1977

January 27, 1977

University of Michigan Law School

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RES GESTAE
the law school weekly

STUDY SCHEDULE

MON.  7-9 PM: CRUISE UNDERGRAD LIBRARY
       9-11 PM: MONDAY NIGHT MOVIE: PAPER CHASE
                   FIRST 3 COMMERCIALS: T&E, COMM. 4-6: ED., REST: RELAX

TUE.  8-9: BAA BAA BLACK SHEEP
       9-10: RICH MAN, POOR MAN
               STUDY CON LAW II DURING COMMERCIALS
       10-11: KOJAK: OBSERVE FOR CRIM. PRO.

WED.  7:30-9:50: R.G.- MIDWEEK PARTY.
       9:50-10:00: TAX II
       10:00: CHARLEY'S ANGELS

THUR. 8:00: WELCOME BACK KOTTER
       8:30-9: MAKE NEXT WEEK'S SCHEDULE
       9:00: BARNEY MILLER: CONTINUE TUESDAY'S OBSERVATIONS
       9:30: TONY RANDALL SHOW: OBSERVE FOR TRIAL PRACTICE
       10:00: GOOD NIGHT'S SLEEP FOR FRIDAY'S CLASSES

FRI.   } PARTY!

SAT.   }

SUN.  : PRAY FOR PASSING GRADES!
PAD
Thursday Luncheon
12:00 Faculty Dining Rm.
Yale Kamisar - "The Karen Quinlan Case - A Dissenting View"

FEMINIST LEGAL SERVICES

General Meeting
Thursday, Jan. 27
12:00 Noon - WLSA Office
Agenda: Phone Policy

LAW AND PUBLIC POLICY JOINT PROGRAM

Information Meeting
Thursday, Jan. 27
3:15 PM Rm. 138 HH
(Institute of Public Policy Studies)

SPEAKERS COMMITTEE MEETING

Thursday, 7:30 PM
Faculty Dining Room

Reminder: LSSS MEETING TODAY (Thurs.)
6:30 PM in the Upstairs Lounge
of the Lawyers Club

I.L.S. -- HELSINKI CONFERENCE -- EVERYONE WELCOME

Mr. Brian J.P. Fall will be the guest of the I.L.S. today, Thurs., Jan. 27. Dinner will be at the Faculty Dining Room at 5:45 P.M. (for all those who signed up in advance*); and everyone is invited to participate in a conversation with Mr. Fall on the peaceful settlement of disputes -- The Helsinki Conference -- at the Lawyers Club Lounge at 7 P.M. The following background information about Mr. Fall may help people to bring questions for him:


*This being a served dinner, the I.L.S. has to pay for all those who signed up; therefore, if you did sign up, you had better show up! (No peaceful settlement for breach of this duty).

CONTROL ON TERRORISM

The Ann Arbor Wellesley Club cordially invites you to attend a lecture by Dr. ALONA E. EVANS, Professor of Political Science at Wellesley College. Dr. Evans' lecture, entitled "LEGAL CONTROLS ON INTERNATIONAL TERRORISM," will be THURSDAY, JANUARY 27th at 8:00 p.m. in the ANDERSON ROOM of the MICHIGAN UNION, 530 South State Street, Ann Arbor.

"UP AGAINST THE LAW" PROGRAM

Friday, Jan 28
8 PM Schorling Auditorium
(School of Education)
"China: Law for the People"
Judge George Crockett, Jr.
(S-1 Coalition· Guild, U-M Continuing Education Dept.)
Friday

BLOODBANK

The Red Cross Bloodbank will be at the Michigan Union Friday. They will be collecting blood from 11 to 5 in the ballroom. (You should eat within three hours of donating.)

Saturday

LEGAL AID SOCIETY

The Legal Aid Society will hold a training session and staff meeting this Saturday, Jan. 29, in the Law Club Lounge from noon to 5. Staff members and law students will give lectures on various substantive and procedural topics such as interviewing techniques, court practice, misdemeanors, consumer problems, and landlord-tenant law. Because the information provided is essential for competent performance, all new volunteers who wish to work at legal aid should attend. More experienced law students will also find the session useful for improving techniques. Refreshments will be served.

We are still in need of second or third year students. If you are interested in working at Legal Aid, please attend the training session or call me at 763-9920.

Morris Klein, President

Wednesday

WLSA BAKE SALES

Did you miss us yesterday? Well, don't worry, we're giving you another chance. The next WLSA bake sale will be next Wednesday, Feb. 2, 9-12 in front of Rm. 100. We need people to staff the table, so if you have a free morning hour consider it. Sign up sheets for baking and selling are posted outside the Women's Lounge. Thank you to all those who helped with the first bake sale too.

Help support the Alumnae Conference.

Thursday

ILS -- LAWYERS IN THE HOUSE OF POWER

Mr. Kurt Siehr from the Max Plank Institute in Hamburg, Germany, will be the guest of the ILS on Thursday, February 3, as follows:

* 5:45 -- Served dinner, Faculty Dining Room, Law Club
* 7:00 -- Conversation on the practical use of foreign law at the Max Plank Institute, which renders advice to German judges in German litigation of international problems.

* ILS members and guests coming to this dinner must sign up at the ILS door before Wed., Feb. 2, and must bring own meal ticket from Law Club to dinner on the 3rd.
Thursday

WLSA GENERAL MEETING

NOON, Thursday, February 3, Law Club Lounge (More room and more convenient for Law Club diners).

On the agenda a discussion of activities coming up:

The 3rd Annual Susan B. Anthony Birthday dinner Sunday, February 13.


The National Conference on Women and the Law, March 24-27, Madison, Wisconsin (so save some pennies over spring break!)

And many more items of interest including any projects you'd like to start or any ideas you have.

Everyone, women and men, is encouraged to come as these activities are hopefully of interest to the entire Law School.

There will be more information on these activities in future issues of the R.G. and the WLSA Newsletter.

** PLEASE COME **

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Notices

DID YOU KNOW???

... L-3 keys are available to law students who are not residents of the Lawyers Club? No more waiting for a friendly resident to stroll by and open the game room and outer doors for you! Details at the Law Club desk.

... The Lawyers Club has darkroom facilities available to law students. Located on the 2nd floor above the kitchen, next to the LSSS office. Check with Livvie at the club desk for information.

