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University of Michigan Law School

res gestae

Vol. 4, No. 7 "Exhaust all legal remedies." March 6, 1970

Three Courses No Longer Required

Evidence, Constitutional Law II and Trusts and Estates I are no longer required courses for upperclassmen. Last Friday the faculty approved the proposal at their regular meeting. The proposal was brought to the faculty by the student-faculty Curriculum Committee. Prof. Sandalow, chairman of the Curriculum Committee, said the motion passed without lengthy discussion on a voice vote. Sandalow reported that the faculty had thoroughly discussed the issue and each had come to his own conclusion on the subject during the two years since the issue was last considered and therefore they felt no worthwhile purpose would be served by further discussion.

Although the dissenting members of the faculty did not debate the issue last Friday, there are several arguments that have recently been advanced as reasons not to eliminate the required courses at this time. The principal argument is that a reevaluation of freshman courses should be undertaken with this action so that the student would get an overview of the courses not now required, which would give the student not taking the course a taste of the subject matter and to stimulate other students to take the courses anyway. The most natural blending of courses would seem to put Trusts and Estates I into the Property course, Evidence into the Civil Procedure course and Constituional Law II into Constituional Law I. This change would require a change of teaching materials, schedules, and texts in some cases and would be a lengthy process, said Sandalow.

An extention to the program and broad based first year courses has been tried at other law schools, especially Berkeley and Harvard. The idea behind the plan is that some students want to concentrate on a field of study while others want just an overview of the subject. Therefore, these schools have offered Long and Short courses in fields such as labor, tax, corporations and estate planning, allowing a student the freedom to choose a course that fits his purpose. Another program would be to offer many small courses (2-3 hours) in a wide variety of areas so that after a very broad freshman experience a student could follow the specific areas of instruction he wanted to, therefore making best use of his time.

Another potential problem arises at the end of a student's freshman year when the student must decide what courses to take and he has no pre-planned course of action to follow. In many cases the students know what they want to study, but also there are students who at this time will require more counseling than has been used before. A possible solution to this problem would be a day each semester spent in counseling and course planning, where the student could discuss with the Professors in their fields of interest the type of schedule that is best for the individual student. The success of the Conference

on Legal Education, being held yesterday and today, should provide an indicator to the potential of such a "counseling day."

However, as of last Friday the freshman class can look forward to no formal restraints upon their individual course elections. The next question is whether that freedom will substantially change the fall enrollment in these courses. Perhaps the law students will find new dimensions in their personal curriculum --or perhaps they will continue to enroll in the same courses as though they were still required. One thing is obvious, however. We now have an opportunity to reexamine our law school plans within new rules--we owe it to ourselves to do that much.

Don Tucker

CONFERENCE ON LEGAL EDUCATION - NADER AND KINOY

Law schools, Ralph Nader wrote in the New Republic last Fall, have traditionally been instruments of the status quo. The case method and the Socratic method of teaching are powerful tools to humble the student into accepting the premises, level of abstraction and subject matter the professor selects. The student is taught to think like a lawyer, which means think small--approach little problems in a craftsman-like way rather than raise larger questions about the system,--and think law--learn what the law is and don't bother about whether it is right or wrong. These powerful techniques enable professors to condition students to serve certain interests. And they are largely the interests which can pay for legal talent.

Arthur Kinoy, Professor of constitutional law at Rutgers, has been at storm center in the political/legal issues of our time. He's Kunstler's partner in the firm of Kunstler, Kinoy and Kunstler. He defended Jerry Rubin before HUAC and represented Adam Clayton Powell in his suit to be reseated in Congress. He thought up the theory of 'chilling effect' which carried the day in Dombroski. He is director of the Legal Center for Constitutional Rights in New York. (They coordinate the Black Panther cases across the country and are currently the clearing house for briefs in the contempt proceedings which grew out of the Chicago Conspiracy Trials.)

In a recent article, "The Present Crisis in Legal Education," Kinoy proposes some sweeping changes in the structure of law school. The law school should have at its heart a clinic and not a library. In part, this is a proposal for better teaching. The best teaching, the most relevant teaching, Kinoy feels, grows out of that union of practice and theory which brings the excitement of current problems into the academy. Professors should be lawyers.

Both Nader and Kinoy are critics of the present system of legal education. Both will be speaking as part of the Conference on Legal Education. Nader will be speaking at 4:00 today in Room 100 H.H. and Kinoy in the same room at 7:15 this evening.

