and cannot be made to reach this sort of behavior. As long as the terms of the sweetheart preferred stock and payments to the relational investor are disclosed, the securities laws' disclosure requirements are satisfied. The most that the securities laws do is force disclosure of protection payments, either up front or continuing, and prevent binding the relational investor by a continuing stream of inside information. The most one can say for section 7 of the Clayton Act is that it could, on an imaginative reading, be used to constrain relational investors from taking advantage of their stock holdings to increase sales of goods and services to the firm. But, to date, it has hardly played a significant role.

If one were serious about controlling bad relational investing, one could approach it from several directions. First, one could seek to prevent it directly by preventing the payment of protection money, that is, the issuance of stock at a bargain price. Second, one could discourage it by limiting the protection that a relational investor can provide to managers. Third, one could attack it indirectly by seeking to interfere with the enforcement of commitments not to challenge managers, and by interfering with direct or indirect payments by managers to relational investors to buy their support. To the extent that one is successful in undermining enforceable commitments, managers will be less likely to pay for protection. I will consider each of these approaches separately.
Preventing the Payoffs

Prohibiting Special Issues of Preferred Stock

Many of the most troubling examples of relational investing previously described share one feature: the firm issues special preferred to the relational investor for what might (or might not) be a bargain price. In such cases, it is particularly difficult to determine whether protection money has been paid because there is no market benchmark.

Thus, one way of interfering with bad relational investing would be to prohibit such limited issue preferred stock. The available empirical evidence that negotiated placements of preferred stock are correlated with losses to common shareholders supports a prohibition. Moreover, such a prohibition would not prevent good relational investing; special issues of preferred stock are hardly the only way to establish a relationship. Warren Buffett, for example, has often purchased large positions in the market. In such cases, one need not worry about any up front payment of protection money through a discount: the relational investor has not dealt with management and owes management no special obligations.

But such a straightforward approach faces obvious problems. Eliminating the special preferred stock issues would not, of course, necessarily eliminate the payment of protection money. Managers could still sell a block of authorized but unissued common to a relational investor for a discount below-market price. Moreover, while prohibiting special issue preferred eliminates the up front payment, payments during the relationship can buy and bind the relational investor to management.

In addition, while prohibiting special issue preferred would help prevent the paying of protection money, it would do so at the cost of limiting a useful vehicle of corporate finance. Preferred stock is a widely used method of raising capital, whose value in part lies in the flexibility that managers and shareholders have in crafting its terms to fit specific needs.

Whether restricting that flexibility to prevent the issuance of sweetheart preferred is worthwhile depends on how big a problem bad relational investing is thought to be, how adequate alternative means of corporate finance will be, and how easy it would be to disguise payoffs in other forms.

Requiring Shareholder Approval

A second, indirect approach to controlling the payment of protection money is to require shareholder approval before the issuance of the special issue of preferred stock, or, more generally, before any large private placement of stock. Such an approach has several virtues. First, shareholder approval, at least when the shareholders are fairly concentrated and organized, could, in theory, provide an effective check. Though institutional investors face agency problems of their own, shareholder interests are aligned when the issue is the payment of protection money to others.

Second, requiring shareholder approval of targeted share placements shifts the locus of decision. When managers can issue sweetheart preferred, the relational investor seeks to make a credible commitment to support managers. But when the decision belongs to the shareholders, the commitment problem shifts. Why, the shareholders should ask, should we trust the relational investor to be a good rather than a bad relational investor? Unless the relational investor can credibly commit to being a good relational investor, shareholders should be unwilling to approve the stock sale.

If, in fact, good relational investing is profitable, and if, moreover, doing so through the issuance of special preferred is better than through open-market purchases, one would expect to see the emergence of terms that will credibly commit the relational investor.

Finally, and perhaps most importantly, shareholders can require advance approval without depending on court review, director action, or changing the law.

Shareholders can use two approaches to ensure advance shareholder approval of special preferred stock issues. The first approach, pioneered by The College Retirement Equities Fund ("CREF"), is the precatory shareholder proposal. In 1990, CREF introduced the first shareholder proposal (at Pfizer) requesting that shareholders be permitted to vote on private placements representing 10% or more of voting stock. The proposal won approximately 7% of the votes cast.

In 1991, CREF introduced a similar proposal at Pfizer, Dun & Bradstreet, and Caterpillar, requesting shareholder approval "prior to placing preferred stock with any person or group except for the purpose of raising capital in the ordinary course of business or making acquisitions and without a view to effecting a change in voting power." At Pfizer, the CREF proposal received 40.1%, at Dun & Bradstreet, it received 40.7%, and at Caterpillar it received 42.3%.

In 1992, CREF expanded its campaign further, introducing the same proposal at American Brands, Baxter International, Burlington Resources, Caterpillar, Dun & Bradstreet, and Intel. The Caterpillar proposal received 48.9% of the votes cast, the Intel proposal received 47.4%, and the American Brands proposal received 31.4%. The proposals at Baxter International, Burlington Resources, and Dun & Bradstreet were withdrawn after those companies' boards adopted resolutions satisfying CREF's concerns. Also in 1992, a management proposal at Pyramid Technologies to create blank check preferred stock failed. While these shareholder proposals are only precatory, managers rarely ignore successful precatory proposals.

A second approach, as yet little tried, would be for stockholders to adopt a bylaw directly prohibiting targeted
share placements without prior stockholder approval. Section 109 of the Delaware General Corporation Law recognizes shareholders' inherent power to adopt, amend, or repeal bylaws: "After a corporation has received any payment for any of its stock, the power to adopt, amend, or repeal bylaws shall be in the stockholders entitled to vote." While the power to adopt, amend or repeal bylaws may also be (and typically is) given to the directors in the certificate of incorporation, doing so "shall not divest the stockholders... of the power, nor limit their power to adopt, amend or repeal bylaws." The promise of stockholder adopted bylaws is that, unlike precatory shareholder proposals, they are binding on management.

Although there is so little Delaware law on stockholder adopted bylaws that one cannot draw anything more than the most tentative conclusions, a stockholder adopted targeted share purchase bylaw should be permissible stockholder action. Such a bylaw would come well within the very broad limits set by the Delaware statute: "The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees." Moreover, it would be on a subject close to one to which the statute speaks explicitly. Section 141(c) provides that a committee of directors can be authorized by bylaw to issue (already authorized) stock. If the authorization to issue stock is a proper subject for a bylaw, limiting the power to issue stock would likewise seem to be a proper subject.

Whether stockholders can entrench a stockholder adopted targeted share placement bylaw from subsequent director repeal is less clear. On the one hand, if, as is usually the case, the certificate of incorporation authorizes directors to adopt, amend or repeal bylaws, and if, as section 109(b) indicates, bylaws cannot include provisions inconsistent with the certificate, then any bylaw restric-

### Limiting Available Protection

A second strategy for limiting bad relational investing is to limit the protection that a friendly relational investor can offer managers. As previously discussed, Delaware section 203, by requiring a hostile bidder to acquire 85% of the shares in the initial tender offer in order to be able to merge within the following three years, gave significant blocking power to a relational investor. Repealing Delaware section 203—something that is obviously highly unlikely in the current climate—would eliminate the relational investor's ability to offer protection from hostile tender offers. By the same token, changes in the financial environment (principally the decline of the pure hostile tender offer and the rise of the tender offer combined with a proxy solicitation), have themselves limited the relational investor's ability to offer the sort of protection that insecure managers desire, thereby reducing the incentives for bad relational investing.

