March 23, 1971

University of Michigan Law School
TIGHT MONEY

"If it weren't for the damn pin-ball machines, we'd be dead."

This is the plight of funding for the Law School Student Senate as related by Dave LeFevre, President for the past year. In spite of a promised allocation of $15,000 from Francis Allen, Dean, the only dependable funds are the $500 per month coming from the electronic games. This situation arises from the tortured allocation process to which the Student Senate is subjected.

As Dean Allen explains it, the procedure is somewhat enlightened from what it once was. Until last year, the Dean said, the $10.00 student fee collected each semester was applied against the operating expenses of the duplicating center and to the law library book acquisitions. The Student Senate's funds were taken from the general fund, the collection of private dollars given by the School's benefactors. In that procedure, the Senate had to compete with scholarship grants, the major use of the general fund. The development of budget involves a request by the student board, negotiation with the Dean, and his final approval. The above system remains the same save that 37½% (about $6000/yr.) is directed to the Student Senate from student fees. The remainder goes to the duplicating center. The rest of the Senate budget and the remainder of the duplicating center expenses come from the general fund. Dean Allen was asked why the appropriate percentage of student fees was not simply allocated to the Senate. He replied that first, it is his feeling that the Dean should have control over all funds; and second, the fact of his control has encouraged an early budget from the board and a concomitant efficient use of funds. "Besides", he noted, "this process has not inhibited innovative action by the students". Chuck Holt, treasurer of the Student Senate this past year, sees the situation somewhat differently. "In spite of the earlier submission of the budget, the Dean has never given us the funds on schedule". As Mr. Holt explained, the result of the at least one month delay has been that the Senate must use the pin-ball revenue to pay current bills. Moreover, the Dean has now indicated that the budget as submitted is the outer limit and he has required an analysis of actual expenditures in order to determine how much will be left over to apply to scholarships.

It is to this entire process that Mr. LeFevre directed his comment above. Instead of a given budget with regular quarterly payments from the Dean, the Senate now has to separately request each item. The expenditure of funds has been further strait-jacketed by the Senate's decision to use the accounting facilities and audit procedures of the Office of Student Services. Since checks can only be written on the first and middle of the month, the late arrival of promised funding is a fiscal disaster. As Pres. LeFevre reflected, the result of these absurd gymnastics by the Dean has been that the Senate has had to rely on the only available funds, the pin-balls. --Joel Newman
From time to time there are discussions within the law school of the old problem of cheating. Specific cases excite controversy about the general issue, but intelligent discussion of the latter is hampered by a dearth of hard information on how widespread the practice is. Since the Editors have given me free rein to discuss whatever I wish in this column, I will present some questions and speculations on a general level about cheating and then relate them, briefly, to information I have obtained concerning one of my previous classes.

1. What exactly is cheating? Does a student have an obligation to follow the rules for an examination (for example, against receiving aid from others), even if the student believes that those rules are bad for pedagogical or other reasons?

2. What is the proper role of the law student in eliminating cheating? Does the law student have an obligation to report the existence of cheating? If so, should he name names? Does he have an obligation not to name names?

3. What is the proper role of the law school or the teacher with respect to cheating? If the teacher attempts to regulate or eliminate cheating, does he merely enforce the rights of the cheater's fellow students which are infringed by cheating, or does he have an independent interest -- for example, the interest of the Law School (or more broadly, society) in maintaining honesty in the legal profession?

4. If the teacher has some proper role in eliminating or regulating cheating, is it a role which he may pursue if he wishes, or is it a role that he must pursue to perform his job adequately? Is there an "acceptable" minimum of cheating with which the teacher or law school should not bother, even if it has a general obligation to discourage cheating?

5. What is the proper sanction, if any, for cheating? A failing grade in the course involved? Expulsion from Law School? Something in between? Something milder?

Obviously this doesn't exhaust the list of questions one could ask. Answering such questions is an even greater problem. I couldn't hope to answer fully even one of the questions above in the space of a few columns of the Res Gestae, but then I suspect that I couldn't answer any of those questions really adequately no matter how much space I had. So I present a few speculations, assertions without reasons, and other non-objective evils:

I think that the teacher should act to discourage cheating, and in doing so I think he acts to vindicate the rights of non-cheaters and the legitimate expectations of the society upon whom our graduates will be inflicted.