Dave Kern
Residential Committee

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SECTION V

Once again, a group of first-year students have formed into what has been known as Section V. Section V is an organization concerned with gathering and presenting information about the practice of law in non-corporate settings. In the past, Section V has sponsored an Alternative Practices Conference in the spring, bringing together lawyers engaged in such fields as environmental law, public interest law, legal aid, labor law, and women's law. This year, we are considering instead a series of 3 or 4 workshops on specific alternative practice areas, in order to provide an opportunity for greater exposure to law students and the community.

Our goals in these workshops are twofold. First, we would like to give law students, especially those in their first year, a chance to get some basic information about work in non-corporate legal fields from people who are currently involved in them. Second, we would like to present a Forum for discussion of the outposts of today's law in a few special areas.

To make this happen, we need help from some people who are willing to commit a little time to work on making arrangements. So far, we have had interest expressed in the following workshops: (1) Environmental & Public Interest Law - Contact Mark Sterling (769-3654) (2) Urban Criminal Law Contact Mike Halpin (764-0052) (3) Labor Law - Contact Sheila Haughey (662-1818 for those interested, there is a meeting for this committee at noon today in the lawyers club lounge).

We must have people to help if these are to materialize. We are also more than open to a fourth workshop, if there are those willing to take charge.

This school often leaves the impression that the practice of law does not exist apart from Wall Street; we are the only ones in a position to tell the other side of the story. Please join us.

For more information call Mark Sterling (769-3654) or Pat Parker (971-3349).
BOARD OF GOVERNORS MEETING

All Law Students are members of the Lawyers Club, and as such are represented on the Club's governing body, the Board of Governors. The Board will be convening for its annual meeting next weekend (Feb. 5) and will be discussing a number of issues relating to use of the Club facilities (set out tentatively below).

Any students with comments upon these or other aspects of the Lawyers Club's operations should contact George Vinyard (764-8949), Martha Haines (995-2071) or Jeanette Ramseur (764-8909). These are the student members of the Board of Governors and may also be reached via LSSS mailboxes either in Room 300 or at the Lawyers Club desk.

Topics for consideration at this year's Board meeting will most likely include the following:

1) Minor changes in the terms of the management agreement between the Club and University Housing Division.

2) Policies governing reserved use of the common areas of the club for meetings, dances, etc.

3) Whether or not to renew the lease of N section to the Medieval & Renaissance Collegium (MARC)—LSSS has recommended that the lease not be renewed.

4) Planned capital improvements.

-- George Vinyard
LSSS President

LEXIS

LEXIS will be available for use on a first-come, first-served basis Monday through Friday from 9:00 a.m. to 2:00 p.m. and 5:00 p.m. to 12:00 midnight and on Saturday and Sunday from 10:00 a.m. to 6:00 p.m. This availability is subject to restrictions for: training sessions, consulting periods and reserved times.

1. TRAINING SESSIONS - Instruction in the use of LEXIS will be available on Wednesdays from 7:00-9:00 p.m. and 10:00-11:00 p.m. on Thursdays from 11:00 a.m. to 1:00 p.m., on Fridays from 7:00 - 9:00 p.m. and on Saturdays from 10:00 a.m. to 12:00 noon. In addition, training for special groups of students will be available on Tuesday nights. Any group or organization which is interested in having its members receive training should make arrangements with Bart Thomas (764-3204) between 12:00 noon and 1:00 p.m. Monday through Friday. Sign-up sheets for the general session will be available on the preceding Tuesday at approximately 1:00 p.m.

2. CONSULTING - Consulting services will be available on Monday from 9:00 - 11:00 a.m., on Tuesday from 11:00 - 1:00 p.m. and 9:00 - 11:00 p.m., on Wednesday from 6:00 - 7:00 p.m. and on Thursday from 9:00 to 11:00 p.m. Use during these periods will be subject to interruption when it is necessary for consulting purposes.

3. RESERVED PERIODS - Monday evenings, from 5:00 to 12:00 midnight have been set aside for reserved uses. Sign-up sheets for these periods will be available at approximately 1:00 p.m. on the preceding Tuesday.

In order to ascertain how well LEXIS is meeting the research needs of students and faculty, a short user survey has been prepared. Please assist this evaluation by completing one of these forms after each use.

Thank you

LEXIS consultants

ICLE

Legal damages, federal and state tax law, law office administration, probate and trust law, and bankruptcy are among subjects of upcoming workshops sponsored by the Institute of Continuing Legal Education (ICLE).
The Institute, a joint unit of the University of Michigan and Wayne State University law schools and the state bar of Michigan, will also present its 28th annual Advocacy Institute this spring on "Persuasion: the Key to Success in Trial."

The following programs are scheduled:

---Evaluating and proving damages in the personal injury case is the topic of workshops Jan. 21 in Southfield, and of videotaped presentations in various Michigan locations throughout February. A second workshop series dealing with other types of damage suits, including breach of contract and civil rights, will be presented March 17 in Southfield, and in videotaped showings in various Michigan cities in April.

---The first annual Federal and Michigan Tax Institute, covering the most recent developments in tax law, will be presented Jan. 27-28 at Dearborn.

---Probate and trust administration is the topic of a program for both lawyers and their non-legal personnel in various Michigan cities throughout February and March.

---A program on legal aspects of commercial leasing will be presented March 4 in Southfield.

---A program dealing with Chapter XI of the National Bankruptcy Act will be presented March 25 in Southfield.

---A "Basic Trial Advocacy Skills" workshop, offering lawyers the opportunity to develop their trial skills under the supervision of leading professionals, is scheduled for March 13-15 at Troy, Michigan.

---The 28th annual Advocacy Institute will be held May 13-14 on the Michigan campus in Ann Arbor. The program, featuring leading trial lawyers and actual trial demonstrations, will explore jury persuasion in criminal and civil cases.

Further information may be obtained from ICLE, Hutchins Hall, Ann Arbor, Michigan 48109 (phone: 313-764-0533).

---SUSAN B. ANTHONY POTLUCK DINNER

Each year, the Women Law Students Association sponsors a potluck dinner in honor of Susan B. Anthony, one of the foremost proponents of women's rights in the nineteenth century. Anthony is, perhaps best remembered for her arrest for the crime of voting.

This year's dinner will be on Sunday, February 13, 1977 at 7 pm in the Lawyers Club Dining Hall. The entire law school is invited. We hope that the turnout will be as large as it has been in the past.

