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University of Michigan Law School

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RES
GESTAE
JUNE 19, 1975

SUMMER STARTER '75

SPRING '76

LAW TERRARY
JUN 19 1975
UNIV. OF MICH.

SPRING '77

GRADUATION '77

By
FRANKLIN JEFFRIES,
ASPIRING SLUMLORD
Michigan Gov. William G. Milliken told graduating University of Michigan law students that political candor and old-fashioned "citizen involvement" may help the country overcome one of the most "skeptic and cynical" periods in our history.

The governor was the keynote speaker at "Senior Day" ceremonies Saturday (May 17) honoring some 300 graduating students of U-M Law School. Citing Watergate and the Vietnam tragedy as reasons for the current wave of "negativism," Gov. Milliken said "no progress will be made unless the people get out from behind their television sets and make things move."

"There are people in this country who would have us believe that nothing on earth is fit for consumption; that every government employe is an over-stuffed and useless bureaucrat," he said.

"Perhaps, in the past, the people who have run this country's business and its government have indeed promised more than they could ever hope to deliver.

"There is only one way to restore confidence in our American institutions," the governor said, "and that is to start delivering on our promises."

Milliken said he found some cause for optimism. "The resiliency of this country and its inhabitants, our ability to cope with diversity--this capacity is perhaps our greatest national resource."

Milliken said today's educational system "has taught people to think for themselves and not to accept at face value what their political leaders, their government or businessmen tell them.

"The ultimate consequence of this skepticism will, I believe, be to improve the quality of life in this country," he said.

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The legal profession now appears to be at a crossroads: there are indications of a growing surplus of lawyers, but at the same time, a large segment of the population does not have ready access to legal representation.

So says University of Michigan law Dean Theodore J. St. Antoine in an annual Law School report. He advocates legal advertising, competitive fee policies, group pre-paid legal services and other measures to make legal services more widely available at a reasonable cost.

"At the present time," St. Antoine says, "approximately 70 per cent of the population is not receiving needed legal services. The richest 10 per cent can afford lawyers. The poorest 20 per cent is at least partially served by legal aid societies, public defenders' offices, and so forth. This leaves some 140 million Americans of 'moderate means' (defined in 1970 as those with incomes between $4,000 and $15,000) who are unable to pay standard attorneys' fees and thus may have to go without necessary legal advice.

"Ironically, this deficiency in the delivery of legal services exists side by side with a growing surplus of lawyers. Following the spectacular upsurge of interest in legal studies during the last half-dozen years, the law schools of the nation have been graduating between 30,000 and 35,000 young lawyers annually--about 10 per cent of the total practicing bar. If this pace continues, the number of lawyers in the country could be doubled in less than 15 years."

One explanation for this apparent paradox, according to St. Antoine, is that "the middle class has perhaps failed to recognize its own need for legal counsel in purchasing a house, registering a consumer complaint, or seeking relief from a recalcitrant bureaucracy."

Restrictive rules of the organized bar are another impediment to more widespread legal services, according to the U-M dean. "Probably most important have been the strictures [SEE ANT P. 3]
of the canons of ethics and other bar association rules against (legal) advertising, competitive fee policies, and group pre-paid legal services."

Dean St. Antoine believes that some changes may be in the offing. "The leadership of the American Bar Association has favored liberalizing the canons of ethics to accommodate a wider range of group plans," he notes. "Many local bars have eliminated mandatory minima for fees. The expanding movement for specialization has been accompanied by a growing willingness to let lawyers classify themselves by area of expertise, thus enabling the uninstructed public to make a more intelligent choice of attorney."

Congress has also taken action, St. Antoine notes, by passing the 1974 Pension Reform Act overriding state bar rules prohibiting lawyers from participating in certain group legal services plans. And, notes the dean, the Justice Department has charged that fixed minimum fee schedules violate the nation's antitrust laws.

Dean St. Antoine stresses that measures for wider public access to legal services would be in the interests of law schools, the practicing bar, and legal consumers. "The bar does not wish to be overwhelmed by a flood of new lawyers far exceeding the absorbent capacities of the current market," he says. "The law schools do not wish to see their graduates going unemployed.

"Presumably, all wish the public to have adequate legal representation available at a reasonable cost. The challenge is to devise new structures for bringing together the many would-be lawyers without clients and the many would-be clients without lawyers, and to shape those structures in keeping with the spirit of the profession's finest traditions."