The first of these justifications is easy to support. Other students suffer indirectly whenever anyone cheats. Whether or not grade curves or rank in class are affected in any particular case, students tend to be compared by employers and by teachers writing letters of recommendation. The person who cheats dishonestly distorts that process. (The process of comparison may not be perfect, but it takes a person of extraordinary self-confidence in his own judgment and abilities to rationalize cheating on the basis that he should rightfully have had higher grades and that cheating will therefore merely right an old wrong). Cheating also appeals to the armchair psychiatrist within me as a source of needless anxiety to a large number of students.
who do not engage in it. The person who believes that cheating is widespread in a particular class is put to the sometimes difficult choice between joining in or suffering a grade disadvantage with respect to the cheaters. Even the person who successfully resists temptation has been put through a strain -- sometimes severe -- which he should not have had to face. Moreover, continued exposure to such a strain may result in eventual capitulation -- a moral defeat for the one who capitulates, but largely due to the influence of the wrongful acts of others.

A second justification for the teacher's role in discouraging cheating is more attenuated, but nonetheless important. I think we have become increasingly aware in the last few years that the lawyer should not be merely a "mouthpiece", that is, he should not sell his services to the highest bidder without consideration of the effects of doing so. In short, a lawyer must apply good ethics, morals, and conscience as well as skill and intelligence to the tasks he undertakes. The student who cheats in law school exams is simply not as well equipped to fulfill such a goal. This is a kind of recidivism problem: it is easier for a person who regularly acts unethically in law school to act unethically once he is in practice.

The role of the student with respect to cheating is more difficult. Obviously he should avoid engaging in it himself. But what should he do when he observes others cheating? I wish we lived in a society in which it would be considered perfectly natural for the observer to confront the wrongdoer and demand that he stop, reporting the wrongdoing if necessary. I don't limit this desire to the narrow area of cheating on exams. I wish that private citizens would express their indignation when they see someone littering, or shoplifting, or parking illegally. (I am not looking for a society of busybodies who snoop for crimes without victims, but rather for a society of mature people who demonstrate that it is not only the law but the individuals who are governed by it that disapprove of selfish harm to others.) But we don't live in such a society. Our society tends strongly in the other direction, with occasional cases in which bystanders have refused to intervene or call the police while a person was being stabbed to death. Fortunately, matters are rarely so extreme, but nonetheless the presumption is usually against the person who speaks out. We have a whole lexicon of pejoratives for such persons: pidgeon, squealer, etc.

With such a background, I find it hard to expect of law students that they confront cheating, or that they name publicly. On the other hand, the danger of clandestine accusations against specific persons is serious enough to make that course unacceptable. My conclusion is that the student who observes cheating has a duty (and not merely a right) to report the existence of cheating. He further has the right (probably not often to be exercised for reasons stated above) to accuse a specific individual as long as he is willing to repeat his accusations in front of the person accused. (Sounds like a good constitutional amendment).

It will have occurred to some that the difficulties surrounding the question of cheating are another argument in favor of a pass-fail system of grading. I think that is true to the extent that cheating is merely a small
The possibilities for cheating are present to a lesser extent even with a pass/fail system, and we have no guarantees that we will ever have a pass/fail system.)

So how much cheating actually takes place in the Law School? In traditional legal style I have discussed theory first, saving the practicalities for the end. I polled my Commercial Transactions class after grading the final examinations, by mailing to each person in the course a postcard to return to me along with a cover letter explaining the purpose of the poll and emphasizing its anonymity. There were two ways that I identified to cheat on the take-home final exam. One was to consult with others; the other was to exceed an unpoliced three-day time limit which required a person to finish the exam within three consecutive days of the time he first read it. Both activities were very specifically forbidden in the written directions accompanying the exam, and the time limit had been voted for by the class to avoid feelings of competitive disadvantage vis-a-vis "tools". The questions on the postcard were as follows (except that I have added letters to them for reference in the discussion below):

1a. Do you have first-hand knowledge of any other student spending more than three days on the exam? Yes ___ No ___

1b. If so, how many students? ______

1c. If not, have you heard second-hand of such activity? Yes ___ No ___

2a. Do you have first-hand knowledge of any other student consulting with others on the exam? Yes ___ No ___

2b. If so, how many students? ______

2c. If not, have you heard second-hand of such activity? Yes ___ No ___

3. Did you spend more than the allowed time? Yes ___ No ___

4. Did you consult with anyone else? Yes ___ No ___

82 people were polled. 55 responded. 48 persons answered "no" to each question, that is, indicated that they did not cheat and had no knowledge of anyone else's doing so. (One of the persons so answering said that his knowledge was limited because he was not in the habit of discussing exams afterward, but expressed cynicism). Of the remaining responses, the following were the results:

--Three people answered "yes" to question 1a (first-hand knowledge that others' exceeding the time limit) and indicated that they knew of 2, 3, and 4 persons, respectively, who had done so. The person who answered "3" to question 1b qualified his answer by indicating that the persons who exceeded the time limit claimed to have spent only three days total, though not consecutive.

