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The montage of photographs on this issue's covers represents some of the events during the deanship (1977-84) of Sheldon J. Plager.

Bill of Particulars is published by the Indiana University Alumni Association, in cooperation with the School of Law—Bloomington and the School of Law—Bloomington Alumni Association, and is mailed to all graduates of the School of Law—Bloomington.

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Dear Fellow Alumni:

During the time that I have been active in the Alumni Association, I have watched the stature of the School of Law, under the careful guidance of Sheldon Plager, grow among all elements of the legal community. Finding a successor who possesses the same dedication to excellence in legal education and the energy to pursue that goal will not be an easy task.

However, as you read in this issue Sheldon's assessment of the School's progress over the past seven years, I am confident that you will agree with me that the position of the deanship at Indiana University School of Law is now a most desirable one, likely to attract many able candidates. Whoever is chosen will find a School with dedicated faculty, superior students, an effective administrative staff, and a magnificent physical facility.

Only you can provide a further and essential attraction: supportive and enthusiastic alumni. I hope you will join with me in thanking Sheldon for his seven years of service to us and the School and in pledging support to his successor.

Arthur P. Kalleres
President, 1983-84
IU School of Law—Bloomington Alumni Association
Dean’s message

Over these past seven years I have used the Dean’s Message to discuss a number of topics. Most often the subject has been something closely related to the law school, its activities and its operations. Occasionally I have written about matters of more general concern to the profession, such as the report by President Bok of Harvard on the flaws in our legal system. Elsewhere in this Bill of Particulars I have discussed at some length matters about the School—a sort of final accounting of my stewardship as dean. I want to use the balance of this Dean’s Message for a more personal message.

Following the public announcement this past spring of my intention to step down as dean in the fall of 1984, I received a number of letters, calls, and some personal visits reflecting disappointment with my decision, and concern that the momentum the School has may be dissipated as a result. Without claiming undue credit or displaying false modesty, it is true that in the past few years a number of problems with which the School has struggled—some of long standing, some more recent—have been resolved, and real progress has been made in a number of areas of vital importance to the School’s future. I am pleased that I had a part in it; I am appreciative of the recognition I am given for my work as dean.

I understand and am sympathetic with the concern for continuity. Years ago the tradition in law schools was for deans to serve 15, 20, 25 years in office; usually only retirement or death ended their service. Our own Dean Bernard Gavit and, more recently, Leon Wallace are cases in point. For the past two decades the opposite has been true. Now, for whatever combination of reasons, in any given year there are a third to a fourth of the nation’s law schools searching for a dean; the statistical average for dean tenure is about three years. While there are a few “old” deans still to be found, there are also a striking number of cases of deans who last less than a year or two.

When I accepted the deanship at Indiana I considered a five-year term a good goal for which to strive. As I approached my fifth year in office, I found myself immersed, in addition to all the other activities of the School, in two major projects for which I felt a special responsibility. One was the impending American Bar Association reaccreditation inspection, which occurs every seven years. Because the 1975 inspection had been critical in some important areas, it was essential that the School’s visible progress not be obscured by the appearance of instability. The other was related: the long and arduous effort to plan and fund the building addition and renovation, one of the ABA’s major concerns, was in its final stages.

With a new dean in place, I have every confidence that we will pick up where we left off and that our momentum will continue unabated.

The School has now been inspected; the relevant reviewing committees have considered the report; with the filing of our follow-up reports we will be fully reaccredited. The second project—the building—received its critical push this past winter when the legislature funded the second phase. Construction on this phase has begun. It is now only a matter of monitoring and inspection.

As I entered my seventh year it was clear to me that the time had come for me to think about what I wanted to do beyond deanng, as well as ways the School might benefit from new ideas and new leadership. With the successful conclusion of these two projects, I felt comfortable about stepping down. True, there will be something of a hiatus while we search for a new dean. This is not necessarily bad, since it will give us a period for reflection and consolidation. The coming year is a particularly timely year for such a hiatus, since we will be disrupted in any event by the extensive building activities.

With a new dean in place, I have every confidence that we will pick up where we left off and that our momentum will continue unabated. I am staking my professional career on this, since I plan to be back at IU, after a one-year leave of absence, as an active member of the law faculty. In the interim, the School will be led by Acting Dean Maurice Holland. Dean Holland served as my associate dean this past year, and I was delighted with his appointment as interim dean. I am also confident that the School will continue to have the support and personal commitment of President Ryan and Vice-President Gros Louis—they both understand the school, its needs and its opportunities. They have been enormously supportive during my tenure; with their help and that of the Board of Trustees, we can continue to look forward to a bright future.

As I indicated, I will be on leave of absence for the academic year 1984-85, as will my wife, Ilene. Most of the year we will be at Stanford University Law School in California. While I look forward to the opportunity to catch up on my professional work and to reacquaint myself with what has been happening in my field these seven years, I shall miss seeing the many friends we have made in Indiana. Ilene and I appreciate genuinely the warmth and friendship we have had from so many alumni and friends of the school. We look forward to continuing those friendships in the years ahead.

Sheldon J. Plager
By late August, most law school operations had moved out of the law building to make way for completion of the addition and renovation of the existing building. Classes are being held throughout the year in the Student Building, which is a short walk from the law school. The Recorder and Dean for Student Affairs offices are also in the Student Building. Admissions and Placement have moved to the Third Street annex, while other administrative offices and all faculty are in Memorial Hall. Only the library remains in its present quarters in the law building. However, the addition will be completed in December 1984, and the entire collection and all library staff will be moved into their permanent quarters then.

Remodeling of the first floor classrooms and all faculty offices should be finished by August 1985, and most law school operations will then move back into the law building. Remodeling of the existing library to provide additional offices, seminar rooms, and trial practice facilities is scheduled for completion in December 1985.

Although the operations of the school will be scattered across campus during the coming year, correspondence to any law school office should continue to be addressed to: School of Law, Indiana University, Bloomington, Indiana 47405.

Directory questionnaires mailed

Work on the second edition of the Alumni Directory is well under way. All alumni have received a brief questionnaire and a follow-up request. The prompt return of these questionnaires is essential so that the information in the directory will be current and complete. The completed questionnaires as well as a list of all alumni who do not respond to either mailing will be turned over to the publisher for telephone follow-up.

Alumni will then be contacted directly by the Harris Publishing Company to verify information and to ascertain whether they wish to purchase a directory. Alumni with current addresses who have not responded to the questionnaires and are not reached by phone by the Harris representatives will appear in the directory with the information provided by alumni records.

Alumni will be listed alphabetically, geographically, and by class year. Each listing will contain name, class year, residence address and phone number, and business or professional information when available.

If you have not received your questionnaire by now or if you do not wish to be listed in the directory, please notify us by writing to: Alumni Directory/School of Law, Indiana University Alumni Association, IMU M-17, Bloomington, Indiana 47405.

Holland named acting dean

Maurice J. Holland, a member of the faculty since 1973, has been named acting dean of the School of Law. Professor Holland, who received his JD and PhD from Harvard University, served as associate dean during the past year.

Prior to joining the School, he was with the firm of Herrick, Smith, Donald, Farley and Ketchum in Boston. He also served as a teaching fellow at Harvard for three years.

During his association with the law school, he has taught Civil Procedure, Constitutional Law, Federal Jurisdiction, Conflicts, Remedies, and Administrative Law. During his term as acting dean, he will continue to teach Federal Jurisdiction and Conflicts.
As can be seen from the pictures on this page, the various events of the 1983 Alumni Conference brought many alumni back to the law school. Special seminars by Professors Boshkoff, Carrico, Oliver, and Popkin, a lecture by Joseph Goulden on "The Decline of the Super Lawyers," the annual Race Judicata, tennis matches, and IU's opening football game brought over 300 graduates back to the law school.

This year's conference, held on September 14 and 15, was equally well attended. Nina Totenberg, legal correspondent for National Public Radio, was the Law Forum speaker.
Dean Plager stepped down as dean at the beginning of the fall 1984-1985 term. For this, his last Bill of Particulars as dean, he reflects on some of the changes that have occurred during his seven-year tenure, and speculates about what the future may hold for the School.

When I joined the School as dean in 1977, I did not have an agenda of things to accomplish or to do. The agenda emerged as I came to understand the School, its strengths and its needs. That agenda has been concerned largely with student matters, faculty development, teaching and curriculum, staff resources, alumni and bar relations, the library and building construction, and the search for new sources of support for the School.

Students

Our students today are among the strongest, in terms of measurable entry credentials, of any in the more than 100-year history of the School. Representation of women and minorities is at its highest. We now place substantial numbers of our graduates in major firms in Indiana and throughout the nation, and in prestigious judicial clerkships in numbers previously unknown. At the same time, we have put in place efforts specifically geared to assist the smaller Indiana law firms and local practitioners with the recruitment of capable new associates.

