

LAW, COURTS, AND JUDICIAL PROCESS SECTION

NEWSLETTER

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TABLE OF CONTENTS

Rating Lawyer Competence -- Philip Laemmle and Paul Weber	1
Selected Bibliography on Artificial Intelligence Applications and Expert Systems for Law -- Werner F. Grunbaum	11
Section News	
Appointment of Nominating Committee	18
1987 APSA Meeting Plans	18
Conference Information	
Southwestern Political Science Association (1987)	19
Research Committee for Comparative Judicial Research (1986)	21
Western Political Science Association (1987)	22
Midwestern Political Science Association (1987)	24
Research Committee on Comparative Judicial Studies (1987)	26
Northeastern Political Science Association (1987)	28
Southern Political Science Association (1987)	28
Journal Information	
Judicature	29
The Justice System Journal	31
Law & Policy	31
Law and Society Review	33

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RATING LAWYER COMPETENCE

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For the past two decades there has been considerable discussion within the legal community about lawyer "competency." Especially since 1973, when Chief Justice Burger estimated that "from one-third to one-half of the lawyers who appear in the serious cases are not really qualified to render fully adequate representation,"¹ there has been great interest in determining the levels of lawyer competence and incompetence, yet there is a startling lack of hard data to either substantiate or disprove Chief Justice Burger's contentions. Aware of this lack of data, the authors provide one measure of trial court competence in Jefferson County, Kentucky.

In July 1985, a list of the names of more than 2,800 lawyers from Jefferson and Oldham counties was given to the local state District and Circuit Court judges in a survey packet. The judges were asked to evaluate the attorneys on a Likert Scale² in several areas: (1) Knowledge of Law, (2) Knowledge of Court Procedures, (3) Representation of Clients, (4) Written Work, (5) Oral Work, (6) General Professionalism and (7) Overall Assessment. (Twenty-two of the eligible thirty-eight judges (57%) completed the survey, providing a statistically reliable basis for evaluation.)³ The results were correlated with demographic data found in Martindale and Hubbell: *Law Directory* to form a profile of those who practice in Jefferson County courts. The results are referred to below as "matched data."

DEMOGRAPHIC PROFILE

Figure 1 summarizes the demographic data. In Jefferson County courts, the percentage of lawyers who go to court on a regular basis is somewhere between 31% and 35%.⁴ Of the 863 lawyers rated by at least three judges, 790 were listed in Martindale and Hubbell. The remainder of the analysis deals exclusively with these 790 attorneys.⁵

The data reveal a "middle-aged," predominately male, University of Louisville law school educated bar. The law school graduation years vividly illustrate the dramatic increase in law graduates in the 1970s, with 46.1% of the sample having graduated in that decade alone. The "firm type" and "firm size" categories demonstrate that the solo practitioner is still a major force in this legal community, representing 41% of litigators. Altogether solo practitioners and small firms (2-9 partners/associates) account for 80.8% of those who go to court. Despite major changes in law school enrollment patterns in recent years, law is still very much a male bastion. Somewhat more surprising is the complete dominance of graduates of the University of Louisville school of law (76%). While this is not necessarily true of the Jefferson County bar as a whole, it does indicate the influence a single law school can have on a community.

FIGURE 1*
Descriptive Statistics For Sample

1. Number of Attorneys in Jefferson County	2800+
Number evaluated by at least one judge	972
Number evaluated by at least three judges	863
Average number evaluated by each judge	345
Average number evaluated by three judges	313
Number of evaluated attorney listed in <u>Martindale & Hubbell</u>	790
2. Lawyers from Various Undergraduate Schools	
University of Louisville	249 (32%)
University of Kentucky	99 (13%)
Other Kentucky schools	65 (8%)
Out-of-state schools	377 (48%)
3. Lawyers from Various Law Schools	
University of Louisville	597 (76%)
University of Kentucky	67 (9%)
Chase (Northern Kentucky University)	4 (1%)
Indiana University	5 (1%)
Other law schools	122 (14%)
4. Age of Attorneys	
35 & under	130 (17%)
36 - 45	341 (43%)
46 - 60	209 (27%)
61 & above	107 (14%)
5. Gender of Attorneys	
Male	734 (93%)
Female	56 (7%)
6. Law School Graduation Years	
1949 or earlier	67 (9%)
1950 - 1959	116 (15%)
1960 - 1969	169 (21%)
1970 - 1979	364 (46%)
1980 - 1984	72 (9%)
7. Firm Type	
Solo	321 (41%)
Firm	377 (48%)
Corporation	36 (5%)
Public	54 (7%)
(missing data = 2)	
8. Firm Size	
Solo	321 (51%)
2 - 9	183 (29%)
10 - 19	64 (10%)
20+	56 (9%)
(missing data = 167)	

*Percentages may not equal 100% due to rounding.

The least expected finding was the large number of attorneys (377) who completed their undergraduate education out of state. The authors found no particular pattern of schools (i.e., private or public, religious or nonsectarian) and have no explanation for this finding.

ATTORNEY COMPETENCE

Despite some negative newspaper coverage at the time the data were released, the competency profile of attorneys appearing before Jefferson County courts was very encouraging. The following tables indicate ratings in four areas for attorneys evaluated by three or more judges.

If "average" written and oral performances meet Chief Justice Burger's standard of competency, then the data indicate a generally competent bar, although certainly not a perfect one. Oral argumentation rated somewhat lower than written work, perhaps indicating some need for continuing education in that area. The results on the negative end (Poor/Incompetent) do not differ markedly from what one would expect, since workforce incapacity estimates across various occupations are generally in the 5% to 7% range.

Table 1
Ratings of Attorneys

A. I would rate this attorney's knowledge of the law as:					
	N	Percent		N	Percent
Excellent	745	10.8	Poor	385	5.6
Very Good	2136	31.1	Incompetent	101	1.5
Average	3505	51.0	Missing Values	11	
N=6883					
B. I would rate this attorney's knowledge of the law as:					
Excellent	573	9.7	Poor	409	6.9
Very Good	1665	28.2	Incompetent	90	1.5
Average	3167	53.6	Missing Values	979	
N=6883					
C. I would rate this attorney's oral presentations and arguments as:					
Excellent	570	8.4	Poor	571	8.4
Very Good	1938	28.4	Incompetent	117	1.7
Average	3620	53.1	Missing Values	67	
N=6883					
D. My overall assessment of this attorney is:					
Excellent	619	9.0	Poor	498	7.3
Very Good	2041	29.7	Incompetent	123	1.8
Average	3585	52.1	Missing Values	17	
N=6883					

Table 2
Overall Evaluation by Attorney Age

	Attorney Age				
	35	36-45	46-60	>61	TOTAL
Excellent	3 2.3%	17 5.0%	34 16.3%	21 19.6%	75 9.5%
Above Average	33 25.4%	86 25.2%	70 33.5%	21 19.6%	210 26.7%
Average	59 45.4%	146 42.8%	63 30.1%	25 23.2%	293 37.2%
Below Average	19 14.6%	52 15.2%	15 7.2%	12 11.2%	98 12.5%
Poor	16 12.3%	40 11.7%	27 12.9%	28 26.2%	111 14.1%
TOTAL	130 16.5%	341 43.3%	209 26.6%	107 13.6%	787