### Interfering with Commitment

As discussed earlier, if relational investors cannot credibly commit to protect managers, managers will not be willing to pay for protection. But commitment can be difficult: the payment is usually up front, while the threat of defection comes later. One means of making these commitments credible—the relational investor's reputation as managers' friend—is largely beyond legal regulation. But other methods of making commitments credible may be more subject to legal regulation.

Comparing sweetheart preferred with the alternative approach to establishing a relationship, namely, open-market purchases of common stock, reveals striking differences. Sweetheart preferred, as previously noted, often contains provisions that make the relational investor's commitment to protect management credible. These terms include contractual agreements not to challenge management, restrictions on resale of the stock, and options to buy out the relational investor at a predetermined price. Moreover, these provisions are apparently unusual in preferred stock. Refusing to enforce such agreements, or prohibiting them outright, could undermine corrupt relational investing, thereby shifting the balance between good and bad relational investing. But again one wonders whether the benefits of prohibiting such terms would outweigh the costs. Here there are two critical questions.

First, would refusing to enforce these agreements significantly undermine corrupt relational investing or would the reputational bond or some other mechanism permit sufficiently credible commitments to support protection payments? Second, would the refusal to enforce such provisions ultimately hurt shareholders by significantly interfering with raising capital through issuing preferred stock? I do not know the answer to either question.
**Prohibiting Continuing Payments**

Continuing payments from the firm to the investor are another way that managers can buy the loyalty of relational investors. Where the relational investor has been invited in to protect managers from, say, a hostile tender offer, spreading out the protection payments over a period of years is one way to make the relational investor’s commitment credible. Similarly, when the relational investor has invested through the market, or by buying shares from the company with no restriction on the relational investor’s behavior, one way that managers can keep such potentially dangerous investors happy is to feed them a stream of purchase orders or investment banking assignments.

To the extent that such continuing payments are a problem, one strategy would be to prohibit them, either through judicial reinterpretation of Delaware law, judicial reinterpretation of section 7 of the Clayton Act, or through legislative action. None of these changes seems likely to occur. Whether doing so would be a good idea is unclear and depends on the answer to [Dean Robert] Clark’s general question about self-dealing transactions: Are there positive corporate or social purposes served by self-dealing transactions between the relational investor and the firm that could not be served by transactions with true outsiders, and are those benefits sufficiently substantial to outweigh the dangers of abuse and unfairness?

**Conclusion**

The diverging interests among managers, relational investors, and shareholders form the crux of what is worrisome about relational investing. At its simplest, the problem is that a virtuous relational investor only benefits pro rata while a corrupt relational investor receives 100% of any direct or indirect payoffs. The good relational investor’s rational apathy and the bad relational investor’s temptation both arise from this difference.

All of the mechanisms for controlling relational investing have problems. To date, judicial review, either under Delaware or federal law, has been a weak and at times possibly counterproductive control. Forcing a market benchmark by prohibiting special issue preferred, requiring advanced shareholder approval, or interfering with commitment by refusing to enforce or prohibiting provisions that tie relational investors to managers, are troublesome to the extent that they interfere with using preferred stock as a cheap and effective way of raising capital or making acquisitions. A blanket prohibition on continuing transactions with the firm, either under corporate law or the Clayton Act, likewise interferes with potentially beneficial transactions.

Relational investing is thus a typical corporate law problem. It is a practice that emerges for a combination of good and bad reasons. The bad examples are sufficiently troublesome—whether from a moral, political, or economic perspective—that corporate law will not ignore them. The potential benefits are sufficiently substantial that corporate law will not prohibit relational investing outright, even if it could. The normal fiduciary duty and disclosure-based models for controlling bad while permitting good relational investing are typically weak. At the same time, good regulatory and nonregulatory alternatives are hard to find. All of this leaves us puttering around the margins, seeking to understand, and perhaps thereby to shift slightly the balance between vice and virtue.
In this essay, which recently appeared at 92 Michigan Law Review 336 (1993), Professor Elizabeth Warren identifies and discusses the competing goals that underlie the business bankruptcy system. Professor Warren believes that useful debates about bankruptcy policy "need a center, some sense of shared ideas about the system's purpose." To this end, she provides "an articulation of the normative goals of the system that scholars, practitioners, judges and legislators can share."

In Professor Warren's view, the system aims, with greater or lesser efficacy, toward four principal objectives: 1) to enhance the value of the failing debtor; 2) to distribute value according to multiple normative principles; 3) to internalize the costs of the business failure to the parties dealing with the debtor; and 4) to create reliance on private monitoring. In this excerpt, she discusses one of the more overlooked goals of the bankruptcy system: the effort to force private parties — not the taxpayers generally — to bear the consequences of a business failure. She also offers a few comments on the state of policy debates in the bankruptcy area that might be applicable elsewhere.

The third normative function the bankruptcy system serves is to constrain externalization of business losses to parties not dealing with the debtor. Like the other two principles, this one is followed in general direction only, and some counterexamples clearly appear in the Code. Nonetheless, the bankruptcy laws are organized to minimize losses to the general public when a business fails and to force parties dealing with the failing debtor to bear the burden of the failure.

The benefits of such a policy are obvious. Creditors' ability to externalize losses significantly blunts their incentives to make carefully considered lending decisions or to monitor the debtor to assure repayment. If a lender knows it must bear the bulk of the losses, the lender is more likely to develop appropriate levels of investigation and monitoring ex ante. With greater certainty of risk bearing and a reduced load on the public fisc, incentives are higher to achieve appropriate diligence and caution in debtor-creditor relations.

Bankruptcy restricts externalization of costs in three key ways: 1) it provides priority repayment of debt to the public fisc ahead of most other creditors; 2) it maintains a largely self-supporting implementation system; and 3) it insulates Congress from pressure to fund bailouts for individual business failures.

**Priority Repayments to the Public Fisc**

Bankruptcy policy minimizes losses to the public fisc in an obvious way: it requires payment first and in full to government taxing authorities. A number of different provisions governing the repayment of tax debt implement this requirement. Outside bankruptcy, the
government has fairly strong collection powers that it exercises primarily through its power to enforce liens against property. A taxing authority can secure a lien against a debtor's property if the debtor is delinquent on its tax obligations. Bankruptcy law gives force to these liens after filing, exempting them from the ordinary provisions on avoidable preferences during the ninety-day period before filing.