NO WRITING COMPETITION

There will be no first year writing competition for Law Review and Prospectus this Spring. James Bieke, Editor of the Law Review, withdrew the writing proposal after consultation with the Law Review Faculty Advisory Committee.

Bieke took this action after being told that the faculty had informally discussed the proposal and that, although only a few were against opening up Law Review membership, many faculty members questioned the implementation of the competition for this Spring. Two professors who teach first year courses

had already assigned papers for the Spring. There was considerable feeling that first year students had been caught unaware by the competition proposal and had already planned the budgeting of their time between March and finals.

Although Law Review is an independent corporation of the Law School, the faculty, in the past, has approved changes in membership eligibility. According to Dean Allen, "Decisions of eligibility for membership has had the input of the faculty advisory committee because of the relationship of the Law Review to the over-all scholarship and educational policy of the Law School." Jason Horton, one of the members of the special Law Review committee which had set up the project, thought that the question of timing of the Spring competition had been the major factor in the proposal's withdrawal, but that some faculty members were hostile to the idea because the faculty was not consulted during the drafting stage earlier this year. Law Review staff and faculty members had never discussed the proposal officially. It was brought up in the faculty meeting informally only after the junior staff had voted for the proposal, fifteen to ten, and an article had appeared in the RG.

The members of the committee did not officially bring the proposal to the faculty because of their belief that the Law Review staff has the power to set eligibility requirements on its own.

The idea of a writing sample is, however, not dead. Both Law Review and Prospectus will be selecting new senior staff in a few weeks. Professor Arthur Miller, Chairman of the Faculty Advisory Committee of Law Review, plans to bring both staffs together to work out new selection processes for both publications. In all probability, such a selection process would, at the earliest, effect the selection of members of the Class of 1973 for Law Review and Prospectus.

At least some members of the Law Review see the question of selection as only the first step in redefining membership on Law Review. Most students consider Law Review membership as a right which vests in the top thirty or thirty-five students in each class. This has created problems in that some of the junior staff and non-editorial senior staff have felt little obligation to put in very much time or effort.

Furthermore, the relationship of the Law Review with Prospectus has been ill defined since Prospectus came into existence. The withdrawn proposal was very much a compromise between the two publications.

Neal Bush

DISCRIMINATION CHARGE SENT TO COMMITTEE

The matter of sex discrimination brought to the attention of the faculty by the Kappa Beta Pi Legal Sorority (see letter from the group in Res Gestae, February 20) has been referred to the Administrative Committee (one student and Professors Julin, Kennedy, Proffitt and Wellman) by Dean Allen.

"We have no doubt that Royall, Koegel and Wells will be dealt with properly, as it was Dean Julin's own idea to bar the firm from recruiting at the University of Michigan at least for a while,"says Priscilla MacDougall, dean of the sorority. "The members are waiting to see what broader action and position will be taken against sex discrimination generally."

No date has yet been set for the committee meeting.

THE ENVIRONMENTAL LAWYER

In connection with the Environmental teach-in of March 11-14, the Environmental Law Society is pleased to announce a special symposium on "The Environmental Lawyer" to be presented Tuesday, March 10 at 7:30 p.m. in Room 100 of Hutchins Hall. In deciding

to present this program, the E.L.S. is not aiming at the individual who intends to specialize in Environmental Law but at any person who realizes the breadth of environmental problems and may be confronted with such litigation at some time. Speakers for the Law School session will be:

Mr. David Dominick, Commissioner, Federal Water Pollution Control Agency, the man who is trying to implement the Water Quality Act of 1965.

Mr. Donald Harris, Counsel, the Sierra Club, and one of the most active environmental lawyers, noted especially for his work in the Mineral King case.

Mr. David Sive, Counsel, Scenic Hudson Preservation Council, a very thorough and efficient man in environmental litigation and one who seems to have keen insight into the procedural problems which confront the environmental lawyer.

There is also a possibility that Mr. Victor Yannacone will be present to present his very new and liberal views on litigation procedure and abortion reform.

Besides the knowledge of environmental matters which Harris, Sive, and possibly Yannacone can present, it is expected that Mr. Dominick, an employee of the nation's largest polluter, the Federal Government, will be under attack by the other panelists and it is hoped he will be able to tell us just how much substance there is to Mr. Nixon's environmental public relations campaign.

