RECENT LAW REVIEW ARTICLES CONCERNING
THE LEGAL PROFESSION

The following section continues the *Journal of the Legal Profession*’s tradition of surveying the literature for relevant law review articles, essays, comments, and notes that were published in the last year. It is designed to help keep the reader up to date on recently published material pertaining to ethical issues of the legal profession. The citations have been arranged by category, and some of the more interesting or noteworthy publications have been briefly described.

I. ATTORNEY-CLIENT RELATIONS

Paul Finkelman, *Legal Ethics and Fugitive Slaves: The Anthony Burns Case, Judge Loring, and Abolitionist Attorneys*, 17 CARDOZO L. REV. 1793 (1996). This article is part of a symposium entitled “Slavery and Legal Ethics.” It provides a historical account and analysis of a widely publicized “fugitive slave” case from the middle of the 1800s. Specifically, the author uses his examination of the Anthony Burns case to discuss the relations between attorney and client, with particular attention to the relative balance of power between the two parties, who does (and should) make certain decisions, the wishes of the client, and the potential motivations of attorneys in representing clients.


Ann Southworth, *Lawyer-Client Decisionmaking in Civil Rights and Poverty Practice: An Empirical Study of Lawyers’ Norms*, 9 GEO. J. LEGAL ETHICS 1101 (1996). This article examines conceptions about the relationship of power between attorney and client in civil rights cases and the representation of the indigent. It addresses the question of whether lawyers who work on civil rights and poverty matters merely passively await marching orders from their clients, or use their clients as pawns in their campaigns to further social agendas. The author bases her conclu-
sions and analysis on research conducted with Chicago lawyers, which reveals that neither of these stereotypes well describes lawyers’ understandings of the allocation of decisionmaking authority. Rather, lawyers’ views about how they should interact with clients reflect both the opportunities and constraints of their practices as well as the needs and expectations of their clients.

II. ATTORNEY-CLIENT CONFIDENTIALITY AND PRIVILEGE


Thomas M. Keating, Feature, *Detailed Billing and Attorney-Client Privilege—The Balancing Act*, 84 ILL. B.J. 587 (1996). This timely article addresses the emerging conflict between lawyers’ duties to present detailed bills to clients yet simultaneously preserve the clients’ confidentiality. The author notes that the increasing pressure on lawyers to provide intricate accountings of billed hours may greatly endanger client confidentiality, and offers several suggestions for maintaining confidentiality while satisfying billing requirements. These options include finding a “middle ground” of billing specificity that minimizes the risk of infringing on confidentiality, excluding privileged matters from billing entirely, or storing billing records separately from other, more detailed, accounting records.


Steven A. Migala, Note, *I.R.C. § 6050I and the Attorney-Client Privilege: The Misplaced Emphasis on Incrimination Over Confidentiality*, 1996 U. ILL. L. REV. 509. This Note discusses the I.R.C. § 6050I reporting guidelines, which require an attorney to report all cash transactions above $10,000.00 to the I.R.S. The author examines the judicially-recognized exceptions to these requirements, as applied to § 6050I and in light of the underlying policy rationales of the attorney-client privilege. He concludes that there is a misplaced emphasis on incrimination over
confidentiality and a lack of predictability in applying the exceptions. To resolve these problems, the author proposes a standard based on whether the client reasonably intended identity and/or fee arrangements to remain confidential.


III. GOVERNMENT ATTORNEYS


Jocelyn Lupert, Note, *The Department of Justice Rule Governing Communications with Represented Persons: Has the Department Defied Ethics?*, 46 SYRACUSE L. REV. 1119 (1996). This Note discusses the recent (September, 1994) amendment to the ethical standards governing federal prosecutors, which allows them greater leeway in communicating with represented persons without their lawyers’ consent or presence. The author explains the history of the new rule and its controversial provisions in detail. In addition, the author examines the need for the rule, its constitutionality under the Supremacy Clause and the Sixth Amendment, and its relationship with statutory authority and the ethical rules set forth by the American Bar Association. Finally, the author concludes with possible solutions to alleviate misgivings regarding this rule, and discusses potential ramifications of the rule if it remains as promulgated.


