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EQUITAS

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Wednesday, May 5, 1976

Women's Law Day Meets, Panels & Speech Set Tone

by Jim Tricarico

Elinor Guggenheimer, Commissioner of the New York City Department of Consumer Affairs, was the keynote speaker at New York Law School's Third Annual Women's Law Day. The school's Women's Caucus organized and carried out the law day program which was designed to introduce prospective women students to the social and academic problems that face women in law school.

Over one hundred students from throughout the metropolitan area attended the event which began in the morning with discussion groups, classroom visits and library tours. Another feature of the program was a workshop on "Employment Prospects for Women." Its focus was on the severe job shortage for lawyers and the tactics that might be used in a successful job hunt.

Guggenheimer, in her address, explored the prospects of women in government. "Law for Love and Money," was the topic of panel discussion that followed Guggenheimer's speech. The panelists were Marie Lambert, president of the New York Trial Lawyer's Association and a partner in the firm of Katz, Shandell, Katz, Erasmus and Marie M. Lambert; Barbara Izette, a partner in the firm of Botein, Hays; Diane Blank, a partner in the firm of Blank, Goodman, Rone and Stanley; and Ellen Agress of the firm Moore, Berson and Lifflander.

Russell Ann Nobles, coordinator of the Women's Caucus, commented that, "Women's Law Day has a dual purpose. One is to make prospective women students aware of both the pitfalls and pleasures of studying law, and the other is to provide law students of both sexes with access to prominent women attorneys." She added, "We are happy that the program apparently has succeeded on both points."

Margaret S. Bearn, Associate



Elinor Guggenheimer Speaks at NYLS Women's Law Day

Dean of New York Law School voiced similar sentiments, "Women's Law Day provides a much needed opportunity for prospective women law students to gain firsthand information about not only a legal education generally, but those aspects of law school that may present special problems to women students. I am particularly pleased that New York Law School's Women's Caucus has organized this event, which proved invaluable during the past three years."



New York City's Mayor Beame addresses large assembly at the awards presentation for the First Annual Robert F. Wagner Memorial Labor Law Moot Court Competition at NYLS. See story and pictures page 3.

Arenson Gets P.D.P. Award

by Paul S. Forster

As a tangible demonstration of the high regard in which Professor Joseph T. Arenson is held by current and former New York Law School students, Phi Delta Phi fraternity bestowed its Professor of the Year award upon him in ceremonies during the fraternity's spring dinner dance.

It was the first time that a member of the adjunct faculty had received this distinguished award.

PDP Magister Alan Smilowitz, in presenting the award, spoke of

the sincere respect and warm admiration held and felt for Professor Arenson by all of those who have come in contact with him both in and out of the classroom.

Prof. Arenson received a handsome plaque. His name will be engraved upon the permanent plaque honoring all recipients of the award which is located in the student lounge.

Prof. Arenson accepted the award "with great pride and pleasure." He said that he would always "cherish the honor."

The PDP tribute to Prof. Arenson is well deserved. His students have found that in addition to a gentle manner and an easy smile, he possesses an incisive intelligence and keen analytical abilities.

Practitioner and Professor

In a later interview, Prof. Arenson said that he considers practicing law and teaching to be most rewarding experiences, adding that he enjoys the interesting and provocative questions raised by his students both in the classroom and after graduation.

When Prof. Arenson first became a faculty member, the school was housed in the old Newsboy Building on William Street. Judge Cox, his former partner, and he jointly taught the courses on Wills and Decedent's Estates and on Surrogates Court Practice and Procedure. Prof. Arenson said "students liked the arrangement because they frequently received two different opinions for the price of one."

Prof. Arenson has for many years been regarded and respected throughout the state as one of the foremost practitioners and authorities in the field of Wills and Decedent's Estates, which he currently teaches at NYLS. He has participated in the preparation and trial of many interesting and important cases which have advanced the law of estates in New York State.

Horatio Alger Tradition

Prof. Arenson's career is in the

(Continued on Page 8)

Silverman Wins Big, Elected S.B.A. Pres.

by James Ryan

The final election results of the SBA's annual spring contest have been posted on that organization's notice board. In a three-way race for the presidency, Larry Silverman, triumphed over his competition.

A third year night student, Silverman far outstripped the opposition, accumulating a total of 398 votes, a healthy majority of the 756 votes cast for the office. The voting broke down as follows: Larry Silverman, 398; Frank Voza, 183; and Rich Cohen, 175. It is hoped that with such a strong showing of support by the student body Silverman can bring to the Student Bar the energy and leadership which has been conspicuously absent of late.

Although soundly defeated in his bid for the presidency Frank Voza, by virtue of his second place showing in the run-off for president, has earned himself the position of vice-president in the Silverman administration. Frank's experience as a SBA representative for the second year day class should provide considerable help in fusing the SBA with some degree of effectiveness.

In other races Harry Katrichis became the Treasurer elect of the new SBA. The outcome was never in doubt as Harry's was the only name on the ballot.

In the race between Loren Bailey Rodstein and Paul Leuzzi for the office of Secretary, Loren Bailey Rodstein emerged victorious after accumulating 337 of the total 595 votes cast. In the contest for LSD representative incumbent Lori Burger was unseated by challenger Lindsay Rosenberg. Lindsay managed to double the number of votes totaled for the incumbent. However, Burger's name was conspicuously left off the ballot.



Larry Silverman

Reflections

Differing Opinions Healthy

by Prof. Richard Harbus

Last February, the New York Law School chapter of the National Lawyers Guild distributed the first issue of a new newsletter. The expressed intention of the Guild's newsletter was to print a different viewpoint, a "political" viewpoint, on issues and policies affecting the school and the students. One of the articles in the newsletter suggests that New York Law School caters to the corporate community, as contrasted with a more ideal orientation to the poor and working people who make up the majority of the city's population. The understated thrust of the article is that a more politicized law school would direct its program and facilities to the needs of these people.

In an academic community any additional viewpoint can only be welcome, as promoting the intellectual exchange of ideas. The Guild, however, in attempting to offer a purpose or direction for legal education, is entering an area which is fraught with uncertainties and opposing ideas.

It is probably impossible to get any sort of agreement as to the methodology and direction of legal education. In discussions with students, with fellow faculty members, and in publications such as the Guild's, I've been exposed to various suggestions with respect to the legal education at New York Law School. These ideas are invariably interesting and usually quite sensible; what is surprising is the divergence of the several viewpoints. Let's look at some of these ideas.

(Continued on Page 5)

Graham Named to Newly Created Asst. Dean for Administration Post

by George Schwarz

After a 27-year association with NYLS that began when he prepared a financial report for the school while still a student here, Arnold Graham has been appointed to the post of Assistant Dean for Administration.

Among his duties will be the administration of the student aid programs, employee benefit programs, ensuring compliance with the various governmental and law associations that NYLS must report to, and a variety of other functions involving payrolls, bookkeeping and other financial matters.

Of major concern to students will be his administration of the various student aid programs. Graham, in an interview, described the system of financial aid, "an outrage."

"We want to give money, but we're hamstrung by the government," he said in explanation of the "difficulties of obtaining grants and loans."

Asked how middle income students should finance their educations in light of current conditions, he answered, "The best way is through student loans and scholarship funds, if obtainable, for those in need, or for exemplary students."

Graham said the problems in obtaining aid, even in the form of government guaranteed loans is that the parents' income is imputed to the student, "even if he is legally emancipated."

Graham cited HEW regulations requiring a minimal parental contribution based on income before a student could qualify for a work-study program. As an example, if a parent earns between five and six thousand dollars, he is required to contribute \$1130 plus 29% of any amount over \$5000.

