A LOOK AT LAW AND VALUES:

An interview with The Most Reverend Anthony J. Bevilacqua, Bishop of the Diocese of Pittsburgh
IN MEMORIAM

ELIZABETH M. SCHEIB
SEPTEMBER 11, 1911 — NOVEMBER 7, 1985

"She epitomized the best in that proud word — teacher."
(From a citation presented by the School of Law on the date of her retirement, June 10, 1977.)

A native of Pittsburgh, Elizabeth M. Scheib received her bachelor of arts degree in 1932 from Duquesne University. It was in that same year she began a lifetime of service to Duquesne. Her presence was felt through the Great Depression to the Great Society. For 44 years, her professionalism, capabilities and loyalty earned the high regard of her colleagues within the Law School and the Pittsburgh legal community.

Miss Scheib began her teaching career at Duquesne in 1932 with the College of Arts & Sciences. After receiving her master’s degree in 1935, she joined the Law School in 1940 as executive secretary — a position she held until 1958. With diligence, patience and commitment she received her bachelor of laws degree from the School of Law in 1949. She joined the law faculty as an instructor in 1957, became law librarian in 1958, and in 1964, was granted tenure and promoted to the position of associate professor. In September 1965, she was made a full professor.

Those who were fortunate enough to know Miss Scheib readily attest to her outstanding contributions to the Law School. Recalling Miss Scheib and her work at the Law School, Dean John J. Sciullo said, "No one was more supportive of the University and the Law School than Betty. Her unswerving devotion to the Law School showed in the excellence that characterized all her work. I can hardly express how much her passing will affect those of us who knew her. I would tell those who did not know her that her warmth and encouragement helped develop many of the strengths of our Law School today. It is a blessing that she was with us for so long."

In memoriam to Miss Scheib, Dean Sciullo announced the creation of the Elizabeth M. Scheib Scholarship Fund. Proceeds from the endowed fund will be awarded to students who possess undoubted ability and require financial assistance to pursue their legal studies. Contributions to this fund can be made directly to the School of Law, in care of the Elizabeth M. Scheib Scholarship Fund.

It is with great fondness that JURIS and the entire Duquesne Law School family remember Betty Scheib.
**Editor’s Note**

Law and Values — are they a contradiction in terms?

In this issue of JURIS several articles consider the question and the influences of values and the law.

Bishop Anthony J. Bevilacqua, Bishop of the Diocese of Pittsburgh, said in an interview with JURIS Executive Managing Editor John Rago that law and religion must never be seen as “enemies.” “Through God,” he said, “the powers to organize society in accordance with His laws are committed to the people.” Law and religion together, the Bishop added, can create more power than anyone ever would — or could — individually.

Our society and our legal tradition do not doubt the presence, or at least the influence, that religion, morals and values have had on our law today. Professor Harold J. Berman of Emory University notes in another article, however, that regardless of its religious base, the law is shifting radically toward a valueless practice of result-orientation, where the result justifies the effect. Professor Berman, in his address as the featured speaker of the Law School’s Second Annual Lecture Series on Law and Values, spoke of an interesting contrast. In theory, the influence of values and religion is widely accepted in the development of our law. But in legal practice, and perhaps even in legal education, the influence of values is oftentimes paid mere lip service.

This fact is clearly seen in this issue’s article on professional responsibility in the practice of law and the public’s perception of lawyers and the legal system. If law is the civilizing force in our society to provide the value-laden yardstick of common conduct and behavior for us all, why is it that the public views law and justice as something only for the wealthy, who manipulate justice and truth to satisfy their particular purpose? Why does more than 70 percent of the general public rate the honesty and ethical standards of lawyers as being average to very low? And why does the Commonwealth of Pennsylvania, like many other states, need to have a Client Security Fund, as Dean John J. Sciullo talks about on Pages 8-9, to reimburse clients whose attorneys have wrongfully used, appropriated or absconded with their funds.

These are questions that cannot at present be answered in anything more than a general way. Of course, it may be said that asking general questions may lead to nothing but a general answer. This may be so, but the questions persist. Is there an answer? Should we even try to look for one? Maybe and yes, but it is not an answer that will provide profession-wide relief in an instant for lawyers, teachers, students, judges and, importantly, the clients. The answer, I think, lies within the individual student and practitioner who must become aware of these concerns and aware of his or her own values to adjust actions and practice to meet the standards that our collective values, religion and morals have set for the profession of law. Hopefully, with this awareness each of us in our own way can seek to make law and values once again “friends.”

Sincerely,

Matthew M. Polka
Editor-in-Chief

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Two-Out Lightning:
The legal pitch to save the Pirates
The Pittsburgh Pirates will celebrate their 100th anniversary next year, and that milestone will be observed during the most tumultuous time in the club's history. The Pirates have been a fixture in America's Most Liveable City for nearly a century, and stability has been the strongest trait for the club whose reputation was, until this past season, marred only by the 1890 "pirating" of a star player from Philadelphia. In that year, the Pittsburgh Alleghenies became the Pittsburgh Pirates.

The Pirates made few moves around Pittsburgh during that time — from Union Park, to Forbes Field, and finally to Three Rivers Stadium in 1971. One of the more stable aspects of the franchise has been the ownership of the team by the Galbreath family of Columbus, Ohio. In 1946, John Galbreath, Thomas Johnson, Frank McKinney and entertainer Bing Crosby purchased the Pirates, and by 1982, the Galbreaths had bought out all but one percent of the team from their previous partners. A year later, they sold 48 percent of their 99 percent share to Warner Communications.

**By D. SHAWN WHITE**

And now, with possibly the team's worst season behind it and the shadows of the infamous and highly publicized drug trials still looming, the Pirates will begin next season with new owners, some new ballplayers and probably one of the most innovative and revolutionary ownership programs in the history of major league professional sports.

"It all started more than a year ago, around November of 1984 when the Galbreaths announced they were anxious to sell the Pirates, but keep the franchise in Pittsburgh," said David Matter, former executive secretary to Mayor Richard Caliguiri and a key player in the public-private buyout of the franchise.

At that time, the Galbreath interests in the Pirates were overseen by the elder Galbreath and his son, Dan, who served as the team's president. The Galbreaths had guided the franchise for more than 35 years, making them third among all active major league family owners in terms of length of ownership, exceeded only by the Yawkey family, who owns the Boston Red Sox, and the O'Malley family of Los Angeles Dodger fame.

"If we wanted to keep the Pirates here, as the Galbreaths had desired, we had to find a local buyer, and a number of groups surfaced," Matter said. The first was headed by Pittsburgh businessman and former Atlanta resident Jim Roddey, but the lack of operating funds hindered the Roddey group.

"When that group fell apart, the Mayor got U. S. Steel President David Roderick and Westinghouse President Douglas Danforth together with Allegheny County Commissioner Tom Foerster to explore a public and private sector arrangement to purchase the club," Matter explained. With the genuine threat of an acceptable outside offer, Mayor Caliguiri was forced into immediate action. Time was of the essence, and both the Pennsylvania Constitution and the state's municipal codes presented roadblocks for public participation in the deal. It had been determined that through the state's Municipal Authorities Act, an authority created by the City of Pittsburgh and the County of Allegheny could be formed to provide the needed public participation.

But after an August 19 meeting with county officials, Mayor Caliguiri could convince only Allegheny County Commissioner Pete Flaherty of the merits of the public-private equity ownership plan. Through the efforts of Danforth, Roderick and Ryan Homes Chairman Malcolm M. Prine, the private portion of the $50 million had already been solidified. It was up to the Mayor and Attorney Carl Barger, managing partner of the Pittsburgh firm of Eckert, Seamans, Cherin & Mellott, to lobby the other county commissioners and the Allegheny County delegation of the state legislature.

"After all, it was our sincere belief that the loss of the Pirates would be a devastating blow to the community," Barger said. "That was the initial motivation for our participation, and the process grew from there. In the course of all this we took an active roll in the fundraising effort, the assembling of the group and the structuring of the deal so that it made sense to the investor."

What Barger had not planned on was the steadfastness of the two county commissioners and many of the state legislators. The Sunday after the August 19 meeting, a story in The Pittsburgh Press detailed the opposition to the deal by the county's legislators who would be needed to amend the state's municipal authority legisla-
tion. The legislators had reasoned that if the majority of the commissioners opposed the deal, they too, would stand in opposition.

"That Sunday, after reading the legislators' article, I drafted a memo to the Mayor indicating that we had to change directions, as the public's support and the legislators' support was so critical to the deal," Matter said.