Some of this has come about through forces external to the School. We have shared in the benefits of a vastly increased pool of applicants for education in law. By holding our enrollment constant over the past decade or so—an entering class of no more than 200 has been our target—we were able to be more selective in our admissions. The enormous increase in the number of women applicants led to a proportionally large increase in the number of women students.

Minority enrollment presented a different problem. The applicant pool has remained small in absolute numbers. Schools throughout the country, with a widely shared commitment to expanding minority opportunities in law, compete for a limited group of students. We are particularly pleased that in the past seven years we have been more than successful in obtaining our share of the best qualified minority students.

This came about largely through concentrated efforts by the School. The faculty approved a program of vigorous recruiting, organized educational assistance for those with special needs, and flexible financial aid. My first staff appointment was Frank Motley, a black law graduate of Columbia University, who had served both there and at Amherst College in admissions and student services. He became our admissions dean in 1977. Frank proved to be the right person at the right time. He is a superb recruiter, a fine administrator, and a favorite of students and faculty. When he returned to New England last year, he left behind a strong and effective admissions program.

Once in residence, our students, not unlike law students everywhere, encounter an array of new experiences. For many, the intensity of law school, the competitive atmosphere, the peer pressure, are unlike anything they have experienced previously in their college education. These experiences, coupled in some cases with family and financial problems, create for many stresses that can be difficult.

I think it essential that there be an understanding and sensitive staff person whose responsibility it is to establish early rapport with individual students, and who is sensitive to changes not only in individuals but in the collective dynamic of the student body. A few deans I know have tried to be their own dean of students. They find themselves with little time to do anything else. Prior practice at Indiana—shared by a large number of other law schools—was to assign the duties of dean of students on a part-time basis to a member of the faculty. It has long been my view that this was not the best solution either. For one, the likelihood that such a dean of students would be someone professionally trained in, or even personally dedicated to, student services was small. And for another, if the individual were a good teacher—presumably the reason he or she was on the faculty in the first place—then the administrative duties, if seriously pursued, would substantially intrude on the person's academic effort. The job, properly attended to, is a full-time one and more.

A year or so after I became dean, and after a careful search, we hired Leonard Fromm to be our dean of students. His training in law (JD, Wisconsin) and counseling (MA, Creighton), and his experience as a member of the dean of students office at Wisconsin equipped him admirably for exactly the role we had in mind. In addition to providing traditional student course advising, program administration, guidance for student organizations, and other administrative functions, he provides professional-level personal counseling, at least on an initial assistance basis. Len has proven to be the perfect choice; the full-time dean of students has worked well for us.

Placement presented yet another set of issues. In 1977 our placement program, though effective, needed to be expanded to attract more employers; thus broadening opportunities for our graduates. The subsequent employment of Mary Kay Moody (MA, Indiana University) provided us with an experienced and trained placement director. Under her leadership, the Placement Office has increased significantly the number of employer interviews held on campus, particularly by out-of-state firms from major centers such as Chicago, Dallas, Washington, Los Angeles, to name but a few. Placement of graduates in law-related jobs consistently runs in the 90+ percentile (based on surveys of six-month post-graduation returns).

The future.
The first opportunities for our new dean will be to fill Frank Motley's position (the assistant dean for admissions). I purposely have left the position unfilled so that the new dean can make that choice. The question of how much and what kind of resources to invest in admissions and recruiting will be a key one in the immediate years ahead.

I believe there will be a significant decline in the number of law school applicants in the next several years nationwide and in Indiana. It already has begun. In order to retain our student body quality, we will either have to aggressively recruit to be sure we are getting our share of the best students, or we will have to be more selective in choosing from a shrinking pool (which means fewer students and a smaller student body), or both. Unfortunately, the School's fiscal support from the University (and in turn its support from the State) is directly linked to enrollment counts. Unless that link can be modified, a rollback in admissions could have a serious negative impact on the School's financial strength. This is an issue that will require thoughtful attention in the period ahead.

Faculty

The single most critical measure of the academic strength of a law school is the national reputation and standing of the individual members of the faculty. The ability to attract, develop, and retain as faculty leading authorities in various fields of law is universally recognized as the mark of an excellent school. A faculty member's stature as an authority in his or her field is based on the publication of scholarly and professional writings, writings which have been subjected to peer criticism and found to stand up under exacting evaluation. While scholarly writing alone is not the mark of genuine distinction, few have attained that mark in legal education without a record of notable productivity.

A number of faculty losses, including senior professors, faced me as I became dean. Finding and hiring new faculty has been a major preoccupation of my seven years. Graduates of the School a decade or more ago would not recognize many of today's faculty. In the years
during which I have been dean, we have hired more than half of the present teaching faculty.

Whatever the reasons for these losses—and a number occurred for reasons unrelated to the School itself—they created a major challenge for the School. We could not expect to replace all our senior losses with persons of similar experience and stature. The challenge has been to find able young people with sufficient experience to assume immediate duties as classroom teachers, and with promise of becoming in due course scholars and teachers of national stature.

...this School in the years ahead could emerge with one of the strongest faculties in its history.

Some turnover in faculty from time to time is inevitable and probably desirable. When excessive turnover occurs, morale is impaired. When morale is low, retention of good people becomes more difficult. My experience as dean has convinced me that one of the most important factors in maintaining faculty morale is to maintain salary levels competitive with the schools which we consider our peers. I have devoted much of my effort over these seven years to seeking ways to do this. IU historically has been below our Big Ten law school peers in faculty salaries. For long periods of time we have been at the bottom of the salary rankings. My goal has been to move our salaries on average by rank to the median of the Big Ten.

We have made some progress, but not enough. For example, this past year our assistant professor salaries on average ranked fourth out of five (not all of the schools have faculty at each of the ranks) among the Big Ten law schools, substantially below the median in dollars. Our associate professors did somewhat better, ranking fourth out of six and within a thousand dollars of the median. Our full professors did least well—their salaries on average place them sixth out of seven and substantially below the median in dollars.

The future. Faculty development is a dynamic, constantly changing effort. A large number of our faculty are still in the process of professional maturation; how well we have done overall will not be fully known for another five to ten years. Salary improvement will remain a top priority need. If we are successful in retaining our best and most productive young people, and in adding more as vacancies occur, and if they are supported by a productive senior faculty, this School in the years ahead could emerge with one of the strongest faculties in its history. I believe this is a realistic goal, accepted by our own faculty and administration as attainable if we remain true to our expectations of and demands for high performance.

Teaching and Curriculum

Scholarly publication as discussed above is an important form of teaching, reaching a national and international audience. A more limited audience, but equally important in the teaching mission of the School, is presented in the classroom. It is there that new generations of competitive young people, and in adding more as vacancies occur, and if they are supported by a productive senior faculty, this School in the years ahead could emerge with one of the strongest faculties in its history. I believe this is a realistic goal, accepted by our own faculty and administration as attainable if we remain true to our expectations of and demands for high performance.

Our curriculum is a mix of traditional and innovative courses. Much faculty and staff time has been devoted these past seven years to curriculum review and improvement. While retaining the traditional strengths of the first-year core courses, we have introduced increased academic depth and breadth to the first year through the Perspectives Course program. Additionally, a formal clinical emphasis was approved by the faculty after a two-year study.

The second and third years consist of a smorgasbord of courses, with little real structure. This is typical of law schools. Schools have attempted to establish some order by defining areas of concentration. We accomplish somewhat the same result through course counselling and indirectly through the impact of Indiana Supreme Court Rule 13 on student course selection.

The teaching program has been aided by the important contributions of a number of practicing lawyers and judges who have served as adjunct professors in areas of their particular expertise, teaching courses that have greatly enriched our curriculum. These individuals are paid a nominal honorarium, which in some instances barely covers their expenses. Their loyalty and willingness to serve the School is a very valuable asset, genuinely appreciated.

Assisting me for the past several years in, among other things, the planning and scheduling of course assignments and in the recruitment of adjunct faculty and faculty visitors has been Assistant Dean Karen Cutright. Karen is a law graduate (JD, Washington University) who served on the administrative staff for a period before my arrival, and returned to assist me in the general area of academic support services. She has been an invaluable help to me and the faculty.

The future. Indiana will continue to be a strong teaching school—it is part of our tradition, and we make it an expressed expectation for faculty promotion and tenure. Curriculum reform will remain a priority concern. It is a never ending but critically important process in legal education...we continually seek to find a balance between preserving what we know worked yesterday and adjusting to a new but only dimly perceived tomorrow.