Calling the restrictions "illogical," Graham pointed out that after taxes are taken from the income, most parents in this group are not in a position to contribute these amounts, especially where there may be more than one child going to school in the family.

The ideal situation, according

to Graham, would be granting financial aid in the form of loans and work-study to all students, and allowing them to pay off five years after graduation.

In order to clarify the situation, Graham said he would try to publish a brochure indicating what financial help is available and from what sources, as well as setting up a student aid office staffed with people who would be able to direct students "in the right direction," concerning financial aid.

A practicing CPA, after graduating NYU School of Com-



Arnold Graham, NYLS Grad.

merce, at a time when some accountants were sued for practicing law, he found, "All of a sudden, accountants were faced with a situation where advice to a client about taxes was in effect practicing law." As a result, Graham attended NYLS at night, while continuing his practice during the day. He graduated with honors in 1952. "I never intended to practice law, but I was intrigued by it," he added.

Graham first became involved with school activity when he prepared their financial report while still a student here. He has since been involved with the school in various capacities for 27 years. He did not become officially involved because, "I had a lucrative practice."

"When Shapiro took over, and Thornton became the chairman of the board, I saw the school grow by leaps and bounds from an ordinary law school to what they hope will be an urban law

center. I was enthusiastic about the board and the administration . . . I decided to see what I could do to help attain certain goals set by them for the school."

Graham, who is a member of numerous associations including the American Association of Attorneys-CPAs which he helped found, has three children, one of whom attends NYLS. One is already an attorney, while another is a PhD candidate in public administration.

Graham, who will be teaching, "on a limited basis," expressed high optimism about the school's future, citing the large number of applications, and the consequent ability to get higher standards for admissions.

Prof. Hochberg to Wed Student

Rochelle Kentov, a member of the legal staff of the Regional Director of the National Labor Relations Board in New York, and Stephen Hochberg, a professor of law at New York Law School, plan to be married this summer in Israel.

Their engagement has been announced by Mr. and Mrs. Eliezer Kentov of Kew Gardens Hills, New York, and Tel Aviv, Israel, parents of the future bride. Her fiancé is the son of Mrs. Leah Hochberg of Stamford, Connecticut, and the late Dr. Charles B. Hochberg.

Miss Kentov expects to receive her Juris Doctor degree from the New York Law School this June, where she is a Notes and Comments Editor of the Law Forum, the law school's law review.

Prof. Hochberg received his Juris Doctor degree from the Yale Law School, where he was an editor and officer of the Law Journal, the law school's law review. He then served as law clerk to the late Judge Abraham L. Freedman of the U.S. Court of Appeals for the Third Circuit. Prof. Hochberg is a magna cum laude graduate of New York University, University College, with Honors in History, where he was a University Scholar, and was elected to Phi Beta Kappa. He is admitted to practice law in New York, the District of Columbia, and Florida, and is the editor of The Medical Law Letter.

Journalist Simon New Professor

by Vivian Gilbert

What did Yale have last year and the year before that, which only we at NYLS have now? Surely one of the very few answers to that question would be Professor James F. Simon's seminar on The Modern Supreme Court.

Indeed, two years ago at this time, the Professor was teaching his favorite subject to students at Yale and at Hofstra Law School. He was also covering the Mitchell-Stans trial for Time Magazine, (where he was the contributing editor in charge of the Legal Department) and beginning work on his second book. This last, The Judge, scheduled to appear on April 12, was to absorb more and more of his energies.

In 1974 the Professor accepted a fellowship in Law and the Humanities offered by Harvard and left Time and Hofstra to concentrate on writing. Fortunately this went well, and the Professor took the time to attend a meeting of the Association of American Law Schools, where he was impressed with New York Law's energy, ambition, and innovative spirit.

In His Own Image — the Supreme Court in Richard Nixon's America, published in 1973 by David McKay, was one of them. The book won wide critical recognition (from the New York Times, among others), and the "Silver Gavel" award for 1974. His other published work included interviews and projects involving some of the most prominent

and provocative legal persons of our times.

It was Simon, who got an exclusive interview with Judge Julius J. Hoffman during the trial of the Chicago Conspiracy. He moderated a panel including Gerald Gunther, Alexander Bickel and Arthur Schlesinger, to consider the legal implications of the resignation or impeachment of the then Vice-President, Spiro Agnew. He had an interview with Abe Fortas after his resignation.

Professor Simon's acquaintance with the Justices, formed at that time, will make it possible for his present class to meet two of them, Justices Powell and Stewart, after the class

(Continued on Page 6)

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APOLOGY

As a result of an error at the printer's, the name of Paul Schook was omitted from the article in the last issue of EQUITAS on the Wagner Labor Law Competition. Mr. Schook is on the Board which conducted that competition.

Recognition of his significant efforts in helping to bring about that competition should not have passed without mention. We sincerely regret the error. (EDS)

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WRITER

Writer wanted to co-write a law review article. Will receive up to \$2,000.00 for the manuscript. Please send your resume to EQUITAS BOX 74 until May 25, 1976.

Case Western Wins Meet Here

by Peter Rose

NYLS hosted the first Senator Robert F. Wagner Memorial National Labor Law Moot Court competition on April 9 and 10, in which 15 teams from 12 law schools across the country participated.

NYLS entered two teams, whose members were John V. Fabiani, Jr. and Philip Menna; Bruce Ginsberg and Steven M. Coren. Other competing teams were from American University, Brooklyn Law School, Buffalo, Case Western Reserve Law School, Catholic University, Cornell University, John Marshall Law School, New York University, Southern Methodist University, University of Detroit and Wake Forest Law School.

The teams alternatively argued the petitioner and respondent side of an interesting and complex labor case.

The semi-finalists were Case Western Reserve, Wake Forest, Buffalo, Detroit, Catholic University, S.M.U. and Brooklyn. Wake Forest went to the final competition along with Case Western Reserve, the eventual winner of the competition.

The NYLS team of John Fabiani and Philip Menna was to have entered the final round of competition, based on the points earned, however, a protest was lodged against the team on behalf of several other teams, regarding the failure to assess mandatory penalties for late submission of a brief. The protesting teams were willing to accept a verbal assurance from the NYLS team that the brief was mailed on time, but, because the mail-



Members of the winning team from Case Western in the NYLS Moot Court Room.



Robert F. Wagner Jr., former mayor's son, addresses a gathering at the competition.

ing was done through an agent, such an assurance could not be made. In order to avoid potential embarrassment to the Wagner Moot Court Board, the NYLS team withdrew from the competition.

The Wagner Moot Court Board members were Jeffrey Zane, Chairperson, Paul S. Shooch, Richard Weiss, Michael Salberg, and Basil F. O'Conner, Esq. Marshall E. Lippman, Assistant Dean was the Faculty Coordinator. Following the competition the members of the Board expressed their appreciation to all the students who volunteered their time to help research cases and assist during the competition.

present at the ceremony included Mayor Abraham D. Beame, and three Regional Directors of the National Labor Relations Board, Mr. Samuel Kaynard, Ms. Peggy Morio and Mr. Arthur Eisenberg.

Judges for this very prestigious competition were many of the top labor experts in the metropolitan area. This can be seen as a tribute to NYLS and especially to the hard work of Dean Lippman and the members of the Board.

CORRECTION

Warren E. Burger, Chief Justice of the United States Supreme Court, is to be honored at the coming NYLS commencement. He is not to receive an "honorarium" as was erroneously reported, due to an editorial error, in the last issue of EQUITAS. Our apologies for this mistake.

