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Fall 1992

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Cover: “150th Year” art by Joe LaMantia;
Bill of Particulars nameplate designed by Merridee LaMantia.

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. Address letters to the editor to Dean Lauren Robel, IU School of Law.
Welcome to the new *Bill of Particulars*! We launch the celebrations of our Law School’s sesquicentennial with a new format—with contributions from faculty, alumni, and other members of our Law School community. We think you will find it informative, interesting, and enjoyable reading. We hope that this new way of communicating with alumni and friends of Indiana University—Bloomington School of Law provides you with some sense of the excitement those of us who are here every day have about our school.

This is an important anniversary for our Law School. Anniversaries are about connections—connections that link the past, present, and future through the people who make and have made IU Bloomington School of Law what it is and what it will be in years to come. We will celebrate this anniversary in a number of ways that we hope will make you want to revisit the school. At the Alumni Conference this year, there will be a Continuing Legal Education Seminar whose topic is “Indiana Law: Past, Present, and Future.” This conference will look particularly at the way the role of the lawyer has evolved over time, emphasizing the Indiana context. It will feature, among others, Judge S. Hugh Dillin and Professors Baude, Dworkin, Orenstein, and Pratter.

In the spring, we will hold a conference on “The Globalization of Law, Politics, and Markets: Implications for Domestic Law Reform.” This conference will look to the future and the role of law in the increasingly global, interdependent world of the late 20th century. This multi-disciplinary conference will bring together scholars from across the country and around the world, to join with our colleagues in law and other schools here on the IU Bloomington campus. The proceedings from this conference will be collected in an IU Press volume, which will be a lasting commemoration of our school’s anniversary. In addition, the conference will launch a new journal, the *Indiana Journal of Global Legal Studies*.

There also will be a series of talks given by judges—most of them alumni of this school—concerning the role of judges and courts in our society. This series will go on throughout the academic year, all of it open (with a warm welcome) to all alumni and friends of the school.

This year, we will inaugurate the Ralph Fuchs Lectureship in Law with an address by Sir David G.T. Williams, vice chancellor of Cambridge University, England, and Rouse Ball Professor of English Law. Like the late Professor Fuchs, Professor Sir David Williams has done most of his academic work in administrative law. He is a most appropriate person to launch this series, as he is an engaging and thoughtful speaker on issues of law, constitutions, and higher education.

In this sesquicentennial year, the Law School will host the final competition for participants in the Jessup Moot Court, a moot court competition devoted to international law. The school will also host a meeting of the Environmental Law Society, which will include student representatives from most of the law schools in the country.

All of these events are open to the University community and the public, and we certainly hope that our alumni will find them a good excuse to visit and spend some time with us.

We will also celebrate this important and happy anniversary through the arts, for which this university is also justly renowned. We have commissioned a silkscreened print from Indiana University Artist-in-Residence Rudi Pozzatti. On the musical side, we have commissioned a composition from renowned composer and arranger David Baker, Distinguished Professor of Music here in Bloomington. We look forward to unveiling the print and to the premiere of the composition during the course of our anniversary year.

Join us for these celebrations! They are as much yours as ours. An anniversary like this one provides an important opportunity for us at the school to reflect on just how important the entire Law School community is to us every day. We view our sesquicentennial as a joyous occasion to celebrate the accomplishments of each and every one of our alumni, past, present, and yet to come.

—Alfred C. Aman Jr.  
Dean and Professor of Law
How Far Can Rust Spread?

Last year, the United States Supreme Court released its decision in *Rust v. Sullivan*. Although nominally the case dealt with the explosive question of federal funding for abortion activities and speech, the doctrinal framework supporting that decision may well provide the most profound challenge to free expression that our society has faced in decades. In a contentious 5-4 decision, the Court held constitutional a gag rule forbidding doctors in federally-funded family planning institutions from discussing an abortion option with patients except in the most dire emergencies. This decision closed the circle that has sustained a broad variety of restrictions on federal funding for abortions. However, this case was particularly important because it involved speech—doctors' speech and nurses' speech—in a hospital or clinic and the confidential precincts of a consulting room.

The impact, however, of the *Rust* decision is not limited to abortion. The most troubling aspect of the decision is the legal theory underpinning it. That doctrine says that if the government funds a project, then the government can constitutionally control the speech of the grantee in the project without offending the constitutional rights of free expression protected by the First Amendment. In doing so, the Court distinguished well established precedent that the government cannot discriminate against particular viewpoints. Rather the Court believed that the government “has merely chosen to fund one activity to the exclusion of the others.” Beyond that, the restriction did not present an unconstitutional condition because it applied only to speech within the federal project and did not impose broader restrictions on the grantee.

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The government's position is that not the piper, but the patron, calls the tune.

Indeed, as one Justice Department official recently told the Congress, "when the government funds a certain view, the government itself is speaking. It therefore may constitutionally determine what is to be said."

It is apparent that Rust can become a potent weapon in the broad scale "culture war" that many are waging against contemporary American society. Federal, state, and local funding pervades all our lives. If the government can use the power of the purse to control what is taught, performed, or created in our society, a new and a quite fearsome power has been vested in the government.

It is no wonder that the Rust decision—and the clear appetite of the Justice Department to expand its reach—is troubling to many concerned about healthy and robust debate and dissent in our nation.

The government's position is that not the piper, but the patron, calls the tune. This theory has truly alarming implications for our society. The government helps fund a university; can it restrict the content of a professor's lecture to ensure that it expresses a viewpoint that is consistent with the official government position in that field? General operating grants are provided by the government to libraries across the land; can the government insist that the library place on its shelves only those books that are consistent with a government-approved right-to-life position in the abortion debate? The government provides financial support in the form of second-class mail subsidies for certain publications; can it therefore discriminate among various publications and support only those that it approves? Legal service offices are subsidized with federal funds; can the lawyers in these offices be limited in their speech or choice of cases because, as the Justice Department official suggests, funding permits the government "constitutionally [to] determine what is to be said" by those lawyers? Public broadcasting to a minor degree is subsidized by federal funds; can the government insist that all speech on PBS be "politically correct"? Or politically incorrect? Indeed, could grants be given only to authors who support a Republican, or a Democratic, administration? That would be perfectly appropriate under the Justice Department's view that the Rust doctrine fully authorizes the government to limit what can be said with government funds.

One of the first areas where Rust may be tested will be in the area of government funding of the arts. For the last three years, a pitched battle has been fought in the Congress over attempts to impose content limitations on grants from the National Endowment for the Arts. Attempts (unsuccessful to date) have been made to require that federally funded artists create works that promote "traditional family values" or are consistent with "general standards of decency"; those standards would deny funds to projects that some bureaucrat might find to be blasphemous, indecent, or that might, in one amendment, "denigrate the objects or beliefs of adherents of a particular religion or non-religion." The supporters of an expansive Rust theory find no problem with such restrictions, which clearly would violate the First Amendment in non-funding situations. Under this view, if the government funds an arts project, the Congress and the president have the power to control what the artist says. If one doesn't want federal money, the artist can simply go away.

The idea is that the government's refusal to fund a particular project leaves unimpaired an artist's freedom of expression on other projects.

In the context of the arts, this kind of distinction is simply absurd. An artist cannot compartmentalize his creative life into a Dr. Jekyll who produces acceptable art when using federal funds and a Mr. Hyde whose creativity ranges freely, and possibly dangerously, while using private funds. A dance company cannot perform a "decent" dance with federal funds and then clone itself into a separate group to perform a more "questionable" dance. A museum that receives a federal grant for capital expansion cannot build two separate facilities, one dedicated to the full range of artistic expression, the other limited to showing G-rated art. As a result of the Rust ruling, art institutions may simply shy away from anything that might create controversy—even though under our Constitution it is perfectly appropriate to say it, sing it, or paint it.

Read this way, the acceptance of federal support creates a Faustian bargain that can inhibit and restrain those who reflect the most creative forces in our society, whose comments on our life and our institutions are so critically important.

Is there any limit to how far the Rust doctrine might spread? The
opinion itself suggests that there may be some limitations on its application as Rust spreads to fields outside the abortion counseling context. It acknowledges that the decision should not be construed "to suggest that funding by the government, even when coupled with the freedom of the fund recipients to speak outside the scope of the government-funded project, is invariably sufficient to justify government control over the content of expression." But it is not clear when this limitation applies. The Court did note that "the university is a traditional sphere of free expression so fundamental to the functioning of our society that the government's ability to control speech within that sphere by means of conditions attached to the expenditure of government funds" is restricted by the First Amendment. In addition, there is the suggestion that the Rust restriction might not apply to government-supported parks and community spaces where the exercise of free expression has been protected, notwithstanding the fact the government provides the funding for the site itself. Finally, because Rust relied on the Court's (somewhat strained) conclusion that the challenged abortion regulations did not limit speech on the basis of viewpoint, arguably the Rust analysis does not apply to more obvious and blatant attempts by the government to restrict expressions of particular viewpoints.

Nevertheless, the government has made it clear that it intends to press the Rust doctrine whenever a challenge might arise to a government-funded viewpoint. An initial attempt to expand Rust arose recently in a suit by Stanford University against the National Institutes of Health, which required Stanford to obtain government approval before publishing or otherwise publicly discussing any conclusions or results of federally-funded research into an artificial heart device. Stanford claimed that this was an impermissible and unconstitutional prior restraint. The government responded that Rust permits that restraint because it is providing the money. Federal Judge Harold Greene rejected this argument. He said that if Rust "were to be given the scope and breadth defendants advocate in this case, the result would be an invitation to government censorship wherever public funds flow." This, he went on to say, "would present an enormous threat to the First Amendment rights of American citizens and to free society."

But this is only the first step in a critical fight to protect our rights. It is imperative that those in the university, in creative activity, in writing and criticism—indeed all those who cherish the concept of a free and open debate within our society—take every available opportunity to inhibit the corrosive effects on our liberties that are threatened by the Rust decision.

Protecting Artistic Expression: A Way of Life

James F. Fitzpatrick is a senior partner in the Washington, D.C., law firm of Arnold & Porter. A 1959 honors graduate of the Law School, Jim Fitzpatrick specializes in constitutional and public policy issues. For example, he counsels arts groups on censorship problems and has provided assistance to the National Endowment for the Arts, key arts lobby groups, and Congress on the constitutional issues posed by proposed restrictions on government support for the arts in this country.

For six years, Jim Fitzpatrick served as president of the Washington Project for the Arts, which sponsored the Robert Mapplethorpe photographic retrospective "The Perfect Moment," after that show was canceled by the Corcoran Gallery of Art. He also has served as legislative counsel for a variety of major U.S. and foreign organizations, including the Recording Industry of America, the Commissioner of Baseball, State Farm Insurance Co., Morgan Stanley & Co., Price Waterhouse, Hoffman-LaRoche, and Stanford University. He has represented a number of congressional committee officials, including the chairs of the House Judiciary and Energy and Commerce Committees, in judicial proceedings raising separation of powers issues.

A law clerk to the Honorable Chief Judge John Hastings, U.S. Court of Appeals for the Seventh Circuit, Fitzpatrick is an active member of the Law School's Board of Visitors, serving as president from 1989 to 1991. He has taught at the London School of Economics, Trinity Law School in Dublin, and the Georgetown Law Center in Washington, D.C.
Health Care Decision Making in Indiana and Beyond

The right of every competent person to consent to, or withhold consent for, medical treatment has been widely recognized by American courts since Judge Cardozo's famous Schloendorff decision in 1914.

The United States Supreme Court gave new force to this right in Cruzan v. Director, Missouri Department of Health. The Court assumed that the right extended to refusing life-prolonging procedures and directing their withdrawal and that the right could be exercised on behalf of an incompetent patient. The Court held, however, that the Constitution does not forbid a state from requiring clear and convincing evidence of a person's wishes before allowing the termination of life support.

The Cruzan case was closely followed by the press and by millions of Americans. The reason is not surprising. The majority of people in this country will at some point be unable to participate in medical treatment decisions affecting their own care.

Chronic or degenerative ailments, such as heart disease, cancer, and cerebrovascular disease, have replaced infectious diseases in this century as the primary cause of death in the Western world. Today at least 80 percent of Americans die in hospitals and long-term health care institutions, where medical technology can sustain them longer than ever before.

Knowing these facts, many Americans are seeking to protect their interests before they no longer can.

The Patient Self-Determination Act

Their efforts were dramatically aided by passage of the Patient Self-Determination Act in November 1990. As stated in the Act itself, its purpose is "to ensure that a patient's right to self-determination in health care decisions be communicated and protected."

According to the Act, which took effect on Dec. 1, 1991, each state must provide information about its laws governing advance directives. Each health care provider receiving Medicare or Medicaid funds must assure that such information is distributed on a timely basis, along with information on the institution's own policies regarding implementation of advance directives.

Finally, while covered health care providers must provide education for their staffs and the community at large, the secretary of Health and Human Services is required to develop and implement a nationwide education campaign and appropriate information materials.

Legal Instruments for Advance Care Decision Making

The Patient Self-Determination Act defines "advance directive" to include both a living will and a durable power of attorney for health care.

The District of Columbia and all but eight states have enacted living

3 2 PresidAssn for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Making Health Care Decisions 11-12 (1982).
4 Id. at 16-18.
6 Id., §§ 4206(a)(1), 4751(a)(1)(c) (codified at 42 U.S.C. §§ 1395cc(a)(1), 1396a(a) (Supp. 1991)).
7 Id. §§4206(a), 4751(a) (codified at 42 U.S.C. §§ 1395cc(a)(1), (f)(1)) & 1396a(a), (w)(1) (Supp. 1991)).
8 Id. §§ 4206(a)(2), 4751(a)(2) (codified at 42 U.S.C. §§ 1395cc(f)(1), 1396(w)(1) (Supp. 1991)).
9 Id. § 4751(d).
will statutes, under which a competent individual may execute a written statement directing that, in the event he or she becomes incompetent and terminally ill, life-sustaining treatment may be withheld or withdrawn. Courts in other states—such as New York—have authorized the use of living wills in the absence of action by state legislatures.¹¹

Living wills allow individuals to make important health care decisions prior to incompetency. These prior statements not only give individuals some assurance that they have communicated their wishes, but they also give health care providers and family members an indication of the individual’s health care preferences. Living wills may be particularly important when a patient does not have family members who can make health care decisions for him or her, or when family members disagree about health care options.

The District of Columbia and 24 states have enacted durable power of attorney for health care statutes, which allow surrogate decision-makers to make necessary health care decisions when a patient becomes incompetent. Health care providers may find surrogate decision-maker appointments more helpful and flexible than living wills.

Both living wills and durable powers of attorney for health care, however, face many practical obstacles. Though widely supported by both health professionals and the public, living wills have thus far had little impact in clinical practice.