The symposium, with Prof. Arthur Miller as moderator, will include interchange between the speakers and questions and comments from the audience.

Jay McKirahan '72

SAX ON CHICAGO AND THE LAW SCHOOL

Students have been expressing increasing disappointment with legal education. As I understand much of the criticism, it is that the law schools are engaged in an enterprise largely unrelated to the urgent social concerns of the nation, and are to a disturbing degree self-satisfied with the self-contained world which is called legal reasoning. The conclusion some draw from this is that legal education has little if any contribution to make to contemporary problems, and that it would be no notable loss if the law schools simply closed up shop. I think there is considerable truth in the factual observation stated above, but I strongly disagree with the conclusion which is drawn from it. To explain this, I would like to make a proposal; for I think that students of law (and I include in this definition faculty and members of the bar), as professionals, have a most important social role to play--and it is a role which is most suitably fulfilled within the law school setting, drawing upon the best traditions of legal education and analysis.

The source of my suggestion is the notable Chicago conspiracy trial, the first part of which has just ended. Here, truly, is a landmark in the law and a major event in American social history. Here, too, a panorama of fundamental issues in the administration of justice, many of which have never been adequately scrutinized: The lawyer's duties to his client vis-à-vis those to the court and the existing judicial system; the rights of defendants to participate in their own defense; the ways in which we can, and should, deal with judicial misconduct; the notion of the "political" trial, and the significance of that concept for traditional rules of evidence which narrowly confine the issues upon which testimony can be taken; and many, many more such fundamental questions.

Thus far, the general public knows only what newspapers have reported about the trial. While I have very great regard for the working press, plainly newspaper reports are at best superficial and insufficiently detailed. Books will be written about the trial,

but in all likelihood they will be written by journalists and partisans in the early years, and later by historians. Higher courts will cull out only a few narrow "legal" issues for consideration.

The trial deserves an exhaustive analysis and report by those who can bring to bear upon it both a finely tuned concern for justice and--most importantly--an informed professional perspective. Out of this should come a report to the public, perhaps in the format which has previously produced Presidential Commission reports on other subjects. But this job cannot and should not be left to officialdom. It is an ideal job for the law schools; in the process not only can the public be informed and educated about American justice, but the producers can educate themselves. Here is a setting in which we can use the best in our tradition of professional education to do a vitally needed public job.

Thus my proposal. I would like to see one or several teams of law students with an interest in this subject, along with faculty members, undertake to study the Chicago trial in exquisite detail, ultimately to produce a report or series of reports and recommendations to the people of the United States. The first job would be the obtaining of a full transcript of the trial. Law school research funds would be well expended in such a purchase. Funds should also be made available to support beginning work for the summer for members of the team or teams. Subsequently a series of courses or seminars can be built to continue examination of particular issues. Some students can arrange individual research projects to continue their work; some may want to build a significant part of their law school education around this project. I would hope that the school would be liberal both with its research monies and its interpretation of formal educational requirements to facilitate the work of those who have an abiding interest in the project. Obviously different levels of commitment will be required (and desired) by different individuals. Those who are interested in, and skillful in, field work, may need to carry on extensive interviewing. Some will have to plow the libraries. Others will have to put certain issues in a historical setting. Still others may need to develop legislative proposals.

In some degree the resources of the entire professional community of the school can and will have to be drawn upon; when the final job is completed, you will see, I think, that there will truly be a "community." The project will make it so.

In the interim, many people in the law school will go about their other interests, as they should. This need not be a thread of association and continuity in which we can all participate in some degree, and which will teach us all a great deal about the law, about our country, about legal education, and about each other.

I hope others share my view that this proposed project can be a beginning point for building, or rebuilding, the law school as a community of professionals, whose professionalism enhances--rather than contradicts--their deep desire for the achievement of justice.

Joseph L. Sax
Professor of Law
on leave 1969-70

FOG

In recent weeks a certain repressive atmosphere has hung over the Law School like a heavy Fog.

This cloud began to settle first over the Library on the night of the Conspiracy protest march. At that time, according to Dean Julin, two Ann Arbor policemen were placed inconspicuously in the building, called there by the University security police who contemplated possible destructive acts. Also on that night, supposedly on warning from the Faculty Senate, many professors were seen around the Library to

keep domestic tranquility. No more disruption than usual took place that night. While the professors have since deserted the Library for their lofty, comfortable offices, the police are still stationed in the Library.