Jane McAtee will give several selections from various suffragists' speeches—the sort of speeches given back in the days when rabblerousers really knew how to rouse the rabble. In addition, the recipient of the Susan B. Anthony Award will be named.

This award is given to the man or woman in the school who has done the most to improve the status of women in the law school.

The dinner is potluck; so if you plan to attend, you should call either Ellen Jean Dannin at 662-1818 or Gayle Horetski at 761-2061 to register what you plan to bring. Those who live in dorms can bring items which don't require cooking. You should bring your own tableware. Beverages will be provided by WLSA.

We hope to see you there.
SOCIAL BALONEY

Yessirree, Bub, the old Social Committee has been at it again, planning far out entertainment (and lots of it, too). For you nouveaux (that's pronounced new-v"uz) and those of you who are shy, there is a fabulous mix n' mingle sherry hour. Pleasant conversation with old friends, making new friends, it's all there. Good drinks, too! Gingerale, 7-Up, coke and tab. For you alkies, effervescent beer and tantalizing wine. For the stoner, munchies! Pretzels and chips n' dip. And that's on FRIDAY, FEB. 18, 3:30 P.M. L.C. LOUNGE.

and

Coming up, believe it or don't, a Law School Dance featuring SQUEEZE and assorted refreshments - and it's all free. So bring hubby or bring the wife and cut loose. For you swinging singles, boys from Disneyland and quacks from the medical school, to say nothing of the sweet sorority queens. "Help, they don't talk about the law school." Special conversation classes will be conducted before the beginning of the dance. "Say, swell weather we're having. Must have got up to 15 today" and other hit openers will be featured.

That's right - Friday, Feb. 18, 9 P.M. Lawyer's Club Lounge, and it's FREE!

For Inclusion Elsewhere.

The reason that there will finally be a dance is that it will be free. No license is required to give away dancing or beer. So as to discourage unnecessary freeloading by unpleasant persons, the Social Committee will invite only several sororities and business, med, and dental students. Spouses and friends are welcome, of course. The total cost of the dance will be approximately $800, which means that this will probably be the only one of the year, as there will be no offsetting revenues. Thus, you should all take advantage of this chance to drink and dance.

If you're confused by Michigan Liquor laws, so are we. If you're from Michigan, write your legislator so that we can have a fuller program of dances. The liquor laws currently prohibit selling alcohol without a license and also prohibit the issuing of licenses for functions on state property. Catch - 22 depriving you. The law school was just determined to be state property, even though it's not, really, for the purposes, which saves $10,000 year. The best way around the law was determined to be the free party so that's what will be.

RAW REVIEW

Anyone wishing to submit an article for publication in the Raw Review, an annual humor magazine published by the Barristers' Society, contact Stew Olson, 665-7613.
Dear Editor:
The curve I used in Criminal Procedure this fall was based on the results of all the exams submitted, without regard to the fact that some students were taking the course on a pass/fail basis. That is, in computing tentative grades, I treated every student as if he were taking the course for a grade, and drew up the curve accordingly. Thereafter, for those students taking the course on a pass/fail basis, I translated each grade into pass, D+, D, or fail.

Twenty-three (23) students took the course pass/fail. These are the grades they would have received if they had not elected pass/fail:

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<thead>
<tr>
<th>Grade</th>
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<tbody>
<tr>
<td>A</td>
<td>4</td>
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<tr>
<td>B+</td>
<td>4</td>
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<td>B</td>
<td>7</td>
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<td>C+</td>
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Peter Westen

TO THE LAW SCHOOL COMMUNITY

On September 24, 1976, a group of concerned students met with Dean St. Antoine to request a change in the date of Senior Day. The Jewish Sabbath, from sundown on Friday to sundown on Saturday, is traditionally a day of rest—a day of abstention from all things associated with the other days of the week. Traditionally observant Jews are unable to attend Senior Day, or any such function, on the Sabbath. It is the association of a graduation ceremony with everyday matters that makes it an inappropriate activity for the Sabbath.

It is an affront to all Jews whenever an official function is scheduled on a Friday night or a Saturday. We assumed, however, that the Law School scheduling of Senior Day was done casually, with no intention to offend or exclude anyone, by people who were unaware of the import of such an arrangement.

Dean St. Antoine said at the meeting on the 24th that the decision was up to the students, and that we should bring it up before the Law School Student Senate. He said that the only objection he could foresee was that at the end of the term people like to leave as quickly as possible, and Sunday is one day later than Saturday. However, according to the Dean, there was nothing he personally could do—it was up to the LSSS.

We immediately sent a memo to the LSSS president George Vinyard, requesting that he put on the agenda a motion to change Senior Day from Saturday to Sunday, explaining that we felt it was inappropriate to hold an event for the whole senior class on the Jewish Sabbath.

At the LSSS meeting of October 14, 1976 such a motion was passed by a vote of 8-2-3. In order to provide maximum flexibility within the time span practical for Senior Day, the motion did not designate a time or day for the ceremony, only a prohibited time.

There was a great deal of discussion about the Dean's fear that people would not wait until Sunday. The decision was that of a 26 hour delay was of less importance than the danger of precluding some students and some parents from attending because of their religion.

Friday afternoon, the thirteenth of May was chosen for the Senior Day ceremony by Dean Pierce, who is in charge of planning the Senior Day activities. When people learned of the Friday date, there was a predictable backlash. Friday inconvenienced all students—the Jewish students as much as anyone.

A second session of the LSSS, on December 2, 1976, affirmed the first motion on the same minority rights grounds on which it was passed, by a vote of 10-1. The Senate charged the Senior Day committee to find out which day, other than Friday night or Saturday, would most please its constituents.

On December 7, 1976, the committee told Dean Pierce of the preference of students: first, Sunday afternoon; second, Saturday night; and finally, Friday afternoon. At the same meeting, on December 7, 1976 some problems of location were discussed. Dean
Pierce suggested that it would be difficult to get $250 to rent Hill Auditorium. We were also told that after vacation we would learn how the scheduling was resolved and would make decisions about the speaker.