Estimates of how many Americans have actually completed a living will vary between four and 17.5 percent.¹² But even for that small percentage, the effectiveness of most living wills is significantly diminished by frequently vague and ambiguous language (referring, for example, to “heroic measures”) and by the fact that health care teams seldom ask and are rarely told whether their patients have living wills.

Durable powers of attorney have had similarly limited impact. The physician may not know the proxy decision maker. The decision maker frequently does not know what the patient would want in a specific situation. Drs. Linda and Ezekiel Emanuel write: “Furthermore, the proxy’s ethical and psychological burden may be overwhelming.”¹³ In the context of withdrawal of life-support, the willingness to act “decreases from 70% to 46% when the decision is not for oneself but rather for a relative.”¹⁴

Indiana’s Advance Decision-Making Laws

In Indiana, the living will and durable power of attorney for health care laws face an additional obstacle: They may conflict over whether they permit artificial nutrition and hydration to be withheld.

Indiana treats artificial nutrition and hydration differently than other medical treatments under the Living Wills and Life-Prolonging Procedures Act (Living Wills Act).¹⁵ Under the Living Wills Act, a person may execute a directive either to withhold or withdraw life-prolonging procedures or to provide all life-sustaining procedures. However, the Living Wills Act does not make clear whether artificial nutrition and hydration may ever be withheld or withdrawn under the Act.

Indiana’s Health Care Consent Law (Consent Law),¹⁶ a durable power of attorney for health care statute, allows health care providers to turn to appointed health care representatives or to family members to make health care decisions for incompetent patients. Until recently, it was unclear whether a “health care representative” could authorize the withholding or withdrawal of artificial nutrition and hydration under the Consent Law. (See sidebar next page.)

However, the Indiana Supreme Court put an end to speculation in In re LaRance,¹⁷ explaining that “[t]he very broad scope that the legislature gave the [Consent Law] also persuades us that its procedures may be

¹⁴ Id..
¹⁵ IND. CODE ANN §§ 16-8-11-1 to -22.
¹⁶ IND. CODE ANN §§ 16-8-12-1 to -13.
The Indiana Supreme Court's opinion in *In re Lawrance* not only determined that nutrition and hydration could be withheld under Indiana's Health Care Consent Law, but also addressed the role of the judicial system in making health care decisions. Chief Justice Randall Shepard wrote a far-reaching majority opinion in which he lamented the unnecessary involvement of the courts and of "uninterested" third parties:

The HCCA [Health Care Consent Law], written for a society in which health care decisions are routinely made by families on advice of physicians, is designed to resolve health care decisions without a need for court proceedings .... In the case at bar ... all of the conditions of Indiana Code § 16-8-12-4(a)(2) were met for a "spouse, parent, adult child, or adult sibling" to make a health care decision for Sue Ann Lawrance under the provisions of Indiana Code § 16-8-12-4. The HCCA mandates that such authorized decision makers "shall act in good faith and in the best interest of the individual incapable of consenting." Court proceedings were not required for the Lawrances to make health care decisions for their daughter.

Given the legislature's design that the HCCA operate without court intervention in instances where none of the interested participants disagree, we think that any future declaratory proceedings under § 16-8-12-4 would be inappropriate. Decisions concerning withdrawal of treatment are not necessarily better decided by the courts. It would be hubris to think otherwise.

... [The Health Care Consent Law requires that a party who wishes to intervene as a guardian] be "a health care provider or any interested individual." There is no evidence that [court-appointed guardians] Mullins or Avila were providing health care to Sue Ann Lawrance, or were interested individuals, or that they even knew her. They were "interested" in her only in the generic sense that any person who makes the effort to go to court is interested. If the General Assembly intended to permit strangers to litigate family decisions, it could have said a challenge may be mounted by "any individual." The use of the word "interested" suggests that strangers need not apply.

579 N.E.2d 32, _-_ (Ind. 1991) (footnotes and citations omitted).
applied to decisions concerning artificial nutrition and hydration ....” The court concluded that “the administration of artificial nutrition and hydration ... is medical treatment that can be refused.”

The case involved Sue Ann Lawrance, a “42-year-old woman who was ‘completely non-verbal, non-ambulatory, requiring total care, and ... only sustained by artificially delivered nutrition and hydration.’” Lawrance died in the course of the appeal, but the Supreme Court determined that the case fell into a public interest exception to the mootness principle.

Chief Justice Randall Shepard, writing for the Court, noted: “The public interest at stake is demonstrated in part by the great number of high-quality amicus briefs submitted to this Court. These briefs suggest that, irrespective of the death of the patient in this litigation, many Indiana citizens, health care professionals, and health care institutions expect to face the same legal questions in the future.”

Reconciling the Indiana Acts
Despite the confusion between the Living Wills Act and the Health Care Consent Law, two recent attempts to revise the Living Wills Act were defeated. The potential for conflict therefore continues to exist. This conflict can be avoided. In the absence of clarifying legislation, the Living Wills Act and the Consent Law should be read to yield a consistent result. To interpret the Living Wills Act otherwise would result in an untenable situation in which a patient could demand the removal of artificial nutrition and hydration, but the patient could not.

Given the scope of Cruzan and Lawrance, any reading of Indiana’s Living Wills and Life Prolonging Procedures Act that would deny citizens the right to refuse artificial nutrition or hydration seems impractical, contrary to medical consensus, unnecessarily restrictive, and perhaps in violation of constitutional rights.

A broader interpretation of the Living Wills Act, and one more consistent with Indiana’s Health Care Consent Law and the Indiana Supreme Court’s Lawrance decision, is important to guarantee to all the dignity of deciding one’s own fate.

Communicating Health Issues
Fred H. Cate is an associate professor of law specializing in communications law and the role of communications in medicine. He recently authored The Patient Self Determination Act: Implementation Issues and Opportunities (with Barbara Gill); a book chapter with Alexander M. Capron, “Death and Organ Donation,” in Matthew Bender’s Treatise on Health Care Law; and “The Media and Health Policy,” in Health Management Quarterly (with Newton N. Minow). Cate also coordinates work in the field of communications, health care, and social issues for The Annenberg Washington Program in Communications Policy Studies.


The Law School offers a wide range of health law courses and research opportunities, led by Professor Roger B. Dworkin.
A Judge for All Seasons

Once, early in the emotion laden Indianapolis public schools desegregation case, federal agents stood guard over Judge S. Hugh Dillin and his family.

"We had to have the marshals living with us for about a week—but that was a long time ago," shrugs Dillin, now in his 31st year on the federal bench. "That goes with the territory. If I were going to worry, I'd worry about the people who didn't make a threat. The people that do don't usually follow through."

The desegregation case, filed in 1968, is Dillin's most visible. It is also his longest running. School officials even today are preparing a request the judge would have to approve to permit experimentation with school choice—an educational buzzword of the '90s in collision with a case from the '60s.

Dillin cautions that because the case is still open, he cannot discuss it. But he can address the impression that if only the judge had been so inclined, busing would never have come to Indiana's capital city.

"The great mistake that the public makes is that judges can do anything they want to do in any given situation, which is so far from the truth that it's really laughable," he says. "The judge does what he does ordinarily because the law says that's what he has to do. In the case of desegregation, the Supreme Court ruled clear back in 1954 that the schools have to be desegregated and if you had to do busing to do that—well, that's what you had to do."

"It's very simple really," Dillin says. "But of course if you don't like the idea, you're not going to pay any attention to that. You're just going to say it's terrible."

While agreeing with the inevitability of the outcome of the case, not everyone believes it was so cut and dried—so matter of fact that just about anyone could have done the job.

IU Professor of Law Patrick Baude, writing earlier this year in support of the judge's nomination for an honorary degree from the University, cited the case—and the judge who handled it.

"This trial, with its potential to become a circus, was in and out of Dillin's courtroom for more than a decade," he wrote.

The outcome, "the actual process of desegregating the Indianapolis public schools, was remarkable for its peacefulness. There were neither riots nor politicians rising to public visibility with sleazy or rancorous attacks on the process .... It was Judge Dillin's own integrity and character that protected the inevitable outcome of the case from becoming a political football. All the participants ... seemed to have the sense that their arguments would be heard and then measured, that wrongs would be remedied if necessary but that this case would not be an instance of brandishing authority for its own sake or of draconian measures adopted through exhaustion or lack of imagination. There are few judges in America who could have brought such dignity and honor to so potentially nasty a situation."

It's likely that few of America's judges had their first taste of the law as early as Dillin, who got his in 1924, when he was 10.

That's when his father, Petersburg attorney Samuel E. Dillin, began taking his boy to watch trials at the Pike County Courthouse in Petersburg, the Dillin family home for six generations.

At home in the small southwest Indiana town, the younger Dillin was steeped in the law, listening in on dinner time tales of his father, his father's second cousin, Pike Circuit Judge John F. Dillin, and Walter E. Treaner, then an Indiana Supreme Court justice and former Petersburg resident, a frequent guest at the table.
Retired Pike Circuit Judge Lester Nixon was a lawyer or judge most of the time Hugh Dillin practiced in Petersburg. He sat on the bench from Dillin’s return after his military service in World War II until his elevation to the federal bench.

Nixon’s first memory of the judge goes back a long way. “I met Hugh when he was eight years old,” he says. At the time, Dillin’s father was attorney for Nixon’s dad, and the two were consulting over some legal matter at the law office. “He came in to get a nickel.”

The two eventually would face one another in the courtroom before the war. After, Dillin frequently appeared before him.

“He was a good lawyer,” Nixon remembers. “He liked to try lawsuits by himself, really—he kind of ran the show. He liked to be a little bit mysterious. He never let anybody know what he was going to do the day he went into court. He was always full of surprises.”

Dillin himself compares good trial work to playing a mean game of cards. “I have to draw on my background,” he chuckles. “I feel that if you’ve had a misspent youth playing poker and you were playing successfully, that’s a big help, because in examining witnesses it’s not just exactly what they say, it’s how they say it and how they look. And you have to have a feel for this kind of thing … It’s very hard to describe. There are lots of good books on how to play bridge, but none that I’ve ever read on how to play poker—because it’s a lot of intuition.”

And tough work, at least on Dillin’s part, Nixon remembers. “He’s a hard worker. His cases were always well prepared. He was a good student of the law. When he briefed a case, it was really well briefed. He was very well prepared, and he had a good knowledge of the law …. He could use the library like it should be used. He found a lot of citations that the other lawyers had overlooked.

“Some lawyers are followers but he plowed right out in front. He usually led the way.”

Dillin himself lists a lawyer’s qualifications a little less grandly. “You probably have to have an IQ of a little above a hundred, and be able to read, write, and speak the English language.”

But, he admits, “There’s an awful lot of work to it. I’ll tell you the truth, compared to practicing the law, judging’s a snap. They certainly have to work.

“The most important quality is to prepare. You don’t necessarily have to be a genius to prepare a case for trial, but you do have to know what the facts are. And of course, you need to know what the law is as applied to those facts.”

Nixon remembers a murder case from the 1950s. Dillin was one of three defense attorneys, and, as usual, “he took charge.”

The case involved an election night brawl in which a young man hit another over the head with a 25-pound soft drink sign. “Swatted him like a fly,” says Nixon. Both had been drinking. The victim had been arrested following the fight and spent the night in jail. The next morning, he was found dead in his cell, a large bump on his head. The defense argued that he had acquired it in a fall against a fixture in the cell, not from the bashing by the sign.

“I’ll be darned if they didn’t sell the jury on it,” he says.

Dillin, a Democrat, was first elected to the Indiana Legislature in 1936 at age 21 while still in law school. After a stint in the Army, he was reelected to the House and eventually the Senate, where as president pro tem, he exerted a powerful influence on state politics. He almost became his party’s candidate for governor before his appointment to the federal bench by John F. Kennedy in 1961.

Nixon remembers well his friend’s interest in current affairs and his demonstrated political inclinations. “He read the paper all the time,” Nixon says. “I got a kick out of him.” Dillin would drive downtown early each morning in Petersburg, parking in front of the hotel, where he would pick up an Indianapolis Star. He’d read it long enough to catch up on the latest, then return it to the stand unpaid for. After all, says Nixon, “The fellow that ran the hotel was a Republican—Hugh was a Democrat.”

Does a judge who must necessarily divorce himself from the hurly burly of the political arena miss it? Well, Dillin muses, “The wheeling and dealing was lots of fun, but before you get there you have to go through a campaign. Going out knocking on every door is not very interesting. I did a lot of house-to-house campaigning. Oh yes, I miss that an awful lot—like I miss scarlet fever and mumps, basic training, and lots of things I’ve been through. No, I don’t miss it at all!”

Divorced from politics or not, Dillin’s pluralistic approach to
• Name: S. Hugh Dillin
• Born: June 9, 1914, at Petersburg, Indiana
• BA in government, Indiana University, 1936
• JD, Indiana University, 1938
• Partner with his father in Petersburg law practice, 1938-61
• Indiana House of Representatives, 1938-41
• Married Mary Eloise Humphreys, of Bloomington, 1940
• U.S. Army, W.W. II
• Indiana House of Representatives, 1951-58
• Indiana Senate, 1958-61, president pro tem of the Senate and majority floor leader, 1961
• Appointed judge for the United States District Court, Southern District of Indiana, Oct. 7, 1960, by President John F. Kennedy
• Member, Judicial Conference, 1979-82, member of Executive Committee, 1980-82, and Court Administration Committee
• Member, Judicial Panel on Multidistrict Litigation
• First president of the District Judges Association of the Seventh Circuit
• Chief Judge of the United States District Court for the Southern District of Indiana, 1982-84
• Honorary Doctor of Laws, Indiana University, 1992
government carried into his judicial tenure.

In the early 1960s, when he first took the bench, standard federal jury selection rules were not yet in place. In those days, the newspapers had a name for the juries in federal court. They were “blue ribbon,” Dillin recalls. “It was generally known that they came from lists that they got from the school superintendent or the president of the Rotary Club. Well, the first thing I did, I called on a couple of black judges here in Indianapolis and I said, ‘Hey, why don’t you give me a list of a hundred names of people, of black people, that you think would make good jurors. So they did.’ And those names went into the hat too, for the first time.

“I did the same thing with a couple of state officers of labor unions. I said, ‘These jurors are all school teachers and insurance people and bankers. Why don’t you give me a few names and I’ll stick them in the box. So they did.’ And those names went into the hat too, for the first time.

By the 1970s, Dillin had established himself as a judge and as a formidable presence in the courtroom.

Fellow Seventh District Judge Sarah Evans Barker remembers her introduction to him in 1972, when she became the first woman deputy U.S. attorney in the state of Indiana.

Her boss led her through the get-acquainted ritual of introductions to the judges in whose courts she would be working.

When they reached Dillin, she remembers, he was blunt.

Any lawyer working in his court, he said, should not only be thoroughly prepared for the case at hand, but also be expert in the law that dealt with that case.

“It was all fairly intimidating to me,” she says. Nevertheless, Barker responded that she was hoping she could fulfill his expectations. “I said, ‘Well, I’ll just have to prepare and be ready to gird for the job.’”