Discrimination

A University of Michigan law professor says a survey he conducted shows that many labor arbitrators may not be qualified to handle legal issues in employment discrimination cases.

Prof. Harry T. Edwards of U-M Law School notes that the most convenient way for employees to pursue charges of employment discrimination is through grievance and arbitration procedures—not through legal action in the courts.

But in a survey of all U.S. members of the National Academy of Arbitrators, completed in April 1975, Prof. Edwards found, among other things, that "only about 72 per cent of the respondents indicated that they felt professionally competent to decide legal issues in cases involving claims of employment discrimination."

The U-M law authority announced his findings in a recent address before the National Academy of Arbitrators meeting in Dorado, Puerto Rico. Based on the findings, Edwards concluded that, in deciding employment discrimination cases, courts should not accord "great weight" to previous arbitration opinions.

Edwards argued that "the nature of the arbitration process often will not allow for full and adequate consideration" of an employee's rights under Title VII of the 1964 Civil Rights Act. The survey also showed that many arbitrators themselves say "they have no business interpreting or applying a public statute in a contract grievance disput," the U-M professor said.

Edwards said his survey revealed that many arbitrators who did consider themselves competent in dealing with legal issues of discrimination did not keep abreast of relevant judicial and legal developments.

"Most of the respondents (83 per cent) who indicated that they had never read a judicial opinion involving a claim of employment discrimination also indicated that they did not regularly read advance sheets to keep abreast of current developments under Title [SEE HARRY p. 4]"
HARRY (cont.)

VII. Yet 50 per cent of this group of respondents nevertheless answered that they felt professionally competent to decide 'legal' issues in cases involving claims of race, sex, national origin or religious discrimination, "according to the U-M professor.

Edwards also cited the inability of this group of respondents to define certain legal terms mentioned in his questionnaire.

The professor concluded: "There is no reason to believe that the arbitration selection processes, as they presently exist, are designed to screen out unqualified persons in cases involving claims of employment discrimination."

The survey was sent to all 409 current U.S. members of the National Academy of Arbitrators, of whom 200 (or 49 per cent) responded.

Edwards noted that in a 1974 case (Alexander v. Gardner-Denver Co.), the U.S. Supreme Court did not prohibit arbitrators from hearing employment discrimination cases. But the court did make it clear, he said, that employees who enter into arbitration do not forego the right to court action under Title VII of the Civil Rights Act.

Edwards warned that "the courts should be very wary about reading 'Alexander' too expansively" and thus standing in the way of "full and complete judicial resolution of employment discrimination claims."

In the survey, said Edwards, "many of the responding arbitrators suggested that the quality of evidence given in employment discrimination cases heard in arbitration was deficient...This fact alone would surely suggest that the courts ought to be very careful before they begin to accord great weight to arbitration opinions involving claims of employment discrimination."

WE'RE LOOKING FOR PEOPLE WHO LIKE TO READ AND WRITE

PIRGIM REPORTS

BUSMAN'S HOLIDAY: PIRGIM DIRECTOR FIGHTS PARKING TICKET
By Joseph S. Tuchinsky, PIRGIM Executive Director

As everyone knows, a change of pace is necessary for a balanced and sane life. Thus, Mathematics professors use their free time to go backpacking. Calm, detached journalists go to baseball games and scream at umpires. Congressional committee chairmen take in strip shows.

What does a PIRGIM director do when he isn't busy fighting for environmental quality, consumer rights, or government reform?

Let me give you an example.

There was the evening my wife and I went to a concert at M.S.U., a dark, rainy night. We returned to the campus parking lot after the program to find a ticket on our windshield alleging we had blocked a loading zone. At night? And a rainy night at that? And with no sign in sight?

My motto is, "Pay the two dollars." Why waste valuable time contesting a minor injustice that probably can't be overcome anyway?

But my curiosity made me read the fine print on the back of the ticket. That's when I got mad. There were copiously detailed instructions on how to plead guilty and how to calculate and pay the fine. But not a word about how to plead not guilty and get a fair trial.

I wrote, then phoned, and finally visited the court. I announced that I wished to defend on Constitutional grounds, that the lack of information on my rights violated basic fairness and due process. This seemed to surprise court employees, who evidently are somewhat unaccustomed to Constitutional defenses in parking ticket cases. I refused to put up bail until trial, offering the court the choice of giving me "recognizance" (signature) release or keeping me in jail until trial.

