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University of Michigan Law School

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RELIGIOUS BIAS FOUND

The Kansas City, Missouri, law firm of Detrich, Davis, Burrel, Dieus and Rowlands has been barred from using the Law School Placement Office for a period of one year, according to Placement Director Ann Ransford.

The firm interviewed students of the Law School in late October of 1970. At that time the firm asked questions concerning the religion of a number of the interviewees.

Ransford wrote the firm in January, (after receiving signed statements from some of the students asked the questions) telling the firm of the complaints and relating the policy of the Law School that firms using Placement Office facilities are not allowed to discriminate on religious grounds.

Less than a week later, William J. Burrell, the managing partner, replied stating that the firm was in full agreement with the policy and that they had no intent to convey a contrary impression, also assuring the office that efforts would be made to avoid such problems in the future.

The evidence was turned over to the faculty Administrative Committee. On February 15, Dean Allen wrote to the firm stating that it was the recommendation of the committee, of which he approved, that the firm would be barred from using Law School Placement Office facilities for a period of one year from the date of the letter. The Dean included the following findings:

1. Questions concerning the religion of students were put by representatives of the firm. Five students have signed statements to this effect. Six other students who were interviewed by the firm stated that they recalled no such questions being put.

2. No sufficient explanation has been given about the purpose of these questions that would yield a conclusion consistent with the Law School's placement policy.

3. Some of the students' statements indicate that an improper purpose did underlie the questions. Thus the interviewer is quoted by one student as saying, "Well, you understand, coming from the part of the country we do, we like to think the boy has something. I mean we don't think he should be an atheist or anything like that." Another student indicated that the interviewer inquired whether the former was a member of the Mormon Church. A third student reported that the interviewer, after asking the religion of the student, stated that "the firm did not want any atheists or non-Christians."

YEARBOOK STAFF

Any law student interested in being editor or staff member of next year's CODICIL, the law school yearbook, should contact Don Tucker at 769-5232 or leave a note in his mailbox at the Lawyer's Club desk. It pays money.

--ed.
A mood of dissatisfaction, almost of despair, has settled over the law schools in the last few years. It has taken its toll on each of us, faculty as well as students. Yet the issues which now consume so much of our energies--details of curriculum reform, clinical education, participation in governance, grading systems and the like--fail to reach the fundamental question which underlies our malaise.

In my opinion, the stark issue is whether it is possible for a life in the law to be rewarding. By this I mean whether it is possible for lawyers to contribute significantly to the advancement of the human condition.

This--the only truly meaningful question--is virtually never asked directly in the three years of one's law school career as a student, and it is rarely even addressed indirectly. Indeed, it is a question which most of us, as faculty members, have buried very far in the recesses of our thought. If the answer were clearly yes, then much of the current debate about the operation of the law school would vanish, for we would then be unified by a larger sense of purpose, and purposiveness, which would transcend minor differences of approach to teaching methods, specific content of courses or management of the law school as an institution.

But we have no such unifying vision of the profession; indeed, we seem to share nothing so much as a feeling of aimlessness about the directions in which the law is being carried, and of impotence about our ability to chart a new course.

At the risk of dangerous simplification, let me try to identify the major stages in the development of modern law which have defined our profession as rewarding and which have therefore, for generations, given members of the legal profession a sense (from the beginning of their law school careers) that they were capable of being useful contributors to the society.

First was law as a civilizing influence. This is the tradition out of which the fundamental common law subjects arose; contract and tort, for example, which attempted with some considerable success to impose an orderly and informed structure upon routine dealings between man and man. For a very long time, the lawyer played a central role in devising and administering this system, and justly took pride in his work. But the fundamental job is done, and what remains is largely housekeeping. There is much to be learned, but little to light the fires of imagination. It is a tradition to be maintained, not a guidepost for the striving of the nobler instincts upon which the profession of the future will be built.