Dillin gruffly cleared his throat. “Well, when you come into my courtroom you’d better wear two corsets.”

“I had no response to that,” she laughs.

She describes her colleague on the bench as “much like a senior partner” in a law firm. “To the extent that you learn your trade at some judge’s knee,” she has learned hers at his. Before joining the bench, she argued many cases in his court, both as an assistant U.S. attorney, and eventually as U.S. attorney until her own appointment as judge in 1984.

On the bench, “he has an absolutely masterful ability to cut through things and find the heart of the issue. He’s very adroit at penetrating the morass and cutting through complications.”

When she was practicing before him, she says, “we had an expression: When he would do an oral ruling it would be like peeling a banana—it was so smooth, so perfect, and so natural. It seemed as if there were no other way to do it.

“He’s able to do it with that sort of easy, facile approach.”

She has watched him on the bench, seemingly almost inattentive, perhaps even with eyes shut, as a case drones on. But a quick arch of the brow, a telling look or nod would reveal his understanding of points that might be lost on others, or that might even have been left unspoken, their importance highlighted only by their omission. “He not only heard what was said, he heard what was not said. He knows what’s between the lines,” Barker notes.

Such quickness could help account for what some might describe as a curmudgeon’s shortness with some lawyerly ways. His sense of humor is wonderful, Barker asserts, but he concedes that “it gets masked sometimes by a certain irascibility.”

That an appearance the next day in Dillin’s courtroom has cost more than one attorney a good night’s sleep is surely true.

For some, the experience is a sort of coming-of-age ritual, as evidenced by this from Baude’s pen in his nomination letter.

“A few months ago I was talking to a young lawyer in the Department of Justice. That lawyer was about to appear before Dillin (in a case of a type he had handled routinely in other courts several times before). He told me that he spent as much time preparing for his case with Dillin as he had for all the others put together. He expected to be held to the highest standard possible. Although he dreaded the experience, he also looked forward to it as part of his growth as a lawyer. When the case was resolved without trial by a last minute guilty plea, his disappointment at missing the challenge outweighed his sense of relief. Many lawyers have similar stories of respect for Judge Dillin.”

Does the judge snap up lawyers
like a crocodile might little fishes?

"Nothing could be further from the
truth," Dillin responds, leaning
forward in his chair, somewhat
affronted by the idea. Later, he allows
that he can count only four attorneys
who could be said to have borne the
brunt of his wrath. And "each and
every one of those lawyers has since
been disbarred, so it could be that I
had my justification," he adds. But
lying in wait for a lawyer to stumble?
"I think any judge that would do that
shouldn't be on the bench," he
asserts.

In fact, his courtroom does not
stand on formality, Dillin says. "I
probably run the most relaxed
courtroom of anybody I know, with
the exception that I don't like foolish
questions."

Lawyers in his court "can ask
questions standing up or sitting
down—I don't care." And it's "pure
bunkum" that courts require a lawyer
seek permission to approach the
witness simply to show that witness
the exhibit everyone is talking about.
"Of course you can approach the
witness!"

"But if they get off asking too many
irrelevant questions, I might well say,
'What difference does it make?'" he
adds.

Barker says the judge's reputation
has its roots in Dillin's own ability to
focus. "Part of it is that he gets
impatient with lawyers' preoccupa-
tion with peripheral matters.

"One of his most favored expres-
sions is 'What difference does that
make?' You can expect to be asked
that more than a dozen or so times,"
during a case, Barker says, and you'd
better be prepared with the right
answer every time.

She tells a story on her friend.

In 1977, Dillin's daughter, Patricia,
was getting married. Just before the
wedding, Barker reminded him that
the preacher would surely be asking
who was giving away the bride?
Based on past experience, she told
him, "You're likely to say: 'What
difference does that make?'"

Dillin only chuckled.

He has been the best sort of teacher
for her. Fairly early in her career on
the bench she was facing a proce-
dural question, one dealing with an
attorney's request to submit a special
verdict form to the jurors in the case,
an unusual process for which there
was not adequate guidance in the
references. She asked Dillin his
advice.

He withheld it, telling her only that
in his own single experience with the
granting of such a request back in
1964, it had prolonged and compli-
cated the case so much for the jury
that he had been almost forced to
throw it out and start over.

But all cases are different, he
pointed out and would not advise her
on her own.

"I realized some time after that
how wise that was," she says. "The
wise thing to say is 'You'll have to
decide. I'll tell you what the experi-
ence was in my case, but you'll have
to decide (your own.)' It made me a
better judge" and helped define the
limits of the job for her.

Dillin himself sees his job as being
at least partly that of a teacher. "I like
to help lawyers as much as I can
when we're trying a case, and I never
try to embarrass one when we're in
the presence of a jury, certainly, and
not in the presence of his client.
Particularly with these young D.A.s
who don't know A from B, I tell them
if they'd like to come around after the
trial, I'd be glad to discuss the case
with them. Some have done that and
some don't."

Another of a judge's jobs is to
move toward a conclusion, he adds.
"There's an awful lot of wasted
motion in the law business, so if you
can cut through that it moves the case
along."

What makes a good judge? "Of
course, everybody values something
that he thinks he might be doing,"
Dillin says. "I think that I have a
reasonably well developed sense of
humor, and I think that's pretty
important because otherwise you can
be carried away with your own
importance—and when that happens,
it's pretty difficult for lawyers to try a
case, I can assure you."

What's toughest about being a
judge? "Oh, I don't know that
anything's very difficult," Dillin
responds, adding that for him, it is
patent cases. "I don't know anything
about mechanics, chemistry, or
physics, so I have to go through a
long process of self education before I
can do much of that kind of stuff."

What gripes? "The Congress is
always telling us how to run our
business," he says. Dillin cites
sentencing guidelines that limit the
options a judge has in determining
the sentence, and he worries that the
prosecutor's ability to influence a
sentencing in exchange for the
defendant's cooperation comes
dangerously close to intrusion by the
executive into the judiciary's consti-
tutional territory. "I just can't for the
life of me understand why the Supreme Court held that to be constitutional, but they did. Most federal judges think they were wrong. It's sort of like Alice in Wonderland. Somebody said, 'I'll be jury and judge and chop off your head.' It gets away from the division of responsibility."

Dillin also complains that the Civil Justice Reform Act procedural rules are an attempt at legislative micro-management that is not only intrusive but also insulting. "We have three branches of government. If they just let the judicial branch do its work the way the judicial branch knows from experience it should be done, I think it would be very nice. We get a little upset when they try to tell us how to do it."

He directs another complaint at the Hoosier state's own high court. He fears its recent ruling that bars automatic change of venue will have the unforeseen result of impairing legal representation for many of the state's people. The old system, he says, "guaranteed at least two good lawyers in every county in this state no matter how small the county. A lawyer could afford to be there because of business coming in from larger counties. In the long run, I think you're going to find that the overall quality in the various counties of the state is going to diminish. They're going to flock to the places where the greater number of cases are filed."

Dillin has seen many changes in the court system during his tenure. One is that fewer cases go to trial. Discovery has foreclosed the possibility of surprise and perhaps taken away some of the drama, too. But "on the other hand, after that's all been done, and if the lawyers on each side are of somewhat similar competence, the case has been settled, so we don't try as many cases as we used to. I don't think I've tried a serious case in—Lord, I don't know—a couple of months, really."

Despite the necessity for judges to isolate themselves somewhat from the day-to-day world if they are to render evenhanded decisions, Dillin does not see the job as lonely. The following is as close as he gets to regret in that regard. "We don't associate much with lawyers. We love 'em, but you never know who's gonna have a case in front of you tomorrow or maybe who already has one, so in that sense we are sort of cut off from some of the people we'd perhaps like to be talking to," he says. "But now, as far as talking to each other about cases, that's certainly possible. Every once in a while I make a call, 'Hey, did you ever try a case like this and if so do you have a set of instructions that I can take a look at.'"

Judge Barker too has occasionally made such calls. One she remembers particularly well was to Dillin shortly after she was elevated to the bench. It was during her own first brush with judicial newsmaking in a case involving the constitutionality of an Indianapolis anti-pornography ordinance. The subject matter guaranteed high interest by the local press, and the fact that a new judge, a female at that, was hearing the case only added to the story. And when she ruled the ordinance was unconstitutional, it was banned in the next morning's news.

Shortly after arriving at her office, her phone rang. It was Dillin. "Oh, Judge," she asked. "Have you ever done anything controversial in your career?"

"He said, 'That's why I called—Welcome to the club!' It was wonderful of him to do that."

As he approaches 80, Dillin carries a full case load and shows no sign of slowing down. He still spends lots of weekends walking miles across the fields at his Petersburg farm, hunting down and summarily executing any errant stalk of Johnson grass that has the temerity to sprout on his land. There is a trophy on a wall in his chambers. Dillin turns, sweeping his arm in the direction of the huge golden frond. "I direct your attention to the west wall here. You will see a plant that stretches from the floor to the ceiling and that, I can assure you, is nine feet, three inches tall, because I measured it. That is a stem of Johnson grass, said by Purdue University—to pardon my mention of that school—to be the worst weed that grows in Indiana."

Like any Hoosier farmer worth his salt, he adds, "I've been waging the good fight for a number of years."

Later in the conversation, Dillin turns to a small stack of thin booklets and programs in crimson covers. They are from the recent celebration in Bloomington honoring Herman B. Wells on his 90th birthday. "I sort of agree with Herman," he says. "The secret is being lucky—and I've been very lucky in my lifetime. I've enjoyed practically everything I ever did, and I've managed to forget the other things."

14 / Bill of Particulars
Inferior to None

THE BEGINNING—1842-1877

On Dec. 5, 1842, Professor David McDonald gave his first lecture to the class of the new Law Department at Indiana University. It was a tradition at the University to make such special lectures open to the public, so the University chapel was used to accommodate all those who attended—faculty, townspeople, and, of course, the new law students. McDonald told of the importance of law and the responsibility of those who administer it, and, in closing, he said: “If you are willing to endure the labor of mastering this noble science; if you are willing to spurn the trifles that engage the time and affections of too many of our youth; if you glow with honorable emulation; if you desire to be distinguished among your fellow citizens, and useful to our beloved country—here is a field worthy of your labor—a field, in which you may, at once, gratify a laudable ambition and promote the best interests of society.”

The Law Department was announced in the 1841-42 catalog, stating that the design of the board was “nothing less than the building up of a Law School, that shall be inferior to none west of the Mountains; one in which the student will be so trained, that he shall never, in the attorney, forget the scholar, and the gentleman.”

As was common in law schools of the period, those applying for admission did not have to meet the requirements of the University, but rather only needed to produce satisfactory testimonials of good moral character. Initiated as an undergraduate degree, two years of study were required with two terms in each year. In addition to the lectures and examinations, moot court was held each week. Required texts included *Blackstone's Commentaries*, *Kent's Commentaries*, and several other standard works. The trustees allocated $150 for law books to be selected by Judge McDonald to begin a law library.

There is no record of how many students were in that first class, but in 1843 there were 15 law students, six seniors and nine juniors. The first graduating class in 1844 numbered five.

In 1846, the University was experiencing financial
difficulties and discontinued McDonald's salary. They asked him to continue, receiving only the student fees as payment for his services. The University was to furnish a room and adequate firewood. McDonald reluctantly agreed to the arrangement temporarily.

The trustees had established the Law Department as autonomous from the rest of the University, and its students were not answerable to the action of the University faculty. This issue was brought to a head when McDonald refused to allow the University to sanction a law student who committed a minor infraction. President Wylie and McDonald had a lengthy disagreement, concluding with McDonald handling the situation privately. The year following the argument, the Law Department was not mentioned in the University's catalog.

In 1847, there were enough students to merit the addition of another professor and McDonald was joined by William T. Otto. In 1852, Otto resigned to accept a position with the Department of Interior, and McDonald resigned in 1853 to return to private practice in Indianapolis.

After McDonald's resignation, the Law Department continued to flourish under the direction of several distinguished jurists, increasing in size to as many as 53 students in 1869. Only during the Civil War did the department, along with the University, experience reduced enrollment.

In 1861, one week after Fort Sumter was fired upon, laws were selected from the class to give addresses at commencement. The main address was given by a faculty member or noted jurist.

A "bogus programme," common in the 1870s. Such programs were prohibited by the University administration as disorderly and dishonorable conduct. This announcement, not as off-color or inflammatory as many, makes references to Professor of Law Bascom Rhodes, Associate Professor Cyrus McNutt and several students.
View of the campus as it looked when the Law Department was established. Law classes were held in the largest of the buildings.

Law classroom in 1876 in the main University building

An extraordinary number of public figures and jurists. Among them were Clarendon Davisson, Class of 1844, consul to France; Samuel H. Buskirk, Class of 1845, Indiana Supreme Court justice and author of Buskirk's Practice; and Willis A. Gorman, Class of 1845, appointed by President Pierce as the first Governor of Minnesota. Ambrose B. Carlton, Class of 1849, was chair of the United States Utah Commission, author of a book on homicide, and a professor of law at the IU Law Department. Robert H. Milroy, Class of 1849, was chief judge of the Eighth Judicial Circuit, and William Pitt Murray, Class of 1849, settled in the Minnesota Territory, where, among his many political offices, he was president of the Territorial Council. Murray County, Minnesota, is named for him. In addition, there were many state judges, legislators, and prominent attorneys in Indiana. It was an auspicious beginning for the young school.

Law Department diploma from 1845. Samuel T. Wylie was one of the nine members of the second graduating class.

Class of 1871
A REBIRTH—1889-99

Following the closing of the Law Department, there was significant public support for its reinstatement. The newly appointed president, David Starr Jordan, began to plan for the new law school, and in November 1885, reported to the Board of Trustees on the matter. The board, because of uncertain financial obligations, decided to postpone its consideration of the reinstatement.

Two years later, at the urging of President Jordan, the board again considered the reinstatement. It was not until the board meeting on March 20, 1889, however, that the trustees reestablished the “Law School as a department of the University.” The trustees elected David D. Banta, then president of the Board of Trustees, dean, and Ernest W. Huffcut, professor of law.

Candidates for admission still did not have to meet the standards for University admission, but instead were required to “be at least 18 years of age, and must pass an examination that shall test the applicant’s ability to write and speak good English and his possession of a fair knowledge of the Common School branches.” The examination was held on the opening day of school. Although tuition was free for the rest of the University students, fees for Law School were $12.50 per term, with a diploma fee of $5. Initially called the Law Department, the name was changed to the School of Law with the 1891 catalog.

Again an undergraduate program, the course of study was two years, each year with two terms, fall and winter. In 1890, a third term, the summer term, was added to correspond to the University schedule.

In September 1889, the Law School reopened with 32 students. It occupied a part of the second floor of the new Library Hall (now Maxwell Hall) and shared the building with the University Library and lecture space for English, history, political science, and pedagogics. The Law Library, separate from the University Library, contained books purchased at the time of the reestablishment of the school. The previous collection of law books had been destroyed in a fire in 1883 that burned the entire University Library as well as most of the University records.

