1975

December 5, 1975

University of Michigan Law School

Follow this and additional works at: http://repository.law.umich.edu/res_gestae

Part of the Legal Education Commons

Recommended Citation
http://repository.law.umich.edu/res_gestae/655

This Article is brought to you for free and open access by the Law School History and Publications at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Res Gestae by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
NOTICES

BASH!

The Law School Student Senate is pleased to announce its bi-annual end of classes celebration, featuring beer and wine. Friday, 3:30 p.m., Lawyer's Club Lounge.

Professor Conard has suggested that the readers of RG might like to identify each of the twelve characters on our cover entitled "St. Anthony Presiding Over the Faculty," rendered by Jessica Seigel (j.a.s.). "Winners" will be identified in a later issue of RG.

BLUEBOOKS

Blue books will not be furnished by the Law School this semester. In exchange for students buying their own bluebooks, the Administration has promised that students will not be required to exchange blue books in the exam, i.e. if you bring a $0.25 bluebook you will not have to turn yours in for an $0.80 one somebody else brought.

So bring your own Bluebooks to Exams!!

THE NINE SCRIBES OF CHRISTMAS

Partridge in a Pear Tree............ Harry Zeliff
Drummer Drumming......Ken Frantz
Piper Piping........Howie Bernstein
Maid-a-Milking......Jessie Siegel
Lord-a-Leaping.....Tony Kolenic
Turtle Dove.........Carol Sulkes
Calling Bird........G. Burgess Allison
Goose-a-Laying......R. Richard Livorne
French Hen.........Dot Blair

CAMPBELL COMPETITION

PEN SETS

Pens and pen sets for participants in last year's Campbell Competition should be available within a week. Information will be posted on the Campbell bulletin board when they are available.

$3.00

The editorial staff of the R.G. is pleased as punch to award the prize for the worst legal related joke to Professor Richard Lempert whose contribution appears in this issue. We would like to thank all those students who participated, but you ought to know that you can't beat professors at their own game! Professor Lempert may pick up his prize at the R.G. office at our convenience.

CONTRACTS
William Butler Yeats at age sixty two had occasion to write "Among School Children". It begins with a "sixty year old public man" being toured thru a school room - a juxtaposition of age and youth. He remembers the love of his youth, a moment of sympathy, of union "into the yolk and white of the one shell". Thinking of her, he catches the side of a head, a resemblance, his heart is driven wild. But he thinks of her aged and himself "hollow of cheek". What youthful mother, he asks, would think the pangs of childbirth worth a wizzened sixty year old head? He searches the philosophy of Plato, Aristotle, Pythagoras and finds only himself still only "old clothes upon old sticks to scare a bird". He concludes:

Labor is blossoming or dancing where
The body is not bruised to pleasure soul,
Nor beauty borne out of its own despair,
Nor blear-eyed wisdom out of midnight oil.
O chestnut tree, great rooted blossomer,
Are you the leaf, the blossom, or the bole?
O body swayed to music, O brightening glance,
How can we know the dancer from the dance?

We are what we do. Those of us who struggle thru sixty or eighty hours of work, who live for the dollar or the pleasures it buys, strangle beauty and love into the remaining weary hours until we can perceive them but no longer live them. We are our work: a student, a lawyer, a professor but no more: acquaintances, like us, a few hours for the family, a fond sentimentality but nothing to quicken the breath or heighten the spirit. Nothing to encompass us in love or beauty.

You have excellence. You will have esteem. You have this school. You set its standards and judge me by them. This is your place and the place of your favorites. To give you your due, you have taught me much about law, little about life, and nothing about love. You have kept your bargain.

Harry Zeliff
Dean St. Antoine Meets with Students
(Otherwise known as a press conference)

On Tuesday, November 18, 1975, Dean St. Antoine met with about 30 students in an informal gathering at which he made a statement and then answered questions for approximately one hour. During the course of that hour, the Dean made the following comments and observations:

General Comments

Aside from the "administrative mess-ups" which are inevitable and about which the administration can do little except try to set things right and try to avoid the same mess-up in the future, the Dean observed that there are perennial questions about the running of the law school that he wished to comment upon. The Dean said that the faculty's concept of the function of the school as a great law school involved a recognition of three purposes: (1) Teaching, (2) Research, and (3) Public Service. The Dean said that a school does not need great minds to have effective teaching in the sense of conveying information. In offering a faculty appointment, the school looks for a generator of new ideas who is not content with what the law is, but who seeks to anticipate future directions of the law and who seeks creative solutions to legal problems by writing, by government work (through leaves of absence), and in the classroom (by conveying to students the need to challenge present law).

