Reflections

The Era Analyzed

By Prof. Nancy Erickson¹

On November 4, 1975, the New York State voters will decide whether, pursuant to the ERA, sex discrimination will be finally and completely protected right in state.

The proposed Equal Rights Amendment to the New York State Constitution (NYERA) states:

"Equality of rights under the law shall not be denied or abridged by the state of New York or by any subdivision thereof on account of sex."

NYERA has been passed in two successive sessions of the state legislature and must now be approved by the electorate. If it is approved, New York will be the fifteenth state to have a state ERA.² Its significance is heightened by the fact that ratification of the federal ERA does not appear to be a certainty.³

The federal ERA was introduced in every Congress from 1923 to 1971; its passage in 1971 was due primarily to the "second wave" of feminism. The prominence of the pre-1971 decisions of the United States Supreme Court concluded that there appeared to be "no present likelihood" that the federal court would apply the Equal Protection Clause in a manner that will effectively guarantee equality of rights for women.⁴ The Movement's emphasis on advancing sex-based discrimination that disadvantages women is understandable; although feminists certainly recognize that men as well as women suffer in sexist societies, women have always suffered more, and blacks have always suffered more than whites in racist societies.

Since Congressional passage of the federal ERA, the United States Supreme Court has indicated an increased ability to recognize, and an increased desire to eliminate laws that clearly discriminate against women. The Reed case⁵ was the first step, Friedman marked a great advance, and the Stanfield⁶ case last term indicated that the Court is unlikely to retreat. Although an equal rights amendment is still needing guarantees to women protection against sex discrimination, at least the most blatantly discriminating laws are now being voided under the Equal Protection Clause.

On the other hand, challenges to sex-based laws that discriminate against men have not proved as successful. During the past two terms, the Court has decided three cases where men were charged with crimes that gave certain benefits to women (or to a subclass of women) which they did not give to men.⁷ These three decisions seem to create a new equal protection test in sex discrimination cases — a test under which many laws that discriminate against men can be upheld by the courts. Without an equal rights amendment, therefore, men may continue to be subjected to sex-discriminatory laws, and the courts may continue to decline to come to their aid.⁸

The first of these three cases was Kahn v. Shrunken,⁹ Mel Kahn, a widower, had applied for a property tax exemption under a Florida statute granting such an exemption to widows and to the disabled. Denied the exemption because he was not a widow, he brought an action to declare the statute violative of the Equal Protection Clause of the United States Constitution. The trial court overturned the statute; but the Florida Supreme Court reversed, and the United States Supreme Court affirmed the reversal.¹⁰

Justice Douglas, writing for

(Continued on Page 7)

¹ Nancy Erickson is a professor of law at New York Law School.
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⁴ The federal ERA was introduced in every Congress from 1923 to 1971; its passage in 1971 was due primarily to the "second wave" of feminism.
⁵ Reed case: a landmark case in the fight for women's rights.
⁶ Stanfield: a case that further clarified the Court's stance on sex discrimination.
⁷ These three decisions seem to create a new equal protection test in sex discrimination cases — a test under which many laws that discriminate against men can be upheld by the courts.
⁸ Without an equal rights amendment, therefore, men may continue to be subjected to sex-discriminatory laws, and the courts may continue to decline to come to their aid.
⁹ Kahn v. Shrunken: a case involving a property tax exemption law.
¹⁰ Justice Douglas, writing for the Court, reversed the trial court's decision.
for any race to be preferred"?

Douglas, had held that sex is a suspect classification, and women, women, for the purposes of employment... One common example of a law that would be unconstitutional under the Equal Protection Clauses is one that differentiates on the basis of sex, race, or national origin. Such laws are generally unconstitutional, unless they are narrowly tailored to serve a compelling state interest. The Supreme Court has held that sex is a suspect classification, and that laws that discriminate on the basis of sex are subject to strict scrutiny. This means that the law must be narrowly tailored to achieve a compelling state interest. If the state interest is not compelling, the law is unconstitutional.

The Equal Employment Opportunity Commission (EEOC) is a federal agency that enforces federal laws that make it illegal to discriminate against a person on the basis of race, color, religion, sex, national origin, age, or disability in employment. The EEOC investigates complaints of employment discrimination and enforces laws that prohibit such discrimination.

