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Spring 1993

### Alumni Quarterly - Issue No. 47

University of Maine School of Law

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# SCHOOL OF LAW

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# University of Maine

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## Addition to Law Library Dedicated

The symbolic ribbon was cut on February 26 and the plaque unveiled, formally marking the opening of the addition to the Donald Garbrecht Law Library for which ground was broken some 18 months ago. The plaque thanks the citizens of Maine for their support of the addition, through the 1988 bond issue, and thanks the private donors whose support helped make the addition possible.

"This addition," said Dean Donald N. Zillman, in welcoming people to the dedication, "is very much the product of collaboration between the public and the private sector — the combination that is the key to education in this decade and likely beyond."

The plaque, which will hang at the second-floor entrance to the addition, thanks the following for their support: Preti, Flaherty, Beliveau and Pachios; Pierce, Atwood, Scribner, Allen, Smith & Lancaster; Eaton, Peabody, Bradford & Veague; Rudman & Winchell; Thompson & Bowie; Petrucci & Martin; Thompson, McNaboe, Ashley & Bull; Friedman & Babcock; Attorneys in Drummond, Woodsum, Plimpton & MacMahon; Attorneys in Richardson & Troubh; and David C. Morse '68.

Dennis Sbrega of Preti Flaherty, Ralph Lancaster of Pierce Atwood, Steven Morrell '78 of Eaton Peabody, Paul Chaiken '74 of Rudman Winchell, and James Bowie '77 of Thompson & Bowie each spoke

about why their firms supported the project. They commented on the excellence of the Law School's graduates, the importance of the Law Library to the excellence of the School, and its role in serving their needs as well as those of the community and State.

On behalf of the University Board of Trustees, Owen Wells talked about the contributions made by the Law School to the legal community and the State. USM President Richard Pattenauade said the University was pleased to be able to add space that is so important to the School.

Professor L. Kinvin Wroth, whose efforts over a period of years helped bring about the addition, gave a brief history of the Law Library. From the very beginning, he said, the strength of the Law Library has supported the

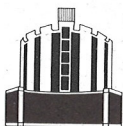
excellence of the School.

Professor and Director of the Law Library, William W. Wells talked about the difference the new space makes to all whom the Library serves — students, faculty, attorneys, the judiciary, the Legislature, and the public. "Law students once again have spaces to study within the Library, there is a reading room that is actually quiet, there is space between the stacks, and the materials are once again organized in a way that makes sense," he said. The Law Library, he pointed out, serves many people in addition to law students and law faculty, who account for about 35% of the use of references services. The USM community accounts for 15%, attorneys account for 24% and the general public for 26%. ■



*Director of the Law Library William Wells, Dean Donald Zillman and USM President Richard Pattenauade cut the ribbon to the entrance of the Law Library Addition. (more photos on following page)*

# Alumni



# Quarterly

Number 47

Spring 1993

Portland, Maine

## Addition to Law Library Dedicated



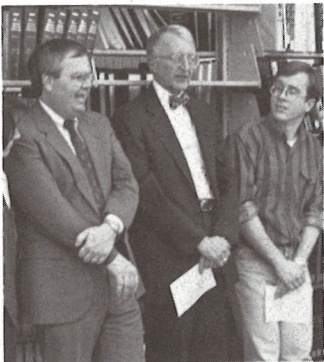
*Dean Zillman unveils the plaque.*



*Trustee Owen Wells*



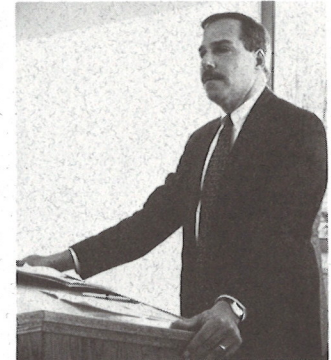
*James Bowie '77, Thompson & Bowie*



*Ralph Lancaster, Pierce Atwood*



*The Law Library Addition*



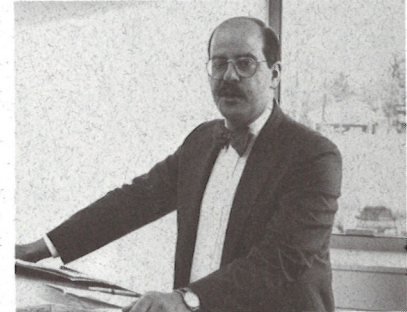
*Paul Chaiken '74, Rudman & Winchell*



*Dean Emeritus Edward S. Godfrey talks with Ralph Lancaster at Reception following the Dedication.*



*Dennis Sbrega, Preti, Flaherty*



*Steven Morrell '78, Eaton, Peabody*



*New SBA Officers Ken Fredette '94 (President), Bill Norbert (Vice-President), John Gause (Treasurer), Anna Zimmerman (Secretary), all '95*



*Noah Wuesthoff, Barbara Shaw, Sarah Smith and Wendy Spargo, all '94, were selected during Moot Court Competition to present the Prize Argument. They argued Soldal v. Cook County, Illinois, before Chief Justice Daniel E. Wathen '65, Justice David G. Roberts, and Justice Thomas E. Delahanty, II '70.*

## King Day Features Fred D. Gray

### Alabama Attorney Represented Martin Luther King, Jr. and Rosa Parks



*Fred D. Gray speaks on Martin Luther King, Jr. Day to packed Moot Court Room. Professor Zarr is seated next to him.*

"When Rosa Parks was arrested, she called on Fred Gray, 24, who had just set up a practice in Montgomery, the second African-American lawyer in the state of Alabama. When Martin Luther King was arrested for leading the bus boycott that followed her arrest, Fred Gray then had two clients." So went Professor Melvyn Zarr's introduction of Alabama attorney Fred D. Gray, Dr. Martin Luther King Day speaker. The audience knew they were about to hear from an important player in the fight for civil rights.

In celebration of King Day on January 18, Gray spoke in the Moot Courtroom to a standing room only crowd of students, faculty, staff and people from the Portland area. Gray's appearance was sponsored by the Law School, the University of Southern Maine and the Black Law Students Association.

USM President Richard Patten, Dean Donald Zillman, and Zarr welcomed Gray. As an attorney for the NAACP Legal and Education Fund, Zarr had worked with Gray in Alabama in the 1950's.

"The careers of King and Gray started out together and intertwined," Zarr pointed out. Gray first represented King during the Montgomery bus boycott in 1955. He represented him again in 1960 when the state of Alabama brought felony tax charges against King — charges that led to the *New York Times v. Sullivan* decision, charges that could have derailed

King's career. And Gray represented King again in 1965, when the courts ruled that marchers be allowed to go from Selma to Montgomery.

Gray talked about his experiences as an African-American attorney in Alabama over the years, his friendship with Dr. King, and the importance of Martin Luther King's message then and now. "When I was growing up," he said, "everything was segregated — churches, schools, employment — everything." Early in his life he had decided to be a minister, but riding a bus five or six times a day while going to college in Montgomery changed his mind. "I made a commitment to myself. I decided I would become a lawyer, return to Montgomery, and destroy everything that was segregated."

Gray said "return to Alabama" because he had to leave the state to attend law school. Because of his race, the University of Alabama would not accept him. Instead, the state provided aid for him to attend law school out-of-state. He went to Case Western Reserve in Cleveland.

"Upon my return, I hung up my shingle and got involved in the community. I met the new minister of Dexter Avenue Baptist Church, Dr. Martin Luther King. He was impressive. He was intelligent. But he was easygoing. I felt comfortable talking to him." He also became friends with Rosa Parks, the youth director of the NAACP.

"Rosa Parks was quiet, submissive and humble, but also assertive," the perfect person to challenge segregation on busses, said Gray. And when Gray and others met to choose a leader for the bus boycott, they found the perfect person in the new Dexter Baptist Church minister. What made the crucial difference in this case and the years that followed, Gray said, was Martin Luther King's message of non-violence, his commitment to people, and his desire to change things.

Much has changed since the 1950's, Gray pointed out. Alabama's bar, courts and legislature are no longer all white. Gray himself was one of the first two African-Americans in the Alabama legislature.

Desegregation has occurred in many areas, Gray said. He is disheartened, however, that it has not occurred totally in education. "Alabama still discriminates on the basis of race and it took a Federal judge from Georgia to say that segregation still exists in Alabama and to establish a ten-year remedial program, just underway," he commented.

The serious condition of our nation today, Gray said, is evidence that the struggle goes on. African-Americans, he said, are still not part of the economic mainstream, and that is where the struggle must now focus. "We need a new civil rights movement designed to eliminate economic disparity between blacks and whites," he said.

Gray sees hope in the election of Clinton and Gore. He sees a new political strategy evolving, involving a coalition of all kinds of people. He sees President Clinton setting this tone: discrimination will not be tolerated. He believes that we are closer to fulfilling the true democracy and freedom and justice for all to which Martin Luther King was committed. ■



*Gray talks with students, professors and people from the community at the Reception.*

# Journalism and Justice Symposium Examines Issues Dividing Media and Legal Professions

A Symposium focussing on relationships and tensions between the legal profession and the press was held at the Law School on Saturday, February 27. It continued a discussion begun during a Law Day panel sponsored by the Portland Council of Churches last May. Panels of journalists, lawyers, and judges examined two hypothetical cases, with questions and prodding provided by moderators Dean Donald Zillman and Professor Melvyn Zarr.

The first panel's hypothetical case, "The Case of the Missing Money," Professor Zarr explained, offered a chance to examine the limits placed on prosecutors and the defense in making statements to the press, the limits on the press in using them, the extent to which issues can be kept quiet, and the extent to which the press should oblige anyone in keeping an issue quiet.