Richard M. Zanfardino, *Leveling the Playing Field for Federal Prosecutors or an End Around Ethics? An Evaluation of the Thornburgh
IV. MODEL CODES AND RULES

Ann M. Hart, Note, *The Model Rules are Close and the Restatement is Closer--But, Neither is Quite Right. Lawyers Who Trade in Their Clients' Securities: Why This Should Be Unethical*, 10 Geo. J. Legal Ethics 185 (1996). This Note addresses the issue of what happens (and what should happen) when lawyers use their clients' confidential information as a basis to trade in those clients' securities? The Note points out the competing interests of client, lawyer, and society, and maintains that it is the job of the lawyer, since law is a self-regulating profession, to strike the correct balance among these interests. Further, this Note argues that there should be a presumption of harm to the client when a lawyer trades that client's securities, whether that trading is illegal under the securities laws or not. This presumption should exist for several reasons, including the fact that a lawyer who trades in client securities is converting information "owned" by the client for that lawyer's own financial enrichment, infringing on the duty of diligent advocacy, and exposing the client to potential civil liability.


Debra Sahler, Comment, *Scientifically Selecting Jurors While Maintaining Professional Responsibility: A Proposed Model Rule*, 6 Alb. L.J. Sci. & Tech. 383 (1996). This Comment discusses and questions whether attorney use of jury consultants conforms with or contradicts ethical representation. It summarizes the use of jury consultants, then moves on to assess the relative advantages and disadvantages of consultants. It asserts that the primary drawback in employing consultants is the appearance of impropriety. Finally, the Comment subjects the use of jury consultants to the standards of legal ethics, concluding that, although jury consulting does not violate current professional codes, the appearance of manipulating a jury conflicts with many of the ethical considerations. In order to address this concern, the author proposes a model rule to help counter the appearance of impropriety and maintain public faith in the legal system.


V. Conflicts of Interest

Todd M. Becker, Note & Comment, Attorney-Client Privilege Versus the PTO's Duty of Candor: Resolving the Clash in Simultaneous Patent Representations, 71 Wash. L. Rev. 1035 (1996). This Comment addresses the conflicts that arise for patent attorneys in their dual roles as attorneys and patent practitioners when the rules that govern one role conflict with the rules that govern the other. It discusses the decision in the case of Molins PLC v. Textron, Inc., where a patent attorney simultaneously representing two clients was caught between the Patent & Trademark Office's duty of candor and the attorney's duty of confidentiality. The author examines the contours of the duty of candor and the attorney-client privilege, concludes that in some situations there is a conflict between the two, and argues that, when a conflict does exist, policy considerations dictate that the attorney-client privilege override the duty of candor.


Robert J. Johnson, Comment, In-House Counsel Employed by Insur-


Thomas D. Morgan, Suing a Current Client, 9 GEO. J. LEGAL ETHICS 1157 (1996). This article deals with the issue of filing suit against a current client. The author maintains that a categorical prohibition on bringing suit on behalf of one client against another of the lawyer's present clients is based on a superficial reading of the case law, a poorly-drafted model rule, and a disregard of the costs imposed on lawyers and litigants by such a rule. The author argues that the rule should stop short of a categorical prohibition against a lawyer's filing suit against a current client, and that a "substantial relation" between the cases should not be required. Rather, the author proposes that, in the case of the client being sued by "its" lawyer, the question should be whether a reasonable client in the circumstances of the case would perceive a breach of loyalty, "loyalty" being defined as more than a financial concept. In addition, in the case of the client on whose behalf suit is brought, the author asserts that the test should be whether there is a credible basis for believing the lawyer may not represent that client wholeheartedly out of a desire to preserve good relations with the client being sued.