In addition to lien protection, taxing authorities enjoy a repayment priority in bankruptcy. While most unsecured creditors can do little more than participate in a pro rata distribution of assets and see their remaining debt discharged, a court cannot confirm a chapter 11 plan unless the tax debts are scheduled for repayment in full. Taxing authorities need not even take the risk that the debtor will promise to repay its taxes and later default during the reorganization process. A debtor must pay priority taxes at the time of confirmation or within six years of the claim's assessment, even though nearly every other creditor can be forced to wait for payment for longer periods during the course of the reorganization. In addition, the Code provides an independent ground for objecting to a plan that meets all the other requirements of plan confirmation if the court determines that "the principal purpose of the plan is the avoidance of taxes."

Finally, if the debtor's property is insufficient to satisfy a tax lien or if the taxing authority did not move quickly enough to get a lien before filing, discharge cannot extinguish priority tax debt, unlike nearly all other debts. The obliteration of nearly every other claim — the bankruptcy discharge — is powerless against priority tax debt.

The pursuit of repayment of government debts is not single-minded. The Internal Revenue Code contains a number of provisions that offer some tax relief for failing companies, particularly if the companies reorganize their debts in bankruptcy. Obviously, such assistance externalizes the costs of a business failure. Moreover, most nontax obligations owed to the government do not receive similar priority. For example, bankruptcy law treats damages stemming from the debtor's breach of a contract with the government the same as unsecured debt held by nongovernment parties. Nonetheless, the government's biggest revenue source — taxes — receives aggressive protection in bankruptcy.

The issue of protecting the public purse continues to evolve. As more businesses fail while owing the government huge sums for the cleanup of their environmental messes, and as more troubled companies try to subsidize the costs of operating their underfunded pension plans with money from federal insurance programs, the possibility of shifting costs from the private to the public domain moves beyond the issues raised by tax policies. Courts are struggling over questions about the discharge of cleanup liabilities and the priority repayment of pension obligations. The Code was written at a time when the possibility of shifting the costs of such huge liabilities was not yet an obvious threat to the public fisc — or an attractive strategy for troubled companies. Not surprisingly, Congress is considering action "self-supporting System

The bankruptcy system offers significant services to the parties involved with a failing company: it provides courts and associated personnel to hear parties' disputes, but it also requires those courts to deal with an extensive list of uncontested matters that arise in the course of a liquidation or reorganization. In addition, a filing office maintains significant public information about the debtors' financial circumstances; court-appointed officials monitor all chapter 7, chapter 12, and chapter 13 cases; court-appointed trustees run some chapter 11 cases; and a designated officer of the justice department — the U.S. Trustee — supervises trustees, provides additional monitoring of chapter 11 debtors, and intervenes in appropriate cases. Notwithstanding the far greater expenditure of resources than most civil actions require, these special bankruptcy features are largely self-supporting.

The U.S. Trustee system is particularly notable because, unlike most systems associated with court processes, it actually turns a profit for the government. Currently, every bankruptcy case yields a fee for the Trustee system. These fees generated $15,700,000 during fiscal year 1992, compared with the program's estimated expenses of $81,200,000. Although the system is relatively new, the fees exceeded the costs of running the offices of the U.S. Trustee by a large enough margin so that the government took $24,500,000 out of the U.S. Trustee fund and transferred it to the general treasury on November 1, 1992. Cross-subsidization clearly occurs in all governmental functions, but the U.S. Trustee system illustrates a startling anomaly: bankrupt debtors subsidize taxpayers generally.

Private trustees, appointed in all chapter 7 and chapter 13 cases, receive a fee from the receipts of the case. A large proportion of chapter 7 cases yields no fees, so that the trustee collects only a portion of the filing fee as compensation. An informal compensation system exists, nonetheless, in which trustees can count on occasional big cases that will yield substantial fees, in part to make up for carrying a number of small cases which are not cost effective. This process creates yet another cross-subsidization in bankruptcy: trustees' fees for administering and monitoring the bankruptcy system are paid in part by the parties in the instant case and are subsidized in part by parties to other bankruptcies who make the overall operation of the private trustees' practices profitable. In no case, however, does the public at large bear these fees.
Some bankruptcy courts, particularly those in high volume areas, have shifted even more of the costs of operating the system to the parties. In large cases, the court sometimes requires the parties to pay a portion of the cost of the court’s staff directly. In the mid-1980s, Congress passed legislation permitting the bankruptcy court to use assets of the bankruptcy estate to pay for facilities or services necessary for case administration. The court administrator might hire clerks or lease space, for example, and charge the expenses directly to a debtor’s estate. The use of this provision varies, but the costs that the parties bear in the largest chapter 11 cases have been substantial.

Bankruptcy laws even make the operation of the bankruptcy courts partially self-supporting. The total cost for the bankruptcy system for fiscal year 1992 is estimated at $375 to $400 million, including personnel costs, real estate costs, security, and so on. During the same period, the bankruptcy courts took in nearly $129 million, a substantial portion of their overall costs. In addition to the filing fees, a portion of which the bankruptcy system keeps, debtors and their creditors using the system pay copy fees, bankruptcy-notice fees, fines, penalties, forfeitures, interest on deposits, registry fees, fees for judicial services, and a number of miscellaneous fees. While the general taxpayer obviously contributes to the costs of keeping a bankruptcy court open, the fees imposed on those who use the system minimize the taxpayer costs.

**Political Insulation**

The bankruptcy system also forces greater internalization of costs by providing a mechanism to deal with failing companies and the enormous claims against them in a manner that discourages the parties from demanding a public bailout. The Chrysler story illustrates why Congress needs help in resisting such demands.

In the late 1970s, Chrysler Automotive faced increasing financial troubles. Years of mismanagement, combined with declining sales and pressure from foreign car manufacturers, left Chrysler facing default on its massive loan obligations. As the crisis deepened, management devised a strategy to reneegotiate Chrysler’s debt, but its financial condition was too shaky to warrant extensions of the credit it required. Chrysler responded with a public relations campaign intended to demonstrate the impact of its impending failure. Spokespersons talked about jobs that would be lost, suppliers that would be put out of business, and banks that would go down with Chrysler if it failed. The campaign was not directed at their lenders, however. Instead, Chrysler focused its efforts on the federal government, asking for loan guarantees to help it overcome its cash-flow difficulties. Chrysler’s creditors — joined by Chrysler employees and suppliers — actively took up the lobbying effort. They held rallies and participated in organized letter-writing campaigns. Ultimately, Congress acquiesced. After considering the views of the Secretary of the Treasury, the President of the United Auto Workers, the governor of Michigan, the mayor of Detroit, the vice president of the National Automobile Dealers Association, the executive director of the National Association for the Advancement of Colored People, and the United States Conference of Mayors, among others, Congress passed, by a comfortable margin, a loan guarantee bill that permitted Chrysler to restructure its outstanding debt. Leading economists of different ideological and philosophical persuasions — including Milton Friedman, Alan Greenspan, James Tobin, John K. Galbraith, and Robert Eisner — vigorously opposed the rescue mission, a fact of little consequence to a Congress facing huge political pressure.