The case involved \$100,000 disappearing from a safe deposit box at a bank; the money was kept there by the Police Department for drug busts. The prosecutor holds a press conference, announcing the indictment of the bank manager and clearing the police department. Will the press cover it? "Most definitely," agreed Al Diamon, talk show host, WGAN Radio and columnist, *Casco Bay Weekly*, and Peter Jackson, reporter, Associated Press.

Karen Kingsley '79 pointed out that the prosecutor could say whatever he chose at the press conference, according to Bar rules, as long as a potential jury would not be prejudiced to the point of making a fair trial impossible. "If the prosecutor

gives you inside information that makes a better story but breaks the Bar's ethical rules," Justice Donald G. Alexander asked the reporters, "would you report the violation?" "Not necessarily," said the reporters; "We might not even know it was a violation, and if we did, we would first ask the defense attorney's view."

The issue of what the defense attorney can say to the press, according to the Bar's ethics rules, led to a spirited discussion. Defense attorney Thomas J. Connolly '82 said he does not hold press conferences. "There are tremendous limits on what I can say," he said. "The system is very strongly geared to the prosecution. I am not allowed to counter what the District Attorney says. I would like more freedom to talk to the press. If I am handcuffed, I can't represent my client effectively. The rule is very one-sided," he commented. "It's unfair and results in convictions of a lot of people who shouldn't be convicted."

"Tom's First Amendment limitations are somewhat self-imposed," said District Attorney David W. Crook. "I would welcome his laying out his case. I'd know his theory, his evidence, and what he is going to do. That's the reason he won't counter what I've said. He's hiding — artfully and cleverly — behind the First Amendment."

The second panel focussed on the ethics and legality of the press printing information harmful to a candidate for City Council, in this hypothetical, a Bayland businessman named Cyril Fox.

Two weeks before the election the Bayland newspaper receives informa-

tion about Fox's behavior eight years earlier when he ran a company in Pittsburgh. A woman alleges she was sexually harassed and that Fox attempted to rape her. Two off-the-record sources back up her sexual harassment allegations. "A good story?" asked moderator Dean Zillman.

"The germ of a good story," said WCSH-TV reporter Susan Kimball. "I need more information. I need to talk with other employees. I need to find out what Fox has been doing since 1985. Most important, I need more than one on-the-record source."

John Kellogg, editor of the *Portland Newspapers*, and Peter Cox, editor of the *Maine Times*, agreed that they would print a story about the sexual harassment charges, if the off-the-record sources went on-the-record. They would not, however, print the rape allegations without a second source. These decisions would be guided by their ethical standards, they said.

Attorney Jonathan Piper '77 said that the decision to print the sexual harassment story would also hold up in court. "The press has the right to be wrong unless they know what they said was wrong or proceeded recklessly." As a public figure, Piper pointed out, Fox has a higher burden of proof. "If he asked my advice about suing for libel, I would tell him he could easily lose."

Chief Justice Daniel Wathen '65 said that this Supreme Court ruling was designed to allow for "robust debate" without the press having to fear consequences.



Panelists Hon. Donald Alexander, Karen Kingsley '79, District Attorney David Crook, Thomas Connolly '82, Peter Jackson and Al Diamon and moderator Professor Melvyn Zarr examine "The Case of the Missing Money."



Panelists Hon. Daniel Wathen '65, John Kellogg, Susan Kimball, Jonathan Piper '77 and Peter Cox and moderator Dean Donald Zillman discuss the tensions involved in protecting individual privacy and freedom of the press.



*Dean Donald N. Zillman*

## Dean's Column

Our remarkable string of moot-ing victories continues with the "final eight" finish in the National Moot Court Competition, the first-place finish in the National Tournament sponsored annually by William & Mary, and the qualification of one team for the national finals of the Trial Advocacy Competition in San Antonio in March. Details appear elsewhere in these pages. It does occur to me that I will have to one day console a team that has not won and explain that winning these competitions is a rare honor.

Our February is filled with moot-ing exercises, changes in power of our student organizations, and the Library dedication on February 26. The new

Library structure is already giving good service. One of its happiest consequences is that new space has opened up in the old Library wing. We again have a modest reading room on the second floor. Stacks aren't on top of each other. You can walk from one section to another without feeling as though you are doing an obstacle course.

My Fall 1992 Dean's Column in the Quarterly about Perry Mason and Anatomy of a Murder provoked this response from Phil Houle of the Class of 1970. With Phil's permission, I share it with you:

"Please let me correct the mistaken impression that television's great Saturday night prosecutor of the airwaves, Hamilton Burger, Esquire, had

a paltry '1% conviction rate.'

While Burger undoubtedly had an abysmally low success rate against clients of Perry Mason (whose fee arrangements seemed unorthodox at best), the blame should be laid at the feet of Lieutenant Tragg and his band of hapless homicide investigators who always seemed to overlook important leads and reasonable alternative explanations.

And, of course, once Perry Mason got the guilty party to 'fess up' after a withering cross-examination, backed up by high-powered (and high-priced?) private investigator Paul Drake and eminently insightful Della Street, well, Burger's conviction rate went through the proverbial roof. Nearly 100% in such cases, might we surmise...

In that light, Burger's reelection seems to have been a foregone conclusion, especially if well-heeled members of the criminal defense bar contributed heavily to his reelection campaigns...a matter that Perry Mason discreetly avoided discussing publicly.

The wonder of it all was that Tragg was not demoted to walking a beat in the LAPD Traffic Division and/or given an 'early out' retirement for the good of the force. ■

The threat of a lawsuit, even when the press believes it will win the suit, still has an impact, the panel pointed out. "The cost of fighting a libel suit is enormous," said Cox. "Insurance rates go up automatically. The emotional drain is great. And I know my insurance company can decide to settle, any time, whether I want to or not," he added.

The editors agreed that the threat of a lawsuit would not, however, lead them not to print the sexual harassment story. Neither would Fox offering to withdraw from the City Council race on the condition that the story not be printed. "That would be unethical," said Cox. "The fact that Fox wants to make a deal then becomes part of the story," said Kimball.

The panel was in general agreement that the current law provides a good balance between protecting freedom of the press and protecting the rights of individuals. "It's a good

balance," said Kellogg. "The press should not be totally invulnerable."

The panels were videotaped for broadcast on television and use in law school classrooms. ■

## Maine State Bar Reception



*Ryan Stinneford '88, Jon Block '92*



*Scott Davis '75 talks with Ron Cullenberg '71 and Peter Michaud '77.*



*John Bisson '93 and Ivy Frignoca '93, with their first-place trophy.*

## Maine Wins Second National Moot Court Title

Ivy Frignoca and John Bisson, both '93, returned big winners from the William B. Spong Jr. Invitational Moot Court Tournament, held February 25-27. They won the competition, their brief was judged second best, and Frignoca was chosen best oralist. The Spong Tournament is held each year at the Marshall-Wythe Law School at the College of William and Mary in Williamsburg, Virginia.

The Spong Tournament focuses on a problem of constitutional law and federal procedure. This year's problem involved two 5th Amendment issues; in the case being argued, two defendants were accused of lying to the Securities and Exchange Commission.

Twenty-two teams from all over the country competed in the Tournament. On their way to the finals, Frignoca and Bisson defeated teams from Catholic University, Washington, D.C.; Loyola University School of Law, New Orleans; Southwestern University School of Law, Los Angeles; and Southern Texas College of Law, Houston. They defeated the University of Cincinnati College of Law in the finals.

The 1993 Moot Court Board has set records; three of their teams have won their competitions. Frignoca and Bisson are the second team from the Law School to win the Spong Tournament; the first were John Lucy and Paul Cadigan from the Class of 1990. ■



*The Law School's Varsity Trial Advocacy Team: James Boffetti, William Schneider, Andrew Black, front; Walter McKee, Anthony Anaman, Andrew Bloom, back. The Boffetti, Schneider, Black team placed second in the Northeast Regional Trial Advocacy Competition in Boston on February 5-7. As one of the two winners, they will compete for the National Championship in San Antonio, Texas, March 8-10.*

## Moot Court Board Finalists in National Competition

The Law School's Moot Court Board recently participated in the final rounds of the Forty-Third Annual National Moot Court Competition held in New York City the week of January 25. Team members David J. Casavant and Elaine M. Michaud advanced to the finals after winning the Regional Round of the Competition in November. Michaud was also selected as Best Oral Advocate for the Regional Rounds.

Twenty-eight law schools representing fourteen regions were present at the finals, each having placed first or second within their respective regional competitions. The University of Maine argued successfully against teams from the University of Maryland, Valparaiso University, and the University of Illinois. These three victories advanced Casavant and Michaud to the quarter-finals where they were narrowly defeated by the University of Denver team.



*Elaine Michaud '93 and David Casavant '93, who made it to the final eight in National Moot Court Competition.*

Over 150 schools entered more than 230 teams in the National Competition. The final rankings placed the University of Maine in the top eight schools. The University of Vanderbilt won the overall competition. ■

## Faculty News

Professor **Orlando E. Delogu** will run for the at-large seat on the Portland City Council during the city's May 4 election.

Professor **Colleen A. Khoury** was appointed Chair of the Commission on Gender, Justice and the Courts by Supreme Court Associate Chief Justice Daniel E. Wathen. The thirteen member Commission, established by the Maine Supreme Judicial Court, will study how gender affects the treatment of women and men in the legal and judicial environment and make appropriate recommendations to ensure that gender bias does not affect judicial decisionmaking.

