February 15, 1974

University of Michigan Law School
ECONEWS

FEB 18, 1974

LITIGATION REPORT

Michigan's Environmental Protection Act (EPA), which in 1970 became the first state law to give citizens the undisputed right to bring polluters to court, is now being used widely by Michigan citizen groups and public agencies, and the law is gaining in stature among lawyers and judges. So concludes University of Michigan law Prof. Joseph L. Sax, the author of the legislation, in a survey covering cases over the past three years. Sax says that, during this period, some 74 cases have been brought to court under the EPA on a wide range of environmental issues, including legal suits initiated by the state attorney general's office, the Michigan Department of Natural Resources and other public agencies. This wide use of the EPA, says the U-M law professor, indicates that the law is far from being "written off in the minds of judges, legislators and concerned citizens as a mere aberration of the legislature that ought to be permitted to fade away as rapidly as possible." Sax's study of EPA cases, covering a period from Oct. 1, 1970, to Oct. 1, 1973, will be published in a forthcoming issue of the Ecology Law Quarterly of the University of California (Berkeley) Law School. The study is co-authored by Joseph F. DiMento, a U-M law student who also holds a doctoral degree in urban and regional planning.

Most indicative of the act's potential, according to the study, are recent initiatives by the state attorney general's office to use the EPA in supplementing administrative regulations. In one case, Sax notes, the attorney general brought suit against the National Gypsum Co., claiming that although a company plant in Alpena, Mich., was not violating regulations of the Michigan Air Pollution Control Commission, the plant was "still polluting the air around it." Specifically, the company had been

(see LITIGATION p. 4)

ENVIRONMENTAL LAW CONFERENCE

At the recent American Law Institute-American Bar Association-sponsored conference on environmental law held in San Francisco on February 7-9, over 500 lawyers, law students, administrators, and industry representatives were given an insight to the trends which environmental law will be taking in the next year. It appears that environmental lawyers will be busy in the future, despite portents of doom fostered by the so-called energy crisis. The National Environmental Policy Act of 1970 is finding greater applicability than ever in ensuring a balanced concern for the environment in searches for new energy sources such as shale oil and coal gasification. And past laissez-faire policies of energy demand accommodation will give way to (hopefully) rational government regulation of energy resources.

NEPA itself, after four years of evolution, will probably be used affirmatively by agencies seeking greater control over environmentally harmful practices of the private sector. The new Federal Water Pollution Act Amendments of 1972 are finally getting underway with national pollution standards applicable to more than 50,000 polluters by the end of this year. And under the Clean Air Act, although the Environmental Protection Agency has been dilatory in fulfilling its duties, citizen litigation is forcing compliance by both agencies and industries.

The areas of greatest current concern, though, are land use and coastal zone management. Each of these areas has seen an infusion of environmental values into planning statutes and litigation. Many of the broader implications for land use in water and air pollution legislation, however, have not heretofore been recognized for their importance. It is in these

(see REPORT p. 3)
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Have you been actively looking for a position? ____________

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Did you have a summer clerkship (3rd year only)?
To the Editors:

The appearance of some virulent anti-Arab graffiti on the walls of at least one john in Legal Research, over a period of several weeks, moves me to write a letter that I hope the author of the graffiti will read.

Racial prejudice is irrational. Categorical insults toward all members of a race necessarily represent prejudice, rather than after-the-fact judgment, unless the insulter has met all members of the race. Nonetheless, racial prejudice may not be the sign of a lack of mental health, in the ordinary sense of the word. For example, the racial prejudice of the South, and to an increasing extent that of the North, is "normal" in the sense that, however irrational, it is something people acquire mainly because it is taught to them from an early age, and not because they have made an affirmative decision to embrace it.

But prejudice that survives years of education, that (unless the circumstances are very unusual) is not the result of childhood training, and most significantly, that is still expressed by a supposedly mature person by means of bathroom scrawl and in terms of childish obscenity--that kind of prejudice represents, I think, not just a social problem, but a serious personal psychological problem.

If there were a nonpublic way to communicate, I would use it. This letter is not intended as a soapbox oratory against prejudice, and it is not intended for the benefit of a large number of readers. It is directed at one person, and is a serious suggestion to that person to give some very serious thought to getting professional help.

s/ Jim Martin

Perhaps not surprisingly, the best presentations at the conference were given by practitioners, some of whom litigated the seminal environmental law cases of five years ago. The law professors who spoke generally presented not very useful historical analyses of the topics, while agency speakers tended to be administration apologists at worst or uninformative at best.