The second tradition, which might be said to have begun with the abolition of slavery and to have run through the development of the labor movement up to the period of governmental regulation in the 1930's, was the struggle for economic justice. Plainly this struggle has not been won, but from the lawyer's standpoint it has degenerated badly. I came to law school at the tail end of this era's vitality, at a time when labor law and antitrust regulation still seemed rather exciting enterprises. But now the work of most lawyers in these areas is so tangled in detail and bureaucracy that it can--in its present form--hardly even be associated with any vision of a better future for mankind. It is not without cause that both the political left and right throw up their hands in disgust with our plodding, elephantine system of economic regulation.

Law as an instrument of social justice, the third of the great traditions, is much closer to my own experience, and it was the phenomenon which sparked my interest in law. I watched the profession turn its attention to the rights of criminal defendants, and saw the courts respond to the plight of these wretched people in a fashion that seemed most impressive--perhaps I should say inspiring. I came to law school only a few years after the school desegregation decision in the Supreme Court. And I saw lawyers persuading the courts to turn back from the national security mania of the post-World War II period. One of the first cases with which
I had contact after I entered practice was an attack on the detestable Hollywood blacklist.

Of course these matters now seem almost quaintly historical; they have rapidly become a part of the past, washed aside in light of such events as the Chicago conspiracy trial, the unspeakable cruelty of the war in Indochina, the abuses of the prison system and even such important symbols as the President's callous maneuvering with the Supreme Court.

I have spoken of these traditions for two reasons. First, to suggest to you who are students that something quite important does separate you from most members of the faculty. Most of us came to the law at a time when the profession seemed to be grappling, rather effectively, with some of the incandescent issues of our time. Despite setbacks and terrible discouragement, we have some residue of hopeful experience that gives us a confidence in the legal system which must seem quite irrational to many of you.

The second, and far more important, significance of these traditions is that they have generally deterred the people who grew up in them from asking whether the enthusiasm of the past can be applied to the future. That is, the assumption that law and lawyers can contribute significantly to the advancement of the human condition remains too much an unexamined assumption. The very question that should constitute the central inquiry of the law school's life is treated as something to be believed rather than as something to be investigated. This is, in my judgment, the issue of legal education today.

I think there is a fourth tradition in the making today. I think it holds sufficient promise for the human condition that it is still worthwhile to work as a lawyer, and that it will assimilate much of the unfinished work of the past.

I perceive a very deep seated striving on the part of people to reassert an effective role in the making of decisions that significantly affect their lives; a striving to break through the barriers of bureaucracy and presumptuous expertise that have imposed a heavy shield between government and the individual citizen. I see an increasing, and healthy, unwillingness to accept without question decisions made in the name of national security or progress by "those who know best." I find a growing demand that evidence be presented to support proposed large scale public commitments. And I see lawyers as having a central role to play in facilitating this movement toward a rebirth of true democracy, for that is what it is.

From the limited perspective of my own professional work in environmental law, I have seen and participated in some heartening instances of this phenomenon at work. The ability of private citizens to restrain the seemingly inexorable development of the Alaskan oil pipeline on the basis of a lawsuit, is to me a very important sign of the potential for shifting the balance of political power back toward the citizen. The work of lawyers in bringing much closer to fruition the work begun by Rachel Carson in the area of pesticide regulation is another highly significant event.

Make no mistake about it. What has been happening in the environmental area is not simple, or isolated, occurrence. It has to do with the rearrangement of political power, and it speaks to the potential for change across a very wide spectrum of American life. And it speaks not only to the balance of power, but to the need for, and use of, legal services. It raises for us, as lawyers, the essential question of how a market can be created to support the services needed for the work that needs to be done. This question will, and must, become a central issue in the viable law school of the future. It speaks to the use of legal tools to create pressures for modifying public and private expenditures in the direction of socially needed activities, and in this critical sense it speaks very directly to the plight of poor people. It speaks to law as an instrument for promoting innovation, rather than merely as a structure for resolving disputes. It has to do with the development of institutions that get things done, rather than with the building of elegant legal sand castles in the statute books. Finally, and most importantly, it shows that on the most essential issue, the furtherance of a culture concerned with the sanctity of life, we are all inextricably bound together--without regard to race or economic status,

(Continued on page 6)
If anyone doubted that Judge Damon Keith was standing at Armageddon with his recent wiretap ruling, let him consider the words of one Richard Kleindienst, deputy attorney general of the United States.