Missing values (3)
gamma = -.120

Table 3
Overall Evaluation by Size of Firm

	Size of Firm				
	1	2-9	10-19	>20	TOTAL
Excellent	11 3.4%	25 13.75%	15 23.4%	20 35.7%	71 11.4%
Above Average	55 17.2%	65 35.5%	28 43.7%	21 37.5%	169 27.1%
Average	120 37.5%	70 38.3%	16 25.0%	11 19.6%	217 34.8%
Below Average	55 17.2%	17 9.3%	3 4.7%	2 3.6%	77 14.3%
Poor	79 24.7%	6 3.3%	2 3.1%	2 3.6%	89 14.3%
TOTAL	320	183	64	56	623

Missing values (167)
gamma = -.576

COMPARATIVE DATA

To provide comparable data and to eliminate small categories, the authors modified the ranking data. Missing data were eliminated and a summary ranking was developed by dividing the sum of the Likert responses (1=Excellent; 5=Incompetent) by the number of judges evaluating each attorney. For individual attorneys, then, a score of 1 would indicate uniform excellence; a score of 5, uniform incompetence. These summary ratings were placed in five categories. Excellent ratings are between 1 and 1.99. Above average ratings are 2 to 2.49. Average are between 2.50 and 2.99. Below average are between 3.0 and 3.49 and Poor (and Incompetent) are from 3.50 to 3.99. Using this competency breakdown, we examined evaluation by attorney age.

Ratings generally conform to our initial expectations: experience is a great teacher. In the assignment of "Poor" ratings, however, it is apparent that the judges are sensitive to a selective deterioration of performance in the "over 60" age group. This group had both the highest "Excellent" rating (19.6%) and the highest poor rating (26.2%).

Evaluation of attorneys by the size of the firms with which they are associated supports a common assumption that, for the most part, superior law students are hired by the larger firms. A strong relationship was found between the size of the firm and overall evaluations. The gamma of $-.576$ clearly indicates this strong relationship. These results are probably due to two professional dynamics--larger firms allow for specialization in practice, both in case type *and* in specialized litigators, both of which should contribute to a higher level of performance in the courtroom. Our presumption is that larger firms probably practice what social service agencies refer to as "creaming," attracting the best and most competent attorneys to their firms, so that these firms have a built-in competitive or evaluative advantage.

One of the more disturbing, although perhaps not overly surprising, revelations in the judges' evaluations was the relatively large difference in evaluation that gender seemed to precipitate. Table 4 clearly indicates a bias in the evaluations (a 10% gap in the Poor category), which is worrisome.⁶

Table 4 presents ratings of male and female attorneys. These data show that male attorneys are more highly evaluated than female attorneys. The question arises, of course, whether these figures measure attorney competence or judicial bias. Since, as we have seen above, competency ratings increase with years in the profession and size of firm, we believe at least two other factors are at work. The ratings reflect the very recent surge of females into the profession and the fact that many women who are leaders in their classes tend to move into the larger firms (and so are not adequately represented in our sample). We cannot rule out either judicial bias or differential competence, but alternate (and to us, more plausible) explanations are available.

We also compared judicial ratings based on the source of legal education. Louisville, Kentucky, is not unlike many states with either one major urban area (e.g., Iowa, Minnesota) or relatively dispersed metropolitan areas with only one major law school in the metropolitan area (Memphis, Cincinnati). One hypothesis is that lawyers from more prestigious schools will receive higher ratings. A second hypothesis is that students tend to leave the state to attend more prestigious law schools, and hence will rate higher in the survey.

Table 4
Overall Rating by Gender

Judge's Rating	Male	Female	TOTAL
Excellent	72 9.8%	4 7.1%	76 9.6%
Above Average	199 27.1%	11 19.6%	210 26.6%
Average	274 37.3%	20 35.7%	294 37.2%
Below Average	90 12.3%	9 14.3%	98 12.4%
Poor	99 13.5%	13 23.2%	112 14.2%
	734	56	790

Table 5
Ratings by Source of Legal
Education

Judges' Ratings	Univ. of L'ville	Univ. of KY	Out of State	TOTAL
Excellent	51 8.5%	8 11.9%	17 13.5%	76 9.6%
Above Average	149 25.0%	19 28.4%	42 33.3%	210 26.6%
Average	236 39.5%	27 40.3%	31 24.6%	294 37.2%
Below Average	77 12.9%	8 11.9%	13 10.3%	98 12.4%
Poor	84 14.1%	5 7.5%	23 18.3%	112 14.2%
TOTALS	597	67	126	790

gamma = -.110

Table 5 reveals a slight relationship between an overall rating and the source of legal education.⁷ Out-of-state educated attorneys have the same divergent set of evaluations as do the oldest age group, that is, relatively high occurrences in both the Excellent and Poor categories. The only other item of interest in this analysis is the relatively consistent poorer evaluations of locally educated attorneys compared to the remainder of attorneys.

One potential explanation of the difference between the University of Louisville and the University of Kentucky is that the latter is simply a "better" school and/or draws a more competent clientele. Another (which the authors find more plausible) is that since Louisville is the major metropolitan area in Kentucky with the largest, most prestigious, and most remunerative law firms, the University of Kentucky tends to send its "best and brightest" to Louisville. The University of Louisville, however, while also placing its best in these prestige firms, tends to retain its less accomplished students in Louisville, often in solo practice.

Finally, since the authors were using Martindale and Hubbell, we decided to compare their ratings of attorneys with those of the judges. Table 6 presents us with what seems to be the single strongest association with judges' evaluations. Martindale and Hubbell legal ratings are assigned by confidential evaluations submitted by practicing attorneys. The extremely strong gamma (.760) in Table 6 clearly indicates a strong positive relationship between the Martindale and Hubbell ratings and the judicial evaluations.

The correspondence between judicial and attorney evaluations should not come as a surprise (since judges are/were attorneys), and since they share the same generalized value system. Two questions might be raised by relying on this measure. First, a large number of attorneys are not rated by Martindale and Hubbell and the editors do not explain the reasons for this discrepancy. Attorneys who are *not* rated tend to be younger (median age of 39 versus a median age of 49), far more in solo practice (54.4% to 30.7%), and more proportionally female (14.2% versus 98%) than attorneys who were rated by Martindale and Hubbell. It is also apparent that the Martindale and Hubbell-rated attorneys are from a slightly different evaluative pool. Table 1 above rated 9.0% of the attorneys as being Excellent; Martindale and Hubbell rated 13.9% of the attorneys as Excellent. Table 1 also reveals 9.1% of the attorneys as being Poor/Incompetent; Martindale and Hubbell-rated attorneys, 6.3%. While the overall differences between the two groups are not dramatic, major differences do occur between rated and unrated attorneys.

Table 7 reveals a clear differentiation in judicial assessment between rated and unrated attorneys. It is apparent that when attorneys agree to rate other attorneys, the judges agree with their assessment. The differences between the two groups (the rated attorneys being older, more likely to be male, and in larger practices), support our initial hypothesis that experience and professional maturation are important components of attorney competence.