The presence at the conference of industrial representatives, most of whom were probably learning their duties under environmental laws, or methods of evading the law, indicates that environmental law is alive and viable. Hopefully, the public impetus which brought about this legal concern for environmental values will remain equally strong.

- Jeff Haynes
Another achievement under the EPA, according to the U-M professor, has been its contribution to the "education of judges, lawyers, public agencies and citizens" in the time of serious threats to the environment. "A good many Michigan lawyers have begun to develop valuable expertise in environmental cases or awareness of environmental problems," Sax notes. And based on a survey of attorneys representing both plaintiffs and defendants in EPA cases, the U-M study shows that a large majority of lawyers view the judiciary as being capable of dealing with "the environmental, scientific and technical" issues involved in such cases.

Despite these accomplishments, Sax acknowledges that environmental progress under the new law has not been dramatic, and that no "big-time test litigation" has resulted from citizen or agency suits. Basically, says Sax, "we got what we bargained for in drafting a grass roots law. The great bulk of the cases have involved quite localized problems—a road widening, vacation home subdivisions, country land drainage or a particular polluting factory—and they have been litigated in modest fashion. Most trials have only three or four days and have involved only local expert witnesses. We have not had an importation of either famous lawyers or glittering scientific superstars with which one adorns the 'big' case. Indeed, with a few rather tentative exceptions, EPA has not been used in a major assault on the biggest actors in the state—the auto industry, agriculture, the electric generating utilities or even the rapidly developing oil and gas or mining operations." Sax also observes that the EPA has received "relatively little in the way of legal interpretation during the first three years," although the Michigan Supreme Court has recently indicated it will undertake interpretation of the EPA for the first time in a case challenging a proposed drain project in Mason County, Mich. In general, Sax concludes, a number of important legal questions—including the constitutionality of the EPA under state law, and the applicability of the act in eminent domain cases and in suits focusing on aesthetic considerations—remain "without authoritative interpretation."

Here are some of the other findings in Sax and DiMento's study:

1. Of the seven states which have enacted similar environmental protection legislation, only Michigan has had more than a dozen cases. All told, some 74 cases have been initiated in Michigan on subjects ranging from pesticide use and Indian fishing rights to an omnibus case designed to control pollution at the Ford Motor Co. The act has been utilized steadily over the past three years at a rate of about two cases per month, with suits being filed in 26 of Michigan's 83 counties;

2. Surprisingly, established environmental groups "with more than local concerns" have not made frequent use of the EPA. The most common plaintiffs have been local and ad hoc groups;

3. Forty-seven cases have been completed, including 26 cases which were resolved in favor of the plaintiff and 16 in favor of the defendants. The duration of the proceedings have ranged from one to 34 months, with the average length being seven months;

4. The survey of attorneys shows that a plaintiff should anticipate expenses averaging $10,000 if the case goes to trial and $2,000 if the case is settled without a trial.

5. The most common type of case under EPA has involved land development controversies, which have often been settled in an atmosphere of compromise with the judge as mediator. Sax notes
that most of these cases have not resulted in "all or nothing confrontations between unyielding adversaries," as some critics had feared.

- UM News

PUBLIC INTEREST LAW SOCIETY FORMED

In an effort to provide law students with an acceptable outlet for their more aggressive impulses, a number of socially-minded types have moved to create the Public Interest Law Society.

Its organizers contend it will function with an absolute minimum of bureaucracy and no superfluous meetings. The organization is intended to provide law students with a mechanism by which they can serve as "consultants" to state citizens' groups and state agencies in a number of areas -- consumer protection, health care, and the functioning of public and private institutions, among them.

Some contacts have already been made with consumers' groups in Michigan, and requests for legal aid on a number of projects have been received. Students, the organizers expect, will also provide an impetus to the activities of citizens' groups, as the Society's contacts with the organizations become more frequent.

A brief organizational meeting will be held for the Society on Tuesday, February 19, at 12:15 p.m. in the Lawyers Club Lounge. Anyone not able to attend the lunchtime meeting can call Pat Shipstead, 665-4600, or Alan Barak, 764-8976, for further information.

- Environmental Law Society

JOIN THE LSD

Effective January 1, 1974 the LSD Membership fee was raised from $3.00 to $5.00 per year (October to September). By special arrangement (and because Justice and Right are on our side) U of M is able to offer membership for $3.00 for the calendar year February to January. Those who have considered the LSD-ABA may want to take advantage of this "bargain".