Pass/Fail Grading

The Dean does not foresee total pass/fail grading in the near future. Usually it takes student body initiative to change the grading system. The Law School had a pass/fail grading system for the first several years of its existence, and apparently it was a student initiative that led to the change to the present graded system. The reasons set out by the Dean for present faculty "stubbornness" in the area are: (1) the conviction of some of the faculty that students perform better and learn more under a graded system, (2) the suspicion of employers of a pass/fail system, (at this point, the Dean said that he feels that grades measure mental agility and quickness of mind in certain ways and at certain levels, although they probably do not measure conscientiousness, personality, ambition, etc.), and (3) the obligation to society to produce best quality lawyers and grades, it is felt, enhances production of qualified professionals. The Dean noted the correlation (slight, but positive) between grades in law school and the amount of money made in life (the Dean here admitted that success measured in terms of money was crisis and that the actual correlation is almost statistically insignificant).

Role of major law schools in legal issues of the day

The Dean felt that faculty members, deans, student bodies and groups should play a role but not necessarily the school as an institution. The school, he said, should prepare students to face issues and help provide impetus for change. (The Dean stated that he could foresee a time when his name would be added to an advertisement in opposition to the S-1 bill, but he cautioned that he could not be knowledgeable in every field and that in making such a statement he was relying on "people I trust" which means "the majority of our criminal law people.")

Academic Counselor

The Dean said that Rhonda fullfills the role of academic counselor quite effectively and that hiring a fulltime counselor is not what the students need (although admitting that Rhonda cannot do it all). The students should feel free to approach any faculty member even though the faculty member may not appear to think the matter of what courses to take is very important. The reason for this impression is probably that the faculty generally thinks how you learn rather than what you learn is the important thing. Therefore, students should take what seems interesting or take a course because they like the professor, because what you learn here has little correlation to what you need to know to be a lawyer.

Dean's Discretionary Fund

Most of the Dean's so-called discretionary fund comes from alumni contributions. Most of these funds go for Student Financial Aid. According to the Dean, only about $100,000 is truly discretionary in the sense of not being earmarked. The fund is used to make up the difference between Student Senate budget and expenditures. About $11,000 per year goes to LSSS from the Law School Student fee according to the Dean. The
discretionary fund is also used for recruiting (especially women and minorities), some social activities for visitors, seniors, etc., and refurnishing of the Lawyer's Club.

Courses to be Taught by New Faculty

In the fall of 1976, Chris Whitman and Sally Payton will be joining the faculty. Ms. Whitman's interest is in teaching first year courses, particularly in the field of procedure. Since the faculty presently has plenty of procedure teachers, Ms. Whitman will probably teach some other first-year course and upper class courses in the procedure field such as Federal Courts. Ms. Payton has expressed an interest in Administrative Law and Regulated Industries both of which is needed, therefore, she will probably teach in those areas. Neither of these new faculty members has expressed an interest in teaching sex-based discrimination. At present there is no provision for teaching that course in the winter semester (1976). The Dean did talk to Wendy Williams, a public interest lawyer concerned with women's issues about a position here and teaching the sex-based discrimination course but Ms. Williams decided to stay in San Fransisco.

Clinic

The Dean noted two big problems with regard to the present clinical program. First is the devastating financial situation and the extremely high cost of clinical education. As examples the Dean stated that there is a freeze on faculty hiring - except for special needs (for example, women and minorities), and that clinic cost three or four times as much per credit hour as does conventional classroom teaching. The Dean also discussed the faculty division over the appropriate place of clinic in law teaching. One position is that clinic does not give anything to the students that they won't get outside on their first job anyway. Therefore, the clinic, it is felt, must do something more, better or different that what students will learn outside of law school in order to be of value. The Dean feels that clinic does not play this role by dealing with ethical problems in practice and dealing with the psychological transactions in lawyer/client and lawyer/court relations. The Dean also thought that students could get adequate clinical experience by other methods such as simulation, observing tapes, etc. This method, he felt, is just as effective and much cheaper, therefore more easily justified. The Dean stated that if all the clinic does is satisfy a student's need to feel as though he or she is doing something, or if the big gain is the student's sense of doing something practical, then the clinic is not worth the money it costs. The Dean did, however, admit that the clinic is often used to show the school's service to the community when revenue requests are made to the Legislature.

