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Wednesday, October 8, 1975

Reflections

A City in Crisis

by Professor Nelson Seitel

"There is a time for every purpose under the heaven," Ecclesiastes wrote, "a time to weep and a time to laugh." For the once proud City of New York, this is a time for tears.

At its special session in September, the Legislature placed our City in the hands of receivers, deprived us of home rule, and put our democratic processes into deep freeze. This is our present situation, despite the patina of statutory verbiage designed to color this dismal situation with a less dismal hue.

This law established an Emergency Financial Control Board (EFCB) of seven members, only two of whom are elected city officials, with the Board empowered to exercise complete control over the fiscal affairs of the City. And to the extent that the Board controls the City's fisc, it dictates the City's destiny.

This legislative program was developed by the Municipal Assistance Corporation, which was created last June. Based upon what MAC has done to our town in just a few months, the destiny for the City appears anything but rosy.

Under the legislation, all City revenues with minor exceptions, will be diverted into accounts maintained by EFCB. In addition, the legislation makes payment of City debt obligations the City's first priority, and to insure that this is done, EFCB is required to maintain a special debt service account which must at all times be maintained at levels sufficient to meet due obligations. It is only after this is done that remaining funds may be used to provide "essential services," a term which is undefined in the law.

This is a topsy turvey approach to municipal government. We have long since outlawed imprisonment for nonpayment of debt. Under this statute it is quite appropriate to murder the City for nonpayment. The general program as outlined by MAC calls for the City to have a balanced budget for the fiscal year 1978, a budget balancing act that will require according to MAC estimates a decrease in the number of City employees by 48,000, with accompanying decreases in municipal services.

The problem, as seen through the eyes of the bankers and underwriters who control MAC, is a "lack of credibility of the City's management and the clouded perceptions as to its actions" by investors. The solution then is to do things to inspire the confidence of investors.

This we have already done to a degree that may irreversibly have destroyed the economy of the City and that may have irreversibly destroyed the quality of life in our town. We have sharp-



Prof. Nelson Seitel

ly increased our subway fares and our bridge and tunnel tolls. We lopped 3000 cops off the payroll, and the arrest rate for felons in our town decreased by 13 per cent. We fired 1000 sanitation workers and now dispose of our garbage by the new technology of conflagration in the streets. We have undermined the standards of education in our public schools and colleges. We have cut back on our health and hospital services to a degree that an increase in the infant mortality rate and in the maternal rate is clearly predictable. We have offered investors MAC bonds at the unconscionable and extortionate rate of 11 per cent, and the investors refused to buy.

And yet MAC has nothing better to offer than more of the same medicine. Presumably the next logical step to open the eyes and checkbooks of investors is to convert our municipal libraries to massage parlors, because those

(Continued on Page 2)



Representative Rodino addresses graduating class. See story Pgs. 6-7.

\$85,000 HEW Grant Gives Consumer Center Impetus

by Elliot Horowitz

A new and unique program has been established at NYLS — the Consumer Law Training Center. The program is an outgrowth of an idea conceived and formulated jointly by Prof. Stephen Newman of NYLS, Nancy Kramer of the New York Public Interest Research Group, Douglas Ackerman of Brooklyn Legal Services Corporation B, and Scott Price of Community Action for Legal Services (CALS). These individuals and the organizations with whom they are associated will be the participants in this project, with the center being located at NYLS and the program being directed by Prof. Newman.

The CLTC proposal was submitted last spring to the Office of Education of the U.S. Department of Health Education and Welfare (HEW), and was one of fifteen selected from three hundred and forty proposals submitted nationwide, to receive a grant under Title I of the Higher Education Law. Notably, NYLS is the only law school in the country to receive such a grant for a consumer oriented program. HEW has awarded \$84,780 to the project, NYLS will be giving \$5,000 (services in kind) and CALS \$5,000.

What distinguished CLTC is its goal of community education as preventive medicine to consumer frauds. CLTC will not litigate consumer complaints; rather

it seeks to nip the problem in the bud by making consumers consciously aware of the traps and pitfalls present in the world of goods and services. Working in conjunction with a community, CLTC will implement its aim in three stages: 1) Identification and isolation of the particular problem; 2) Analysis of the problem and definition of the appropriate solution; and 3) Dissemination of educational materials to the public to obviate further recurrence. The last step will be effectuated via community workshops and printed matter.



Prof. Stephen Newman

CLTC will not, however, limit its endeavors to problems pecu-

liar to particular communities; it will appeal to the public at large, mainly through the medium of radio. Already a number of shows have been taped (e.g. "Debt Collection Abuse" and "Door to Door Selling" — WKTU-FM 92.3) and approximately two dozen topics are being considered for future taping.

While the project will employ paid full-time help — an attorney is being recruited to act as over-all administrator under Prof. Newman's direction, and a secretary has already been hired — the program will be staffed in the main by NYLS students enrolled in Prof. Newman's consumer-protection clinic. Other students interested in volunteering their services are requested to contact either Prof. Newman (102/47 Worth) or Greg Coburn (third year day) who is assisting in all phases of the project. Some input is anticipated from the NYLS faculty and a number of prominent public officials have expressed interest in the program; State Attorney General Louis Lefkowitz for example has offered his aid, as has Assemblyman Andrew Stein.

Overall CLTC seems destined for success. It has the necessary ingredients of competence and enthusiasm among its participants and a great deal of experience to draw on in Prof. Newman, New York Law's consumer advocate extraordinaire.

Development Office Begins Mission

by Vic Pino

One of the many innovations implemented by Dean Shapiro has been the establishment of a full-time office for development. It is a welcome addition to our administrative functions and was long overdue.

The director of the Office of Development is Ms. Lucielle Cesarone. Ms. Cesarone comes to NYLS with a wide range of experience in securing funding for charitable as well as academic institutions. She has acted as Director of Alumni for Chatham College in Pittsburgh and Finch College in New York.

The basic purpose of this office, as explained by Ms. Cesarone, is to establish a more beneficial relationship with the institution's constituents. These include the alumni, the legal community, the press, the business community and the various charitable foundations. The first priority in developing these relationships is in working more closely and in conjunction with the alum-

ni. Ms. Cesarone has been acting as an advisor to the Alumni Association. She has undertaken numerous projects that will assist the association in its effort to increase contacts with NYLS graduates.