Professors **Michael W. Mullane** and **Judy Potter** were on the faculty of the Maine State Bar Association's Continuing Legal Education program, "Maine Trial Evidence," held on February 5 in Augusta. Professor Mullane spoke on "Expert Witnesses: How to Make Mumbo Jumbo Admissible and Convincing." Professor Potter's topic of discussion was "Character Evidence and Impeachment: How to Destroy Credibility and Build it Up Again."

Professor **Thomas M. Ward** is the

## Paul F. Zendzian Appointed IOLTA Visiting Professor

Motivated by his own rewarding experience as a student intern in a legal services program while in law school, Paul Zendzian hopes to provide a similar experience to law students in his position as IOLTA Visiting Professor of Law from Practice.

As IOLTA Professor, Zendzian is responsible for supervising up to 12 students in the Clinical Practice program during the spring semester 1993, and the five full-time student interns employed in the Cumberland Legal Aid Clinic from mid-May through June 30, 1993. "I will try to bring to the students I work with the importance of always retaining that primary focus on service to the client," said Zendzian. "The procedures and

author of the article, "The Supreme Court Diminishes the 'Redeeming' Qualities of the Bankruptcy Code in *Dewsnup v. Timm*." The article appears in the *Annual Survey of Bankruptcy Law — 1992* published by Clark, Boardman, Callaghan & Co. At the Annual Meeting of the Maine State Bar Association held in Bangor on January 21-22, Professor Ward served as panelist for a seminar program, "Intellectual Property as Collateral." The program was presented by the Intellectual Property Section of the MSBA.

Professor **L. Kinvin Wroth** served on the panel, "Proposed Maine Bar Rule 12-Continuing Legal Education Requirement," at a public forum held at the Maine State Bar Association's Annual Meeting in Bangor on January 21-22. He also served as a panelist for the "Access to Justice Symposium," held the first day of the Meeting; he covered the background and current status of the Legal Needs Study.

Professor **Melvyn Zarr** chaired a panel discussion on appellate review of sentences at the Sentencing Institute in January.

Dean and Godfrey Professor **Donald N. Zillman** served as com-

mentator on the issue of gays and lesbians in the armed forces for the Independent Broadcasting Network "Battleline" show on January 27. His comments on the issue also appeared in the January 27 issue of *USA Today*. Dean Zillman is assisting in editing the second edition of *Constitutional Law for the Citizen Soldier* for McGraw-Hill Publishers. ■

Karen Tilberg '84 and Peter Wiley '89 are teaching the Environmental Law Clinic for the second year in a row. Under the supervision of Professor Alison Reiser, they will each supervise the work of five students during the spring semester. Both practice environmental law; Tilberg's office is in Hallowell, Wiley is with Jensen, Baird, Gardner & Henry in Portland.

Students enrolled in the Environmental Law Clinic get hands-on experience working on a variety of projects for clients such as Maine Audubon, the Department of Environmental Protection, the Land Use Regulation Commission and other government, public interest advocacy, and citizens groups. ■



*Paul F. Zendzian*

conundrums of practicing can be confusing and dismaying; I hope to pass on to the students my experiences in practicing law to help them get past the 'technical' aspects of practice and allow them to focus on helping the client."

After a month on the job, Zendzian is looking forward to the rest of the semester. "The students are very much involved in their cases and work hard to solve their clients' problems," said Zendzian. He is impressed

with the students' desire and dedicated hard work. "I am delighted to be a part of this."

Zendzian, a graduate of Wayne State University School of Law, has practiced law in Maine for 24 years, primarily as a trial attorney. He spent four years with Pine Tree Legal Services in Waterville, Rockland and Bangor, "an invaluable and personally rewarding experience." He then went into private practice in Bangor, moving his practice to Portland in 1985, becoming a partner in the Portland law firm of Poulos, Zendzian and Campbell. Last year he opened his own office in Brunswick. "I believe I can bring to the Visiting Professorship an excellent understanding of litigation of all types in not only the urban setting of Portland and its environs, but also in the rural areas of Maine," he said.

"Mr. Zendzian's skill and experience as a trial attorney will be a valuable resource for student interns at the Clinic," said Dean Zillman. "The Law School is fortunate to have him as IOLTA Professor of Law." ■



# Environmental Dispute Resolution and the North American Free Trade Agreement

by  
Professor L. Kinvin Wroth

The North American Free Trade Agreement (NAFTA), negotiated last year among the United States, Canada, and Mexico, would create a new trilateral regime of trade regulation accompanied by a system for the resolution of disputes arising under that regime. President Clinton is currently considering submission to Congress of a bill implementing NAFTA. Meanwhile, serious concerns have been raised about the impact of the Agreement on protection of the environment in the United States.

In particular, environmentalists fear that their concerns will not be properly considered in dispute resolution proceedings under NAFTA. Environmental issues can arise in two basic types of trade regulation disputes: (1) U.S. environmental regulations may be challenged by an importer of goods as a barrier to trade. (2) The environmental regulations of an exporting country may be challenged as giving goods from that country an economic advantage in U.S. markets.

NAFTA, like all international agreements, is in effect a contract among the nations that are parties to it. Its dispute resolution provisions, like similar provisions in private contracts, are designed to provide a medium for the contracting parties to resolve their disputes. Thus, individuals, whether traders or environmentalists, would be relegated to use of the political process as a means of assuring that their interests are considered when their government enters dispute resolution.

NAFTA must be understood in the context of two major international agreements that presently provide both substantive rules and dispute settlement procedures applicable to trade relations among and between Canada, Mexico, and the United States. All three countries are among the 108 signatories to the General Agreement on Tariffs and Trades (GATT), which has been in effect with subsequent modifications since 1947. The GATT is the framework within which virtually all world trade occurs. It balances a basic free-trade orientation with recognition of the rights of its signatories to pursue their legitimate national interests and policies. The GATT also provides both informal and formal dispute resolution procedures. Currently, in the so-called "Uru-

guay Round" of international trade talks, major revisions to the GATT are being considered.

In 1989, the Canada-U.S. Free Trade Agreement (CFTA) became effective. This bilateral undertaking builds upon and supplements the GATT with special provisions that recognize and encourage the economic integration of North America's two largest trading partners. The CFTA contains two basic dispute resolution provisions that have served as a model for NAFTA. Chapter 18 of the CFTA establishes procedures for resolving nearly all disputes concerning interpretation or application of the Agreement. Chapter 19 provides for binational panel review of domestic determinations establishing antidumping duties or duties designed to countervail subsidies. Judicial review of domestic determinations is expressly preempted if panel review is sought.

Both the GATT and the CFTA are essentially environment-blind. Nevertheless, actual experience under the two agreements shows how environmental issues may arise in the context of trade disputes. Note that the effect of a trade decision against a domestic environmental regulation is not to void that law or affect its application in other settings. Rather, the sanctions are reciprocal trade actions, and the issue becomes a matter for continued international negotiation and possible domestic political action.

For example, in a recent important decision, a GATT panel sustained Mexico's challenge to a U.S. ban under the Marine Mammals Protection Act on importation of Mexican-caught yellowfin tuna. The panel held that the exception of certain conservation measures from GATT's prohibition of trade barriers applied only to activities within the jurisdiction of the importing state and that the importing state bore a heavy burden to show the necessity of the restriction. Mexico has deferred enforcement of this decision pending further negotiations with the United States.

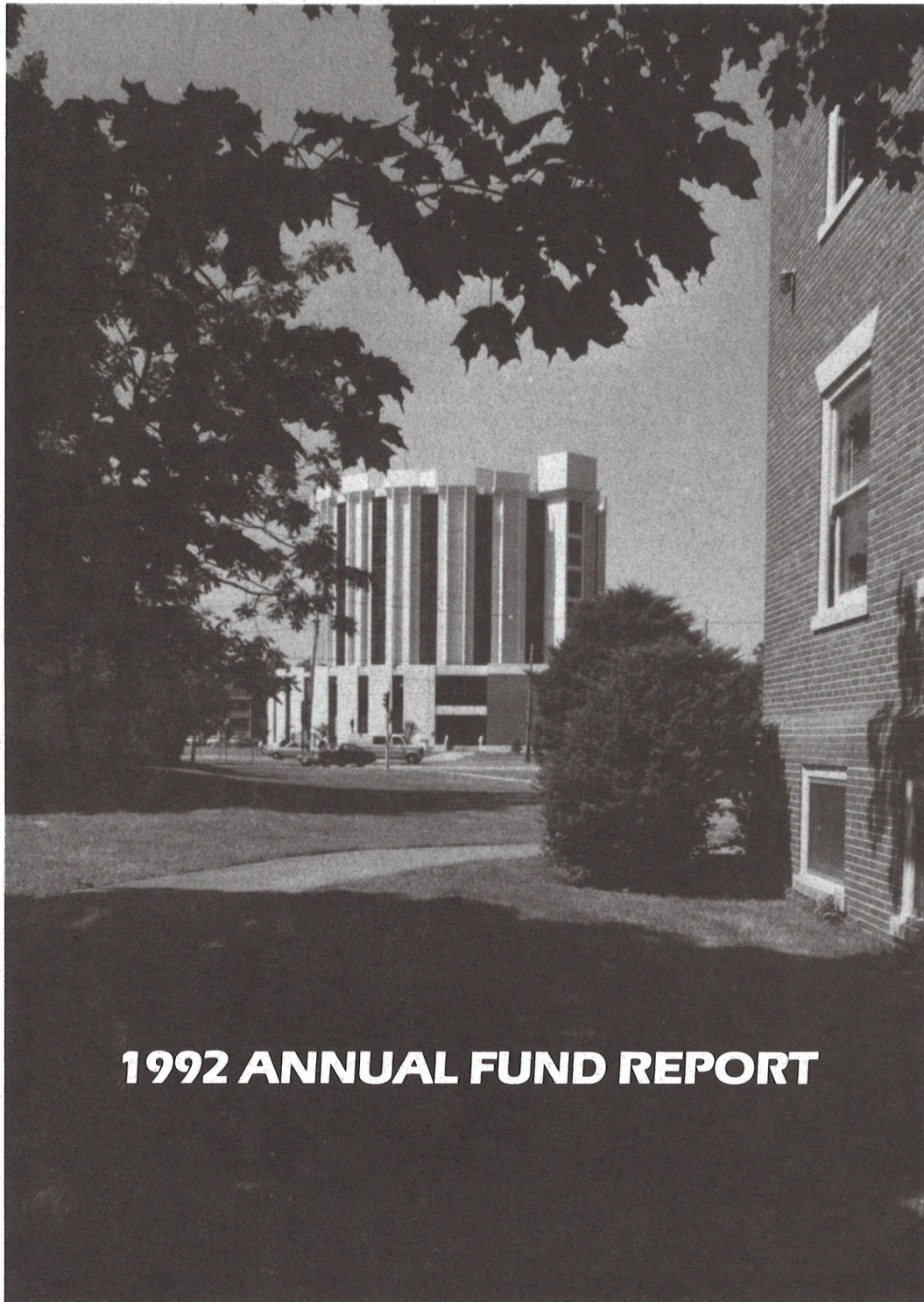
Under the CFTA, two Chapter 18 proceedings have involved environmental issues. In the very first panel, Canada's requirement that all fish caught commercially in Canadian waters must be landed in Canada for biological sampling was unanimously held to violate the