 Critics of Title VII argue that it is too broad and too vague, and that it is used to challenge practices that are not discriminatory. They argue that the law is used to promote affirmative action, and that it is used to promote gender quotas. They argue that the law is used to promote the interests of the government and the political parties, and that it is used to promote the interests of special interest groups. They argue that the law is used to promote the interests of the government and the political parties, and that it is used to promote the interests of special interest groups.
Alumni Dinner: Beame to Speak, Solomon Professorship Announced

by Elliott Horowitz

The Alumni Association of New York Law School is alive and well, and is presently in the midst of final preparations for its annual fall galah which will take place this year on Monday evening, November 15 at the Waldorf Astoria. (Cocktails at 8:15 in the Terrace Court; Dinner at 7 in the Hilton Room.)

The Dinner, which will honor the Alumni of 50, 60, and 70 years ago (classes '25, '35, and '45), will be highlighted by the presentation of a special citation to Joseph Solomon of the class of 1927. Mr. Solomon, who is a senior partner at the Wall Street Law Firm of Lehman, Biderbost, Solomon and Heffter, has recently added to his long list of beneficent acts by establishing the "Joseph Solomon Professorship of Law" at New York Law School — the first Chair to be endowed in the history of the School. (The individual who will fill this Chair will be named later in the year.)

Mr. Solomon's personal success is in large part directly attributable to "the sweat of his brow," for like many New Yorkers of his generation, he was raised in a large family by impoverished immigrant parents. Mr. Sol­­omon began his legal career over 60 years ago as an errand boy for a law firm; he is now a senior partner in that firm with an expertise in the field of estates, wills and trusts.

The citation which Mr. Sol­­omon is to receive will be presented, most fittingly, by a promi­­nent classmate of his, the Distinguished Justice of the Appellate Division, First Judicial Department, Hon. Emil Nudel, who himself brought much hon­­or to New York Law School by virtue of his illustrious career. The principal speaker of the evening will be none other than New York Mayor Abraham Beame, Chief Magistrate of the City of N.Y., a former Alumni of NYLS, who will take a pause from the weary problems of the Big Apple to address the Alumni.

The fever that won't break: THE RISING COST OF A MEDICAL EDUCATION

In one form or other, the cost of a medical education has risen sharply in recent years. The problem that can arise is whether or not the cost is justified in terms of the benefits received. It is a problem that is faced by all medical schools, and it is a problem that is faced by all medical students.

Ernst, a graduate of Williams College in 1940, said that he de­­cided to go to law school for a rather unusual reason. He claims that while he was strolling along a street in inner city Chicago, he decided to go to law school to help the poor.

At 86 Ernst still goes to his office 4 or 5 times a week to consult with his colleagues or to keep his patients informed. He feels that there is no difference between the problems of the poor and the problems of the rich.

Ernst received great pleasure in referring to himself as an "amateur at the law; a legal dile­­tante." When asked by Joseph Koffler, professor of law at NYLS, just what his definition of a dilettante in Ernst replied, "a lawyer who writes a lawbook without footnotes."

The "Thirteenth Annual Symposium on Health Law" was held in New York City on May 26, 1975. The symposium was sponsored by the New York Business Law Association and the New York City Bar Association. The symposium was attended by a large audience of attorneys and medical professionals.

The program included a panel discussion on "The Future of Health Care," a discussion on "The Role of the Medical School in the Training of Physicians," and a presentation on "The Role of the Lawyer in Health Care Reform." The panelists included: Dr. John P. Holditch, Dr. Samuel L. Rubinstein, and Mr. James D. Flaherty.

Ernst is well known among his colleagues for his extensive knowledge of medical law. He is a member of the American Bar Association, the New York Bar Association, and the New York State Bar Association. He is also a member of the American Medical Association and the American College of Physicians.

Ernst is the author of several books on medical law, including "The Lawyer's Guide to Medical Law," "Medical Malpractice," and "The Medical Lawyer's Handbook." He is also a frequent speaker at medical law conferences and has given numerous lectures on the subject.

Ernst is married and has four children. He lives in a large family home in New York City.