On Tuesday, January 18, 1977, the next meeting of the Senior Day committee, Dean Pierce told us that "the Dean" (St. Antoine) "has decided to move the Senior Day ceremonies to Saturday, May 14, at Rackham, for the following reasons: convenience; that a substantial number of students have come to him to ask him to change it; staff assistance; that the rabbi and a Judaic scholar told the Dean that Jewish students may attend; and that he fears there might be some validity to the establishment [of religion] argument." This is a quote from Dean Pierce. Dean Pierce was asked if Dean St. Antoine mentioned which rabbi he had talked to. He answered no. In truth, on January 20, Dean St. Antoine told us that he had not consulted anyone about the validity of our statements concerning the traditional observance of the Jewish Sabbath. Apparently Dean Pierce misunderstood Dean St. Antoine's explanation.

This incident raises a number of questions:

If Dean Pierce does believe that a rabbi said it was permissible for observant Jews to attend a graduation, what then does he think is our motive in requesting a change in the timing of Senior Day? The implication of his statement is that we are not expressing a legitimate concern. Dean Pierce has no reason in fact to so impugn our motives. All he knows about us is that we are students and Jews who are raising an uncomfortable point. Dean Pierce must not realize how he insulted us by this ugly incident. We think that, under the circumstances, an apology would be appropriate.

Dean St. Antoine, at the January 20 meeting told us that he called "a half a dozen Jewish friends" in order to ascertain the number of Jewish students who would be affected. He did not ask anyone familiar with the law school student body. He did not ask us. The number of students affected, however, is irrelevant to the issue. In America, at least in theory, the size of the harmed minority is not the standard used to protect their rights.

We don't know what went on behind the scenes between December 7 and January 18. Sometime in that time Dean St. Antoine decided that he in fact had the authority to change the date of Senior Day--authority he denied having September 24.

When did the "substantial numbers of students" approach the Dean? More important, why didn't they affirm the power of their Student Senate and try to effect change by attending, at least, the second LSSS meeting which was publicized in the R.G. and also by a big sign on the blackboard outside room 100? Both times that the subject of the date of Senior Day was on the agenda of the LSSS it was published in the RG. No more than three of those substantial number of students were at the second LSSS meeting about Senior Day.

Finally, why weren't they sent to the Student Senate by Dean St. Antoine, as we were? Why didn't they go through channels, as we did? And, why did Dean St. Antoine send us through those channels and then not honor the decisions that were made?

At the meeting with Dean St. Antoine on January 20, he discussed his other reasons for changing the date of Senior Day:

INCONVENIENCE TO STUDENTS AND PARENTS:
This issue was dealt with by the LSSS (see chronology above) which is in a better position to assess the affect on students and weigh it against the other considerations. Additionally, the Institute for Continuing Legal Education scheduled its Trial Advocacy Institute for the same weekend, all day Friday or Saturday morning. This makes Sunday an easier day to accommodate out-of-towners who need hotel reservations for Saturday and Sunday night. If Senior Day ends even as late as 5:00 p.m.--which is unlikely--there are still three or four hours of light in May. Anyone who has to drive far enough to drive in the dark on Sunday night, or else miss work on Monday, would, for a Saturday morning ceremony, have to leave home after five on Friday and drive in the dark, or else miss work on Friday. The possible inconveniences are not insuperable.
DIFFICULTIES OF SCHEDULING A FACILITY IN LIGHT OF LATENESS OF THE REQUEST: We submit that these difficulties are overstated. Rackham would not be available, however, Hill Auditorium is. We admit that Rackham is cozier, if an auditorium that accommodates a thousand people can be cozy, but Hill would do. Hill, however, costs money to rent. Can the Law School find the necessary $250 to rent Hill? We think that this, too, is not insuperable. "Lateness of the request" is thrown in as frosting on the cake. We made our request in September. Last Thursday, the 20th of January, when asked, "What about next year?" (when scheduling Rackham would still be possible, and when people can plan a whole year in advance, rather than a mere eight months) the Dean hemmed and hawed and finally doubted he'd change it. "It is up to the students," he said again. Who exactly is it up to, and what precisely are the problems? Finding a facility and lateness of the date are not real problems.

ESTABLISHMENT OF RELIGION: Had the Dean not assured us that he would include this argument as a factor in his decision, we would merely have dismissed it for the frivolous, makeweight argument it is. We will not give the argument weight by attempting to construct a legal argument against it. We could not compete against a legal scholar like the Dean. We are certain, however, that if pressed, we could find someone who can. We will appeal only to your logic and your sense of fairness.

We cannot believe that not scheduling the Senior Day ceremony on Saturday is anymore an establishment of religion than is scheduling the entire school year around Christmas, or than is not scheduling anything (classes, exams, Law Club dinners) on Sundays. Jimmy Carter was sworn in on a Bible on a Thursday; does that establish religion? Which one? What exactly does a Tuesday election day establish?

Dean St. Antoine noted that an act is more likely to be establishment if it is done knowing of the religious significance of the timing, than if it is done casually or for another, nonreligious, reason. This would put a premium on ignorance—hardly a logical or beneficial policy. An extension of that argument would hold that it can never be changed now that its religious significance has been pointed out.

This establishment argument is using the Constitution to defeat itself. The establishment of religion clause is to preserve religious freedom—to insure that one religious group does not force another to abandon its beliefs and practices. The First Amendment does not force a group to choose between participating in society and observing its religion. Moving Senior Day does not prohibit other religious groups from participating because of their religion.

All that is established by the scheduling of our Senior Day ceremonies is that observant Jews are excluded from an official activity simply because of their religion. This is the same kind of discrimination experienced by any group that deviates from the dominant majority.

This is not a call for a boycott of Senior Day. We only ask that all of you be aware that a decision has been made—by the Dean and a "substantial number" of your fellow students—to exclude a group (that cannot change what makes them different) simply because they are different. This should concern everyone who cares about minority rights. It is only a symbol, but it symbolizes the behavior in this law school of students, faculty and administrators, and that behavior eventually harms all of society.