Table 6
Overall Assessment by Martin and Hubbell

Judges' Rating	M&H Legal Rating			Total
	A	B	C	
Excellent	48 42.5%	16 5.4%	0 0.0%	64 13.9%
Above Average	50 44.2%	100 33.7%	3 6.1%	153 33.3%
Average	13 11.5%	128 43.1%	24 49.0%	165 35.9%
Below Average	1 .9%	34 11.4%	13 26.5%	48 10.5%
Poor	1 .9%	19 6.4%	9 18.4%	29 6.3%
TOTALS	113	297	49	459
Missing values (331) gamma = .760				

Table 7
Differences between Rated and Unrated Attorneys
in Martindale and Hubbell

Judges' Ratings	Unrated	Rated	Total
Excellent	12 3.6%	64 13.9%	76 9.6%
Above Average	57 17.2%	153 33.7%	210 26.6%
Average	129 39.0%	165 35.9%	294 37.2%
Below Average	50 15.1%	48 10.5%	98 12.4%
Poor	83 25.1%	28 6.3%	112 14.2%
Totals	331	459	790

gamma = -.485

CONCLUSION

Our research provides one of the few empirical tests of Chief Justice Burger's contention that from one-third to one-half of trial lawyers are not qualified to render adequate presentation. Our data indicates that, at least in the opinions of the state court judges before whom they appear, Burger's allegation of widespread incompetence may have been overstated. Less than 2% of trial court attorneys were rated incompetent. The combined Poor/Incompetent rating was consistently less than 15%. If Chief Justice Burger and our judges define competence the same way, then the data suggest a solid, competent trial court bar with a sizable proportion of excellent attorneys and a less sizable minority of poor and incompetent attorneys. The survey supports the traditional wisdom that competence tends to increase with experience as a trial attorney and with firm size. Some differences exist between the graduates of the two major law schools and between male and female attorneys, although reasons for this are unclear.

A question remains as to how "typical" the findings in Louisville/Jefferson County, Kentucky, are, and how much one can extrapolate to the U.S. attorney population as a whole. There is, of course, no easy answer. The authors suspect that their findings typify most American cities, with some variations for larger cities and more rural counties. Only further research can test the validity of that conjecture.

NOTES

1. Chief Justice Warren Burger, "The Special Skills of Advocacy," 42 *Fordham Law Review*, 227 (1973).
2. A Likert Scale requires a forced choice rating. We utilized the following categories: (a) Excellent (b) Very Good (c) Average (d) Poor (e) Incompetent.
3. To increase the likelihood of candid appraisals by the judges, the authors guaranteed complete anonymity for individual judges and lawyers.
4. The difference depends on how one understands "regularly." Nine hundred seventy-two lawyers were evaluated by at least one judge. To protect against the personal bias of any particular judge, the authors chose to analyze only the ratings of lawyers evaluated by at least three judges. Being known to at least three judges may be some measure of "regular appearance."
5. The authors were unable to determine why 73 lawyers were not listed in *Martindale-Hubbell*. However, we had 91.5% of the attorneys who practice regularly in the courts and assumed no systematic bias is represented by those excluded from *Martindale-Hubbell*.
6. Our survey tends to corroborate other studies in this area. See William Eich, "Gender Bias in the Courtroom," 69 *Judicature*, No. 6, p. 339 ff. (1986).
7. There were not enough attorneys from the Samuel Chase Law School at Northern Kentucky University for inclusion as a separate category. With all due apologies, they are listed with the out-of-state attorneys.

8. To our knowledge, this is the first study to empirically test and validate the Martindale and Hubbell ratings. Therefore, contrary to some suggestions in the literature, the ratings are not just a measure of social acceptability. See Barlow Christensen, *Lawyers for People of Moderate Means*, Chicago, American Bar Foundation, 1970, p. 121.

Public Policy, Jails, and Criminal Justice
Policy Studies Journal

Individuals engaged in policy-relevant research on jails are invited to submit papers to Dr. Joel Thompson, Department of Political Science and Criminal Justice, Appalachian State University, Boone, North Carolina 28608 or to Dr. Larry Mays, Department of Criminal Justice, New Mexico State University, Las Cruces, New Mexico 88003.

ANNOUNCEMENT
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Selected Bibliography on Artificial Intelligence Applications and Expert Systems for Law

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Computer-aided legal retrieval is common today because it is fast, accurate and convenient. This artificial intelligence (AI) bibliography identifies research that is leading to the development of more powerful computer systems that not only retrieve law but also interpret it.

AI computer systems in law fall into three major areas. The oldest of these deals with legal drafting. This research area seeks to draft law for easier interpretation and for facilitating logical analysis. It produces legal statements that can be manipulated by computer in a manner that simulates legal reasoning. Tennessee was the first state to adopt normalized legal drafting in bills adopted in 1982, 1983 and 1984. Normalized drafting in Tennessee has four characteristics: (1) each legal proposition is stated in the form of a condition or a result; (2) standard syntax terms, such as "if," "if and only if," "and," "or," and "then" are used to connect legal propositions; (3) conditions and results are stated in regular, uniform sequence; and (4) a uniform outline format has been adopted (Gray 1985: 470-471).

The second major area proposes more sophisticated techniques for "intelligent" data retrieval than possible in existing legal document searches by attempting to address such problems as legal ambiguity. Present commercial systems, such as LEXIS and WESTLAW, rely on word indexes of data text. Categories, such as "First Amendment," "search and seizure," and "interstate commerce" are indexed. When users query the data base, the computer matches queries against its index to locate relevant text by using the text's location that is stored with the relevant index item. This method is limited because it can only trace words or combinations of words. For example, the search query "software and copyright" will only produce text containing those words. Law, however, is grounded in concepts rather than in words; thus the query in question would tell the user nothing about copyright protection for computer programs stored on microchips because they are regarded as hardware rather than software.

While expert users overcome such problems, building more intelligence into data bases would benefit other users. Researchers have suggested various techniques to overcome the deficiencies of existing data bases. One approach is to employ an expert with knowledge of the data base to set up the query. However, such experts are not generally available. A second approach involves allowing full natural language queries for searching data bases. However, the same problems would apply here as are found for searches based on word categories or combinations of words. Vector searching techniques are a third technique. Every document is considered as a vector of the elements within the document consisting of different word combinations the document contains and the frequency with which these elements occur. Vector searching considers the pattern of analysis of the entire document rather than its constituent words. Here, we can retrieve documents that are most important to the search query. Finally, retrieval based on citation criteria has been proposed. Although Shepherdizing is among the most accepted search techniques, citations are neither classified quantitatively nor supplied for statutes and constitutions. Under this proposal, searches would be organized by citation age, citation position within the hierarchy, citation applicability to jurisdiction, and whether

the citation is applied, followed, distinguished or overruled. Such techniques are still being evaluated in pilot projects.

The third area applies AI to new computer systems known as "expert" or "knowledge-based" systems. These systems represent and apply factual and legal knowledge to solve legal problems by making available to a wider audience the knowledge of domain experts. Such problems include case prediction, tax strategies for clients, assault and battery, product liability determinations, and contract law. Tax programs determine when stock redemptions are taxable, tax consequence of gifts and prizes, and constructive ownership of stocks owned by others. A program for contract law deals with the offer and acceptance problem. Another system helps attorneys choose between Chapter 7 and Chapter 13 bankruptcies for their clients.

All three areas share the fundamental problem of finding appropriate logical representation for law that leads to productive applications. These systems use and explain extensions of traditional deontic logic. While researchers have adapted different systems of logic for representing law in software, all these approaches yield significant results.

Expert systems have yielded spectacular practical results. Noteworthy are Peterson and Waterman's product liability system, McCarty's TAXMAN project, and Meldman's work on assault and battery. Peterson and Waterman developed a system with a sizable set of rules that evaluates product liability claims. Their system is based on a two-year study of how lawyers and adjusters evaluate such claims. The system is noteworthy in that it models legal decisionmaking in that area. McCarty's TAXMAN analyzes the tax consequences of given corporate transactions. The model simulates legal reasoning in the corporate tax area and is based on case and statute law. Meldman's system supplies guiding legal doctrine and authoritative case citations in response to user input facts in the area of assault and battery. However, theoretical approaches, such as Laymen Allen's, offer insights that will undoubtedly be important in designing future intelligent retrieval systems for law. Allen has developed new representations for legal logic since the 1950s. His work underlies recent advances in computer-aided statutory drafting.