No Impact on 'Law School Crunch' As New Schools Open

by Ira Pollack

Suppose you wanted to go to law school in New York City and you are confronted with nine schools to choose from. You write to each school and they send you a bulletin and application form.

Those students with the very highest grades can apply to Columbia and NYU. All other students may attempt Hofstra, Brooklyn, St. John's, Fordham, NYLS, Pace or Yeshiva. The competition to enter law school

self. It is not hard to understand why the information in the bulletin is scarce. First of all, both schools are just getting off the ground and so facts relating to Student Activities, Special Programs, and Placement are understandably excluded.

Additionally, these schools have been opened in the wake of a tremendous influx of people into the training grounds of the legal profession and those students who apply for Pace or Yeshiva know the score. They realize that the

position where they can demand more from each student.

For those students who were lucky enough to score extremely well on the LSAT's, they may have the choice of attending Columbia or NYU although it is the school which makes the selection. Both schools have fine reputations and can offer law students a full range of law oriented activities as well as the advantages of a fully integrated campus. Each school offers every imaginable course although I did not find any offerings in ballet law. Both schools have excellent library facilities, student activities, special and joint programs, and placement. The main differences are money and faculty. While NYU lists hundreds of faculty names, we cannot be sure of the exact nature of their association with the school. There is also a difference in tuition which over a three year period would amount to \$1,650 less for NYU. Depending on your financial backing, this factor may be crucial because when faced with going to two excellent schools, you may simply choose the cheaper one.

Other students who wish to attend in New York City may attempt Hofstra, Brooklyn, St. John's, Fordham, and NYLS. Notice that with the exception of Hofstra, the other schools are trying to hold the line on tuition as they are in horizontal competition with each other. The easiest way to decide which school to attend is having no choice to make at all, but assume the choice must be made. Based on

other joint masters degree and JD programs is an important step for NYLS.

While the purpose of this comparison might be to help prospective students decide which school to apply to and attend, there are no discernible differences in the bulletins, as each school looks magnificent, and the student should be aware that a visit to each institution is in order before any final selection is made.

SCHOOL	TUITION	SIZE OF FACULTY	NUMBER OF VOLUMES IN LAW LIB.	NUMBER OF COURSES OFFERED	SPECIAL PROGRAMS
HOFSTRA	\$5,100	47	100,000	94	Joint MBA/JD
BROOKLYN	\$2,500	33	110,000	83	Joint Program; Law & Urban Planning
ST. JOHN'S	\$2,500	48	125,000	70	No Information Available
FORDHAM	\$2,500	N/A	N/A	90	No Information Available
N.Y.U.	\$2,500	38 F.T. 48 P.T.	85,000	133	C.C.N.Y.: 6yr BA/JD Bologna
N.Y.U.	\$3,200	24 F.T. 17 P.T.	130,000	225	10 MA programs; 3 Joint Programs Urban Law, Int'l Affairs, etc.
COLUMBIA	\$3,750	87	550,000	147	11 Joint Programs
PACE	\$3,200	4	N/A	5/A	N/A
YESHIVA	\$3,500	13	40,000	N/A	N/A

is so tough that even the newcomers Pace and Yeshiva can demand high admission requirements because there are only a small number of places for the flood of students in the New York area.

In making this survey, EQUITAS wrote to each school as if we were an interested applicant and the information contained here is based on the responses to that inquiry. In the case of the two newcomers, Pace and Yeshiva, aside from the application form, little information is given in regard to the school it-

insecurity of our time has caused every college student to apply for professional graduate study to try to be assured of a job. Thus the professional schools have been swamped with thousands of applications of students who they could not hope to consider for a place in their entering class, not because the student is not qualified, but because the school is limited by its facilities. Law school qualifications, like the economy, have become inflated due to the increase in the number of applicants to choose from, leaving the schools in a

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Equitas Editorials

Goal Is Professionalism and Cooperation

Professionalism and cooperation are not dirty words. Both administrators and students seem to forget this fact.

When people who are trying to 'do a job' allow their personalities and even their emotions to get in the way, not only do they suffer, but the people for whom they are working suffer as well. The students at NYLS are supposed to be learning how to be professionals but this is not a transition that miraculously occurs upon graduation. Such conduct is a goal worth attempting at all times.

We are not here advocating insincerity or 'phoniness'. Rather, we use the word professional in the highest sense. That is: To follow certain standards of integrity as well as of courtesy.

We in no way want to infer that the students are the only ones who should act accordingly. We all know of occasions when members of the administration are guilty of the very same 'unprofessional' conduct.

The fact that a student does not personally get along with a particular administrator or vice versa, should not stand in the way of a smooth advancement of the progress of NYLS. There is no reason why any such individuals cannot treat each other with mutual respect when they must confer. Such personality clashes are most acute when they occur on a student organization level. There is no reason why S.B.A. committees do not meet with their administrative or faculty counterparts on a regular basis. S.B.A. committees such as "financial aid" and "registration" are no more than voices in a vacuum if they do not confer with these parties.

To the administration we say: "The students are not the enemy; please listen," and to the students we say: "Stop allowing petty personality differences to get in the way of achieving those goals which are beneficial to the entire student body." Because, if not, it is the students who ultimately will suffer.

New Election Procedures Are Necessary

The recent S.B.A. elections were disgraceful. There is no other word applicable to the procedures used for the voting. This is not to say that the winners or the election results are incorrect; particularly, the general elections, as those ballots were well protected.

However, both the second year day and first year day classes were subject to a very questionable procedure for the election of their representatives. There are students in the second year day class who are willing to attest to the fact that a "bunch" of marked ballots which were handed out by the "elections committee" were never collected and counted.

Two days after the results of the second year day elections were posted (and many complaints were voiced) there was an unexpected addition to the list of write in votes. We can only wonder where these additional six (6) votes come from?

The general school elections were run in a somewhat competent manner. Although the polls were supposed to be open early Monday morning, the voting did not commence until noon.

If such procedures are the product of the S.B.A.'s unusually worded constitution, let us hope that the new "regime" will amend accordingly.

Crim. Justice Clinic

Students in Fed., N. Y. & N. J. Offices

by Peter Rose

NYLS has one of the largest and most diversified criminal justice clinics in the metropolitan area. Under the direction of Professor Salvatore Pino Jr., the clinic has placed close to 50 students in prosecutors' offices throughout New York. Pino has placed students in New Jersey as well.

As with all the clinical programs, the Administration of Criminal Justice Clinic consists of two distinct parts. First there is two hours of classroom lecture each week. Then there is work within the individual prosecutors' offices which may take from eight to fifteen hours a week.

The classroom part of the course covers an advanced study of criminal procedure while incorporating class discussion of various problems or situations that may have arisen during the course of each student's work in the respective prosecutors' offices. This classroom work is tested upon at the end of the year and each student is graded accordingly. This grade is worth two credits.

The professor has made it clear that the discussion of the

students' work must be done in general terms. He does not want any confidences broken by a discussion of specific cases. Thus, the students bring to class interesting points of substantive and procedural law that have come up in the course of their work.

The other part of the course cannot be explained in the same terms. Each student has different jobs to do, and most are working on what one student has described as "very useful practical projects." This part of the course is also worth two credits, however, the students are graded on a pass-fail basis.

Students All Over

Not only has Prof. Pino placed students in District Attorney's offices in each of the five boroughs, and the U.S. Attorney's office, but there are students working in the state prosecutor's office in parts of New Jersey also. Pino explained that he did this at the specific request of certain students who both live in and wish to practice in New Jersey.