--Two persons answered "no" to question 1a, but qualified their statements by indicating belief or suspicion that another person had exceeded the three-day limit.

--One of the persons just mentioned also answered "no" to question 1b (respondent's spending more than three days), but added "Probably because I just didn't have more time to spend on it."

--One person answered "no" to question 3 (respondent's exceeding the time limit), but qualified his answer to indicate that he spent three days total, though not consecutive.

--One person answered "yes" to question 2a (first-hand knowledge of consulting with others) and indicated that he knew of one person who consulted.

I was disappointed by the response on the poll (55 out of 82): the procedure guaranteeing anonymity seemed
to me foolproof; I made a separate guarantee that if I should discover information I would neither use it nor pass it on; and I thought the subject matter of the poll interesting enough to students to prompt cooperation.

The answers on the poll respecting the time limit, read together, indicate that (1) certain persons were mistaken in what they believed others did, or (2) certain persons did not answer the poll, or (3) the persons referred to in (2) did not answer the poll honestly, or (4) the persons in (2) were mistaken as to the character of the time limitation (that is, thought that they had three days total rather than three days consecutive). All but explanation (4) cast significant doubts on the utility of this poll.

The answers respecting consulting with others indicate that (1) one person was mistaken about what another did, or there was (2), at least one person who consulted but didn't answer the poll, or (3) at least one person who consulted did not answer the poll honestly. All of these conclusions cast significant doubt on the utility of the poll.

My net conclusion from the poll is this: I can't be certain about the results because of the poll's incompleteness, along with the possible inaccuracy of some answers. I tend to believe that those who reported wrongdoing on the part of others were truthful (they had little motive not to be), and I have no substantial reason to believe that they were inaccurate. (It is disappointing that those who reported wrongdoing on the poll were silent, even as to the existence of cheating, before the poll was taken but during or after the exam.) My inclination, then, is to continue a significant policing role by trying to design procedures which minimize temptations and opportunities to cheat.

I would be interested in seeing a poll conducted throughout the Law School; perhaps such a poll could get a more complete and accurate response. That might be a worthy project for the Law School Student Senate. I would also be interested in general student reaction to my speculations and to the poll I took.

---James Martin

RELAX

(Ed. Note-- The following is an excerpt from the article "One Day in the Life of Guy Vander Jagt(R. Mich.)" by John Corry in April 1971 Harpers Magazine at page 71.)

He left television because that was just another branch of show business, and he went through the University of Michigan Law School mostly out of perversity. A dean had called him in on his arrival and said that Michigan was the finest and toughest law school about and that it was impossible to get through without the utmost devotion to law books and classes. The hell, Vander Jagt had said, and subsequently made it a point not to open too many books, and not to be particularly diligent about classes either. (Philip A. Hart, the senior Senator from Michigan, is supposed to have gone through Michigan Law School without opening any books. He was graduated No. 1 in his class; Vander Jagt, however, only made it into the top quarter.)
SUMMER JOBS IN DETROIT

Summer Internships are available through the Urban Corps in Detroit for law students. These jobs will be primarily legal research, and students will be attached to Recorder's Court, Corporation Counsel (city attorney), city councilmen, and assorted other agencies. Upon acceptance into the program, students will have the choice of the remaining jobs.

Pay: $3.25/hour currently, some chance of an increase to $3.50/hr by July 1, 1971.

Procedure for Application: All jobs are funded through the Work-Study program of the federal government; therefore all applicants must qualify for work-study through the University Financial Aids Office (2d floor, Student Activities Building). Applications for the Urban Corps itself will also be found in that office. Once applications are in, an Urban Corps representative will schedule interviews on campus through the Financial Aids Office.

If you wish further information, contact the Urban Corps office in Detroit at 224-3410, and speak to Michael Smith.

COMING DOWN IN THE COURTS

1. Parker v. Morgan (WDNC, 1/22/71) was a challenge to the North Carolina flag "desecration" statute. According to the law a "flag" was almost anything that was red, white, and blue and had stars and stripes. Moreover, included under the definition of desecration was defying or casting contempt upon the flag by means of words. Finally the statute was unclear as to whether all "marks" and "figures" upon a flag were in violation of the law, or only those which deface or cast contempt on the flag. The Court cited the Barnette case, (Board of Education v. Barnette 319 U.S. 624) for the proposition that the citizen has every right to be contemptuous of the government and its symbols, and held that the law was both overly broad and vague (on the matters delineated above) and unconstitutionally left local law authority too much opportunity for discriminatory, selective enforcement. "Flag" must be precisely defined and the "outermost limit" of a state's legitimate interest is "contemptuous physical conduct with the clearly defined flag".