The staff in the development office has been working during the last few months in compiling essential information pertaining to NYLS graduates. This information includes the geographic positions they are now holding. Previously this information was location of the alumni as well as not accessible in a concise form. However, through the efforts of the development office the information is now available to the various interested groups within the school.

Ms. Cesarone believes that the accessibility of this information will lead to a greater and more consistent flow of communication with the alumni. The end result will be the increased interest of NYLS graduates in our institution. The reasons for this are ob-

vious: increased donations to the school, better job opportunities for NYLS graduates, more programs for the alumni at the school and greater self-esteem.

One of the primary goals of the office is to develop contributions from philanthropic organizations. An initial requirement for funding is a well thought-out presentation. Next the school has to have demonstrable proof of administrative as well as alumni backing. This is where the Office of Development plays an important role. Essentially the office takes the school's image as a whole and attempts to convince the foundation that the institution is worthy of a program grant. In effect, the office has to "sell the school." If the school's image is tarnished by disgruntled or apathetic alumni the foundation might not rule favorably on the application for a grant.

Previously, the area of foundation funding has been untapped

(Continued on Page 3)

Prof. Erickson Joins Expanding Faculty

by Ed Sanocki

NYLS continues its quest to become the major urban law school in the East. One of the more recent additions to NYLS' changing faculty is Professor Nancy Erickson, who is teaching Family Law and Evidence this year.

Originally from New Jersey, Prof. Erickson began her college studies at Hope College in Holland, Michigan, where she planned to major in Philosophy and Religion. After two years, she

transferred to Vassar and changed her major to history. She graduated in 1967.

Upon leaving Vassar, Prof. Erickson began to work for the Department of Social Services in New York City. As a social worker she felt a true sense of frustration and helplessness in that the city's efforts provided no real aid for those in need. It quickly became obvious to Prof. Erickson that the law played an important role in the lives of these people;

New York's poor were plagued by landlord-tenant, matrimonial, and consumer problems that were not being remedied by the various and sundry programs which the city had to offer.

Somewhat disillusioned, Prof. Erickson left New York in an attempt to help people elsewhere; she joined the Peace Corps and was sent to India. While there for two months, it became exceedingly clear to her that women were to play a subordinate role in the plans of the Corps. In answer to the query why female Corps members were receiving different and less-important training than their male counterparts, the official reply was, "We don't really expect women to do much of anything. There are serious psychological and social problems in sending single men to India." A large group of the female Corps members, including Prof. Erickson, left a short time thereafter.

Returning to the U.S., Prof. Erickson flirted with the idea of graduate school and began to do social work again. More importantly perhaps, she strongly felt a need for change in our society and concluded that the best way to accomplish this was to know about the law and to promote reform through the legislative and judicial processes.

After taking two courses in law at the New School for Social Research Prof. Erickson applied to, and was accepted by, Brooklyn Law School where she became Editor-in-Chief of the Law Review. To meet expenses, she obtained a part-time job taking notes for a handicapped student who completed his studies last year.

Prof. Erickson was involved

with the women's movement throughout law school, especially in the area of sex-based discrimination. Since graduating from Brooklyn in 1973, she has travelled the lecture circuit, speaking on topics such as matrimonial law and equal rights amendment at Vassar, Bard, and other well known campuses. For a short period of time, she also worked for a law firm in the city, but felt she needed more time for writing and research projects. Her position at NYLS is particularly suited to such endeavors.



Prof. Nancy Erickson

Prof. Erickson says she likes the college atmosphere and enjoys teaching. It is particularly important to her that the students learn the material, not merely that they pass the course. "Law school should be an interesting as well as an educational experience," says Prof. Erickson. Her main efforts will be directed toward that goal.

New Name For Caucus

by Anita Miller

2nd Careers held its first meeting of the semester over lunch at Gil's on Wednesday, September 10th.

"2nd Careers" is the new name for the Older Students Caucus. Because of the difficulty in determining at what point a student is considered "older," and because of a general reluctance in American society to accept oneself as being "older," it was decided, before the meeting, to change the name of the organization.

The new name of the organization is indicative of the purpose of 2nd Careers, that is to attract as members all students, who, because of their previous experience in other professions, careers, or life activities, might have unique concerns in their adjustment to student life at NYLS, as well as in their entry into the professional world as law school graduates.

The discussion at the meeting centered around a definition of 2nd Careers as an organization, and the development of goals and programs. The organization has in the past provided the shared personal resources of members in helping each other to adjust to life at NYLS. This function will continue.

Other possible functions of the group this year include providing information about professional opportunities which will exist for members upon graduation, providing service to NYLS, providing programs of academic and professional interest, and providing the traditional function of an "interest" group within the Law School.

'City default some time in December'

(Continued from Page 1)

are profit generating institutions, whereas libraries are budget expense items.

It may indeed be that our City can no longer afford the luxury of operating a School for the Deaf and Bellevue Hospital, free tuition at the City University, a network of museums and cultural and recreational facilities that are open to all, residents and non-residents alike. Yet these are some of the qualities of our City that make it comprehend, in the felicitous phares of Gibbon, "the fairest part of the earth and the most civilized portion of mankind." I am convinced that our City can afford these things.

What our City cannot afford is to pay 11 per cent or higher on its bonds. On the \$5 billion of such bonds that MAC is authorized to issue, I calculate that we will be paying excessive interest amounting to about \$200 million annually. In my judgment, the one thing that our City cannot afford to do is to pay \$200 million a year in excessive interest rates.

Those of us who own the City's general obligation bonds know perfectly well that we are not entitled to top priority on the City's finances. What we invested in really was in the viability of our City. Its viability is the sine qua non of our investment's security. I suspect that is the reason why City bondholders have never contested the constitutionality of the Act creating the Municipal Assistance Corporation and the Act creating the Emergency Financial Control Board. In our own dim witted way we are confident that the City will overcome these afflictions.

From a legal point of view there is much that is questionable about the validity of those acts. For example, in order to finance MAC bonds, the State has diverted from the City's revenues the sales tax, the stock transfer tax, and per capita State aid to the City. Do not the holders of the City's general obligation bonds have a priority on these funds? We now have a State sales tax of 4 percent in each of the 57 counties of the State, except that in the five counties comprising New York City, the State sales tax is 8 percent. May the State levy a tax that is not geographically uniform?

In connection with the legislation creating the EFCB, the State took control over the City's fiscal affairs, although such action is clearly prohibited by the Constitutional provision, that is more than a hundred years old,

which restrains the State from so interfering with the affairs of a municipality. It seems to me to make little difference that the City Council dutifully enacted a home rule measure. Suicide is a prohibited act under our laws, and our elected members of the City Council have no right to commit our people to so disastrous a course.