"We recast the idea of keeping the club as an argument for economic development rather than for an equity ownership. The Pirates are, after all, an economic development enterprise which brings enormous amounts of money to the economy.

"That was the threshold decision. We would convert the plan from equity participation to a loan arrangement, and we were off to a running start," Matter said. "There was an enormous amount of work from that point. We had already begun to investigate the sale and lease-back of Three Rivers Stadium, but it was on the back burner. All of a sudden we had to get serious with it. We got the investor team together, brought the appraisers together, and we began structuring the deal."

"What emerged is the current deal which brings together the previously established private sector group with the public sector contributions from the sale of the publicly owned stadium to a group of New York investors.

The scheme is attractive because the city will make a loan to the private sector using no taxpayer dollars, while keeping control of the stadium by paying a set rental fee pursuant to the lease agreement. Although the rental fee would eventually be paid from taxpayer revenue, the city has chosen the minimum amount of revenue necessary to complete the whole transaction. In addition, the Allegheny County Commissioners, although not by a majority, have agreed to rebate all potential real estate tax dollars paid by the new, private owners to the city while sharing in one-half of the leaseback costs.

With everything in place, the new Pirate deal will still consist of a group of private investors participating in the public sector. It is expected that this coalition of private investors will form a limited partnership to raise funds for the purchase of the assets of the Pittsburgh Athletic Company and the required working capital to operate the club. The control of the franchise will completely vest in the private sector.

The agreement provides for the purchase price of $22 million in cash for the assets plus the assumption of certain player compensation liabilities. If the new limited partnership should sell the franchise for more than the original purchase price, the Galbreath family, along with minority owner Warner Communications, will receive a portion of the future sales price, not to exceed $6 million.

With control of the franchise in the hands of the private sector, the public sector will be responsible only for funding half of the purchase price and working capital. This will be achieved through a loan of $11 million to the private sector, derived from the sale of Three Rivers Stadium, and repayable only in the event that the team is sold in the future, sale proceeds permitting.

Matter explained that the stadium will be straight-line depreciated over 40 years, but the possibility of a 19-year depreciation had been explored. "The only way to accomplish a 19-year depreciation would be to bring a disinterested third party between the Stadium Authority, which currently owns the stadium, and the private purchasers. This would require another non-profit organization to operate the stadium. We approached two groups, and both declined. We would have generated upfront cash, but legal and financial complications, along with political considerations, forced us back to the 40-year depreciation."

But how unique is the Pirate plan in the world of professional sports ownership? A typical sports franchise usually involves a group of investors from the private sector who may choose to incorporate, or form a general or limited partnership that will own and operate the franchise. The
determination as to which is more advantageous depends upon certain variables and each particular situation. These variables include the number of investors and their contributions, the profit-sharing established among the investors, the assumption of losses and liabilities and, most important, the tax consequences which flow from the entity to each investor.

Apart from private ownership is the concept of public ownership. This is generally more attractive to a community which hopes to insure that a sports franchise will not relocate at some future date on the whim of a few businessmen-owners who are seeking a better economic opportunity for themselves. It would be advantageous for the community to claim the prestige that comes with ownership of a sports franchise while maintaining a large employer, a revenue generator and an entertainment outlet for its residents.

Although the concept is attractive, it is quite rare in practice. Until the City of Pittsburgh devised its current plan, the only other publicly owned sports franchise was in Wisconsin, where the residents of Green Bay own the football Packers.

The Packer franchise is operating as a non-profit corporation under Articles of Incorporation granted by the State of Wisconsin in 1935. The first Articles were granted in the 1920s after the team's coach purchased the franchise from the original owner—a Green Bay meat packing company. After the Articles were granted, stock was issued to the citizens of Green Bay. While the stock does not carry any dividend rights, it does include the right to attend the annual meeting and participate in the election of the Board of Directors. Ownership of Green Bay Packer stock is more of a community status symbol than an individual business investment.

The stock ownership by the citizens of Green Bay is significant, however, as Wisconsin law provides that a corporation may not dissolve without the approval of its shareholders. Excluding a voluntary sale, the only way the citizens of Green Bay would lose the Packers is through a forced bankruptcy action. With this particular structure, the citizens of Green Bay have insured that Packer football, with all of its traditions and the revenues generated, will remain at their option.

In Pittsburgh, however, the structure may still pose problems with the use of taxpayer money to pay the lease on the stadium. But an analysis of the entire scope of the transaction must weigh the tax burden against the dividends returned to the public. There are those citizens who are employed by the stadium and the Pirate organization. The revenue generated by the franchise far outweighs the rental fees which would have to be assumed by the city and county to keep the Pirates.

Finally, how would America's Most Liveable City present itself to the country after losing a major league franchise only a few short months after a telethon was staged to keep its professional hockey and soccer teams?

In a region suffering from high unemployment and a declining industrial sector, the overriding question is quite simple: Can Pittsburgh afford to lose another revenue generator of the magnitude of the Pittsburgh Pirates? The question will only be answered with the success of this innovative public and private partnership formed to keep the Pirates in Pittsburgh.

Senior Staff Member Timothy G. Uhrich also contributed to this article.

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**University of Santa Clara School of Law Summer Study Law Abroad - 1986**

**TOKYO, JAPAN:**
June 18 - August 8


**OXFORD, ENGLAND:**
June 30 - August 10

Students live in 15th century Oxford College and are taught by Oxford professors in Oxford Tutorial Method. Course offerings include Jurisprudence, European Economic Community Law, Legal History, Computers and the Law, International Human Rights, and various comparative courses in areas such as Constitutional Law, Real Property, Torts and Labor Law.

**STRASBOURG, FRANCE, GENEVA, SWITZERLAND:**
June 11 - August 1


**HONG KONG:**
June 9 - July 30

Trade and commercial relations between Hong Kong, China, and the rest of East Asia is the focus of the program held at the University of Hong Kong. Practice component affords option of either a writing tutorial or an internship with a Hong Kong law firm, corporate law office or government agency.

**SINGAPORE-ASEAN:**
June 9 - July 30

Focus of the program to be held at the National University of Singapore will be the legal systems and cultures as well as the legal aspects of international investment and development in the countries of the Association of Southeast Asian National (ASEAN) (Singapore, Indonesia, Thailand, Malaysia, The Phillipines, Brunei). At our disposal are the resources of the National University of Singapore, The Asian-Pacific Tax and Investment Research Center, local and international faculty consisting of recognized experts in the subject areas, and law offices which deal in such matters on a daily basis. Internships required after the academic courses with Singapore and Bangkok (Thailand) Law offices.

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**JURIS**
HELPING THE CLIENT

The Pennsylvania Client Security Fund

Not all attorneys in the Commonwealth of Pennsylvania are honest. This fact, though not pervasive throughout the Pennsylvania Bar, is sad, but true. There are times when the funds of clients are wrongfully appropriated by less-than-scrupulous attorneys.

Until recently, there was not much a victimized client could do about a lawyer who absconded with the client’s money, or about getting all or at least part of it back. But now Pennsylvania has a mechanism to reimburse clients whose money was converted by unethical attorneys, and to hold those attorneys responsible for their acts.

This mechanism is called the Pennsylvania Client Security Fund.

“Most lawyers are ethical, honest and reliable, who do not steal or convert their clients’ money,” said Duquesne Law School Dean John J. Sciullo, Vice Chairman of the seven-member Client Security Fund Board. “But there are a few attorneys in this state who are dishonest, and it is for those attorneys’ clients that the Fund was meant to address.”

The Fund was established in 1982 by the Supreme Court of Pennsylvania in response to the numbers of clients in Pennsylvania who suffered losses of money or other property as a result of the dishonesty of their attorney. Dean Sciullo said the Fund was created as a remedy of last resort for clients who could not get reimbursement from other sources, such as insurance or from the attorney himself.

Being a Fund of last resort, however, does not mean the Board is not busy. Dean Sciullo noted that the Board, made up of five lawyers and two non-lawyers, meets four times a year in Pittsburgh, Harrisburg and Philadelphia to hear complaints filed by clients and, if warranted, award the client reimbursement for his or her attorney’s wrongful acts.

“The majority of claims we hear involve conversions of funds, and thefts from trusts and estates,” said Dean Sciullo, who is in his second three-year term as the Board’s Vice Chairman. “The remaining claims usually involve funds appropriated through forgeries, embezzlement of litigation proceeds or blatant misappropriation.”