VI. ATTORNEY FEES AND BILLING

James M. Altman, Trouble With the Bottom Line, 68 N.Y. ST. B.J. 6, November 1996. This article stands out from most articles in the area of lawyers' fees because it provides a cautionary statement about becoming obsessed with law firm profitability. The author examines the relationship of the profitability of a law firm with the satisfaction its lawyers, and argues that one of the reasons for the dissatisfaction of lawyers with the practice of law is the unbridled pursuit of "the bottom line." This dissatisfaction, the author further argues, results from lawyers becoming blind to some of the most rewarding parts of practicing law as they become obsessed with maximizing dollars.

Robert N. Amkraut, Note & Comment, Taxing Contingency Fee


Lester Brickman, Contingency Fee Abuses, Ethical Mandates, and the Disciplinary System: The Case Against Case-By-Case Enforcement, 53 WASH. & LEE L. REV. 1339 (1996). This article addresses the common practice of accepting contingency fees as compensation for representing clients. It criticizes the ABA Committee's position that charging standard contingency fee rates is virtually always ethically permissible, although such charges must be "reasonable." In addition, it argues that that the reasonable fee standard and the case-by-case method of enforcing it are ineffective, as they still permit lawyers to charge and obtain substantial and fees in cases without risk. To support his arguments, the author assesses the efficacy of the case-by-case approach by surveying those who administer the disciplinary system to determine what they regard as violations of the ethics codes and how they respond to such violations.

Sean T. Carnathan, Esquire, Feature, Presenting an Attorney's Fee Application in the U.S. District Court for the District of Maine, 11 ME. B.J. 244, July 1996.


Martha J. Edenfield, Feature, Attorney's Fees and Costs, 71 FLA. B.J. 73, March 1997. This article provides a brief history and overview of recent changes to the Florida Administrative Procedure Act concerning recovery of attorneys' fees and costs. Prior to the enactment of the 1996 amendments, recovery of fees and costs was available under limited circumstances in Florida. The new APA retained the original remedies, but added new provisions relating to the recovery of costs and fees for rule challenges and strengthened provisions for the recovery of
costs and fees for challenges to the agency application of unadopted rules. Because of these amendments, the author asserts that private litigants should be better able to recover fees and costs from government agencies that have overreached their legislatively delegated authority.


Angela D. Schaer, Casenote & Comment, *Musser v. Higginson: The Standards for Awarding Attorney Fees Against a State Agency*, 32 IDAHO L. REV. 437 (1996). This Comment discusses awarding attorney fees against a state agency. The author points out that awarding fees in these cases is designed to compensate a private party for correcting an unreasonable or unjustified agency action, and to deter an agency from making an unreasonable or groundless mistake. The author then moves on to determine the proper standard to be applied in reviewing agency action in order to fulfill these purposes. The author concludes that the standard of responsibility should be from the viewpoint of a reasonable person, rather than a reasonable agency, which will result in a higher standard of
responsibility for government agencies than for private parties. This higher standard, the author argues, will serve both to deter unreasonable agency action and to compensate private parties.


**VII. ATTORNEY ADVERTISING AND SOLICITATION**


Douglas W. Swalina, Note, *The Florida Bar Went For It, But It Went Too Far: How Limiting Targeted, Direct-Mail Solicitation of Clients Harms The Reputation of Attorneys More Than It Helps: Florida Bar v. Went For It, Inc.*, 115 S. Ct. 2371 (1995), 26 STETSON L. REV. 437 (1996). This Note discusses the recent case of *Florida Bar vs. Went For It, Inc.* dealing with direct solicitation of clients by mail, in which the Supreme Court upheld the Florida Bar’s restrictions on solicitation of clients. After reviewing the factual and procedural development of this case, the author discusses the development of commercial speech as it relates to lawyer advertising and targeted, direct-mail solicitation. The author goes on to critically analyze the Supreme Court’s decision in this case and explore the ramifications of the Court’s decision. The author argues that the thirty-day ban on direct-mail solicitation imposed by the Bar will eventually harm the reputation of attorneys more than it helps by forcing personal injury attorneys to use more public forms of communication to solicit clients. In addition, the author asserts that the ban will have a devastating effect on injured persons’ right to receive information about their legal options during a time period when the tortfeasor’s attorney and insurance representatives are not restricted from contacting them. Finally, the author offers recommendations on how the reputation of attorneys can be preserved without the imposition of a thirty-day ban on direct-mail solicitation.