Faculty Minutes

The Dean said that the faculty turned down a Student Senate request that the students be furnished with a copy of the minutes of faculty meetings (of course with the right of the faculty to abbreviate the minutes any way they saw fit). The argument apparently is symbolic in that the faculty is afraid that the students will next ask to be allowed into faculty meetings. In the alternative, the faculty has requested the Dean to publish monthly (approximately) reports in R.G. concerning things of interest to the students. The Dean feels that substantively, the students will be better informed this way because often "nothing happens at faculty meetings anyway."

Pam Hyde, for LSSS
Law School Student Senate Minutes  
November 20, 1975

The meeting was called to order at 6:30 p.m. in the Lawyer's Club by President Pam Hyde. Present were: Jeanette Ramseur, Otilia Sanz, Jon Forman, George Vinyard, Bertie Butts, Barbara Harris, Gwen Mosley, Maryel Norris, Pam Hyde, and Phyllis Rozof. The minutes of the last meeting were approved.

Speakers Committee

Ross Eisenbrey of the Speakers Committee reported that there have been difficulties coordinating the various activities taking place around the Law School. He suggested that the LSSS attempt to set up a method whereby various committees and groups would be informed of upcoming events planned by other groups. It was suggested that a calendar be kept where clubs and other groups could schedule their planned activities.

The Speakers Committee has been asked to plan an event for Values Week (February 1 - 7, 1976) in coordination with the University Values Program. The Speakers Committee would like to hear suggestions from the students, and they would especially like someone to take charge of organizing the Values Week program. Any student with ideas or who is interested in working on this should put a note in the Speakers Committee mailbox in the Lawyer's Club or contact Ross Eisenbrey at 668-8743.

Student Personnel Committee

The Senate voted unanimously to appoint Jeanette Ramseur to the Student Personnel Committee.

Treasurer's Report

Bertie Butts reported that BLSA had exhausted its allocation for administrative expenses. He said that if there was no objection he would simply apply the BLSA allocation for telephone expenses to future expenditures for Copy Center services.

President's Report

Pam Hyde relayed to the Senate a report from Dean St. Antoine that the faculty does not want minutes of the faculty meetings available for students to read. The faculty has asked the dean, in lieu of publishing faculty minutes, to publish a periodic report in RES GESTAE regarding issues being considered by the faculty. He will also republish an explanation of what is done with the $20 Law School fee.

A representative of Minnesota Mutual Life Insurance Company had contacted Pam to ask for LSSS endorsement. This company underwrites the American Bar Association - Law Student Division - Life Program and has been endorsed by past Senates for several years. The company's solicitation is limited to sending a letter to each law student. After lengthy discussion it was moved by Barbara Harris that the LSSS give its endorsement to the Minnesota Mutual Life Company. This motion passed 6 to 2 with 1 abstention. Jon Forman asked that his vehement opposition be noted.

Pam next reported that according to Buck Schott a four-by eight-foot bulletin board could be purchased for $29.59. The Senate passed a motion that two bulletin boards be purchased. A motion then was passed stipulating that disbursement of the funds for the bulletin boards be contingent on Buck Schott finding out how much it would cost to have the bulletin boards installed in the basement of Legal Research.

LSSS Constitution

The remainder of the meeting was spent discussing a proposed new constitution for the Senate.

The next meeting will be held on Monday, December 1, 1975.

Respectfully submitted,

Phyllis Rozof
LAW SCHOOL STUDENT SENATE MINUTES
December 1, 1975

The meeting was called to order shortly after 6:00 p.m. in the Faculty Dining Room of the Lawyers' Club. Members present were: Jon Forman, George Vinyard, Otila Saenz, Paul Ruschmann, Carol Sulkes, Sharon Williams, Valerie Anderson, Bruce Hiler, Phyllis Rozof, Pam Hyde and Dave Dawson. The minutes of the last meeting were approved.

Game Room

Discussion was held concerning a sign which has been posted on the door of the game room in the Lawyers' Club announcing that the game room will be closed after 1:00 a.m. every night. It was decided that Pam Hyde would ask Art Mack to come to the next Senate meeting to discuss this new policy.