Recent academic interest in legal AI applications has been influenced by several successful commercial applications. One national accounting firm has introduced an expert system incorporating the tax expertise of its 35 senior partners for use in all its offices. Computer drafting is used for statutes in at least one state. Programs calculating legal liability for claims are used by insurance adjusters and by lawyers in several large firms. The commercial success of these ventures demonstrates that the knowledge of experts can be made available to professionals in many areas. However, pure research by nature depends only upon the expertise of the investigator. Does AI offer practitioners more promise than it offers researchers? Political scientists would benefit from AI in their research because applications can expand the theoretical horizons of a discipline, giving it greater scope and significance. In addition, theoretical research would become available to a wider audience.

AI models can simulate legal reasoning in many areas of law, often clarifying the structure of the law and its application to given sets of facts. In addition, theoretical insight can be gained by studying the operational limitations of computer models. Whether AI will serve only as a research tool or whether it will also yield new insight into the study of judicial systems remains an open question.

The following bibliography identifies research in the three major AI areas--legal drafting, intelligent legal retrieval, and legal expert systems. The category, programming computer software in law, describes underlying techniques common to most AI legal applications. Other categories include overview, introduction and background, possibility theory and fuzzy logic (mathematical axioms required by some expert systems to manipulate uncertain events), programming languages, seminal expert systems in other fields, and theoretical perspectives. The listing of journals and introductory texts may be of help to those new to AI.

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JOURNALS AND NEWSLETTERS

AI Expert, P.O. Box 10952, Palo Alto, CA 94303-9908. Monthly. \$27/year. (Emphasizes PC applications.)

AI Magazine. American Association for Artificial Intelligence, 445 Burgess Dr., Menlo Park, CA 94025-3496. Quarterly with \$25 membership fee.

Applied Artificial Intelligence Journal. Hemisphere Publishing Corp., 79 Madison Ave., New York, NY 10016. Quarterly. \$55/year.

Expert Systems. Learned Information Inc., 143 Old Marlton Pike, Medford, NJ 08055-8707. 609-654-6266. Quarterly. \$79/year, \$49 for personal subscriptions.

Expert Systems Strategies. Cahners Publishing Co. Inc., 275 Washington St., Newton, MA 02158. 617-964-3030. Monthly. \$247/year.

SECTION ANNOUNCEMENTS

APPOINTMENT OF NOMINATING COMMITTEE

At this year's APSA meeting, the Section will select a chair-elect to serve in 1987-88 and three members of the executive committee to serve in 1987-89. The following persons have agreed to serve as the 1987 Nominating Committee:

Joel Grossman (chair), Department of Political Science, University of Wisconsin, Madison, Wisconsin 53706

Lucius Barker, Department of Political Science, Washington University, St. Louis, Missouri 63130

Beverly Cook, Department of Political Science, University of Wisconsin, Milwaukee, Wisconsin 53201

Robert Dudley, Department of Public Affairs, George Mason University, Fairfax, Virginia 22030

Roger Handberg, Department of Political Science, University of Central Florida, Orlando, Florida 32816

Please send the names of any suggested nominees to Joel Grossman or another committee member by April 7.

1987 APSA MEETING PLANS

At the 1987 APSA meeting in Chicago, the Section will conduct a business meeting at 5:30 p.m. Sept. 3 and an executive committee meeting at 5:30 p.m. Sept. 4. The Section will also sponsor the following panels and roundtables:

Roundtable on Pre-Law Curriculum and Advising

An Overview of Contemporary Judicial Research

Change over Time in Supreme Court Policy

Supreme Court Decision Making

State Judicial Processes

Equality and the Law

Constitutionalism and Constitutional Ideas in the Current Era

Judicial Review

Constitutional Interpretation: The Warren, Burger and Rehnquist Eras

Participants for these panels have been selected and fuller information on the panels will be published in the summer issue of this Newsletter.

CONFERENCE INFORMATION

SOUTHWESTERN POLITICAL SCIENCE ASSOCIATION (1987)

The following papers will be presented at the annual meeting of the Southwestern Political Science Association March 18-21 in Dallas.

FIRST AMENDMENT ISSUES IN THE 1980s

"The First Amendment, National Security and Information Control in the Reagan Administration," U. Lynn Jones, North Texas State University

"Church-State, the Reagan Administration, and the Supreme Court," Rodney A. Grunes, Centenary College of Louisiana

"Court Responses to Religious Challenges Concerning Humanistic Public Education: The Free Exercise/Establishment Debate Continues," Kenneth P. Nuger, University of South Alabama

LITIGANTS BEFORE THE COURT

"Administrative Agencies before the Supreme Court," Mitzi Mahoney, Emory University

"Congress v. the President in Court: Congressional Legal Offices, the Defense of the Constitutionality of Statutes and the Separation of Powers," Eva R. Rubin, North Carolina State University

"The Study of Interest Group Litigation: A Time for Reappraisal and Consolidation," Joseph P. Kobylkan and Lee Epstein, Southern Methodist University; and Joseph Stewart, West Virginia University

FRAMING THE CONSTITUTION

"Ideas of Legal Change: Precursors to the Constitutional Amending Process," John R. Vile, McNeese State University

"A Retrospective View of the Fourth Amendment, The Origin and Development of 54 Words," Priscilla H. Machado, University of Texas at Austin

"James Madison's Blueprint for the Constitution: An Examination of the Constitution in Light of Madison's 'Vices of the Political System of the United States,'" John S. Vanderoef, Florida State University, and William E. Brigman, University of Houston-Downtown

CHOOSING JUDGES

"Nomination and Confirmation Process," Joseph Menez, Ball State University

"Explaining Adoption of Merit Selection in the States, 1950-1980: A Multivariate

Test," Judith Haydel, University of Southwestern Louisiana

"Will Missouri Abandon the Missouri Plan? A Case Study of Problems of Judicial Selection and Politics," Kenyon Bunch, North Texas State University, and Richard J. Hardy, University of Missouri-Columbia

POLITICAL QUESTIONS BEFORE THE COURTS

"The Courts and the Changing Nature and Perceptions of the 'Political Questions Doctrine,'" Steve J. Mazurana, University of Northern Colorado

"The Supreme Court as Interpreter: Resolving the Article V Controversy," Donna Childers, Georgia Southern University

"Presidential Power and Political Questions," Alan I. Bigel, University of Wisconsin-LaCrosse

A MULTI-DIMENSIONAL ASSESSMENT OF THE U.S. CONSTITUTION

"The Meese-Brennan Debate," John Maltese, Johns Hopkins University

"The 1937 Constitutional Revolution," Howard Gillman, Pepperdine University

THE PRESIDENT, CONGRESS AND THE CONSTITUTION

"The Power to Make War: The Court and the Presidency," Helen G. Brudner, Fairleigh Dickinson University

"The President and Congress in Foreign Affairs--A Balance Sheet," John L. Carmichael Jr., University of Alabama at Birmingham

EXTRA-LEGAL INFLUENCES IN JUDICIAL POLICY-MAKING

"State Judicial Policymaking and the Public Trust Doctrine in Environmental Law: Determinants of Judicial Actions and Restraints," James Lawler, Oklahoma State University