Mr. Kleindienst, speaking over the weekend, challenges Judge Keith's decision that the attorney general has no right to wiretap, without prior court approval, against domestic national security threats. There is no difference, Mr. Kleindienst argues, between a foreign and a domestic threat to the security of the United States.

What Kleindienst says ignores the basic point in Judge Keith's decision: That American citizens, unlike foreign subversives, are protected by the Constitution.

Once you grant the original premise that some wiretapping is all right you come dangerously close to surrendering to Mr. Kleindienst's seduction. You even come close to accepting Attorney General John Mitchell's argument that the President has the inherent power to do whatever is necessary to protect the government from violent overthrow.

This is why, in our judgment, the late Robert Kennedy surrendered so much precious ground when he set out to legalize wiretapping as the only means of controlling it. This is why the American Bar Association's recent switch on electronic surveillance -- trying to assure proper standards rather than opposing it -- is a dangerous concession to those who are willing so casually to override privacy and freedom in the name of security.

In the ABA debate, Jerome J. Shestack of Philadelphia told the delegates: "Our approval will be a green light for a rash of wiretapping legislation. We won't find the restraint in the states that we can expect from the federal government. We joke about 1984, but it's no joking matter. Erosion of our privacy grows and grows."

The trouble with resisting the efforts to extend and justify wiretapping and bugging is that most citizens never see the police actions as a threat to themselves, only to criminals. Yet electronic surveillance is, in the words of Justice Holmes, "a dirty business" that cannot sort out the wicked from the merely indiscreet.

In recent weeks Detroit has had reminders that individual policemen cannot always be counted on to be faithful enforcers of the law. Private temptation does occasionally interfere with professional performance. The possibility of blackmail or personal embarrassment through information collected by bugging is a powerful weapon to put in the hands of mere mortals.

Does anyone really care that the "hallmarks of a police state", which include wiretapping, are winning increased acceptance? Does one really care that Mr. Kleindienst, having carried the day on the issue of security against external enemies, now wants to justify wiretaps on a vastly broadened base?

One wonders, Suddenly, 1984 does not seem so far away at all, and one is reduced to hoping that the Supreme Court will remind us what a precious thing privacy is and how resigned we now seem to accepting its loss.

--Detroit Free Press, 2/24/71
WHAT'S COMING DOWN 
IN THE COURTS

I. In re Kinoy Testimony (S.D.N.Y. Jan. 29, 1971) involved the Organized Crime Control Act, specifically the section which compelled possibly self-incriminatory testimony while providing immunity only against subsequent use of the compelled testimony ("use" immunity) and not absolute immunity from prosecution for the crime about which defendant might testify ("transactional" immunity). The court held that Counselman v. Hitchcock 142 U.S. 547 (1892) mandated transactional immunity as a constitutional requirement and thus the Act is unconstitutional insofar as it provides only for use immunity. Murphy v. Waterfront Comm. 378 U.S. 521 (1964), sanctioning use immunity, was distinguished on the ground that it involved a cross-jurisdictional situation, e.g., the court wanted to minimize interference with the law enforcement prerogatives of the non-questioning sovereign. The Supreme Court has dismissed Piccirillo v. N.Y. (cert. improvidently granted), a case dealing with the same issue. Jan. 25, 1971