**VIII. BUSINESS AND CORPORATE LAW**


Barbara A. Frey, *The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights*, 6 MINN. J. GLOBAL TRADE 153 (1997). This article addresses existing and proposed human rights guidelines regarding transnational corporations. The author first discusses the traditional methods of promoting and protecting human rights, defining the minimum human rights responsibilities of public and private actors. She then reviews efforts to regulate the activities of transnational corporations with regard to human rights, asserting that the policies are too vague to be either a predictor of corporate behavior or a guide for the proper corporate response to human rights violations. The author then analyzes the emerging continuum of human rights responsibilities of transnational corporations based on various regulations and voluntary codes that have been adopted by governments, private groups, and by corporations themselves. She argues that corporations believe the further removed they are from human rights abuse, the lesser their degree of responsibility to act; conversely, the closer they are to the point of being the actual abuser, the greater their responsibility to intervene. Finally, the author concludes that the continuum of human rights responsibilities for transnational corporations is constructed according to the relationship between activities in a country, and the degree to which human rights are respected in that country. Further, she asserts that a proactive approach to human rights by corporations will result in a
more coherent, and more humane, response to abuses in the countries in which they operate.


IX. PROFESSIONAL CONDUCT AND RESPONSIBILITY


Honorable Mel L. Greenberg, Essay: Thoughts from the Bench, Beyond Confrontation: A Holistic Approach to the Practice of Law, 30 New Eng. L. Rev. 927 (1996). This essay addresses the changing relationships between lawyers, characterized by more impersonal interactions and a lessened emphasis on civility. The author reasons that at least one of the reasons for the altered legal climate is the increased number of lawyers, and that rules of professional behavior alone are insufficient to bring about greater comity. Rather, he argues that traditional notions about the rules of attorneys must be reexamined, that the adversarial system must be examined in the light of public criticism, and that competing pressures of zealous advocacy and professionalism must be taken into account as efforts are made to return to civility in the legal profession.


David Luban, Steven's Professionalism and Ours, 38 Wm. & Mary L. Rev. 297 (1996).


X. SANCTIONS AND ATTORNEY DISCIPLINE

Susan Carboni, New Jersey Developments, The Entire Controversy

George A. Googasian, Column, Shaping Up Character and Fitness,

Mary Robinson, Avoiding ARDC Anxiety: A Disciplinary Primer,
84 Ill. B.J. 452, September 1996.

Caroline Lowry Winningham, Crockett & Brown, P.A. v. Wilson-
Rule 11: Sanctions and Arkansas Attorneys, 49 Ark. L. Rev. 853
(1997).

Charles M. Yablon, Essay, The Good, the Bad, and the Frivolous
Case: An Essay on Probability and Rule 11, 44 UCLA L. Rev. 65
(1996). This essay asserts that the frivolous lawsuit, at least as envisioned
in the case law and literature of Rule 11, does not exist. The author reas-
sons that most of the cases that have been challenged and sanctioned in
recent years under Rule 11 were brought by lawyers who reasonably
believed that their claims had a some slight probability of success. In
light of this contention, the author maintains that there is no special char-
acteristic of the "frivolous" case that distinguishes it from the losing case.
Thus, a rule that will deter frivolous litigation without inhibiting meri-
torious cases is simply not attainable, as deterring low-probability claims,
by definition, means the loss of some meritorious claims. Finally, the
author examines the arguments for and against the sanctioning of low-
probability litigation, and concludes that the profession should return to
the subjective standard of pre-1983 Rule 11.