In my opinion the City will be in default some time in December unless the Federal government undertakes a rescue mission. In view of statements of President Ford, Treasury Secretary William Simon, and Federal Reserve Board Chairman Arthur Burns, there will be no Federal rescue mission. The only steps that the Federal government is prepared to take are those necessary to preserve the liquidity of banks.

The reaction of the Federal officials to all of this is curious. The events in the City have already undermined the capital market for municipal and State bonds and have sent interest rates on tax exempts sky high. Default by the City will be a disaster for virtually all communities in the Country. Strangely enough, the only community that will escape that disaster is our own City. We will be as calm as the eye of a hurricane. The day after we default, the sun will rise and the sun will set. Our subways will run. Our police, firemen, teachers, and other public employees will be doing what they are supposed to be doing. Those of us who own general obligation bonds will learn the virtues of patience as we wait our turn to be paid.

Time is an enemy of all living things, but in the life cycle of cities our end remains in some distant future. Time is also the great healer, and in time our City will once again be the great magnet for the talented and the oppressed, for the rich and the poor, for all those who want life to be challenging.

* Professor Seitel is secretary of the Board of Editors of the NEW YORK LAW JOURNAL.

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A Change from Guns to Gavel

PART I by Gary E. Dolan

During a "halftime" in Contracts II class last year, I was asked a provocative question by one of my classmates. Unfortunately, my response was curt and ill-advised. I should have been more sympathetic, especially since other students have made essentially the same inquiries of me. Having now taken some time to reflect and deliberate, I will try to respond fairly and fully.

The gist of the questions is how can I reconcile my previous professional military service (notably my volunteer combat service in South Vietnam) with my present vocational interest in a legal education. To formulate an answer I have made the assumption that the many inquirers suppose some inherent dichotomy between being a member of the armed forces and a member of the bar. To the extent my assumption is incorrect, I have misunderstood the essence of the questions. Perhaps all that was

questioned was my justification for having volunteered for combat service. However, since that exploration is necessarily included in the answer to the question of reconciliation, I retain the assumption. So you might better evaluate my viewpoint, let me advise you of some factors which admittedly have heavily influenced me and had no little effect on my strong convictions. The first seventeen years of my life as an only child I was an "Army brat," my father having worked his way from Private to Colonel. The next year I was supposed to have spent some time studying at Ohio State University while employed part-time at a sorority. The following four years I loved hating West Point, graduating from U.S.M.A. in 1969. The last 5+ years before entering NYLS, class of '77, I spent in the Army, receiving my discharge as a Captain on August 1.

Why? Part II Next Issue

Placement Picture: A New Hope Arrives

by Glenn von Nostiz

For students expecting to start job hunting next year, there is both good and bad news. First, the bad news: The state and city governments have virtually stopped hiring, and in fact may begin to lay off legal staff. Proportionately, New York Law School students have taken more of these local government jobs than students at other law schools, making the impact here especially severe. Additionally, the federal government is no longer actively recruiting on campuses, and the Legal Aid Society is filled for at least the next few years. According to Associate Dean Margaret Bearn, Legal Aid has even gone so far as to "dishonor" some of the hiring commitments they made for this year.



New Placement Director Ms. Robin Edwards

Now the good news: NYLS' New Placement Office opened

last Monday. It is headed by Ms. Robin Edwards, formerly Assistant Placement Director at Columbia Law School. The new placement office, on the 7th floor of 57 Worth St., will contain space for students to sit down and read the expectedly expanded amount of material concerning jobs. The office will also handle summer employment, concentrating on placing second year students in summer positions. There was considerable delay in getting the new Placement Office started, but Dean Bearn explains that this was due only to the desire to obtain the most qualified person for placement director possible.

According to Dean Bearn, the school is working aggressively in other ways, to increase the number of job prospects for graduating students. During the summer, the Development Office investigated the whereabouts of many school alumni in an effort to inform them of changes that have occurred at NYLS and to encourage them to hire graduates of their alma mater. There is also a judicial clerkship committee, formed with the purpose of investigating the possibility of obtaining more lucrative judicial clerkships for NYLS graduates.

Dean Bearn stated that the school will continue to work with students long after they have graduated, so that students with non-legal or semi-legal jobs can move into positions where they fully utilize their law school training.

The administration is now in the process of surveying the 1975 graduating class to determine how successful they were in finding employment. The response so far has been small, but the number of responses to the survey is expected to grow as more and more graduates find jobs. "Obviously there are a lot of people who still have not found jobs," Dean Bearn stated, "but we will continue to work with them." The Associate Dean also reported that there are many students working in legal-related jobs, such as insurance and real estate. They may still take advantage of the placement service to find new jobs.

There is not much encouragement in store for students in the bottom quarter of their class. The opportunities for these students are extremely limited, although their disadvantage can often be overcome with work experience. Dean Bearn suggests that part-time jobs can often turn into, or lead to full-time positions upon graduation, and that the criterion for performance in such situations would be 'on the job' performance, rather than academic standing.

Overall, the job situation is certainly no worse than last year. The ill-effects caused by state and city cutbacks is being offset by the school's apparently determined effort to increase the number of job prospects. The administration is actively contacting law firms in the city, and the number of firms reportedly interested in hiring NYLS graduates has increased. As a result, more and more firms are coming to New York Law School for interviews.

Additionally, the economy seems to be bottoming out, meaning that the number of new lawyers being hired by private firms should begin to increase. Even the Legal Aid Society will some day start hiring again, if only due to the effect of attrition.

Placement News

Sept. 11, 1975 — An opportunity for bi-lingual (Chinese-English) person with at least two years experience as a para-professional legal assistant instructor or recent law graduate to work in para-professional training project in Chinatown.

Please see placement office for details of application procedure. Job #13.

Sept 11, 1975 — Ninety day assignment as Special Assistant to the Associate Commissioner for Student Assistance. Under the auspices of the U.S. Office of Education three concurrent ninety day assignments will be filled during the 1975-76 academic year. To qualify, applicant should have one year experience in institutional or state student aid or student service administration. Travel expenses will be paid to and from Washington, per diem of \$33.00 per day for thirty days — \$21.00 per day for remainder of assignment. If interested, please call Dean Bearn. Job #12.

