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EQUITAS

THE AWARD WINNING STUDENT NEWSPAPER OF NEW YORK LAW SCHOOL

AFFILIATED WITH PACE COLLEGE

VOLUME II, NUMBER 1

PUBLISHED JOINTLY BY THE STUDENT BAR ASSOCIATION AND PHI DELTA PHI
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FRIDAY, SEPTEMBER 25, 1970



Some of the more than two hundred first year day students crowded onto the fourth floor for the two-day orientation program.

Largest Class In NYLS History At Extensive Orientation Program

The largest first year class in the history of New York Law School this year experienced one of the most extensive orientation programs in the school's 79 year history. The two day orientation program, which was organized by Prof. Andrew Simak, featured speakers on every aspect of New York Law School life.

Among those to speak to the NYLS rookies were Dean Walter A. Rafalko; Hon. Charles W. Froessel, Chairman of the Board of Trustees; Sylvester Smith, President of the Board of Trustees; Prof. John Thornton, Vice President of the Board of Trustees; Prof. Louis E. Schwartz; Prof. John R. Dugan; Prof. Joseph Koffler; Alan J. Schnurman, President of the Student Bar Association; Mark Brenner, Vice President of the SBA; Richard Green, Editor-in-Chief of the New York Law Forum; Edward Ryan, Magister of the International Legal Fraternity Phi Delta Phi; and William P. Nolan, Editor-in-Chief of EQUITAS.

Dean Rafalko presided at the first day program and opened with a brief welcoming address. (The full text of Dean Rafalko's remarks can be found on page 2).

Following the Dean's welcome, Judge Froessel spoke to the new students on the history and development of New York Law School, including the affiliation with Pace College and its advantages for NYLS students, citing the availability of modern dormitory space at a modest cost and an extensive general library as but two examples.

President Smith, a past President of the American Bar Association (1962-63) and still one of its most active members, spoke on recent activities within that organization of interest to the newest members of the legal

community. He stressed the increasing amount of influence young members are now exerting within the ABA, pointing both to the Young Lawyers Division (members under age 36) and the Law Student Division as important parts of this country's most prestigious and powerful professional organizations.

Dean Rafalko introduced the members of the full time faculty citing both their academic as well as professional qualifications, and enumerating the courses taught by each.

These introductions were followed by brief addresses by leaders of the student organizations within the law school, simultaneously greeting the new students and urging them to take an active role in student activities.

After a brief collation at which coffee, sandwiches and cake were served in the main lobby, the first year students reassembled on the fourth floor to hear an address by Prof. John Thornton on the development of law, pointing out the extensive ties between modern juridical science and Roman, French and British legal systems. This address was immediately followed by a lecture by Prof. Joseph Koffler on effective study habits in the law school, including how to brief cases, take notes and write legal examinations. This lecture concluded the first day's activities.

The first year students assembled on the following day at 12:30 p.m. in order to hear in-depth lectures by Professors Schwartz and Dugan on their respective courses and on what they expect from their students. Each professor assigned certain cases from the casebooks to be

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Equitas Wins First Place In American Bar Ass'n Contest

EQUITAS has won its class in the American Bar Association Law Student Division Student Bar Association contest for the school year 1969-70. EQUITAS and Arete, the law school newspaper at the University of Akron School of Law have both come in first place in the contest for the best Student Bar Association Newspaper or Journal. The winning entries for the Law Student Division were announced at the concluding Awards Dinner at the annual meeting of the division in St. Louis.

The winning entries and their respective categories were, Washington College of Law; American University - Best Student Bar Association Project; and Marshall-Wythe School of Law, College of William and Mary - Best Student Bar Association.

The Best Student Bar Association Newspaper or Journal was won by New York University Law School - Class A, University of Virginia Law School - Class B, and New York Law School and Akron University Law School - Class C. Akron University Law School has now won in its class for three consecutive years.

The Editorial Board and the staff of EQUITAS are extremely pleased with the response to our newspaper after its first year. We hope to maintain our good standing and widen our focus on the legal community for the coming year. A concerted effort by a dedicated staff attained these results. We wish to offer our special thanks to Joel Slomsky, Kerry Katsorhis, Marty Dunne, Phil Papa, Frank DiMarco and

Professor Silverman.