Also in recent days was the famous elevator incident where fear once again got the best of the administration. When two of the now permanent elevator installers began to yell in the open shaft, the Library staff thought the Revolution was at hand, and immediately called in the deans to suppress it. The only disruption was caused by the confusion.

Many teachers have also fallen under this cloud of tension. One constitutional libertarian mentioned that his liberal attitudes have changed, presumably because the dense cloud (of fear?) has made the Truth harder to see. While the Constitutional right to engage in non-violent protest has been assured in a southern library, it does not seem so clear to him that the same form of protest would be protected by the First Amendment free speech guarantees in our Library.

These events make one speculate as to what the future holds for our Law School in the clouds. Looking ahead to, let us say, 1984, we might find the following in the censored Res Gestae--

Item - Dean Fred Inbau, lured away from Northwestern back in 1973, announced his resignation today to become Dean at Yale Law. Inbau, who is said to be a prime candidate for the still vacant seat on the U.S. Supreme Court, wants to firm his hard-line image, as it is said that he is soft on crime.

Roger Tilles

Being Counted

Last week Res Gestae published the names of faculty members who signed statements protesting the nomination of Harrold Carswell to the Supreme Court. Their signatures suggested their values; of at least equal interest is a delineation of the values of those who did not sign.

Professors Siegel, Proffitt, Pierce and Kahn did not have the opportunity. Siegel and Pierce indicated that they would have signed. Proffitt stated he would have "considered" signing. Professor Kahn, miffed at being asked whether he had the opportunity to sign, let it be known he wouldn't have signed had he the chance.

Professor Bishop said that he and Professor Stein phoned in their signatures for Dean Allen's telegram, and their names had inadvertently been omitted.

Professor Steiner felt the particular petitions were appropriate only for lawyers' signatures--"those with some expert opinion plus strong feelings."

Professor Polasky preferred his own words and sent a separate letter.

Professor Kauper offered no comment but stated that he had the opportunity to sign and chose not to.

Professors Plant, Wellman, and Gray asserted that they were not petition signers, Plant's operative rule being well-nigh irrefutable and Gray's a presumption against petition signing. Wellman said for him "to speak out on political issues wouldn't benefit anybody." Gray added that he didn't know enough about Carswell.

To me the most troublesome group was that which professed insufficient knowledge to take action. "This does not mean that the commands of the rulers cannot pass for general wills, so long as the sovereign (i.e., the people), being free to oppose them, offers no opposition. In such a case, universal silence is taken to imply the consent of the people." Rousseau, not Agnew, wrote that, and we all know how the present administration interprets silence. The silent were Professors Cramton, Browder, Cooperrider, Gray, Plant, Conard, Nelson and Israel. Nelson conceded that the fact that Carswell was unknown suggested that he was

intellectually undistinguished, but sufficient incompetence was not thereby proven to warrant signing a petition; he was out of town for the first. In addition to insufficient knowledge, Professor Israel reasoned that he had supported Thornberry (not to be confused with Haynesworth) and not upon his competency; therefore he felt constrained to oppose Carswell on that ground. Furthermore, he wasn't "all sure it's bad to have a Southerner on the Supreme Court."

Professor White believed the Warren court had been too activist, infringing upon legislative domain. Furthermore, "If Carswell represents part of the population who believes integration should be prevented legally, that's no reason to oppose him." Further, the President should have wide discretion. He concluded with the usual "doesn't know enough about his legal skills."

Fortunate to escape the inquiry of the peripatetic Res Gestae investigator were non-signers Vining, Watson, and Regan. Where they stand is left to conjecture.

David A. Goldstein

"I'm a Chicago civil liberties lawyer. What's your crime?"

JANE L. MIXER MEMORIAL AWARD: NOMINATIONS

"Students in the Law School, friends, faculty, staff, and her family contributed to a fund to establish an annual award in memory of Jane L. Mixer who met an untimely death while in her first year in the Law School. The award will go to the law student who has made the greatest contribution to activities designed to advance the cause of social justice the preceding year."

Provisions for this award further provide that "nominations for the award will be made by students in the Law School with the recipient to be chosen from among those nominated by a committee of the faculty."

Nominations are now in order. Please submit them to Dean Proffitt's secretary, Mrs. Richards, at the counter in the Administrative Office. Closing date for nominations will be at the end of business on Friday, March 13, 1970. The faculty committee will appreciate a brief statement of the activities of the various nominees thought to qualify them for the award. The announcement of the recipient will be made at the Honors Convocation which will be held early in April.