Whitehouse Fellows

Sept. 17, 1975 — Information concerning the Whitehouse Fellowship Program is available in the placement office. This very prestigious program is open to persons between the ages of 23 and 35; fellows serve as special assistant to the Vice President and to members of the Cabinet and of the President's principal staff.

Attorney 5 yrs. Experience

Sept. 11, 1975 — An outstanding corporation seeks an attorney for its legal department consisting of five lawyers. Must have graduated in top 25% of class and have the versatility to work in the following areas of corporate law. Energy Resources, OSHA, Food and Dietary Law, Import Laws, Wage Laws, Antitrust Laws, National Labor Law, Environmental and Product Liability, EEO.

Salary commensurate with experience. Please send detailed resumé to Dean Bearn and call for particulars. Job #11.

Development...

(Continued from Page 2)

by NYLS, due in large part to a lack of concerted effort. The Consumer Law Clinic, recently funded by HEW, illustrates the benefit from such grants.

firm or company he is associated with and his area of concentration. Hopefully this will facilitate communication between present students and the alumni.

The Development Office is lo-



Assistant Ms. Judy Gumperts and Ms. Lucille Cesarone, Director of Development

Some of the programs Ms. Cesarone plans for the future are annual fund raisings coupled with a possible phone-a-thon, a periodic alumni newsletter and a comprehensive directory of lawyers who have graduated from NYLS. The directory will contain the attorney's name, the state in which he practices, the

cated on the sixth floor of 57 Worth Street. Ms. Cesarone and her assistant, Ms. Judy Gumperts, are working assiduously toward establishing a stronger, more beneficial link, between the students and the alumni. The office student desiring information has an open-door policy and any should feel free to stop by.

HOW TO MAKE MONEY PRACTICING LAW

by Volney F. Morin

A book first published in 1966, but the new Fifth Edition is as up-to-date as a new hairstyle. The price of \$12.95 seems high, but every other page contains a nugget as to how to increase earnings from a law practice. The book is highly readable, practical and is a great refresher course, from Ivar Publications, P.O. Box 1855, Los Angeles, California 90028.

The author's main thrust — to have a zero accounts receivable balance by the use of deposit fees — is intriguing.

This "method" may not work in all situations, but any progress would result in a higher collection ratio for fees charged. The author points out that equipment for a modern secretary station will probably cost from \$10,000 to \$20,000, and payments must be met. He clearly explains practical methods of attracting legal business in an ethical manner, and, more important, how to keep clients after original engagement.

The sections on public relations cover involvement with client, staff and other attorneys. These sections should be read and re-read by every lawyer in public or private practice. Morin's statements are a unique blend of psychological principles and personal experience.

The author clearly has some tried and proven methods. The book will make you stop and reexamine your own methods of operation and unless you are a successful genius, you will find some ideas to adapt into your own system. The cost of the book can be earned from better relations with your next client.

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Equitas Editorials

With Growth: Pain

The curriculum has increased, the faculty has increased, the amount of space has increased and so has the student body. Fortunately, along with all of these increases has come improvement. Unfortunately, along with the improvement has come "pain." However, this is not at all unusual, most change is accompanied by certain problems — problems which hopefully can be worked out.

One such problem has occurred for those students now in the second year day class. These students were required to take the course, Agency and Partnership. Nevertheless, the faculty voted to make Partnership a part of the Corporations course, thus increasing this one semester three credit course to a one semester four credit course. This change alone creates no problem. The advisability of a four credit Corporations course is not in question. It was a faculty decision presumably based upon solid academic principles. The problem arises from the fact that the change was instituted immediately. What of those students who have already taken Partnership? Must their class time be subject to unnecessary duplication?

It is hoped that the faculty and administration can see fit to alleviate this "growing pain" by offering the three credit Corporations course one more time for those students caught in the middle.

Finally

Finally NYLS has a full-time Director of Placement as well as a full-time Director of Development. To these individuals we say good luck. To the students we say, take advantage of these offices. Make them work for you as is their job. And finally to the alumni we say look! Become aware of the changes that are taking place. Become an active part of the NYLS community.

Is It Too Late?

We wholeheartedly agree with Professor Nelson Seitel's estimation that New York will default on its obligations by the end of December (see story, page one). This is the immediate problem the city faces, and it cries out for federal intervention. While federal officials believe only that they will have to shore up some banks if the city does default, we fear that they will learn soon after the default that the nationwide effects are somewhat more serious. In short, there will be direct and very discernible effects on the municipal bond market, meaning that cities as far away as Anchorage, Alaska will have difficulty raising capital. Meanwhile, President Ford has been telling curious foreign leaders that the only problem is that New Yorkers do not know how to manage their money.

The problem is not limited to New Yorkers, as Mr. Ford would like to believe. It is nationwide.

Thus, the response has to be national. We endorse the proposal made by New York Law Journal, publisher Jerry Finkelstein. Mr. Finkelstein, in a front page editorial, called for a \$100 billion federal aid program, on the scale of the Marshall Plan, "to help finance the rebuilding and restoration of our urban centers." We feel that some of this money could be used to stave off immediate collapse, but most of it would be allocated toward making long-term improvements which should ultimately restore the tax base and viability of our great urban centers. Tax-paying people and institutions must be attracted back into the city, where they belong, if we are to avoid even more budget crises.

The Grade Problem

Last year we witnessed two rather perturbing problems concerning the distribution of grades at NYLS:

First, the second semester grades were mailed to students nearly two months after the last exam had been written, in spite of a new regulation requiring that professors submit exam and course grades within three weeks after the testing period has ended.

Second, the faculty unanimously voted not to allow the posting of grades, thereby making it impossible for students to determine how well they fared in a particular class in comparison with their colleagues.

We believe there are a few good excuses for the first situation. Some professors abided by the new three week requirement. Unfortunately, there were a number of holdouts among the faculty, and it was largely because of them that the grades were received so late. Of course some professors have too many exams to mark. The students should not be tortured by such an extended period of anticipation. Yet promises were made that grades would be sent earlier. Neither the faculty nor the administration delivered.

The second above-stated problem is a somewhat more complex issue. We know that most undergraduate and graduate schools post grades. It is the rare exception, indeed, to find a school (including law schools) where students are not allowed to see all of the grades in a given class.

The faculty and administration argue that grade posting only allows students to choose the "easy professor" who gives high marks. While there may be some truth to this, we think any evil inherent in such a practice is more than outweighed by the students' right to know. There are, as far as we can determine, few truly valid educational reasons why non-posting of grades should be the rule. Could not some system be worked out whereby students are allowed to see their grades? Why such secretiveness?