Sally Zanger
Steve Tenenbaum
Daniel Nadis
Alan Gilbert
Deborah Friedman

POLICY ON LETTERS

All submissions are to be limited to one page unless prior approval from the Editor has been obtained. If submitted after noon on Tuesdays, all submissions should be typed in columns, single-spaced.
January 25, 1977

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
ANN ARBOR, MICHIGAN 48104

Editor, Res Gestae:

Sally Zanger, Steve Tenenbaum, and Daniel Nadis were good enough
to provide me with an advance copy of their statement concerning Senior
Day. I am not going to try to respond point by point, but I do wish to say that
there have obviously been a number of misunderstandings in the communications
between the writers and other members of the Law School community. I
never meant to suggest, for example, that there "was nothing [I] could
do" about the timing of Senior Day, or that it was all "up to the LSSS."
At my first meeting with the student group in September, I simply wasn't
thinking in terms of "authority." I had in mind the fact that Senior
Day had been initiated at the request of students, and that the Law School
had tried to hold it in accordance with their wishes. My feeling was that
the LSSS could take account of any inconvenience the rescheduling might
cause, and if the Senate had no objection, the Law School would be happy
to change the date.

I now concede I was wrong in referring the matter to the LSSS without
further thought. For any distress my mistake has caused, I owe an
apology to the Senate and all the students affected. While I did not
fully realize it at the time, I was in effect passing the buck on a
difficult choice between the convenience of many and the religious practices
of a few. I now see that it would be hard to find any kind of issue that
lends itself less well to public debate and vote, or that is more likely
to be divisive in a heterogeneous community like the Law School. The
natural inclination of anyone who must act in an official capacity -- dean
or Student Senate -- is to respond to the powerful appeal of religious
scruples. Yet the result may be to underestimate the weight of widespread
inconvenience.

In the period following my initial decision, I was approached by both
students and faculty members who objected to the proposed change of
schedule. Moreover, some contended that I had raised a possible "establishment
of religion" issue under the First Amendment by my readiness to accommodate
a particular set of religious beliefs. While I personally reject this
argument, I cannot dismiss it as frivolous when it is apparently accepted
by a scholar like Harry Edwards and by four Justices of the Supreme Court.
Cf. 69 Mich. L. Rev. 559 (1971); Parker Seal Co. v. Cummins, 46 U.S.L.W.
4009 (1976), aff'g by equally divided Court 516 F. 2d 544. Furthermore,
I thought I began to detect in the Senior Day debates an unpleasant
stirring of religious antagonisms of the very sort that the First
Amendment was designed to prevent.
In any event, my ultimate decision to return to the traditional Saturday morning schedule was based on highly pragmatic grounds. I became convinced, on the basis of some wide-ranging inquiries, that, whatever might be their religious heritage, only a very small number of our students would be precluded by their beliefs from attending a celebratory event which was no part of the Law School's required academic program. On the other hand, a great many persons would be inconvenienced by any rescheduling, either in travel plans, Ann Arbor accommodations, or both. The lateness of the change would exacerbate the situation (Rackham was not available for the preferred alternative time). I also took into account the fact that Senior Day has been held on Saturday mornings for over a decade, with no previous known complaint.

I am not happy with the result. If my own personal desires were the criterion, I would be pleased to accommodate religious preferences as much as possible. But there are times when I think a dean has the obligation to take sole responsibility for a decision that he determines, as best he can, is in the best interest of the whole Law School. I believe this was one of those occasions.

Sincerely,

Theodore J. St. Antoine
Dean
LEGAL LINES

By Clarissa

Vacation was exhilarating -- I tried to hoard enough pleasant memories to last me through a homework-ridden winter. The only part of my vacation which was arguably legally related was my three encounters with the police. Thus, allow me to relate my saga of The Men in Blue.

The first incident was classic. I was driving out in the wilds of suburban Detroit, in the middle of a snow storm. Traffic had slowed down to a snail's pace, and as I was inching along, I hit an ice slick and careened off of the road. The car spun totally out of control and landed in a ditch, stopping inches short of a telephone pole. Believe me... my life passed before my eyes. As soon I stopped shaking, I tried to move the car to no avail. Stuck. I got out, and waited for someone to stop and help me. The first gentleman who stopped was friendly, albeit bizarre. He tried to pull the car out of the ditch, but was unsuccessful. Numbers two, three, and four had the same problem. Someone promised to call a gas station, so I stood alone by the car, waiting in two feet of snow. By that point, however, I had begun to enjoy the adventure. I counted the people who stopped, in order to keep my mind off of the fact that I was slowly freezing to death... Eleven Good Samaritans, not including the bozos who honked and waved. Number twelve was a nice guy from East Lansing who had chains in his truck. He was able to pull my car out of the ditch. Meanwhile, a policeman had pulled up, and he sat by, watching us try to rescue the car. I was very relieved to see him, since I was pleased to know that if all else had failed, he would have been able to help me. Just as I was about to drive away, he walked up to the car, and I rolled down the window.

Him: You know that what you did was illegal.

Me: (Incredulous) Are you kidding? I hit an ice slick and slid off of the road.

Him: You have to be in control of your car at all times.

Me: There's a storm going on! I was going 10 miles an hour! (At this point, I got smart, and realized that I wasn't going to win points by arguing. Anyway, who am I to ruin his good time?)

Him: I'll let you off this time, but I'm giving you a warning. Don't let this happen again.

Me: (Gritting my teeth and craning my neck to see his badge number) Yes, officer. Thank you.

Even my Criminal Justice class didn't prepare me for my second encounter with a policeman, which occurred a week later. Imagine the scene: there I was, in Times Square on New Year's Eve. Then, on the stroke of midnight, in the drunken turmoil of the moment, I ended up kissing a New York cop standing next to me, who was, I swear on a stack of Gilberts, adorable! Yale, forgive me! It was temporary insanity!!

Barely having recovered from my rendezvous with Serpico, I was hardly prepared to have any further dealings with New York's finest. Thus, I behaved myself, and my last encounter with a policeman was at a distance. Several of us went to see the movie "Rocky" in a theater on Seventh Avenue. Yes... you guessed it. There was a policeman patrolling the audience during the entire movie. Slightly disconcerting--strains of that old melody "It's a nice place to visit, but..." started running through my mind. (Incidentally, I heartily recommend the movie--"Rocky" was the first event which ever made me see any nobility in the sport of boxing, which has always seemed like quintessential macho nonsense to me. Sylvester Stallone, who looks remarkably like Paul McCartney, both authored and starred in this movie, the story of a boxer making his way out of Philadelphia slums).

Naturally, after my brushes with the law, I'm relieved to be back in the safety of the library. By the way, MH11, you should count yourself among the fortunate that our local law enforcers are only giving you tickets. One of our own Law Review Notables got the scare of his life not too long ago

(cont. p. 18)
"I wish I may, I wish I might, Have the grade, I wish tonight."
by HAROLD L. CAMMER

The Nixon legacy that is likely to have the longest-lasting and most harmful effect on the working people of this country and their unions is the Burger Court.