In 1984 alone the Board heard 142 claims through final disposition, approving 86 claims for a total reimbursement award of $538,814, and rejecting 45 claims whose reimbursement figure would have totaled $398,352. The final 11 claims that year were either dismissed or discontinued.

The Fund is financed through an annual assessment of all licensed, active attorneys in Pennsylvania. None of the Fund’s money comes from clients’ fees paid to attorneys, and no tax dollars are used. The Fund is administered by the Board members, who are all appointed by the Supreme Court for three-year terms. All Board members serve without compensation as a public service.

The present Board represents a cross-section of all geographic regions of the Commonwealth. Present Board members include Arthur R. Littleton, Esq., of Philadelphia, who is Chairman of the Board and, with Dean Sciullo, the only other original member of the Board, Dean Sciullo of Pittsburgh, Paula Geen Bregman, Esq., of Wilkes-Barre, Harold S. Irwin, Jr., Esq., of Carlisle, and Walter F. Baczkowski, Esq., of McKeеспort. The two non-lawyer Board members are Dean Janet S. Dickerson, Dean of Swarthmore College in Swarthmore, and Joseph P. Scottino, President of Gannon University in Erie.

By MATTHEW M. POLKA

VICE CHAIRMAN AND DEAN JOHN J. SCIULLO

“Our Chairman, Arthur Littleton, devotes a great deal of his time away from his law practice, reviewing claims and making decisions on which cases are appropriate for the Board to hear,” the Dean said. “Without him and the valuable time he devotes to the Board, there is no doubt that we would have to hire at least one full-time staff member to handle our caseload.”

Dean Sciullo said also the interaction with non-lawyers on the Board gives the decision-making process an interesting perspective, which lawyers alone might otherwise not consider.

“The lawyers on the Board have the tendency to ask why something happened, but the non-lawyers are very good at giving us their opinion on the credibility of the parties involved, the expectations of the clients and whether the lawyer acted improperly,” he said. “The mix works very well, and all of the members take their duties seriously.”

The Fund covers valid claims of clients up to a maximum of $25,000 for each claim. The attorney involved must have been a licensed Pennsylvania lawyer and must have served the client as an attorney in a fiduciary capacity, or as an escrow agent arising from an attorney-client relationship. Dean Sciullo noted, however, that the
"...Mostly all attorneys in the Commonwealth recognize the obligation that the Bar has to try to help clients whose funds have been converted."

Fund does not cover losses resulting from the malpractice or negligence of lawyers, nor does it cover clients' claims based upon fee disputes with the attorney.

"The awards made by the Board are a matter of privilege, and not of right," he said. "The Board has a great deal of discretion in listening to claims and making awards, and we can deny claims for a number of varied reasons."

Jurisdiction of the Board is invoked simply by filing a complaint form, which can be obtained from the Board at their main office in Philadelphia at 1515 Market Street, Suite 1420, Philadelphia, 19102.

Once a complaint is filed, the Board determines whether the claim is appropriate for review. If it is, the Board may determine the substance of the claim on the basis of merely the complaint and answer. If the complaint is more complicated, the claim will be decided in a hearing before the Board. In such a hearing, Dean Sciullo said the Board uses a preponderance of evidence standard to determine the validity of the claim. It is not necessary that an attorney represent a claimant in such a hearing; however, if an attorney does represent a claimant, the Dean added that Board policy prohibits the attorney from receiving a fee or other compensation for his services.

"We like to encourage attorneys to participate in these matters, but we would rather have them do it as a public service to the client," he said. "People should know that the Fund exists, because it is very simple to file a claim if you fit within the rules."

"But clients should remember that the award is a matter of grace, and that we're not going to give money away," Dean Sciullo added.

The statute of limitations for claims before the Board is two years from the date when the claimant knew or should have known that the attorney converted his property. However, if the Board finds that special circumstances exist, a claim more than two years old will be heard nonetheless.

In filing a complaint, all clients are required to sign a subrogation agreement, allowing the board to recoup the award from the attorney. In addition, clients filing a claim must agree to pursue the matter against the attorney before the Disciplinary Board of the Supreme Court of Pennsylvania.

"I think that mostly all attorneys in the Commonwealth recognize the obligation that the Bar has to try to help clients whose funds have been converted," Dean Sciullo said. "The problems arise many times not just because of the dishonesty of the attorney, but by his slowness in casually handling the client's assets."

"An attorney might take a client's money for awhile because of a personal or financial problem or something, thinking that this is only temporary and that he'll pay it back," he added. "But this is still misappropriation, no matter what the reason."

In the next several years, Dean Sciullo said the Board will review the question of increasing the maximum allowable award for estate claimants that may not be as adequately compensated with the $25,000 maximum award as would an individual claimant.

"But, the importance of the Board is that it is there to address the needs of the client, and to educate the Bar and attorneys on the problems that they must avoid in the practice of law," he added. "And this we are doing."
Law and Values: A Question of Compatibility
By JOHN T. RAGO

Law students, professors, attorneys and members of the judiciary want to find a deeper justification for the powers of society which vest in our legal system. The commentator, Blackstone, stated that law is “a rule of conduct prescribed by the supreme power of the State, commanding that which is right and prohibiting that which is wrong.” But should our understanding of the foundation of law stop here? Can, as Blackstone suggests, so few decide what is right or wrong for so many? Or should we repudiate his definition, and all it implies, by appeal to Saint Paul who says “there is no authority except from God” (Romans 13:1 b)?

JURIS’ interview with the Most Reverend Anthony J. Bevilacqua, Bishop of the Diocese of Pittsburgh, focuses on this question of law and values and on the Bishop’s belief that the principles of law are of Divine origin. The conversation with the Bishop centered on legal education and immigration law, demonstrating Bishop Bevilacqua’s firm conviction that society must not remove God from His creation. “Through God,” the Bishop said, “the powers to organize society in accordance with His laws are committed to the people.”

As lawyer and priest, Bishop Bevilacqua’s many fields of activities have been a true reflection of his participation in the religious and intellectual life of our time. He is a pastor, teacher and leader not only in the Church, but also in our community. His intense commitment to Catholic Social Teaching has been re-enforced dramatically through his many legal and ecclesiastical achievements.

Bishop Bevilacqua was born in Brooklyn, New York, the ninth of 11 children of Italian immigrant parents. He attended Cathedral High School and Cathedral College of Brooklyn, then entered the Seminary of Immaculate Conception in Huntington, New York. Following his ordination in 1949, he continued his education at the Gregorian University in Rome where, in 1956, he was graduated and received his doctorate in canon law with summa cum laude distinction. After returning to serve his home Diocese of Brooklyn, he received his M.A. in political science from Columbia University in 1962, and in 1975, earned his juris doctor degree in civil law from St. John’s University Law School. Bishop Bevilacqua returned to the classroom once again, but this time in the role of professor of immigration law and canon law at his respective alma maters.

A number of his written works include contributions to The Jurist, “Dictionarium Morale et Canonicum”; The New Catholic Encyclopedia; The Catholic Lawyer; Proceedings of the Catholic Theological Society of America; Proceedings of the Canon Law Society of America; Migration Today; and, “In Defense of the Alien,” a series of articles for the Center for Migration Studies.

Before coming to Pittsburgh, Bishop Bevilacqua served the Diocese of Brooklyn, New York, as Auxiliary Bishop. In 1982 he was appointed by Pope John Paul II to the Pontifical Commission for the Pastoral Care of Migrants and Itinerant People. His most recent Papal appointment brought him to Pittsburgh where he now serves as the tenth Bishop of the Diocese.
**ON VALUE EXPOSURE IN LEGAL EDUCATION AND THE LAW**

**JURIS:** Do you find any conflict between your roles as canon and civil lawyer?

**BISHOP:** At times, reality causes me to have some difficulty. But there is never any conflict between the two. So much of our civil law has come from the canon law and so much of civil and canon law come from the fundamental natural law. Specifically, they represent different approaches, but the canon law, like civil law, is a reflection of moral values. So while there are different emphases — generally, they coincide.

**JURIS:** Why does there appear to be a tension between law and religion? Is it necessary?

**BISHOP:** The two must never be seen as enemies. They should be synergistic. Together they can create more power than anyone can individually. Law and religion — when they cooperate can accomplish a great deal.

**JURIS:** There seems to be a growing debate in legal education over the paucity of value exposure both in legal education and the law. What are your impressions?