Because of the problems caused in the past by an “independent” law school, it was firmly established by the trustees that the new Law School was “an integral part of the University,” and that the students were “under
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1899 advertisement for the Law School. Ads were placed in several Indiana newspapers and magazines.

At the conclusion of the 19th century, the Law School had proven to be a worthy addition to the University. Entering students now needed to meet the requirements of the University, which included a high school education. In addition, each student was examined in English composition and, if found deficient, was required to take additional course work in the English Department. The Law School was growing in size and reputation, and was entering the 20th century with high hopes for the future.

Although only 17, and not old enough to meet the age requirement for admission, Tamar Althouse was admitted to the Law School in 1890 and became the first woman at the Law School. She graduated in 1892. Within the century, three other women received their LLB degrees.

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Professor Huffcut resigned to accept a professorship at his alma mater, Cornell, in 1892, and later became dean of that school. William Perry Rogers, who had been visiting lecturer in law at Indiana was appointed to replace Huffcut. In 1896, when Banta died, William Rogers became dean.

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CREATING THE MODERN LAW SCHOOL—1900–18

The University’s enrollment was more than 1,100 at the beginning of the century. Just 15 years earlier, in 1885, it stood at 157. Technological advances and a more industrialized work force made an education more important. The University, thrust into the modern age by the industrial revolution and a more sophisticated populous, could no longer follow the academic traditions of an agrarian society, with a university education only for the elite few.

Law schools also needed to be responsive to changing societal needs. State and federal governments were becoming more involved in regulation of products and services. Courts were examining issues that were more meaningful to the common person. To meet the needs of this modern society, more sought a legal education. The legal profession was becoming too complex for the old method of learning the law by reading in a lawyer’s office.

In 1900, the Association of American Law Schools (AALS) was formed, granting membership to those schools that met its standards. Indiana’s law school was one of the 25 charter members of this group. The standards required that students have a high school diploma; the degree program had to be two years long (30 weeks a year); and students were required to have access to a library with U.S. reports and local state reports. The AALS raised the minimum to three-year law school programs in 1905. Anticipating the rising requirements, the Law School increased its course of study to three years in 1901.

The Law School enrollment stood at 125 students in 1900, there were three faculty, and the Law Library had 4,000 volumes. Sharing Kirkwood Hall now, with the departments of philosophy, psychology, pedagogy, physics, Greek, Latin, Romance languages, German, history, and economics, the Law School was desperate for new space. This was true all over the University, for the building program had not kept pace with the rapidly escalating enrollment of the University. In 1901, the Law School moved to the third floor of Wylie Hall, gaining some relief from the crowded conditions.

In 1902, Dean Rogers resigned to become dean at the University of Cincinnati Law School. George Reinhard, professor since 1896, was appointed dean. Following the trends in legal education throughout the country, Reinhard raised the graduation requirements and enthusiastically supported the case method during his deanship. In a few years, that method nearly replaced the lecture/recitation methods of the past.

When Dean Reinhard died in 1906, Enoch Hogate, noted lawyer and professor since 1903, was appointed dean. Under Hogate’s leadership, the Law School initiated the joint arts-law degree, in which students in five years could receive both AB and LLB degrees. Also, beginning in 1910, two years of collegiate work were required for admission. In 1917, a JD degree was established for students who had an AB degree, achieved high academic ranking in law school, and completed a thesis.

To fulfill the promise of new space during Reinhard’s deanship, the addition to Maxwell Hall was completed in 1907. During the holidays, while the University Library
The Reinhard Club, organized in 1902, was established to promote “debating, discussion, and extempore speaking.” Its membership was limited to 15. It was named for Dean George Reinhard, whose “life and example inspired the origin of this society.” It continued for several years after his death in 1907.

Class registers, kept by Dean Enoch Hogate, covering 1906 to 1912

moved out the west door of Maxwell into its new quarters, the Law School moved in through Maxwell’s east door. Law classes began there in January 1908.

This was also a period of increased diversity in enrollment. Masuji Miyakawa, graduating in 1905, became the first Asian-American law graduate. Samuel Saul Dargan, graduating in 1909, was the first African-American graduate, and Juan T. Santos, in 1916, was the first Hispanic law graduate. In addition, for the first time, the University opened its doors to foreign students. Several students from the Philippines graduated from the Law School between 1907 and 1909.

As World War I approached, the Law School had risen to the challenges of the times. Strengthened by its alliances with other law schools in the nation, the Law School was providing a quality legal education for its students.
American Bar Association certificate, Aug. 28, 1923

Book Nook commencement, 1928. Owner Peter Costas and Book Nook regulars organized a mock university, with graduation ceremonies held each year, and awarded such degrees as Doctor of Nookology.

Harry Kurrie (holding bucket), Law Class of 1895 and president of the Monon Railroad, and George Ade, Indiana humorist and Purdue alumnus, initiated the Old Oaken Bucket tradition in 1925. Because the game ended in a scoreless tie, the first link on the bucket is an I and a P together.

BROADENING PERSPECTIVE—1918–33

The end of the first world war brought more than a rush of students to the University’s door. Changing attitudes and social mores and new personal and social freedoms rocked the University clinging to its Victorian attitudes. These were the days of the emergence of the automobile and the radio. Students danced the Charleston and the Black Bottom, listened to jazz, and smoked and drank behind the barred doors of speakeasies. It was a period of enthusiasm and uncertainty. Americans were thrilled by national heroes like Charles Lindbergh and Babe Ruth; and they feared and suspected immigrants and everything foreign.

These changing attitudes altered and challenged the legal system as never before, affecting the lives of everyone in America. Women were given the right to vote; laborers in newly formed unions went on strike for better working conditions; and the Volstead Act prohibited the sale or manufacture of liquor. The Indiana Legislature considered a bill to fix the length of women’s dresses between the instep and first tendon. Even the small-town trial of John Scopes, the teacher who dared to teach evolution in high school, illustrated the struggle between traditional and modern values. America rejected the League of Nations, yet was inextricably involved in world affairs and the consideration of humanity’s problems.

Charles McGuffey Hepburn was appointed dean of the Law School in 1918, following the sudden illness of Dean Hogate. Hepburn, a scholar active in a number of national associations, was among the founders of the American Law Institute. In addition to Hepburn, the faculty in 1918 included Jesse LaFollette, Morton Campbell, Warren Seavey, and Paul V. McNutt, an Indiana undergraduate alumnus and recent graduate of the Harvard Law School.

The Law School enrollment had dipped to 74 during the war, but rapidly climbed to 180 by 1919. In the same year, the school began to offer the LLM degree, and a joint degree in commerce and law was initiated in 1923.

Hepburn spent much of his deanship working toward the establishment of the Indiana Law Journal. By the end of 1918, he had gained the necessary approvals, but was unable to raise the $1,500 needed to fund the project. In 1925, he negotiated with the Indiana State Bar Association to take over its bar association publication. The school was to have editorial responsibility, and the bar association would fund the publication. The first editor was faculty member Paul L. Sayre; he was assisted by other faculty. In the early years of the journal, students played only a small role. The first issue to be edited by the Law School, in January 1926, was published six months after Hepburn resigned as dean.

When Paul V. McNutt was appointed dean at age 35, he was the youngest dean in the Law School’s history. McNutt recog-
Hoagy Carmichael, Law Class of 1926

nized that to keep professors of promise and distinction, he must crusade for higher salaries. The issue of low salaries was a problem all over the University and one that IU President Bryan had been trying to solve since the end of the war. Faculty had been willing to put up with inadequate salaries during the war, but now the war was over. They felt the University owed them the salaries that they deserved. Faculty were lost all over the University, and the Law School suffered major losses when Morton Campbell, Warren Seavey, James Parks, Merrill Schnebly, and William Britton all left within a five-year period. Although some salary increases occurred, the Depression made it impossible for McNutt to reach his goal of parity with other ABA-approved schools.

At least one Law School tradition began outside the classroom. The first known Law-Medic Game, a football game between the “Laws” and the medical students each fall, occurred in 1920 and was reported as a scoreless tie. The game was to continue as a beloved fall ritual for more than 50 years.

By 1925, the Law Library had more than 13,000 volumes. Rowena Compton, the first full-time librarian with both law and library training, was appointed and began the task of cataloging and indexing the library. Sam Dargan, curator of the Law Library, had been a familiar face at the school since his appointment in 1909. Dargan managed the Law School bookstore and maintained order in the Law Library. Beyond his regular responsibilities, however, he befriended the law students, inviting them for dinner, and occasionally loaning them money. Through all the changes of the times, Dargan was a constant, a kind of institution.

While dean, McNutt successfully campaigned for governor of the state, and in 1933, with the law faculty and students looking on as invited guests, McNutt was inaugurated.
BUILDING A REPUTATION—THE GAVIT YEARS, 1933–51

A demoralized American people sought change during the deepest part of the depression, as a wave of public sentiment elected Franklin Delano Roosevelt president of the United States. Roosevelt’s confident style and media personality raised American spirits as they hoped for a “new deal.” During his first 100 days, there was a massive surge of new legislation regulating financial institutions and initiating public relief projects. These programs changed the workplace, altered the governmental structure, and even changed the American landscape, as the nation tried to regain its prosperity. But the financial crisis had spread worldwide and military imperialism grew, setting the stage for another world war.

With McNutt as governor, the University weathered the Depression somewhat better than other schools. His experience as dean made him aware of the difficulty of building programs with inadequate funds. He was influential in securing increased appropriations from the General Assembly for academic programs and salaries. McNutt also helped the University obtain state and federal funds for the expansion its physical facilities. The University still struggled, but irreparable decline was avoided by having a sympathetic ear in high places.

Following McNutt’s resignation as dean, President William Lowe Bryan assumed the acting deanship of the

*The Indiana Flaw Journal, a humor version of the Law Journal, was published annually from 1947 until 1958 and irregularly in the 1960s.*

Hugh Willis was the only law professor who was also the golf coach at IU.
Law School until the trustees named a new dean. Bernard Gavit, who had joined the faculty in 1929, was appointed in June. His deanship would be the longest in the history of the school.

The Law School's enrollment was at 375 in 1933, with eight faculty. The Law Library had 26,000 volumes and, under the administration of Jean Ashman, was growing into a major research collection. As part of the New Deal programs, the University began to obtain federal matching grants to aid building and academic programs. Upon completion of Bryan Hall in 1937, the central administration moved from its offices in Maxwell, making the space available for the Law School, which then occupied the entire building. The space was remodeled, providing additional space in the basement for the Law Library. Ashman remained as Law Librarian until 1948, when she resigned to head the Law Library at the University of Chicago. Betty LeBus, with degrees in both law and librarianship, was appointed to the position. She was the first woman given tenure as a faculty member in the Law School.

In 1933, admission standards were increased to require three years of undergraduate training. The grade point needed for graduation was 1.4 on a 3-point scale. By 1951, an undergraduate degree was the norm. Those admitted without a bachelor's degree were required to have a 1.6 grade-point average instead of a 1.4.

In 1936, the battle was won to get the state to require a law degree as a prerequisite for the bar exam. This was a victory long in coming. It began in 1923 when the Indiana State Bar Association ratified a resolution of the ABA recommending the requirement. The Indiana State Constitution allowed any voter of...
good moral character to sit for the bar. Gavit and the deans before him worked to persuade the reluctant state to tighten its rules for admission. Gavit wrote numerous articles and spoke to countless groups regarding the importance of the measure. This marked the end of the constitutional lawyer in Indiana.

In 1940, as the centennial of the Law School grew near, the University appointed a prestigious committee of faculty, trustees, University administrators, and alumni to plan a gala event. Notable alumni and legal dignitaries, such as Wendell Willkie, Paul McNutt, and Chief Justice Charles Evans Hughes, were invited to speak. Before the plans could be concluded, the attack on Pearl Harbor occurred. With the emphasis on the war effort and the consequent reduction in the student body, it was determined that the celebration should be postponed. Near the conclusion of the war, in November 1944, a small celebration took place.

In 1944, a proposal for the merger of the independently-run Indiana Law School and the IU Law School was approved. The Indianapolis school was to continue as the evening division. Alumni of the Indiana Law School were made alumni of Indiana University upon application. Dean Gavit served as the administrator of both schools.

When war broke out, the Law School amended its rules to provide for those students who needed to leave mid-semester for the military. Law students who withdrew from school to enter the service and who had completed as much as 10 weeks of a semester were granted credit if the...
student was in good standing in the classes. Seniors in their last semester needed only to complete half the semester to receive credit.

During World War II, the Law School enrollment dipped to the lowest since the 1870s, with only 23 students enrolled in 1943-44. Dean Gavit took a leave of absence in 1943-44 to serve on the Federal War Manpower Commission. Hugh Willis served as acting dean during his absence. Three other faculty were also on leave that year, either on government service or holding service-related positions. Following the war, the Law School's enrollment grew at an extraordinary rate, reaching 416 in 1948-49.

Gavit's strategy for the Law School was to build on the strength in the current faculty, attracting distinguished scholars and teachers, thereby enriching programs and gaining prestige for the school. At the conclusion of the war, many new faculty were needed to meet the growing enrollment. Within the next five years, Dean Gavit appointed 13 distinguished teachers and scholars. It was with these professors that Gavit built the Law School into one of the finest in the country.

Others issues, however, needed to be addressed. Maxwell Hall, home of the Law School since 1907, was not large enough to hold the growing school. Dean Gavit began to plan for a new building. But before his dream could be realized, Gavit resigned the deanship because of failing health. He returned to teaching but died in 1954, before construction on the new building was begun.
The conclusion of World War II ended one threat but brought another with the nuclear age and the Cold War. The anti-communist rhetoric of McCarthyism fed America’s frustration and insecurity about its new place in world politics. With the economy booming, Americans sought security and fulfillment in “the good life” as consumerism swept the nation. Television, better highways, and growing leisure time united the country in a kind of national style of conformity. Yet there were voices of discontent speaking out about the invisible underclass and the individual’s vulnerability in this modern bureaucratic society. Abroad, President Eisenhower supported an anti-communist government in southern Vietnam, setting the course for another war and a decade of domestic unrest.

The Law School, like the University, continued struggling to accommodate the escalating enrollment following the war. Leon Wallace, professor since 1939, was named dean in 1952. Wallace took up where Gavit left off, planning the new law building. This would be the first building actually designed for the Law School, since throughout its history the school had moved from building to building as space became available. Construction began in 1955 on the $1.6 million structure, which was completed the following year. “The Mad Monks of Maxwell,” as the law students had become known, would begin their classes in the new Law Building in fall 1956. The dedication of the building was attended by scores of successful alumni and legal dignitaries, with Chief Justice Earl Warren as the main speaker.