The Chrysler story had a mostly happy ending, at least in the intermediate term. Chrysler weathered the crisis, the workers gave up some benefits but kept their jobs, Lee Iacocca and his management team took fat bonuses, and the company paid back the government guarantees in full. Nevertheless, Congress had set a worrisome precedent for federal bailouts. It had agreed to the Chrysler guarantee in part because it arose in the transition period between the Bankruptcy Act of 1898 and the replacement Bankruptcy Code of 1978. Most observers regarded the old laws as inadequate for the reorganization of large, public companies like Chrysler, and the new Code remained untested.

As the Chrysler saga was unfolding, another highly visible financial crisis was in the making. The number of people beginning to show symptoms of asbestosis were multiplying rapidly. A mounting number of successful lawsuits had established that manufacturers using asbestos in their products had injured their workers for decades, and that the likely bill to compensate these victims would run into the billions of dollars. Recognizing their financial plight, the asbestos manufacturers decided to emulate a proven strategy: go public and ask for government help. The chances of success looked even better than Chrysler’s. Their victims were more sympathetic, the government arguably bore some responsibility because the Department of Defense had contracted for much of the asbestos work in the 1940s, and the odds of the business surviving and repaying the victims without government help seemed nonexistent. Within twenty months of the Chrysler bailout, another industrial giant appeared in Washington asking for help.

This time, however, Congress issued a strongly worded refusal for the parties seeking its help: work it out yourselves. Congress reminded the asbestos lobby that the federal government was facing its own budget crisis, and it
recommended a “private solution.” The solution of choice was the new bankruptcy code. When Johns-Manville filed for bankruptcy — followed by other companies confronting significant asbestos liability — it became clear that, at a minimum, companies would have to exhaust their private resources before the government would step in with relief.

Thus, bankruptcy laws give large companies the opportunity to reorganize. Along with this opportunity come the hopes that creditors will eventually be repaid, tort victims will be compensated, and employees will be able to keep their jobs — all without subsidization from the taxpayer. Even if the reorganization effort fails, liquidation in bankruptcy involves delay, which gives those who depend on the failing business a chance for final collection and some time to adjust to the losses they will face. The opportunity for the business to reorganize and its accompanying hope of success allow Congress greater leeway to withstand the pleading of all those who will be injured by the failure of the business. This process, in turn, tends to block the development of an ever-growing number of specialized government programs that externalize the costs of business failure to the taxpaying public.

**Conclusion**

The debates over bankruptcy laws are not likely to subside soon. As bankruptcy policy continues to impinge on a number of other fields — such as tort, environmental liability, labor law, pension rights, banking regulation, class actions, director and officer liability, merger and acquisition rules, and SEC disclosure regulations — it is likely that the volume of the disputes about the bankruptcy system will increase rather than decrease. Bankruptcy policymaking no longer suffers from inattention; the question now is whether it can survive the spotlight.

Ink has spilled freely in the past few years as a number of critics have called for the reform or outright abolition of the bankruptcy system, claiming that it has failed and offering some other method for dealing with business failures. The critics reassert the theoretical justifications for the bankruptcy system by implication, focusing on how the system has failed to meet its thinly articulated goals.

It is important to expose the inefficiencies, inadequacies, incentives, and errors of the bankruptcy system. Its shortcomings may be many, and its operation is sufficiently important to both debtors and creditors to warrant thorough academic study and strong public debate. The chapter 11s of large, publicly traded companies that have fueled much of the debate are important, particularly as these cases become the fora for the resolution of a multitude of critical social issues. No one should sit back comfortably, assured that we have a well-functioning business bankruptcy system.

In the march through the details of the rules and the attention to the megacase, however, it is essential that the larger impact of the system not be lost.
Regina Austin ’73, Professor of Law, returns to the Law School following a productive sabbatical year in which she published “‘A Nation of Thieves’: Securing Black People’s Right to Shop and to Sell in White America,” 1994 Utah Law Review 149, and “Commentary: Concerns of Our Own,” 24 Rutgers Law Journal 731 (1993), and completed “‘An Honest Living’: Street Vendors, Municipal Regulation, and the Black Public Sphere,” to be published in volume 103 of the Yale Law Journal. In November 1993 she participated in a symposium at the Massachusetts Institute of Technology on “The Responsibility of Intellectuals in the Age of Crack,” which was published in the Boston Review (March 1994). In February Professor Austin delivered the Mason Ladd Lecture at Florida State University, entitled “Of Black Demons and White Devils: Antiblack Conspiracies, Material Analysis, and the Black Public Sphere.”


Jacques deLisle, Assistant Professor of Law, presented a paper on the aims of legal reform and the functions of law in post-Mao China at the Association for Asian Studies National Conference in March 1994. This presentation was part of a panel entitled “Jurisprudence and Beyond: Concepts of Law and Legality in China.” Professor deLisle continued his work on a study of the politics of economic reform in China from 1978 through 1988, as well as a study of post-Mao legal developments.

Colin S. Diver, Dean and Bernard G. Segal Professor of Law, gave a lecture on “Hate Speech, On and Off Campus” to the Philadelphia Rotary Club in March 1994. In April, Dean Diver served as moderator for the David L. Bazelon Conference in Science, Technology, and Law at the Law School. Little Brown & Company issued the second edition of Dean Diver’s co-authored casebook Administrative Law in May. Dean Diver also spoke on major gift fundraising at an ABA-sponsored conference on law school development in Jackson Hole, Wyoming, in June.

Douglas N. Frenkel ’72, Practice Professor and Clinical Director, gave a presentation on “Clinical Methodology in a Law School Curriculum” at a Vermont Law School faculty colloquium in March 1994. He also spoke on “Teaching Professional Responsibility in Simulation Skills Courses” at a New York Law School faculty workshop in April.

Sarah Barringer Gordon, Assistant Professor of Law, delivered a paper on the prosecution of bigamists in the territorial period at the University of Utah Humanities Center and the New York University Legal History Colloquium. She also delivered four other papers on topics from her dissertation on the antipolygamy movement in nineteenth century America at the NYU Colloquium, as well as a paper on the
treatment of Mormon women in the territorial courts at the Annual Meeting of the Law and Society Association in Phoenix.

**Robert A. Gorman**, *Kenneth W. Gemmill Professor of Law and Associate Dean*, delivered the Annual Benjamin Aaron Lecture on the Role of Public Policy in the Employment Relationship in June 1994. The Lecture was co-sponsored by the UCLA Institute of Industrial Relations and the Labor Law Section of the Los Angeles County Bar Association. The Rockefeller Foundation recently awarded Professor Gorman a position as Scholar-in-Residence for next fall at the Foundation’s Bellagio Conference Center in Italy. In addition, Professor Gorman was recently elected Vice President of the World Bank Administrative Tribunal. The Tribunal is an international arbitration court established by the World Bank to render decisions on employment-related claims against the Bank by its staff members. Professor Gorman has been a member of the Administrative Tribunal since its founding in 1980.