With the recent appointment of Justice Stevens, the Nixon-Ford appointees now constitute a numerical majority of the Court. However, they had achieved an effective majority much earlier because their views are largely shared by Justice White and, to a lesser extent, by Justice Stewart, two holdovers from the Warren Court.

The Court has therefore been able, within a short time, to put into effect many proposals aimed at controlling and weakening unions which it had been impossible for employers to achieve through legislation, despite years of effort. The indications are that if the Court can continue to have its way, this is only the beginning.

This article undertakes to summarize the principal labor decisions of the Court since Burger became Chief Justice in June, 1969. These decisions override or disregard statutes, overrule or chip away at precedents long-established by the Court, and display an increasingly open hostility to the needs and aspirations of labor.

The Burger Court's ideological spokesman in the labor law area has been Justice Powell, who went directly to the Court from a law practice representing banks, insurance companies, pipelines, railroads, buses and airlines, textile, paper and other large manufacturers, retailers, and many other of the largest employers in the country. Where he has needed support, he has received it from Justice Rehnquist, whose supposed constitutional expertise has been used to provide a rationale for the desired anti-labor result.

Although the Nixon appointees were presented to the country as "strict constructionists," they have, in fact, been the very opposite. With few exceptions, their decisions have been based upon their biases, not on established law. They pick and choose from among precedents as it suits their purpose, and they are remarkably inconsistent.

Anti-Trust Offensive

One of the clearest indications of the Burger Court's hostility to labor has been its application of the anti-trust laws to unions and the extension of their common law liability.

The Sherman Anti-Trust Act was directed to business combinations, but the courts of that day lost no time in applying it to unions, as in the infamous Danbury Hatters' cases. In response, Congress, in 1914, enacted the Clayton Act, which provided that human labor is neither a commodity nor an article of commerce, and that labor unions are not combinations in restraint of trade.

It has since settled that unions are not subject to the anti-trust laws if they act in their own interest and do not use their immunity to provide a price-fixing or bid-rigging shelter for employers or non-labor groups. Even Congresses notably hostile to labor have consistently refused to subject unions to the anti-trust laws, despite intensive efforts to persuade them to do so. This effort reached a climax during the struggle over the Taft-Hartley Act in 1947. In it, Congress for the first time established severe sanctions against secondary activities in strikes, thereby to a large degree forbidding labor solidarity among workers. Congress also modified the Norris-LaGuardia Act to give the NLRB the right to apply to Federal district courts for temporary injunctions against certain secondary actions, and it also authorized 80-day injunctions in Presidentially-declared national emergency strikes. But in spite of the anti-labor provisions of the Act, Congress still refused to subject labor unions to anti-trust liability.

It is important to realize that without the anti-trust immunity, it would be all but impossible for unions to exist, since it is the very heart of their function to try to get all of the available work for their members and to fix the wages, hours, and working conditions under which the work will be done. Therefore, any extension of the anti-trust laws to these activities would result in outlawing them.

However, this history has not prevented the Burger Court from doing what Congress had refused to do on this issue. In the Connell case, a union, by picketing, had compelled a general contractor to agree to subcontract its plumbing work only to unionized firms. Justice Powell, in a 5-4 opinion for the Burger Court that reversed both the district court and the court of appeals, held that this action subjected the union to triple damage liability under the Federal anti-trust laws. This decision came in spite of a specific section of the Labor-Management Act that exempts construction unions from the provision forbidding unions to restrict the right of an employer to deal with whomever it wishes. The majority got around this by the astounding argument that the agreement involved was unlawful because it barred non-union contractors whose competitive advantage might be due to superior skill or efficiency, not to low wages or non-union conditions!

This tortured reasoning reflects a determination to subject unions to triple damage liability for putting pressures on non-union employers, despite the persistent refusal of Congress, since 1914, to change the Clayton Act.

In contrast to its broad approach to union anti-trust liability, the Burger Court takes a very narrow view of the anti-trust and similar laws when employers combine to resist their employees. For
example, it upheld the players’ reserve clause in organized baseball, even though it acknowledged that baseball’s exemption from the anti-trust laws was purely a creation of the courts. And in another case, it refused to review a decision finding that a mutual aid pact entered into by airline employers violated neither the Railway Labor Act nor national labor policy.

But when it comes to unions, the ground rules change. Thus, in the 

Eason

case, the Court has also refused to review the action of the court of appeals which doubled a district court damage award to over $1.2 million on a finding that the union had not taken sufficiently aggressive action to discipline workers who had engaged in a wildcat strike in defiance of their leaders.

The contract in that case specifically released the union from any liability for unauthorized strikes, and the appellate court had accepted the lower court’s finding that the union had not only not condoned or authorized the strike, but had denounced it and called upon the workers to go back to work. Nevertheless, the Burger Court held that there was an implied duty on the part of the union to get the striking members back to work by taking disciplinary or other action against them, and that it was liable for damages for its failure to do so.

The court’s action in this case reflects a remarkable indifference to the many critical legal and practical issues which its decision presents. It is common knowledge that wildcat strikes are as often directed against union officers as against management. It could therefore be counterproductive to require strenuous disciplinary action from the leadership.

Besides, Taft-Hartley effectively prohibits disciplining a worker except for non-payment of dues, and the Landrum-Griffin Act requires due process for union discipline prevents the quick response that the Court’s decision demands. On the other hand, the employer could invoke swift disciplinary action against wildcatters if he thinks it will succeed.

Equally menacing is the Court’s refusal to review a related case in which the lower court subjected the union to liability for damages caused by any incendiary device because members of the union had contributed to the legal defense of the officer charged with throwing it.

**Attack on Norris-LaGuardia**

Of almost equal importance to the Court’s actions in eroding the immunity of unions from anti-trust suits has been its efforts to rewrite the Norris-LaGuardia Anti-Injunction Act.

It is no exaggeration to say that in the history of this country, and until the Norris-LaGuardia Act was passed, no judicial action had generated more resentment, antagonism, disruption, and strife, or triggered more violence in labor struggles, than the labor injunction.