**BISHOP:** Law is a reflection of values, or perhaps it should be a reflection of the true human values of mankind, not just what is pervasive. It would be difficult to find any law, especially criminal law, that does not reflect a value structure. Almost all do, at least indirectly. I believe the law reflects morality and we have to inculcate in students, more and more, the ethical values of the whole Judeo-Christian culture. Perhaps the underlying problem lies in a variety of attitudes which need to be reshaped. It is precisely these attitudes which affect the way our laws are interpreted. You may have a law that reflects a particular value, but if your personal values are improper you can take that law which reflects a high value system and change it through interpretation or application. This is why the federal judiciary is changing now. But a number of years ago, the federal bench was imposing its own value system on the law and that is how we got abortion. As you know, many constitutional lawyers and even pro-abortionists have said that Roe v. Wade was a very bad decision. But that was the mindset of the federal judiciary. Their value system was different.

**JURIS:** Is it a problem of improper attitudes or too much subjectivity in matters where the law is used to shape and reflect our values?

**BISHOP:** No matter how hard you try, I do not believe you can escape your own personal value system. Why is it, for example, that the law may seem quite clear and yet you have five judges say yes and four judges say no? The subjectiveness, or the tendency to impose one’s own system of values, is always present. It is in this context that I am suggesting we have to build up or shape attitudes.

**JURIS:** Does the Catholic university, particularly a Catholic law school, have a greater burden in this regard?

**BISHOP:** There is a greater burden in the sense there is a greater responsibility, a greater expectation. Every university is supposed to teach a high value system. However, the reality is that more is expected of a Catholic university because it is proclaiming that we are Catholic and, therefore, our value system is Catholic. For example, why is it that more is expected of a priest, or a nun? Members of the laity have an equal obligation to witness our value system. However, priests and nuns give public witness. We have said, “This is what we are going to do; this is our responsibility.” But the responsibility for all is the same. However, you see that when we publicly witness our Catholic value system in the context of a Catholic university or its law school, we do so officially. And therefore our responsibility, and the expectation placed upon us, is greater.

**JURIS:** The law is grounded in belief systems and many legal scholars are suggesting that these systems are beginning to break down. Would you agree that modern law is facing this sort of crisis?

**BISHOP:** From an attitudinal perspective I would agree. By this I do not mean all of the people, but I do mean those who are in a position to almost control our most basic values. The media, for example, or perhaps members of the legal community or some within the academic community have the mentality of secular humanists. By this I mean to say that they have very relative values, very self-serving values once you deny God, one goes into himself or herself. Only “I” am important. I am always amazed by this mentality because it offers no reward system after death. So what does one do? Camus, if I recall correctly, said the logical consequence of atheism is suicide. In other words, it is fine to enjoy yourself as much as you can. But you can see where this leads you if you exist without God in your life. Without God, everything is self-serving pleasure and that is secular humanism, which I believe is pervasive today.

**JURIS:** Are you suggesting that our belief systems within the law are in a process of irreversible decay?

**BISHOP:** No. But I am suggesting that this problem, and it needn’t be confined to the law, is a cyclical problem. What I believe is happening is that we will reach a point, probably from a bitter experience, where we will learn that secular humanism does not give us the happiness or the sense of order that we want. Actually, it creates unhappiness. Why, for example, is there so much crime, drug abuse, divorce and general unhappiness in a society as fortunate as ours? I would suggest that we are all searching for God, and by this I mean happiness. But some of us are searching in the wrong areas. Secular humanism is like a drug. The more pleasure you seek, the more you become accustomed to that level and you find you need more.

**JURIS:** Where else do you see a crisis in the law?

**BISHOP:** Again, I believe the country is in a crisis of secular humanism. When we are allowing 1.5 million unborn children to be killed under our law, that alone suggests we are in a crisis situation. When we see the law accepting something like this, we are in a real crisis, not only for these unborn children, but for what this crisis is leading us to. Soon we will see the passage of euthanasia law with the focus
on the quality of life rather than the life itself. At what point, for example, will it become acceptable to end the life of an aged individual who is not terminally ill, but has fallen into a state of discomfort? Is that notion so far-fetched? We see secular humanism in the law in a number of ways. We see it in the liberalization of divorce laws, the so-called no-fault divorce provisions. There is no preservation of family life. The law should protect family life, but instead, we do everything for the sake of the individual. These are only a few isolated examples of carrying out secular humanism.

The law is accepting and, I think, catering to the actual value system of the people and not the value system that they should have. Moral values are not determined by ballot. Certain moral teaching is absolute and it does not depend upon a majority vote. We must have absolute moral values; otherwise, we will end up in total chaos.

JURIS: Can the law actually lead us or is it more reactionary in the shaping of our values?

BISHOP: The law, it is true, is reactionary. But at the same time, it leads. Ideally, there should be as little law as possible. We have laws because there are abuses, and since people will not act voluntarily to uphold a high value system, the state must compel people to do so. If original sin had not been committed, we would have very few laws. We would have some, perhaps, to give us a sense of order. But in the sense that mankind has fallen victim to the potential for abuse, I believe it is highly proper that the law should lead us toward a proper value system as well as provide for its maintenance.

JURIS: What is the Church’s position on capital punishment, and, by this, I suppose I am asking how do we know whether or not its acceptance or rejection is the proper value to maintain?

BISHOP: First of all, we must be careful to distinguish what I mean when I say the Church’s position. Remember, the Catholic Church is in hundreds and hundreds of countries around the world, which causes us to consider a great many factors. Theologically, capital punishment is not a teaching of the Church. It is a prudential judgment. The basic position of the Church is that the state has the right to inflict capital punishment. It is not immoral when all of the conditions are met. I would add that this position is completely different for the issue of abortion. That is an immoral decision which we must reject. Now remember, because the Church says the state has the right to inflict capital punishment it does not mean it is always the prudent thing to do. It depends entirely upon the circumstances. Not everything that is licit is expedient as Saint Paul says. The Bishops’ position of 1980 is that we are against capital punishment because we do not believe it achieves the benefits of deterrence, or rehabilitation, or retribution. We feel the data is insufficient with regard to these objectives of the law and that at this time, it does not seem to be the most effective way to punish the crime. Certainly, there is room in the Catholic Church to oppose capital punishment, but once again, it is a question of prudential judgment.
ON IMMIGRATION LAW

JURIS: Some legal scholars would suggest that immigration laws are insulated and divergent from the norms which animate our legal system, such as constitutional rights and adequate access to administrative and judicial review. Do you accept this premise?

BISHOP: No, I cannot agree. To say that immigration laws do not afford the same protections of other laws is not true. Immigration law embodies and provides for all of the protections of the Constitution, administrative review and judicial attention. Even so-called “illegal aliens” are protected by our laws.

JURIS: Would you agree that the public perception of immigration is largely inaccurate?

BISHOP: For a number of reasons, I would say that the public does not have a well considered understanding of immigration law. People are moved by propaganda or sensationalized reports on a particular situation and, as a result, are duped into thinking that all immigrants are “illegal aliens” who destroy neighborhoods, cause crime, diminish the value of property and take away jobs. Believe me, I have reviewed enough studies to refute these claims. The real problem lies in the fact that people are unaware of the various classifications of immigrants among us. For example, you have two types of migrant farmworkers — American and those brought in from Mexico and the Caribbean as temporaries. The word immigrant is a term of art meaning anyone who comes to the United States with the intention of remaining here permanently. A non-immigrant is someone who comes from a foreign country to remain here temporarily — students, visitors, business executives, entertainers and so on. Then you have the classification of refugee. This is the area which I believe causes the greatest amount of confusion. These individuals come in under separate legislation. They are a people who either because of race, or religion, political stance or social position, would be persecuted if they returned to their country. These are the major groups which we must be careful to distinguish. When you suggest that immigration laws are not comprehensive, you may be thinking of the situation concerning the refugees from Central America. Most of them have not entered the country legally and therefore, according to the law, they are outside of the country. The sovereignty of a nation gives that nation the right to exclude people from its borders. Those who are outside these borders are afforded no constitutional protection.

JURIS: Does immigration law change its character to reflect domestic or foreign policy objectives?

BISHOP: I would say no, but I think you have to distinguish between the law and the way it is administered. In this context I would reserve my observation to refugees. You must distinguish between the immigrants and the refugee. There is equality as far as immigrants are concerned.

JURIS: Under what laws do these people enter the country?