Class Scribe

Carol Sulkes said that she had received a suggestion that class lectures be taped on cassettes and put on reserve in the library so that, if a student missed a class, the tape could simply be checked out and referred to. An alternative suggestion would be to appoint a student in each class "class scribe." This student would then be responsible for taking thorough notes, which would be xeroxed and sold to other students at the end of the semester. No conclusion was reached by the LSSS as it was decided to ask for the response of other students to these ideas before taking any action either for or against them.

TV Antenna

Pam Hyde reported on facts that had been ascertained by Bertie Butts in regard to the workings of the Lawyers' Club TV antenna (a definite hearsay problem). The purpose of this discourse was to assess the extent of the responsibility for a $180 repair bill of a student who attached a wire from his private television to the Lawyers' Club antenna. It was moved by George Vinyard that the Senate delegate authority to the President and Treasurer to settle the Senate's claim for $20. The motion passed with two members opposed.

Deanship

Jon Forman reported that U-M Vice President for Academic Affairs Frank Rhodes would come to the Law School Student Senate meeting of January 29, 1976. However, according to Mr. Rhodes' secretary, this will be after he has solved the "Deanship question." The Senate discussed sending a delegation to Mr. Rhodes' office before then in order to provide more student input on this issue but decided against this because of gross confusion over what the "deanship question" is. (See letter from Frank Rhodes appended to LSSS minutes of October 16, 1975.) If any student would like to discuss this with Frank Rhodes, he or she should make an appointment to see him.

Gala Honoring Dean St. Antoine

Because the party honoring Dean St. Antoine was such a success, the LSSS passed the following resolution:

The Student Senate congratulates and thanks the Social Committee for the tremendously enjoyable party held last Tuesday in honor of Dean St. Antoine. The festivities were well planned; the faculty turnout was gratifying; and a good time was had by all who attended.

Exam Schedules

Discussion was held concerning current Law School policy which permits a student to have an exam time changed only if he or she has three exams scheduled in a row. The following resolution was offered by Dave Dawson and passed by the Senate:

Resolved, that the current exam policy should be amended so that a student with three exams in two successive days can have one exam time changed.

The meeting was adjourned at approximately 6:40 p.m. The next meeting will be held Thursday, January 15, 1976 at 6:00 p.m.

Respectfully submitted,

Phyllis Rozof
ONE NIGHT in the LIBRARY...

Thermos freak

KEKE
As this semester draws to a close, the Weekly Personal Foul (everyone's favorite column this fall according to a recent informal Res Gestae poll) will be graduating into the real world. Leaving the protective custody of the gothic walls which have been my sounding board, my refuge, my jail, my Mordor, my Elvidner of Niffleheim, I am going to take this opportunity to make a few carelessly chosen remarks.

In past months, this column has been a forum for countless attacks (even mindful diatribes) upon this law school, the administration, and the faculty; but I have strived throughout to take notice of and specifically mention, whatever credits to the school I have happened to run across. My reputation, admittedly, is nevertheless a one of constant abuse and criticism. I want now to make particular note of some of the things I have found within these halls which are exceptional exemplars of excellence.

Some of the faculty at this school is truly great. Most of the students, faculty and administration may know who they are, but the absence of express recognition in a column which is otherwise quite critical and unfair is improper. Naming names (well, some of them anyway).

The following professors are the best. Just about everyone knows who they are. (One of them however, teaches a subject which is not his own and has come into some criticism for shortcomings in his teaching of that subject which is not his. But that makes no difference when he is in his area.) All of them display the utmost in scholastic excellence, the ability to communicate and teach effectively, and the ability to translate the academic scholastics into real live honest-to-God, jump-into-the-outside-world practicalities!

Professor Doug Kahn
Professor John Reed
Professor L. Waggoner

There are other professors who excel in certain areas of the scholastic processes (quite conspicuously so), but are somewhat hampered by their shortcomings in other areas. These especially include Professors Allen, Jerry Israel, Fast-Eddie Stein, Yale Who, and J.J. White.

There are many new or younger persons teaching who are very good and have the potential to be some of the best teachers in the business. These people have a remarkable similarity in being deeply concerned with law students as being human and in caring that these students are going to one day be faced with out-in-the-'real'-world problems.

There are a few professors who should not be granted tenure and a few others who should have it stripped. The students know who they are. The faculty and administration may have gotten some hints if they don't already know (but certainly could easily find out if they were at all concerned).