Although EQUITAS attempted to conduct a comparison of the size and scope of the NYLS Administration of Criminal Justice

Clinic with comparable courses in other schools, we were unsuccessful in obtaining any official data. However, through discussions with students, (who represented themselves as being in the know) from other schools, it appears quite safe to say that we have the largest (or at least one of the largest) and most diversified programs in the state.

Most Students Enthusiastic

The over all consensus of the class appears to be that the clinic and the work done, is in the words of one second year student, "a very useful, practical and rewarding experience. Still others are hoping to become employed in this field and have had an opportunity to meet helpful individuals.

The professor has a background that lends itself to this type of program. Before coming to NYLS in 1973, Prof. Pino, a graduate of Fordham Law School, worked in the Manhattan D.A.'s office since 1947 where he went from trial assistant in the Homicide Bureau to Chief of the Indictment Bureau.

With this background it has been possible for Prof. Pino to bring into class guest lecturers.

Point of View

— 30 —

by Paul S. Forster

Impatience and anxiety are at war within me: impatience for the day when I may shed the psychological robe of the pupil and don that of the professional, anxiety over the prospect of departing a familiar environment.

New York Law School has prepared me well. I am proud of my school and of my classmates. The class of 1976 is destined to become one of the great classes of NYLS.

We have been trained at a time of renaissance of a great institution. It is our good fortune to have been present at such a time of experimentation and growth, for we have been given the opportunity to realize our potential unbound by those traditional notions whose time has passed.

In depth and breadth our curriculum rivals that of any law school in the nation. Our clinical programs and our course concentrations in Estates, Taxes, Labor Law, Commercial Law, Advocacy, Real Estate and Securities are outstanding.

The ranks of our adjunct Faculty are filled with members of the Bench and Bar of superb ability.

I have no doubt that NYLS soon will be recognized as the premier law school in New York State.

With this resurgence of reputation has come a stiffening of admission standards. Demand for places in our first year classes has so increased entrance requirements that many of us who are about to graduate would have a hard time being admitted were we to apply today.

Behind this progress are the tireless efforts of our Deans, the financial and moral support of our Trustees and the thankless day-in and day-out activities of our hardworking administrative staff.

The explosion of student activism over the last three years also has contributed to our success. No longer are there but four or five ongoing student activities carried along by a half dozen stalwarts.

In addition to the traditional organizations, EQUITAS, Moot Court, S.B.A., Phi Delta Phi Fraternity and the Law Forum, we now have a Jewish Law Student's Union, a Women's Caucus, a chapter of the National Lawyer's Guild, the Second Career's Caucus, the Black Law Students Association (BALSA), and a Consumer Center.

No week passes without two or three special programs organized by one of these groups or by an unaffiliated group of interested students. The Wagner Labor Law Moot Court Competition and Women's Law Day are outstanding examples of recent student run projects.

This past year has seen the endowment of our first faculty chair, the receipt of a substantial federal grant to create at NYLS a Consumer Law Training Center in conjunction with prominent consumer groups, and the institution with the City College of New York of a joint, six-year, B.A.-J.D. program.

The decision of Chief Justice Burger to speak at our graduation is not unrelated to our growing prominence.

The general absence of an 'Us vs. Them' mentality between the students as a body and NYLS as an institution has in large part contributed to the recent progress in modernizing the way the school is run and to the successes of student organizations and projects. This is as it should be.

While vigorous discussions among students, faculty and administration on policies and procedures are healthy and should be encouraged, I can think of no area in which the interests of the students and the school are truly antithetical.

In such an atmosphere the opportunities are enormous for students to exert meaningful influence on the course of events at NYLS.

If mistakes have been made during the recent past, they are the result of experimentation and innovation. Once problem areas have been identified, errors have not been repeated.

There is a strange danger in all of this. Disappointment must be avoided when expectations temporarily are unfulfilled.

It is with great regret and sorrow that I leave NYLS. I have found great pleasure during these years in the people whom I have come to know.

I am saddened that it will be as an observer, not a participant, that I must watch NYLS' inevitable ascendancy to greatness.

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Letters to the Editor

To The Editor:

Being a participant in one of the clinic programs at NYLS, I felt it incumbent upon me to defend such programs in light of Professor Hochberg's article in the last issue of EQUITAS.

I have the utmost respect for Professor Hochberg as an educator and as a member of the legal profession. However, I feel his article does an injustice to clinical education in general and, in particular, to clinical education as it exists at NYLS.

To the clinic opponents, I posed these questions: What kind of society would we have if we allowed medical students to become physicians without clinical experience? What kind of education would teachers have if they never student-taught? How well-trained would our scientists be if they relied only on books? To these professions, clinical experience is indispensable. Why should it be any less so with the legal profession?

Is clinical experience any less important when dealing with a man's life, his freedom, his dignity? To the opponents of clinical legal education, I ask the question: If you were on trial, would you rather be defended by a newly admitted attorney with previous courtroom experience, or a newly admitted attorney who had spent all his law school days engaged in sophisticated rhetoric with his professors? A strained example, you say? I fear many indigents relying on court-appointed attorneys aren't even given this much of a choice!

It is an undeniable fact that law, good or otherwise, is not made in the classroom. It is made in the courtroom or the

hearing room.

I can't fully address myself to all the collateral issues opponents raise such as poor follow-up and "goldbricking."

As to the latter, it is hoped that insincere persons are "weeded" out in the law school admissions process. But even if they aren't, it should be remembered that "goldbrickers" are not peculiar to clinic programs. Such people have existed for years. ("Cans" were written for them.) My own observations indicate that a "glodbricker" will be unmasked sooner in a well-supervised clinic program than in a classroom where he's just one more number on a computerized sheet.

A closing remark must be addressed to the advantages the clinic programs provide in post-law school job hunting. The clinics provide the job contacts and personal references which are so very important in obtaining employment.

It is my hope that the voices of the clinic opponents fade into deep oblivion of an ivy-covered, bygone era.

Jeanne Cygan

The Board of Advisors for the Outstanding Young Men of America Awards Program announced that Prof. Stephen Hochberg has been selected for inclusion in the 1976 edition of OUTSTANDING YOUNG MEN OF AMERICA. The Outstanding Young Men of America program is sponsored by the U.S. Jaycees and numerous other leading men's civic and service organizations throughout the nation.

To The Editor:

Bravo! After reading Marna Hale's article "Three Years Later — The Impact of DeFunis" (April 2, 1976), I thought it appropriate and correct to express my personal feelings and thoughts concerning the unfortunate lack of positive action on the part of the Supreme Court of the United States as to what Ms. Hale in my opinion correctly concluded as leaving "the fundamental issues raised by DeFunis unsettled."

Unquestionably, with all of the legal and general interest generated by the case, and the obvious legal rights of universities and of future students at stake, and the case not being frivolous nor too moot, the court should have acted to resolve the issues at that time.

It was most relevant that such a numerous quantity of "Friends of the Court" briefs on both sides were submitted to the court. This fact alone indicated not mere interest in a case, but by the sheer number of weight and quality of those briefs, in my opinion clearly demonstrated that a unique set of facts were being presented for a positive and just determination by the Supreme Court of the United States. To ignore this fact, left a cloudy and not clearly defined situation for all concerned.

Ms. Hale's article proves the point, in that three years later that "silence" practiced by the court does not resolve legal problems, but in fact like the Hydra tends to increase the awareness of fundamental inequities which refuse to go away.