BISHOP: Immigrants and refugees enter the country under different legislation. Immigrants come in under a preference system which has a quota that is equal for all countries — 20,000 per country according to the six preferences. With regard to refugees, I would say that the laws are generally equal, but there does seem to be a tendency, at times, to favor certain nations as far as permitting certain refugees to enter and remain. For example, there seems to be a tendency to favor Polish refugees — primarily, I would
think, due to the large basis of Polish people here. On the other hand, we have refugees attempting entry from Central America or Haiti who do not have the same degree of freedom of ingress. This is so only because of the discretion within administration of immigration law and, often, its motivation is of a political nature. The current administration has not hidden its concerns about Haiti or Central America and it tends not to recognize these people as political refugees. It sees them more as economic refugees, and, as a result of discretionary or politicized determinations, their treatment may be different. I believe this is a classic example of the distinction which needs to be made between the immigration laws and administrative discretion.

**JURIS**: How should the United States respond to these refugees?

**BISHOP**: Let’s stay with the Haitian and Central American refugees for a moment. The reason they are coming here, according to the administration, is not because they are fleeing some type of persecution or any other abuse of human rights. They are coming here because of extreme poverty. But, in fact, there are unstable situations in their countries. Consider the Salvadorans alone. Regardless of the positions taken on their status as a refugee, once they have entered the country, we should grant them extended voluntary departure. We have done this for Afghanistan, for Ethiopia, for Poland. But we do not grant this in favor of Central Americans. Again, the decision is essentially political and it is justified by calling them economic refugees.

**JURIS**: Would you support a liberalization of the deportation law?

**BISHOP**: I feel, myself, we should support the Moakley-DeConcini Bill, which would give these refugees the ability to remain here until an investigation of the situations in their countries can be made. Once they are in the United States, deportation to their homeland becomes an entirely separate issue. We cannot send them back without examining whether they will suffer persecution when they return, and I really do not believe there is enough evidence in this area.

**JURIS**: What is the Sanctuary Movement in the U.S.?

**BISHOP**: The Sanctuary Movement in the United States has a particular definition. It means that certain churches will harbor refugees within the church facility. At the same time, they call the media and the INS (Immigration Naturalization Service) to publicize what they are doing. It is an act of civil disobedience designed to draw attention to the position of our government on the visas of the Central American refugees.

**JURIS**: Do you agree with these methods?

**BISHOP**: I myself do not support the Sanctuary Movement in the sense that church facilities are used as a tool to attract attention. The INS has said, repeatedly, that they would not enter a church facility and to this day they have yet to do so. But I do favor a sanctuary movement with a small “s.” By this I mean providing assistance without violating the law. When a person comes to the church door, we do not ask, “What is your legal status?” The role of the Church is to help human beings. If you come to our door and you are poor, or you are hungry, I see no relevance in asking whether or not you are an undocumented alien. There is absolutely no need to call the press into the picture, nor is there any need to enter into an act of civil disobedience. In this sense, I think every aid should be given to the refugee. But I do not accept the argument that the laws should be violated.

**JURIS**: What about the trial of four clergymen in Tucson, Arizona, with regard to their participation in the Sanctuary Movement? Are their actions justifiable?

**BISHOP**: In Tucson, these people are being tried for illegal transportation of aliens. They are actually bringing them
across the border. This, I think, represents an entirely different issue under the immigration laws. But you see, a tremendous problem is created by this trial. The expression “sanctuary movement” is constantly used to describe this trial while, in fact, it is quite distinct. If you ask most of the people who work with refugees — social workers, members of Catholic relief charities — you would see that they, too, are against the sanctuary movement being thought of in this sense. They cannot do their work adequately because of the adverse publicity. They are trying to help 300,000 to 400,000 refugees, while the Sanctuary Movement which I do not support involves only 200 to 300 people. Whether or not it is justifiable, it is obvious that we should appreciate their motivations. But I cannot support those who are exploiting the refugee.

JURIS: Is the Sanctuary Movement creating a backlash?
BISHOP: It is creating a feeling against refugees, against immigrants, and as a result, people, as well as the law, are becoming more and more restrictionist. This is a reaction to what appears to be a blatant disregard of immigration law and in the final analysis, I feel we are all bound to suffer.

JURIS: In your report “The Pastoral Experience with Immigrants in the United States,” you suggest that the Church is in a position to lead the world in an appreciation of the stranger among us. What is the Church’s role in immigration law?

BISHOP: Well, certainly, our role is educational. Not only concerning the law but in shaping the proper attitudes governments should have toward refugees and immigrants. The committee of which I am chairman, the Committee on Migration and Refugees, has developed a program called the National Immigration Week which will take place the week of January 6th — the week of the Epiphany. You see, the Church maintains there is no such person as a foreigner. Borders are artificial. It is the Church’s belief that immigration issues represent questions of shifting responsibilities. A person born in a certain country has a responsibility to that nation. They have a duty to contribute to the growth and development of their homeland. If, however, there is a reason to immigrate to another country, the responsibility shifts to that receiving country to welcome that person and not consider that person inferior in any way or make it difficult for that person to gain entry. In turn, the governments of the immigrants’ homeland are responsible for developing the environment so that the person need not feel compelled to leave. So you can see there are responsibilities on a global scale.

JURIS: How then do you characterize the Church’s attitude toward refugees and immigrants?
BISHOP: Both the ideal and the teaching of the Church is we are all equal and the earth is given to us all. Man has created boundaries. The book of Leviticus, I believe, reflects the whole attitude of the Church. When the Jews entered
the promised land with the help of God, I think the first immigration law to be published was written in the Old Testament. It says: "Do not take advantage of foreigners in your land; do not wrong them. They must be treated like any other citizen; love them as yourself, for remember that you too were foreigners in the land of Egypt." Equality is the theme. The alien must be considered as oneself. Whatever you do to the least of my brothers, you do to me. That is the whole theme of the Church. I think it can be summarized best by saying in the Kingdom of God, there is no alien.

JURIS: Given the busy agenda for the Church in our time, can the immigration problems be sufficiently addressed?

BISHOP: The role of the Church in this regard is very important. We are in a teaching process right now. We are not denying at the present time there has to be certain limits on the numbers of people allowed to enter our country. If we ever opened our borders completely, we would just be flooded and this would benefit no one. This process will take a great deal of training on a global basis — not just in the United States. We must not forget we are the most generous nation in the world in this respect. We allow in more refugees than all of the other countries of the world combined. We also allow more immigrants than these same countries. But the responsibility cannot be held solely by the United States. The responsibility is global and in this sense the efforts of the Church will be invaluable.

JURIS: Are the political or economic climates of these countries primary factors in causing this wave of immigration?

BISHOP: Let's consider the political atmosphere for a moment. So many immigrants are coming from communist countries. I was in Southeast Asia where I visited a number of refugee camps and saw hundreds of thousands of these refugees. There are still two or three hundred thousand refugees in Thailand. Where do they come from? They are from Vietnam, Cambodia, Laos — all communist countries. Everyone is fleeing from communism, not towards it! In Central America, they are fleeing from civil war and poverty — tremendous poverty. If there were genuine freedom in these countries, I seriously doubt we would have so many trying to come to the United States. Now remember, I am not certain who can make these changes, but, in ideal terms, if we could eliminate poverty in Mexico, Central America, parts of South America, Africa, or other parts of the world, people would simply not come here. People do not want to leave their homeland. But absolute necessity compels them. For example, the poverty in Haiti is incomprehensible. It is the poorest country in the Western Hemisphere and among the ten poorest countries of the world. They dare to cross the water knowing many will die, but they do so because it is necessary. We need to address this issue on a global basis. We need to learn it is better to immigrate jobs than to immigrate people. If we could assist in building the economics of these nations we may make it more attractive for the people to remain in their homeland.

JURIS: Are there any other factors?

BISHOP: Putting it simply, two factors cause refugees and immigrants to come to the United States. We call them the "pull factors" — the high standard of living in the United States and the "push factor" — turmoil, oppression or extreme poverty. The disparity is so severe that the U.S. acts as a magnet. Everywhere I have gone — South America or Southeast Asia, the one thing everyone has access to is television. They may not own one, but they do see it. They see the image of America and its lifestyle. But they don't see the poverty or depressed areas. Instead they see glamour, magnificent homes, an abundance of food, endless opportunity and wealth. So when I say we have a global issue on our hands, I mean much more than correcting these misconceptions. We need to have a balance of economics. The responsibility is international. For example, I have seen poverty in Africa which I simply cannot describe. And yet, they have resources which defy our imagination. In the Southern Sudan (Sudan being one of Africa's poorest nations) there are hundreds of thousands of square miles of fertile acreage which some maintain could feed all of Africa. But little of it is developed.