Although funding for the building was obtained, the Law School experienced severe financial setbacks in its operating budget during the 1950s and 1960s. Through these years, the Law Library slowed its growth and numerous faculty were attracted to other schools. Despite the efforts of the deans, it would not be until the 1970s that significant funding would be restored.

Sam Dargan, the Law Library curator, still could be found at the Law School in the early 1950s. Although, at the age of 78 he had been retired by the trustees in 1948, he continued to come to work in the mornings, helping in the Law Library. He died in 1954 at the age of 84.

In 1955, Herman Krannert of the Inland Container Corp., donated $250,000 to the Law School to establish an innovative new course called Legal Techniques, a laboratory course “to provide students practical knowledge of the law.” The first clinical courses were developed through this donation.

In 1966, Wallace returned to teaching and W. Burnett Harvey was appointed dean. The first dean not to be chosen from the faculty ranks, Harvey was brought in by the University to revitalize the Law School after a number of years of financial decline. Under Harvey’s leadership, the admissions criteria were made more selective, and he renewed the school’s emphasis on excellence in teaching and scholarship, appointing a large number of young faculty with top credentials. The administrative staff of the Law School was expanded, adding a dean of student affairs and a dean for administration and alumni affairs. A broader range of clinical offerings also were developed including the Federal Prison Clinic, the Clinic on Juvenile Problems, and the Poverty Law Clinic. In 1968, the JD degree was made the standard law degree. Those who previously had received an LLB degree were permitted to convert the degree to a JD.

In 1968, the Evening Division of the Law School in Indianapolis was made autonomous and began its day program in fall 1969. It was expected that the move would ease the enrollment and space problems on the Bloomington campus, with its enrollment then at 570. By 1970, enrollment on the Bloomington campus was 421, the
The Law Building is dedicated in November 1957.

The Law School decal was originally designed by the wife of law student Phil Siegel in the late 1950s.

Sam Dargan, curator of the Law Library

Professor Jerome Hall

Dean W. Burnett Harvey

Professor Harry Pratter
lowest since 1963. In addition to the draw from the new day program in Indianapolis, the reduction was attributed to the Vietnam War draft deferment changes, a substantial fee increase throughout the Bloomington campus, and the more selective admissions criteria. The reduction was temporary, however, and, in 1972, enrollment stood at 617.

During this period, several student organizations were established to respond to the growing diversity in the student body. In 1969, the Black Student Lawyers Association was organized, and, in 1970, the Women’s Caucus was formed. Student Legal Services, originally called the Legal Services Office, began in early 1971. In 1972, students seeking greater participation in Law School decision-making formed the Radical Caucus.

Rapid change is not always an easy adjustment. Despite the major development in faculty and curriculum, Dean Harvey was not viewed positively by the alumni. President Stahr had resigned in 1968, and the subsequent University administration was not as supportive of the Law School. Following two years of major support during the Stahr administration, the funding stopped. In 1971-72, the Law School received a two-percent increase. Dean Harvey resigned in fall 1971.

After serving as acting dean for a year, Douglass G. Boshkoff was appointed dean in 1973. He set as his priority building support for the Law School from the University administration, from members of the state bar, and from the students. He traveled widely around the state talking to alumni groups. In 1971, he started the annual fund drive and was able to increase financial

Contracts class, 1970
support to the Law School through alumni giving.

As the law students moved from their beloved Maxwell Hall, their long-time football rivals, the medical students, moved to their newly completed building in Indianapolis. Only the first-year medical school program remained in Bloomington. The Law-Medic Game continued into the 1970s, but it never regained its earlier vitality, which was fed by the close proximity of the two buildings.

Talk of shutting the Bloomington school and moving it to Indianapolis began in 1962. Rumors emerged again following Dean Harvey’s resignation and discussion was rekindled in 1974 by Chief Justice Givan, who advocated the move. That same year, the University trustees considered a reorganization plan that recommended that the Bloomington Law School report to the vice president in Indianapolis. Dean Boshkoff and the Bloomington faculty opposed the recommendation, arguing that such a measure would dilute the strengths of each school. The trustees voted to leave the organizational structure as it was with each school reporting to its own campus vice president. The controversy continued into 1975, leading IU President Ryan to appoint a blue-ribbon committee to study the organizational relationship of the two schools and to make a final recommendation on the matter. In November 1975, the committee recommended that the University continue to maintain the two schools as separate units.

After serving five years as dean, Boshkoff resigned the deanship in January 1976 to return to teaching. Long-time faculty members Val Nolan and Harry Pratter served as acting deans consecutively during the 18-month search for a new dean.

The 1960s and 1970s had many demonstrations. One in 1970 occurred on Indiana Avenue near the Law School. It resulted in the First Amendment case Hess v. Indiana, which was taken to and won in the United States Supreme Court by Professors Pat Baude and Tom Schornhorst.

Behind their ivy-covered walls, law schools by the mid-1970s had been transformed into multimillion dollar operations. In addition to the traditional costs of faculty and court reports, the modern law schools needed to respond to new technologies, advanced teaching methods, modern clinical opportunities, and the requirements of a productive faculty. Computer technology was making its way into legal education, and legal publication was exploding with material on the broadening perspective of the law and its role in society.

In 1977, Sheldon Jay Plager came from the University of Illinois to serve as dean. The University administration renewed its commitment to the Law School, which had been struggling financially since the 1950s. Dean Plager negotiated and received a broad package of improvements including additional faculty positions, higher faculty salaries, and improved funding for the Law Library.

Following the national trend toward an interdisciplinary approach to the study of law, talented young faculty were appointed, many with additional advanced degrees in other disciplines. An increased emphasis was placed on scholarship, and the school began to increase its visibility through faculty activity and research.

Calling attention to the years of inadequate funding, Dean Plager convinced the University to begin to respond to the growing needs and advancing technologies in the Law Library. During his deanship, the library made major progress, reaching nearly 275,000 volumes by 1984. The library began processing books by computer through OCLC in 1977 and students were introduced to computerized legal research with LEXIS in 1977 and with WESTLAW in 1983.

"We are entering upon an experiment, which touches a variety of interests dear to the University, and dear to the legal profession of the State of Indiana . . . . To study our jurisprudence as a science and to be thoroughly learned in its precepts, are therefore, not only honorable to us and necessary to a wise administration of justice, but of the highest moment to the permanence of our political institutions. It is fondly hoped that in the performance of the duties on which I am now entering, I shall be able to contribute, in some small degree to this most desirable end; and if so, I will have the gratifying reflection that my life has not been altogether unprofitable to my country."

David McDonald, Introductory Address, Dec. 5, 1842
Betty LeBus resigned as law librarian in 1978. During her 27 years as librarian, the Law Library had more than tripled in size. Through the difficult times in the 1950s and 1960s, she guided the building project, orchestrated the move from Maxwell to the new Law Building, and developed the human environment that made the library the heart of the Law School. Colleen Kristl Pauwels was appointed director following her resignation.

In 1980, funds were allocated to begin planning for a major addition and renovation of the Law Building. Funding for the project was approved by the General Assembly in two phases. The $12.6 million project was begun in November 1982 and dedicated in September 1986, two years after Plager resigned to return to teaching.

Following Plager's resignation, Associate Dean Maurice Holland served as acting dean. In summer 1985, Morris Sheppard Arnold began as dean. Although previously on the Indiana law faculty, he had left in 1977 to teach at the University of Pennsylvania. Shortly after his return to IU to serve as dean, Arnold was nominated for a federal judgeship in the Western District of Arkansas.

Although dean for only six months, Arnold began negotiations for the computerization of the Law School. Personal computers in faculty offices, at secretarial stations, and in administrative offices, as well as a computer center for student word processing were all segments of the negotiated package. Upon his confirmation as district court judge in December 1985, Arnold resigned as dean.

In spring 1987, Bryant G. Garth was appointed to the deanship after serving as acting dean. Because the needs
of a modern law school could not be met with state funding alone, one of Dean Garth’s priorities was the expansion of resources through fund raising. He built alumni support and succeeded in establishing a general endowment of $500,000. During his deanship, the Law School also received $1.5 million dollars as a bequest from the estate of Roscoe and Estella O’Byrne.

The Law and Society Center was created in 1987 to sponsor and encourage interdisciplinary research interests at the University. In Spring 1987, the Community Legal Clinic was organized through a federal grant, and, in 1989, the Protective Order Project was established. Both programs were developed to enhance clinical opportunities for students and to contribute to the public interest legal needs of the community.

Dean Garth accepted the position of director of the American Bar Foundation and resigned the deanship in
In July 1991, Alfred Charles Aman Jr. was appointed dean of the Law School. Since his appointment, a major contribution created another endowed professorship, making three professorships and six fellowships available for faculty salary enrichment. Three new faculty appointments in 1991–92 provide not only new course offerings for the coming years, but also respond to the school's continuing commitment to diversity and excellence. In 1992, the Law School will begin publication of the *Indiana*
The administration of the law comes home to the business and bosoms of men. It discourages and punishes crime and maintains and cherishes good order and wholesome morals in society. It secures the poor against oppression of the wealthy; and it guards the rich against lawless violence. It protects the husbandman in his peaceful avocations and the mechanic in his useful labors. None are so lofty as to be above its power; none so low as to be out of its protection.

David McDonald, Introductory Address, Dec. 5, 1942
Commitments to Teaching

Mary Ellen O'Connell

Since arriving at the Law School three years ago, Professor Mary Ellen O'Connell's goal has been to develop a comprehensive curriculum in international law. Through her efforts, the school now offers courses not only in basic international law, but also in the international aspects of business transactions, environmental law, and litigation—all courses she developed and teaches.

Several years ago, she joined forces with IU President Tom Ehrlich to offer a seminar in the law of armed conflicts. Together, they have produced a set of teaching materials, *International Law and the Use of Force*, that will be published this fall by Little, Brown. Concentrating on documentary sources, the book will also have a set of case studies that will be produced separately.

O'Connell uses the case studies in class, requiring students to prepare cases on particular uses of force and to argue those cases as if before the International Court of Justice.

She hopes that the publication of the book will encourage teachers to include this area of international law in their classes. "Through this topic, students learn about one of the most difficult issues in international law. My hope is that this knowledge will support and enrich their whole understanding of legal systems."

O'Connell has aggressively developed new courses during her tenure at the Law School. "Teaching new courses really immerses me in the subject area, which, of course, helps with my research. But some of my students will probably have a far greater policy impact than articles I have written. In International Environmental Law, half the class were committed environmental students who are all going to work in the environmental area, but they had never even thought about the fact that they could enforce environmental protections everywhere in the world in U.S. courts. After spending the course looking at U.S. cases and international treaties, I know some of them will now do just that."

Dan Conkle

When a student committee nominated Professor Dan Conkle for the 1992 Leon Wallace Teaching Award, it quoted from an anonymous student evaluation: "Professor Conkle is perhaps the best professor this law school has, and this is true in all respects, including his mastery of the material, handling of classes and students, and overall respect that he accords students. This is why..."
Dan Conkle with his Leon Wallace Award

he is so widely respected among the student body."

The committee added:

"Professor Conkle is an effective and highly-regarded professor because he is a master communicator. Student praise is a testament to his special gift for clearly and precisely explaining complicated issues."

This gift for clarity is especially appreciated in the often disordered world of Constitutional law, where Conkle does most of his teaching.

The students concluded their recommendation:

"In addition to all of Professor Conkle's pedagogical strengths, he is simply one of the best-liked professors at the Law School. The warm regard for Professor Conkle is due largely to his enthusiasm and positive demeanor in class. Despite his efficient classroom pace and organization, Professor Conkle often allows his amicable sense of humor to shine through. Students also appreciate Professor Conkle's attention to students, praising his respectful, considerate, and thoughtful treatment of them. One student explained that Professor Conkle 'seems to truly care about his students—it shows in the relationship he has to his class.'"

Earl Singleton

Earl Singleton is director of legal services for the Law School's Community Legal Clinic, where he supervises students who participate in the clinic in their work with clients. Since its creation in 1987, the clinic has provided professional training to law students as they in turn provide legal assistance to low-income people.

"My sense is that the students come to law school to become lawyers," says Singleton, "but many of them don't know what it is to be a lawyer. By working in the clinic, they are both learning practical things and providing a service. I want them to always view their practice, or at least a portion of their practice, as providing a service, and I think students leave the clinic with that view. The student thinks, sure I've learned how to draft a verified petition for dissolution of marriage and the various and sundry motions that go with it, but, more important, I'm providing a service for a family that it otherwise wouldn't be able to get. I'm helping them go through a process that without me would be more tortuous and more difficult. I think a lot of people really get their first sense of professional satisfaction here. I'm excited by the students and their approaches to things—sometimes I'm amazed by their approaches!"

Students involved in the clinic learn more than a sense of professionalism and service. They also grapple with the transition from the two-dimensional world of casebooks to the complexities of three-dimensional clients.

"Practically, the clinic introduces students to the complexities of the real world. Students who are having their first introduction to clients would never have thought that client credibility was something with which they had to be concerned. Many of the students who take the clinic really want to do good. They want to help people. But they often aren't aware that sometimes clients themselves are the biggest obstacles to the student being able to help them."
Students learn how difficult it is to get the information they need. I think it's better that they learn these skills now than later on when it's their livelihood that is at stake."

**Jeff Stake**

Professor Jeff Stake taught property law to property teachers this summer as he recreated his famous "Moby Dick" class exercise for other law professors at the AALS Conference on Property.

He begins by waving a twenty-dollar bill—"Moby Dick"—and inviting the class to "invest" in "capturing" this whale by investing dimes in outfitting whaling boats. The students are told that they will win the whale through a random drawing of lottery tickets, and that the number of tickets they receive is the square of the number of dimes they invest.

Stake then leads the class through a series of hypothetical "best" investments. "The first example is easy," he says. "If everyone in the class invests zero dimes, it's clear to all the students that their best investment would be one dime. Then we assume that everyone in the class is going to invest one dime, and work through the math to determine the optimal investment for any individual student—in a class of 100, the optimum investment turns out to be 32 dimes." Eventually, the students have invested far more than the worth of "Moby Dick," bringing home dramatically a number of points important to their later understanding of property law.

"Beyond learning lessons about optimum and marginal return, the lesson brings home with a vengeance the tension between what's individually rational and what's societally wasteful. I tell them the name that the economists put on this process is 'rentseeking,' and I use that concept again and again throughout the semester. They learn in a very graphic way that one benefit of property rights is to reduce rentseeking behavior."

After hammering home the wastefulness of their actions, Stake asks how the class might have prevented it. "The students quickly realize that all we had to do was allocate rights to one person in the class ahead of time and then there's no point in anybody else investing a dime. The problem is that within their own class, they don't have any way of creating enforceable rights against each other if they do invest, so the exercise also teaches a little bit about cartel behavior. They ask sometimes, 'Well, what if we got together and we said we were only going to invest a dime?' I point out that unless I'm included, I'll sell tickets to some of them secretly."