Anthony F. Gonzalez '65

Politicized Law Schools Have Many Drawbacks

(Continued from Page 1)

Beginning with the Guild students' implied desire for a "political" law school — is such a concept really applicable to professional education? Would we want to be treated by a doctor who was educated in school that emphasized "good" politics rather than good medicine? If a school has a given political orientation, isn't it likely that a professional training will be biased toward that orientation, with a corresponding lack of awareness, or what is even worse, the denigration of opposing opinions? Assuming that it is the existence of different political views which keeps a democratic society viable, what would the situation be if the majority of law schools were directed toward a particular political direction with only a minority, or perhaps none, presenting differing views? Lawyers would then be a very potent political force (as they are now) but a force without the appropriate balance that hopefully now exists.

Although I feel that the law school itself should not be directed toward any particular political philosophy, there is no reason why law students and law faculty should not be politically responsive. Indeed, the lawyer's role in society representing diverse and conflicting interests, demands sensitivity and political awareness. The law school shall certainly attempt to arouse such sensitivity and awareness, but should not channel it into a particular direction. Ideally, every law school shall produce its share of both "movement" and corporate lawyers. Poverty Law has its valid place in the law school curriculum, but so too does Advanced Taxation.

Perhaps the most effective way of developing societal and political awareness is to have a faculty representative of different ethnic and economic backgrounds, and also representative of all shades of the political spectrum. In this respect, the Guild's rhetorical question concerning the scarcity of women and Third World faculty members at New York Law School is quite pertinent.

For some years now, the graduates of Yale Law School have disproportionately avoided the practice of law and have instead entered politics, government service and teaching. In large part, this is due to the emphasis Yale Law School places upon social responsibility and political awareness. But the emphasis is not the result of any particular political orientation of the school itself (although some will question this point); rather, it is the result of a politically diverse and vocal faculty, which ranges from the very liberal to the very conservative. Law schools in general, New York Law School in particular, should affirmatively try to achieve a good faculty "mix," just as they attempt to obtain a "mix" within the student body. The interaction between the groups would undoubtedly result in socially and politically aware attorneys, without any need for the school itself to maintain a political posture.

Not everyone wants a politicized law school. Many people would like to see a purely intellectual law school. Those who favor this approach would like to see an institution devoted to legal abstractions, analytical reasoning, and discussion of philosophic niceties instead of social, professional and political activism. There is a touch of the romantic in this approach. It is pleasant to imagine Raphael's School of Athens in the Vatican transferred into a law school, with law students instead of geometers surrounding the central figures, not of Plato and Aristotle, but perhaps of senior faculty and administration.

The intellectual approach, however, seems to overlook the fact that law school is a professional school, providing the requisite education for entry into a trade. As such, the curriculum cannot exist solely on an abstract basis, but must include those practical courses which are necessary to formulate professional skills. (Just how cerebral are medical students struggling over the memorization of their anatomy charts?) Although law is perhaps the most intellectual of all professions, it is also a very pragmatic profession. Lawyers represent real people and deal with real problems. The abstractions and hypotheticals which appear in the casebooks and in the professors' lectures are certainly part of the legal learning process, but should not be the exclusive teaching method. Some clinical education is necessary in law school. Although no one pretends or even suggests that the law school will produce a polished legal product, the basic skills and techniques can and should be taught.

This approach can be taken too far, however. There are those who would like to see law school education directed entirely toward practical professional knowledge, with emphasis on "how to do it" instruction. Proponents of this approach would like to see an abundance of clinical courses and practical courses. The classroom, if possible, should parallel the law office. Education should imitate reality. The law graduate should be able to make the transition from school to actual practice with a minimum of difficulty. Office routines would have to be learned, but not techniques of practice.

I feel that this ultra "pragmatic" approach to law school education cannot be justified. In the first place, it demeans the intelligence of the students. Law school is, after all, graduate education. The three years of law school are quite equivalent, in time and in effort, to the demands made in the acquisition of an academic doctorate. The degree awarded now in law school is indeed a doctorate. To justify such a degree, one should learn more than mere practical skills; the law student should perfect a mode of thinking and analysis — a rational method of problem solving combining practical knowledge with theory. The lawyer should rely on statutes and cases, but should also draw upon knowledge gained from other readings and sources. Life experience and social sophistication are also important.

Secondly, it is unrealistic to assume that even the most clinical of law schools could really prepare its students for actual practice. No matter how rigorous the practice curriculum, no matter how expert the faculty — the essential element is still lacking in the school environment. This element is the real client with the real problem.

(Continued on Page 6)

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Professor Simon...

(Continued from Page 2)

listens to arguments before the Supreme Court on the twenty-sixth of April.

It is a continuing source of interest to the Professor, who has taught Law and the Media here, as well as Legal Journalism and Constitutional Law, that each class stamps the quality of its collective mind, its personality as it were, on the subject being taught, no matter how formally demanding the course content is. From his comments I gather that *Marbury v. Madison* is never the same, no matter how thoroughly covered.

The professor brings a varied background to his subject. He was born in Fort Worth, Texas, to what he remembers as a com-

fortable existence. Every male relative for as far as the eye could see was a lawyer, so in due time he was packed off for college to Yale to fulfill his destiny. He attended Yale Law School as well.

Summers saw him in Europe, in Israel on a Kibbutz, in Ghana as part of Operation Crossroads Africa — which was a precursor to the Peace Corps — and per-



Professor Simon ...

Hindi to let others know of advances being made.

Back in the United States he joined Robert Nathan Associates, an economics consulting firm which specialized in advising developing nations on how to draw up their development plans. At about this time developing nations were beginning to show more and more resistance to American expertise and guidance.

The first top notch paper to offer the Professor a job was the Saint Louis Post Dispatch and he spent the next two years there, learning his trade, writing everything from general, to police, to political news. At this point Time magazine offered him a job as their Law Reporter and he accepted. In a relatively short time he became Contributing Editor in charge of his department.

The professor thinks of himself as a writer who enjoys teaching.

New Library Regulations

April 19 — Prof. Andrew Simak, Librarian, announced that due to increased student population and in order to maximize student access to library facilities, the use of the library is restricted to students, faculty, and members of the Alumni Association of New York Law School. Alumni must present an alumni card and must sign in at the circulation desk on the ninth floor. Students from other schools will be permitted access to the library upon presentation of a letter of introduction from the librarian of their own school requesting permission to use their facilities.

haps most fatefully of all for him, at the Washington Bureau of Newsweek, interning under Ben Bradlee following a course in Legal Journalism taught by Fred Rodell.

It might have been predictable to graduate, marry and become a member of the Texas Bar, which he did, but these happy events were followed by a journey to Uttar Pradesh on a Ford Fellowship.

Uttar Pradesh is in the North-East of India, near Nepal, and is Indira Gandhi's home state. Simon worked with the District Magistrate, (under the old English system, the equivalent of the Governor) on development projects (poultry and fisheries) and he started a newsletter in

AN OPEN LETTER

While the members of the New York Law School Chapter of BALSA (Black American Law Students Association) favor increased admissions of minority students to law schools, we do not necessarily support the stand of the National Lawyer's Guild on this issue. Nor do we endorse or support their position on any other issues. The National Lawyer's Guild has never consulted with any officer or member of BALSA concerning minority admissions or other issues of concern to minority students. We have never participated in the publication of any articles in the NLG Newsletter regarding minority students, nor have any of these articles reflected our views. We feel compelled to make this statement in light of the inference of our support.

Members of the NYLS Chapter Black American Law Students Association

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Differing Opinions

(Continued from Page 5)

Anything short of exposure to the living client, the actual litigation, the conferences with opposing counsel, the confrontation in court, is artificial. The emotions and realities of life cannot be duplicated in the classroom.