Staff Resources

I have noted above several significant administrative staff changes and additions that have occurred during the past seven years. I will note a few others in conjunction with topics to be commented upon subsequently. To single out by name each staff member, past and present, who has made a significant contribution to the School during these seven years would unduly lengthen this report. By and large they know who they are, and they have my heartfelt thanks.

One area of staff resources important to the School and not always given the recognition it deserves is that of secretarial and clerical services. The School employs a number of secretarial and clerical personnel. Some, like Sherrilyn Kobow, recorder (student records), Pat Clark, admissions clerk, and Kathy Hartenfeld, accounts clerk, have major administrative assignments and have been with the School many years. They contribute enormously to the running of the School. We have a number of secretaries who service the administrative and faculty functions. Among these one in particular deserves special note. The dean has been blessed with a secretary who is the model of an efficient and dedicated executive secretary. Jan Turner was hired by me during my first year, and has been with me since. I would feel my term in office was a success if I left no legacy to the School but her.

Perhaps the most striking change in personnel, other than the faculty, has been in the library staff. In 1977 the small staff of librarians consisted of a few temporary employees and the head librarian. Shortly after, the head librarian, who had been with the School 25 years, left on short notice due to family illness. This precipitated a major rebuilding of the law library staff. The temporary staff has now been replaced with permanent, professionally trained persons, and increased by 30 percent. The support (nonprofessional) staff has been increased by 125 percent, allowing us to keep the growth in number of full-time professionals within budget constraints and still provide the necessary services. Because of our small beginning size, our growth still leaves us with one of the two smallest library staffs in the Big Ten. With only a few additional positions, our staff will approach the median staffing level of our peer schools. In performance, given their numbers, our library staff is competitive with the best.

After an extended search and a period of operating with an acting director, we now have a permanent law library director, Colleen Pau-
wels. Colleen was a junior professional here when I became dean. Through a series of increasing responsibilities she has demonstrated the knowledge and drive necessary to successfully direct a major research library.

The future. We have in place a competent and dedicated administrative staff, backed by a cadre of mostly young but willing secretaries and clerical personnel. While the University's staff salary structure is not generous, we have been fortunate in retaining a number of the able people. The core library staff, though relatively inexperienced, is now very strong, with excellent leadership; continued strengthening there will mean even further improved library operations.

Alumni and Bar Relations

Good relations between the School and its alumni and with the bench and bar are not simply a matter of "public relations" in the Madison Avenue sense. The bench, in particular the State Supreme Court, which controls licensing and discipline of attorneys, has a legitimate interest in the quality of the products of this School. Our graduates have more than a legitimate interest in the School. Not only are our colleagues, present and future, in many cases our graduates, but the value of their own credentials as lawyers directly reflects the esteem in which the School— and thus its graduates—are held.

Our graduates have more than a legitimate interest in the School. Not only are their colleagues, present and future, in many cases our graduates, but the value of their own credentials as lawyers directly reflects the esteem in which the School—and thus its graduates—are held.

It is not a secret to anyone familiar with the history of the School that the relationship with the bench and bar of our state, and with some of our own alumni, has in times past not always been the best. When this happens, the School suffers in very real and tangible ways. While it takes two to have an argument, the dean of the School will always bear the brunt of stresses between the School and its alumni and the profession, and thus it behooves the dean to ensure that the best possible relationships prevail.

As it turned out, I found this to be considerably easier than I had anticipated. I have never asked for help without receiving it; I have never been asked for anything I was not delighted to give if it were in my power to do so. Individually and collectively the alumni of this School are one of its strongest assets. Much the same can be said for the bar and the bench of our state. I have found among their officers and leaders a group of people who are intensely interested in and concerned about legal education in Indiana. With rare exceptions, this interest took the form of positive support and contribution. The state is fortunate in having this kind of enlightened leadership; the School has been the beneficiary. The future. The law school properly thinks of itself as a national school. At the same time, we have a special place and we play a special role in Indiana. We are the oldest law school in the state. We have a long and honorable tradition of quality education, and we count among our graduates many distinguished careers. We hold a place of honor and responsibility within the state's senior University.

There is every reason for the School, its alumni, and the organized profession of the state to work together to maximize the benefits that can accrue from this tradition of strength and mutual support. There are no inherent obstacles to our doing so. From my experience, I have every confidence that this will prove to be the case in the years ahead, as it has been for the past seven.

The Library and the Building Construction

I assume that anyone who reads the Bill of Particulars is by now familiar with the building addition and renovation currently in progress and something of the history. I will not go into any detail. Suffice it to say that, at the beginning of my decanal term, the overcrowded conditions in the library, both for people and books, had reached a state that prompted the ABA and AALS, in the accreditation inspection completed shortly before my arrival, to focus on this condition as a significant defect. Temporary palliatives kept program quality up, but clearly the only long-term solution was more library acquisitions and more space to house them.

The turnaround in the library's fortunes adds the critical intellectual and academic dimension we needed to put the School on the firmest possible footing.

It took all seven years to get the job done, but done—well, almost—it is. The 65,000-square-foot, $5 million addition funded in Phase One is nearing completion. The balance of the $12 million dollars needed for Phase Two was approved by the Legislature this past winter. Final working drawings and specifications have been completed. Construction crews are now at work.

Phase Two will complete the physical connection between the addition and the existing building; it also includes a complete renovation and upgrading of the existing building so as to bring it up to the same functional and appearance level as the addition. What remains to be done then is largely in the hands of the contractors. When completed, in the spring of 1985, we will have a modern and efficient law school facility as fine as could be wanted, and for half the cost of a new building.

The library has also been the recipient of dramatic improvements in its operational and acquisitions support. A combination of minimal budget increases for a number of years and skyrocketing inflation in book costs had left the library unable to keep the collection current, much less buy new books and serials. We were close to losing the library's research strength that had been a pride of the School and a key part of our educational program.

With the personal support of President Ryan, the University several years ago committed itself to making substantial annual increases in the library acquisitions fund. As a result, we begin the 1984-85 term with a library budget almost four times what it was in 1977. We are able to maintain the collection, and have once again begun significant expansion in areas of importance. While our acquisitions budget still remains below the median of the Big Ten law schools, the improvement in our overall status has been most heartening. Gains have also been made in the operational budget and in funds for new and replacement equipment. As part of bringing the new building facility on line, we anticipate further major improvements in all of these areas.

The future. The new building facility brings not only vastly improved physical surroundings, but a whole new sense of well-being and excitement to the School. The School on the firmest possible footing, the School is, at the critical intellectual and academic dimension needed to put the School on the firmest possible footing. We owe a tremendous debt of gratitude to the many key alumni and others in the legislature and throughout the state who worked so hard to bring this about; to the Trustees, President Ryan, Vice-President Gros Louis, and other University administrators who supported the project from the beginning; and to the students, staff, and friends who, despite the economic conditions and grim predictions, believed in and worked for a successful outcome.

The Search for New Sources of Support

It is a truism of state-supported education that a major part of the funding comes from sources other than the state. This has certainly been true of the sciences, and more recently areas of the humanities as well. It has been less true of legal education. By and large the federal and foundation funds for research and teaching have not been directed at the law. Law faculty and law schools have had relatively little experience in seeking external funding, and the record is not replete with great success.

To deal with this problem, we established an Office of Research and Development in the School, and appointed one of our faculty—who holds a PhD in Sociology—to head it. The Office has had some success in obtaining and assisting faculty members in obtaining external re
search support, and in coordinating the distribution of available internal funds for research. Equally importantly, the director has played a highly visible role in Indiana University research circles, providing us with a valuable entree into the research support network.

Another source of support for our overall program is voluntary contributions from alumni and friends of the School. For many years, Indiana, as was true of many law schools, sought funds for alumni primarily through a once-a-year mail solicitation. While some number of alumni, who, by definition, contributed on a regular basis, the overall results were not enough to support an expanded program and to create special areas of excellence. After experimenting with various alternatives, I concluded that the School needed its own inhouse development program and staff. A Law School Development Office was created, and Arthur Lotz was brought in as assistant dean to head it. Art's background in IU alumni work, in Foundation fundraising, and his credentials as an IU law graduate made him a very attractive choice for the position. The dramatic increases in alumni support these last few years testify to the value of the Development Office and its director.

1983 saw all-time highs in alumni annual giving, both in dollars and in numbers of givers.

For example, 1983 saw all-time highs in alumni annual giving, both in dollars and in numbers of givers. New programs have been instituted that combine the efforts of the law school and the University Alumni Office in alumni programming, including the annual Bloomington Law Conference/Law Alumni Weekend; and that combine the efforts of the law school and the Indiana University Foundation in new and creative opportunities for gifts. The Carl and Eulaia Gray Endowment, which funds the Gray Advocacy Program, is one example of this. Another is the recently established program for Faculty Fellowships, of which we proudly hold as examples the Charles Wistler Fellow, the Ira C. Bateman Fellow, and the Harry Ice Fellow (soon to be formally established).