SBA PRESIDENT

An Honorable Solution

by Stephen J. LoPresti

Now that the difficulties of first year orientation and the inception of the school year are behind us, the task at hand becomes the even more monumental problem of designing an equitable final examination schedule. Trying to please everyone, of course, is impossible, but arranging exams to suit students is not the only obligation to be overcome. In addition, there is the necessity to formulate a schedule which can be proctored both reasonably and economically. It seems to me that, the students by virtue of their commitments and sacrifices which lead up to final exams should have priority in scheduling matters, regardless of the position of the administration.

The contradictory nature of the situation leads me to what I believe the most equitable and honorable solution — institution of the honor system for final examinations. The problems which accompany an honor system for final examinations are not to be denied, however the benefits merit our taking a serious look.

In a legal system where so much emphasis is being placed on ethical conduct and where sanctions against unethical practices are being more strictly enforced, what better time to indoctrinate the aspiring lawyer to his professional responsibility than during final examinations? Since every student has been introduced to the Code Of Professional Responsibility at first year orientation, he or she should be well aware of the implications of the Code and prepared to accept its moral burden.

The system at present has more faults than an honor system would. To begin with, more than one proctor is superfluous. Administration of an exam need take the service of no more than one person to hand out and collect papers. The security aspect of the proctor's presence is at most minimal — any student who wants to cheat badly enough will do so regardless of how many proctors are in attendance.

Since we are supposedly mature individuals, at most four years away from practicing law in the real world, it's about time we were treated as such. If given the opportunity to work under an honor system, I am sure our students would realize the responsibilities necessitated by the institution of an Honor System and would perform admirably.

At Yale Law School, (where an Honor System is in use) the policy is as follows: a student signs out the exam he/she is taking and is given twenty-four hours to return it. The system proceeds as follows: you may sign for any exam you wish to take during the testing weeks. For example, a student may sign for "Sales" on January 10, Thursday at 10 A.M., the student must return that exam completed on January 11, Friday at 10 A.M.

Since this approach is not practical for NYLS, because of lack of manpower, as well as, lack of space let us propose another solution. Let the student come in and sign for any exam he/she wishes to take, give them the exam and the two, three or four hours allotted for each exam. Assign rooms where these exams can be taken; appropriate rooms for each two, three or four exams so as not to disturb other students, and enforce the rule that if the student does not return the exam and sign out for it in appropriate time, he/she forfeit the exam.

This system requires both honesty, and integrity, as well as efficiency, character traits of any lawyer.

The editors and staff of EQUITAS welcome the opinions of the students, alumni, faculty and administration of NYLS. "Letters to the Editor" are always welcome. If you wish to write for the newspaper or work with us in any capacity, please contact us at our office in the basement of 47 Worth Street.

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Letters to the Editor

NLG Speaks

Dear Editor:

We're appealing to those of you who don't see yourselves pursuing a career in corporate law but rather would prefer to use the valuable legal skills which you'll acquire in law school in order to achieve meaningful social goals. We hear a lot lately about the overabundance of lawyers in our society and how difficult it is to find a job, but, in truth, the only abundance of lawyers is in the corporate fields where the few lawyers who are lucky enough to be employed devote their lives to protecting the favored status of their giant clients. On the other hand, there are not nearly enough lawyers who are willing to pass up the questionable luxuries of a 9 to 5 Wall Street practice in order to serve the needs of the poor — or even the middle class — in this country, who are desperately in need of legal assistance.

The National Lawyers Guild was founded in 1937 as an alternative to the American Bar Association which at that time (and still does today) served as the bastion of the most conservative and self-interested legal and political elements in the profession. The preamble to the constitution of the NLG adopted in 1937, most adequately states our aims:

operates its own law school in California which teaches people their legal rights.

Here at New York Law School the emerging prominence of the National Lawyers Guild reflects the school's growing awareness of the need for a more viable interaction between the community and the legal profession. Since its founding this chapter has become one of the most active student groups in the schools. We have brought into the school speakers who are actively working in such areas as public interest law, criminal defense, prisoners' rights, landlord-tenant and housing law and international law. Our chapter also co-sponsored a large citywide conference held last April at NYU Law School on alternative legal practice.

This year we intend to get more involved in research and lobbying. Some of our members are already involved in the civil suit being brought on by and on behalf of inmates involved in the Attica uprising and we hope to oppose and change the new class action rulings. Another important function of the Guild particularly for first year students is to find others in your class who feel the same way you do about the law. Join us every Wednesday at 11:30 in room 302 of 57 Worth.

Loren Baily Rodstein

The National Lawyers Guild is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests. Our aim is to bring together all those who regard adjustments to new conditions as more important than the veneration of precedent; who seek actively to eliminate racism; who work to maintain and protect our civil rights and liberties in the face of persistent attacks upon them; and who look upon the law as an instrument for the protection of the people, rather than for their repression.

The kinds of activities the Guild has engaged in over the years through its national office (which is here in N.Y.C.) and its more than 50 local chapters include: a wide-ranging defense of civil liberties during the McCarthy era, extensive involvement in the civil rights and anti-war movements, defense work in all the recent nationwide political trials, and most recently the Guild has done the legal work for the Indians at Wounded Knee and the defense in the Attica trials. In addition the Guild sponsors many projects which seek to serve the legal needs of diverse communities such as: the National Women's Committee, the Grand Jury Defense Office, the National Electronic Surveillance Project, and the United Farmworker's Project. The Guild even

The Grade Mess

To the Editor:

The Administration has done it again. Although students were told after they received their first semester grades (six weeks after exams were given) that corrective action would be taken to get the second semester grades out as soon as possible, the second semester grades were not sent until the end of July. These grades were, of course, important to all students but they were of special importance to students on probation during the first semester, who did not know if they would be in law school anymore. It's a shame that a law school supposedly "on the make" is so disorganized that it cannot send out students' grades in a timely manner. It merely shows a lack of compassion and respect for the students.

Richard Stelnick

**JOIN
EQUITAS!**

LSD Needs Support

by Lori Burger

As you should have discovered, there's more to law school than attending classes. As you stop now and then, take a look around and see the many organizations that seek to add to your experience here at NYLS. The Law Student Division is one of the largest sections of the American Bar Association with approximately 20,000 law student members nationwide. Its goals are threefold: to further academic excellence, involve law students in current social problems and involvement with the organized Bar — the lawyer's professional organization.