(Continued from Page 1)
No Federal Aid

Since our last editorial on the topic was published, the future of our city has become even more bleak. In that editorial, we agreed with the New York Law Journal that what is really needed is a massive federal program of emergency aid to the cities. We stated that the city's current financial difficulties in the short term, and would serve as a catalyst to begin a rebuilding of our central cities to make them viable entities. Instead, hope for any federal aid appears to be fading all the more. And now we know that Ford is not bluffing: New York came within hours of default with no last-minute federal action.

As future lawyers, we have great stakes in the outcome of the city's present crisis. Most NYLS graduates end up practicing in or around New York, so there is little likelihood that we will be able to personally escape the consequences.

The outlooks that have already been made serve only to further weaken the city. More corporations can be expected to move the week. More middle class income people will be fleeing to the suburbs as police and fire protection are reduced. Unfortunately, these consequences are obvious, but others, such as further overburdening of the courts, are subtle, but equally harmful in the long-run. And we will be the ones who will be expected to work in these courts.

Unless this federal government stops playing political games, before December, the future will be bleak indeed.

A Good Beginning

The annual alumni dinner to be held November 12th will be a notable affair. The principal speaker will be Abraham Beame, Mayor of New York City; other high political figures are also expected to be in attendance.

A most notable aspect of the evening will be the announcement of the funding of this chair. There are many committees that have student members. The faculty and administrators who serve on these committees should be thanked and commended. But how are these individuals to react to student impatience when the SBA has yet to recommend any student members? It's hard to tell whether this is a case of the chicken or the egg.

It's about time the students who so actively solicited our vote last year stop doing their imitations of bumps on a log and start to live up to their responsibilities.

Keep Clinics Alive

The course offerings and curriculum of NYLS have advanced considerably over the past year. A major achievement along these lines, was the addition of many clinical programs to the list of course offerings.

It was not long ago when many NYLS students asked the administration to meet the changing needs of our urban law school's student body by developing these clinical programs. The administration responded with many courses such as the Administration of Criminal Justice Clinic, the Law School Civil Practice Clinic, the Justice Clinic, and certain Judicial clinics, to name a few.

Unfortunately, recent registration figures for many of these clinics have been very low. In part this is due to students waiting to take other courses first, eg. Criminal Procedure prior to the Criminal Justice Clinic. But certain clinics have been almost ignored by the student body.

Of late, there has been a great deal of investigation into and review of the clinical offerings. We hope that there will not be any, or at most very few cuts in these offerings. We also hope that the newly enlarged student body will begin to take advantage of these clinics after their basic courses are completed.

Set Record Straight

The "evaluation" of law schools appearing in a recent edition of the New York Law Journal constituted a great injustice to NYLS.

As related in the feature article on the last page of this issue, the school has changed markedly in the last two years. The size of both faculty and library has doubled, and a whole new building has been added during that period. These are only a few of the major changes that have been introduced this year.

Clearly, Prof. Kelsen's "evaluation" was inaccurate, and we think it is up to the Journal to correct these gross inaccuracies.
EQUITAS

SBA PRESIDENT
ON COMMUNICATION
by Stephen J. Lo Presti

The worst thing that can happen to someone is being turned off. If we are asked to fill out forms, we should comply; however, if we do not, we cannot blame anyone but ourselves for no reaction. Nothing has been mentioned as to the courses to be offered next term; it is already mid-October. At many law schools when students sign for their courses at registration their final exam schedule is already set up so they may plan in advance. This practice is not even heard of at this law school. We are asked to report to classes three times a week. If students have to make an appointment with their instructors, they are unable to rectify the situation immediately. They must submit a request then the problem proceeds to the first sergeant. Next the form arrives at the platoon leader’s desk, and finally gets to the commandant. If soldiers have to make an appointment with an administrative office who may be out of town, it all boils down to a lack of communication. 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"Men Too Have Much to Gain..."

(Continued from Page 2) that "the mere recitation of a beneficence, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme." Then, assailing the actual purposes behind the statute, the Court found that the intent of the statute was not an automatic shield which could not be upheld. This, as shown by the Equal Rights Amendment is not as far in its intent towomen as men too much to gain from its provisions. Men, more importantly when men and women enter into relationships as equals, their relationships have a much greater potential for being deep, satisfying and rewarding. When women marry men seem to be the exception rather than the rule, such a possibility in no small matter, both for the individual and for society.