CASE CLUB BANQUET

Tickets for the Case Club Banquet are now on sale in front of Room 100 from 11:30 a.m. to 1:30 p.m. each day and at the Main Desk in the Lawyers Club until Tuesday evening. Tickets will cost $1.00 for all persons who participated in the Case Club or Campbell programs, while tickets for their guests will be $4.00. Judge Wade McCree will speak at the banquet, and the winners of the Campbell Competition and the winners in the various Case Clubs will be announced. The banquet will be held Thursday, March 12, in the Michigan League at 6:15 p.m. The final argument in this year's Campbell Competition will be held that afternoon at 2:00 p.m. in Room 100.

VOTE

Election to the Lawyers Club Board of Directors will be held on Tuesday, March 10, 1970. A polling place will be open in front of Room 100 from 8:00 A.M. until 5:00 P.M. After 5:00 P.M. the polling place will be moved to a desk in front of the Lawyers Club office. This polling place will remain open until 6:15 P.M. After the polls close the ballots will be counted by Walter Sutton, Neill Hollenshead, and myself.

The results of the election will be announced in the Lawyers Club lounge at 9:00 P.M. barring any unforeseen problems.

There are a few rigid election rules which should be noted. The present Board of Directors has decided that an individual must receive at least 40% of the total votes cast for an officer's position. This was aimed at 3 and 4 way races when a candidate might win with what we felt would be too small a plurality. Since 3/5 of the student body votes at a given election, a 3-way race could produce a winner with less than 20% of the students voting for him. If no candidate receives more than 40% of the votes cast then there will be a runoff on March 11.

Another rule is that at least four members of the Board must reside in the Lawyers Club. If the winning candidates do not include four such beasts in their number, the non-resident member-at-large winners with the fewest votes will be dropped in favor of resident losers with the highest vote count until 4 residents are on the Board.

Voting procedure is simple. Vote for one President, one Vice-President, one Secretary, one Treasurer, and one Member of the Board of Governors. Then go to the group of names at the bottom half of the ballot, who are running for Member-at-large. Vote for any seven of these folks. If you voted for a man for one of the officer positions you may vote for him again for one of the Member-at-large positions. If his name does not appear in both areas it is because he failed to submit separate petitions for each office.

There will, of course, be no campaigning within 20 feet of the polling place.

These are the more significant rules.

Let me close this rather dry dissertation with a suggestion. Law student government can do lots of constructive things if the right combination of people are elected to it. This combination should include maturity, open-mindedness, creativity, and a few other boy scout virtues. In a word, it is balance. Hopefully, you will get 13 folks with 13 viewpoints who are willing to adjust their ideas to obtain a group solution. Bear this and a few other conundrums in mind when you vote, and by all means, please exercise your franchise! You get what you pay for.

Billy Greenbaum '70
Vice President of the
Board of Directors

21st ANNUAL ADVOCACY INSTITUTE

Program -- Hill Auditorium -- Ann Arbor

Friday, March 6 -- First Session
9:00-9:45 a.m. -- Automakers and the New Liability
9:45-10:15 a.m. -- Failure and Design: A World of Difference
10:15-10:45 a.m. -- The Second Collision: Crashworthiness
11:00-12:30 p.m. -- Trial Demonstration I Ejection from the car

Friday, March 6 -- Second Session
2:00-3:45 p.m. -- Courts and Cars: A Symposium
4:00-5:30 p.m. -- Trial Demonstration II When did the part break

Friday, March 6 -- Third Session
7:30-9:30 p.m. -- Use of Technical Data in the Ordinary Automobile Case: An Illustrated Symposium

Saturday, March 7 -- Fourth Session
9:00-9:25 a.m. -- The Duty to Instruct and Warn
9:25-10:20 a.m. -- Examination of Expert Witnesses in Automobile Product Liability Cases
10:35-11:30 a.m. -- Dismemberment of an Automobile Liability Case: A Synoptic View (Exploring the avenues of liability; Choosing strategies and techniques)
11:30-1:00 p.m. -- Trial Demonstration III Accident reconstruction

Trial Judge: Edward F. Bell
Program Moderator: John W. Reed

Student Registration fee - $5.00

Letters

To the Editors:

I found Mr. Campbell's recent letter on the Chicago trial very interesting, but I believe that he may have misconstrued my remarks on that subject. My intention in participating in the discussion of the Chicago trial was to present "the other side"--i.e., the side which had not been advanced, to my knowledge, in prior discussions. I did not mean to suggest that I presonally favored 18 U.S.C. § 2101 and 2102 even if these sections are assumed to be constitutional. I certainly do not. (On the other hand, 18 U.S.C.§ 231-33, also relied upon in the Chicago indictment, present a much more difficult problem.)