**Lani Guinier**, *Professor of Law*, published her widely acclaimed and extensively reviewed book, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (Martin Kessler of the Free Press, March 1994). She also published a review of Professor Charles Fried’s recent book in the *Texas Law Review* and several op-ed pieces. Articles about her views on voting rights and race relations have appeared in dozens of newspapers and magazines, including feature stories in the *Philadelphia Inquirer*, the *Los Angeles Times*, the *Washington Post Magazine*, and *The New York Times Magazine*. Despite a whirlwind schedule of lectures, speeches, and media appearances, Professor Guinier taught a full course load at the Law School and was selected by the graduating students to receive the 1994 Harvey Levin Memorial Award for Distinguished Teaching.

**Heidi M. Hurd**, Assistant Professor of Law and Philosophy, published an article entitled “What in the World is Wrong?” in the *Journal of Contemporary Legal Issues*. In March Professor Hurd gave a series of on-campus talks on “Women as Law Students and Law Teachers.” At the David L. Bazelon Conference in Science, Technology, and Law, held at the Law School in April, Professor Hurd presented a commentary on Professor Thomas Merrill’s “Two Models of Liberal Judicial Activism.” She also spoke on “Sources of Judicial Value Judgments” at a conference for bankruptcy judges in Atlanta sponsored by the Federal Judicial Center.


Charles W. Mooney, Jr., Professor of Law, was selected by the United States Department of State to attend the second meeting of the study group on International Secured Financing of Mobile Equipment in Rome, and continues to serve as a member of the Securities and Exchange Commission's Market Transactions Advisory Committee and as a member of the Secretary of State's Advisory Committee for International Secured Financing of Mobile Equipment in Rome, and continues to serve as a member of the Securities and Exchange Commission's Market Transactions Advisory Committee for Private International Law. Professor Mooney has completed three recent articles, including "Security Interests as Property: Taking Debtors' Choices Seriously," (with Harris) to be published in the University of Virginia Law Review, "Introduction to the Revised UCC Article 8," to be published in Business Lawyer, and a comment on an article by Professors Lynn LoPucki and William Whitford in the Washington University Law Quarterly.


Eric Posner, Assistant Professor of Law, completed an article entitled "Contract Law in the Welfare State: A Defense of Usury Laws, the Unconscionability Doctrine, and Related Restrictions on Freedom of Contract." In March he presented a version of the paper at the Harvard Law and Economics Seminar.

David Rudovsky, Senior Fellow, presented "The Impact of the War on Drugs on Procedural Fairness" at a symposium sponsored by the University of Chicago Legal Forum in November 1993. He published annual supplements for his textbooks Police Misconduct: Law and Litigation and Pennsylvania Criminal Procedure.

Michael H. Schill, Professor of Law and Real Estate, presented a paper on "Borrower and Neighborhood Racial and Income Characteristics and Financial Institution Mortgage Screening" at a banking conference at the Federal Reserve Bank of Philadelphia. Professor Schill co-authored this paper with Professor Susan Wachter of the Wharton School. In May, Schill and Wachter presented another paper, entitled "Housing Market Constraints and Spatial Stratification by Income and Race," at the Fannie Mae National Housing Conference in Washington, D.C.

Reed Shuldiner, Assistant Professor of Law, completed an article entitled "Indexing the Tax Code," which will appear in the Tax Law Review. He served as a panelist at the winter meeting of the Tax Structure and Simplification Committee of the ABA's Tax Section, and as a commentator at the Roundtable on Tax Reform sponsored by the Institute for Law and Economics at the Law School in April.


Elizabeth Warren, William A. Schnader Professor of Law, was one of eight faculty at the University to receive a 1994 Lindback Award for Distinguished Teaching. The Lindback Award is the University’s highest form of recognition for teaching excellence. During the past few months Professor Warren, in collaboration with co-authors Teresa Sullivan and Jay Westbrook, published four articles on bankruptcy law and policy, appearing in the Washington University Law Quarterly, Harvard Journal of Law and Public Policy, American Bankruptcy Law Journal, and Marriage and Family Review. Professor Warren presented a paper to the Harvard Law faculty on “Teaching Men, Teaching Women: What are the Responsibilities of the Faculty?” in February 1994. She also presented papers at the Keynote Discussion Group of the National Conference of Bankruptcy Judges, the Federal Judicial Center’s Annual Meeting for Bankruptcy Judges, a Conference on the Future of the Airline Industry at the Wharton School, the Tenth Annual Conference on Bankruptcy at the University of Texas, a meeting of the Florida Bankers Association, and the University of Minnesota.

Professor Warren recently spent a day with the staff of the President’s Council of Economic Advisers discussing bankruptcy policy. The Council has asked Professor Warren to serve as a regular consultant to assist the Council as it develops a policy position on business bankruptcy. Professor Warren also consulted with Hillary Rodham Clinton’s health care staff about the role of medical debt in personal bankruptcies. Mrs. Clinton has used consumer study data provided by Professor Warren in her speeches and written reports.

Barbara Bennett Woodhouse, Assistant Professor of Law, served as co-reporter for Family Law for the American Society for Comparative Law. She completed a paper for the XIV Congress of the International Academy of Comparative Law to be held in Athens in August 1994. The paper has been published under the title “Property and Alimony in No-Fault Divorce,” 42 American Journal of Comparative Law 1401 (1994). Professor Woodhouse also completed an article entitled “Sex, Lies, and Dissipation: The Discourse of Fault in a No-Fault Era,” to be published by Georgetown Law Journal.
Alumni Briefs

41
Marvin Comisky has joined the panel of arbitrators and mediators of Judicate, the national private court system (The Legal Intelligencer, 3/22/94).

42
Professor A. Leo Levin presented the American Judicature Society’s prestigious Herbert Harley Award to Pennsylvania Superior Court Judge Phyllis W. Beck at the Philadelphia Bar Association’s Annual Conference Luncheon. Also, Professor Levin has been reappointed to a three-year term on the ALI-ABA Committee on Continuing Legal Education and Professional Responsibility.

47
Hon. Arlin M. Adams has been retained by Governor Casey to serve as Special Counsel to Pennsylvania State Police Commissioner Glenn A. Walp. Judge Adams will be primarily responsible for reviewing Pennsylvania Crimes Commission records and recommending the appropriate disposition of all investigations in accordance with a state law that abolished the Crimes Commission. Judge Adams received the University’s Alumni Award of Merit on January 15, 1994. In April, Judge Adams and six of his fellow Third Circuit judges were appointed by President Richard M. Nixon to conduct a memorial service for the late President (The Legal Intelligencer, 4/28/94).

50
Peter Florey has been elected chairman of the Vermont Emergency Systems Calling Board. In addition to his national labor arbitration practice, Florey is a hearing officer for the United States Senate Office of Fair Employment Practices and a Director of the Brattleboro, Vermont, Food Cooperative.