Does he take their money? "Absolutely! If I didn't take their money, they wouldn't feel the impact of the exercise. But I use it to pay for class handouts during the semester, so they get the benefits after all."

**National Moot Court Team**

The National Moot Court Team each year serves as guides and teachers for the students who follow behind them in the appellate advocacy competitions. The team reads briefs, watches and critiques arguments, and shepherds students through the Sherman Minton Competition.

Last year's team, holding their trophies—Back, from left, John Colvin, Bruce Brightwell, and Richard Butler; front, from left, Jennifer Jordan, Cynthia King, and Moira Squier.
Commitments to Scholarship

Alfred Aman
Dean Alfred Aman will have the authorial satisfaction of seeing three books released this year. His case book, Administrative Law: Cases and Materials, will be published by Matthew Bender. A treatise on administrative law co-authored with Professor William T. Mayton was published this summer. And Administrative Law in a Global Age was recently published by Cornell Press.

The last is the book closest to Aman’s heart. “The book came about when I began to ask myself a question. Why was it that in the 1980s certain kinds of constitutional questions that have been long dormant in administrative and constitutional law suddenly seemed to be monopolizing the courts again? What’s going on now? As I tried to answer that question, I had to look at deregulation.”

The more he studied it, the more he concluded that we were at a watershed in our regulatory history. “Quite apart from the ideological and political push that was coming from the Reagan administration concerning the role of government, there were major changes taking place in the political economy that necessitated a total reconceptualization of the role of regulation in American society.”

Aman’s research led him to question the continuing efficacy of some of our national political institutions. “I want to suggest an explanation for why our political parties seem to matter less and less, our national politics seem so increasingly ineffectual and why gridlock between the president and Congress is likely to continue, no matter what party occupies the White House or dominates the Congress. That explanation is that the U.S. no longer primarily calls the shots in the global economic order now evolving.

“Since World War II, we have witnessed the increasing globalization of law, politics, and business. We’re in an era with global capital markets, global telecommunications, the science that enables us to understand the global aspects of pollution, and the increasing ability of companies to locate off-shore thereby making health, safety, and environmental questions global questions as well. This is not due to some failure on any administration’s part, though not recognizing the fact is a failure that present and future administrations must avoid.”

The challenge now facing the United States, Aman concluded, is nothing short of retooling our nation’s democracy to meet the demands and opportunities in a world where there are more key players than ever before. “Globalization diffuses political power, both within nations and among them. No matter what we do domestically to ensure economic growth or to try to regulate the environment or the securities markets, we are faced increasingly with global realities that limit our ability to solve such problems completely or even primarily on our own.”

He notes that the Japanese and German economies and economic policies greatly affect our own economy no matter what we do. Acid rain, greenhouse gases, and ozone depletion know no national boundaries. Global capital markets fundamentally change the assumptions on which New Deal regulatory agencies were established. “In short, the globalization of politics, law, and the markets leads to a complexity that renders simple cause-and-effect explanations and purely domestic solutions impossible. It makes a political system appear ineffectual if it claims it can solve certain domestic problems—such as health, safety and environmental issues, unemployment, and the ability to attract and keep capital investment in the United States.”

Aman concludes that no one state, party, or politician can really effectively “deliver” anymore. Globalization means that international issues reach directly to, and over, the thresholds of local communities and vice versa.
“Globalization produces at least two political and structural results that bear directly on our system of checks and balances. First, globalization tends to promote the executive branch, giving it a rationale for exercising more power over issues once thought to be purely local and primarily within a legislature’s purview. The president has the duty to ensure that the laws are executed faithfully. But he now is more than ever before intent on making them efficient as well. Executive orders do more than carry out Congress’ goals. Now, they are increasingly substantive.

“In contrast, Congress is designed to focus on regional, state and, especially, local issues. It is not an institution structured for a consistently global perspective on issues. By its nature, Congress is not likely to share the president’s perspective. Unless local politics become global in outlook, the institutions of the presidency and the Congress are bound to conflict.

“The more domestic issues are affected by global processes, the more these two branches will disagree — no matter who is in office or what political parties are represented — with Congress giving the appearance of lagging behind or outright undermining the president’s programs. Such contrasts are, to some extent, inevitable in a system of checks and balances, but they are exacerbated by the effects of globalization on these two institutions.”

While Administrative Law in a Global Age presents an elegantly argued thesis about changes in the field, the goal of the treatise is to present the law in a structured and straightforward way. Aman hopes that the book will be useful to students as well as “practitioners who do not do a lot of administrative law work but suddenly are confronted with an administrative law problem and need someplace to start. They need to know what the basic cases are, what the basic doctrine is, and what the key law review articles are in the area. The treatise is really written for them.”

And the casebook? “That’s a teaching book that grows out of my 14 years of teaching administrative law. I try to put the key issues and cases in context, so that the students will not only understand the doctrines, but they also will understand what was at stake when these doctrines were being created and applied in some crucial cases.”

After a year away from teaching, Dean Aman looks forward to using the casebook for the first time this fall, when he again returns to teaching administrative law—this time at Indiana.

**Lynne Henderson**

One of Professor Lynne Henderson’s articles is titled “The Dialogue of Heart and Head,” an apt description of the committed approach to scholarship that characterizes her work on feminist approaches to criminal law and jurisprudence. In articles from “Legality and Empathy,” which appeared in the Michigan Law Journal, to “Rape and Responsibility,” forthcoming in Law and Philosophy, Henderson explores the meaning of culture and cultural and professional understandings of the place of rationality and emotion in the law.

“We expect our judges to be ‘rational,’ but we also want our judges to be wise. Wisdom, judiciousness, is not reducible to accumulation of knowledge, nor is it reducible to insight. Wisdom is more than reason. Born of experience, it is both. It has its ‘intuitive’ elements and its ‘cognitive’ elements. It is based on the dialogue of heart and head, and includes emotion and compassion. Solomon, the model of the wise judge, gambled—reason could not tell him who was the child’s mother. His experience, his tuning into expected emotion, could explain his solution.”

A careful observer of the role of empathy and emotion in judicial decision making, Henderson brings passion as well as intellect to her own work as she weaves insights from many disciplines—especially psychology and philosophy—into compelling arguments. Her latest work,
which will appear in a symposium on rape in the *Journal of Law and Philosophy*, traces notions of moral responsibility for rape historically by looking at accounts of this responsibility in religion, science, and popular culture over time.

“I argue that rape has always been constructed culturally around a theme of male innocence and female guilt, and I try to illustrate how that theme emerges in the context of several well known recent cases, such as the William Kennedy Smith case.”

Henderson has also just completed an article on a parallel theme that explores how cultural models of domination and submission in sexuality are exploited legally, using the Mike Tyson case as an example.

Professor Henderson is the Hastings Faculty Fellow for 1992-93.

**Joe Hoffmann**

How do people resolve whether to mete out the ultimate punishment? What explains their decisions? Those are the questions Professor Joseph Hoffmann and a group of law professors and social scientists across the country are investigating by going to the source—people who have served as jurors in capital cases.

Funded by a grant from the National Science Foundation, participants in the project hope to interview 150 capital jurors in each of eight states.

“The prerequisite was that the jury had to get to a capital sentencing hearing at which it was asked to make a judgment” says Hoffman. “We were interested both in cases where the jury came back ‘life’ and in ones where they came back ‘death,’ so we could try to identify differences between the two. The jurors were to be evenly divided—roughly three or four jurors per case was the target, with three per case the minimum, on the theory that that gave you some opportunity to test the juror’s recollection of the facts.”

The researchers spent a year developing a comprehensive interview protocol for the jurors, but Hoffmann says some of their most interesting findings have come in response to an open-ended question.

“I have found that question to be just an absolutely wonderful way of getting information from these jurors. The whole danger was that we would make a real mistake if we assumed that we knew what we wanted to know. After asking a series of precise questions, we ask an open-ended question, and the juror says, ‘I’m not really sure that this is really important, but . . . .’”

It was in response to this question that Hoffmann first began hearing jurors talk about the importance of prayer to their decision.

“One juror had been very, very troubled by the case from the beginning. She was an empath, a person who felt everybody’s pain. She felt the pain of the victim’s family very deeply, but she also felt the pain of the defendant and the defendant’s family very deeply—the threat of the death penalty hung very heavily on her. So she felt extremely distraught and torn. It turned out after the case that she couldn’t go to work for several days and really felt like she was having a nervous breakdown because of the trauma the case brought to her.

“Then we asked the final, open-ended question: ‘Was there anything else that you haven’t told us about that you think happened during the sentencing and deliberations?’ She replied, ‘Well, I doubt that this is really very important, but the first thing we did when we got into the jury room was we all held hands together and prayed. Prayed for help, prayed for guidance from God in making this decision.’ She said she didn’t remember who made the suggestion, but she had thought initially that a number of jurors were not particularly religious. She herself was not particularly religious; she said she went to church once a year. She said she expected somebody to resist the suggestion, but nobody did. The entire group held hands around the table and prayed together for guidance in making this decision. And then they prayed again at several different points during the deliberations.
And when asked, at the end, what was the single most important factor in her decision, that was what she cited: the role of prayer in helping them to do the right thing.”

Hoffmann has heard the same story since from jurors from other cases. He speculates that it is the weight of the decision and the seriousness with which they take it that pushes jurors for a way to share their burden.

“There is a tremendous feeling on the part of almost every juror we talked to that they wish they didn’t have this decision resting on their shoulders. Even the ones who think the death penalty is very appropriate wish that they weren’t the ones who had to make that decision. And so they cast about for ways to pass that responsibility to somebody else so that they don’t have to feel that it is all on their shoulders. Some jurors do that by trying to pin it on the judge. Other jurors look to the law. They want the law to tell them that if they find A, B, C, and D, they are going to have to give death or life. They hate the fact that the law tells them that they can essentially do whatever they want once they have thought about particular factors. Then, I think that there are jurors who, when they are confronted with the reality that they are going to have to make a decision, look upstairs for guidance. In fact, prayer made them feel as though what they were doing was not just their decision. It was a way to reassure themselves that they weren’t just acting as sort of autonomous moral human beings, but that they had called upon God to guide them in this process.”

How did the case of the empathic juror come out? “That jury came back with a recommendation for life. But one thing I have learned is that it would be a mistake to think that this juror reacted as she did because she is a woman.”

One of the most exciting preliminary findings from a related project explodes the use of gender stereotypes to pick capital jurors.

“My research here in Indiana demonstrates that lawyers assume that women are going to be one way and men are going to be the other way. So during voir dire, they don’t even ask the same attitude questions to the male prospective jurors and the female prospective jurors in these death penalty cases.

“Because attorneys are using gender stereotyping during voir dire, the effect is to leave on the jury only the most logical women and the most emotional and empathic men.”

This latter finding comes from a related project, which Hoffmann designed, that is just being done in Indiana. Through a grant from Indiana University, the Voir Dire Project examines the transcripts of voir dire from the capital trials involved in the juror study in order to determine how the jurors were selected and what they were asked.

One of the most interesting findings is that trial attorneys are not exploiting the unique aspects of death penalty law during the jury selection process.

“Lawyers are asking almost no questions about the death penalty despite the fact that the Supreme Court has created a body of law in which both the defense and the prosecution have many additional grounds for challenging jurors for cause in a death case based on death penalty attitudes than they would in a non-death case. On average, in the cases we’ve studied so far, jurors who actually serve get no more than one or two questions during the voir dire that relate to any aspect of the death penalty.”

The obvious question is “Why?”

“I think the obvious answer is that because lawyers don’t get these cases very often, they do not appreciate the specialty of the law, at least not early enough in the proceeding. They certainly understand how special it is by the time they get to a death sentencing hearing. It may just be coincidence, but the one case we’ve seen in which the defense lawyer did everything that a lawyer was supposed to do in voir dire was the only case that came out ‘life.’ The others all came back with a recommendation for death.”

Craig Bradley

Professor Craig Bradley’s book, The Failure of the Criminal Procedure Revolution, has been accepted for publication by the University of Pennsylvania Press. The revolution of the title refers to “a series of constitutional decisions by the United States Supreme Court during the 1960s that ‘revolutionized’ the criminal procedures of the states.”

Bradley notes that “at the time requirements such as Miranda were imposed, criticisms of the Court’s rulings were vehement. Many complained that the courts were ‘handcuffing the police.’ A rising crime rate was blamed on the Court’s rulings, and Richard Nixon made the appointment of ‘law and order’ Supreme Court justices a
Craig Bradley

major issue in his successful 1968 presidential campaign.” After President Nixon appointed four Justices, “the pendulum swung in the opposite direction. Liberal critics of the ‘Burger Court’ complained that constitutional guarantees of civil liberties were being ‘gutted’ and that a reemergence of ‘police state’ tactics by law enforcement authorities was imminent.”

While he argues that the predictions of both sides have been proven inaccurate, Bradley concludes that “the American criminal procedure system is flawed in a way that goes beyond ideological criticisms and lack of resources. Those problems stem from the fact that, because of a unique constitutional system, America has developed its ‘rules’ of criminal procedure piecemeal, on a case-by-case basis, rather than through a code of criminal procedure. Every other major country in the world uses a legislatively enacted code of criminal procedure. Only the United States expects its police to follow a set of rules so cumbersome and so complex that one area of criminal procedure law alone—search and seizure—requires a four-volume treatise to explicate.”

Bradley’s book traces the history of the criminal procedure system we now have, comparing it to systems in six other countries. He then explains why a national code of criminal procedure is possible and why it is the best solution to the problems identified in the book.

Bradley’s understanding of other systems of criminal procedure has been enhanced by study in Australia and Germany. He spent last summer teaching in Kiel, Germany, as a Humboldt Fellow.

Antje Peterson

Earl Snyder, BA’42, LLB’47, JD’67, an alumnus of the Law School and of Cambridge University, has provided support for a student from Indiana University to work at the Research Centre for International Law of Cambridge University during the summer. As a Snyder Scholar, Antje Peterson, JD’92, will spend three months at Cambridge at the Research Centre.

Peterson, originally from Bonn, Germany, attended the University of Bonn, then came to the United States, where she earned a PhD at Stanford University. She taught Danish literature and other courses at Lake Forest College and at IU before enrolling in the Law School, where she has just finished serving as articles editor of the Law Journal. This past year, Antje was a MacArthur Scholar at the Center on Global Change and World Peace. She will continue work she did last year in Germany as a MacArthur Fellow on a case involving East German border guards who are now being prosecuted for their actions when Germany was a divided country.

“There are people at the Centre who have submitted briefs on the international law implications of the dispute to the court in Germany, and I hope to work with them,” she says.

After working in England, Peterson plans to continue

Antje Peterson and Elihu Lauterpacht, director of the Research Centre for International Law, Cambridge, who recently spoke at the Law School on “The Conduct of International Litigation”
work on the case in Germany, where she will apply to German law firms to continue to develop experience in German law. She is hoping her work on the case will culminate in a book.