New York's child support laws make fathers primarily liable for the support of their children, whereas mothers are only secondarily liable. As a practical matter, equalization of the statute would probably have no effect on child support awards in the majority of cases, because a father is rarely wealthy enough to provide 100% of his children's support. However, in those few cases where a father is supplying full support for his children and the mother is not contributing, although financially able to do so, the NY-ERA would remove some of the father's burden. New York's child custody statute is neutral on its face — neither parent is presumed to be a preferable custodian; he would start with a blank slate.

As has been shown the Equal Rights Amendment is not an interest to women only: men too much to gain from its provisions. Men, more importantly when men and women enter into relationships as equals, their relationships have a much greater potential for being deep, satisfying and rewarding. When women marry men seem to be the exception rather than the rule, such a possibility in no small matter, both for the individual and for society.

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The Odyssey of a NYLS Grad

by Ray Marcus

The elevator ride to the 47th floor of 2 World Trade Center was an exciting experience, but the view from the office of Lee Miller was even more unforgettable.

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By Ed Sanock

The changes that are taking place at NYLS have undergone during the past few years have been innovative and dramatic. The school, which is somewhat stagnant past, is now finding its way. Perhaps the future will find it growing again. This is a proud institution, degree of respectability after decades of decline and stagnation.

Prior to the purchase of the main building at 57 Worth St., NYLS was located at Williams St., in an old seven story brick building. There were no elevators, professors and students alike had to climb a stairway to reach their offices and classrooms. Likewise, there was no air conditioning, and whether there would be any until the building was able to cool a winter day was the subject of speculation by many a legal scholar.

Finally, in 1942, the trustees of the school made their biggest move in over twenty years by purchasing the main building at 57 Worth St. This tremendous move was not precipitated by a desire to improve NYLS, but was rather formed upon the school by the city which condemned the old structure to construct the Police Department complex.

NYLS's policy has always been one of conservatism. Former Dean Guttman epitomized this philosophy by requiring that all students take a limited number of courses, regardless of how inconvenient or uncomfortable it might have been for those who were subjected to it. "This is a professional school," the ex-Dean used to claim. Unfortunately, fine exteriors did not necessarily produce brilliant legal minds.

After almost four disasterous years, Dean Guttman was replaced by another man who could do little better, Dean ReaField, who possessed this dubious distinction. The total scene in the last three years, related or unrelated, has been dramatic in view of the school's student body. Perhaps the building at 47 Worth St. has not alleviated the problem. Classrooms and elevators are always overcrowded. Library spaces, although increasing rapidly, is woefully inadequate. Even more rapid growth in the number of volumes has been hindered by a single lack of room. Furthermore, the books are arranged in such a fashion that you have to consider yourself fortunate if you find something that is listed in the card catalogue; there is no numbering system and references are shelved in order of their title. Perhaps even more significant is the fact that NYLS does not have its own dormitory facilities, which is still significant for us years as a local commuter college.

Opening the new storey building gave NYLS much needed office space. But some shortages still exist.

later, the only visible change was a broken window. The era of NYLS's history is characterized by an educational upheaval. The era of World War II was not only the "finest urban law school in the East," but was one of the finest in the nation, claiming graduates such as John M. Hartas and Robert F. Wagner, Sr., as well as lecturers such as Woodrow Wilson and Charles Evans Hughes.

With the hiring of E. Donald Shapiro as Dean, NYLS had its first "breath of fresh air" in over twenty years. Changes in the school have become commonplace. Almost immediately the Dean announced sweeping curricular changes, establishing a greater variety of courses while permitting students to harness more freedom in choosing their subjects. Prior to this time a student was permitted to take only 18 hours of electives in three years, whereas, at present, one may select 47 hours of classes to suit his personal desires or needs. As a consequence measure, the faculty size was more than doubled.

1974 was an especially significant year in the development of NYLS. In December, we were given A.A.L.S. accreditation, largely through the efforts of the Dean. Several months earlier, a new building had been purchased on Court. Even the research facilities have been improved by the addition of the Florence Library and a large number of recent acquisitions.

Statistically, the improvements have been astounding. In 1967, there were 448 students enrolled in both the day and evening divisions, with only 22 of these women.

In relation to its entire history, the past few years have been more remarkable. The school has previously been so lacking, however, that change cannot come fast enough.