(Now that I've gotten that off my chest) Please do not misinterpret this week's Personal Foul as an apologista, wimp farewell. This law school, despite a few conspicuous attributes is still an abortion of society. It certainly does more harm than good and there is no doubt that it is a pompous, elitist womb of injustice and all the ideals and ethics which made Richard Nixon et al a reality.

My extreme disappointment in coming to law school has been only fully substantiated throughout my law school "career". Its purpose is identical with that of a hell-week in fraternity pledging! Its value for becoming a lawyer is zero, but the harassment factor, I'll admit, is quite effective. I truly believe that
ABA-SPONSORED CONFERENCE URGES NATIONAL CLE STANDARDS, REJECTS MANDATORY PROGRAMS

CHICAGO, Nov. 21 -- Establishment of a national standards for continuing legal education is urged by a national conference sponsored by the American Bar Association.

But the conference opposes institution of mandatory CLE programs by every state and urges state bar associations to study closely results of mandatory programs in effect, such as in Iowa and Minnesota, as well as other ways to improve the delivery of legal services.

"There are unanswered questions concerning the specific relationship between required programs of continuing legal education and the quality of legal service," said a report issued by the National Conference on Continuing Legal Education.

The ABA-sponsored conference, held in Chicago Nov. 10-12, attracted 153 registrants from 36 states. Participants included professional CLE administrators, private practitioners, deans and law professors, judges and government officials.

Suggested alternatives to mandatory CLE programs, the conference said, include specialization arrangements for providing more information about lawyers and legal services, increased inducements for voluntary participation in CLE programs, peer review, self-assessment programs and prescribed remedial educational programs, expanded use of disciplinary procedures, and intensified efforts to improve the quality and coverage of CLE courses and materials relating to legal problems faced by middle and low income persons.

Addressing itself to the recognition of legal specialties, the conference said that mandatory CLE may be an appropriate response to specialist recognition, but the participants "believe that qualifying standards in such plans should place more emphasis on experience and periodic testing of specialists' proficiency than on mandatory CLE."

National standard for CLE programs "would offer guidance to those responsible for CLE and assist in the administration of programs involving mandatory attendance," the conference said.

It is said the standards should be promulgated by an independent national commission and should provide for an approval on both an institutional or a course-by-course basis.

However, the conference said it does not "attach a high priority to a formal system of accreditation absent widespread adoption of mandatory programs."

The conference said new technology, such as videotaping and computerized instructional programs, present both challenges and opportunities to CLE.

The bar should help finance and give other assistance to CLE the conference said.

Continued from p. 9

the last two and a half years of my life have been completely wasted. It was neither a good nor rewarding experience which I will remember, as life goes on, as a void ... a nothing. I leave these impressive halls in January, but as I recall my hopes and ideals as I left my undergraduate college, I am left only with a deep feeling of severe disappointment.

Law school is not life and deserves no place in one. It has but a minimal entertainment value which must be nurtured and encouraged to be noticed. It has no meaningful purpose unless made fun of and laughed at. And the key to its entertainment is irreverence. If you let this place make demands of you, or if you respect it, you are a turkey-nose and in serious trouble. Life is awaiting and your priorities are screwed.

Penalties: the law school: five yards for delay of game and ten yards for offensive holding.

Remember that law school is only just so much down-field interference.

G. Burgess Allison said that this is the final straw and if I ever use his name again he'll punch me out. Nancy Lipper said I couldn't use her name either, but that was after the Ohio State football game so maybe she didn't really mean it.
Epilogue

You'll never know how grateful Ms. Warning was that I solved her little problem, because I'm not going to tell you. Of course, you must have heard of her brilliant sweep of the Spirituality contest. I will tell you this, in case you would like to prepare for the competition the same way that she did. Spirituality has nothing to do with it.