"Expectation and Anticipatory Experience among Reagan U.S. District Judges," Mary M. Smith, St. Joseph College (Indiana)

"Contextual and Home-State Appointment Effects on President Reagan's Appointees to the Federal District Courts," C.K. Rowland, University of Kansas, and Robert Carp, University of Houston

"Determinants of Capital Sentencing in Louisiana, 1979-1984," Margaret Klemm, Saginaw Valley State College

SUPREME COURT JUSTICES

"Constitutional Reassessment: The Unheralded Role of Justice Tom C. Clark," Priscilla H. Machado and Mary P. Beeman, University of Texas at Austin

"Justice Black at 100: Enigma Variations," R. Christopher Perry, Indiana University

"Justice John Harlan II: The Conservative Conscience of an Activist Court," John Moeller, Luther College

RESEARCH COMMITTEE FOR COMPARATIVE JUDICIAL RESEARCH (1986)

The following papers were presented at the interim meeting of the Research Committee for Comparative Judicial Research at the Center for the Study of Law and Society at the University of California, Berkeley, on Dec. 14-15.

THE CANADIAN SUPREME COURT: A LESS "QUIET COURT IN AN UNQUIET COUNTRY"

"The Politicization of the Supreme Court of Canada," F.L. (Ted) Morton, University of Calgary

"Patterns of Decision Making in the Supreme Court of Canada, 1949-1985," Panu Sittiwong and C. Neal Tate, North Texas State University

"Diagnostic Adjudication in Appellate Courts: The Supreme Court of Canada and the Charter of Rights," Carl Baar, Brock University, and Ellen Baar, York University

COURT DEMAND, PROCEDURE AND JURIES: COMPARATIVE APPROACHES

"Social Development and Demands on the Courts: The Case of Spain Revisited," Micheal W. Giles and Thomas Lancaster, Emory University

"Islamic Criminal Procedure: The Rights of the Accused," Matthew Lippman and Sean McConville, University of Illinois at Chicago

"Participation, Rationality, and the Development of the Democratic Jury," Del Dickson, University of Southern California

CITIZENSHIP AND DELINQUENCY IN COMPARATIVE PERSPECTIVE

"Problems in Citizenship Law in Israel and the United States," Martin Edelman, State University of New York at Albany

"The Judicial Response to Delinquency: Contrasting France and North America," Jim Hackler, University of Alberta

"The Juridical Foundations of Delinquency and Citizenship in America," Thomas Dalton, California Polytechnic University, San Luis Obispo

NATIONAL COURTS: INSTITUTIONAL ROLES

"The Federal Constitutional Court of West Germany as a Political Institution," Donald Kommers, Notre Dame University

"Emerging Trends in the Political Role of Courts in Modern Democracies," Kenneth Holland, University of Vermont

"The Changing Institutional Role of the Philippine Supreme Court, 1961-1981," C. Neal Tate, North Texas State University

NATIONAL SUPREME COURTS: ELITE AND JUSTICE BEHAVIORS

"Linear Models of U.S. Supreme Court Justice Behavior, 1916-1985," Roger Handberg, University of Central Florida

"Law Student and Lawyer Evaluations of the Indian Supreme Court," George Gadbois, University of Kentucky, and Mool Chand Sharma, Delhi University

"Judicial Administration in Japan: Judges Who Judge vs. Judges Who Do Not," Takeo Hayakawa, Occidental College (visiting)

CONCEPTS IN COMPARATIVE JUDICIAL RESEARCH

"The Components of a Comprehensive Format for Cross National Investigation of Judiciaries and Judicial and Legal Elites: From Conceptual Framework to the Nitty-Gritty of Coding Formats," John R. Schmidhauser, University of Southern California

"The Concept of Legal Culture," Sam Krislov, University of Minnesota

"Thinking about Equality," Donald W. Jackson, Texas Christian University

WESTERN POLITICAL SCIENCE ASSOCIATION (1987)

The following papers will be presented at the annual meeting of the Western Political Science Association, March 26-28, in Anaheim, Calif.

CONTEMPORARY CONSTITUTIONAL CONTROVERSIES

"Balancing and the Expectation of Privacy," Donald Crowley, University of Idaho at Moscow, and Jeffrey Johnson, Eastern Oregon State College

"Eating the Fruit of the Poisonous Tree: The Burger-Rehnquist Courts and the Exclusionary Rule," Kenneth Betsalel, Southwest Missouri State

"The Changing Nature and Perceptions of 'Political Question' before the Federal Courts," Steven J. Mazurana, University of Northern Colorado

"Foreign Policy and the Separation of Powers under the Constitution," David Adler, Idaho State University

THE REHNQUIST COURT: DIVISIONS AND DEVELOPMENTS

"Justice Brennan and Strict Scrutiny: A Liberal's Approach to Balancing," Edward V. Heck, San Diego University

"Antonin Scalia and the Limits of Judicial Power," Richard A. Brisbin Jr., West Virginia University

"Constitutional Creativity or Trivialization? The Gathering Judicial Storm," Carwin C. Williams, Brigham Young University

"Justice Stevens and the Fourth Amendment," Paula Arledge, Idaho State University

CAPITALISM AND THE RULE OF LAW

"The Right to Food: Foundation of the Law Protecting the Private Ownership of Property," William M. Alexander, California Polytechnic State University

"Capitalism and American Constitutional Law in the Context of Weberian and World Economic Systems Conceptual Frameworks," John R. Schmidhauser, University of Southern California

"Norm Articulation, Interest Balancing and Subsystem Conformity: The Supreme Court and the Contract Clause," Alpert P. Melone, Southern Illinois University

JUDICIAL REVIEW IN COMPARATIVE PERSPECTIVE

"Judicial Review and Developing Countries: A Comparative Study of the Ivory Coast and Botswana," Anthony R. Brunello, Eckerd College

"The Constitutional Council and the Judicialization of Parliament in France," Alec Stone, University of Washington

STATE COURTS: ISSUES AND IMPACTS

"The Gender and Race Factors in Judicial Elections," Charles H. Sheldon and Nicholas P. Lovrich Jr., Washington State University, and Eric Wasman, Assistant Attorney General, State of Oregon

"Revolting against Politicians in Robes: The 1986 Elections to Confirm Rose Bird and the California Supreme Court Justices," Roy E. Young, San Jose State University

"Voting Behavior in Judicial Elections," Ken Griffin and Michael Horan, University of Wyoming

THE POLITICS OF FEDERAL COURTS

"A Comprehensive View of the 'Fairness' of Warren Burger's (and William Brennan's) Opinion Assignments, 1976-1984," R. Christopher Perry, Indiana State University

"Judge Harry Claiborne and the Federal Impeachment Process," Eleanore Bushnell, University of Nevada, Reno

"Explaining Retirement from the U.S. Supreme Court," Peverill Squire, University of Iowa

MIDWEST POLITICAL SCIENCE ASSOCIATION (1987)

The following papers will be delivered at the annual meeting of the Midwest Political Science Association, April 8-11, in Chicago.