JURIS: Earlier, you expressed a concern over a restrictionist attitude toward the refugee and immigrant. Is it showing in any of the proposed immigration law reform?

BISHOP: Yes, I am fearful that proposed legislation becomes each year more and more restrictive. Particularly as there is considerable publicity on what these immigrants are doing. The Mariel Flotilla which came from Cuba brought in some patients from mental hospitals and some criminals and this led to a whole series of reports that these people were responsible for an increase in crime. In fact,
it was only a few who were causing these problems. But
before you know it, people are ready to turn them and every­
one else away. In addition to these types of incidents, you
have the publicity generated by the zero population group
which believes the fewer people you have, the more com­
fortable it will be for the people who are allowed to be born,
which, in my mind, is a contradiction. Yet, what they are
lamenting is that we have brought the fertility rate down
only to be cancelled by the numbers of immigrants granted
entry. Mind you, their resistance represents one of the
strongest lobbies against any form of expansion or liberal­
ization of the immigration laws.

JURIS: What are your observations on the Simpson­
Mazzoli Bill?

BISHOP: Each time they tried to pass this bill it became
more and more restrictionist — more reactionary. The
Church has taken a very strong position against the Senate
(Simpson) bill for a number of reasons. First, we do not
feel its legalization provision is generous enough. Its legaliza­
tion date is 1980. Legalization is also not automatic in the
bill. In other words, they are imposing employer sanctions
which the Church is opposed to but which the Church would
tolerate if it is joined with a very generous legalization pro­
vision. The Senate Simpson Bill, which has already been
passed, separates the two issues and says legalization will
be triggered if employer sanctions work. And it is left to
the discretion of the government to determine if, in fact,
it works. Since this could be delayed indefinitely, it really
does not solve anything. The Rodino-Mazzoli is more ac­
ceptable, though the Church has not taken a position on
it yet. We favor it as adequate, but we need to see what will
happen when it goes to the floor — the amendments, etc.
Also, we are concerned over the compromises which may
result from the conference on the Bill. But generally, in its
current state, the House bill is more acceptable. It has a
much more generous legalization date — 1982. Also, the
legalization is not a contingent part of the legislation. In
other words, legalization occurs at the same time as employer
sanctions.

JURIS: How would you assess the attitude of the American
people toward immigrants and refugees?

BISHOP: Earlier, you will recall, I spoke of the pervasive
problem of secular humanism. I think, too, it is reflected
in the general attitude of our country at this time with respect
to the immigrant. We are tending to be more self-serving
and more materialistic. I am not saying this is so for most
of the people, but I am suggesting that the image we have
of ourselves, which is portrayed in magazines, film, and tele­
vision, indicates we are a society with an egocentric type
culture. It manifests itself in so many ways — in abortion,
contraception, divorce. The ""I"" has become the most
important individual, instead of the concern for others. So
if we are constantly self-centered as a culture we must ask
what is the source of this mindset? Clearly, it comes from
ourselves. It can be described, I suppose, as once we get a
piece of the pie, we do not want to share it with the less
fortunate. Remember, too, that we are all immigrants or,
at least descendants from immigrants. There isn't a single
non-immigrant among us — except for the Native Indian,
and we must not lose sight of our heritage.

JURIS: Would you go so far as to suggest that many
Americans are hostile, or are they merely indifferent toward
the immigrant?

BISHOP: I will give you an example. I was present at a rally
in New York City. It was back in 1975. The rally was called
to support certain legislation aimed at eliminating the ""prob­
lem"" of undocumented aliens. At this rally of several thou­
sand people a number present were shouting ""kill them."
That is how far the hostility has run. Now we ask who are
these people? I would say of those present, 99 percent were
Christians and a majority of them were Catholics.
A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibilities for the quality of justice... As a public citizen a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession.

This language, found in the cobwebs of the Preamble of the Model Rule of Professional Conduct, was adopted by the House of Delegates of the American Bar Association in August 1983. It illustrates the point that the privilege of becoming a member of the bar and a guardian of the law carries with it extra public and ethical burdens.

The legal profession requires the performance of many difficult tasks. As Chief Justice Warren E. Burger said, lawyers are charged with "special obligations to consumers of justice to be energetic and imaginative in producing the best quality of justice at the lowest possible costs for those who use it, and with a minimum of delay." If the holder of a license to practice law breaches the standards of professional conduct found in the American Bar Association's Code of Professional Responsibility, he or she is subject to discipline, which in very serious matters, could mean suspension of the right to practice or even its permanent loss. The Code of Professional Responsibility benefits the public, clients and the legal profession.

But do members of the general public view lawyers — those men and women who spend every day preserving and implementing our legal structure — as pillars of justice? Unfortunately, statistics compiled for over a decade suggest that lay persons have a chronic distrust of the lawyer. In 1974, a poll sponsored by the American Bar Association showed 68 percent of the public believed that lawyers charged more for their services than they were worth; 60 percent believed that lawyers work harder for wealthy, influential clients than for others; 82 percent believed that many matters could be handled as well and cheaper by accountants, bank officers and insurance agents; and 42 percent believed that lawyers were not concerned about the bad apples in the legal profession.

A 1977 Gallup poll measuring the honesty and ethical standards of lawyers found that only 26 percent of the sample rated honesty and ethical standards of lawyers as being high or very high, while 27 percent rated lawyers' honesty and ethical standards low or very low.

Since there are more than 600,000 lawyers in the United States today, and roughly 4,200 attorneys in Allegheny County, the public's general dissatisfaction with the law profession affects the lives of many professional working people.

Moreover, an August 1985 Gallup poll illustrates that the public's attitude toward attorneys has not changed much in the last ten years. When members of the general public were asked this question, "How would you rate the honesty and ethical stan-
A more graphic painting of the public's general perception of the legal profession can be drawn through more detailed statistics, which clearly indicate that members of the clergy, physicians, dentists, college teachers, TV reporters and others are considered to have higher ethical standards than lawyers.

Many scholars have commented that the most prevalent reasons for the general public's image of lawyers is the fact that oftentimes only the most notable members of the legal profession are visible to the general public. When an attorney is publicly disciplined for unethical conduct it is newsworthy. The public, however, sees an attorney disbarred or suspended and concludes that all attorneys are bad, rather than viewing this as a legitimate effort to correct the ills of the profession.

In 1980, the Supreme Court of Pennsylvania created the Disciplinary Board of the Supreme Court of Pennsylvania to investigate complaints of alleged professional misconduct, and to insure that appropriate disciplinary action is taken, when warranted, to protect the public. Concurrently, the American Bar Association adopted the Model Code of Professional Responsibility, established the Center for Professional Responsibility and later, in 1979, adopted the Standards for Lawyer Discipline and Disability Proceedings.

The purpose of these reforms was to direct attorneys' attention to the importance of professional responsibility and to their duty to abide by the ethical standards of the profession. But, since the end of 1984, complaints regarding ethical misconduct filed at the Disciplinary Board have not decreased in number and the number of attorneys facing formal discipline has not declined, even though the Bar Association has assumed its responsibility in taking a more active part in solving the problems which weigh upon our profession.

Disciplinary Board figures for the past year indicate that at least 149 attorneys have been disciplined. Sixteen attorneys have been disbarred, 14 have been suspended for a period of up to five years, and three have been publicly censured. However, the Disciplinary Board in Pennsylvania provides no panacea for all of the problems in the legal profession. Nor should it be looked to as the exclusive control of unethical conduct.

The law schools of this country also have the responsibility to instill high ethical standards in their students — all prospective lawyers.

Through the implementation of professional responsibility courses, law schools have made great strides in meeting this duty, considering the practical restraints placed on a typical law school curriculum.

When a student enters law school, constraints are imposed on the teaching curriculum because law schools are expected to prepare students for the diverse roles that society expects lawyers to fill. Thus, the law school is charged with the critical obligation to define, structure and internalize the professional norms, values and attitudes of the profession in its students.

According to Professor Mary Pat...
Law and Values

Treuthart, who teaches professional responsibility at Duquesne, the problem is not that a professional responsibility course is intellectually unacceptable, but rather that it is extremely difficult to simulate the moral perils encountered in the practice in a one- or two-hour course.

"Classic wisdom tells us that an attorney will run into problems for one of three reasons — insufficient communication with the client, poor law office management or an ignorance of the Code of Professional Responsibility," Professor Treuthart said. "For any law school to address these problems its faculty needs to encourage dialogue among its students.