GATT's market access provisions, binding on Canada under the CFTA. In a Canadian challenge to U.S. minimum-size limits on imported lobsters, a majority of the panel held the restrictions to be nondiscriminatory and thus to satisfy GATT's national treatment provisions, also incorporated in the CFTA. These decisions were accepted by both countries and have been the subject of further negotiations.

No Chapter 19 panel proceeding has directly involved environmental issues. Although it is arguable that lax environmental regulation or enforcement could be in effect a subsidy to production or could lead to a market situation that might be characterized as dumping, no antidumping or countervailing duty proceedings have been brought by either country on these grounds. Significant evidentiary and policy concerns stand in the way of such a use of the procedure.

In contrast to the situation with the GATT and CFTA, environmental issues played a major political role in the development of NAFTA. Supporters of NAFTA have argued that its economic benefits would provide Mexico both the motivation and the resources to improve its level of environmental protection. Opponents have expressed a number of environmental concerns, including the environmental impact of increased economic activity, the possible flight of U.S. industries to Mexico to escape environmental regulation, the danger of "environmental dumping" in the U.S. of goods produced in unregulated Mexican plants, the possibility that U.S. environmental standards would be weakened by political pressure to compete with Mexico or invalidated as nontariff barriers under the Agreement, and the fear that NAFTA does not provide an adequate forum for the environmental concerns of state and federal regulators and the public.

Though environmentalists are far from fully satisfied, NAFTA as drafted would break new ground among trade agreements in its recognition of environmental concerns. The preamble recognizes the importance of environmental goals, and certain specific international environmental accords are expressly declared to prevail over inconsistent provisions of NAFTA. The complex and lengthy technical standards set forth



**1992 ANNUAL FUND REPORT**

**SCHOOL OF LAW**  
University of Maine

# 1992 ANNUAL FUND REPORT

## University of Maine School of Law

In a tough year for fundraising, the 1992 Annual Fund reached and exceeded its goal. Thanks to every person who contributed. Thanks to all those who increased their gifts. Thanks to recent graduates who are paying back loans but still contributed. Thanks to David J. Corson '69, the 1992 Chair, who worked hard and enthusiastically to make the Fund Drive a success. And, thanks to the Class Agents and those who helped with the Phonathons; their diligence and personal touch made an enormous difference.

### **New Records:**

Alumni giving totalled \$78,540, an increase from last year, and gifts from friends, corporations, foundations, law firms, bar associations, and professional organizations also increased, totalling \$35,073.

Alumni participation also increased. More than 40% of those solicited contributed to the Annual Fund, a jump from last year's 38%. While comparable statistics are not yet available for other law schools, a 40% participation rate will definitely place us in the top quarter of all law schools. We also received more contributions from Law School friends.

### **Special Thanks to Campaign Workers:**

Without the dedication and leadership of David J. Corson '69, Campaign Chair, the 1992 Campaign would not have reached its goal. The

Class Agents were also essential to the success of the 1992 Annual Fund. Those who helped with the Phonathons also made a major contribution.

As always, some Class Agents went way beyond the call of duty. Nine classes had participation rates of 50% or more. The Class of 1965 had an incredible 71% participation rate. Dick Elliott was Class Agent. The Class of 1968 had an impressive 61% rate; Paul Hirsch was Agent. The Class of 1984 followed with 60%; Tom Powers and Colleen Tucker were Agents. 57% of the Class of 1974 participated; Rick Hull and Joe Chawes were Agents. 53% of the Classes of 1989 and 1990 contributed. Michael Martin was 1989 Agent; John Veroneau helped with phoning. Elizabeth Morley was 1990 Agent; MaryBeth Fougere and Julie Finn helped with phoning. 51% of the Classes of 1973 and 1979 participated. Bill Hardy was Agent for the Class of 1973; Terry Snow helped with phoning. Rob Burgess was Agent for the Class of 1979; Allen Hrycay helped with phoning. 50% of the Class of 1969 contributed; Bob Walker was Agent. The Class of 1992 broke participation records for the class most recently graduated; 49% participated. Laura O'Hanlon and Jessica Maurer were Agents.

Eighteen classes increased their percentage of giving, some dramatically. The Class of 1965 went from a 38% to 71% participation rate, followed by the Class of 1968, which went from 38% to 61%. Jim Kriger

served as Agent for the Class of 1963; its percentage of giving went from 11% to 33%. The Class of 1964 went from a participation rate of 22% to 44%; Henry Berry was Agent. The Class of 1983 jumped from a 15% to a 34% rate; John Hobson was Agent and Bill LaCasse helped with phoning. The Class of 1989 went from 38% to 53%. The Class of 1986 went from 29% to 43%. David Farrar was Agent; Bill Fisher helped with phoning.

A number of classes increased the size of their class gifts by more than \$500: 1968, 1984, 1983, 1982, 1977, and 1975. Anne Catlin and Jeff Jones were 1982 Agents. Bill Jordan was Agent for 1977 and Peter McKenney helped with phoning. Mark Dunlap was Agent for 1975.

### **Thanks to Students:**

By supporting the Public Interest Fellowship Fund, many students contributed to the Annual Fund. Special thanks to them.

### **Thanks to Friends:**

We greatly appreciate increased support from law school friends, who contributed as individuals, as firms, as bar associations and professional organizations, and as corporations and foundations.

If you supported the 1992 Annual Fund and we have inadvertently omitted your name, misspelled it, or failed to place it in the proper category, we apologize. Please notify the Alumni Office of any errors.

Total Giving .....	\$113,613
Gifts from Alumni .....	\$78,540
Gifts from Friends .....	\$35,073
Number of Gifts .....	885
Alumni Gifts .....	724
Friends Gifts .....	161
Alumni Participation .....	40%
Highest % Participation: .....	1965 - 71%
	1968 - 61%
	1984 - 60%
Biggest % Increase .....	1965, from 38% to 71%
	1968, from 38% to 61%
Largest Gift: .....	1973 - \$7,300
Biggest Increase: .....	1968, from \$2,250 to \$3,610
Unrestricted Gifts .....	\$74,186
Restricted Gifts .....	\$39,427

# Annual Fund Special Recognition Clubs

## DEAN'S CLUB (\$1,000 or more)

This club recognizes those who have contributed at least \$1,000 to the 1992 Annual Fund Campaign.

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1984: Colleen P. Tucker  
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1985: David P. Silk  
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1986: David D. Farrar  
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1988: Patricia A. Nelson-Read  
1989: Michael K. Martin  
1990: Elizabeth Stout Morley  
1991: Joseph M. Baldacci  
1992: Jessica L. Maurer  
Laura M. O'Hanlon

### Thanks to those who joined Class Agents for the phonathons:

1973: Terry Snow  
1976: Paula Silsby  
1977: Peter McKenney  
1978: Mark Terison

1979: Allen Hrycay  
1980: Richard Shinay  
1981: James Poliquin  
1983: William LaCasse

1986: William Fisher  
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1988: Donna Ryan  
1989: John Veroneau

1990: Julia Finn and  
Marybeth Fougere  
1991: Justina McGettigan

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in NAFTA that provide the foundation for exceptions to its ban on nontariff trade barriers are also significantly friendlier to environmental concerns than the comparable provisions of the GATT and CFTA.

NAFTA's dispute resolution provisions, like those of the CFTA, are designed to assure the fair and orderly decision of issues arising under the substantive provisions. The Agreement offers a sequential menu of dispute resolution options, including conciliation, negotiation, mediation, and nonbinding arbitration. Like the CFTA and the GATT, however, NAFTA as presently drafted does not make direct provision for intervention by state governments or private individuals in dispute resolution proceedings.