Joke

R. G. Worst Joke Contest

Sam Stein was a brilliant man. He could have been a Nobel Prize winner if he had continued his promising career in physics. Why he turned to crime no one ever knew. But he was a master criminal. One day he walked into the City Bank, released a gas bomb which knocked everyone unconscious, gathered $20,000,000 from the vaults, put it into a suitcase and stepped into a box looking something like a phone booth which he had set up in the bank lobby. Seven years and one day later he suddenly materialized in the bank lobby suitcase in hand. He had not aged a minute, for he had invented the first time machine. Of course Sam was arrested immediately. In his defense he pleaded the statute of limitations which set a seven year period during which charges for bank robbery could be brought. The issue was clear. Was the statutory period seven calendar years after the crime was committed or seven years in the life of the person who committed the crime. Only the Supreme Court could resolve the question. Most observers thought that Sam had no chance given the tough law and order decisions which had been coming down in the court in recent years. But they did not figure on the rather strange sense of humor of Chief Justice "Ham" Burger and his eight colleagues. To this day legal scholars are debating whether this epoch making decision represented a perverse sense of humor or the tightest kind of legal analysis. The Court was unanimous and the opinion in support of acquittal but six words long: A niche in time saves Stein.

Richard Lempert

Joke

City slicker walks up to a rural New Hampshire farmer who's in town and asks "Do you have a criminal lawyer in this town?"

Farmer replies, "Yes, sir, yes sir we do. But so far we haven't been able to prove it on him."

--John Sobetzer

Bad Legal Joke (Shaggy Dog Division)

A famous Eastern attorney was forced to go to court in a small Nevada town to enforce some mineral rights for his corporate client. On the morning of trial, he arrived in the courtroom a half hour early so as to be able to get the feel of the local people and procedures. Everything seemed quite normal, although a bit rustic, until ten minutes of nine, at which point an old prospector and his donkey ambled down the aisle and stopped just short of the bar, where they remained standing respectfully until the judge was seated.

Before the attorney could register his disgust at this breach of decorum, the first case was called from the docket with a nod to the spectators, the donkey approached the bench and introduced himself as counsel for the plaintiff. As the case proceeded, the Easterner's initial shock was replaced by a growing respect for the animal's tremendous grasp of courtroom law. His opponent was obviously no match for him, and within an hour he had obtained a favorable judgement for his client.

During the brief recess that followed, the famous visiting attorney rushed up to the old timer who was court clerk and exclaimed "that is by far the most amazing thing I've ever seen in my life! How can you possibly get an animal to do all this?"

"The eddication ain't hard - they seem to take to law school real natural like," he answered, chewing thoughtfully on the end of his cigar. "The tough parts is gettin' 'em to come back here to Nevada when they find out how much those big city firms back East're willin' to pay a jackass to work for 'em."

Jim Schnare
THE SPIRIT OF SHAY'S REBELLION: THE NEW YORK CITY DEBT MORATORIUM

The partial New York City debt moratorium passed by the state legislature on Nov. 15th was supported by both socialist organizers and banking interests. Socialists, who argued that a broadly based moratorium was necessary to maintain the standard of living for the majority of city residents, viewed the limited measure as a major international precedent for debt strapped municipalities and Third World countries. Banking interests, who realized that a default would seriously injure their equity capital and property holdings, felt that the moratorium was a small step to pay for avoiding a long drawn out Federal bankruptcy court proceeding. A closer examination of the legal implications of the Act, however, indicates that the political battles surrounding New York City's fiscal crisis are far from being resolved.

The Moratorium Act, which was part of a $6.8 billion plan to cover the City's financial needs until fiscal 1978, suspends payment of principal on $1.6 billion of city notes maturing between Dec. 11 and March 12, 1976 for at least three years. Note holders are also given the option of swapping their securities for ten year Municipal Assistance Corporation (M.A.C.) bonds that pay 8% interest. The constitutionality of the Act was immediately challenged by the Flushing National Bank of Queens which filed suit on November 17 in State Supreme Court. In its complaint the bank argued, among other things, that the Act violated Article I, section 10 of the United States Constitution which provides that "no state shall pass any law impairing the obligation of contracts."

This clause was adopted by a constitutional convention sitting in 1787 that had recently witnessed the rebellion of heavily indebted farmers led by Daniel Shays of Massachusetts. Justice John Marshall described the situation prevailing at that time as one where, "resentment against lawyers and courts was freely manifested." In many instances "the course of the law was arrested and judges restrained from proceeding in the execution of their duty by popular and tumultuous assemblages. This state of things alarmed all thoughtful men, and led them to seek some effective remedy."

Earlier this year one of the partners of Hawkins, Delafield & Wood, now bond counsel for M.A.C., sought to advance the "thoughtfulness" of the Convention's remedy for unruly state legislatures in New Jersey court. Appearing as the representative for bondholders of the New York and New Jersey Port Authority, the firm argued that the legislative repeal of a covenant (which limited the Authority's use of its revenues for rail passenger service) was an unconstitutional impairment of contract. The trial court disagreed and in so doing set a precedent that municipal bond counselors may regret more than the ignoble fall from their ranks of John Mitchell.