With respect to the Chicago prosecution itself, I sought only to suggest certain arguments that might be advanced to justify that prosecution. These arguments were not based on the stare decisis of prior "seditious speech" prosecutions. Indeed, I suggested that the Chicago case might be distinguished from these prosecutions because of various allegations in the Chicago indictment relating to the teaching of techniques of violence. [Of course, the jury subsequently acquitted the defendants on these charges.] In the alternative, I noted that even if the prosecution rested entirely on more general speeches, reasonable men could disagree as to whether it is appropriate to punish speech urging others to engage in illegal acts. It was in this connection that I cited the previous prosecutions ranging from Debs to Spock and the general judicial acceptance of the basic theory of these prosecutions, as well as the participation of officials like Ramsey Clark and O. John Rogge. Certainly, the potential for prosecutorial abuse in enforcing statutes punishing "seditious speech" may be so great as to override any value those statutes may have in supplementing other criminal provisions prohibiting violence. In this regard, Mr. Campbell's point that the federal prosecutions over the years have concetrated largely on the left is well taken.

For myself, I will have a much better idea as to whether the Chicago prosecution reflected prosecutorial abuse after I have examined the transcript.

Jerry Israel

MASS LEGAL DEFENSE OFFICE

The statistics tell the story. This year in Ann Arbor, as all over the country, more people are being arrested because of political action. There were one hundred and seven in the L.S.&A. sit-in, six Black Berets, numerous members of S.D.S. in various actions.

Nor is it expected that political actions or arrests are going to stop. The warm weather will be here soon. Local lawyers and law students who have wanted to help in the past have always had to react on a crisis basis, responding to each volatile situation. There is a need for a more permanent response.

With that in mind, students from the University have set up a mass defense office in the Student Activities Building. This office will coordinate all political trials in the area. It hopes to provide defendants with lawyers and law students who can help them.

On Monday, March 9 at 7:30 in Room 116 H.H. there will be a meeting of all students interested in working at the Mass Legal Defense Office. Hopefully, enough money can be raised to provide summer jobs at subsistence wages for one or two law students. There are at least three lawyers who have made a commitment to give some of their time to the project, but they will need help.

Law students are needed for a variety of purposes. Even more than the usual legal research, law students are needed to teach those defendants who wish to defend themselves. Moreover, law students can act as counsel to students being tried by the internal judicial bodies of the University. Students will have a variety of chances of putting some of their classroom theory into practice.

Anyone who is interested in working either part-time or full-time, either now or after the semester ends should attend the meeting in Room 116 H.H., Monday, March 9 at 7:30.

RECENT DEVELOPMENTS: LSCRRC v. WADMOND

Most law students are probably aware of the looming spectre of the bar character and fitness committees. If a student plans to practice in California, for example, he has already filled out the first year form which may well have been adapted from the draft board scene in "Alice's Restaurant" ("kid--have you ever been arrested?") If he's a third year student, he may well have already signed a statement pledging himself to the American way of life. The Michigan form requires belief in the "principles underlying the government of the United States," and an affirmation, without moral reservation, that the applicant is loyal to the government. In any case, his decisions concerning what actions he might take to fight the war, oppose racism, or work towards building a better society have very probably been tempered by the prospect that the character and fitness committee won't like what he's doing.

It may be encouraging to know that the power of these committees is currently under attack. The major battle is being fought in LSCRRC v. Wadmond, to which the Supreme Court on Jan. 12 noted probably jurisdiction.

The LSCRRC case is a consolidation of two actions, one brought by LSCRRC and three law student members, and the other brought by the Columbia student chapter of the National Lawyers Guild and three law school graduates who had passed the bar but refused to submit themselves to the character and fitness examination. (One of the graduates is currently an assistant professor at Columbia Law School.)