Fundraising and alumni programming and development have taken on a new level of activity and importance; they will continue to require constant attention and work if they are to meet the needs of the School in the years ahead.

The future. The flexible funds available to the dean through unrestricted annual gifts to the School, while a relatively small part of the overall budget of the School, constitute one of the most valuable management tools available. Just about every activity in the School has benefited at one time or another from these funds, and long-term, the focused larger gifts, such as the Faculty Fellowships, will have a major impact on our retention of first-rate scholars, aided by our efforts to broaden the funding base through grants and contracts. Fundraising and alumni programming and development have taken on a new level of activity and importance; they will continue to require constant attention and work if they are to meet the needs of the School in the years ahead.

Conclusion

When I started as dean at Indiana University seven years ago, I had virtually no formal preparation for the job beyond having been a faculty member at several other law schools over a period of almost 20 years. I certainly had no experience in administering a multi-million dollar business with a professional staff of 25 to 30 lawyers and a total employee force twice that. Indeed, I never thought that that was what deans did. (I sometimes wonder what I thought they did do.)

I found myself devoting the bulk of my time to doing just that—running a business: preparing budgets and allocating limited funds among too many competing demands, hiring and firing, dealing with union grievances, equipment breakdowns and inadequate facilities, while at the same time constantly responding to new opportunities on which to capitalize and watching for inadvertent mistakes or oversights that could affect the welfare of the School.

As I reflect back, I was by no means successful in everything I set out to do. Some costs or failings were simply inevitable in the structure of the job, especially given the inexorable competition for time and resources; some, however, were my own. For example, some students felt they never really had a chance to get to know the dean even though we worked in the same building together for three years here. Although greater contact with students would have been gratifying personally, that was not where I thought my time was best spent. And while I enjoyed good relations with the students in my classes, for the larger student body there was little time for personal interaction. I missed that, and felt badly that there were some who thought I was distant or, worse, indifferent to them.

Another example relates to the emphasis placed on scholarly publication. As I noted earlier, an emphasis on good classroom teaching comes naturally to most faculty; a commitment to productive and creative scholarship and publication does not. My commitment to the University when I was hired and my own values led me to put heavy emphasis on research and scholarship, even where relatively senior faculty were concerned. Positive results accrued, but the costs were in some cases high.

While many faculty accept with reasonably good will the need for increased emphasis on scholarship and a reward system that reflects that emphasis, a few for whom scholarship was not a priority took it as a personal attack on themselves and a failure on my part to appreciate their overall contribution. Their negative feelings were not lessened by my lack of sympathy with and perhaps understanding of the problems this emphasis created. On balance, I feel good about the increased productivity and national stature of our faculty; I feel badly about any resulting strains this may have caused.

Perhaps the greatest frustration for me was the sheer impossibility of doing everything that needed to be done at the time when it most demanded attention. I started with the assumption that, if I increased the time spent and became more efficient at responding to the correspondence, phone calls, meetings, and other demands of the job, ultimately I could be fully current in the performance of all my tasks. Regrettably, even after seven years I have failed to accept the fact that the increases in time or effectiveness of which I was capable could not keep pace with the endless flow of work that needed my attention. I never became comfortable with making choices about what could get done now, and what had to wait for another time.

As we turn our attention to the search for our new dean, the School will be guided by the careful hand of Acting Dean Maurice (Maury) Holland. As associate dean, Maury showed himself to be extraordinarily adept at decanal tasks and sincerely interested and effective in the handling of the external as well as internal activities of the School. I am confident that under his leadership we will go forward with our projected goals and that the School will continue to grow, to prosper, and to mature even as we change.

I have tried in this report to give a balanced view of the events of the past seven years, against the background of our history as I have come to understand it. I have also tried to suggest the directions and challenges awaiting the School in the years ahead. I hope that you, the alumni and members of the law school community, will continue your support in full measure. No dean can create something from nothing; improvement is incremental at best, and positive change must be nurtured and supported and given tender loving care. We can expect our new dean to do. Some costs or failings were simply inevitable in the structure of the job, especially given the inexorable competition for time and resources; some, however, were my own. For example, some students felt they never really had a chance to get to know the dean even though we worked in the same building together for three years here. Although greater contact with students would have been gratifying personally, that was not where I thought my time was best spent. And while I enjoyed good relations with the students in my classes, for the larger student body there was little time for personal interaction. I missed that, and felt badly that there were some who thought I was distant or, worse, indifferent to them.

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Academy of Alumni Fellows

The law school's Alumni Association has announced the creation of an Academy of Alumni Fellows of the School of Law. The purpose of the Academy is to recognize graduates of the law school who have distinguished themselves in their career fields through their personal achievements and dedication to the highest standards of their profession. Nominees must be leaders in their chosen careers, as evidenced by public service such as national or state offices held, professional leadership positions, published works or other indicia of special qualifications and performance. Fellows will be selected by an anonymous committee jointly appointed by the president of the Alumni Board and the dean of the law school.

Anyone wishing to nominate an alumnus/a for the Academy should send a written nomination which includes biographical and supporting information to the Chairman of the Academy Selection Committee, School of Law Alumni Association, Room 201, School of Law, Bloomington, Indiana 47405.

Telefund

The 1983-84 IU law school Telefund was coordinated by law students Mark Wagner, Greta Gerberding, and Scott Brown under the supervision of Dean Arthur Lotz. Law students Susan Wilson, Leslie Mead, Carol Nolan, Lance Clark, Kathleen Sweeney, Kathy Stratton, Lucinda Delph, Beth Ahlmeyer, Cherri Branson, Bonny Forrest, Kevin Brooks, John Lawson, Elizabeth Powell, John Larson, Johann Smith, Dennis Stutsman, and Jesse Patton were able to persuade over 300 alumni who had not previously been donors to make pledges to the School. The students raised more than $26,000 in pledges.

Parents and Partners Day

The School hosted its second Parents and Partners Day, a day designed to give those important "others" an idea of what law students experience. As was the case last spring, parents and partners of law students sat in on classes and watched a mock trial and a practice Moot Court argument. Professors Terry Bethel, Robert Heidt, Harry Pratter, and F. Thomas Schornhorst participated in the program.

Conference

BLSA, LLSA, and the Women's Caucus hosted a conference for students, alumni, and prelaw students on April 6 and 7. Deborah Gaither Gaskin was the keynote speaker at the BLSA Symposium. Mrs. Gaskin was featured in a February issue of Jet Magazine. Among the panelists at the two-day conference were law professors John Baker, Julia Lamber, and Barbara Wand, and alumni Nora Peoples, Viola Taliaferrro, Tony Prather, Loren Coopwood, Milton Thompson, Sterling Neal, Jr., John Ward, Michael Huerta, Stef Padilla, Connie Dyer, Karen Strveit, and Marva Leonard. Professors Cathy Widom (Forensic Studies) and Margaret Wilder (SPEA) also participated.

Environmental Law Society

The Environmental Law Society was active this year. Their goals for the year included a review of the Forest Management Plan Environmental Impact Statement for the Hoosier National Forest, assisting the Audubon Society in its challenge to the Marble Hill nuclear power plant, and review-
The 1983-84 board of editors of the Law Journal, under the leadership of editor-in-chief Mark Erics, had a remarkably productive year. This year's Board was able to publish five issues of the Journal. The Board has also announced the new Board members for 1984-85. Rodger Heaton is editor-in-chief, and Karen Jordan and Michael Lewinski are executive editors. The articles editors are Peter McCabe and R. Kurt Wilke. David Klinevister is the senior managing editor; the managing editors are Barbara Fruehling, Phyllis E. Grimm, Suzanne Smith, and Mac Tripp. James Bleeke and Dean Rooper are the note editors. John Lynch, Cindy L. Porter, and Susan C. Rogers are members of the editorial staff, and Michael Paton is a third-year associate.

Moot Court Program

Other teams from the law school entered several competitions. Bill McKinzie, Alan Reed, and Jeff Wilhite, made it to the quarterfinals of the Benton Moot Court Competition, held at the John Marshall Law School in October. Under the coaching of Professor Richard Lazarus, the teams argued the issue of a bank's liability for injury resulting from its accidental release of computer records to a governmental investigatory agency. Becky Craft and Chris Keele participated in the Kaufman Competition in Chicago in October. Under the coaching of Professor Richard Lazarus, the teams argued the issue of a bank's liability for injury resulting from its accidental release of computer records to a governmental investigatory agency.

Miscellany
Rudy Chapa entered the 1983 New York City Marathon with the intention of running only the first 15 miles of the race. Somewhere along the line he must have decided to finish because he captured seventh place, just 27 seconds behind the third place finisher at the end of the 26.3-mile race.