In apparent response to concerns about Mexico's domestic administrative procedures, Chapter 18 of NAFTA makes basic due-process-like provisions for domestic administrative proceedings, including judicial or administrative review. Chapter 20 of NAFTA is an expanded and modified version of the dispute resolution provisions of Chapter 18 of the CFTA. Article 2001 establishes a Free Trade Commission consisting of cabinet-level representatives of each country or their designees, with responsibility for both general supervision of the Agreement and dispute resolution. The dispute resolution provisions begin with Article 2003, calling on the parties to cooperate and consult for mutually satisfactory resolution of all matters. Article 2005 recognizes the possible interest of the third-party nation in NAFTA resolution and requires NAFTA, rather than GATT, resolution of many disputes on request of a party.

NAFTA Articles 2006 and 2007 provide for initial consultation between the parties, followed by subsequent request to the Commission for "good offices, conciliation, mediation, or other dispute resolution procedures," or the provision of technical advice or the making of recommendations. Under Article 2008, if consultation fails, the Commission on request of a party is to establish a panel to conduct nonbinding arbitration. At that point a third party may request joinder. Failure to make a request for joinder operates to bar later proceedings by that party on the same matter, except that under Article 2013 a party who has not joined may still participate as a kind of amicus.

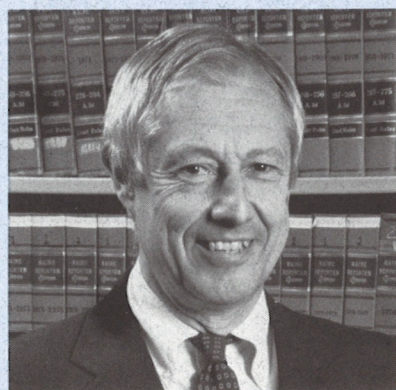
Provisions for panel qualification and selection from a roster are similar to those of the CFTA. Specific procedural provisions, including provision for experts and reference to a scientific review board, are made in Articles 2012, 2014-2015. Report provisions and sanctions are similar to those of the CFTA, with the difference that the parties, rather than the Commission must, under Article 2018, agree to the resolution. Under Article 2019, the sanction for noncompliance with a panel determination is suspension of equivalent trade benefits, with further provisions, including possible panel determination of whether the benefits suspended are equivalent and appropriate.

In provisions unique to NAFTA, Article 2021 prohibits creation of a domestic private right of action based on the Agreement, and Article 2022 requires each party to encourage the use of arbitration and other ADR devices in the resolution of private international commercial disputes.

Chapter 19 of NAFTA makes dispute resolution provisions for antidumping and countervailing duty disputes similar to those of the CFTA, providing for review by a panel chosen from rosters established by each country. Article 1905, unique to NAFTA, provides for review by a special committee appointed from the panel roster if parties to the Agreement are unable to resolve through consultations the allegations of one party that another has frustrated the use of the Chapter 19 procedure through domestic law. Chapter 19 of NAFTA also contains elaborate provisions for consultation.

The dispute resolution provisions of the CFTA have been viewed in both Canada and the United States as a process with a high level of fairness and integrity that has led to "a lower temperature" in Canadian-U.S. trade relations. Proposals have been made to alter this process under NAFTA with provisions to allow state or private standing in dispute resolution proceedings involving environmental issues, or at least to require U.S. trade officials to give formal recognition and consideration to state and private environmental concerns in a particular proceeding.

In fact, given the solid track record established under the CFTA, the dispute resolution procedures should be left alone. The better course would be to concentrate on measures that address environmental concerns directly at the level of basic trade policy formulation and to seek parallel agreements with Mexico that would strengthen that country's internal environmental controls and foster bi- or trilateral approaches to the solution of common environmental problems. ■

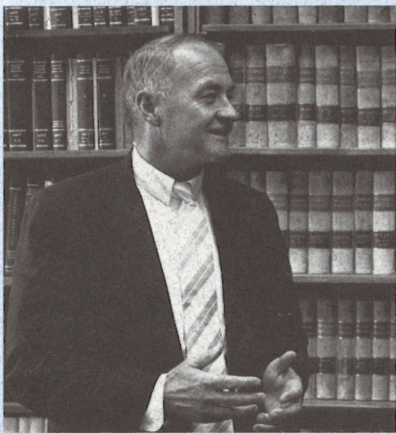


## L. Kinvin Wroth

Professor Kinvin Wroth joined the faculty of the Law School in 1964 and served as Dean from 1978 until 1990. His courses include Alternative Dispute Resolution and the Canadian Legal System, and he directs the Law School's Canadian Legal Studies program.

Professor Wroth serves as consultant to the Maine Supreme Judicial Court's Advisory Committees on the Rules of Civil Procedure, Rules of Probate Procedure, Code of Judicial Conduct, and Code of Professional Responsibility and is coauthor of *Maine Civil Practice*. As a member of the Commission to Study the Future of Maine's Courts, he chaired the ADR Task Force.

This article is adapted from a paper presented by Professor Wroth at "The New North America," a seminar sponsored by the ABA Section on Natural Resources, Energy, and Environmental Law, San Antonio, Texas, December 4, 1992.



*David J. Corson '69*

## President's Column

I am writing my first of four columns in my capacity as President of the Law Alumni Association. In this column I will attempt to insure that communication between the School and its graduates is enhanced, and am soliciting input from readers relating to any matter which can be appropriately addressed by virtue of our relationship with the Law School. Recently, I sent a letter to all of our constituents discussing a number of Law School related items. I will be touching on those areas briefly in this column over the course of my tenure. They will

include the role of the Law School and its graduates, past, present, and future in the legal profession, and the impact of both on the academic, judicial, legislative, business and state agency disciplines.

First, though, I would like to thank all readers, who, with the help of hard working class agents and others involved in the Annual Fund Drive, brought us in over the \$110,000 goal. This is an outstanding result in what I consider a terrible economic and psychological environment for raising money. I expect the monies will be expended close to last year's budgeted categories as follows: scholarships totalling \$41,000 to 42 students; summer public interest fellowships of \$1,500 to 13 students; internships for two students with the Rural Access Project; the Martin Luther King Day Symposium; the third-year program on ethics; library acquisitions; student organization conferences sponsored by the Environmental Law Society and the National Lawyers Guild; the Jessup Moot Court Competition; computer equipment for the Moot Court Board; achievement awards at Convocation; Cumberland Legal Aid Clinic needs; and the Alumni Quarterly. As you can see, our Association can proudly claim a significant impact on the essential extras the Law School needs to com-

pete and provide first-rate training for quality students.

The Board of Directors will be following through on a theme set by its last two presidents — that of promoting greater involvement by graduates within the Law School. For instance, this will be the third year that graduates have participated in the first-year orientation program. Included also is the further development of a Student-Alumni Mentor Program, which got such a head start by many of you responding to the questionnaire our ad hoc, soon to be standing, committee sent to you, and by many of you volunteering to be mentors. The Fund Raising Committee of the Board is working in conjunction with the staff and certain experts to develop a brochure highlighting aspects of and resources available for planned giving and long-range estate planning.

I look forward to working with the Alumni Board and hope to hear from many of you in response to the matters about which I recently wrote you, and welcome your suggestions and ideas at any time throughout the year.

Needless to say, I am very enthusiastic about the wonderful news about the Law School activities and student accomplishments set forth elsewhere in this publication. I am pleased to be associated with such a fine institution. ■

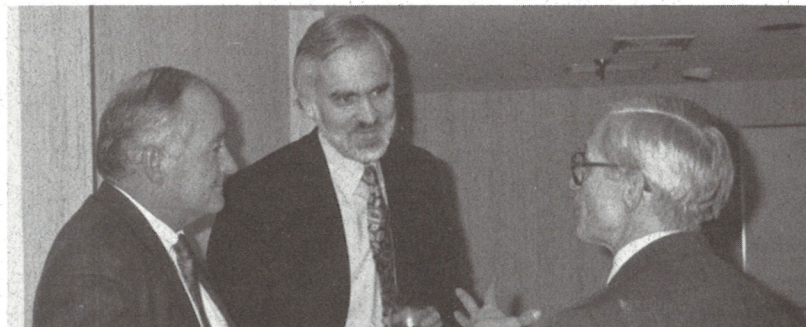
## New Hampshire Alumni Dinner, January 28, 1993



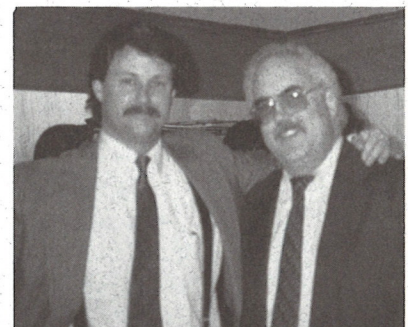
*Irene Smith '83 with Doreen Connor '86*



*Will Phillips '91, Michael Quinn '88, Deb Fauver '90*



*Alumni Association President David Corson '69 talks with Greg Smith '73 and Hon. Edward Thornton, Jr. '65 (back to camera).*



*Jonathan Flagg '87 and Peter Gardner '73*

## Alumni News

**'52** James E. Gagan and Franklin G. Hinckley were honored by the Cumberland County Bar Association with its Harry H. Marcus Award. The award is presented annually to senior members of the Cumberland Bar who have demonstrated those same qualities possessed by Marcus of subtle humor, incisive wit, and compassionate understanding. The awards were presented at the association's annual meeting on January 28. Gagan, a former Westbrook city solicitor, continues his legal practice, now as a consultant, with the Westbrook firm, Cooper & Desmond.