53
Alexander Greenfeld was featured in Who’s Who in American Law, 8th edition.

54
Jerome B. Apfel, a partner in the Tax and Estates Department of the Philadelphia firm of Blank, Rome, Comisky & McCauley, addressed the Fountain Pointe Condominium Association in February, speaking on “Advance Health Care Directives and Powers of Attorney as Estate Planning Tools.” Apfel frequently writes and lectures on legal issues involving estates, mental disabilities, and death and dying. Also, Apfel was recently elected to serve on the board of the Mann Music Center in Philadelphia. In addition to his legal practice, he is a promoter and sponsor of musicians and chamber music concerts, a member of the American/Israel Cultural Foundation, and an advisor to the American Society of Ancient Instruments. Currently, Apfel also serves as president of the Penn Law Alumni Society (The Legal Intelligencer, 3/11/94).

55
Milton A. Feldman has joined Dilworth Paxson Kalish & Kauffman as counsel to the firm. Feldman is emeritus trustee of Chestnut Hill Hospital, a thirty-year member of the Pennsylvania Republican Finance Committee, and an overseer of Penn’s Graduate School of Education, where he also serves as an associate trustee (The Legal Intelligencer, 4/15/94).

Edward L. Snitzer is a principal and partner with Dr. Marshall E. Blume of the Wharton School in the investment advisory firm Prudent Management Associates of Philadelphia. He continues to serve as Chair of the Investment and Pension Committee of the Albert Einstein Medical Center and Foundation of Philadelphia. The eighth supplement to Snitzer’s book,
Published by Penn Law: Legal Scholarship Repository.


Edward I. Dobin received the Peace Medal from the Greater Philadelphia State of Israel Bonds during a Bucks County community-wide dinner. In addition to being the managing partner of Curtis & Heefner, Dobin is a member of the House of Delegates of the Pennsylvania Bar Association and the director of the Pennsylvania Bar of Bond Lawyers.

James D. Crawford, a partner in the Litigation Department of Schnader, Harrison, Segal & Lewis, has been elected to membership in the American Academy of Appellate Lawyers. He concentrates his practice in civil and criminal appellate litigation.

John F. Ledwith, a partner with LaBrun and Doak, was appointed to the Professional Liability Section of the Federation of Insurance and Corporate Counsel. The FICC is an international organization of defense attorneys, insurance company executives, and corporate counsel who are involved in the defense of insurance claims.

William H. Ewing, a shareholder in Hangley Connolly Epstein Chicco Foxman & Ewing, and his wife, Anne Constant Ewing, a freelance editor, served as official observers for South Africa’s first democratic election. They were stationed in East London, on the Indian Ocean in the East Cape Province. At Hangley Connolly, Ewing’s practice involves employment disputes and civil rights litigation, as well as general business, zoning, and other municipal law matters.

Paul C. Heintz, a partner in the firm Obermayer, Rebmann, Maxwell & Hippel, has been re-elected assistant treasurer of the Philadelphia Bar Association. Heintz also serves as a member of the Professional Guidance Committee, as a board member and treasurer of the Philadelphia Bar Education Center, and as a trustee of the Philadelphia Bar Foundation (The Legal Intelligencer, 2/25/93).

Benjamin Lerner, who is a member of the Philadelphia Bar Association’s Board of Governors and of counsel to Hangley Connolly Epstein Chicco Foxman & Ewing, was a program co-chair for the session, “Ethical Concerns for Senior Lawyers,” presented at the Philadelphia Bar Association’s 35th annual conference (The Legal Intelligencer, 12/22/93).

Michael Coleman, founding president of the Philadelphia Volunteer Lawyers for the Arts, was “roasted” on November 23, 1993, at the Warwick Hotel in Philadelphia. The PVLA was founded in 1978 to serve the legal and business needs of the
cultural community and to provide free legal services to individual artists and cultural non-profit organizations. In addition, Coleman currently directs the National Association of Legal Search Consultants and is a member of the executive committee of the Philadelphia Drama Guild and the Chamber of Commerce's Arts and Business Council.

William T. Hangley, Chairman and Chief Executive Officer of Hangley Connolly Epstein Chicco Foxman & Ewing, was re-elected to serve on the firm's Executive Committee. Hangley, who is co-chair of the Federal Procedure Committee of the American Bar Association Litigation Section, spoke on "Preparation and Trial of Complex Business Cases" at the seminar "Case Management Techniques for the Attorney: Moving Your Case in an Age of Accelerated Deposition," an educational presentation at the Philadelphia Bar Association's 35th annual conference (The Legal Intelligencer, 12/22/93). In addition, he was a course planner and a faculty member of a national seminar entitled "Revolutionary Changes in Practice Under the New Federal Rules of Civil Procedure." This seminar, co-sponsored by the American Bar Association Section of Litigation and Prentice Hall Law & Business, included panels addressing the new self-executing disclosure requirements, the implications of amended Rule 11, and the changed procedures for service of process in federal lawsuits.

Peter G. Glenn '88

'71

Donald R. Auten has become the chair of the Tax Department and has been elected to the Partners Board of the Philadelphia law firm of Duane, Morris & Heckscher. Auten is also a member of the American Bar Association, a member of the Section on Tax Law of the Pennsylvania Bar Association, and the vice president of the Federal Tax Committee of the Philadelphia Bar Association.


MARTIN I. DARVICK was promoted within the legal department of General Motors Corp. in Detroit to a position equivalent to that of assistant general counsel. (GM legal staff members do not have titles.) Darvick will be responsible for the legal work involved in the worldwide issuing of over $75 billion in debt securities by GM and GMAC. In addition, he will advise GM's directors and officers on avoiding insider trading problems and on other matters of securities law.

Theodore Eisenberg, a professor at Smith College, presented "National Capital Jury Project: Preliminary Results from South Carolina" at the South Carolina Death Penalty Resource Center and at the Fourth International Conference on Social Justice Research. He also presented a co-authored article, "Trial by Jury or Judge: Transcending Empiricism," at the Tort and Insurance Practice Section of the ABA's annual meeting in New York. Eisenberg recently addressed the Williamsburg Conference on Civil Justice, the Institute of Continuing Legal Education in Atlanta, and the Tompkins County Bar Association on topics including his empirical findings about the legal system. A new supplement to his casebook, Civil Rights Legislation, was recently published.
Marc Jonas has been selected by the board members of the Montgomery County Lands Trust to serve pro bono as the organization’s solicitor (The Legal Intelligencer, 12/22/93).

Aida Waserstein, a partner in the Wilmington firm of Waserstein and Dempsey, has been named chair of the Delaware Human Relations Commission by Governor Carper.
Hope A. Comisky, a partner in the Philadelphia office of Anderson, Kill, Olick & Oshinsky, P.C., has been elected to serve as a member of the firm’s Board of Directors. She concentrates her practice in employment law and commercial litigation.

Michael J. Ettner, senior assistant general counsel at the U.S. General Services Administration, was elected president of the Board of Directors of Bread for the City, a non-profit agency providing free food, clothing and counseling to low-income people in Washington, D.C.