XI. JUDICIAL ETHICS

Leslie W. Abramson, Canon 2 of the Code of Judicial Conduct,
79 Marq. L. Rev. 949 (1996). This article deals with Canon 2 of the
Code of Judicial Conduct, which instructs a judge to avoid impropriety
and the appearance of impropriety in all of the judge's activities. The
author first points out that judicial discussions of Canon 2 issues often
devote more attention to the appropriate sanction for the judge's miscon-
duct than to the question of whether a violation occurred. In addition, she
asserts that courts rarely define or analyze the relation between the appli-
cable ethical standard and the offending conduct. In an attempt to fill this
gap and provide further guidance with respect to Canon 2, the author
focuses on the diverse parts of the Canon and the cases in which courts
have explicitly applied those standards. Each section of the article com-
pares the differing language of the 1972 and 1990 Codes of Judicial Conduct, and the extent to which the states have modified the Code’s black-letter language or commentary. Finally, the author discusses and analyzes the judicial decisions that go against the norm of Canon 2 judicial decisionmaking.


**XII. LEGAL ETHICS AND TECHNOLOGY**


Brad Hunt, Comment, *Lawyers in Cyberspace: Legal Malpractice on Computer Bulletin Boards*, 1996 U. CHI. LEGAL F. 553. This Comment addresses the emerging ethical issues related to legal bulletin boards in cyberspace, which are areas where people discuss legal issues and ask and answer questions about the law. The author points out that, although some commentators have argued that attorneys on legal bulletin boards should be liable for legal malpractice if they provide misleading information, the law governing this potential problem remains unclear. To help resolve this lack of clarity, the author argues that attorneys who
answer questions on legal bulletin boards generally should be able to avoid liability for malpractice by employing a disclaimer that states: 1) the information they provide is not authoritative legal advice on which a person should rely, and 2) no attorney-client relationship is formed by virtue of the communications in cyberspace. The author asserts that the "disclaimer rule" would both allow the continuation of the beneficial communications that occur on legal bulletin boards and promote the understanding that people should not rely on the information provided in those communications as they would on in-person legal advice.


XIII. DEFINING THE LEGAL PROFESSION


XIV. FAMILY LAW


Austin B. Byrd, Case Comment, Family Law—Alexander v. Inman: The Tennessee Court of Appeals Establishes Guidelines for Contingent Attorney's Fees in Domestic Relations Cases, 26 U. MEM. L. REV. 1575 (1996). This Case Comment discusses the recent Tennessee Court of Appeals decision of Alexander v. Inman, in which the court set forth the guidelines for determining whether attorneys may enforce contingency fee contracts in divorce cases. The author observes that, although the Tennessee Court of Appeals clearly objected to the use of contingent fees in domestic relations cases, it recognized that such fee arrangements were not precluded by the Model Code, and thus sought to strictly regulate the enforceability of contingency fees in these cases. This regulation took the form of nine jury instructions and three pivotal questions: Is the contract enforceable; did the attorney provide the contemplated services; and is
the requested fee reasonable? After discussing and analyzing the opinion at length, the author provides some guidelines for practitioners that may help to ensure the enforceability of fee contracts.


**XV. STANDARDS AND ISSUES IN SPECIFIC AREAS**


Erwin Chemerinsky & Laurie Levenson, *The Ethics of Being a Commentator*, 69 S. CAL. L. REV. 1303 (1996). This article, written in the aftermath of the O.J. Simpson trial, is part of a symposium entitled "People v. Simpson: Perspectives on the Implications for the Criminal Justice System." It examines the phenomenon of the legal commentator which emerged so dramatically during the Simpson trial as America grappled with the comprehension of the legal issues involved in the trial. It explores the ethical issues that commentators face, offers suggestions for dealing with these issues, and proposes several suggestions for the future of legal commenting. Finally, this article argues that a model code is necessary to govern legal commentators, both to ensure consistency and to promote public confidence in the profession.