"Whether law schools meet their duty to teach professional responsibility through a pervasive method, case method, simulation course or an in-house clinical program, they have to prepare the student for the time he or she is sitting next to a client in a contract negotiation and the client lies," she added. "The lawyer/student ought to have some idea what to do."

Legal education is not complete unless it can get the students to understand his or her role as lawyer. Professor Treuthart said the best method of doing this is to familiarize the student with the Code, use the traditional case method approach and, most importantly, encourage dialogue among its students.

"Most law schools have required courses in professional responsibility, and a variety of teaching methods are used. I think Duquesne is unique in that it offers Legal Philosophy and other courses, such as Law and Religion, which gives the student a chance to re-examine his or her values in the context of the legal profession," Professor Treuthart said. "But many schools are constrained by their curriculum to offer professional responsibility. I do believe there is room for some expansion, perhaps a two-credit course or an in-house clinical program, but these decisions are made in the context of the educational needs of the students and our students should know that these are difficult choices for the faculty to make."

As the Honorable Tom C. Clark, former Associate Justice of the United States Supreme Court, commented in his article, "WHAT GOOD IS KNOWLEDGE OF THE LAW WHEN THOSE WHO POSSESS IT ARE CORRUPTIBLE?" "We now have generations of lawyers whose superior technical training has not been leavened by adequate training in ethics and professional responsibility." These comments accent the role that law schools must play with regard to values and their place in legal education.

The urgency of assuring a competent, diligent, moral and fit bar is too important in an era where thousands of lawyers can be smeared by the actions of a few. In the final analysis, however, it cannot be overlooked that the ultimate obligation rests on the individual lawyer and law student. For the profession to find acceptance in the eyes of the public, it is necessary that more students and lawyers recognize their duty to develop a greater sense of professional responsibility. The most important lesson is often not learned. For better or worse, we are the role models.

ENDNOTES


SUMMER LAW STUDY in
Dublin
London
Mexico City
Oxford
Paris
Russia-Poland
San Diego

Foreign Law Programs
Univ. of San Diego School of Law
Alcala Park, San Diego CA 92110
The separation of law today from its religious and moral origins has placed modern law in a state of crisis, said Professor Harold J. Berman, Woodruff Professor of Law at Emory University in Atlanta, Ga., and this year's featured speaker at the Second Annual Duquesne University School of Law Lecture Series on Law and Values, held November 14.

Professor Berman, who delivered his address, "The Influence of Belief Systems on the Historical Development of Law," to students, faculty and alumni, stated that the separation of law and religion has bred hostility and incompatibility between them. This polarization, he said, has caused today's legal system to fall into a crisis of attitudes.

According to Professor Berman, the crisis in the law today is not a crisis in legal philosophy. The moral and religious beliefs that have formed the basis of Western legal tradition are still presumed valid, he said. However, the development of modern law toward result-orientation has shifted it drastically from its moral base.

"The law is becoming more fragmented, more subjective, geared more toward expediency and less to morality, concerned more with immediate consequences and less with consistency or continuity," Professor Berman said. "The historical sail of the Western legal tradition is being washed away in the 20th century, and the tradition itself is threatened with collapse."

To halt this potential collapse, Professor Berman suggested that current law and legal thinking must once again be reunited with the influence of its values and religious origins.

"We must restore the influence of our belief systems on the law by combining positivism, natural law and historical jurisprudence if we are to reverse this trend in modern legal thought and practice," he said.

In addition to his position at Emory University, Professor Berman is the James Barr Ames Professor of Law Emeritus at Harvard University, where he has distinguished himself as a teacher and author for 37 years.

Professor Berman has devoted his academic and public life to tracing the connection between law and religion, encouraging legal thinkers and practitioners to restore the fruitful and essential interaction between them. As a result of his many works, he has been credited with almost single-handedly establishing the Law and Religion Section of the Association of American Law Schools.

The Law and Values Lecture Series was established and is directed by Professor Robert D. Taylor. The Series was developed by Professor Taylor to explore the growing debate in legal education over the lack of values and value exposure in the study of law. The program's purpose, according to Professor Taylor, is to help law students, faculty and practitioners view law as a civilizing force in our society, while providing an opportunity to reexamine values in the context of legal education.
Chapter 11 and Collective Bargaining Agreements — How courts have moved to the Wheeling-Pittsburgh cases

By JACQLYN D. STEIN

From the inception of the labor movement through the present time, unions and management have dueled over every imaginable issue of labor relations. Most recently, however, the greatest terror felt by both parties is in response to the rejection of collective bargaining agreements in Chapter 11 reorganizations.

As a point of comparison, both the labor and bankruptcy laws are statutory. It is here that the similarity ends. The Bankruptcy Reform Act of 1978 (BRA) permits a company involved in a reorganization proceeding to reject any and all executory contracts, including collective bargaining agreements. The only requirement is that such rejection must be approved by the bankruptcy court. In complete contrast, the National Labor Relations Act (NLRA) requires that the union must consent to such a rejection before the company acts.

Finding a point of compromise for these codes has been almost impossible. Unions argued that a company's unilateral modification of a collective bargaining agreement constitutes an unfair labor practice. In fact, prior to some recent legislation modifying the company's rights, it did appear that the bankruptcy law encouraged an activity which was expressly prohibited by labor laws.

Because of this "comedy of errors," Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984 to create some controls on the debtor's rejection activities.

While it appeared that this legislation removed the clouds from the eyes of the courts, unions and companies, the clear picture now seen has been interpreted very differently among the various parties. In order to fully understand where the decisions will go in the future, it is necessary to know where they have been and are now.

KEVIN STEEL

The first major case to be decided in this area was Shopman's Local No. 455 v. Kevin Steel Products, Inc. The Second Circuit Court of Appeals espoused in this case what came to be known as the "new entity" theory — that the debtor-in-possession was not the same entity as the prebankruptcy company, but was a new and distinct entity. As such, it was not bound to uphold collective bargaining agreements, unless it affirmatively chose to do so.

This theory came under immediate criticism. Specifically, it was argued that the "new entity" theory did not coincide with the statutory procedure. If that theory had been anticipated, Congress would have considered all of the prior company's executory contracts to be void, permitting the new entity to assume, rather than reject them.

REA

The primary issue before the Second Circuit in Brotherhood of Railway, Airlines, and Steamship Clerks v. REA Express, Inc., was whether a collective bargaining agreement, subject to the Railway Labor Act (RLA), was controlled by the same principles governing the NLRA. While the court claimed that the standards should be the same, it adopted a stricter standard for rejection.

The court held that the new standard required a determination as to whether the company would collapse without rejection of the collective bargaining agreement. This policy considered an analysis of "two evils": making less money under a newly negotiated contract or being without work completely. The court clearly determined that if these were the only available choices, rejection would be permitted.

IN RE BILDISCO

In this case, the Third Circuit adopted the "new entity" theory as enunciated in Kevin Steel, finding that the debtor-in-possession was not a party to the collective bargaining agreement. Therefore, rejection of such a contract could not constitute an unfair labor practice under §8(d) of the NLRA. Furthermore, the court found that the "certain failure" test enunciated in REA was far too strict and completely obviated the "balance of the equities" standard as delivered by the court in Kevin Steel.

Since this decision created a split in the circuits, the Supreme Court granted a hearing on two issues:

1. Under what conditions can a bankruptcy court permit a debtor-in-possession to reject a collective bargaining agreement; and,
2. May the National Labor Relations Board find a debtor-in-possession guilty of an unfair labor practice for unilaterally terminating or modifying a collective bargaining agreement before rejection of that agreement has been approved by the Bankruptcy Court.

A unanimous court determined that the "reject or fail" standard of REA was completely at odds with the policies behind the Bankruptcy Code. The Supreme Court adopted a three-part test which was used by the Third Circuit court:
1) the debtor-in-possession must show that the collective bargaining agreement burdens the estate;
2) sufficient facts must be presented for the court to balance the equities; and,
3) if a balance of the equities convinces the court that rejection will aid the reorganization effort, it may be rejected.

The court cautioned, however, that it was still necessary for the debtor-in-possession to have made good faith efforts to negotiate with the union without reaching an agreement to avoid an unfair labor practice dispute.

The court reached a 5-4 decision on the issue of whether the debtor-in-possession could unilaterally reject the union contract before receiving bankruptcy court approval. The court held that it could, explaining that the flexibility necessary to the reorganization of a failing business required the debtor-in-possession to take such action in order to avoid liquidation.

A powerful dissent argued that this action effectively subordinated the NLRA to the Bankruptcy Code. Specifically, the dissent argued that a determination of the contract should be made by the bankruptcy court after it has had an opportunity to balance all the equities and consider the labor law ramifications.