**'68** David B. Smith, Jr. is the author of "Apprenticeship Wanted," in the February 1993 *Vermont Bar Journal & Law Digest*.

**'70** Joel H. Goldman has formed a new law firm, Goldman & Mears, in Peabody, Massachusetts.

**'72** Peter J. DeTroy was on the faculty of the Maine State Bar Association's Continuing Legal Education program, "Sentencing Advocacy: The Lost Art," held on January 29 in Augusta. He was also chairperson and panel member at the MSBA's CLE program, "Clients: Their Proper Care and Feeding," held March 5 and 6 at Sugarloaf. Paul R. Dionne has been elected chairman of the Central Maine Medical Center Board of Trustees. He is a partner in the Lewiston law firm of Dionne, Gosselin & Dubord and is a former two-term Lewiston mayor. He was named to the Central Maine Medical board in March 1989. Clifford H. Goodall was featured in a *Maine Times* article on February 26, 1993. The article, "Clash of Interests," offered insights by eight Maine lawyers into how the conflict between business and environmental interests has changed in the past 20 years and ideas about new methods for resolving old conflicts.

**'74** Paul W. Chaiken is the new President-elect of the Maine State Bar Association. He has also been named Chair of the Maine Supreme Judicial Court Advisory Committee on Rules of Evidence. Frederick G. Chioffi has established a management and marketing consultants business, Chioffi & Chioffi in Burlington, Vermont.

**'75** Madge Baker is writing an economic/social history of York County for the period 1865 to 1965.

She welcomes any interesting materials or insights you might have on the subject. Samuel H. Merrill is staff counsel for Atlantic Title Company in South Portland.

**'76** Robert Checkoway, formerly with Preti, Flaherty, Beliveau & Pachios in Portland, has joined the U.S. Department of Justice as Assistant U.S. Trustee for the District of Maine. Richard G. Riendeau ran the Boston Marathon in 1992 and plans on doing it again in '93. Mary L. Schendel has been named Chair of the Regional Events Committee of the Williams College Bicentennial Commission, to be celebrated in 1993. She will be coordinating events for 60 regional alumni associations. John F. Shea is the associate editor of the Massachusetts Environmental Compliance Update, a monthly publication surveying environmental law developments in Massachusetts. He is a founding member of the Massachusetts environmental and land-use firm of McGregor & Shea, P.C.

**'77** Robert C. Perkins is the author of "Issues in Land Use Appeals Under Rule 80B," in the January '93 *Maine Bar Journal*.

**'78** Eileen M.L. Epstein, a partner with the law firm of Jensen, Baird, Gardner & Henry in Portland, has been elected a Fellow of the American College of Trust and Estate Counsel during a recent meeting of the Board of Regents of the College in Seattle, Washington. The Fellowship recognizes outstanding practitioners in the laws of wills, trusts, estate planning and estate administration. Paul S. Gillies is the author of "Impartiality," published in the February 1993 *Vermont Bar Journal & Law Digest*. Mark Lavoie and Meg Cushing Lavoie '87 had a baby girl, Aislinn Margaret, on November 26, 1992. Gene R. Libby was on the faculty of the Maine State Bar Association's Continuing Legal Education program, "Sentencing Advocacy: The Lost Art," held on January 9 in Augusta. Karin Marchetti Warden provided the introduction at the MSBA's CLE program, "Preserving Family Lands: Land Ownership Succession Planning," held on January 21 in Bangor. Warden is General Counsel for the Maine Coast Heritage Trust, and has also opened a law office, Warden Law Offices and Land Conservation Legal Services, in Bernard.

**'79** Peter L. Kelley is now working in Teradyne's office in Brackneel, Great

Britain. He had been working in their Tokyo office. Constance P. O'Neil was on the faculty of the Maine State Bar Association's Continuing Legal Education program, "Clients: Their Proper Care and Feeding," held on March 5 and 6 at Sugarloaf.

**'80** R. Terrance Duddy presented a talk, "When The Client Becomes the Enemy: How to Deal with Difficult Clients," at the Maine State Bar Association's Continuing Legal Education program, "Clients: Their Proper Care and Feeding," held on March 5 and 6 at Sugarloaf. Mary Lou Dyer has become the Executive Director of the Bureau of Employment and Training Programs, Maine Department of Labor in Augusta. Neale A. Duffett was on the faculty of the MSBA's CLE program, "Sentencing Advocacy: The Lost Art," held on January 29 in Augusta.

**'81** Michael P. Cantara and Laurence Gardner were on the Maine State Bar Association's Continuing Legal Education program, "Sentencing Advocacy: The Lost Art," held on January 29 in Augusta. Lisa M. Tripler and husband, Dan Rapaport, of Cape Elizabeth are the new proprietors of Kamp Kohut in Oxford.

**'82** Martha L. Casey was married to John Angell on May, 23, 1992, in Washington, D.C. John C. Milazzo is associate general counsel of Recoll Management Corporation. Hon. Nancy Diesel Mills, a District Court judge since 1991, has been nominated and confirmed as a Superior Court judge.

**'83** Annmarie Levins, formerly with the U.S. Attorney's Office in New York City, is now teaching at the University of Washington School of Law in Seattle. M. Michaela Murphy was on the faculty of the Maine State Bar Association's Continuing Legal Education program, "Sentencing Advocacy: The Lost Art," held on January 29 in Augusta. Daniel R. Warren, an avid baseball card collector, has authored two articles: "The Great American High Numbers Chase" or "How I Spent My Summer, Fall & Winter Vacations Completing Some Unfinished Childhood Business" published in the March 1993 *Sports Card Review* and "Gentleman Jim" featured in *Beckett Baseball Card Monthly*, March 1993.

**'84** Edmund R. Folsom has been promoted to Deputy District Attorney of Cumberland County. Laurie A. Gibson and Anne M. Berland have formed

a Lawyers Assistance Group providing legal research, writing and project support services to attorneys. **Mary Ann Lynch**, who is general counsel to Maine Yankee, and her husband Greg J. Ginn, announce the birth of Liam on April 3, 1992, who joins brothers, Mathew, 7 and Douglas, 4. **Peter Meyer** has been made a partner in the firm of Sulloway & Hollis, Concord, New Hampshire, as of January 1, 1993. **Karin R. Tilberg** was featured in a *Maine Times* article on February 26, 1993. The article, "Clash of Interests," offered insights by eight Maine lawyers about how the conflict between environmental and business interests has changed in the past 20 years. Tilberg was staff attorney at Maine Audubon Society from 1986-90. She is now in private practice in Hallowell, representing individuals and municipalities. **Edwinna C. Vanderzanden** was appointed a mediator by the New Hampshire Pilot Program on Alternative Dispute Resolution.

**'85 Timothy P. Benoit** was made a partner of Perkins, Thompson, Hinckley & Keddy in Portland in January 1993.

**'86 Richard R. Beauchesne** has become associated with Peters & Randlett, Attorneys at Law in Lewiston. **Sara O. Burlock**, formerly with the firm of Severson, Hand and Nelson in Houlton, has opened her own general law practice in Houlton. **Doreen F. Connor** has been made a partner at Wiggan & Nourie in Manchester, New Hampshire. **Wayne R. Foote** was on the faculty of the Maine State Bar Association's Continuing Legal Education program, "Sentencing Advocacy: The Lost Art," held on January 29 in Augusta.

**'87 Diane Dusini** and Susan H. Livingston '88, both formerly associated with VanMeer and Belanger in Portland, have formed a law firm, Dusini & Livingston, located at 75 Pearl Street in Portland. The firm will focus on corporate, business, and tax law and family law. **Elizabeth Gallie** has coauthored a comment, "Rural Access Project Initiated in Androscoggin and Oxford Counties," in the January '93 *Maine Bar Journal*. **Meg Cushing Lavoie**, formerly associated with Norman, Hanson & DeTroy in Portland, has been associated with Bernstein, Shur, Sawyer & Nelson since September 1991. Meg and her husband Mark '78 had a baby girl, Aislinn Margaret, on November 26, 1992. **Bruce N. Shibles**, formerly with the Maine Attorney General's Office, is now Assistant City Solicitor in Bangor. **Joel C. Vincent** was featured in the

February 23 *Portland Press Herald*. The article, "Lawyer Defends Poor with Zeal," focussed on Vincent's commitment to court appointed work; he led the state in billings for defending the indigent in 1992.

**'88 Anne H. Cressey** and her husband announce the birth of a son, Samuel James Daniel Cressey, born on September 30, 1992. **Michael H. Hill** and his wife, Cindy, are parents of a baby girl, Alison Elizabeth, born on Oct. 19, 1992. **Susan H. Livingston** and Diane Dusini '87, both formerly associated with VanMeer and Belanger in Portland, have formed a law firm, Dusini & Livingston, located at 75 Pearl Street in Portland. The firm will focus on corporate, business, and tax law and family law.

**'89 Heidi Bean** has moved to Ottawa, Ontario, and is working for Gowling, Strathy & Henderson in Ottawa. **Mary A. Davis** was on the faculty of the Maine State Bar Association's Continuing Legal Education program, "Sentencing Advocacy: The Lost Art," held on January 9 in Augusta. **Alicia E. Flaherty** has become associated with Drummond, Woodsum, Plimpton & MacMahon in Portland as a loan transaction officer/staff attorney in their Real Estate/Commercial Law Department. **Peter J. Wiley**, formerly with Robinson, Kriger, McCallum & Greene, P.A., is now with Jensen, Baird, Gardner & Henry in Portland.