Jesse Villalpando, a third-year student, was appointed to the Indiana General Assembly for the 12th District. He will stand for election this fall.

Admissions
As is the case with most other law schools in the country, the School experienced a decrease in the number of applications for the class entering in 1984. However, the quality of the applicant pool has remained at the same level as in the recent past. This year, the Admissions Office has used student and alumni volunteers to contact applicants who have been admitted to provide them with more information about the law school and encourage them to enroll here. The Admissions Office plans to expand this program in 1984-85, and any alumnus/a who would like to contact admitted applicants should notify Patricia Clark in the Admissions Office.

The Admissions Office would like to thank the following alumni, who volunteered their time this fall to help in recruiting by traveling to various colleges and universities: William Resneck, JD '70—University of California, Berkeley; Thomas Prytynia, BA '69, JD '73—University of California, San Diego; Vicki Edwards, JD '80—University of California, San Diego; Clarine Riddle, BA '71, JD '74—Yale University; Laird Street, JD '81—Washington, D.C., Professional Day; Gerardo Remy, Jr., JD '81—Florida International University, University of Miami; Alfred R. Fenner, JD '83—Atlanta University Center; Don Carrillo, JD '78—Loyola Law School Forum; Richard Harkness, JD '75—Ball State University; Julia Johnson, JD '78—Boston University; James Palmer, JD '81—Michigan State University; Paul Kara, BA '77, JD '80—Western Michigan University; M. Guy Ross, JD '80—University of Minnesota; Frank Demody, JD '82—Dickinson College; Darcy Conaty, JD '79—University of Pennsylvania; and Susan Marguet, BA '77, JD '80—University of Wisconsin.

Placement Office
The Placement Office has held a number of career planning sessions this year. In August a conference was held for entering as well as second- and third-year students on a range of job opportunities. Eight attorneys volunteered their time to talk to students: Michael J. Grant, BS '74, MBA '77, JD '77, Wildman, Harrold, Allen and Dixon; Stephen H. Paul, BA '69, JD '72, Baker and Daniels; William E. Daily, BA '70, JD-1 '73, Office of the Attorney General; Harriet Lipkin, Attorney for the City of Bloomington; Alecia De Coudreaux, JD '78, Eli Lilly and Co.; D. Robert Webster, Cummins Engine Company; Joseph H. Hogsett, BA '78, JD '81, Bingham, Summers, Welsh & Spillman; and Carol M. Seaman, MA '78, JD '82, Ferguson, Ferguson and Lloyd.

Later in the academic year the Placement Office held a number of job search skill workshops, including a session for students interested in judicial clerkships. The Honorable William I. Garrard, JD '59, Stanley Fickle, BA '66, MBA '68, JD '74, James Strain, BA '66, JD '69, Craig Bradley, JD '83, and Patrick Baude participated.

On March 28, the office, in cooperation with the Indiana State Bar Association, sponsored a law career night, featuring information and advice from four Indiana practitioners. They were Daniel P. Byron, BA '59, JD '62, of McHale, Cook & Welch; Daniel E. Yates, JD '68, of Mayflower Corporation; C. Rex Hemhorth, JD-1 '62, of Harding and Hemhorth; and David A. Miller, JD-1 '73, from the Attorney General's Office.

In addition, a new student-to-student session on the values and pitfalls of summer clerkships proved to be so popular with students that it was repeated several times during the semester.

Congratulations to the following members of the Class of '84 for their judicial clerkship positions: Mark C. Eriks, with Judge Douglas W. Hillman, U.S. District Court, Western District of Michigan, Grand Rapids; Kirk A. Wilkinson, with Judge Cynthia H. Hall, U.S. District Court, Central District of California, Los Angeles; and Ariane S. Schallwig, with Judge Michael A. Kane, U.S. District Court, Northern District of Indiana, Hammond.
Ackerman keynotes Addison Harris lecture series

During 1983-84, 16 distinguished speakers visited the law school to present lectures to students, faculty, and members of the bench and bar. These lectures, as well as three workshops, were funded by the Addison C. Harris lecture program. The Harris lecture program is an opportunity to enrich the education of the students, continue the education of the faculty, and reach out to the members of the bench and bar to share in this experience.

The keynote Harris lecturer for 1983-84 was Bruce Ackerman, Charles Keller Beeckman Professor of Law and Philosophy at Columbia University. Professor Ackerman presented two lectures on minority rights. His first lecture was entitled "Rethinking Minority Rights: Beyond Carolene Products"; the second was "Rethinking Minority Rights: From Critique to Reconstructing."

Former United States Senator Birch Bayh addressed a large group of students on the Insanity Defense in a talk that was cosponsored with Phi Delta Phi. Several other speakers focused their lectures on aspects of criminal law. G. Robert Blakey of Notre Dame Law School addressed issues posed by RICO. David Farrington of the Cambridge Institute of Criminology at Cambridge University spoke on "Longitudinal Research in Delinquency and Crime." Indiana Attorney General Linley Pearson discussed with students and faculty the kinds of cases and issues handled by his office.

David L. Chambers of the University of Michigan School of Law related the results of a study he had done on child support orders; the results of his work have been used by several state legislatures in reforming their child support laws. The title of his talk was "Turning the Findings of Social Science into Law: Uneasy Lessons from a Study of the Enforcement of Child Support."

Gyula Eorsi, the president of the University of Budapest, led a luncheon discussion on "Doubling of Law."

Hope Levitt Frye, an associate with Smith and Schnacke in Cincinnati, led another luncheon discussion on the pending Simpson-Mazzoli bill. She also spoke to students working at Student Legal Services and with the University Counsel's Office regarding problems faced by foreign students at the University. Dr. E. O. Herzfeld, author of Joint Ventures, discussed his work in international business law.

Steve Ramsey, chief environmental enforcement officer of the Department of Justice, lectured on "Hazardous Waste Enforcement." John Roberts, associate White House counsel, gave an address on "Congressional Control of Supreme Court Jurisdiction."

John Coffee, professor at Columbia law school, spoke on "Rescuing the Private Attorney General: Why the Model of the Lawyer as Bounty Hunter Is Not Working."

George Schatzki, the newly appointed dean of the University of Connecticut law school, gave a talk on "The Supreme Court and Its Relationship to the Labor Movement."

Peter Strauss, professor at Columbia law school, lectured on "The Place of Agencies in Government: Separation of Powers and the Fourth Branch."

James F. Short, of the Social Science Research Center, Washington State University, presented a paper on "Institutional Trust."

Robert Summers, McRoberts Research Professor of Law at the Cornell law school, gave an address on "Law's Means and Ends: General Assessment."

Vladimir Vrecion, of the University of Prague, spoke on "The Application of Computers to Law."

Mark G. Yudof, James Elkins Professor of Law at the University of Texas, presented a paper on "Textbook Selection in the Public Schools."

The keynote Harris lecturer for 1984-1985 will be Professor Lawrence Friedman of Stanford law school.

Application to join the Indiana University Alumni Association

Includes membership in the School of Law-Bloomington Alumni Association

Please enroll me as indicated:
Single Annual__ $20
Family Annual___ $26
Single Life____ $250
Family Life____ $350

Name ____________________________

Address __________________________

Please make your check payable to the Indiana University Alumni Association, M-17 Indiana Memorial Union, Bloomington, Indiana 47405.
Professor Patrick Baude and Assistant Professor Julia Lamber spent fall sabbaticals as visiting scholars at the University of Connecticut School of Law. Baude also lectured in October on American Legal Philosophy at the Interuniverzitetski Centar za Postdiploomske Studije in Yugoslavia.

Professor Ilene Nagel is chair-elect of the Association of American Law Schools Section on Law and Social Science and will be the National Program Chairman for the 1984 annual meeting of the Law and Society Association. She also has been appointed to the American Bar Association's Committee on Lawyer Training after Law School and to the National Policy Committee of the American Society of Criminology.

Assistant Professor Barbara Freedman Wand has been named to the Monroe County Guardian Ad Litem Project Advisory Board. The Board is to oversee a pilot project in Monroe County to provide guardians ad litem to children in need of services whose cases are before the Monroe County Juvenile Court.

Associate Professor Merritt Fox presented a paper in September entitled "Real Investment and the Regulation of Corporate Dividend Policy" at the Law and Economics Workshop of the University of Illinois College of Law.

Professor William Popkin and Professor and Acting Dean Maurice Holland have been named as members of the American Law Institute. Holland also delivered an invited paper at Harvard Law School on "The Radicialization of the Legal Professoriat"; his paper will be published in the Harvard Journal of Law and Public Policy.