To these ends the LSD sponsors competition: client counseling; best Student Bar Association, best SBA project, and best SBA newspaper; as well as a variety of programs and publications. The section magazine, *STUDENT LAWYER*, is free to members and the *ABA JOURNAL* is available at a reduced rate. LSD members may take advantage of special health and life insurance; they may seek professional guidance by joining other ABA sections or by becoming a section liaison or committee member. Publications free to members cover such topics as: writing exams, legal research, placement, career opportunities, clients, etc. Graduating students may be particularly interested in JURISCAN, a national computerized job search program. Schools with at least 20% LSD membership may apply for funding through the Law School Services Fund for programs with a community aspect.

In addition to this LSD sponsors programs such as Freshman Conferences, roundtables day-long programs offering workshops, panel discussions, seminars (keep your eye open for the Fall Roundtable sponsored by the Second Circuit!!!), speakers programs and films. ALL students are invited to join and participate.

At the LSD Annual Conference, national officers are elected, resolutions are voted on and other business is conducted — panels, workshops, etc. Among the resolutions on the floor of the delegates convention this year were those dealing with LSD funding, minority legal institutions, establishment of a special committee on law student rights and privileges, increased participation by women in the ABA, gun control, and more. These resolutions not only express the stand the Law Student Division takes on a particular subject, but they are then submitted to the ABA for adoption and presentation to the legal community for further action.

Keep reading the student bulletin boards for programs sponsored by LSD. You are hereby invited to add your talents to those of us already working to make the LSD serve students. This year in particular, when the ABA is undertaking a functional analysis of the role of LSD, we seek your support. Can we afford to let a program like this one be phased out? Let your membership and participation be your vote of support!



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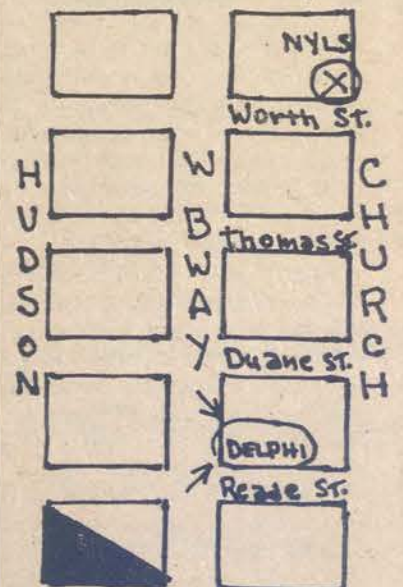


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Or is Or, And is And, and Hardly Ever the Twain Shall Meet

by Prof. Elliott L. Biskind

In 1819 Chief Justice Marshall allocated to himself and his associate justices the role of supreme arbiter of the meaning of meaning. He did this in *McCullough v. Maryland*, 17 U.S. 316, 324, 413-414, where, through a semantic contortion, he concluded that necessary may mean only maybe unless it is modified by words such as absolutely, very or indispensably. He acknowledged that necessary may, at times, be equated with indispensable, but insisted that it is not always so used. To support that reasoning he compared the language in the Constitution authorizing Congress to make laws, which, he wrote, "may have relation to the powers conferred on the government, but such only as may be 'necessary and proper' for carrying them into execution," with another provision that "prohibits a State from laying 'imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws' . . . (italics in original).

The Chief Justice then declared that necessary and proper "are probably to be considered as synonymous [sic]," and im-

There are many words which have escaped pollution.

pliedly imparted the definition of proper (suitable to the occasion) to necessary thus disposing of its meaning (indispensable, requisite, needful; that cannot be done without) unless preceded by absolutely.

Here we have a pronouncement that a word, not used as a term of art, may be deprived of its ordinary meaning.

When an adjective is employed to modify a noun or an adverb to modify an adjective, the intent is to strengthen the modified word. But more often than not, the modified word needs no help — and necessary needs none — the effect is the opposite; its meaning is downgraded.

While Marshall's semantic juggling had its precedents in earlier English legal writing, precision suffered. *McCullough* has given us our own precedent, namely, that modifying adjectives and adverbs are "very" essential if words are to be given their commonly understood meanings. Precision has given way to imprecision. If necessary no longer enjoys its dictionary definition — but only sometimes — how long will it be before absolutely suffer the same fate?

There aren't many words whose meanings have escaped this pollution. And and or are examples of the tendency to ignore their conjunctive and disjunctive meanings. There are instances where the courts substitute one for the other in statutes and contracts. As for statutes, there is in many states legislative sanction for this practice due to the acknowledgement that legislators are neither grammarians nor "wordsmiths." With respect to contracts, the only justification occurs when ambigu-

ities are present or when not to do so would leave one party with an unconscionable advantage. Generally, the or and and problems may be resolved by applying a test contained in a 1751 treatise stating that or may be

'Write It Right'

substituted for and, when, "two such things so contrayant are coupled together that they can not draw under one yocke." (Melinkoff, *The Language of the Law*, p. 149)

If a deed contains a covenant forbidding the manufacture or sale of certain dangerous or noxious substances, and both are done, there is a double violation. If sale and manufacture are forbidden, either may be a violation if it creates the condition the covenant is designed to avoid. In both situations the "two such things . . . [may] draw under one yocke."

But let us look at subdivision 1 of Sec. 170 of the Domestic Relations Law. In 1966, one of the added grounds for divorce became cruel and inhuman treatment that renders cohabitation unsafe or improper. Earlier, in former Sec. 200, a ground for separation was cruel and inhuman treatment that rendered cohabitation unsafe and improper. In enacting Sec. 170, the legislature recognized that either unsafe or improper cohabitation should be a sufficient ground for divorce. In construing this language the New York Court of Appeals observed:

"The new divorce provision, however, is different from the earlier language authorizing a separation. The conjunction 'and' is replaced by 'or' to read 'unsafe or improper.' Under the new law, then, conduct endangering mental well-being by making cohabitation 'improper', though not necessarily 'unsafe', is a ground for divorce. (Hessen v. Hessen, 33 NY 409-410)

Here we have an awareness by the legislature and by our highest state court of the difference in meaning between and and or.