J. Robertson MacIver has joined the Real Estate Department of Ballard, Spahr, Andrews & Ingersoll as Of Counsel.

Ellen Metzger, who has served as general counsel and secretary of Neuberger & Berman Management, a firm that manages and distributes mutual funds, was elected a vice president of the firm in January 1994. Metzger also chairs the Compliance Committee and is a member of the SEC Rules Committee of the Investment Company Institute, the national trade association for mutual funds. She spoke on the subject of marketing mutual funds at a seminar in April.

Deborah T. Poritz was recently appointed New Jersey Attorney General. She is the first woman to hold this position.

JEFFREY PASEK, president of the Pennsylvania region of the American Jewish Congress and a partner in the Philadelphia firm of Cohen, Shapiro, Polisher, Shiekm & Cohen, recently participated in a panel discussion on “The Responsibility of Being a Jewish Lawyer.” This discussion was sponsored by the AJC and the Jewish Law Students Association of Greater Philadelphia and was held at the Law School (The Legal Intelligencer, 3/21/94).

CHARLES S. WRIGHT has been named national director of litigation services for Ernst & Young, the international professional services firm (The Legal Intelligencer, 1/4/94).

ELLEN L. BATZEL, former executive vice president of Security Environmental Systems, Inc., has been appointed president of the company.

William J. Heller, a member of Hannoch Weisman, P.C., in Roseland, New Jersey, is the co-author of “The Organizational Sentencing Guideline and the Employment At-Will Rule as Applied to In-House Counsel,” which appeared in a recent edition of The Business Lawyer.

Dr. Burkhard Bastuck, L.L.M., frequently lectures on issues of German and international law. At the spring meeting of the ABA’s International Section in Washington, D.C., he gave a lecture on “D&O...
Liability Risks and Insurance in Germany” as part of a program on “Europe After Maastricht,” sponsored by the European Law Committee and the Committee on Intellectual Property Law of the ABA’s International Section.

Timothy J. Boyce was named a partner in the Hartford, Connecticut business law firm Pepe & Hazard. A member of the firm’s Commercial Finance Practice Group, Boyce concentrates his practice in real estate finance, new loan origination, debt restructuring, and sales and leasing.

Sherrie Brown has been named a principal in the firm of Lowey, Dannenberg, Bemporad & Selinger in New York. The firm specializes in complex commercial litigation, including securities fraud, shareholders’ rights and matters of corporate governance.

Glenn Carberry is attempting to bring the Albany Yankees minor league baseball team to southeastern Connecticut, with the support of the region’s fans. The plan has been endorsed by nine town governors, five area chambers of commerce, eight legislators, two mayors and one first selectman (The Norwich Bulletin, 11/6/93).

Mary Jo Reich of West Orange, New Jersey was recently named a third prize winner in the Kudos Brand Working Mother of the Year Award contest. Reich was selected from over 2,000 entrants who submitted essays describing “how they work and make it all worthwhile.” Reich, her husband and her two children will enjoy dinner out once a month for a year at their local T.G.I. Fridays restaurant.

Bruce L. Christmen was recently named the Practice Chairman for the Real Estate/Finance Section of the Virginia-based law firm of Hazel & Thomas.

Gianni Donati has formed Donati & Gableman in Princeton, New Jersey. The firm has a general law practice with a concentration in commercial litigation.

Joyce S. Meyers was appointed chair of the Media Law and Defamation Torts Committee of the American Bar Association’s Tort and Insurance Practice Section. Meyers served as vice chair of this committee from 1989-1992, when she became chair-elect. She also served as chair of the Philadelphia Bar Association Bar-News Media Committee from 1990-1993, and she has been a member of the board of directors of the Support Center for Child Advocates in Philadelphia (The Legal Intelligencer, 1/13/94).

Bruce S. Nathan’s monograph, “Protecting Corporate Creditors Under the Bankruptcy Code,” was recently published by Matthew Bender as part of its Business Law Monograph series.

Beth Olanoff, a shareholder in the Philadelphia firm of Hangley Connolly Epstein Chicco Foxman & Ewing, spoke on “Creating Alternative Work Options to Maximize Productivity” at a law firm governance seminar held in February in New York.

Karen Senser has joined with Nina Segre ’74 to found the firm of Senser & Segre. The firm’s practice focuses on business, real estate and other areas. Senser was formerly an associate at Dechert Price & Rhoads and administrative counsel at Mutual Fire, Marine and Inland Insurance Co. (The Legal Intelligencer, 3/9/94).

Bruce Jacobson is CEO of People Care, Inc., a New York-based home health care services company. He and his wife are co-founders of the Friends of the Children’s Cancer Center, which supports pediatric oncology treatment and research programs.

Randy Mastro is chief of staff to Mayor Rudolph Giuliani of New York.


Larry Stromfeld was named partner in the corporate group of Cadwalader, Wickersham & Taft. He was formerly associated with the firm.

Nancy Hopkins Wentz was elected 1994 president of the Montgomery Bar Association, Montgomery County, Pennsylvania.

Stephanie Franklin-Suber joined the City of Philadelphia Law Department’s management team as the City’s chief corporate attorney. Franklin-Suber was also recently elected to the Philadelphia Bar Association’s Board of Governors, and she will chair an event at the National Bar Association’s mid-year meeting this spring (The Legal Intelligencer, 1/27/94).
Kevin W. Kelley was elected partner in the international law firm Clifford Chance, which has offices in eighteen countries. Kelley is resident in the firm’s New York office.

Ira Daniel Tokayer was named counsel to Coleman & Rhine. He was formerly an associate at Shea & Gould.

Beth Hirsch Berman has become a principal of Hofheimer, Nusbaum, McPhaul & Samuels. Her practice is devoted to government contract law, construction law, general corporate law and employment law.

Lloyd A. Gelwan has been elected to the executive committee of Liberty Resources, Inc., a not-for-profit company devoted to training handicapped persons to lead independent, productive lives (The Legal Intelligencer, 1/18/94).

Paul Lawrence has been named chair of the Litigation Department at Preston Thorgrimson Shidler Gates & Ellis in Seattle. He formerly co-chaired the firm’s environmental litigation practice group. Lawrence is active in pro bono work and currently serves as the president of the American Civil Liberties Union of Washington.

Robert A. Marchman, a former managing director of the New York Stock Exchange, has been promoted to the position of Vice President of the Enforcement Division.

Susan Raridon spoke at a seminar entitled “Strategies for Shattering the Glass Ceiling,” sponsored by the Philadelphia Bar Association’s Committee on Women in the Profession. She stated that women can succeed by building personal credibility, being active, and seeking mentors, and she concluded that the outlook for women is brighter than it once was, despite obstacles (The Legal Intelligencer, 10/21/93).

Alan G. Rosenbloom has been named a partner of the Philadelphia firm of Wolf, Block, Schorr and Solis-Cohen. Rosenbloom is a member of the firm’s Health Law Department, where his practice concerns legal issues related to patient care, biomedicine, ethics, and reimbursement and access to care.

Thomas J. Sabatino, Jr. was named senior vice president and general counsel for American Medical International, Inc., one of the nation’s leading healthcare companies (Southwest Newswire, Inc., 4/17/94).