INTEREST GROUPS, POLITICAL PARTIES AND THE COURTS

"Interest Groups and Decisions 'On the Merits' in the United States Supreme Court," Gregory A. Caldeira, Ohio State University, and John R. Wright, University of Iowa and California Institute of Technology

"Political Parties in the Judicial Process," Lee Epstein, Southern Methodist University, and Charles D. Hadley, University of New Orleans

"Washington Lobby Groups and Public Law Litigation," Patrick J. Bruer, University of North Carolina

JUDICIAL POLICY DEVELOPMENT AND INNOVATION

"Diffusion of a Judicial Innovation among the American States: The Missouri Model," Peter Bergerson, Southeast Missouri State University, and Steven Puro, St. Louis University

"The Supreme Court's invalidation of State Statutes and Constitutional Provisions, 1837-1964," John Gates, University of New Orleans

"Area of Law and the Communication of Precedent among State Supreme Courts," Peter Harris, Seattle Department of Community Development, and Jim Gyldenrand, University of Washington

"Judicial Decision Making and Theories of Innovation," Garry-Eoghin Jennings, University of Maryland

THE "SEPARATIONISTS" VS. "ACCOMMODATIONISTS" ISSUE: DOCTRINE, POLICY, COMPLIANCE

"Chief Justice Burger's Leadership in Church-State Cases," Joseph F. Kobylka, Southern Methodist University

"Having it Both Ways: The Constitutional Agenda of the New Religious Right," Bette Novit Evans, Creighton University

"Compliance with *Wallace v. Jaffree* in Mobile County Schools," Kenneth Nuger, University of South Alabama

"The Founding Fathers and the Scope of Religious Liberty," Ellis M. West, University of Richmond

THEORIES OF LAW AND CONSTITUTIONAL INTERPRETATION

"Constitutional Interpretation and Hermeneutics," Gregory Leyh, Illinois Wesleyan University

"Figuratives and Images of Power," Ira Strauber, Grinnell College

"Conservative Jurists and the Problem of Opportunism," Richard Brisbin, West Virginia University

"Warren, Burger & Rehnquist: From Community to Conflict to Chaos," Stephen A. Graham, Indiana Central University

STAFFING THE COURTS: RECRUITMENT, RETIREMENT, DISCIPLINE

"Recruitment of State Supreme Court Judges," Craig F. Emmert and Henry R. Glick, Florida State University

"Who are the U.S. Magistrates?" Christopher E. Smith, University of Connecticut

"Judicial Retirements: Exploring Decisions to Leave the Federal Bench," Charles A. Johnson, Texas A&M University

"Judicial Conduct Organizations..." Jeffrey Shaman, American Judicature Society

EMPIRICAL STUDIES OF JUDICIAL BEHAVIOR

"A Rational Choice Approach to Consensus on State Supreme Courts," Melinda Gann Hall, Colorado State University, and Paul Brace, New York University

"Reagan and Carter Trial Judges: Labor and Economic Regulation Cases," Robert A. Carp, University of Houston, and Ronald Stidham, Lamar University

"Technology and Communication in a Federal Court: The Ninth Circuit," Stephen L. Wasby, State University of New York at Albany

"Federal Appeals Judges and Presidential Power Cases," Craig R. Ducat, Northern Illinois University, and Robert L. Dudley, George Mason University

TOLERANCE IN AMERICAN LAW AND POLITICS

- "Tolerance Belief Systems: Complexity and Restraint," James L. Gibson and James P. Wenzel, University of Houston
- "Civil Liberties and the American People: Towards an Understanding of a Lack of Understanding," Gerald Houseman, Indiana/Purdue University
- "The Policy Implications of Political Intolerance in Britain and the United States," David Barnum, DePaul University, and John L. Sullivan, University of Minnesota

POLICY ISSUES IN CIVIL JUSTICE

- "Causality and Proof in Non-Traditional Tort Cases," Howard Ball, University of Utah
- "Civil Jury Verdicts and the Crisis in Civil Liability," Stephen L. Daniels, American Bar Foundation
- "Civil Litigation Trends in State Courts: The Propensity to Litigate," Robert Roper, National Center for State Courts

SUPREME COURT DECISION MAKING

- "Supreme Court Abortion Policy: Selection and Development of a Social Policy," William P. McLauchlan, Purdue University
- "Majority Coalitions on the Burger Court: The Dominance of the Moderates," George Pruet Jr., University of Akron
- "Case Characteristics v. Judicial Attributes: A Comparison of Statutory and Constitutional Issues," Jilda Aliotta, Miami University
- "Judicial Behavior in Oral Argument: A Psycholinguistic Analysis," James Schubert, Alfred University

JUDICIAL ROLES AND PUBLIC POLICY

- "The Politics of Inequality: Impact of Context and Public Policy Alternatives on Sentencing Outcomes," Margaret E. Gilkison, Louisiana State University
- "Redefining the Power of the Federal Judiciary: The Impact of Court-Ordered Prison Reform on State Expenditures for corrections," William A. Taggart, New Mexico State University
- "Law at the Margin," Jack Tweedie, State University of New York at Binghamton

RESEARCH COMMITTEE ON COMPARATIVE JUDICIAL STUDIES (1987)

The 1987 interim meeting of the Research Committee on Comparative Judicial Studies of the International Political Science Association will be at Erasmus University

at Rotterdam. It will be hosted and organized locally by Dr. Peter van Koppen and Dr. Jan ten Kate of the Erasmus faculty of law. Dates for the meeting are Aug. 10-12, with the possibility of extension to Aug. 13.

The scholarly program for this interim meeting will be organized in two sections. One section will be open to proposals or panels from any researcher addressing the Research Committee's central concerns: the political causes, consequences, and normative implications of law and legal systems, courts, and judicial recruitment, politics, administration, and behavior.

The second section of the scholarly program will be organized around a theme. Although several themes are under consideration, a final selection of the conference theme has not been made. Until that final selection is made and announced to affiliates of the research committee, the convenor (who will organize the scholarly panels) welcomes theme suggestions.

Proposals for papers for the open section of the meeting, suggestions for themes and offers to participate in the interim meeting as a panel chairperson and/or commentator should be sent to the research committee convenor at the following address:

C. Neal Tate
Department of Political Science
North Texas State University
Box 5338
Denton, TX 76203-5338
U.S.A.

To guarantee full consideration, the convenor must receive proposals and suggestions by the following deadlines:

Paper proposals for the "Open" section of the program:
March 15.

Offers to serve as panel chairperson and/or
commentator: March 31.

The convenor will make every effort to consider and to accommodate, if appropriate, proposals and offers received after these deadlines, but will proceed first to organize the program using information received before the deadlines. This should give those scholars whose proposals are accepted the maximum amount of time to arrange their travel funding and other essential logistical matters.

Those desiring to participate in the interim meeting should remember that the research committee has no funds available to support travel by its program participants. Thus, finding travel support is the responsibility of the participant, and prospective program participants should not assume the committee will be able to provide *any* monetary assistance. On the other hand, the committee does wish to be of whatever assistance it can in helping participants secure funding. The convenor will be pleased to see to it that participants get the necessary official letters of invitation or other certifications to satisfy funding authorities. Finally, the convenor is seeking funding support for travel and other interim meeting expenses from plausible foundations, but has no way of knowing at this time whether those efforts will meet with any success.

Information about lodging and other local arrangements in Rotterdam will be provided later, after the program has taken its initial form. Unlike some universities, Erasmus does not have student housing that can be made available for conferences during the summer. But Rotterdam is, of course, a cosmopolitan city and offers a full range of hotels and restaurants appropriate for meeting attendees.

As a final note, the Rotterdam location should be especially interesting to research committee because of the proximity of the major international courts and related judicial bodies.