Finally, the East Lansing district judge, a young man with a sense of both humor and
perspective, agreed to grant the recognizance release and allow me to argue the constitutional issues by pretrial motion.

My work puts me in touch with legal matters, but I'm not a lawyer and I know little of legal forms. And I couldn't afford to hire a lawyer for a parking ticket defense. I told the judge I would have to submit letters in lieu of briefs. He agreed to consider them.

My legal research consisted of rereading the amendments to the U.S. Constitution and thinking about the unfairness of the process, then writing it all out in a letter to the judge, with a copy to the prosecutor.

Soon I got a formal brief from the prosecutor, complete with case citations, arguing that there was no "due process" issue. I wrote another letter, criticizing the prosecutor's logic.

I visited the judge. He felt people should know their rights. But he seemed just a bit uncomfortable with the prospect of having to make a Constitutional ruling on a parking ticket case, perhaps in part because if it went my way it might invalidate every pending parking ticket in the court.

I suggested a compromise. I would withdraw my Constitutional argument. In exchange, the city would modify its ticket form to give clear and equal information about the guilty and not-guilty plea options.

He said I would have to discuss it with the prosecutor. Soon I got a phone call from a young assistant prosecutor acknowledging that, though I was wrong on the law (he said), it really wasn't very fair for the University or the city to offer such one-sided information.

But, he said, he couldn't change the form. I would have to talk with the city treasurer. I called him.

He said they had thousands of the forms already printed and it would be too expensive to discard them and print more—a waste of the taxpayers' money. Could they print the information on a separate attachment or the outside of the ticket envelope? No, that would also be too expensive.

No compromise. I waited for a trial date to be set. Then, one Saturday, I got an envelope from the city treasurer. In it was another envelope, the kind parking tickets are put in. Neatly printed on the back of the envelope were simple instructions on how to plead guilty or not guilty.

On Monday, I phoned the city treasurer and expressed pleasure at the decision. How much of the taxpayers' money had it cost to print the new information? An extra $8 for an entire order of envelopes, enough for many months, he answered.

I called the prosecutor and told him I was satisfied that my basic goal, a fair form, had been achieved. I suggested we settle the case: I would withdraw my Constitutional argument and he would dismiss my ticket. He counter-offered: I should plead guilty. I refused and suggested we go to trial on the Constitutional arguments. He said he'd talk with his boss.

Three days later the ticket was dismissed.

Today, if you get a parking ticket on the M.S.U. campus or in East Lansing, you'll find instructions on the envelope for pleading either guilty or not guilty.

Of course, this is a very condensed version of the story. The whole process actually took over eighteen months from ticket to dismissal.

That's why, if you're angry about a parking ticket, my advice is, "Pay the two dollars." Unless, of course, there's a principle involved. In that case, fight like hell. You'll probably win.
Under this plan, Michigan Bell predicts that about 95 percent of its customers would not be charged for any calls to directory assistance in a given month. Combining cost savings from reduced directory assistance calls and additional revenue from the charging plan, the company expects to come out $10 million ahead—equivalent to about $4 per year, or about 33 cents per month, for each customer.

This amount, Michigan Bell promises, will be returned to the customers, so that most of us should not only incur no extra charge but actually have lower phone bills. Unfortunately, it is at this point that Michigan Bell becomes vague. Its proposal does not offer actually to reduce individual phone bills by these amounts, though presumably the Public Service Commission has power to require it to do so. We suspect that what the company had in mind was keeping the $10 million but promising to request smaller rate increases in the future.

PIRGIM is now gathering information and considering intervening in this case. We're delighted at the prospect that a utility rate might actually go down. But because we're more than a little skeptical that we'll ever actually see that 33 cent reduction on a phone bill, we'd like to pursue guarantees that the $10 million savings will actually come back to the subscribers.

In addition, we find some inequities in the proposed system. If the basic goal is to encourage people to look up numbers in their phone books rather than call directory assistance, we don't see why they should have to pay to get numbers not in their phone books.

Why charge for directory assistance calls beyond the coverage of the local phone book but within the area code?

Why charge for numbers installed since the current directory was published?

These provisions penalize rural people, who more often have to call beyond the scope of their local phone books to reach acquaintances or businesses. They penalize people whose friends move more frequently, as students are compelled to do.