In a recent case a commercial tenant, operating under a lease that permitted him to sub-lease

or assign the lease with the landlord's consent, sought consent to do both with the assignment and a re-assignment to be held in escrow. While the landlord approved the financial standing of the proposed sub-lease, he refused consent for the combined transaction. The tenant sought a declaratory judgment claiming that the landlord's refusal was arbitrary since he could not possibly be prejudiced. The lower court held for the landlord on the ground that the language of the lease does not "contemplate or permit any sale of the lease on an installment sales basis where by the lease would be used as security . . ."

On appeal the court reversed, holding that it is common practice for courts to interpret or as and and vice versa, and, "Whether the use of the word 'or' . . . prevents the combined arrangement . . . is doubtful . . . Further, uncertainty or ambiguity is resolved against the draftsman-landlord."

As for the asserted ambiguity, the lease provides that the tenant is permitted to assign or sublet . . . only with the written consent of the landlord which consent the landlord shall not unreasonably withhold." That is all there is in the lease on that point.

We are now told that or is an ambiguous word, and, to remove the ambiguity it must be accompanied with the phrase, "but not both" or preceded by the word "either."

Or is defined as a "particle co-ordinating two (or more)

'A word . . . may be deprived of its ordinary meaning'

words, phrases, or clauses, between which there is an alternative," and and as "side by side with, along with, in addition to." (Oxford English Dictionary)

When two contracting parties agree that one may sublet, or, alternately, assign his lease, absent a genuine ambiguity or unconscionable advantage to the other, respect for the meaning of common words requires that or be accorded its disjunctive, unambiguous function.

GRADUATION:



Dean E. Donald Shapiro addresses the graduates, their families and friends.

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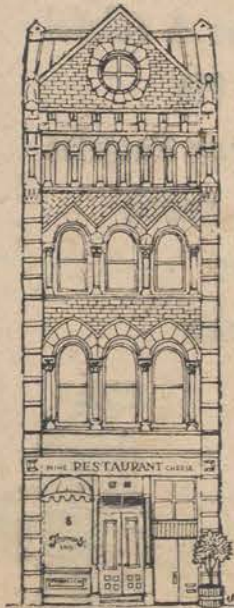
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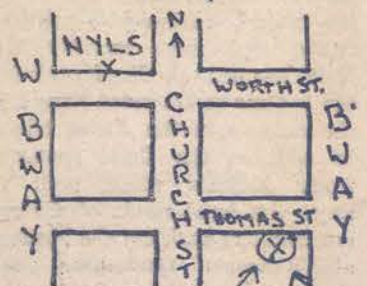
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RODINO SPEAKS, DEGREES GIVEN



EQUITAS Editorial Board Graduates. L-R.: Jim Pagano, Diane Ieuschewitz, Arthur Fisch, Sal Baté.

by Kay Marcus

The 83rd commencement exercises of New York Law School were held on Sunday, June 8, 1975, at 2:00 P.M. in Manhattan's Hunter College Auditorium.

The 198 graduates along with their families and friends were greeted by Dr. Silvester C. Smith, Jr., President of NYLS and former President of the American Bar Association.

The Honorable Peter W. Rodino, Jr., a member of Congress from the 10th district of New Jersey and the Chairperson of the House Judiciary Committee, delivered the commencement address. Rodino who was thrust into the public eye during the Watergate hearings, spoke on ethical responsibility and the challenges facing those individuals entering the legal profession. This topic, one with which the representative was under-

standably well versed, was received enthusiastically by many members of the graduating class. One student found himself both emotionally moved by the address as well as intellectually stimulated by many of the concepts discussed.

Dean E. Donald Shapiro, in a time-consuming procedure, gave



L-R: Dr. Smith and Mayor Wagner.

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out awards to the outstanding graduates.

President Smith then conferred the honorary degrees. These degrees were given to Mr. Rodino; Robert F. Wagner, former United States Senator and Mayor of New York City; William J. Curran, the Frances Glessner Lee Professor of Legal Medicine and faculty member of the Harvard Medical School and the Harvard School of Public Health; John E. Murray, Vice-President — Assistant to the President — of the Association of American Railroads and a class of 1950 graduate of NYLS. Also NYLS's own Dr. William J. Weary, Dean Emeritus of St. John's University School of Commerce, and the former Secretary-Registrar of NYLS, now Secretary-Registrar



Dr. John V. Thorton

Emeritus, received an honorary degree.

The exercises were concluded with an address by Dr. John V. Thorton, Chairman of the Board of Trustees of NYLS.

EQUITAS wishes to extend to the Class of '75 both Good Luck and Prosperity in the legal profession.

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Women's Caucus Slates Speaker

On Monday, October 20th, the NYLS Women's Caucus has arranged for a speaker to appear here from the New York State Equal Rights Coalition. The topic of discussion will be the forthcoming vote on the Equal Rights Amendment to the New York State Constitution. The program will be held from 5:30 to approximately 6:30, thereby allowing both day and evening students the opportunity to attend.

Following the speaker's remarks there will be a period for questions and answers.

Wine and cheese will be served. One Caucus member has commented that, "Since this is a topic of vital interest to everyone, particularly to those who will have to deal with the effects of this law in the not too distant future, it is incumbent on everyone to attend."

— Jim Tricarico

LSD Elects Woman Head

CHICAGO — "The Law Student Division has the potential to make professional legal organizations more responsive to the needs of the country," says Lynne Z. Gold, newly-elected president of the American Bar Association's 20,000-member Law Student Division, the nation's largest organization of law students.

Gold, 37, a third-year student at Villanova Law School, Villanova, Pa., is the first woman to hold the office of Law Student Division president.

"My election," Gold said, "is reflective of a change in the legal profession, which is opening up to increased participation by women and minorities."

She entered law school after raising four children, being in theatre for 10 years and, for a year and a half, serving as moderator of the television show, "Off the Pedestal," about women who have chosen alternate life styles other than the traditional housewife role. Her age was not a barrier to her going to law school. "People need to know that law schools are accepting older women," Gold said.

She was graduated from Albright College, Reading, Pa., in 1973, where she was valedictorian of her class. She lives with her husband and four children (ages 11 to 18) in Valley Forge, Pa.

Gold succeeds David W. Erdman, Georgetown University Law School, Washington, D.C., as president of the ABA law student group.

Other newly-elected officers include: Richard C. Eymann of Gonzaga University Law School, Spokane, Wash., first vice president; Richard Annis of the University of San Diego School of Law, San Diego, Calif., second vice president, and Carol A. Coe of the University of Missouri at Kansas City Law School, secretary-treasurer.