Finally, a practice oriented law school curriculum would have to be continually updated to reflect the constant changes that occur in the law. Procedurally and substantively, the law is in a state of flux. Practicing attorneys often find it difficult to keep current, even in their areas of specialization. Surely the student, just being introduced to the material, and struggling to master its intricacies, cannot be expected to be aware of the latest developments. It is useless to learn the details, for example, of bankruptcy practice, when it is likely that the law is going to be changed. The law student should be exposed to as many areas of the law as possible during the three years of his education — exposure, however, does not mean expertise, proficiency, or even basic competency.

I'd like to briefly mention yet another way of looking at legal education — the bar examination viewpoint. Proponents here argue that since the passing of the bar exam is an absolute prerequisite for entry into the profession, the law school should be directed primarily toward preparation for this test.

There is little to be said for this approach. This is not learning — this is cramming. It certainly is not what we would like to think of as graduate or professional education. Above all, it seems to me to be an incredible misallocation of time and priorities. Is there any way to rationalize three years of one's life (longer in the case of evening students), working hard most of this time, plus a large amount of money — all for a single examination? Every one of the graduates of New York Law School will pass the bar exam, nearly all on the first attempt, and the few remaining on a subsequent effort. And this without undue bar emphasis in the present New York Law School curriculum.

There should be no movement to greater bar emphasis in the curriculum. Let the bar exam courses remain what they are and fill the need that they do — several weeks of intensive effort devoted solely to the bar examination. But not law school. Law school is much too important for this.

So, what is the appropriate direction of purpose of law school education? Since I have been critical of various approaches in this article, it might be assumed that I favor something entirely different, some mysterious pedagogy not discussed here. Not at all. My criticism is meant to apply only when these several views are advocated as being the correct, or the only purpose or direction of law school education. In and of themselves, each of these approaches is valid. Only when exclusivity is suggested for any given approach does criticism become warranted.

The answer to legal education then, is obvious. What is needed is an amalgam of the various approaches — a balancing (n.b., a favorite word of lawyers and judges) between abstraction and pragmatism, between intellectual courses and "how-to-do-it" courses. Add to this a socially and politically aware faculty and student body, with perhaps a touch of bar review for those subjects which lend themselves to this form of study (Article 92), and you have the ideal law school.

The next question is whether New York Law School achieves this ideal, and, if not, by how much it misses. After a year and a half of teaching here, I've experienced exhilaration, and, on a few occasions, some depression. On the whole, I feel very positive, motivated, and encouraged with respect to the legal education at New York Law School. A detailed evaluation, however, must wait until another article.

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On Compensation of Fiduciaries

by Paul S. Forster

Compensation of fiduciaries as a matter of statutory right is a relatively recent development in Western jurisprudence.⁽¹⁾ A Common Law rule against compensation for fiduciaries unless specifically provided for by will was codified by English case law in the early 1700's.⁽²⁾ Such a prohibition also was present in Roman law.⁽³⁾

It has been suggested that the reason for the rule is that fiduciaries would perform unnecessary services in order to increase their fees, and that it would be difficult to assess the worth of the time of different individuals.⁽⁴⁾ The rule also was justified on the ground that acceptance of fiduciary responsibility is voluntary.⁽⁵⁾

Since the early 1800's New York State Surrogates have had the power to remunerate fiduciaries. Present laws fixing commission levels are found in N.Y.S. C.P.A. Article 23.⁽⁶⁾

Under current law all fiduciaries are entitled to fixed levels of compensation for their services based upon the value of the assets they administer.⁽⁷⁾ Article 23 treats all types of fiduciaries, with the exception of trustees⁽⁸⁾, in a similar manner for the purpose of computing commissions.⁽⁹⁾

Amounts Allowed

Fiduciaries other than trustees are entitled to commissions on services rendered on a sliding scale, based upon the value of the assets received and paid out.⁽¹⁰⁾ A commission of 4% is allowed on the first \$25,000 administered; 3½% on the next \$125,000; 3% on the next \$150,000; and 2% on all estate assets in excess of \$300,000.⁽¹¹⁾

Since the assets of an estate may change in value between the times of receipt and delivery by the fiduciary, the amount of commissions to which a fiduciary is entitled under §2307 generally is calculated by applying half the statutory rate to assets received, and half to assets delivered.⁽¹²⁾

If the gross value of the principal of the assets to be administered is less than \$100,000 and there is more than one fiduciary, the commissions are to be apportioned between or among them in proportion to the services rendered.⁽¹³⁾

If the gross value of the principal of the assets is equal to or exceeds \$100,000 and there are one, two or three fiduciaries,

each fiduciary is entitled to a full commission based upon both principal and income administered.⁽¹⁴⁾

If the gross value of the principal exceeds \$100,000 and there are four or more fiduciaries, then an amount equal to the commissions to which three fiduciaries would be entitled is to be apportioned among them in proportion to the services rendered.⁽¹⁵⁾

If the will under which the fiduciary acquires his authority provides for a specific level of compensation, then the fiduciary is not entitled to the statutory commission unless the specific compensation is renounced within four months of the receipt of letters.⁽¹⁶⁾

When the fiduciary has received successive letters, as would occur if a person acted as both temporary administrator and administrator or preliminary executor and executor, total compensation cannot exceed that which a person acting in a single capacity would have been entitled.⁽¹⁷⁾

For the service of collecting rents and actively managing real property, fiduciaries are entitled to retain 5% of the gross rents collected, in addition to the commissions on such rents to which they otherwise would be entitled. Even if there is more than one fiduciary, only one 5% sum is allowed, however. In such case the sum is apportioned between or among the fiduciaries in proportion to their respective services rendered.⁽¹⁸⁾

If a fiduciary dies before the final accounting, the amount of his commissions will be determined by the amount and nature of the services performed.⁽¹⁹⁾ Receiving commissions, plus commissions on disbursements actually made, generally are allowed in such a case. Where the affairs of the estate have been virtually completed, although not all disbursements made, the deceased fiduciary may be allowed substantially a full commission.⁽²⁰⁾

Commissionable Property

Fiduciaries are allowed commissions as compensation for the services they render in receiving and paying out assets. Therefore, assets of an estate which are not administered by a fiduciary are not valued in the estate for the purpose of calculating commissions.⁽²¹⁾

By statute the Surrogate is given broad power to determine

the value of assets received by the fiduciary for the purpose of computing receiving commissions.⁽²²⁾ In the ordinary case, the value fixed is the same as that used in the New York State Estate Tax Proceeding, generally the value of the asset on the date of death.⁽²³⁾

This is a rule of convenience, not law, however.⁽²⁴⁾ Where the value of the asset has changed markedly between the date of death and the time the asset is taken into possession by the fiduciary, the Surrogate may in his discretion fix the value as of the later date for the purpose of computing commissions.⁽²⁵⁾

Property specifically bequeathed or devised is excluded by statute from the value of the assets for the purpose of calculating commissions. This is because even though a fiduciary might actually take physical possession of the property or a document of title and give it over to a legatee or devisee, in theory the ownership of the asset passed by operation of law.⁽²⁶⁾

Specific legacies are bequests of a specified part of a testator's personal estate distinguished from all others of the same kind.⁽²⁷⁾ Commissions may be allowed on specific legacies where the executor has performed regular executorial duties with respect to the property.⁽²⁸⁾ Where division of specifically devised property is required of the executor, or where discretion is required in its distribution, commissions have been allowed.⁽²⁹⁾