The New Jersey decision was a stern reminder to bondholders that not every impairment of a contract obligation, or security for its performance, runs afoul of the contract clause. The court stated that "the clause must be constructed in harmony with the power of the states to alter or modify their contractual obligations where an important public interest requires. Those who enter into contractual relation with the sovereign, including the bondholders of Port Authority, are chargeable with the knowledge that it is a sovereign entity with which they are dealing..." But the exercise of such sovereignty may also be used to uphold bondholders long term interests, as financial institutions who supported the Moratorium Act are well aware. The U.S. Supreme Court said as much in an important decision upholding the constitutionality of a 1933 Minnesota law providing an extended period of redemption to defaulting homeowners from foreclosure sales. Chief Justice Hughes said, "The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile-a government which retains adequate authority to secure the peace and good order of society."

The situation facing Hawkins, Delafield & Wood illustrates the fundamental contradictions facing capitalist governments in a period of economic depression. To the extent that the Moratorium Act is upheld as a legitimate exercise of the reserve power of the state to protect its citizens health, safety and welfare, the terms of outstanding municipal securities may be subject to political renegotiation by militant state
Who will play in the AFC Championship game?
Who will play in the NFC Championship game?

Who will play in the Super Bowl?

Who will be the NFL Champion?
It was a warm day in November. As a matter of fact, I was thinking to myself "Hell of a warm day for November," when the door to my office, the one marked Nick Latrine, Psychic Investigations, swung open, and in she walked. She was a tall blonde, with extraordinary cranial development, and everything else in good working order, too. I started out with some pleasantry about the weather, but she wanted to get right down to business.

"My name is Miranda Warning, and you must help me, Mr. Latrine. You see, I'm scheduled to compete in the Spirituality division of the Post-Watergate Morality Competition at the Law School later this month, but my ethical compass seems to have gone haywire. Suddenly, something is missing in my life. Can you help me find it?"

"Well, Ms. Warning, that's my job, and I'll sure give it a try. But maybe you could give me more particular information about this missing component of your spiritual makeup. A metaphor, perhaps?"

"Well, it's like a kiss always dreamed of but not yet found, and a mirror, reflecting a kind of compassionate irony."

"Yes, well that helps a great deal. Why don't you just sign this ironclad employment contract, let me work on it for a few days, and see what turns up."

As she walked out the door, she turned, and appealed to me with those liquid brown eyes. "Please hurry, I must be ready for the Competition" she said.

"This sounds like just another case of psychic indigestion," I thought to myself. Certainly nothing requiring the talents of a class investigator like myself. But, I decided to run down all of the usual leads anyway, just in case.

Working on the principal of ruling out the most gross phenomena first, and then working my way down to the most subtle and least detectable, I decided to check the Law School for poltergeist and demons. It was a short, brisk walk from my office to the Quad. There seemed to be nothing unusual happening there, other than the strange sight of law students sunning themselves in mid-November. As I walked around, giving the student body the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even the sunshine and the quick once-over, I caught snatches of conversation here and there "Even

Next, I tried exorcising the Legal Research Building. I turned up a few ghosts of abortive ideas, and the spirit of a wizened pedant whose soul had fled years earlier, but whose body kept on teaching from force of habit. Nothing, however that would help explain my client's dilemma.

As usual, this job was not turning out to be easy. And this unnatural heat wasn't helping matters, I thought, loosening my tie. Wait a minute! Could this freakish heat wave have anything to do with it? Quickly I scanned the horizon for source of the disruption. My psychic senses indicated that the source was in the basement of the Library!

Hurrying to the basement, I entered a small room by the Copy Center, and there, huddled in a gloomy corner of the room, was the kid with the cloud!

"All right kid. The game is up. Messing with the seasons is a pretty heavy offense. Add in attempted disturbance of cosmic rhythms, psychic disruption with a blunt Autumn, and practicing Literature without a license, and you have one hell of a mess."

"These offenses you talk about" he squeeked. "They are just not to the point. I'm talking about need."

"And I'm talking about time. That's what you're going to have from now on. All the time in the world."