Jeffrey A. Bomberger has become a partner in the international law firm of Squire, Sanders & Dempsey. He practices in the area of public sector law.

Keith B. Braun was admitted to the Florida Bar in September 1993. He is also a member of the Michigan Bar.


Jay A. Dubow, a member of the Litigation Department of Wolf, Block, Schorr and Solis-Cohen, has been named a partner in the firm (The Legal Intelligencer, 3/11/94).

John S. Summers, a shareholder in the firm of Hangley Connolly Epstein Chico Foxman & Ewing, was recently appointed to the Board of the Philadelphia Bar Association’s Education Center by Philadelphia Bar Association Chancellor Lawrence J. Beaser. Summers was also reappointed chair of the Center’s Group Services Subcommittee (The Legal Intelligencer, 2/7/94).


Leonard S. Ferleger has become a member of the firm Kirkpatrick & Lockhart.

Walter J. Mostek, Jr. has been named a partner of Drinker Biddle & Reath. His practice concentrates on acquisitions and dispositions of businesses, the private placement and public offering of securities, corporate finance, securities law, and general corporate representation (The Legal Intelligencer, 2/7/94).

F. Douglas Raymond III has been named a partner of Drinker Biddle & Reath. Since joining the firm in 1986 following a clerkship with Judge Stapleton of the Third Circuit, he has practiced in the firm’s Business and Finance Department, concentrating in the areas of acquisitions, international joint ventures, and public and private offerings of securities (The Legal Intelligencer, 2/7/94).

Adam A. Veltri has become a member of the firm Haythe & Curley in New York.

Warren E. Fusfield, a member of the Tax Department in the Philadelphia firm Wolf, Block, Schorr and Solis-Cohen, has been named partner.
FRANK N. TOBOLSKY recently taught "Buying Your Home: A Step-by-Step Guide," a Temple University course geared to first-time home buyers. Tobolsky was also a guest speaker at Temple’s Real Estate Institute, where he discussed environmental liabilities with commercial real estate brokers, property managers, investors, and developers (The Legal Intelligencer, 3/3/94).

Beth Dickstein and Mark Weisberg announce the birth of their daughter, Rachel Fae, on June 27, 1993. Rachel joins her three-year-old brother, Brian Daniel. Dickstein works part-time at Sidley & Austin in Chicago, while Weisberg works at Hopkins & Sutter, also in Chicago.

Michael B. Landau is currently Associate Professor of Law at Georgia State University College of Law in Atlanta, where he teaches courses in copyright, trademarks and unfair competition, and antitrust. In addition, he is the General Editor of Lindey on Entertainment, Publishing and the Arts: Agreements and the Law, a four-volume set published by Clark Boardman Callaghan.

Sylvia T. Polo has been named the new Associate Director of International and Foreign Programs at the University of Miami School of Law. The program offers Master of Laws degrees in comparative law, international law, inter-American law, and ocean and coastal law.


Dean Weisgold married Cheri Cutler on November 6, 1993. She is a 1989 graduate of the University of Michigan who works in public relations.

Michael D. Smith has been appointed an Assistant Attorney General with the Maryland office of the Attorney General, Department of Health and Mental Hygiene, in Baltimore.

Neil R. Bigioni has joined the office of Chief Counsel to Governor Christine Whitman of New Jersey as Assistant Counsel, handling environmental matters. Bigioni was formerly an associate in the Environmental Department of Saul, Ewing, Remick & Saul.

Paul Boni, an attorney with the firm of Cohen, Shapiro, Polisher, Shiekman, and Cohen, recently participated in a panel presentation on water regulations before the Manufacturers Association of Mid-Eastern Pennsylvania. Boni discussed the issuance of state permits for storm water discharges from industrial and construction activities.

Ira C. Goldklang graduated from Yale University's Business School with a master's in management degree in May 1994. At Yale, Goldklang majored in Negotiation and Strategy. He will become an associate in the corporate department of the law firm Christensen, White, Miller, Fink and Jacobs in Century City, California.

Langdon Van Norden, Jr. became an associate in the banking department of Milbank, Tweed, Hadley & McCoy in New York after serving as a federal clerk in Bridgeport, Connecticut. He recently married Lynn A. Addington '92.

Teresa Valls joined Miller Alfano & Raspani, P.C., as an associate.
In Memoriam

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Richard W. Thorington
Gladwyne, PA
January 6, 1994

'R26
Valmo C. Bellinger
San Antonio, TX
January 1994

'R29
G. Harry Isaacson
Johnstown, PA
March 18, 1994

'R30
Henry Berman
Wallingford, PA
November 11, 1993

'R32
Walter W. Beachboard
Bryn Mawr, PA
March 18, 1994

'R33
Harry Greenwald
Kingston, PA
March 31, 1994

Louis H. Wilderman
Philadelphia, PA
December 13, 1993

'R34
William F. Zinger
Chatham, NJ
January 13, 1994

'R35
George M. Berg
Northampton, PA
July 6, 1993

Charles H. Dorsett
Newtown, PA
January 25, 1994

Donald W. Henry
Hudson, MA
June 1992

Elliot M. Winer
Lake Worth, FL
January 27, 1994

Myron E. Barg
Philadelphia, PA
January 11, 1994

William D. Balitas
Pottsville, PA
January 6, 1994

Madison S. DuBois
Vincentown, NJ
April 1, 1994

Joseph J. Strassman
Hallandale, FL
March 15, 1994

James A. Sutton
Bryn Mawr, PA
December 12, 1993

Anderson Page
Chester, NJ
January 8, 1994

Jane Barnes Stradley
Bryn Mawr, PA
February 17, 1994

Lester S. Block
Princeton, NJ
September 1, 1993

Roy G. Shubert
Devon, PA
January 17, 1994

Robert L. Woshner
Pittsburgh, PA
May 5, 1993

Capt. Mary L. McDowell
Bradford, PA

Herbert G. Schick
Philadelphia, PA
April 7, 1994

Joseph H. Young
Media, PA
December 20, 1993

Philip R. Grant
Virginia Beach, VA
March 3, 1994

Samuel R. Richeson, Jr.
New Castle, DE
January 24, 1994

Irving R. Feldman
West Palm Beach, FL

Rich B. Kirkpatrick
Butler, PA
February 4, 1994

Hon. W. J. O’Donnell
Phoenixville, PA
March 14, 1994

Hon. C. Norwood Wherry
Media, PA
January 27, 1994

Thomas C. McGrath, Jr.
Margate City, NJ
January 15, 1994

Irene H. Cotton
Philadelphia, PA

William B. Gray
Jericho, VT
March 22, 1994

Dennis H. Replansky
Narberth, PA
March 11, 1994

Thomas F. Luce
Wilmington, DE
March 16, 1994

David G. Battis
Philadelphia, PA
February 15, 1994

Glen Joseph Pacheco
New York, NY
March 24, 1994

Scott L. Boos
Fairfield, CT
November 25, 1993

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