Kevin Kinney
Kevin Kinney, a 1992 graduate, is meeting with German President Von Weizecker and Prime Minister Kohl this fall as a Humbolt Fellow. Chosen after a national competition, Kinney joins 10 other Americans identified by the Alexander Von Humboldt Foundation as future leaders for a year of study and research in Germany. He plans to do research on intervention for humanitarian purposes and also to pursue an LLM at the University of Kiel.

Professor Jost Delbruck encouraged me to apply for the fellowship, and as the former president of Kiel University, his recommendation carried a lot of weight, as did President Ehrlich’s,” says Kinney. “I had taken Professor Delbruck’s class in European Community Law at the Law School, and the seminar on Use of Force with President Ehrlich and Professor O’Connell. I have always wanted to study international law, and I took all the classes the Law School offered.”

Delbruck, a member of the Law School faculty, teaches classes at IU every fall before returning to his duties as director of the International Law Institute at Kiel.

Kinney has traveled in Germany before as an undergraduate exchange student and later through the University’s Heart of Berlin program. During his year as a fellow, he plans to study at the Max Plank Institute for Public International Law and to do research at the Hague.

John Gastineau
John Gastineau served as editor in chief of the Indiana Law Journal during 1991-92. Under his leadership, the Journal published all of its issues on time and undertook a significant symposium on banking law.

“We had a very good board,” Gastineau says. “I suppose ‘collegial’ gets used often and badly around law schools, but I think we were collegial. Certainly any board of editors is going to have strong-willed and diverse personalities, and I don’t think we’re different in that regard. But we were able to work together very well, and we had to work together very well to get these things accomplished. My Law Journal experience is in many ways representative to me of what I’ ve enjoyed about law school. I like to refer to myself as a non-traditional student since I am 40 years old, but the intellectual challenge throughout law school is what has been fun, and certainly this last year working on the Law Journal has been an intellectual challenge magnified.”

In addition, Gastineau’s paper, “Bent Fish: Issues of Ownership and Infringement in Digitally Processed Images,” was selected from 101 papers certified by the deans of 68 contributing law schools as the national fourth-prize winner of the Nathan Burkan Memorial Competition, garnering a $1,000 prize. It will appear in ASCAP Copyright Law Symposium No. 41.
soon to be published by Columbia University Press.
And the title?
“‘I mostly wanted a hook (pardon the pun),’ says
Gastineau, ‘to get people to read the thing. I also wanted
an example to work into my topic. It used to be in the old
days before digital alteration of photographs that, when
they were shooting covers of hunting and fishing maga­
zines, photographers would buy a fish and bend it and
put it in the freezer, and then to get the shot they wanted
they would throw it into the air, because you can never
actually capture anyone catching a fish the way those
magazines portray it on their covers. I used that example
as a way of illustrating that computers can do these things
now, but it also was a way of getting people to read the
story. To some degree, I suppose there’s an implication
that with modern technology you have to bend old
principles of law to make them applicable to how this
new technology operates.’”
Gastineau will practice law at Steele Ulmschneider &
Eberhard in Fort Wayne.

Adelphia Law Journal
The Delta Theta Phi Law Fraternity at IU produced the
10th anniversary edition of the Adelphia Law Journal this
year. The issue is a symposium on punitive damages.

The Adelphia, the only law journal in the country
produced by a legal fraternity, is awarded to schools on a
competitive basis. Alan Irvin, a production editor, ex­
plains, “We were required to submit resumes and budgets
and letters of support from the dean.”

Why did the fraternity want to take on a project of this
magnitude?

Catherine Maxwell, also a production editor, saw it as a
way of demonstrating that the school had the talent to
produce more than one journal. “I guess we hoped when
we took this on that it would pave the road for a perma­
ent second law journal. Now, next year, we’re going to
have two more. So that’s been nice.”
In addition to an 11-member editorial board, the
Adelphia had a staff of more than 30 students, all members
of Delta Theta Phi. The journal, which will be produced
on time, contains articles from noted practitioners and
academics, such as Victor Schwartz, co-author of the
famous Prosser casebook on torts. Buddy Yosha, a 1963
graduate of the Law School and a well-known Indiana
attorney, will publish “Defusing the Attack on Punitive
Damages and the Civil Justice System.” And the journal
will contain a comprehensive state-by-state guide to
punitive damages.
Irvin notes, “Our reason for including the guide is that
we wanted the symposium to be useful both to academics
and to practitioners—we want to be a desk reference
guide on the subject.”
Most of the editors involved were graduating seniors
who finished the production work while studying for the
bar. Executive editor Tim Ehinger commuted from Ann
Arbor during his bar review course to assure that the
journal met its deadlines.

How did the board members cope with the responsibil­
ity during bar review? Laughs Maxwell, “If we don’t
know punitive damages, we don’t know anything!”

Commitment To Service

Pat Baude
One would think a law professor would get enough of
grading examinations in the ordinary course of duty.
Since his appointment to the Indiana Board of Law
Examiners by Chief Justice Randall Shepard last year,
however, Professor Patrick Baude has also read the
examinations of hopeful applicants to the Indiana Bar.
“I thought that writing and grading the exams would
be more burdensome than it has turned out to be,” says
Baude. “I don’t make light of the grading, but bar exam
questions do not involve cutting-edge issues. Unlike my
law school exams, I never ask a bar question to which I
don’t know the answer.”

In fact, Baude finds that the most difficult aspects of bar
grading come from his decision not to write or grade
examinations in areas he teaches. “It wouldn’t be fair to
students at other schools if I wrote the constitutional law
questions, so I have written corporation and partnership
questions instead.”

What surprised Baude most about the work, however,
was the volume of appeals the board hears from adverse
determinations on character and fitness for admission to the bar. Baude attributes the numbers largely to increased problems with substance abuse.

His work for the board corresponds to an intellectual interest in the area of legal ethics. He recently presented a paper, "The Puzzling Persistence of the Character and Fitness Inquiry," at the Law and Society Conference in Philadelphia. In the paper, he notes that character and fitness requirements lead to the denial of admission of a "minute proportion of applicants—best estimated as one in 500. Yet the requirement persists in every state and commands a fairly large amount of money and time." The "puzzling persistence" of the requirement can be attributed, Baude thinks, to its dual aims.

"The regulation of the bar is made of two almost incompatible components. On the one hand is the project of convincing potential customers that their lawyers will not cheat or otherwise harm them," a project Baude believes is successful. "The other project is the Weberian enterprise of justifying the privileges of lawyers in the political and economic sphere ... by an appeal to the idea that lawyers are committed, in the words of the preamble to the ABA’s Model Rules of Professional Conduct, to 'cultivate knowledge of the law beyond its use for clients, ... to improve the law ... and to exemplify the legal profession's ideals of public service. This second project is by and large a failure."

Baude notes that Indiana has worked to retain a sense of professional community:

"It used to be that a small group of really distinguished lawyers wrote the bar examination for a small group of students. A state that is much bigger than Indiana has to accept the fact that the law examiners don’t write and grade the exams; professors from across the country write the questions and the state hires lawyers to grade them. Indiana is sort of betwixt and between. The Court doesn’t want to let go of the ideal of the legal profession, of lawyers and judges evaluating the new youngsters and welcoming them on board."

But the judicial branch is not the only beneficiary of Baude’s knowledge and judgment. Baude’s expertise in constitutional law has been mined by both the executive and legislative branches.

After Indiana’s ban on out-of-state garbage from landfills was declared unconstitutional by a federal court, Governor Evan Bayh appointed Baude special counsel to a task force created to craft legislation to address problems caused by importation of garbage. Chief among the problems was how to draft a bill that would withstand constitutional attack.

"We drafted 10 bills, three of which eventually were enacted. In order to satisfy the Commerce Clause, the legislation could not focus on out-of-state waste and had to address individually the state’s concerns."

One piece of legislation is now the subject of another court challenge:

"One of the problems of out-of-state trash is that the truckers haul their trash into the state in trash trucks and turn around and haul produce back to the east coast. One bill, which we thought was relatively minor, required that they sterilize the trucks that carry garbage before they carry other things in them. As it turned out, that was the bill that attracted almost all of the attention."

In order to prevent unconstitutional legislation from being drafted in the first place, Baude teaches a class each year, sponsored by the Indiana Legislative Services Office, for legislators and their staffs on constitutional law topics.

"The class is very stimulating," says Baude. "The question and answers are just really remarkable. If a senator has really been working on some goal for three or four years, the importance of the answer to a constitutional question is quite real."

Thomas Schornhorst
Tom Schornhorst was honored by the University last Founders Day with the W. George Pinnell Award for Outstanding Service. The award was presented for doing
“a thankless job” on behalf of those whom society believes to “have no value,” in the words of Brent Westerfeld, one of a few private attorneys in Indiana who handles death penalty cases for indigent clients. All attorneys and all members of the Indiana University faculty, for that matter, are expected to devote time to the public interest. But skilled representation in death sentence cases requires mastery of all areas of criminal and capital case law—matters of both substance and procedure. Each case demands a thorough review of massive records and briefs, and “all of this,” says Rhonda Long-Sharp, executive assistance public defender, “must be done under enormous time and emotional pressure in a frequently hostile environment with a very troubled client.”

Because it is impossible for the public defender’s office to represent all those who cannot afford to hire a lawyer, outside attorneys are often needed. Few Indiana attorneys want to handle complex death penalty cases or have adequate experience in capital litigation. Tom Schornhorst, however, is highly skilled in this area and, more important, highly committed to helping those most at risk from the legal system.

For these reasons, Schornhorst is frequently tapped by the public defender’s office to take on such cases, and he does so for little or no compensation.

Susan Carpenter, public defender of Indiana, says, “The enormous time commitment required is only exceeded by the inherent difficulty and stress associated with trying to rectify what in some cases is a mockery of justice …. It is extremely difficult to find competent and committed individuals who are willing to undertake this representa-

Schornhorst’s service record began when he was a fairly new faculty member at IU Bloomington in the late 1960s and early 1970s. Most of his cases involved significant first amendment issues, including the groundbreaking Gregory Hess v. State of Indiana. The litigation arose out of a campus demonstration following the U.S. invasion of Cambodia during the Vietnam War. Schornhorst represented several students arrested for disorderly conduct. One student appealed his conviction, citing the violation of his First and Fourteenth Amendment rights. (He had been arrested primarily for shouting a four-letter word in the presence of local law enforcement officials.) Schornhorst argued the case throughout the Indiana courts and was joined by colleague Patrick Baude in presenting the matter to the U.S. Supreme Court. The Supreme Court reversed the Indiana Supreme Court’s decision and held that Hess’s arrest for disorderly conduct was a First Amendment violation. The case appears in modern constitutional law textbooks as an application of the “clear and present danger” doctrine. Schornhorst successfully argued another Vietnam-era case before the Indiana Supreme Court, which declared unconstitutional a criminal trespass statute aimed at campus demonstrations.

The cases Schornhorst deals with, including major felonies handled while spending a sabbatical year serving as a deputy prosecuting attorney in Marion County, often inspire cogent commentaries that expose inadequacies in the legal system. His experiences in the courtroom undoubtedly enliven his teaching of law classes and continuing legal education programs. The Indiana Law Journal has published his critiques on the overzealous use of the death penalty as a prosecutorial tool; on the application of juvenile jurisdiction waivers that allow certain minors to be tried as adults; on the constitutionality of Indiana’s probable-cause-for-arrest rulings; and on the ethical problems arising from lawyers negotiating with, or on behalf of, terrorists, the latter deriving from Schornhorst’s experience as a prosecutor with the notorious Anthony Kiritsis case. Before it became a regular plot
device in courtroom television dramas, Schornhorst recognized the problems posed for the legal system by the novel uses being made of scientific evidence in court. He published "Don’t Be Cowed by Scientific Evidence: Pretrial Primer for Prosecutors and Defense Attorneys" in the spring 1988 issue of Criminal Justice, a publication of the American Bar Association.

Judge Douglas R. Bridges, Monroe Superior Court (who first met Schornhorst when Bridges convicted Gregory Hess in Bloomington City Court), commends Schornhorst’s commitment to the practical application of scholarship and believes his service to the state of Indiana benefits the School of Law as well as the University.

"First, he knows what is really happening out there and can translate that into what he teaches," says Judge Bridges. "Second, he is an example to all of his students of the importance of involvement beyond one’s professional employment. This commitment to service to community can’t be taught and is not exemplified often enough today."

Indeed, Schornhorst’s pro bono work is valued by the Law School faculty. Bryant G. Garth and Terry A. Bethel, both former deans of the school, in nominating him for this award wrote, "We at the law school are justifiably proud of Tom’s contributions. He is not a defender of popular causes. He does not seek recognition; indeed, this nomination was not his idea .... Those of us who work with him daily see the emotional toll it takes to represent clients who, literally, depend on him for their lives."

Moira Squier
The Protective Order Project, founded several years ago by Professor Lauren Robel and Jennifer Payne, JD’90, unites law students and local attorney volunteers to provide civil representation for victims of domestic abuse. The project has 50 student volunteers and has served hundreds of people in Monroe County, since its inception. Moira Squier served as director last year.

"I would say that it was the most rewarding thing I did in law school," says Squier, "and I hope to carry it over into my professional career. I have contacted all the third-year students who were in POP with me and asked them for addresses in case they would like to start something similar to POP in their cities. I would encourage anybody to participate, even if for a minimal amount of time. It put everything in law school in perspective for me."

The project accepts clients on referral from the local women’s shelter, prosecutor’s office, and the police. Robel, faculty advisor to the project, is impressed with the students’ commitment to the work.

"They have to go through a substantial training program on their own time, and the cases themselves take time, yet we consistently have around 45 to 50 volunteers. The students value the experience in interviewing and drafting and the opportunity to work with experienced attorneys. But they also value the opportunity to make a difference in people’s lives. It’s the victories they have—the women who get out of abusive relationships and go back to school, the kids who get the counseling they need—that keep them in the project. I have heard from many of the volunteers who have graduated. They tell me that they now take cases involving domestic violence as pro bono cases. So I know that this experience continues to have an influence in their lives, and, in turn, that their communities benefit from the experience they got here."

Amy Huffman
The Public Interest Law Foundation was begun five years ago to provide support and education to law students regarding the profession’s ethical obligation to work in the public interest or to provide pro bono representation for persons who cannot afford legal assistance.

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1 The section on Tom Schornhorst was written by Sylvia Payne, University Publications, for the 1992 Founders Day Program.
PILF also conducts a pledge drive every year, asking students to pledge one day of their summer earnings toward Public Interest Summer Fellowships. The fellowships allow students to work in public interest law jobs that would otherwise go unfilled. Last year, PILF funded students to work for homeless clients in Los Angeles, AIDS patients in Chicago, people in need of housing in Portland, Oregon, and poverty law clients in Bloomington.