THE AMENDMENTS

The 5-4 split in Bildisco created a great deal of uneasiness for the NLRB and union affiliates everywhere. Because significant pressure was brought to bear on the legislature, Congress included a provision in the Bankruptcy Amendments and Federal Judgeship Act of 1984 to deal specifically with this problem. Section 1113 of the Amendment is concerned with the
l laterally terminate or alter any provision of a collective bargaining agreement prior to compliance with the provisions of this section.

Clearly then, if the action taken by the debtor-in-possession in Bildisco were to occur again, it would be considered an unfair labor practice under §§8(a)(5) and 8(d) of the NLRA.

**POST-AMENDMENT**

Since the Amendments were signed into law in July 1984, several courts have analyzed §1113. The two most important to date are *In re American Provision Co.* and *In re Wheeling-Pittsburgh Steel Corp.*

*American Provision* was the first case to be decided under the new Amendment. Judge Kressel of the Bankruptcy Court for the District of Minnesota outlined a nine-point test that has become the foundation upon which all of the subsequent decisions have rested. The test as stated in this case is:

1) the debtor-in-possession must make a proposal to the union to modify the collective bargaining agreement;
2) the proposal must be based on the most complete and reliable information available at the time of the proposal;
3) the proposed modifications must be necessary to permit the reorganization of the debtor;
4) the proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably;
5) the debtor must provide to the union such relevant information as is necessary to evaluate the proposal;
6) between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet at reasonable times with the union;
7) at the meetings, the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement;
8) the union must have refused to accept the proposal without good cause; and
9) the balance of the equities must clearly favor the rejection of the collective bargaining agreement.

*Wheeling-Pittsburgh* is the first major case to be decided since the Amendments were passed, and its importance cannot be overstated. Because of its size and ranking among American steelmakers, *Wheeling-Pittsburgh* will set the pace for others in the industry.

The significance of these decisions has knocked the wind out of union members across the country. For what they thought was achieved by §1113 was heavily tempered. The Amendment offers the union greater protection than they had previously but not nearly the expansive shield they expected.

Judge Bentz of the Bankruptcy Court for the Western District of Pennsylvania carefully scrutinized each of the nine points outlined in *American Provision*. Not all of the nine points were challenged — those argued were: 1) good faith; 2) the necessity of the modifications; 3) the treatment of all
affected parties; 4) the provision of the necessary information for evaluation; and 5) the balance of the equities.

The first blow dealt to the unions was Judge Bentz's interpretation of "good faith." He found that Congress did not intend the term as used for bankruptcy purposes to comply with labor law precedent. He returned to the language of Bildisco that required the debtor to make reasonable efforts to negotiate voluntary modifications, which resulted in less than a satisfactory solution.

The union also challenged the necessity of certain of the proposed modifications. In finding that those challenged modifications were in fact necessary, Judge Bentz summed up the concerns of the bankruptcy court, "The paramount goal in a Chapter 11 is reorganization of the company, not preservation of the collective bargaining agreement."¹¹

Next the union claimed that rejection placed an unfair and inequitable burden on it when compared to the other affected parties. Again Judge Bentz disagreed by finding that the terms fair and equitable were not necessarily synonymous with equal or identical. In analyzing the union, the creditors and the salaried employees, he concluded that all parties were sacrificing in an equitable manner.

The union further claimed that the company's filing of the motion to reject, only three weeks after giving the union the information to evaluate the proposal, was severely insufficient. Judge Bentz was not persuaded, maintaining that "...there simply is not the time during a Chapter 11 proceeding in general, and a §1113 proceeding, in particular, to do a completely exhaustive financial analysis. The parties must make critical, and often costly decisions in a short period of time as best they can, and then move forward."¹²

In rejecting the union's argument on the balance of the equities, Judge Bentz again turned to Bildisco, which requires a focus on the goals of Chapter 11 when the equities are weighed. Judge Bentz determined that without rejection of the contract the company would be forced to liquidate. He sympathized with the employees who would be facing an inevitable wage cut, but explained that wage reduction was infinitely better than no wage at all.

In closing, Judge Bentz encouraged both parties to return to negotiations, because the Bankruptcy Court was not the appropriate forum for contract negotiation.

The Federal District Court heard arguments on appeal. Finding the standard of review to be the "clearly erroneous" test, Judge Mencer held that the Bankruptcy Court had not committed error. Again each of the union's positions was addressed. It was Judge Mencer who truly brought the reality of the new legislation crashing down around the union lobby. Specifically, Judge Mencer found that the standard for rejection itself had not been altered from that announced in Bildisco. All that was accomplished by the Amendment was 1) a clarification of the procedural and substantive test for rejection; and 2) a prevention of unilateral termination of the collective bargaining agreement by the debtor before formal rejection by the Bankruptcy Court.

Finally, Judge Mencer reinforced the belief of Judge Bentz that this problem should be settled at the bargaining table, not counsel table. Without cooperation between the parties, they would both lose.

CONCLUSION

This chapter of the labor/bankruptcy story is far from complete. Further litigation has shown that courts will continue their efforts to reconcile Bildisco and the Amendment. Bildisco gave the debtors a "carte blanche" to reject collective bargaining agreements, unless the debtor participated in truly fraudulent activity. This pushed unions back to the bargaining table at square one. The new Amendment was expected to give the union significant protection against bogus bankruptcy activities. It is hoped that it still shall. However, many businesses petitioning for protection are truly in dire need of assistance. In such a situation it would be in the union's best interest to renegotiate. It could be a choice of being flexibly employed or rigidly unemployed.

The only clear resolutions for the unions created by §1113 are the protection against unilateral rejection and the increased scrutiny by the courts before permission to reject will be granted.

END NOTES

⁴ 519 F.2d 698 (2d Cir. 1975).
⁵ 523 F.2d 164 (2d Cir. 1975).
⁶ 682 F.2d 72 (3rd Cir. 1982).
¹⁰ 13 B.C.D. at 333.
¹¹ Id. at 336.

JURIS
FACULTY NEWS...

Professor Robert S. Barker attended the XXV Federación Interamericana de Abogados (The Twenty-fifth Conference of the Inter-American Bar Association) in Acapulco, Mexico, November 9-15. Professor Barker, chairman of the Constitutional Law Committee, organized and presided over the Committee's meetings. He was also a co-chairman of the joint sessions of the Constitutional Law Committee and the International Law Committee, as well as the Constitutional Law Committee and the Human Rights Committee.

Professor Bruce S. Ledewitz has been elected National Secretary to the National Coalition Against the Death Penalty. In connection with the death penalty, Professor Ledewitz recently spoke to the Mount Lebanon Democratic Committee and appeared on KDKA-TV's "Weekend Magazine," as well as public television's program, "The State of Pennsylvania" which is broadcast statewide.

Professor Cornelius F. Murphy has recently had his book, The Search for World Order, published by Martinus-Nijhoff, The Netherlands. The book is a study of major ideas from the time of Dante to the present on the possibility of organizing the world in a peaceful manner.

Professor Robert A. Taylor has been invited to deliver his paper, "History of Interpretation: Whether Christians Should Sue," at the Symposium on Church and State at Princeton University in August 1986. In preparing the paper Professor Taylor has traced Christian history through Latin, Hebrew, Greek and German sources.

Professor Kenneth E. Gray's hornbook, Mortgages in Pennsylvania, was recently published by The Harrison Company of Norcross, Ga. The treatise is the first of its kind in providing a detailed, thorough review of mortgage and property law in Pennsylvania.

...ALUMNI UPDATE

The Honorable Bernard F. Scherer, a judge of the Common Pleas Court of Westmoreland County, was recently honored by Saint Vincent College with the conferred of an honorary doctoral degree during the inauguration ceremony for the College's thirteenth president.

Judge Scherer, a 1972 graduate of the Law School and a 1954 graduate of Saint Vincent, has had an active and varied career in academics, teaching, writing and the law. After earning a Ph.D. from the University of Pittsburgh, Judge Scherer pursued an academic career as a professor of law and history and as an assistant to the president of Saint Vincent College, where he is currently a senior lecturer in history.

Prior to being named to the bench, Judge Scherer was active in federal and state trial and appellate practice with the Latrobe, Pa., law firm of Lightcap, McDonald, Moore and Mason. In addition, Judge Scherer has also served for a number of years on the board of directors of the Laurel Legal Services, a non-profit corporation that assists indigent litigants.
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