Professor Roger Dworkin has been appointed to the National Academy of Sciences Institute of Medicine Committee on Public-Private Sector Relations in Vaccine Innovation and serves as a member of the Indiana State Board of Health Genetics Advisory Committee. He was a panelist at the annual meeting of the American Society of Human Genetics in Norfolk, Virginia, and addressed the Washington State Obstetrical Association on "Recent Developments in Obstetrical Malpractice" and "Wrongful Life." He has also been made an honorary member of the Washington State Obstetrical Association.

Professor F. Thomas Schornhorst was the principal speaker at the 1983 Indiana Judicial Conference, which focused on the law of search and seizure.

Professors J. William Hicks and Douglass Boshkoff will be on sabbatical leave during the spring 1985 semester. Hicks will continue his work on securities law, and Boshkoff will continue his study of differences in American and English bankruptcy laws. Boshkoff, who was named the 1983-84 Charles Whistler Fellow, will conduct his research in London. Boshkoff was also the recipient of the 1984 Gavel Award from the graduating class.

Professor John Baker received the 1984 Black Law Student Association Recognition Award at the law school's graduation ceremonies on May 5. In November Baker was a panelist at the John Pflieger Symposium at Yale on "The Accountability of Non-Profit Corporations."

Students hosted a special reception for Dean Sheldon Plager, Professor Harry Pratter, and Assistant Professor Michael Carrico. Carrico has resigned from the law school to become associated with the Seattle law firm of Riddell, Williams, Bullitt and Walkinshaw. Pratter, after 34 years of full-time teaching, has decided to take a lightened load of courses at this time. Plager, having resigned the deanship, will return to full-time teaching after a year's leave of absence. He will spend the leave as a visiting scholar at Stanford law school.

Associate Professor J. Alexander Tanford's book, The Trial Process: Law, Tactics and Ethics, was published by Michie in the fall.

Assistant Professor Richard Lazarus and EPA General Counsel James Barnes were members of a panel on Victim Compensation for Toxic Torts.

F. Reed Dickerson, professor emeritus, was consulted by the nation of Indonesia when that nation decided to set up a legislative drafting center. Saleh Baharis, assistant to the Minister of Justice for Administrative Reform in Indonesia, spent a week at the law school consulting with Dickerson.

The Center for Law and Sports has new leadership. John Scanlan, who received his JD from Notre Dame and his PhD in English from the University of Iowa, began working with the Center in March. Scanlan was formerly with the Notre Dame Center for Civil and Human Rights.

What's news with you?

The School of Law is always interested in the promotions, honors, and activities of its alumni. Please send your news on the coupon below to Alumni Publications, IU Alumni Association, IMU M-17, Bloomington, Indiana 47405. Please use this coupon for change of address.

Name ____________________________
Home Address ______________________
Business Address __________________
IU degree(s) and date(s) ______________
Current position/employer ____________
News (promotions, community activities, elected offices, etc.) ________________________

______________________________
Speculations on the role of context in boycott cases

by Robert Heidt

A prevailing bromide of antitrust scholarship maintains that the antitrust laws are designed to protect competition, not competitors. Accordingly, concerted action that injures a businessman or two but does not threaten to deprive buyers and sellers of the benefits of competition is of no concern. No one seems to care whether the legislators who passed the antitrust laws pledged allegiance to this bromide. That it's been stated by the Court and, more importantly, that it dovetails nicely with the Chicago School's view in which the antitrust laws concern only economic efficiency (or, as they like to say, consumer welfare) is enough. It is now too settled to admit discussion. I yield to the force major.

But how can we explain those decisions finding violations of the antitrust law when competition is not threatened? These decisions currently give a treble damage harvest to such plaintiffs: the retailer who can show a rival and his suppliers, acting in concert, cut off his supplies; the terminated franchisee who can show the franchisor and a rival franchisee acting in concert gave him the axe in part because of his price cutting; the stockbroker who can show rival brokers on the New York Stock Exchange cut off his wire connections to other brokers without giving him a hearing; the manufacturer of a safety device for pressure boilers who can show that a rival acting in concert with another and with intent to hurt him led the American Society of Mechanical Engineers to say that his products might not comply with its safety standards.

In most of these cases, which are analyzed as "group boycotts," the defendants' action plainly does not threaten competition. Whatever the motive for the "conspiracy," the presence of many other competitors (such as rival retailers, rival franchisees, rivals of franchisees selling other brands, rival brokers, and rival manufacturers of safety devices), none of whom are charged with collusion, should ensure that normal competition will continue. True, one competitor, perhaps an especially vigorous price-cutting competitor, will be hurt or eliminated. And his demise may help the defendants and the remaining competitors police a price-fixing conspiracy or pursue other cartel behavior. But in that case, the defendants and the remaining competitors are already violating the antitrust rules against price-fixing and cartel behavior, rules which do protect competition, not merely competitors. So defendants' behavior could be attacked under current law on that ground, and in such an attack their action against the injured plaintiff would supply important evidence. But the supply cutoff, franchise termination, or product disparagement by itself does not deprive buyers and sellers of competitive prices or terms and does not hurt anyone but the plaintiff.

In the language of the Chicago School, defendants' behavior will not significantly raise prices or reduce output compared to the price and output that would prevail under competition. So why do we allow the plaintiff to prevail?

I suspect the best explanation confirms the worst fears of the Chicagoans. Despite statements to the contrary, the courts have been smuggling into the antitrust laws not merely concern about behavior which hurts competition but also concern about proper business behavior generally toward rivals, suppliers, and buyers. But, Chicagoans protest, doesn't this attempt to establish a general code of business behavior under the antitrust laws usurp the role of the law of business torts and unfair competition? Why call some tortious business conduct an antitrust violation because it purportedly happens to affect interstate commerce and to involve agreement between parties? Why give a treble damage windfall to this plaintiff and not to other victims of business torts? A complete answer to these protests would require looking back at the history of the antitrust laws, a history which suggests the code of conduct goal has always operated, at least when concerted conduct restrains the trading capacity of business. A complete answer would also require a lengthy explanation of why the unfair competition torts and other business torts do not afford many injured businesses an adequate alternative avenue for relief.

To admit a general "code of business conduct" goal for antitrust is to admit that antitrust is an embarrassingly unscientific and unquantifiable subject. It suggests antitrust is no more an economic science than is, say, torts. One implication is that antitrust scholars may examine not only conduct reducing efficiency, but, like tort scholars, may examine other concerted conduct that may strike the courts as unacceptable business behavior. To be sure, such an examination "divorced from economic considerations will lack any objective benchmarks." But those of us who doubt that economic considerations provide objective benchmarks will welcome this examination, especially because it allows us to speculate about the use of the antitrust laws to allocate power between private groups. In any event our examination of that conduct which does not threaten competition but yet creates antitrust exposure directs us to the particular context of the defendants' action.

Consider the franchise termination context. As noted above, a cursory look at the facts often shows that the termination has not threatened competition in any way. It probably has not even reduced the number of competitors because the franchisor usually will have appointed another franchisee or will have himself vertically integrated to the former franchisee's level. Even when the termination is motivated by hostility at the plaintiffs' pricing, the termination does not itself show price-fixing between franchisees or between franchisors nor does it significantly increase the chance of successful price-fixing. So why let the terminated franchisee prevail by showing that a rival and the franchisor acting in concert gave him the axe in part because of his price-cutting? Even those who condemn resale price maintenance will look in vain to economic theory or to the language of the cases for a compelling explanation.