2. Several recent cases have involved the issue of standing to prosecute environmental protection cases (see also Sierra Club v. Hickel 39 LW 2180, 4 RQ 5). In Environmental Defense Fund, Inc. v. U.S. Army Corps of Engineers (D.D.C. Jan. 27, 1971), plaintiffs sought injunctive relief against the manner in which the Cross-Florida Barge Canal was being constructed, alleging violation of several statutes designed to preserve natural resources. Since the plaintiffs (including Florida Defenders of the Environment) alleged they had benefited and desire to continue to benefit from the recreational and aesthetic advantages of the Oklawaha River eco-system, the court held that they would suffer real injury if the environmental damage occurs. They were arguably within the "zone of interests" to be protected by the statutes, their personal stake makes them "aggrieved persons within the Administrative Procedure Act (5 USC §702) and therefore have standing. On the other hand the Ninth Circuit in Alameda Conservation Assn. v. California (Jan. 19, 1971) held, in an action to enjoin salt dumping in San Francisco Bay, that the corporate association does not have standing to prosecute the suit, as it did not allege that it owned land bordering or near the bay, or at all; no allegation that any of its rights or properties were threatened. That the corporation's purpose and raison d'être was protection of the public interest in the waters of San Francisco Bay was insufficient to confer standing. However, individual plaintiffs able to allege personal damage may maintain the action, even though they do not own property contiguous to the Bay.

3. Collins v. White (N.D. Ohio, Jan. 22, 1971) involved an Ohio regulation concerning requirements under the federally funded Aid to Families with Dependent Children (AFDC) program. The plaintiff's family unit consisted of a mother and 3 children, two of whom (being children of the mother's late husband) were entitled to share in survivor's benefits under the Old-Age, Survivors and Disability Insurance (OASDI) program, also federally-funded under the Social Security Act. The federal law clearly stated that the OASDI recipient takes only in his own behalf, but on application for AFDC benefits for the third child the county welfare department took the position that the state regulation required OASDI payments be made available to all 3 children, and therefore the eligibility requirements (need) were not met. A three-judge panel held the Ohio regulation void under the Supremacy Clause and issued an injunction against further enforcement of the regulation.

speaking through Chief Justice Fuld recognized that the courts are
divided on this issue, but the Su-
preme Court has held (Mempa v. Rhay
389 U.S. 125, McConnell v. Rhay
383 U.S. 2) that counsel must be
provided at a proceeding to revoke
probation. The court concluded that
the possible detriment to the indivi-
dual is so closely identical in the
two cases that counsel should also
be provided when parole revocation
is the issue.

---David Stahl.

What we need now is your help and ideas.
This might be a great thing or it just
may be a great bust. Think about it.
Would you be interested in joining a
public interest law firm? In Michigan?

The Environmental Law Society is now
working on this proposal, so if you have
any ideas stop by the office or leave a
note.

What is the Public Interest?

Recently, college and university stu-
dents across Michigan have expressed
interest in helping to establish a
"public interest law firm" in Michigan.
This firm would litigate consumer pro-
tection cases, environmental cases, etc.

There are several inherent problems
in such a proposal. First, and per-
haps most crucial, how, where, and
when does one fund such an endeavor?
One suggestion is to ask for a dona-
tion from each college and university
student in Michigan. One dollar from
each of them would amount to a fund
of nearly $200,000 with which you
could hire 40 lawyers at Nader's
scale. Foundations and non-profit
associations might also be able to
help with financing. But the major
question would be whether this law
firm could continue for any extended
period of time dependent upon this
rather uncertain funding system.

There are many other problems in-
volved in an undertaking of this
kind. Would it draw any lawyers at
all? What would the Bar's attitude
be? Is it legal? How should it be
structured? What kinds of problems
should it address? Do we really need
it?

---Joseph L. Sax

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NEPOTISM

( The U has long had an unwritten "nepotism" policy, but now—with a little help from their HEW friends—they have come up with a written one. The RG feels that those involved in faculty hiring should take note.)

The statement reads:

In accordance with general University policy, the basic criteria for appointment and promotion of all University staff shall be appropriate qualifications and performance. Relationship by family or marriage shall constitute neither an advantage nor a deterrent to appointment by the University provided the individual meets and fulfills the appropriate University appointment standards.

No individual shall be assigned to a department or unit under the supervision of a relative who has or may have a direct effect on the individual's progress or performance, nor shall relatives work for the same immediate supervisor, without the prior written approval of the administrative head of the organizational unit (dean, director, etc.) and the Office of the Vice-President for Academic Affairs or the Personnel Office as appropriate.