**'90 Martha D. Kelley** and her husband announce the birth of a son, Patrick Iain, on September 11, 1992; he joins brother, Peter, 2½. **Nancy Wandrerer Mackenzie**, formerly with Pierce, Atwood, Scribner, Allen, Smith & Lancaster in Portland, is now working for the Maine Health Care Finance Commission in Augusta.

**'91 Robert C. Brooks** and Michelle Dorsey '93 were married on January 8, 1993, in Portland. **Daniel R. Hartley** and his wife are proud parents of Stephanie Elizabeth born on November 20, 1992. **Abby Holman** is the new legislative director to Maine Governor John McKernan '74. As Director, she helps map out McKernan's legislative strategy while coordinating bills the executive branch sends to lawmakers. She specializes in critical issues such as workers' compensation, education and retirement. Holman was featured in a January 24 *Maine Sunday Telegram* article. **Julie Nepveu** is now working at Legal Services of Northern Virginia. ■

## Graduates Serving in and Serving the Legislature

Serving in Maine's citizens' legislature is a part-time job that requires more than a part-time commitment; it can be challenging to combine the job of legislator with lawyering. Yet serving as a legislator seems a natural course for a law school graduate, trained to understand the making and ramifications of laws.

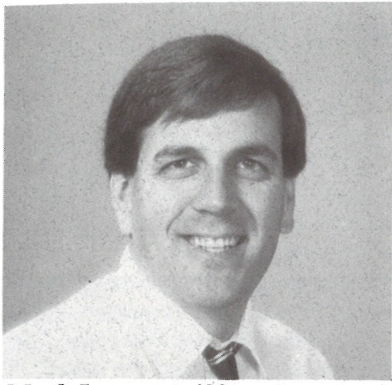
Only 13 lawyers serve in Maine's Legislature. Two of the 10 in the House and all three of those in the Senate are our alumni. All three Senators formerly served in the House. We asked our alumni legislators what inspired them to serve and how they view their work and the challenges facing them this session.

Behind the scenes, four non-partisan offices provide services to the Legislature, services essential to their effectiveness. A number of alumni work in these offices. We asked the Principal Attorney in the Office of Revisor of Statutes and the Director of the Office of Policy and Legal Analysis to explain the role their offices play in the process and how they view their work and current challenges.

"I know the Law School wants a total commitment from its students, and by running for the Legislature during the fall of my second year, I knew I wouldn't be doing that," said **Mark Lawrence '90**. "But I am very glad I ran."

Lawrence had been active in Democratic politics before coming to law school; he had even run unsuccessfully for the state Senate in 1984. He was interested in running again, but not while in law school. He wanted to do well in law school, to be on the Dean's List, and to be on Law Review. But when recruited to run for the House in a heavily Republican district, he decided he could not say no.

Loading up on courses the first semester, during his campaign, Lawrence said, made that semester his toughest, but allowed him to take a lighter load in the spring, during his first session as a legislator. (He did, by



**Mark Lawrence '90**

the way, qualify for Law Review during his third year and also ended up on the Dean's List.)

Initially, Lawrence was not pleased with his assignment to the Legal Affairs Committee. "The Chair, Charlie Priest, advised me to give it a chance. I did. I also took a course he was teaching at the law school in how the legislature works. I gained insights I wouldn't otherwise have had. Two years later when Priest left the Legislature, I became Chair of the Committee." Lawrence was the only second-term legislator to be made a Chair and was also the youngest Chair of a committee.

After two terms in the House, Lawrence decided to run for the Senate. The race, he said, was an enormous challenge. The Senate district was more heavily Republican than his House district. "I began campaigning in April," he said, "and hit 40 homes every night. By the end of the campaign, I had gone to 7500 homes."

Now Chair of the Energy and Resources Committee, Lawrence said he will be kept busy. This committee hears more bills than any other except Judiciary. But he sees the state's budget as the biggest challenge facing legislators, overshadowing all legislative issues. He is optimistic that the Legislature can forge a consensus.

Combining life as a legislator with a law practice is a different sort of challenge. Lawrence said that he chose the kind of practice which would not put him in court a lot — "I'm getting my trial experience in the Legislature." He said that he must make an extra effort to maintain contact with clients and he is managing to do that. "You can't have a full-time practice," he commented, "but you can have a successful and satisfying practice."

Satisfying is the word Lawrence chose to sum up his feelings about his life as a lawyer/legislator. "I can't think of a more enjoyable form of public service," he said. "I would encourage others to think about running. I believe I can make a difference and that is a very satisfying feeling."



**Dana Hanley '90**

Dana Hanley '90 and Lawrence were law school classmates and Hanley too has just been elected state Senator after serving in the House. While Hanley is a Republican and he and Lawrence do not always agree on issues, he shares many of Lawrence's feelings about the difficulty of combining a commitment to law school with a commitment to the Legislature.

Hanley was already in the Legislature when he began law school. He knew from the start, he said, that combining the two would be difficult, but "the reality of balancing the two commitments was even tougher than I had imagined." He said that while he would urge law students to consider running for the Legislature after graduating, he would not urge them to go through law school as a legislator.

Involved in student government throughout high school and college, Hanley found it natural to become involved in politics. He was elected Republican Chairman of the Town of South Paris in 1984, at the age of 22. "We were looking for someone to run for the House seat in the Legislature," Hanley said. "I was on the committee." With time running out a candidate was not forthcoming, however, and so Hanley was drafted.

"I knew that I would probably run for the Legislature at some point," Hanley said. "Although I had been planning to go to Duke University Law School and be a legislator far in the future, I learned that in politics, timing is everything."

Having been something of an introvert, Hanley found the campaign itself good for him. As the underdog, he worked hard and talked to thousands of people. He won, at age 24, in 1986. He served for three terms in the House before running for the District 15 Senate seat last November. "The House is not a true democracy right now," Hanley commented. "I felt I could be more effective in the Senate, where each of the 35 members treats each other — and their ideas — with respect." The campaign was grueling, he said, both physically and mentally.

His biggest challenges, he said, relate to his role as a maverick, within his party and within the Legislature. Sometimes called "the Father of term limits," Hanley introduced the first term limit legislation in Maine. He feels strongly that the Legislature should conduct its business within a reasonable time frame, "and that means starting to work at full speed the first week in January and finishing our work the first week of April. By returning to a true citizens' legislature, we will open up the State House doors to allow more people the opportunity to serve," he said. Sometimes, Hanley added, "standing up to the status quo means standing alone."

The biggest challenge facing the Legislature, Hanley believes, is "the restructuring of state government as we know it." He too is cautiously optimistic. The new people in the Legislature, he said, have brought with them a commitment to bring about change, to make things better. He is convinced that the public agrees. "All this may help in bringing about real reform," he predicted.

Hanley has started his own law practice in South Paris. When he retires from the Legislature — he plans to run for one more term — he will practice full time. So far, he said, he is managing to balance his legal work and legislative work. "I like being my own boss, working with people I know and like, in a community I like and where I want to raise my kids. I feel like I have the best of all worlds," he said.



**Gerard P. Conley, Jr. '79**

As the oldest of twelve children, **Gerard P. Conley, Jr. '79** said it was the example set by his father that got him interested in the Legislature. "My father never graduated from high school but possessed a fine mind and tremendous street smarts," he said. Conley Sr. served in the Maine House and Senate, culminating his Legislative career with one term as President of the Senate in 1982. Public service was in Conley's blood.

After graduating from law school, Conley went to work for the Attorney General's Office, prosecuting child abuse cases for the Department of Human Services. In 1982, he took a leave of absence to run Joe Brennan's gubernatorial re-election campaign. In 1984, he formed a law practice with three other Maine law school graduates in Portland.

That year also marked his first run for public office; he lost a race for the Maine Senate to now-Congressman Tom Andrews. In 1986 Conley ran successfully for a House seat, in 1990 for a Senate seat. Now in his second Senate term, he is chair of the Judiciary Committee.

"Almost every issue we deal with in the Legislature," Conley said, "has legal implications, and the other members of the Senate often look to the three lawyers in the Senate for legal guidance. Frankly, even if we were David Gregory or Mel Zarr, I don't believe we could answer all the variety of legal questions that occur." He mentioned caps on personal injury awards, medical malpractice reforms, mandatory sentencing provisions, workers' comp initiatives, and complicated environmental issues relating to private property rights as just a few examples of the issues with legal implications facing the Legislature.

Conley believes the Legislature would benefit from having more lawyer members and that lawyers would also benefit from serving. If more lawyers served in the Legislature so that they could be seen as "caring human beings not obsessed with making money at the expense of people with problems," he commented, "their public image would be improved."

Serving in the Legislature is an excellent opportunity to help one's community and improve the quality of life for all Maine citizens, Conley said, and it provides a tremendous chance for personal growth. As a legislator, Conley said he finds himself thrust into the concerns and cares of 185 other people from diverse backgrounds with constituencies very different from typical clients in a law office. "A term in the Legislature helps one see that the world is not constructed merely of legal questions and answers but of a whole array of human needs, emotions and cares."

Conley's views about the difficulties of combining legislative service with a law practice echo those of other alumni legislators. "Speeding tickets, Motions to Continue and apologetic phone calls are far more frequent for me than they are for my partners," he said. But the endeavor is definitely worthwhile, he said. "When I get old and look back on what kind of a mark I have made on the planet, I would much rather be reading my far fetched liberal speeches from the Legislative record than the cases I lost on appeal to the Law Court."

When **Susan Farnsworth '76** graduated from Bates as a Spanish major, she did not plan to run for the Legislature or go to law school. After working for the Lewiston Model Cities Program as an urban planner for a few years, however, she decided law school would give her the greatest expansion of options.