The plaintiffs attacked two New York statutory provisions and the rules and questionnaires implementing them. The first statute, N.Y. Judiciary Law, Section 90, provides for admission to the bar only if the admitting court finds that the applicant "possesses the character and general fitness requisite for an attorney and counselor-at-law." It was attacked as impermissibly vague. The second statute, N.Y. Civil Practice Law and Rules, Rule 9406, calls for admission only upon the condition that the applicant has "furnished satisfactory proof of the effect that he believes in the form of government of the United States and is loyal to such government." It was attacked as imposing an unconstitutional burden of proof on the applicant.

The cases were heard by a three judge district court which held the statutes valid on their face

but which did find three questions unconstitutional No. 27(a), "Do you believe in the principles underlying the form of government of the U.S.?" No. 26, referring to participation "in any way whatsoever" in organizations or groups which teach or taught overthrow of the government by unlawful means, and No. 31, "Is there any incident in your life not called for by the foregoing questions which has any favorable or detrimental bearing on your character or fitness? If the answer is yes, state the facts.") Circuit Judge Friendly wrote the majority opinion and Judge Constance Baker Motley wrote a beautiful and vigorous dissent. LSCRRC v. Wadmond, 229 F.Supp. 117 (S.D.N.Y., 1969).

In reaching his decision, Judge Friendly found Section 90 indistinguishable from the "good moral character" test approved in Konigsber v. State Bar, 336 U.S. 36 (1961). He found the Rule 9406 burden of proof was permissible because the applicant himself had the best access to the information. On the substantive grounds, Judge Friendly found that the rule did not create an in terrorem effect because it referred only to the state of mind at the time of admission.

Judge Motley's dissent appears more attuned to the Supreme Court's attitude towards civil liberties. (She describes the plaintiffs as "waving their first amendment freedoms on high...(as they) carry the banner for lawyers to have the same protection against state infringement upon these areas as won by public employees, ... other civil rights advocates, ... and the public in general.") It indicates a good possibility of reversal if Nixon's glue sticking the pages of the Bill of Rights together doesn't harden before the decision.

Judge Motley was willing to look beyond the sterile words of the statutes to see exactly how they had been administered by the N.Y. courts. To that end she set forth in great detail the incredibly inquisitorial questionnaires and affidavits. References were not told what was meant by "moral character," but were asked to comment on it. Applicants were to list all organizations of any kind they had ever belonged to, and to write, in not less than 100 words, what they believed the principles underlying the form of government of the U.S. to be. Judge Motley also examined the plaintiffs and found that "They are plainly concerned with whether political tests may be employed in determining eligibility."

Turning to the statutes, Judge Motley found that Section 90, while not unconstitutional on its face, was unconstitutional in its application, as evidenced by the affidavits and questionnaires. These failed to meet the standard for precision dictated by the first amendment, they led to an "improper focus upon the applicant's political beliefs," and they constituted an invasion of privacy. Judge Motley found rule 9406 to be an unconstitutional political test. Moreover, the burden of proof was impermissible under Speiser v. Randall, 357 U.S. 513 (1958).

The importance of the current appeal should be obvious. The threat posed by character and fitness committees is not the time required to fill out all the questions and remember every speeding ticket. Rather it is the pervasive threat of repression: in the form of channeling the prospective lawyer away from activities, beliefs, and life styles that a few sequestered men might disapprove of, and in the form of actual refusal of admission on political grounds. As lawyers become more visible in the struggle for political change, those who oppose them will no doubt attempt to stifle their activity. The weapons wielded by character and fitness committees can be just as repressive as Judge Hoffman's contempt sentences.

Tom Jennings

one man's opinion

Michigan Law School is a cop-out!

After considerable research in the field, I am able to report that Michigan is not alone. Most law schools are cop-outs.

Why?

Law schools are cop-outs with regard to their responsibility to society. This was the crux of the argument of the Black Law Students Alliance in the continuing furor over the admission of more black law students.

The reply of the faculty was two-pronged:

First, that no more black students could be found who would meet Michigan's "standards."

Second, that even if more black students could be admitted, they could not be financed because of limited financial resources - especially dimishing alumni contributions if more black students are admitted.

It is to the second point that I address the charge of law school being a cop-out.

As is generally acknowledged, nearly every law school needs money, and money is at the crux of many law school problems.

Why don't law schools have more money? Lawyers, especially graduates of schools like Michigan are one of the highest paid occupational categories in America. Lawyers are also among the most influential groups in America. Lawyers compose the largest occupation category of members of Congress and most state legislatures. The President of this University is a lawyer. Some of the regents are lawyers.