In any event, in accordance with general University policy, there shall be no discrimination based upon sex in appointment, promotion, wages, hours or other conditions of employment.

BOARD OF DIRECTORS MEETING
TUESDAY NIGHT

The Board of Directors welcomes candidates and other interested students to its regular weekly meeting, Tuesday night, March 2.

Jane Mixer Memorial Award

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

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

Nominations are now in order. Please submit them to Assistant Dean Kuklin's secretary, Marilynn Williams, at the counter in the Administrative office. Closing date for nominations will be at the end of business on Wednesday, March 10, 1971. The faculty committee will appreciate a brief statement of the activities of the various nominees thought to qualify them for the award. The announcement of the recipient will be made at the Honors Convocation which will be held early on April 3, 1971.

PLACEMENT

Second and Third Year Students

The Harvard Law School Placement Office has put their computer to work and sent job employment questionnaires to the following employers: Model Cities Programs, Legal Service Offices, Public Defenders, District Attorneys, State Attorney Generals, and Public Interest Groups. The results are now in our Placement Office, and there appears to be a number of openings for both second and third year students.

A reminder to those students who have already accepted jobs, please report this information to the Placement Office as soon as possible.

Thank you.
NEVADA KILLS EFFORT
TO RURALIZE BROTHELS

A bill to confine houses of prostitu-
tion to Nevada's rural counties was
ekilled when legislators referred it
to the Agriculture Committee.

"That's the best place to kill it," said Assemblyman Artie Valentine of
the Senate-passed bill, which was
designed to prohibit brothels in Las
Vegas. They are now legal throughout
the state on a local-option basis.

* * * *

Policeman-of-the-world-quote-of-
the-week:

Sgt. Kirk Coles, an American soldier,
on the United States-supported South
Vietnamese drive into Laos: "You
might say it's a case of the unwilling
helping the ungrateful to kill the
unwanted."

* * * *

Picky, Picky, Picky...

An increase of more than 40 per cent
in the number of complaints against
policemen during the last year was
reported to Police Commissioner Pat-
rick V. Murphy of New York City by
the Civilian Complaint Review Board.

In its annual report, the board said
that 2,901 complaints were received
in 1970, compared with 2,039 during
1969.

Among the complaints received last
year, 1,545 involved allegations of
unnecessary force, 586 allegations of
abuse of authority, 713 allegations
of discourtesy and 57 allegations of
ethnic slurs.

The board also noted that the number
of white complainants exceeded the
total of black and Hispanic complain-
ants 1,375 to 1,338.

STOP, COMRADE LAWYERS

Dunning letters from Prague to Czecho-
slovak refugees abroad, demanding
money to pay for their defense at trials
in absentia on charges of leaving the
country without permission, raised a fuss
in the United States, Canada and Australia
last year. There were complaints that
Czechoslovakia was trying to blackmail
the 70,000 Czechoslovaks who fled to the
West after the Soviet-led invasion in 1968.

Last week, it was revealed, the letters
caused a fuss among authorities of
Czechoslovakia, too. The Communist
party leader, Gustav Husak, said he and
other party leaders had not known about
the scheme which he said had originated
with lawyers conducting the cases. Then
he added:

"But the lawyers did not ask anybody.
And now there is a big campaign and
some governments even took action so that
these letters would not be delivered.
So we put our heads together and told
the lawyers: 'Comrades, don't do it,
there's no sense in it anyway. Now,
because of your foolish actions, they
are slandering the whole regime.'"

He ordered the letters halted.

VAMPIRES AND THE LAW

Disciples of Count Dracula will be dis-
heartened by an Associated Press story
from London, where police arrested a
young man who was prowling through High-
gate Cemetery with a flashlight, a
crucifix and a sharp wooden stake. The
youth told the judge he was hunting vam-
pires, which he intended to slay in the
accepted fashion. The judge found that
hunting vampires is within the law and
dismissed the case.

The Board of Directors needs election
watchers to observe counting of ballots
after the Board of Directors election
March 10. Any volunteers?