Where part of dividends, interest or rents payable to a fiduciary is withheld by the payor pursuant to an income tax law, the money so withheld is to be deemed to have been received and paid out by the fiduciary.⁽³⁰⁾ However, where taxes are paid on behalf of the estate by beneficiaries of assets which passed outside the testamentary estate, such payments are not included in the value of the assets used for the purpose of computing commissions.⁽³¹⁾

Powers of Appointment

The passing of property through the exercise by will of a power of appointment will not be commissionable to the executor of the decedent's estate in the absence of a clear intent to merge the appointed assets with the other assets of the estate.⁽³²⁾

There are several other classes

(Continued on Page 8)

The Alumni Scene

The 16th Annual Dean's Day Alumni Homecoming will take place on Saturday, May 8, 1976 at Pace University. The day long event, which is being chaired by Prof. Bernard M. Eiber '51, will be highlighted by two seminars, each of which will be presented by a panel of distinguished experts. The first panel, which will run from 9 to 10:30 a.m., is entitled "Matrimonial Practice: Stipulate or Litigate — Today's Techniques, Tomorrow's Trends." The members of the panel are Hon. Sybil Hart Cooper, Justice, Supreme Court of the State of New York; Bernard A. Selkow, Esq., co-chairperson, New York State Trial Lawyers Association; and Elaine R. Sheps, Esq., co-chairperson, New York State Trial Lawyers Association.

The second panel discussion, entitled "Estate Planning — Its Opportunities and Pitfalls" will follow the first after a brief intermission. The members of that panel are Joseph T. Arenson, Professor, New York Law School (Wills and Estates), who will chair the discussion; Bernard M. Eiber, Professor, New York Law School (Taxation and Estate Planning); Bernard H. Greene, Esq., partner, Paul, Weiss, Rifkind, Wharton & Garrison, and Visiting Lecturer at Yale Law School; Hon. John F. Skahen, Surrogate Rockland County; and James P. Tannian, Esq., partner, Mudge, Rose, Guthrie, and Alexander.

At one p.m. luncheon will be served, during which time the presentation of the Distinguished Alumnus Award will be made to Albert Parker '21, of Parker, Chapin, Flattau and Klimpl. (An article concerning Mr. Parker, it will be recalled, appeared in the Feb. 1976 issue of EQUITAS). A cocktail hour honoring Mr. Parker will follow.

Registration for the program will take place at 8:30 a.m. in Shaeherle Hall at 41 Park Row, and coffee and Danish pastry will be served then. The fee for Alumni Association members and their guests is \$15, and \$10 for those who graduated after 1971; for all others the fee is \$25. NYLS students are invited by the Association to attend the seminars free of charge, and may join in the luncheon for \$5.

EQUITAS EDITOR EXCELS

Arthur Fisch, past Editor-in-Chief of EQUITAS has been both successful and busy since his graduation last year. He has not only passed the New York State Bar Exam but the Pennsylvania State Bar as well. He has been employed since graduation as assistant general counsel for E. F. Hutton and Co.

More important than all of this is his new daughter Jessica Anne. We wish to congratulate both Arthur and his wife Francine Margolin Fisch, M.D. on their five month old baby girl.

Alumni Overseer of CIA

Leo M. Cherne, '34, was recently chosen by President Ford to act as one of the overseers of the CIA. Mr. Cherne is the executive director of the Research Institute of America, Inc., an organization that publishes various types of guides for business executives. He has been a member since 1973 of the President's Foreign Intelligence Advisory Board and has been a board member of numerous government and private organizations, chiefly in the field of international affairs, including the International Rescue Committee of which he has served as chairman since 1953. Mr. Cherne is also a sculptor with works on exhibition in several museums.

Richard M. Flynn, '57, of Pryor, Cashman and Sherman, has been appointed a trustee of the New York State Power Authority. In announcing his appointment to a term that ends in May, 1980, Governor Carey cited Mr. Flynn as "one of New York State's outstanding experts in the field of large cable distribution system." Mr. Flynn has also been particularly active in community affairs and has lectured to various groups on problems of racial and religious prejudice.

Audrey C. King, '71, has been appointed to the position of senior attorney of the GAF Corp. Ms. King has previously served as assistant division counsel for Sperry Rand Corp.

NUNEZ HONORED

The Honorable Emilio Nunez, '27, Associate Justice of the Appellate Division, First Department, Supreme Court of the State of New York, is being honored on Law Day, Monday, May 3, 1976, at the Plaza Hotel, by the New York State Trial Lawyers Assoc. Judge Nunez, who was appointed to his present position in January, 1969, by Governor Rockefeller, is being singled out in "recognition of his outstanding efforts in behalf of law and justice." Mayor Beame will address those attending.

Jeffery P. Fogelson, '68, and a past editor of the NEW YORK LAW FORUM has announced that he has joined his father's firm of Fogelson and Fogelson. The younger Fogelson has been a Deputy Assistant and Assistant Attorney General since his graduation. His father, Nathan B. Fogelson is an Adjunct Professor of Law at NYLS and has taught Bankruptcy. The firm is located at 150 Broadway.

Alfred P. Werbner, '49, has joined the staff of Manchester Community College as fulltime coordinator of real estate education. He will be responsible for matters relating to courses now offered by the college, for developing additional credit courses in real estate, and for developing in-service continuing education courses for realtors. Mr. Werbner, who is a senior member of the American Society of Appraisers and is on the Board of International Examiners, taught for fifteen years at the University of Hartford and also at the University of Connecticut.

FROSSEL HONORED

The Honorable Charles W. Froessel, '13, former member of the Court of Appeals of the State of New York and former dean of New York Law School, was honored by the Second Annual Walter M. Jeffords, Jr. Distinguished Visiting Lectureship. The lecture, which took place on April 30, 1976, was given this year by General Rowland F. Kirks, Director of the Administrative Office of the United States Courts. The lecture was followed by a reception in the Charles W. Froessel Library. (see the next issue of EQUITAS for details.)

The final meeting for the academic year 1975/1976 of the Board of Directors of the Alumni Association will take place at 5:30 pm on June 3, 1976 at Teddy's Restaurant at 219 West Broadway.

Obituaries: The Hon. Samuel J. Aronowitz, '24
Thomas Farley, '53

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Arenson Wins Annual Awards

(Continued from Page 1)

Horatio Alger tradition. He began his legal career as an office boy and later a clerk in the law offices of Cohen, Cole and Weiss, the predecessor of the prestigious firm of Paul, Weiss, Rifkind, Wharton and Garrison.

He attended Eastern Evening High School where he was Editor-in-Chief of the school magazine. He also attended evening college and law school. Upon graduation from Brooklyn Law School he entered the employ of Joseph A. Cox and later became his partner.

When Judge Cox was elected to the New York State Supreme Court, Prof. Arenson succeeded him as Counsel to the Public Administrator of New York County, a position he still holds.

Judge Cox subsequently was elevated to the Appellate Division, First Department and was later elected Surrogate of New York County.

Numerous Articles

Professor Arenson received his doctorate from Leiden University in the Netherlands.

He is co-author of the six-volume treatise, *Cox-Arenson-Medina, New York Civil Practice-Surrogates Court Procedure Act*. His other writing include, *Surviving Spouse's Right of Election and its Application to Testamentary Substitutes*; *Recent Significant Legislation Affecting New York Law of Trusts and Estates*; *the Doctrine of Undue Influence in Anglo-American Law*; *Outlines on Aspects of Administration of Estates, Preparation and Trial of Will Contests*; *Section 4519, Civil Practice Law and Rules, and Privileged Communications and Their Application to Litigation in the Surrogate's Court*; and, *Restrictions on Testamentary Gifts to Charities in New York*.