Following graduation, Farnsworth went to work for the State, first as legal advisor to the Division of Community Services, then as Assistant Attorney General at the Labor Department, and for six years, as an Employee Relations attorney in the Governor's Office, where she was made Chief Counsel of Employee Relations for State government. "It was a wonderful job. I was involved in policy issues. There was a constant

change in focus. But it was also a draining job," she said.

With a change of administration, Farnsworth decided to leave. "I was approaching forty, feeling a little burned out and a little restless," she said, "I wasn't sure exactly where I wanted to head, but knew I wanted to do something different, something more, with my skills."

A short time later, Polly Reeves '90 decided, after entering law school, not to run for re-election to the Legislature. "I knew instantly that this was something I wanted to do," said Farnsworth. "I wasn't political, but I knew a lot about how government policy is made and I had seen the effects of what the Legislature did. Without consciously thinking about it, I had been drawn to public service all my life."



**Susan Farnsworth '76**

Farnsworth was victorious, defeating two opponents in the primary and winning a tough general election in November, 1988. While she has never made an issue of it, nor have her opponents, Farnsworth was the first legislator to be openly lesbian. She believes her presence has given some legislators their first conscious opportunity to get to know a gay person.

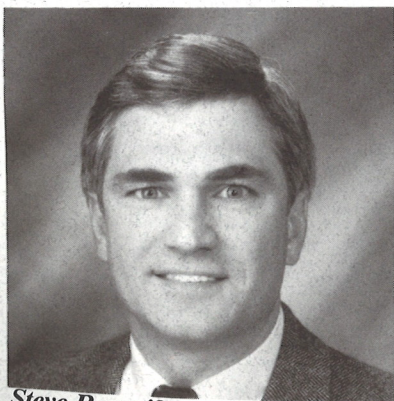
Now in her third term, she has served from the start on the Judiciary Committee and this term asked to be on the Taxation Committee as well. "Taking responsibility for figuring out what policy should be is very rewarding to me," Farnsworth commented. She manages to combine her legislative responsibilities with a solo law practice and recently, with work as a private mediator. Like other alumni attorneys in the Legislature, she finds juggling the two jobs is very difficult to manage.

The biggest challenge facing the Legislature, said Farnsworth, "will be finding a way to get through all the difficult major issues we must deal with without gridlock and without ceasing our dialogue. I believe that solutions can be found if we keep talking and keep drawing on the expertise of a variety of people."

Farnsworth has found her legal training and skills to be tremendously useful, both in terms of what she gets out of her work and what she gives to it. "There are legal issues in every subject matter coming before the Legislature," she said. "Lawyers contribute a lot to the process. There is a sense that the Legislature is riddled with lawyers but really, there are too few."

**Steven Rowe '87** has been interested in politics and government since childhood. "My father loved politics. Political and governmental issues and events were daily topics of discussion at my family's dinner table." Until November 1992, however, family and personal economic considerations restricted Rowe's political involvement to campaigning for others, he said. He decided to run for State Representative from District 30 of Portland, "because I was concerned about the condition of Maine's economy and its impact on the people of our state." Rowe said that his concern regarding the ever-increasing property tax burden on local residents also contributed to his decision to run.

During law school Rowe took a course on legislation taught by former State Representative Charles Priest '74. As part of the course, students worked with legislative staff to draft bills and then monitored the bills' progress in the Legislature. "That experience also helped spark my interest in legislative service," Rowe said.



Steve Rowe '87

"A legal background is a real asset to a legislator," he said. Rowe has found that his legal education and training have enabled him to more quickly and thoroughly analyze the impact of proposed legislation. He also believes that his legal background allows him to contribute more significantly during committee deliberations.

"On the other hand," he commented, "legislative service requires a change of mindset from lawyer to lawmaker." Unlike lawyers and judges, legislators need not feel constrained by the legislative intent underlying existing statutes, Rowe said. "If changing a law can significantly improve the lives of Maine people, legislators should probably change it."

Rowe sees the biennial budget as the major issue confronting this legislative session. He believes the Legislature's greatest challenge will be to ensure that budget considerations do not drive long-range policy decisions. "While some spending cuts appear to be inevitable," said Rowe, "we must be careful not to jeopardize the health, safety and future of Maine citizens."

"State government must work more closely with municipal, county, and federal governments to ensure that their collective resources are integrated and focussed to achieve maximum impact," Rowe stated. He also believes structural changes need to be made in the state's revenue base to avoid another fiscal crisis in the near future.

Rowe has taken temporary leave from his job as a litigation attorney with UNUM to serve in the Legislature; however, he continues to work part-time at UNUM. He acknowledged that the time commitment associated with legislative service can be substantial, but noted that the rewards are great. "I consider it to be an honor and a privilege to serve in the Legislature. The work is not only interesting but extremely important. I recommend that other Maine law graduates consider such service."

Although **Martha Freeman '80** came to law school intending to work in the public sector and wanted to be involved with policy issues, she did not know about the Office of Policy and Legal Analysis until she read about it in a *Maine Times* article during her second year. "I got in touch with the OPLA director and was

hired as a summer intern."

Freeman liked the chance to do research and writing and to work with policymakers. "When OPLA had an opening for a lawyer the year I graduated, I jumped at the chance to apply, was hired, and the rest has been, for me, happy history."

OPLA is a non-partisan office with a staff of 23 that serves joint House and Senate committees and Republican and Democratic legislators. They provide research, committee amendment drafting, and decisionmaking facilitation services. OPLA also staffs study committees and commissions established by the Legislature, organizing meetings, gathering information, writing reports and preparing legislation. They also draft between a quarter to a third of bills introduced to the Legislature.



Martha Freeman '80

During her first years on the job, Freeman worked for the Local and County Government and the Energy and Natural Resources Committees; she also staffed the Judiciary Committee for eight years. She became senior attorney and then principal attorney in OPLA. In 1988 she became director.

As director, Freeman manages the efforts of the OPLA staff. This involves negotiating with legislators to accommodate their needs within the limits of staff resources and the Legislature's schedule. She also coordinates work with the directors of the three other non-partisan legislative staff offices.

She noted that her biggest challenges "generally involve helping others accept our non-partisan role in a very partisan environment and doing all the work demanded of us." Her office must be objective and have the trust of people in both parties, she said. The situation she has found most difficult to date "involved assisting the Legislature and Governor during the state shutdown in the summer of



1991 to negotiate a workers' comp law compromise. Everyone was dealing with complex substantive issues while inventing a new decision-making process. Everyone was tired and strained. Helping to find a way for the parties to talk and rely on information was extremely challenging."

The biggest challenge this session, she said, is the state budget "and all the very difficult policy choices that our budget problems place in front of the Legislature. We need to help the committees we staff get their hands around the complex and interrelated policy and program issues of concern to them in the budget."

Freeman said her legal education is of great benefit in her career. "Knowing the law, knowing how to work hard under pressure, knowing how to stand my ground, knowing how to take care in writing are assets in my work. A law degree seems to serve me well for handling legal, policy, and even managerial issues in state government."

When **Margaret Matheson '82** came to law school, she thought that she might want to be another Perry Mason. By graduation she knew that she did not want to spend her life in a courtroom. A government major at Colby, she knew "government work" of some sort would appeal to her. Nonetheless she came to her job at the Office of Revisor of Statutes somewhat by accident and with no plan to work there permanently.



*Margaret Matheson '82*

"They were looking for someone to work for a few months until the legislative session ended. I was interviewing for other jobs. I found, however, that I really liked this job and stopped looking. It's probably the most creative job a lawyer can have."

That was ten years ago. Matheson is now the principal attorney in the office, heading the legal group and serving as liaison on drafting issues with the other three non-partisan offices that serve the Legislature.

The Office of Revisor of Statutes, Matheson said, serves a variety of functions. When the Legislature is in session, they prepare all legislative documents, drafting a lot of bills and processing everything else, she said. Part of their job is to see that the form, format, and language in bills are clear. Three lawyers, two full-time and one half-time paralegals and the director form the legal group; the

office includes data entry and legal proofreaders groups.

"Much of what we do is technical," Matheson said. "We are in charge of all floor amendments, which must be done immediately." There are times, she said, when the Legislature recesses for her office to write a floor amendment and someone is literally waiting to take it to the Legislature as it is written. Everyone in the office works on all issues, she explained, because each person has to be prepared to write an amendment on any subject.

Matheson likes serving the public and likes the creative aspects of her job. "I see the law as much more mutable than many of my practicing attorney friends," she said. "My friends see the law as carved in stone. My job is to change the law."

The Legislature is still a citizens' Legislature, Matheson said, and a very interesting place to work. From December to July the pace is hectic. There are constant deadlines. At the end of the session, people in the Revisors Office often work through the night. Her biggest personal challenge this session, she said, "will be to keep my sense of perspective. When the atmosphere gets hectic, you have to remember you're not just grinding out documents like a sausage machine. You've got to keep your creativity intact."

She sees the budget as the biggest challenge facing the Legislature. "Everyone knows that hard choices will have to be made," she said. ■

## SCHOOL OF LAW University of Maine

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### ADDRESS CORRECTION REQUESTED

The Alumni Quarterly is published at the end of March, June, September and December by the University of Maine Law Alumni Office. It is sent to alumni, students, and friends of the Law School. The deadline for each issue is one month prior to publication. Please send items of interest to the Law School community to Joan Amerling or Kristi Clifford, writers and editors, at the above address.

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