Jon Gray, University of Missouri at Kansas City Law School, and Dayle E. Powell, Samford University's Cumberland School of Law, Birmingham, Ala., were elected division delegates to the ABA House of Delegates.

In addition, 13 were elected circuit governors, each representing about 14 law schools.

The governors are: Judy Burnett, Stetson University School of Law, Tampa; John Geil, Lewis and Clark College's Northwestern School of Law, Portland, Ore.; Carolyn Gould, University of Colorado School of Law, Boulder; Ulysses S. Jones, Texas Southern University School of Law, Houston; Bill King, Southwestern University School of Law, Los Angeles; K. Kidwell King, Memphis State University; Steven Machov, University of Nebraska College of Law; Charles R. Mannix, Duquesne University School of Law, Pittsburgh; Dennis Manzanera, Georgetown University School of Law, Washington, D.C.; Alane C. Probst, New England School of Law, Boston; Connie Raffa, Brooklyn Law School; Anne Rennie, John Marshall Law School, Chicago, and Mary Lynn Tate, University of Richmond-T. C. Williams School of Law.

Of the 19 officers and circuit governors, nine (47 per cent) are women and four (21 per cent) are from minority groups.

New Student Writes

Impressions on Law and NYLS

by Robert Fraser

When did you first ask what is the law and why am I attracted to it? When was the first time you asserted you wanted to enroll in law school and hopefully become a lawyer? Possibly about the time you began understanding and accepting yourself, searching for the better life, and showing interest in those around you. During almost five thousand years of man's (meaning woman's also) recorded history many frontiers have been faced, several opened, but the most challenging one remaining is man himself. And the study of man in all his various behaviours appears to be a large part of the study of law.

How does one prepare for law school? Does a course of study or of life exist anywhere which leads naturally across the portals of law school? Perhaps a recipe of exercising one's passions and pursuing one's interests within the socio-legal framework, of loving books, reading them, and learning from them with the assistance of good teachers, and of studying people, their customs, and the places they inhabit is a tall order but worthy of mixing and consuming.

Which are the right books to read? All are important, but obviously we do not have time in this life to devour and digest all the recorded word. We have to make decisions, unfortunately, because our time is limited. Perhaps the Torah, or Old Testament in the Christian tradition, would be a good beginning. The classics should also receive attention, especially in the writings of Socrates, Plato, and Aristotle. For Christians the New Testament supplies the foundation of canon law *anno Domini*. In the works of St. Augustine and St. Thomas Aquinas, religion vis-a-vis civil life is examined and submitted to numerous examinations.

But what application do the sacred texts and words of the fathers have in preparing for a legal education in the twentieth century? The connection may appear unclear, but who would argue that the above-mentioned works are or not a part of the foundation of contemporary Western civilization? Be that as it may, let us at least vault ahead to America in the nineteenth century. Emerson's essay on "Self-Reliance" may supply just enough fortitude to withstand the slings and arrows of well-meaning faculty and fellow students.

Let us set aside these weighty tomes for now and seek another

avenue of preparation. What about one of those three-week, three-city trips to Europe? With H. V. Morton at our side to inform us on what we might not know, let's go off to Rome to climb the Capitoline Hill and look down on the Forum Romanum with its Curia. A few stumps for pillars are left, but history and the laws of Rome are wedged in those ruins. Some inscriptions survive, and if one is adept at filling-in missing letters and words, a few decrees and accounts of valor can be read. The face of the letters fathered the print in our present-day casebooks, codes, rules, calendars, reviews, briefs and decisions. Italics appeared in Rome, (actually in the Vatican) at a later time.

On to Paris to study the Burgundian courts and that of Jean, duc de Berry. Berry had rules and extraordinary courtiers, he had taste and wealth, and the wedding of the two produced some of the greatest French intellectual and artistic achievements. Time permitting, the Sorbonne and the Code Napoleon might be investigated.

London, and particularly the Old City hold great interest in our quest for the law. The Public Records Office contains the Domesday Book, "the record of a great survey of the lands of England, made, 1085-86, by order of William the Conqueror" (Webster's New Collegiate Dictionary). Two copies of the Magna Charta are on the other side

*'A study of people..
appears to be a
large part of the
study of law' --*

of the exhibition gallery. Nearby are the Inns of Court and Halls of Justice. They are architecturally beautiful and intellectually fascinating to the legal traveler. Down the way toward Greenwich is the Tower with its memories of the imprisoned and their sufferings. When a moat surrounded the walls, prisoners entered through the Water Gate, which since the water has been drained, has been known as the Traitor's Gate.

Back to reality and orientation at New York Law School. The baptism and initiation were very helpful to me. Before school officially began I knew where the

School was located and that my commute was one and a half hours door to door. The morning of September 3rd I met two other commuting law students (Seton Hall and Columbia) on the tracks. One told me in two days' time I would learn the locations of the WC's, while the other suggested I would be bored. The first proved right, the second, wrong.

The Dean's welcoming remarks showed great hope and enthusiasm for the future of the School and our attendance here. Dr. Smith spoke with informed conviction, and Judge Froessel's canoeing metaphor will long be remembered.

Imagine a free lunch in New York City! Even one during which we could eat all we wanted in preparation for impending starvation as students for the next three years. Any place that is as thoughtful as this must be good. With information in my head and fuel in my innards, I was ready for the afternoon.

From his executive office at Con-Ed, Dr. Thornton zoomed in to deliver a brilliant one-hour lecture on the history of common law. Perhaps this was an early indication of the rate of communication in the School.

Next Dean Bearn, to whom we are all grateful for admitting us, paraded-out eight or ten student-leaders, one-by-one. Each made interesting cases on important ways to divert us from our studies. How many more temptations will we face during the next three years?

"Where is the first year faculty" was the first crisis on Thursday morning. (I wonder how long it took a Hungarian moving from Australia to settle in the Big Apple!) Professor Koffler's "How to Brief a Case" pointed the way, and we have been reading, writing, reciting, and recuperating ever since. Add racing around to those four "volitional" acts, and the legal merry-go-round is set in motion.

How are we as a class going to run this nine month legal relay race and survive? We are probably our own worst adversaries during this academic gestation, and if we can overcome the barriers posed by our diversity, we stand a very good chance of coming out whole after these mental gymnastics. Or, is it intellectual rugby? Perhaps a one-sided tennis match during which students remain at love? Je suis prest, at least for Monday-morning Torts with Professor Lancy.

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