Amy Huffman, 1991–92 president of PILF, sees PILF as an way to raise awareness in students. “PILF for me has meant an ability to get students interested in doing public service activities. Students don’t necessarily have to think of public interest as a career. Its just a question of having the awareness that there are people who don’t make a lot of money and who need legal services just as badly as corporations and other individuals and the fact that there is a huge gap in the middle—the middle class who can't afford legal services. It's just a question of awareness. We don't expect everyone to take a public-interest job, but we want people to know that it is an option. There are so many people who come to law school with that ambition, and they lose it somewhere along the way. I'm constantly there reminding them. PILF had 67 members who remain committed to public interest, and they probably will remain committed after law school ends.”

Thomas Applegate

Last year, PILF and the IU chapter of the ABA Law Students Division organized a Volunteer Income Tax Assistance (VITA) clinic to provide income tax filing assistance to lower income people. The IRS has sponsored VITA clinics for more than 20 years, and the ABA's Section on Taxation recently has encouraged law schools to organize the clinics.

Thomas Applegate and Jim Oliver worked with the Business School to organize the clinic. More than 40 students completed the 20 hours of training to become certified by the IRS to provide tax assistance. The students conducted three clinics in Bloomington.

Applegate recalls that the experience of working at the clinics brought home to him the existence of problems with poverty in the community. “At one of the clinics, we were competing for room with a food distribution program. We ended up bagging food. They handed out food and asked everyone who came in if they needed help with their taxes. We have always talked about the problem of homelessness, but I had never seen it in Bloomington before.”

Eric Cooper

The Inmate Legal Assistance Clinic allows 25 law students the experience of working with inmates at the federal prison in Terre Haute. Volunteers travel to the prison about 24 times each year, and the clinic gets letters and requests for assistance from several other prisons in the state. The clinic focuses on inmates who have completed their initial appeals and are involved in habeas corpus or other post-conviction relief proceedings. The students also work on prison condition cases. Eric Cooper, student director of the clinic for the last two years, began volunteering for the clinic before he even began his law studies.

“I like the research. I enjoy going to the prison. Actu
ally, I like talking to the guys over there. Many of them are pretty smart, although not smart enough or they wouldn’t be there.

“One thing that surprises the student volunteers is how much the prisoners know about the law. They find out that these guys just know tons more than they do about both their case and the laws that apply to their case. The prisoners sit in the cell for months thinking about their cases. But they are happy to have someone interested in the case, even if much of what we do is tell people they’ve exhausted their avenues of appeal.”

Connecting to the University

Julia Lamber

Law is not only a discipline in its own right; it is also the focus of study for other disciplines interested in the effects of legal institutions on society and society’s effects on legal institutions. The Center for the Study of Law and Society was founded several years ago to encourage and facilitate interdisciplinary approaches to law. Professor Julia Lamber, of the Law school faculty, and Professor Lee Luskin, of the criminal justice department, have served as the Center’s co-directors since 1991.

Lamber explains, “The Center has its purpose drawing together people on the Bloomington campus to form a community of law and society scholars. Part of its point is identifying people who are interested in law as an institution and getting them together to talk to each other.”

While the highest percentage of participants in the Center’s activities are from the law school, faculty and graduate students from anthropology, business, education, political science, criminal justice, SPEA, journalism, and even the humanities, such as English and history, take part in the intellectual life of the Center. The Center sponsors workshops on current law and society research by Bloomington faculty members—such as Law Professor Kevin Brown’s presentation of his research on educators’ attempts to set up separate schools or “Afrocentric” curricula for African-American children and Law Professor Alex Tanford’s discussion of the effect of empirical research on legal policy. The Center also brings in speakers from other schools. Last year saw Herbert Kritzer, a political scientist from the University of Wisconsin, compare the effectiveness of advocacy of lawyers and non-lawyers, and John Donohue, research fellow at the American Bar Foundation and professor at

Northwestern School of Law, discuss “Law and Macroeconomics: Employment Discrimination Over the Business Cycle.”

Lamber says, “When we chose speakers or events, we try to illustrate the breadth of law and society to establish that it is a very broad, open, encompassing discipline, and I feel we’ve been successful in doing that.”

She looks forward to watching research groups form around specific areas that attract scholars from several disciplines, such as dispute resolution, criminal courts, or issues of gender. She would also like to see the Center continue to encourage interdisciplinary teaching, noting that the Center has inspired several participants to give guest lectures in related classes in each other’s disciplines.
Lamber notes that when it began, "the Center was focused on the Law School and was a way to reach out to other disciplines." In its fifth year, the Center's emphasis on crossing traditional boundaries in the pursuit of knowledge about legal institutions continues to enrich the teaching and research of faculty across Indiana University.

To the Profession

In addition to the Indiana Law Journal, the Law School will sponsor two new journals next year. After a prolonged and very competitive selection process, the Federal Communications Bar Association chose the IU Law School as the new publisher of the Federal Communications Law Journal. The Journal, which is currently published at UCLA, is the nation's oldest and largest communications law journal, with a circulation of 2,500.

The Journal is student-managed and publishes three issues per year, including articles, student notes, commentaries, and book reviews dealing with telecommunications, intellectual property, and information policy. The Law School will begin publishing the Federal Communications Law Journal in 1993-94. An editorial board will be selected for 1992-1993 to design and implement a structure for the Journal, establish selection criteria for members, oversee the transition from UCLA, and prepare notes and select and edit articles for the first issue.

During this academic year, the school also will institute the Indiana Journal of Global Legal Studies. This will be a multidisciplinary journal aimed primarily at topics that have international and comparative law aspects to them, but may include a wide variety of global issues. The inaugural issue of this new journal will consist largely of the papers that will be given at a research, agenda-setting conference to be held at the Law School on March 3-7, 1993, titled "The Globalization of Law, Politics, and Markets: Implications for Domestic Law Reform."

This new journal will represent a departure from most of the international and comparative law journals that currently exist, because it will involve both students and faculty working together in a special editorial relationship. Articles submitted to the journal will be reviewed and selected by faculty, thereby ensuring the type of peer review that is common in many academic fields but unusual in legal publishing. The school believes that this innovation will help attract the highest quality articles to our journal.

The journal will also include student notes and commentaries, which will be selected and edited by students. The student editorial board, which will bear primary responsibility for operating the journal, will work closely with a faculty editorial board to produce one of the finest multidisciplinary journals in the country. In addition to publishing innovative scholarship and provocative commentaries, the journal will be an opportunity for faculty and students to work closely preparing, selecting, and editing articles and notes.

Professor Mary Ellen O'Connell will be the adviser for the Indiana Journal of Global Legal Studies, and Professor Fred Cate will advise the Federal Communications Law Journal.

And to the World

You are invited to the

16th Annual Indiana University Law Conference
"Professionalism and the Law"

Friday
September 11

Coffee and Donuts
8:15-9 a.m.
School of Law Lobby

Conference Registration Locations
8:15-11 a.m.
School of Law Lobby
11:45 a.m. -1 p.m.
Big Red Tent near Well House
Northeast of Law School
6-7:30 p.m.
Solarium/Alumni Hall
First Floor, Indiana Memorial Union

Continuing Legal Education Seminars
8:45 a.m.-12 noon
1:30-4:45 p.m.
School of Law Classrooms

Conference Luncheon
12 noon-1:45 p.m.
Big Red Tent near Well House
Northeast of the School of Law

Law Conference Reception
6-7:30 p.m.
Solarium
First Floor, IMU

Law Conference Dinner
7:30-9:30 p.m.
Alumni Hall
First Floor, IMU

Saturday
September 12

Pre-Game Barbecue
11 a.m. or 2 hours before kickoff
Memorial Stadium
17th & Dunn

IU Football
IU vs. Miami of Ohio
Time: TBA
Memorial Stadium
17th & Dunn

For more information on schedule,
reservations, or accommodations,
please contact the School of Law Alumni Office, Room 200, Indiana University School of Law, Third & Indiana, Bloomington, IN 47405, 812/855-9700.

Send Us Your Class Note

Pass along the latest about yourself to Bill of Particulars, Indiana University Alumni Association, P.O. Box 4822, Bloomington, IN 47402-4822. Your class note will be used either in this alumni magazine or in the Law alumni newsletter, Update. Please use this form for address correction. (Please send letters to the editor to Dean Lauren Robel at the Law School.)

Date ______________________

Your news

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Name _____________________________________
Address -------------------------------------
IU degree(s) /date(s)_______________________________


Cate, Death and Organ Donation (with A. Capron), in Treatise on Health Care Law, (Matthew Bender, 1991).


Hicks, Civil Liabilities, Release No. 4, (Clark Boardman, 1991).


Hicks, Exempted Transactions Under the Securities Act of 1933, Releases No. 31, (Clark Boardman, 1992).


Hicks, Resales of Restricted Securities, (Clark Boardman, 1991).

Before 1960
On June 7, Juanita Kidd Stout, JD’48, LLM’54, LL.D’66, former Justice of the Supreme Court of Pennsylvania, was honored with a Distinguished Alumni Service Award by Indiana University in recognition of her outstanding career achievements. Justice Stout was the first black woman elected to a judicial position and the first to serve as a state supreme court justice.

1960–1969
Charles J. Deiter, LLB’65, of Indianapolis, is judge of the probate division of Marion Superior Court. Donald W. Rupprecht, BA’66, JD’69, a corporate and employment law attorney for 17 years and adjunct professor at the University of Evansville, has joined the law firm of Locke Reynolds Boyd & Weisell, Indianapolis, to become of counsel to the firm’s employment law department.

1970–79
Patricia Dianne (McNown) Weaver, JD’70, is a partner in the law firm of Weaver Kuvin & Weaver, Fort Lauderdale, Fla. U.S. Congressman Francis X. McCloskey, BA’68, JD’71, was in war-torn Croatia in December on a fact-finding mission funded by the Croatian-American Association and Serbian-oriented groups.

David T. Skelton, BA’68, JD’71, has received a Caleb Mills Distinguished Teaching Award from Indiana State University, where he is professor of criminology.

Thomas A. Clancy, JD’73, of Chicago, was honored as a new life fellow of the American Bar Foundation in Dallas at the 36th annual meeting of the Fellows of the American Bar Foundation. A plaque was presented to him by the honorary organization of practicing attorneys, judges, and law teachers whose professional, public, and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Established in 1955, the Fellows encourage and support the research program of the American Bar Foundation.

Basil H. Lorch, BA’71, JD’74, has been appointed to fill the 14-year position of federal bankruptcy judge for the Southern District of Indiana.

Frank E. Thomas, JD’74, affirmative action compliance officer with the Iowa Department of Human Services, has been appointed special assistant to the president at Grinnell College in Grinnell, Iowa, of which he is an undergraduate alumnus.

John E. S. Mohr, JD’76, has been promoted to senior attorney for TRINOV A Corp., Maumee, Ohio. He will continue his responsibilities in TRINOV A’s government contracting and litigation management areas.

Robert W. Dunbar, BA’74, JD’77, left the Elkhart law firm of Chester Pfaff and Brotherson to start his own practice in Bloomington.

Michael O. Fitzgerald, BA’73, JD’77, is chairman of the board of Sunrise Publications, a greeting card company he launched in Bloomington 20 years ago.

Jeff Richardson, BA’73, MPA’81, JD’77, of Indianapolis, has been promoted by Indiana Governor Evan Bayh to head the state’s Family and Social Services Administration.

1980–89
Jerry J. Burgdoerfer, BS’80, MBA’83, JD’83, is the second partner, in Chicago’s 300-lawyer firm Jenner & Block, to spend a year overseas working on international transactions. Burgdoerfer is working in Tokyo from September 1991 to September 1992 with a major Japanese law firm as part of Jenner’s international law program.

Michael B. Ortega, JD’81, has become a partner in the law firm of Miller Canfield Paddock & Stone, Kalamazoo, Mich. Rebecca Clendenning, BS’81, JD’84, practices business, real estate, and family law with the firm of Mallor Grodner & Bohrer, Bloomington.

John K. Hanson, BS’81, JD’84, an attorney with the firm of Cotner Andrews Mann & Chapman, Bloomington, is now a CPA. Hanson specializes in estate planning and administration, taxation, and business law.

William H. Hollander, JD’84, has been named partner in the Louisville office of the law firm of Wyatt Tarrant & Combs.

James Keith Bemis, BS’79, JD’85, a captain in the United States Air Force, stationed at Anderson Air Force Base in Guam, began work as an area defense counsel in October 1991.

Robert S. Gebhard, BS’83, JD’86, joined the San Francisco law firm of Bronson Bronson & McKinnon. He will be working in the firm’s bankruptcy department.

Michael K. Davis, BS’82, JD’87, administrative assistant to Bloomington Mayor Tomi Allison, received the 1992 Leadership Bloomington Distinguished Alumni Award. The award is given to a past Leadership Bloomington participant who has made significant contributions to the community.

1990–present
Nicholas C. Pappas, JD’91, has joined the law firm of Locke Reynolds Boyd & Weisell, Indianapolis, practicing with the firm’s general litigation group.

In Memoriam
- Frank George Lujan, ’67 died on Feb. 28, 1992, at the age of 61. After obtaining his law degree, Lujan returned to the Territory of Guam, where he served as the attorney general of Guam and as a senator in Guam’s legislature. Lujan practiced law as a solo practitioner and was later joined in practice by his brother, David J. Lujan, and his daughter, Monessa G. Lujan.
- Thomas A. Perry, ’32
- Clemence A. Nordhoff, ’37
- Charles P. Carroll, ’47
- James A. Frederick, ’53
- Douglas D. Seely Jr., ’58
- Raymond E. Rauch, ’61
- Bruce E. Wackowski, ’72
- Leslie F. Clifford, ’90
Aug. 6-12
American Bar Association meeting San Francisco, Calif.; IU Law Alumni Reception on Monday, Aug. 10

Sept. 10
Law Alumni Association Board of Directors meeting and past presidents meeting; reception and dinner; Bloomington

Sept. 11
1992 Law Conference dinner; unveiling of Rudy Pozzatti print; premier of David Baker composition

Sept. 12
Class reunions for the years ending in 2 and 7; Bloomington

Oct. 22
IU Law alumni reception at University Club; Chicago

Nov. 5-7
Indiana State Bar Association annual meeting; Indianapolis; IU Law alumni reception on Thursday, Nov. 5

Nov. 13-14
Board of Visitors fall meeting; Bloomington

Nov. 19
Law Alumni Association Board of Directors meeting; Indianapolis

Dec. 5
150th anniversary of IU School of Law; Bloomington; commemorative judicial address

Jan. 28-30
National Association of Environmental Law Societies 1993 National Conference

Feb. 6-8
Jessup International Moot Court Competition

March 4-7

April 9-10
All-school celebration for alumni, faculty, staff, and students

April 12
Judges on the Role of the Courts Series: The Honorable Jesse E. Eschbach

April 15
Ralph Fuchs Lecture: Sir David G.T. Williams