He has often been a contributor to our own law review, the New York Law Forum.

Prof. Arenson also has held important positions with many organizations, including President of the Consular Law Society, Vice-President of the Federal Bar Association (Eastern District), a Director of the New York County Lawyers Association, a member of Harvard Law School-Cooperative Research for Israel's Legal Development, Research Counsel to the New York State Commission on Estates, and a contributor to the Encyclopedia Americana. He

is a fellow of the American College of Probate Counsel and a fellow of the International Academy of Trial Lawyers.

He currently is chairman of the Legacy Development Committees of both the United Jewish Appeal and the anti-Defamation League of B'nai B'rith, and chairman of the Surrogate Court Lawyer's Committee of the Federation of Jewish Philanthropies.

He has been a guest lecturer in Ireland, Israel, Scotland, and the Netherlands and at Columbia, Edinburgh, George Washington, Harvard, Leiden, Louisville, New York, St. Johns, and Yale University Law Schools; Yeshiva University; the Practising Law Institute; the New York State Trial Lawyer's Association; the American Bar Association;



Prof. Arenson,
Winner of Annual Award

the New York State Bar Association; and major bar associations in the City and State of New York.

For the past fourteen years he has been moderator and a member of the panel on subjects relating to Trusts and Estates at the New York Law School's Annual Dean's Day Alumni Homecoming. He has moderated similar panels for innumerable other organizations throughout the state.

Progress at NYLS

Commenting upon recent changes at NYLS, Professor Arenson stated that he was most impressed by the tremendous improvement of NYLS under the leadership of Dean Shapiro, who has greatly increased the prestige of the school in his short tenure.

He landed the members of the Board of Trustees for their support of the school's progress and commended Associate Dean Bearn, Assistant Dean Lippman, Secretary-Registrar Scanlon, Di-

On Fiduciary Compensation

(Continued from Page 7)

of assets passing outside the administered estate with which the fiduciary may have to deal without being compensated by commissions. These include jointly-held assets passing by survivorship, Totten Trusts, inter vivos trusts upon which taxes may be due, life insurance and employee death benefits.

Real property passing through the estate is not received or distributed for the purpose of computing commissions, unless actually sold and money collected.⁽³³⁾ Mere power to sell realty, if not exercised, will not entitle the fiduciary to commissions thereupon.⁽³⁴⁾

Even management of the property over an extended period has been held not to justify fiduciary commissions based upon the value of the property. As discussed earlier, however, rental commissions would be allowed to the fi-

rector of Development Cesarone, the Faculty and the entire administrative staff for their efforts and accomplishments.

Professor Arenson praised the improved organization of the school, the additional facilities and the new programs that have been instituted.

According to Professor Arenson, the reputation of NYLS has been so significantly enhanced that many law firms are pleased to offer employment to our graduates. He expressed his own great confidence in the abilities of our students. This confidence has been demonstrated by having two of our former students as associates in his firm. He said they were extremely capable and competent lawyers.

Law Changes

Looking to the future in estate practice, Professor Arenson predicted changes in several areas. He said that section 5-3.3 of the Estates, Powers and Trusts Law, which limits dispositions for charitable purposes in certain circumstances, should be repealed. Citing the discrimination of the section against worthy charities and not against other legatees, Professor Arenson asserted that there is no need for such law.

He stated that there also should be movement toward expanding the right of election of surviving spouses, and toward increasing the rights of illegitimate children with reference to their paternal relatives. In addition, the 'family maintenance' bill, with the beneficial purpose of providing protection for infant children, should be duly considered, he said.

Professor Arenson concluded

the interview by again expressing his sincere appreciation at receiving the PDP award. duciary if there has been active management.⁽³⁵⁾

When real property or any other property used as collateral security is sold, the fiduciary is entitled to commissions only on the net proceeds after the satisfaction of any liens.⁽³⁶⁾ A corollary to this rule is that it also is the net value of the asset which is used to determine whether the estate equals or exceeds \$100,000 for the purpose of multiple commissions.⁽³⁷⁾

Even when the proceeds of other estate assets are used to repay the loan, the property used as collateral is not included in the estate at its gross value for the commission computations.⁽³⁸⁾

The so-called 'exempt' property of a decedent, which can include up to \$5,000 in household effects, \$150 in books, \$1,000 in cash, and \$5,000 in motor vehicles, passes by operation of law to the decedent's spouse or minor children, and therefore is not subject to administration nor commissions therefor.⁽³⁹⁾

The fiduciary also is not entitled to commissions on moneys received and disbursed in the course of investment and reinvestment of the estate assets, nor upon monies spent and received in the course of carrying on decedent's business. In such cases, commissions are computed on the basis of the value of the principal plus any net income received.⁽⁴⁰⁾

When Commissions Payable

The general rule is that the fiduciary is allowed commissions, expenses and compensation for legal services only on the judicial settlement of his account by decree of the court.⁽⁴¹⁾ This may be either on an intermediate accounting, at which time the allowance of commissions is discretionary with the court, or upon the final accounting, when allowance is required in the absence of fiduciary misconduct.⁽⁴²⁾

Payments on account of the commissions also may be made prior to such judicial settlements.⁽⁴³⁾ Such payments generally can be made only after all interested parties have been notified.⁽⁴⁴⁾ However, when the fiduciary can show that either he or the estate will suffer adverse tax consequences unless such payments on accounts are made, the court may allow the payments without notice to the beneficiaries or other interested parties as a means of expediting the process and reducing the cost of the proceeding.⁽⁴⁵⁾

The taking of commissions by the fiduciary without permission

from the court may result in penalties.⁽⁴⁶⁾ The surcharge of interest, customary in earlier cases where payment was made in the absence of consent, is not imposed today unless there is negligence or wrongdoing leading the court to disallow commissions in part or in the entirety.⁽⁴⁷⁾

Trustees' Commissions

There are two classes of testamentary trustees established by statute, those acting under wills of persons dying on or before August 31, 1956,⁽⁴⁸⁾ and those acting under wills of persons dying after August 31, 1956.⁽⁴⁹⁾ The commissions received by each of these classes differ in kind and amount.⁽⁵⁰⁾

Pre-August 31, 1956 trustees receive commissions of three types: an annual commission on income realized; an annual commission based upon the principal of the trust; and, a commission on final settlement based upon the assets received and paid out. These amounts are allowed to the trustee out of the fund upon which they are based.⁽⁵¹⁾

Post-August 31, 1956 trustees receive only two types of commissions: an annual commission based upon current principal; and, a commission on final settlement. The annual commissions are payable half out of principal and half out of income; the commissions on final accounting out of principal.⁽⁵²⁾

Both classes of trustees are permitted additional commissions of 6% of the gross rents collected for the active management of real property in addition to those commissions otherwise allowable.⁽⁵³⁾

Full commissions are allowed for each of up to three trustees where the trust principal exceeds \$100,000. If there are more than three trustees then a sum equal to the amount to which three trustees would be entitled is apportioned among the trustees in proportion to the services rendered by them.⁽⁵⁴⁾

Similarly, if the trust principal is less than \$100,000, multiple trustees apportion among themselves a sum equal to the amount to which a single trustee would be entitled.⁽⁵⁵⁾

There has been some question whether a trustee under either type of trust is entitled to paying out commission where the trustee transfers the property to himself as trustee of a successor trust. A case decided recently in New York County, following the modern view on the subject, held that under such circumstances the trustee is entitled to the payment of commissions from the first trust.^{(56)*}

Paul S. Forster is a third year day student and the business manager of EQUITAS.

* Footnotes upon request.

Those Who Also Serve



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