It would seem that with such impressive credentials being possessed by their graduates that law schools in general, and this law school in particular, should not be in financial straits.

There would seem to be three major sources of contributions, alumni, the university, and federal and state government appropriations directly to the law schools.

Why are these not forthcoming?

I contend that it is because of the overwhelming irrelevancy of the law school to society. Really what does the law school do for society? It grants a degree without which one cannot take the bar exam (in many states, though not all). But more than that is open to question.

A paraphrasing of a remark made recently by one of the deans of this law school would seem to sum up the prevailing attitude of the faculty and administration "I don't want to turn out general practitioners, I want to turn out great legal minds."

This seems very well to sum up the mentality of the "powers that be" and at the same time offers a penetrating insight into the reason that the law school doesn't have enough money. It is because the faculty wants to turn out not professionals trained to meet the needs of society, but academics --great intellects--people who know the law, but know it as an abstraction, not as it relates to the needs of society.

The alumni, regents and legislatures recognize this irrelevancy, to the needs of society, of the law school and the result is that precious economic resources are allocated elsewhere.

The medical school is an example of this. Its appropriation from the university is many times that of the law school. Why?

The medical school turns out doctors, men who are trained to do a specific job that society recognizes as important. Can the law school say this? That its graduates are really trained

to do a job, any job? Let alone one that is recognized by society as important?

The lawyer is not as well or as functionally trained as the physician. The law graduate cannot do nearly as much for society fresh out of school as the medical graduate.

What facility does the law school have that is comparable to the medical complex either as a teaching facility or as a public service?

What services do the faculty perform for society at large that is comparable to the time most of the teaching faculty of the medical school put in on the wards and seeing patients?

In short, the medical school is more relevant to and better meets the needs of society and it gets more of the limited supply of society's resources.

This is the situation and this state of affairs will continue until the law school can be made more relevant to the needs of society.

The need for change is apparent. The method is left open to question. When the Black Law Students Alliance indicted the law school for being racist, the Dean refused to appear because it wouldn't be an appropriate forum for rational discussion. If the faculty and administration want the rational approach to making the law school more relevant (if indeed they do want the law school to have any relevance to life--which, from all evidence, is not at all a foregone conclusion) then they should deal in good faith.

The law school needs to be made more relevant to society's needs. If this can be done by "rational discussion," it is good. If not, then application of other means which give more promise of success should be employed.

Michael D. McGuire

ANOTHER ELECTION, SAY WHAT?

After a rather uneventful, drowsy winter, March shows all the signs of arousing dreary minds from their beds of placid indifference. Suddenly we have thrust upon us a conference on legal education, an environmental teach-in, an advocacy conference, and the Board of Directors election. What? An Election? Yes, somehow in the midst of all this activity and involvement, an election is softly creeping up on us. Quietly it comes because no one seems too concerned in letting his peers know that he would like to be elected. And this is really unfortunate. Elections generally can be counted on to accomplish several things, only one of which is inevitable--someone will get elected. Some of the other more esoteric, worthwhile phenomena of elections include people deciding what needs to be done around here, people laying some ideals and ideas on the line, and people being stimulated to the point that they are commited to some person or platform. Basically, then, the most valuable aspect of an election is that it can act as a catalyst for student thought and discussion, which will result in a representation that will serve our interests.

And right now is just an excellent time of the year for some very pertinent issues to be raised. Certainly many good thoughts and ideas have been generated by the conference on legal education. If we are going to have a group of people represent this law school then they should let us know what they think and what they would like to do. Any other policy results in the creation of a Board which will represent no one and do nothing. Presently, we are confronted with a popularity contest which is masquerading as an election. This is cheap. The Board cannot possibly have any power or respect if it is a conglomeration of non-action, smiling people.

I'm leaving for the service in May but

here's where I stand: Legal Aid and the Milan Prison Program should supersede P&R; the First Year College System should be adopted; class averages should be raised from the grubbing level of 2.7 to the standard professionalism of 3.5; student-faculty committees should be reexamined and revamped; there should be more flexibility in the curriculum--only first year required courses; and, pass-fail should be optional.

So where are YOU, CANDIDATES?

Bob Buechner '74

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Produced and Collated: The Boone's Farm Tribe

NOTE: Because of vacation this will be the last RG until Friday, March 27.