NORTHEASTERN POLITICAL SCIENCE ASSOCIATION (1987)

The Northeastern Political Science Association annual meeting for 1987 will be in November in Philadelphia. Proposals for panels and for papers should be sent to Professor John White, Department of Political Science, SUNY at Potsdam, Potsdam, NY 13676 (phone: 315-265-2414) or to Professor Carol Holden, Department of Political Science, Jersey City State College, Jersey City, NJ 07305 (phone: 201-547-3231).

SOUTHERN POLITICAL SCIENCE ASSOCIATION (1987)

The Southern Political Science Association annual meeting for 1987 will be Nov. 5-7 in Charlotte, N.C. Proposals for panels and papers should be sent to Professor Leslie Goldstein, Department of Political Science, University of Delaware, Newark, Delaware 19211.

JOURNALS

Charles Lamb, Associate Editor

JUDICATURE (Volume 69, 1985)

✓ "Justice Sandra Day O'Connor and the 'Freshman Effect,'" John M. Scheb II and Lee W. Ailshie	9.
"Video in the Misdemeanor Court: The South Florida Experience," W. Clinton Terry III and Ray Surette	13.
"State Trial Court Appointments: Does the Governor Make a Difference?" Philip L. Dubois	20.
"Local Court Administration: Findings from a Survey of Appointed Managers," G. Larry Mays and William A. Taggart	29.
"Practicing Attorneys and Judicial Retention Decisions: Judging the Judges in Wyoming," Kenyon N. Griffin and Margaret Maier Murdock	36.
"Funding the Federal Judiciary: The Congressional Connection," Thomas G. Walker and Deborah J. Barrow	43.
"Participation by Judges in Civic and Charitable Activities: What are the Limits?" Steven Lubet	68.
"Personality, Stress and Health in American Judges," C. Robert Showalter and Daniel A. Martell	82.
"Becoming a Judge: Problems with Leaving a Law Practice," Candice Goldstein	88.
"Penalizing Judges Who Appeal Disciplinary Sanctions: The Unconstitutionality of 'Upping the Ante,'" Daniel J. Brooks	95.
✓ "Judge Harold R. Medina: The 'Freshman' Years," J. Woodford Howard Jr.	126.
✓ "On Becoming a Judge: Socialization to the Judicial Role," panel discussion	139.
"Innovative Appellate Court Processing: New Hampshire's Experience with Summary Affirmance," Charles G. Douglas III	147.
"Civil Caseloads: The Impact of the Economy and Trial Judgeship Increases," Thomas B. Marvell	153.
✓ "If a Supreme Court Vacancy Occurs, Will the Senate Confirm a Reagan Nominee?" Jeffrey A. Segal and Harold J. Spaeth	186.
"Collaboration between the Judiciary and Victim-Witness Assistance Programs," Peter Finn	192.

"When Good People Do Good Things: The Ethical Dimension of Judicial Involvement in Victim Assistance Programs," Steven Lubet	199.
"Victim Offender Mediation and Judicial Leadership," Mark Umbreit	202.
"Planning for Unified Court Budgeting," Ronald Stout	205.
"Law, Morals and Justice Holms," Frederic R. Kellogg	214.
"Judicial Activism and the Concept of Original Intent," Robert W. Bennett	219.
"State Administrative Law Adjudication: Idaho's Private Pool Approach," Richard B. Doyle	224.
"The Question of Independence Continues: Administrative Law Judges within the Social Security Administration," Donna Price Cofer	228.
"Law Clerks: Their Roles and Relationships with Their Judges," David Crump	236.
"Alternative Dispute Resolution and the Courts: An Introduction," James J. Alfini	252.
✓ "The Emergence of the Judge as a Mediator in Civil Cases," Marc Galanter	256
✓ "Arbitration vs. Mediation--Explaining the Differences," John W. Cooley	263
"What We Know and Don't Know about Court-Administered Arbitration," Deborah R. Hensler	270.
"Early Neutral Evaluation: An Experimental Effort to Expedite Dispute Resolution," Wayne D. Brazil, Michael A. Kahn, Jeffrey P. Newman and Judith Z. Gold	279.
"The Summary Jury Trial--An Alternative Method of Resolving Disputes," Thomas D. Lambros	286.
"ADR Problems and Prospects: Looking to the Future," Stephen B. Goldberg, Eric D. Green and Frank E.A. Sander	291.
"Review Essay: Dispute Resolution: The Periphery becomes the Core," Carrie Menkel-Meadow	300.
"Privatization of Corrections: Defining the Issues," Ira P. Robbins	324
"Finding a Role for the Civil Jury in Modern Litigation," Roger W. Kirst	332
"Gender Bias in the Courtroom: Some Participants are More Equal than Others," William Eich	339.
✓ "Criminal Justice in the People's Republic of China: A System of Contradictions," George T. Felkenes	344.
✓ "Magistrates and the Work of Federal Courts: A New Division of Labor," Carroll Seron	353.

✓ "The Influence of the Solicitor General upon Supreme Court Disposition of Federal Circuit Court Decisions: A Closer Look at the Ninth Circuit Record," Gerald F. Uelman 360.

"The Impact of Jurisdiction Amounts on Trial Court Caseloads," Thomas B. Marvell 367.

THE JUSTICE SYSTEM JOURNAL (Volume 10, 1985)

"Judicial Selection and Trial Judge-Journalist Interaction in Two States," Robert E. Drechsel 6.

"Caseflow Management Conflict in Non-Appellate State Courts: Some Findings and Implications for Court Administration," William A. Taggart, G. Larry Mays and David Hamilton 19.

"Time and Process in Juvenile Court," Anne Rankin Mahoney 37.

"Of Dollars and Justice: The Appropriations Process of the Federal Judiciary," Jonathan P. Nase 56.

* "Underdogs, Upperdogs and the Use of the Amicus Brief: Trends and Explanations," Robert C. Bradley and Paul Gardner 78.

"Rethinking the Consequences of State Financing," John K. Hudzik 135.

"Costs and Quality of Indigent Defense: Ad Hoc vs. Coordinated Assignment of the Private Bar within a Mixed System," Pauline Houlden and Steven Balkin 159.

"Published Opinions versus Summary Affirmations: Criminal Appeals in Louisiana," David W. Neubauer 173.

"The Impact of Eligibility Rules on Female and Male Crime Victims in a State Compensation Program," Mary Ann Steger 193.

"Understanding Leadership in State Trial Courts: A Review Essay," Mark A. Zaffarano 229.

* "Docket Control as an Influence on Judicial Voting," Melinda Gann Hall 243

LAW & POLICY (Volume 8, 1986)

"Mediator Settlement Strategies," Susan S. Silbey and Sally E. Merry 7

"Elements of the Defense Attorney's Craft: An Adaptive Expectations Model of the Preliminary Hearing Decision," Roy B. Flemming 33.

"Assessing the Consequences of Corporate Discretion on Regulatory Compliance: The Case of Motor Vehicle Safety in Canada," Richard J. Tobin and Roy Fitzgerald 59.