I contend the context of the franchisor-franchisee relationship is a more fruitful place to look, keeping in mind that we are looking for features which might persuade a judge to see the cutoff as behavior so offensive that it should be actionable. In looking at this context, the judge may see a powerful and experienced franchisor who probably has enticed the less experienced franchisee with the implied promise that, as long as the franchisee works the franchise diligently and sells an acceptable amount, the franchisor will continue the franchise arrangement indefinitely, insofar as he has discretion to do so. The franchisee's belief in this implied promise may have been bolstered by the infrequency of cutoffs when the franchise arrangement was entered. True, the franchise contract may clearly give the franchisor the unlimited discretion to terminate, a term of the contract which no doubt was brought home to the franchisee and his attorney. Nevertheless, the implied promise to continue the franchise indefinitely may color the relationship in the judge's eyes. On the basis of this implied promise, the plaintiff has probably invested a substantial percent of his net worth or, at least, has so incurred loans that the termination will represent a financial setback that is serious enough to affect his status. To some extent the franchisee has also invested his reputation, his self-image, and his hope for security, not to mention his energy. Thinking the franchise would continue indefinitely as long as he was diligent, circumspect, and far-sighted toward the business and cooperative toward the franchisor, the franchisee probably has failed to provide for and protect himself adequately against termination. In contrast, the franchisee's termination gives the franchisor the opportunity to appropriate the value of the franchisee's investment and energy either by vertically integrating or by selling the franchisee to another and the franchisor acting in concert gave him the axe in part because of his price-cutting? Even those who condemn resale price maintenance will look in vain to economic theory or to the language of the cases for a compelling explanation. I contend the context of the franchisor-franchisee relationship is a more fruitful place to look, keeping in mind that we are looking for features which might persuade a judge to see the cutoff as behavior so offensive that it should be actionable. In looking at this context, the judge may see a powerful and experienced franchisor who probably has enticed the less experienced franchisee with the implied promise that, as long as the franchisee works the franchise diligently and sells an acceptable amount, the franchisor will continue the franchise arrangement indefinitely, insofar as he has discretion to do so. The franchisee's belief in this implied promise may have been bolstered by the infrequency of cutoffs when the franchise arrangement was entered. True, the franchise contract may clearly give the franchisor the unlimited discretion to terminate, a term of the contract which no doubt was brought home to the franchisee and his attorney. Nevertheless, the implied promise to continue the franchise indefinitely may color the relationship in the judge's eyes. On the basis of this implied promise, the plaintiff has probably invested a substantial percent of his net worth or, at least, has so incurred loans that the termination will represent a financial setback that is serious enough to affect his status. To some extent the franchisee has also invested his reputation, his self-image, and his hope for security, not to mention his energy. Thinking the franchise would continue indefinitely as long as he was diligent, circumspect, and far-sighted toward the business and cooperative toward the franchisor, the franchisee probably has failed to provide for and protect himself adequately against termination. In contrast, the franchisee's termination gives the franchisor the opportunity to appropriate the value of the franchisee's investment and energy either by vertically integrating or by selling the franchisee to another and an appreciated price. In short, the context of the franchisor-franchisee relationship suggests enticement of the relatively powerless by the powerful, enticement which leaves the powerless much more dependent on the discretion of the powerful and which causes the powerless substantial injury. And the entire may spring from unprovable but suspected deception. For reference, let's dub this type of suspected abuse of power "enticement by implicit promise." I suspect reaction against this behavior is common and may also lie behind such legislation as the Automobile Dealers Day in Court.
Statutes.19

Granted, the franchisor can ridicule my notion that judicial anger at suspected deception explains the antitrust rule. If my notion were correct, the antitrust rules would call for the court to look for evidence of deception, and the rules plainly do not. Under the antitrust rule, a franchisee will not hurt himself nor a franchisor help himself by showing that the franchisor scrupulously avoided deception and warned the franchisee that cutoff was a realistic danger. Moreover, actual deception is less likely in this context, where the plaintiff had an attorney and where the contract expressly covered the discretion to terminate, than in many others.

Two replies suggest themselves. Perhaps the courts pay no attention to the actual facts because they realize actual deception, however likely, cannot be proven as a practical matter. On the other hand, and this is a more radical reply, the reason may be that the courts are not really concerned about the actual deception. The courts may not want to enforce the provision giving the franchisor absolute discretion to terminate no matter how clearly the meaning of the provision was brought home to the plaintiff. They may feel the provision simply reflects the greater power of the franchisor, power they are not willing to let the franchisor exert in this particular manner.14 Similarly, the franchisee's acceptance of a provision may simply reflect his greater need to keep the good will of the franchisor. All the concerns about enticement by the powerful, save only the concern about deception, still apply. True, the franchisee is rarely among the socially disadvantaged, and no contract claim of over-reaching or unconscionability is likely to succeed. But actually, the franchisee's inability to succeed on such a contract claim, by showing the lack of any other remedy, only underscores the need for antitrust relief.15 By giving such relief, the judges may be enforcing the agreement they wish the parties had entered, namely an agreement providing that the franchisor would terminate the franchisee only for just cause.16 Here this means a cause related to the franchisee's performance and respectful of the franchisee's status as an independent businessman. Disobeying the franchisor's suggested resale price would hardly constitute just cause.

If this explanation contains any value, we can see a parallel with the efforts of modern courts to recognize a tort action for wrongful discharge of an employee who is subject to discharge at the employer's will.17 There again, an examination of any actual agreement would uphold the employer's right to discharge at will. Modern courts often justify intervening in that contractual relationship by citing some public policy impaired by the discharge.18 Yet the more astute commentators19 see in these interventions nothing less than a judicial desire to rewrite the actual employment contract so it provides for termination only upon just cause. The courts are intervening paternalistically to aid employees who, whether through social customs, poor judgment, or lack of power, fail to negotiate a "just cause" provision on their own. As far-reaching as this explanation is, it may explain the termination at will and franchise termination cases better than any other.

Consider now the industry standard setting context. The facts of American Society of Mechanical Engineers v. Hydrolevel case are illustrative.20 There the plaintiff had developed a safety device for avoiding boiler explosions and was threatening to provide its rivals serious competition on the merits. The defendants were employees of a rival company who managed to obtain responsible positions in the American Society of Mechanical Engineers. They used their positions to issue a statement by the ASME suggesting plaintiff's device did not satisfy the ASME's safety standards. The jury found they acted with intent to harm the plaintiff and without regard to the safety of his device. Again the plaintiff was not required to show that his exclusion (if any exclusion resulted) would allow a monopoly or cartel to flourish and thus would impair competition. As in the franchise context, I suspect the court is troubled by defendants' abuse of power. Here the abuse of power, lies not in suspected deception or in enticement of the powerless to their disadvantage but in defendants' improper response to rivalry on the merits and their deception. Instead of responding to a new entrant through some form of intensified rivalry on the merits, defendants attempted to suppress the entrant through a method that seemed untoward but did not fit comfortably into any tort or criminal category. In addition, defendants appeared to be public-spirited industry leaders keeping the market free of dangerous products through independent and impartial examination of those products and publication of the results to buyers and sellers. But in reality they were using the prestige from this pose and}

The "enticement by implicit promise" tort can be identified because it usually involves a contract provision, such as a provision giving the franchisor the unfettered discretion to terminate, and the remedy involves manipulating the antitrust laws in order to enforce the contract the judge thinks the parties should have entered. The "improper con-
certain response to proper rivalry" violation is distinguished by defendants' motive of hurting a rival for his rivalry on the merits, and by the absence of any social value in the defendants' response. The "concerted deception from an impartial position" violation is distinguished by the use of subterfuge. Defendants typically adopt a pose of acting impartially and for the public. They also give some formal and facially appealing reason for harming the plaintiff, but the fact finder determines that the true reason was a different, selfish, and much less appealing reason such as plaintiff's price cutting or his testifying in malpractice suits against colleagues, usually the defendants. The violation dubbed here "concerted encroachment on the judicial domain" can be distinguished by its resemblance to criminal law enforcement by a private group and by the sincerity of the defendants in acting against plaintiff for relatively unselfish reasons. Typically defendants seem to be hurting plaintiff not because plaintiff threatens their interests but only because plaintiff threatens society's interest. The impulse behind the court's hostility to defendants' behavior might be described as "mind your own business and leave the disciplining of plaintiff to the legislature and courts." Defendants often can claim a selfish motive only by insisting that the presence of a socially undesirable character like plaintiff in defendants' business somehow tarns the reputation of the others in the business. The disciplinary sanctions imposed by the National Football League on players who take cocaine are another example of this behavior. While I admit some overlap, the "improper responses to proper rivalry" and "concerted deception from an impartial position" violations usually involve a more clearly selfish reason for hurting the plaintiff than this claim of "one bad apple spoils our barrel."

A major difficulty in recognizing non-economic considerations in antitrust is the difficulty of suggesting a way these considerations can be taken into account in individual cases. As the Chicagoans have pointed out, the current law builds these non-economic considerations into doctrine, such as group boycott doctrine, sub rosa. Unfortunately the doctrine will apply to all group boycott cases, including those in which the context does not raise the non-economic considerations. Even commentators like Lawrence Sullivan, who realize the need to classify types of boycotts and to apply different tests to different types, do not focus attention on any matter we have discussed. Sullivan, for instance, calls for a different approach when defendants are plaintiff's horizontal competitors rather than plaintiff's suppliers. Such classifications are too inclusive and give few clues about the non-economic considerations involved. As crude and arbitrary as my categories of action may sound, identifying behavior that under specified circumstances will trigger antitrust exposure brings to the surface more clearly some of these non-economic considerations. Identifying this behavior also gives some guidance to a judge who must decide an individual case. When defendants' concerted conduct—and their power relative to plaintiff in the context of before the court—raise the non-economic concerns encompassed by our four new torts, following the boycott precedents that are hostile to defendants is more appropriate.