2. In re Pappas (Mass. Sup. Jud. Ct., 1/29/71) and State v. Knops (Wis. Sup. Ct, 2/2/71) both dealt with the question of a newsman's right to refuse to answer grand jury questions to protect the confidentiality of his sources. See also Caldwell v. United States 39 LW 2281 (9th Cir., 1971), holding a newsman needn't attend a grand jury until the government could make a showing or an overriding interest and lack of alternative source of information. The Pappas case involved questions concerning what the newsman saw and heard in Black Panther headquarters during a police raid and the Court refused to adopt the Caldwell position that the First Amendment affords the newsman a privilege in this context. In the Court's view, any effect of compelling answers on the free dissemination of information is only indirect and relates only to the future gathering of news (isn't that precisely the point?). The newsman has the same privilege as the ordinary citizen -- to be free of unnecessary, oppressive questions -- and no other.
In a somewhat tortured reading of the Ninth Circuit's opinion, the Wis. Supreme Court succeeded in distinguishing Caldwell. The Knops case arose out of the Madison, Wis., arson and bombing of last August and concerned the Madison Kaleidoscope. The reporter was held in contempt for his refusal to testify, arguing that if he answered, his sources of information would disappear and the public would be deprived of crucial information (let's evaluate this claim). The Court said that Caldwell was inapplicable since here the investigation of a specific crime is of so serious a nature that the state has an "overriding interest" (once again 1st amendment rights are balanced away.) Moreover the court seems to say that the reporter has the burden of demonstrating the state has alternative methods of gaining the desired information, a rather silly requirement.

3. San Mateo County v. Boss (Ca. Sup. Ct., Jan 27, 1971) involved a challenge to the California Old Age Security law insofar as it required adult children of recipient of aid to the aged to contribute to the support of the parent. County brought the action to collect from an adult child accrued but unpaid monthly contributions toward the support of his mother and to obtain an order requiring him to make such contributions in the future. The effect of this statute obviously was to impose a disproportionate share of maintaining the aged under the program and the adult child charged that this was an irrational discrimination in violation of the Fourteenth Amendment's Equal Protection Clause. The court sustained the defendant's position, but only because the child is under no legal obligation to support a parent either at common law or under California law in the situation here. for this reason there was no rational basis for the classification and the imposition of liability was a denial of equal protection.

4. In Jackson v. Ogilvie (NDill. 1/28/71) a three-judge panel (one dissent) held valid, against equal protection and free association attacks, provisions of the Illinois Election Code requiring an independent candidate for public office to obtain a nominating petition with the signatures of at least 5% of the number of votes cast in the last preceding election for the office sought, and thereby put a further obstacle in the path of Jesse Jackson in his effort to wrest the job of mayor of Chicago from the Big Guy. The basis of the opinion was that the law does not impose on independents any requirements that are considerably more burdensome than those regular party candidates must meet, since the latter must first obtain the signatures of 1/3 of 1% of the registered party members in the appropriate election district and then participate in a primary. Does this opinion ignore the realities of big-city politics? Is the Northern District of Illinois really a federal court?

--Publius.

To the Editor:

I am a social coward and therefore I write this anonymously. There are those who will accuse me of not having a sense of humor, but I think that some lone voice should raise objection to the silliness of the election committee in their little game with the squirrel on the ballot and the reporting of this boyish prank to the Ann Arbor News. Let's hope that the new members of the board who were elected in the recent election don't become quite so overcome by their own cuteness.

(Anonymous)
ENVIRONMENTAL LAW SOCIETY

More About the Public Interest Law Firm

On Saturday, Feb. 27, 1971, three members of E.L.S. attended a meeting in Lansing with Walt Pomeroy and the Michigan Student Environmental Confederation to discuss the feasibility of establishing a Public Interest Law Firm in Michigan. At the meeting it was suggested that the Minnesota approach combining a law firm with a scientific study group was unnecessary considering the research groups already existing in Michigan like the U of M Student Environmental Counseling Service and that this project should be strictly a non-profit law firm which would litigate in the public interest. A representative of S.C.C. proposed a referendum concerning the student funding of the firm be placed on the ballot at U of M in about three weeks.