Barbara Hanson Nellermoe & Fidel Rodriguez, Jr., *Professional


George C. Rockas, Lawyers for Hire and Associations of Lawyers: Arrangements That Are Changing the Way Law is Practiced, 40 Bos. B.J. 8, November/December 1996.

Megan M. Wallace, The Ethical Considerations of Defense Strategies When Confronted With a Victim-Impact Statement—Give Us Dirty Laundry?!, 13 T.M. COOLEY L. REV. 991 (1996). This article addresses the use of the victim-impact statement in the sentencing phase of criminal proceedings. The author begins by presenting the history and development of the use of victim-impact statements and evidence at the sentencing phase of capital cases. She then examines the cost of victim-impact statements to both the victim's surviving family members and the capital defendant. Finally, the author summarizes rules concerning the ethical obligations of defense attorneys to their clients and the court, and presents strategies and questions for the defense to consider when planning an attack on victim-impact evidence. The author concludes that, while there are no rules barring an attack on the truth of the information contained in victim-impact statements, it is probably not in the best interest of the capital defendant to risk alienating the jury.


XVI. ATTORNEYS AND THE FIRST AMENDMENT


Douglas E. Mirell, Gag Orders & Attorney Discipline Rules: Why Not Base the Former Upon the Latter?, 17 LOY. L.A. ENT. L.J. 353 (1997). This article discusses Rule 5-120 of the California Rules of Pro-
professional Conduct and the increasing use of judicial gag orders to curtail the out-of-court statements of attorneys and other trial participants. The author maintains that such judicial gag orders are unconstitutional and represent poor, ineffective, and short-sighted public policy. Furthermore, the author criticizes the new California Rule as inadequate to address concerns of either the opponents or proponents of gag orders. The author maintains that, so long as the constitutionality of attorney disciplinary rules constraining lawyers' extrajudicial comments remains unsettled, and so long as the standards within these rules are vague or ambiguous, gag orders based upon such rules will themselves remain under a constitutional cloud. As a result, more speech will be chilled than is absolutely necessary to remedy the "problem" which that the trial court is seeking to solve through the imposition of a gag order in the first place.

XVII. ALTERNATIVE DISPUTE RESOLUTION


XVIII. LEGAL EDUCATION


Roger C. Cramton & Susan P. Koniak, Rule, Story, and Commitment in the Teaching of Legal Ethics, 38 WM. & MARY L. Rev. 145 (1996). This article grapples with the issues surrounding legal ethics instruction in law schools. The authors first examine the validity of the ABA requirement of instruction in legal ethics. The authors conclude the requirement should be maintained, but indicate that the inquiry is nonetheless worthwhile to address the concerns of individuals who scorn legal ethics yet stop short of suggesting that it be discontinued. The authors then
address the issues of what is appropriate subject matter for ethics courses and when they should be taught. They conclude that some first-year instruction is important, but that, after the first year, an additional ethics course is also necessary. Further, they maintain that the required courses should be supplemented with a well-designed and deliberate effort to teach ethics in all upper-level courses, and provide guidance on how to teach legal ethics courses. Finally, the authors address the issue of who should teach legal ethics, indicating that the character of teachers of legal ethics themselves should always be taken into account.


**XIX. LEGAL ETHICS AND THE ADVERSARY SYSTEM**


**XX. RESPONSIBILITY TO NONCLIENTS AND THIRD PARTIES**


Leslie Griffin, *Whose Duties and Liabilities to Third Parties?*, 37 S.