To join, pick up a membership blank from the LSD-ABA bulletin board in the basement of the library. Slide the completed form and $3.00, plus $3.00 for each Section joined (checks preferred), under the RG office door. Membership in at least one Section is strongly recommended.

First year students are especially invited to join and become active in the LSD and in the ABA Committees.

Student appointments to Committees and selection of LSD liaisons to each ABA Section will take place in Spring for the '74-'75 year. U of M LSD representatives for next year will be elected in March. Persons interested in any of these positions are invited to contact Don Duquette at 769-7685, or Connye Harper.

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The following are excerpts from a recently received letter from the President of the Law Student Division of the ABA. The full letter is now on the LSD-ABA Bulletin Board, and discusses the questions, what is the LSD-ABA, and why should one join.

"I must answer the most obvious question about the Division at the outset. 'What does the Division do that merits a law student's monetary investment of $3.00 [see above] and his or her energies?'

"Firstly, we are an organization that provides services to those law students who wish to reach out and take advantage of the services. We initiate a multitude of programs and projects designed to incorporate substantive student participation with the organized bar. These are of educative and reformative natures and available to all of our membership. The institution of these services are the extent of our immediate action. We then need active involvement from each member."

The programs and services now functioning are:

"Opportunities to work on revision of laws and participate in effecting legal reforms through activities in the liaison program. One student member is chosen to represent the Division's membership to an ABA section or one of the more than 60 ABA committees. This Law Student Division liaison will sit on the council or governing body of the particular section or committee and participate as a full member. The liaison's capacity will be that of representing the 100 or 1,000 or 2,000 LSD members that are also members of a particular section or committee. This is a fantastic opportunity for an individual law student to participate with the leading members of the judiciary and the organized bar. Some of the particular sections that will be having an opening in the near future for Law Student Division members to take leadership positions in are the Young Lawyers Section, the Insurance, Negligence and Compensation Law Section, the Real Property, Probate and Trust Law Section, the Criminal Justice Section and the newly formed Litigation Law Section. Within the Law Student Division we have many committees and commissions that are in dire need of Law Student Division member participation. These include the Fair Hiring Practices Commission, the Juvenile Rights Commission, and the Marijuana Law Reform Committee.... These projects, committees and commissions are open to any member of the Division who actually takes an affirmative step to communicate their desire to participate to myself or the circuit governor [or to the local LSD representative]."

- Don Duquette

PLACEMENT NOTES

Michigan Attorney General's Office will be interviewing second year students who turned in resumes in December and January, on Mar. 13th. If you turned in a resume, please come in and sign-up for a time.

Intern Program sponsored by the National District Attorneys Association and the National Legal Aid and Defender Association - second year people interested in working in a defender office or a prosecutor office for the summer should stop in the Placement Office and pick up a pamphlet describing the program and an application.

Additional interview: February 19th - Owens-Corning Fiberglas

Please remember to report jobs to the Placement Office.
BOOK REVIEW

THE WATERGATE HEARINGS: Break-in and Cover-up, ed., N.Y. Times staff; Bantam paperback, 1973; $2.50; 886 pages.

Essentially, this manual tells you everything you already knew about the theatrical-existential affair of last year, but were too confused or bored to understand. That flippant opening remark is designed to convey my skepticism about the intrinsic historical value of the book while recognizing the need for quickie chronicles of important contemporary events on America's coffee tables and kitchen counters. And given the imminent death of the Senate Select Committee on Presidential Campaign activities, following its few days of anti-climactic dirty tricks exposure last Fall, the hasty appearance of this fact-shy volume on the Summer investigations cannot be criticized. The initial Hearings story, with all its unresolved contradictions and accusations, has turned out to be the whole Watergate story after all, at least until the revelant prosecutions become unsnarled and conclude some years hence.

The Watergate Hearings: Break-in and Cover-up draws on the proceedings of the Sam & Howard Show from May 17 to August 7, 1973, in the context of events from June 20, 1969 to September 20, 1973, and sets out the foregoing material in several different informative ways. Leading off is a narrative account of the Hearings by R.W. Apple, Jr., not at all neutral-in the manner of the New Journalism-but bristling with pejorative descriptions of the characters. In other words, the prologue glows with all the facility of language and suffers from all the pomposity of the N.Y. Times editorial staff. Next, the principal elements of the Watergate affair offered in a commendably detailed chronology put together by Linda Amster, with accounts of critical days coming out equivocal or contradictory since they were derived from testimony at the Hearings. Incidentally, the lying isolated by the chronology reappears in still another form at the tail-end of the book, as a section called "The Basic Conflicts," which juxtaposes excerpts of testimony from various parties with respect to issues of impropriety or criminality. Amster's work easily snatch-

es the Most Useful Award for finally making sense out of the pattern of Watergate participants' actions, if not their motives.