After years of conflict caused by these injunctions, Congress, in the Norris-LaGuardia Act passed in 1932, enacted a flat ban against the issuance of any injunctions against any union activities in a labor dispute that did not involve fraud or violence.

It is hard to conceive of a more unequivocal ban than that provided by the Act: “No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of a labor dispute to prohibit any person or persons participating or interested in such dispute...from doing, whether singly or in concert, any of the following acts:...” The Act also provided for the right to trial by jury in all labor contempt cases in equally categorical terms.

The Burger Court has eroded both of these provisions by creating exceptions which Congress never authorized. It has not even bothered to claim that these exceptions are constitutionally necessary; it has simply twisted the law in order to create them.

As mentioned earlier, the Taft-Hartley Congress created two narrow exceptions to Norris-LaGuardia: one permitting an injunction in case of a national emergency, but only upon the initiative of the President; and the other permitting a temporary injunction in certain secondary or emergency situations, but only upon the initiative of the NLRB.

The Burger Court’s first step in weakening the Norris-LaGuardia Act was a decision that the district courts had jurisdiction to issue an injunction in a strike called in violation of a contract if the issue in dispute was covered by an arbitration provision.

Next, in the Gateway case, the Court further amended Norris-LaGuardia to permit an injunction even though there was no no-strike clause. With his characteristic resourcefulness in this area, Powell invented an “implied” promise not to strike from the presence of an arbitration clause in the contract, despite the fact that the arbitrability of the issue over which the strike arose was itself in dispute.

The case arose out of a strike over safety conditions in a mine classified as “especially hazardous” by the Bureau of Mines. (The history of that Bureau’s callous neglect of miners’ lives provides some indication of what such a classification would require.) The court of appeals had held that the arbitration clause did not cover safety issues, because miners were not obliged to submit “life and death” matters to arbitration.

But Powell held that the national policy favoring arbitration was so strong that it required the miners to arbitrate the issue, and that the duty to arbitrate implied an obligation not to strike. Once he had created a no-strike provision, he had no trouble applying the earlier decision.

The recent wildcat miners’ strikes against being “injunctioned to death,” which closed half the mines in the country, are an example of the type of chaos that such offhand determinations produce.

The Burger Court has also held that Norris-LaGuardia permits an injunction against a railway strike even if no contract exists, if a court finds that the impasse is due to the union’s failure “to exert every reasonable effort to reach an agreement.”

The Burger Court has further held that, despite Norris-LaGuardia, there is no right to a trial by jury for contempt of a labor injunction obtained by the NLRB. Since, except for cases of fraud or violence,
Norris-LaGuardia permits no other injunctions in labor disputes, this ruling effectively nullifies the jury trial provisions of the law.

In addition, the Court has held that the constitutional requirement of a jury trial in other than petty cases does not apply to a $10,000 fine imposed on a union, because this is a "small amount" for a "big union" to pay!

Undermining Free Speech

A third area in which the Burger Court has demonstrated its anti-labor bias has been in restricting free speech. During the past term, the Court effectively buried earlier court decisions which had held that the First Amendment protects the peaceful distribution of literature in areas that are essentially public, even though they may be privately owned: Jehovah's Witnesses literature in a company town in the Marsh case, and union leafletting in a large shopping center, in the Logan Valley case.

The Court had given us a foretaste of what was to come when it ruled a few years ago that the First Amendment protection did not apply to anti-Vietnam handbills distributed in a shopping center, because the war had nothing to do with the purposes of the center, and because there were other ways of getting the anti-war message across.

In Hudgens, the latest case, both the NLRB and a lower court had held that peaceful picketing by striking warehouse workers of their employer's shoe store at a shopping center was related to the business of the center, and that the alternatives of picketing at the parking lot or at the entrance to the mall were either unavailable or inadequate to reach the intended audience: the store employees and its potential customers.

But the Burger Court has now declared that Logan Valley is no longer law because the property rights of the owner of the shopping center are superior to any First Amendment right of the pickets.

In an era of more and larger shopping centers and malls, this decision effectively prevents striking workers from appealing for consumer support at the very place where that appeal is most likely to be effective. Equally important, it denies consumers the right to know, at the time when this information is meaningful, that the product being offered to them for sale is the subject of a strike. The fact that consumers want this information is shown by the lengths to which the employer goes to prevent the picketing. Thus, this decision violates the rights of both the striking workers and of the consumers.

But an even more dangerous invasion upon this freedom to communicate in labor disputes is in store if the Court should decide to review, and possibly overrule, an earlier landmark decision (the Tree Fruits case), which upheld the right to picket for the information of consumers.

In Tree Fruits, the Warren Court, overruling the NLRB, had upheld the right of a union, in spite of the law's ban on secondary picketing, to picket a supermarket in order to urge the public not to buy a struck product (in that case, apples.) The Court held that such picketing did not violate the Taft-Hartley Act if the pickets asked consumers to boycott the struck product only, and not the store, and if the picketing did not result in a work stoppage by store or other employees.

Despite this decision, the Labor Board later held that picketing of a retail outlet for struck gasoline was unlawful if the gasoline was a major source of the station's revenue. If the Burger Court agrees to review the Court of Appeals decision disagreeing with the NLRB, it will probably mean that it intends to overrule Tree Fruits and further diminish the First Amendment rights of workers to inform, and of consumers to be informed, that a product offered to them for sale is the subject of a labor dispute.

The Burger Court has also acted to narrow the coverage of labor laws by excluding retirees and managerial employees from any form of union protection. In the Pittsburgh Plate Glass case, declared that retirees are not employees and, therefore, that an employer is not required to bargain about their benefits and may, on its own, change them, and further, that it is unlawful for a union to strike to protect or improve these benefits. Since every union member is either a present or potential retiree, the scope of this decision is as broad as the unions themselves.

Government Workers Also Under Fire

Finally, the Burger Court has demonstrated a special hostility to the interests of government workers, and has shown a particular desire to hold such employees down. This job has been the special assignment of Justice Rehnquist.

In one of its last decisions of the past term, the Court effectively wiped out decisions going back over 150 years when it declared that the commerce clause did not empower Congress to extend the Federal wage-hour law to state and municipal employees, resting its position, in large part, on how much it would cost. Only a year earlier, the Court had held that the same commerce clause did empower Congress to subject state and municipal workers to the Nixon wage freeze. Rehnquist explained that this was different because the freeze "operated to reduce the pressures upon the state budgets rather than increase them." Rehnquist's opinion was too much even for Ford's appointee, Justice Stevens, to swallow.