Ronald E. Mallen, Duty to Nonclients: Exploring the Boundaries, 37 S. TEX. L. REV. 1147 (1996). This article, part of a symposium entitled “The Lawyer’s Duty and Liability to Third Party,” discusses the parameters of a lawyer’s duties to nonclients. The author attempts to identify the areas where lawyers may assume duties to third parties, in order to assist the practitioner in identifying risks of exposure and acting accordingly. He presents developing areas of the law that may indicate new exposure for attorneys, and highlights aberrational decisions that illustrate the risk of judicial inattention to important policy considerations. He concludes that a lawyer’s duty to nonclients is expanding, even in areas where a duty could not be anticipated, resulting in increased liability for attorneys.


XXI. LEGAL MALPRACTICE

Manuel R. Ramos, Essay, Legal Malpractice: Reforming Lawyers and Law Professors, 70 TUL. L. REV. 2583 (1996). This essay critically examines lawyer self-regulation, legal malpractice, and the roles of lawyers and law professors as they relate to each. The author argues that, in
order to address concerns about legal malpractice, lawyers and law professors, not the civil justice system, need to be reformed. As part of this reformation, the author calls for ending lawyer or judicial "self-regulation," abolishing the traditional disciplinary model, and replacing it with legal malpractice litigation. The author further argues that such litigation is much more effective than the traditional self-regulation disciplinary model of lawyer regulation, and sets forth the Oregon Professional Liability Fund (PLF) as a model of a better way to regulate lawyers. Finally, the author maintains that legal malpractice begins in law school and continues with continuing legal education courses, and argues that more needs to be done to train students and lawyers to become competent. He concludes that legal malpractice will continue to act as a catalyst to fundamentally reform the legal profession and legal education, and that radical changes are a natural part of this process of reformation.


Lucille T. Sgagliione, *Practice Strategies, When Duty Calls Long Distance: Local Counsel Are Also Vulnerable in Malpractice Suits Against Lead Attorneys*, 82 A.B.A. J. 82, May 1996.

XXII. ATTORNEYS AND SUBSTANCE ABUSE


XXIII. LEGAL ETHICS AND MORALITY


William H. Simon, *Should Lawyers Obey the Law?*, 38 WM. & MARY L. REV. 217 (1996). This article challenges the dominant view in legal ethics that ethical rules must yield to the bounds of the law. The author asserts that the duty of obedience to the law depends on how
“law” is defined. The author argues that, in order to give support the notion that law entails respect and obligation, it must be defined in a broad and substantive manner. In defining law this way, however, the author maintains that the obligation that attaches to the law becomes meaningless, and the line between law and morals is erased. On the other hand, if jurisdictional criteria are used to define law, then the author asserts that lawyers are left with no strong reason to obey the law. The author thus concludes that the proper way of defining law balances these two views, as opposed to overly emphasizing the jurisdictional definition of law. Once lawyers begin to define the law in this manner, the author asserts, they will find it easier to justify their obedience to law but harder to determine what obedience requires.


**XXIV. ISSUES OF ATTORNEY REGULATION**


Richard W. Painter, *Game Theoretic and Contractarian Paradigms in the Uneasy Relationship Between Regulators and Regulatory Lawyers*, 65 FORDHAM L. REV. 149 (1996). This article examines relationships between regulators, regulated firms, and lawyers from the vantage point of two theoretical paradigms: game theory and contractual theory. The author first discusses the work of regulatory lawyers as part of a series of ‘games’ between regulators, regulated firms and lawyers. Next, the author examines the interaction between these players and discusses the possibilities for bargaining between them. The author acknowledges that neither of these paradigms completely describes the relationship between lawyers and regulators, but maintains that both are useful analytical tools that offer valuable insights into conflicts between lawyers and regulators. The author concludes, in part, that because lawyers representing agencies and lawyers representing firms play the “regulatory game” with each other on a frequent basis and have opportunities to bargain, cooperative play between them can create substantial benefits for both. Further, he theorizes that this “cooperative play” between lawyers, if it evolves, is likely to foster cooperative play between agencies and regulated firms as well.

**XXV. General Interest**


*James W. MacFarlane*