PIRGIM is now exploring the possibility of

[SEE PHONE p. 7]
a system that charges for directly assistance calls only if the number requested is not in the caller's local phone book. Such a system has been adopted in some areas of Canada, and we are looking into its feasibility for Michigan. Quite possibly such a system is somewhat more expensive to operate, but it seems far more equitable.

PIRGIM is now initiating surveys of student and community opinion on these issues—conducted, appropriately, by telephone. If you want to help, call or visit the PIRGIM office on your campus.

CREATING JOBS FOR MICHIGAN
By Richard Conlin, PIRGIM Staff Member

Michigan has one of the highest unemployment rates in the country, nearly 15 percent. Yet the state is ignoring a vital resource which could be used to create thousands of jobs.

The resource is capital, money available for investment. The state of Michigan holds a lot of capital as reserves for the payment of future pensions—over 2½ billion dollars. If this money were invested in creating jobs in Michigan, used as financial capital to back economic growth, it could (according to estimates of the average amount of capital needed to create industrial jobs) produce over 100,000 new jobs. Instead we are exporting those jobs to other states.

Each year the state and local governments are required to set aside a sum of tax money calculated by insurance analysts as needed to pay for future pensions for today's government employees. For each year a government employee works, a certain amount of money is set aside as a reserve to pay for that employee's pension in the distant future. The formula for calculating the reserve is complicated, taking into account statistical chances of death, resignation, and length of time on the pension for many thousands of employees. Right now, however, the fund exceeds 2½ billion dollars and is increasing by a quarter billion dollars each year.

This money is invested by employees of the state Treasury Department. Essentially, their philosophy is to put the money into stocks and bonds and attempt to outguess the stock market and select the right securities to make gains for the state.

Their investments are generally prudent, and generally have low but stable returns. Their returns now are around 5%—about as much as one could get from a bank savings account. But even such cautious investments were not proof against losses in the stock market declines of recent years. In the last six months of 1974, for example, they lost $13 million on stocks they sold. Their overall stock market portfolio has taken heavy paper losses. Some of their bonds are not completely safe, either—such as the $300,000 they invested in Famous Writer's School, now worth $750. Their present management, while reasonable, has made mistakes and is not making a great deal of profit for the amount invested.

This somewhat mediocre management is not the major problem, however.

The major problem is simply that we are letting this huge amount of capital, which could bring major benefits to the state, dribble away into the stock and bond markets, and be invested, for the most part, in other states. This money could serve two purposes for the citizens of Michigan: provide a reserve for future pensions, and capitalize industry and construction that would bring jobs to the state. Instead, it is doing only the first.

Very little of the state's money is being invested in job-creating Michigan industries and utilities which in many cases, sorely need capital. These businesses could provide a reasonable return, as much as industries.
JOBS (cont.)

In other states--and would give us the added benefit of jobs created for Michigan's workers.

Mortgages are another field where capital could be used, and where present state investments include apartment buildings in Puerto Rico and Las Vegas.

Why should money gathered from the taxpayers of Michigan be used to create jobs in other states?

PIRGIM has proposed a new system for investing money. In a report published earlier this year, Harvest of Jobs, PIRGIM analyzed the inadequacies of present investments and suggested an alternative plan. We believe the State should deliberately pump the money in these reserves back into the Michigan economy, building houses and factories and stores, or whatever else capital can be useful for. We proposed a new investment authority, in the State Department of Commerce, which would use the money in conjunction with state and local economic development authorities.

Of course, like any investment, this might involve some risk. But it would certainly be safer than gambling in the stock market, and there is no reason why we shouldn't be able to find sound Michigan investments to put this money into.

Even if the risk were equal to or greater than under our present policy, the returns from each success would be so much greater that even an increased risk would be well worth it. Today, we are paying a triple price by exporting our capital: we lose the jobs that could be created here, we lose the tax revenue these jobs generate, and because these jobs are not available we increase welfare and unemployment costs.

Michigan has high wages, good pension plans, and relatively generous employee benefits. For that reason, we have much larger pension funds available than other states, so even if other states followed a similar policy, Michigan would gain jobs.

Michigan leaders have talked about the need to create jobs in Michigan, the need to fund low and middle income housing and pollution control equipment, the need to diversify our economy.

What PIRGIM is really talking about is making our government do what it says: mobilize its resources to do something about one problem. Proper investment of state-held funds is one means to do it.