✓ "Alternative Models of Policy Compliance by Unions with Civil Rights Legislation," Michele Hoyman	77.
✓ "The Dilemmas of Legal Mobilization: Ideologies and Strategies of Mental Patient Liberation Groups," Neal Milner	105.
"Gun Availability and Robbery Rates: A Panel Study of Large U.S. Cities, 1974-1978," David McDowall	135.
"The Politics of Legal Representation: The Influence of Local Politics on the Behavior of Poverty Lawyers," Mark Kessler	149.
"Means Discrimination: An Investigation into the Ideology of Constitutional Equality," John Brigham	169.
"Compensating Victims for Harms Caused by Pollution and Other Hazardous Substances: A Comparison of American and Japanese Policies," Alfred A. Marcus	189.
"Free Trade: Problematic Theory and Anachronistic Faith," Lee A. Albert	213.
"In Search of Legitimacy: Toward an Empirical Analysis," Craig A. McEwen and Richard J. Maiman	257.
✓ "The Role of Special Master in Institutional Reform Litigation: A Case Study," Murray Levine	275.
"Galanter Symposium Introduction," Robert M. Hayden	323.
"Affirmative Action in India: The Judiciary and Social Change," George H. Gadbois Jr.	329.
"Marc Galanter's Competing Equalities," Rajeev Dhavan	365.
"Indian 'Compensatory Discrimination' and American 'Affirmative Action': Some Parallels--A Review of Galanter's 'Competing Equalities,'" Stephen L. Wasby	379.
"The Juvenile Justice and Delinquency Prevention Act: Federal Leadership in State Reform," Gordon A. Raley and John E. Dean	397.
"Reforming Justice by Geography: Organizational Responses to the Problem of Juvenile Crime," Susan Guarino Ghezzi and Lee Kimball	419.
"Juvenile Justice in Florida: A Legal and Empirical Analysis," Kathleen M. Heide and Benjamin Wesley Pardue	437.
"Juvenile Justice Reform in New York State: The Juvenile Offender Law," Simon I. Singer and Charles Patrick Ewing	463.
"The Justice Model in the Juvenile Justice System: Washington State's Experience," Thomas C. Castellano	479.
"The Politics of Policy: Deinstitutionalization in Massachusetts 1970- 1985,"	

Bruce Bullington, James Sprowls, Daniel Katkin and Harvey Lowell	507
<i>LAW AND SOCIETY</i> (Volume 19, 1985)	
"The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law," Alan Hunt	11.
"The Place of Law in the Marxian Structure-Superstructure Archetype," Alan Stone	39.
"The Foundations of Parole in California," Sheldon L. Messinger, John E. Berecochea, David Rauma and Richard A. Berk	69.
"The Juvenile Court and Social Welfare: Dynamics of Progressive Reform," John R. Sutton	107.
"The Catalytic Effect of a Federal Court Decision on a State Legislature," Kathryn Moss	147.
"The Road Not Taken: The Elusive Path to Criminal Prosecution for White-Collar Offenders," Susan P. Shapiro	179.
"Bartering Rationality in Regulation," Gerd Winter	219.
"The Impact of Fee Arrangement on Lawyer Effort," Herbert M. Kritzer, William L.F. Felstiner, Austin Sarat and David M. Trubek	251.
"A Political Analysis of the Philippines' Katarungang Pambarangay System of Informal Justice through Mediation," G. Sidney Silliman	279.
"Community Justice, Capitalist Society, and Human Agency: The Dialectics of Collective Law in the Cooperative," Stuart Henry	303.
"Courts and Public Schools: Educational Litigation in Historical Perspective," David Tyack and Aaron Benavot	339.
"Continuity and Change in Patterns of Case Handling: A Case Study of Two Rural Counties," Stephen Daniels	381.
"A State Court's Clientele: Exploring the Strategy of Trial Litigation," Wayne V. McIntosh	421.
"Ecology and Culture in the Communication of Precedent among State Supreme Courts, 1870-1970," Peter Harris	449.
"The Origin of Insanity as a Special Verdict: The Trial for Treason of James Hadfield (1800)," Richard Moran	487.
"The Legal Malaise; or, Justice Observed," Marc Galanter	537.
"Judicial Reform and Prisoner Control: The Impact of <i>Ruiz v. Estelle</i> on a Texas Penitentiary," James W. Marquart and Ben M. Crouch	557.

"Race and Prosecutorial Discretion in Homicide Cases," Michael L. Radelet and Glenn L. Pierce	587.
"Rule-Centrism versus Legal Creativity: The Skewing of Legal Ideology through Language," Bernard Weissbourd and Elizabeth Mertz	623.
"Litigant Satisfaction versus Legal Adequacy in Small Claims Court Narratives," William M. O'Barr and John M. Conley	661.
<i>LAW AND SOCIETY REVIEW (Volume 20, 1986)</i>	
"The Transformation of the American Legal Profession," Richard L. Abel	7
"American Lawyers in the 1980s: A Profession in Transition," Barbara Curran	19.
"Six Score Years and Ten: Demographic Transitions in the American Legal Profession, 1850-1980," Terence C. Halliday	53.
"A Comparative Perspective on Legal Professions in the 1980s," P.S.C. Lewis	79.
"Law and Strategy in the Divorce Lawyer's Office," Austin Sarat and William L.F. Felstiner	93.
"What do Dutch Lawyers Actually do in Divorce Cases?" John Griffiths	135
"Worker Safety, Law, and Social Change: The Italian Case," Kitty Calavita	189.
"Popular Use of Yugoslav Labor Courts and the Contradiction of Social Courts," Robert M. Hayden	229.
"Regulated and Unregulated Sentencing Decisions: An Analysis of FirstYear Practices under Minnesota's Felony Sentencing Guidelines," Charles A. Moore and Terance D. Miethe	253.
"Criminal Prosecution of the Mentally Disordered," Ellen Hochstedler	279
"The Effectiveness of Increased Police Enforcement as a General Deterrent," Roy E.L. Watson	293.
"Perceptions of Justice: Race and Gender Differences in Judgments of Appropriate Prison Sentences," J.L. Miller, Peter H. Rossi and Jon E. Simpson	313.
"Prohibition of Beer in Iceland: An Internationalist Test of Symbolic Politics," Helgi Gunnlaugsson and John F. Galliher	335.
"Equal Employment Opportunity and the Mobilization of Law," Paul Burstein and Kathleen Monaghan	355.
"Crowding, Social Control, and Prison violence: Evidence from the Post-Ruiz Years in Texas," Sheldon Ekland-Olson	389.
"The Impacts of Evidence and Extralegal Factors in Jurors' Decisions," Barbara	

F. Reskin and Christy A. Visher	423.
"The Relative Significance of Disputing Forum and Dispute Characteristics for Outcome and Compliance," Craig A. McEwen and Richard J. Maiman	439.
"The Implications of Apology: Law and Culture in Japan and the United States," Hiroshi Wagatsuma and Arthur Rosett	461.
"Comment: The Implications of Apology," John O. Haley	499.
"Juvenile Justice Italian Style," Edwin M. Lemert	509.
"Perceptual Research on General Deterrence: A Critical Review," Kirk R. Williams and Richard Hawkins	545.
"Max Weber's Tragic Modernism and the Study of Law in Society," David M. Trubek	573.

George W. Pruet Jr.

It is with deepest sorrow and regret that the Department of Political Science at Florida State University reports the death of Professor George W. Pruet Jr., a recent graduate student in the department and assistant professor at the University of Akron. Professor Pruet received his Ph.D. degree in political science in 1983 and was at the start of his career in judicial politics when he became ill and died following heart surgery.

The Department of Political Science at Florida State has created a memorial fund in George's name with the funds to be used to reward outstanding graduate student papers and to further graduate education in political science. Donations in George's memory may be made to THE FSU FOUNDATION -- PRUET MEMORIAL FUND and mailed either to the Foundation or to the Department of Political Science, Florida State University, Tallahassee, Florida 32306-2049.