Continued on p. 11
legislatures. But if the Act is upheld the financial package, whose conditions were initially determined by the political impossibility of enforcing greater fiscal austerity, may become worthless.

Moreover, if the Act is declared unconstitutional bond counsel for various instrumentalities could become personally liable under fraud provisions of the 1933 and 1934 Securities Act for misrepresenting the legal merits of such securities. It is the civil liability of counsel, rather than the market for municipal issues, that is apparently worrying bond attorneys the most these days. This concern is responsible for the unprecedentedly candid statement of Hawkins, Delafield & Wood in a letter accompanying M.A.C.'s official prospectus detailing the swap option under the Moratorium Act. The statement read, "In the event that the constitutionality of said Moratorium Act is sustained by a court of final jurisdiction such judicial determination could support the constitutionality of similar legislative enactments...". By imposing the responsibilities upon bond counsel to behave according to the rules that other people who use financial markets must follow, it is possible that the privileged position that financial exploitation of urban problems by the state enjoys, may be diminished.

One of the quickest ways to secure a nominally honest government is to strip the ruling class of the legal immunity that they possess. If the tactics of Judge John Sirica taught us anything, it is that jail and the deprivation of liberty affect the powerful and the weak, the rich and the poor, with fine impartiality. The same approach that the SEC has taken to the opinions of bond counsel should also apply to so called labor leaders. Notably, the trustees of several New York City employee pension funds only approved the investment of a substantial portion of these monies in New York City and State securities after Gov. Carey pledged that he would submit legislation to protect them from lawsuits charging a breach of fiduciary responsibility. Similar legislation passed months ago as a prerequisite for obtaining purchases by State Comptroller Arthur Levitt was appropriately struck down by the courts.

The issues raised by the Moratorium Act can not be emphasized too strongly. The present situation is untenable for financial circles, not only because of the uncertainty of the outcome of the suit brought by Flushing Bank, but because no matter which way the case is decided, the decision will provide the basis for a serious fight over whose interests are really served by the existing mechanisms of public finance. The stage will have been set for advancing proposals that seek to deal with the de facto strikes of financial institutions the way striking workers movements dealt with intransigent industrialists in the last Great Depression; namely, by running the factories themselves. At the very least it can be argued that a strike by capital that seriously threatens the public welfare should be dealt with the way the United States presently deals with labor strikes of that type. Of course, an injunction and a back to work order for investors is hardly the best program for capital allocation.

What seems necessary is a new urban development bank explicitly aimed at reversing the wasteful private disinvestment and social dislocation that is responsible for central city fiscal decline. A new credit institution should be coupled with an amended Federal Bankruptcy Act for municipalities that is predicated upon increasing the productive capacity of a city's residents and not on guaranteeing the most cents on a dollar for creditors in order to perpetrate the historical exploitation of public debts.

(References available upon request. Footnotes were left out in the interest of an uncluttered exposition).

The author is a student in the University's joint degree program in Law and Public Policy.

Staple
1660 Broadway, #1
Ann Arbor, Michigan 48104
995-5378
PILLS PRESS ON

This term U of M law students did legal work on campaign reform, the rights of the poor to utilities services, industry-backed bonds on price advertising of prescription items, and the elimination of undue government secrecy. Each of these projects came to the law school through the efforts of the Public Interest Law Society (PILS), and others like them will be available to students through the term break and during next semester.

PILS was organized to give students a chance to apply their research and advocacy skills to "real world" problems involving, for example, the functioning of large public and private institutions, consumer protection, human rights, and the political process. Through PILS students undertake pro bono work with attorneys from public interest groups in Michigan, in Washington, and in other parts of the country.

PILS will continue to operate as a clearinghouse for student pro bono work over the semester break and, of course, through next term. Project requests with January-February deadlines have already been received on the following topics: The legal means available to compel rule-making by a state agency; a series of separation of powers issues on the question of constitutionally mandated state administrative agencies and legislative power over them; conflicts of interest and judicial disqualification; and conscionability under state consumer protection legislation.

PILS can provide you with some challenging legal work aimed at affecting governmental and private institutions, contacts with the appropriate public interest lawyers, and all the pens and legal pads you can consume in your efforts.

If you want to work on a PILS project over the term break, or during next semester, leave a note to that effect in 112 Legal Research (i.e., basement of the library near the men's bathroom) or contact Alan Barak, F-34 Lawyers Club, 764-9037.

-A.B.