The middle two-thirds of the book which follows is devoted to significant parts of the testimony of all your favorites at the Watergate Hearings last Summer, but it was also in this area that the peculiar demands of the paperback publishing business brought some disappointments. High irony and the sensational were at a premium at the expense of less dramatic but helpful background information. Probably the most serious such omission was the organizational out-line and description of the workings of the Committee to Re-elect the President provided by administrative head, Robert C. Odle, Jr., which was dropped in favor of about a page of pedestrian chatter between Odle and several Senators concerning the former's contact with wonder boy, Jeb Magruder. In contrast, the provocative but third and fourth-hand revelations of James W. McCord, Jr., received 36 ill-deserved pages - more than any of the other 33 witnesses save John Erlichman and H.R. Haldeman. As a final reference to the book's abject surrender to bombastic trivia, one need only note that 13 pages of bafflegab from slickie Gerald Alch somehow escaped the blue pencil.

Filling out the remainder of the manual is first, a presentation of all of President Nixon's statements on Watergate from June 22, 1972 to August 22, 1973. Gathered thereafter are the texts of many of the White House documents that teased our imaginations during the Hearings but which had remained unpublished, including the Domestic Intelligence Plans, the original "enemies" lists and memoranda, plus the infamous (and if you read it, hare-brained) CIA psychological study of pop semi-hero Daniel Ellsberg. The book concludes with several indices, true to "manual" form, one by subject, another by name and official title of persons mentioned in the course of testimony, along with a list of key witnesses' biographies. The Who's Who is quite uneven in its treatment of the various characters, erring consistently on the brief side.

Overall, the N.Y. Times manual on the hearings of the Senate Select Committee on Presidential Campaign Activities went quite

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BASKETBALL POLL

As you all know, there were two subs up for grabs last week. However, there was only one winner. Craig Gehring's only failure was his prediction of the Creighton-Marquette encounter. Of course, only three people did guess that game correctly. As a result of his expertise, Mr. Gehring is entitled to a double case of indigestion which he may pick up at the Res Gestae office.

Not only was the winning percentage of .950 truly exceptional, but the average percentage correct last week (.702) was higher than the best score of a week ago. In short, it was a week of which all the participants can be proud. Even those in the bottom half did well.

Alabama at Mississippi(15 1/2)
Wake Forest(12 1/2) at N.C. State
Notre Dame at South Carolina(8 1/2)
Southern Cal at Oregon State(15 1/2) —
Wisconsin(5 1/2) at Prudue
Nevade-Las Vegas(3 1/2) at San Francisco
Georgia(15 1/2) at Vanderbilt
St. John's at Niagara(8 1/2)
Kansas State at Colorado(8 1/2)
Arizona State(5 1/2) at UTEP
Arizona at New Mexico(4 1/2)
Maryland at Clemson(12 1/2)
Xavier(12 1/2) at Detroit
Florida State(12 1/2) at North Carolina
Tennessee at Kentucky(3 1/2)
Michigan(6 1/2) at Indiana
Illinois(1 1/2) at Northwestern
Ohio State(4 1/2) at Iowa
Minnesota(8 1/2) at Michigan State

Tie-breaker: Total number of points in the Michigan-Indiana game

- George A. Pagano

CENTER FOR LAW AND SOCIAL POLICY

Mr. Eldon Greenberg will be interviewing second-year students who would like to spend the '74 Fall semester in the clinical law program at the Center for Law and Social Policy in Washington, D.C. Mr. Greenberg will conduct a group meeting for interested students from 12:10 p.m. to 1:00 p.m. on Thursday, February 21, in Room 236 Hutchins Hall, and individual interviews immediately thereafter. Students who wish to sign up for individual interviews or pick up written material on the Center may do so at the Placement Office.

ILS PRESENTATION

On Monday night, February 18th, the International Law Society will present Emilio J. Cardenas of Argentina, speaking on "Foreign Investment in Argentina: Law and Politics," at 6:45 p.m. in the Main Lounge of the Lawyers Club. The Society will host Dr. Cardenas at a dinner preceding his presentation, at 5:45 p.m. in the Faculty Dining Room of the Lawyers Club. Anyone wishing to attend the dinner should sign up on the list outside the ILS office by noon Monday.