Let's be clear, however: Judges will never say publicly that the behavior or suspected behavior we have identified is the reason for a violation. To do so would admit that antitrust is just a vehicle for the creation of a federal common law of business torts. To do so would admit that the judge is allocating power between private groups by attacking the defendants' exercise of power. A judge is not likely to admit he is redistributing private power, if only because doing so suggests he may not consider the existing distribution of power legitimate.

Litigators probably take for granted that the context of a case is likely to affect the result. To them, the notion that context explains antitrust rules may be no surprise. But to the economist this notion necessarily drops antitrust from the lofty realm of economic science back into the rough and tumble of tort litigation. Beyond that, it warns against applying a single analysis, namely, the group boycott analysis, to all group boycott contexts. The concerns that underlie the franchise termination context, for example, are not identical to those underlying either type of industry self-regulation context, not to mention the many other contexts group boycott cases present. The group boycott label is applied to them all only because all involve agreement between businesses which puts another business at a competitive disadvantage. I doubt the importance of this common feature. But a unifying concept like the group boycott concept is valuable only to the extent that the different fact patterns to which it applies share important features. A unifying concept misleads us when it encapsulates underlying realities that are significantly different from one another. As we realize the importance of context, the group boycott concept loses its utility.
In the latest revision of Prosser's hornbook, however, the editors acknowledge the importance of the status of the parties.

The extreme and outrageous nature of the conduct may arise not so much from what is done as from abuse by the defendant of some relation or position which gives the defendant actual or apparent power to damage the plaintiff's interests. The result is something very like extortion.


"E.g., Abraham Used Car Company v. Selva, 208 So.2d 500 (Fla. App. 1968). See also Janvier v. Sweeney, 2 K.B. 816 (1919) (Defendant represented himself as police officer in order to obtain letters in plaintiff's possession).


Granted, a conventional cost/benefit analysis weighing the benefits of ruling for plaintiff and thus helping to deter defendants' undesirable actions against the costs such a ruling would entail might also persuade a judge to rule for plaintiff. Such a wide open cost/benefit analysis, however, is not normally recommended for antitrust cases.


"I d. at 345.

"See also Justice Black's condemnation of an industry self-regulation effort in Fashion Originators Guild of America v. FTC, 312 U.S. 457, 470 (1941): 'The combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus trenches upon the power of the national legislature and violates the statute.'

Granted, some instances of these four behaviors survive antitrust scrutiny. Again the formal reasons given by the courts do not suggest a principled explanation. One factor, which other commentators have emphasized, is whether the defendants are horizontal competitors of the plaintiff. Other things being equal, the potential for horizontal competitors abusing their self-regulation of the industry in order to hurt a plaintiff for a disfavored reason is greater than for presumably less interested buyers and sellers. Accordingly, these examples of concerted behavior are more likely to be found illegal when engaged in by horizontal competitors.

Such results are largely consistent with the speculations offered here. Judicial hostility toward "concerted encroachment on the judicial domain," for instance, should intensify when the defendants who are setting up as an extrajudicial authority to judge plaintiff are plaintiff's horizontal competitors. To a very limited extent this "horizontal" factor may also explain why "enticement by implicit promise" in the franchise context is only a violation when a Sherman Act agreement exists between the franchisor and one of plaintiff's rival franchisees.

In general, however, the importance of the horizontal factor has been overstated. The solicitude for the plaintiff and the concerns raised by defendants' actions do not disappear when defendants are no longer plaintiff's horizontal rivals.


Associate Professor Robert Heidt joined the law school faculty in 1982. He earned both BA and JD degrees from the University of Wisconsin in 1972. After a year as law clerk to Judge John W. Reynolds in Milwaukee, he joined the Antitrust Division of the U.S. Department of Justice, San Francisco, as a trial attorney. He left that position in 1978 to join the faculty at the University of Nebraska College of Law.
## Alumni briefs

### Before 1960

Last December Decatur, Ind., paid tribute to the Hon. Myles F. Parrish '42, Adams County's Circuit Court Judge for 32 years. Parrish, who died in August 1981, was first elected Adams Circuit Court Judge in 1948 and re-elected for five consecutive terms. A memorial plaque was unveiled and dedicated at the Adams County Courthouse. The plaque reads in part, "Truly a man of the people, he presided over the court with integrity and compassion, devoting his career and life to our service in this courthouse so dearly loved." Parrish's son, Franklin '75, is a registered investment advisor in Walnut Creek, Calif.

Walter F. Kerrigan '42 is president of the San Diego chapter of the Sons of the American Revolution. The largest chapter in Calif., the San Diego chapter was founded on July 4, 1984. Kerrigan was appointed the 1984 Career Candidate Officer of Flotilla 16-03 of the U.S. Coast Guard Auxiliary. He is also president of the Friendly Sons of St. Patrick of San Diego County and a member of the San Diego Coast Guard Officers' Association and the Navy League.

Jack B. Joel '51, general counsel and senior vice-president of United States Testing Co., Inc., is serving a four-year term as chairman of the Friendly Sons' Sons of St. Patrick of San Diego County and is a member of the San Diego Coast Guard Officers' Association and the Navy League.

Joel Yonover '57 is with the law firm of Davis, Pecar, Newman, Talesnick & Kleinman in Indianapolis. Donald Grande '66 is president of Sampson Industries. A frequent speaker on tax subjects, he has taught in the master's program at the University of Wisconsin—Milwaukee and at the University of Wisconsin Law School.

John V. Barnett, Jr., '68 is director of public affairs for the Kroger Co., with regional responsibility for governmental and community affairs for the retail food firm in the states of Indiana, Michigan, Illinois, and Kentucky.

Frederick F. Thornburg '68 is senior vice-president, administration, for the Wackenhut Corporation, with executive offices in Coral Gables, Fla.

### 1960-69

- Donald Grande '66 is president of Sampson Industries. A frequent speaker on tax subjects, he has taught in the master's program at the University of Wisconsin—Milwaukee and at the University of Wisconsin Law School.
- John V. Barnett, Jr., '68 is director of public affairs for the Kroger Co., with regional responsibility for governmental and community affairs for the retail food firm in the states of Indiana, Michigan, Illinois, and Kentucky.
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### 1970-79

- Penelope S. Farthing '70 has joined the Patton, Boggs & Blow law firm in Washington, D.C.
- Bruce H. Klang '70 is an assistant district attorney for the Special Narcotics Prosecutor of the City of New York.
- In April Thomas Edward Dolatowski '72 was elected city Municipal Judge of Burlington, Wisconsin. He is chairman of the Patients Compensation Panel for the State Bar Association.
- Maj. William P. Fugelsang '72 has been named full-time judge advocate for the Wisconsin Army National Guard.
- Deborah Gaither Gaskin '73 was a featured newsmaker in a February issue of Jet. She is described as a "criminal attorney in Detroit who looks beyond the crime to the troubled souls she is called to defend. She has a lot of heart, but she is no pushover." According to Jet, "she is a pete, soft-spoken attorney who practices her craft with compassion." She and her husband, Gregory, a police officer, have one son, Gregory, Jr.
- Charles E. Caniff, Jr., '74 is senior vice-president, general counsel, at the Geisinger Foundation in Danville, Pa. Geisinger is a not-for-profit, multi-institutional health care system.

### 1980-83

- Christopher G. Scanlon '80, Indianapolis, has earned the status of Diplomate of the Court Practice Institute.
- Cynthia Manning Root '80, of Washington, D.C., is an assistant to the State's Attorney Office for Montgomery County, Md.
- Barbara A. Nardi '81 is a partner with the Bloomington, Ind., firm of Baker, Barnhart, Andrews, and family issues.
- Bruce Johnathan Artin '82 has joined the Executive Office of the President, working on food and drug policy for OMB's Office of Information and Regulatory Affairs. He lives in Washington, D.C.

### 1960-69

- Five Bloomington graduates are part of Varum, Riddinger, Schmidt & Howlett, the new firm formed by the merger of two Grand Rapids, Mich., firms. They are Carl E. VerBeek '62, Robert D. Kullgren '71, Richard W. Butler '80, Myra L. Willis '81, and Bradley J. McLampy '82.
- Air Force Lt. Col Michael E. Murphy '63, deputy staff judge advocate with the Eastern Space and Missile Center, has been decorated with the Defense Meritorious Service Medal at Patrick AFB, Fla. The medal is awarded to individuals for "non-combat meritorious achievement or service that is inestimably exceptional and of a magnitude that clearly places them above their peers."
- Charles O. Ziener '64 has been elected a senior vice-president of CBI Industries, Inc., with headquarters in Oak Brook, Ill. He recently was appointed general counsel.
- Donald Grande '66 is president of Sampson Industries. A frequent speaker on tax subjects, he has taught in the master's program at the University of Wisconsin—Milwaukee and at the University of Wisconsin Law School.
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