In other government personnel decisions during the past Term alone, the Court has held that permanent state employees have no constitutional or "implied" right to their jobs so as to entitle them to a hearing before they are fired; that uniformed personnel may not wear their hair or beards as they please; that they may be compulsorily retired at age 50; that the equal protection clause is not violated by a city's refusal to checkoff union dues, although it makes payroll deductions for other organizations; and that federal government employees who were found to have been wrongfully underclassified have no right to back pay. In the one case favorable to government workers, the Court held the "spoils system" unconstitutional to the extent that it resulted in the dismissal of non-policymaking
employees who did not belong to the political party in power. As might be expected, Powell and Rehnquist dissented on the ground that the spoils system has "contributed significantly to the democratization of American politics!"

The Political Perspective

It would require much more space than is available here to detail the other areas of labor law which have received the Burger Court treatment. Overall, they reflect an insidious approach to established principles intended to recast the Constitution and laws in the Nixon image. Its rulings have an even more harmful effect because they inevitably affect the attitudes of state and Federal judges below: reactionary judges are encouraged, and those who have a tendency to defend freedom will be restrained or reversed if their decisions affect areas of concern to the Burger Court Justices. The Court's absolute power to grant or deny review makes it easy for the Justices to let lower courts accomplish the results they like, and to reverse those they do not.

The repressive decisions of the Burger Court, like those of the "Nine Old Men" in Franklin D. Roosevelt's day, favor the rich and powerful, and are incompatible with the needs of the people. They subvert law and increase disorder.

An independent judiciary is probably the most unique and indispensable part of our system of checks and balances, but Congress is supposed to write and make laws, not the judiciary. The system becomes completely distorted if judges appointed by a disgraced President continue to apply his version of the Constitution and laws after he, himself, has been forced to abdicate.

Harold Cammer is a member of the NYC chapter and has represented many unions since the formative days of the CIO since 1936.

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<thead>
<tr>
<th>BASKETBALL POLL</th>
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<td>Michigan at Northwestern (16 1/2)</td>
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<td>Michigan State at Wisconsin (4 1/2)</td>
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<td>Minnesota at Ohio State (12 1/2)</td>
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<td>Iowa (8 1/2) at Indiana</td>
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<td>Illinois (14 1/2) at Purdue</td>
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<td>North Carolina at Clemson (6 1/2)</td>
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<td>Virginia (8 1/2) at NC State</td>
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<td>Kentucky at Alabama</td>
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<td>Appalachian State (17 1/2) at Wake Forest</td>
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<td>George Washington (14 1/2) at Maryland</td>
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<td>Florida at Mississippi</td>
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<td>Mississippi State at Vanderbilt</td>
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<td>Arkansas at Baylor (10 1/2)</td>
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<td>Duquesne (15 1/2) at Cincinnati</td>
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<td>Dayton (8 1/2) at Memphis State</td>
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<td>Marquette at De Paul (3 1/2)</td>
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<td>Fordham (18 1/2) at Notre Dame</td>
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<td>Providence (5 1/2) at Louisville</td>
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<td>Oregon at St. John's</td>
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<td>Iowa State (15 1/2) at Missouri</td>
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<td>Bowling Green (7 1/2) at Western Michigan</td>
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<td>UCLA vs. Tennessee at Atlanta</td>
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TIEBREAKER: How many points will Phil Hubbard score against Northwestern?

<table>
<thead>
<tr>
<th>THE GAMES PEOPLE PLAY</th>
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<tbody>
<tr>
<td>Erector Set............Ned Othman</td>
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<tr>
<td>Spin the Bottle........Carol Sulkes</td>
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<tr>
<td>Chess....................Bob Brandenburg</td>
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<tr>
<td>Scrabble.................Don Parman</td>
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<td>Shoots 'n Ladders.......Stewart Olson</td>
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<tr>
<td>Monopoly................Ken Frantz</td>
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<td>Backgammon............John Mezzanotte</td>
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<td>Dominoes..............Dot Blair</td>
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<td>Uncle Wiggley..........Earl Cantwell</td>
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<td>Red Rover...............Sandy Gross</td>
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<td>Hopscotch...............Dennis Fliehman</td>
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<td>Old Maid................Kevin McCabe</td>
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<td>Life....................Murray the K</td>
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<td>Concentration..........Andrea Sachs</td>
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<td>Checkers................Richard Nixon</td>
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<tr>
<td>Cops 'n Robbers.......Yale Kamisar</td>
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</tbody>
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MORE LINES

when the police raced towards him in a parking structure with guns drawn, and accused him of trying to steal his own car! Personally, I'm just hoping that only police I see in the next few months are in my textbooks...
CRIME

by Res Jester

LOL: DID YOU KNOW THAT ORGANIZED CRIME HAS AN ANNUAL INCOME EXCEEDING 50 BILLION? REALLY?

WELL, I STILL MAINTAIN THAT "CRIME DOES NOT PAY," DODO!

ARE YOU REFERRING TO TAXES?

OPPORTUNITY KNOCKED ONCE, BUT BY THE TIME I SWITCHED OFF THE ALARM SYSTEM, REMOVED THE SAFETY BAR, LOOSENED THE GUARD CHAIN AND UNLOCKED THE DEADBOLT, IT HAD GONE.

HOW DO YOU SPELL CANNIBALISM?
BASKETBALL POLL

The winner of the season's first basketball poll was Ethan Falls. He correctly picked the winners in 20 of the 28 games. The big loser was Jamie Hogg, who went 9-19 and nosed out Stu Jones on the tiebreaker. The individual median score was a dead even 14-14.

Now for this weekend's games. These are the top match-ups involving major conference leaders and independents. Notice that a few of the ACC teams (Maryland and Wake Forest) are getting into the tough part of their non-league schedules. Biscayne and South Florida must not have had open dates this weekend. The rules for the poll are the same as always - Circle winners, Cross out losers, and deliver the entry to the box outside Room 100 before 5 P.M. Friday, or to K-43 Lawyers' Club before noon on Saturday.

Michigan at Northwestern (16 1/2)
Michigan State at Wisconsin (4 1/2)
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TIEBREAKER: How many points will Phil Hubbard score against Northwestern?

NAME: __________________________

John Mezzanotte