This year EQUITAS will try to expand its scope within The Law School and the legal community. The editors invite comments and criticisms from the student body, faculty and alumni. We expect our readers to voice

their opinions as to those issues they feel pertinent during the year. Written articles also are encouraged in addition to letters to the editor as we realize the need for a diversified approach to the problems facing the legal community.

Loans And Grants Made Available To Law Students

BY BRUCE PITMAN

Sept. 14, 1970. Information on loans and grants in aid to students of New York Law School was made available today by the office of the Dean. Some of the tuition loans and grants may be applied for for the academic year 1970-71. However, in the case of some others, funds will not be available to the students until next year.

Those students who are residents of New York state have two loans automatically open to them. One is the New York Higher Education Assistance Corporation Loan which will make loans to undergraduate and graduate students of \$750 to \$1500 per year for tuition. The other is the New York Scholar Incentive Program which makes grants of between \$200 and \$800 per year. A student may make application for the program through the State Dept. of Education, Albany, New York. Among the requirements to qualify for the loan, the student must show his financial need and that he is a full-time student carrying twelve credits or more. Students, who are residents of New Jersey, may apply to the New Jersey Higher Education Assistance Authority if they are interested in acquiring a loan to pay for tuition. Similar to the New York loans, the New Jersey loan has a \$1500 limit per year for students engaged in graduate work. Students who wish to apply for this loan should write to P. O. Box 293, Trenton, N.J. 08625. All three of the above loans are still available to students for this academic year.

Once again a Federal Work-Study Program will be offered to our law students for the summer of 1971. This program places a limited number of law students, for the summer, in a city or state agency which deals primarily in urban problems. The student is paid \$3.50 per hour. The funding for this program is primarily by the Federal government. In the past students have been placed with the Corporation Counsel of New York City, Legislative Drafting Service and the Urban Corps.

Dean Rafalko stated that he will make application to the Federal government for thirty-five National Student Defense Loans. The Dean will submit the request this

year. However, if granted, the loans will not become available to students until the 1971-72 academic year.

The Board of Trustees of NYLS appropriates each year a certain sum of money from which it issues grants in aid. These grants are made to students who are deserving on the basis of need and scholarship achievements. They are given in the form of tuition remissions. Other scholarship funds available to students of NYLS are set forth at Page 32 of the school bulletin.

Certain special funds are available to minority group students. Among these is the Council on Legal Education Opportunity grants. A student can receive up to \$800 per year for living expenses. Students who are interested should write to Dr. Melvin D. Kennedy, 863 Fair Street S.W., Atlanta, Georgia, 30314. Another is the United Student Aid Fund available to those students who are unable to borrow through the normal channels. Those interested should direct their letters to Dr. Alan D. Marshall, care of the fund, at 835-3rd Avenue, New York City, New York 10022.

Students, who are upperclassmen, will also find funds available through the American Bar Assn. Students entering law school for the first year may apply to the C. Bainbridge Smith Fund sponsored by the New York City Bar Association. The Hon. Dudley Bonsal of the U. S. District Court administers this fund.

The Urban Studies Fellowship Program is also available to students of our school. Only 2nd and 3rd year students may apply, and application should be made directly to the Dept. of Housing and Urban Development in Washington D.C. 20410. Also, police or correctional officers who have had five or more years continuous service with a local or state police force or agency may apply to the Law Enforcement and Assistance Administration. This grant in aid will be available for next year.

If students have any questions with regard to any of the above loans or grants, they should see Miss Elenor Gravenhorst in the Dean's office.

Dean Rafalko's Message To New Law Students

Permit me to take this opportunity to extend to you, the incoming students, our heartiest welcome to the Law School. As of now, in effect, you have become members of a distinguished legal profession. The next three years in the Day Division and the next four years in the Evening Division are the most formative and important years of your lives because they enable you to shape the form of your legal careers. The time you put in your studies and the study habits you develop will determine ultimately what you will get out of your legal education. Depending upon what one pours into the glass, determines the volume of water one is able to drink. So, in your course of study at the law school, fill your glass of legal knowledge to the brim so as to be ready for your future legal challenges - what you feel are the priorities of our times.

For years, New York Law School has had an outstanding reputation with the bar, bench and the general public. You will find when you practice law that many excellent attorneys, judges and legislators are graduates of this Law School and that this distinguished Faculty teaches you how to become competent, professional lawyers.

This year, the number of applications far exceeds those of last year and you should be congratulated upon your admission because your records indicate you have the potential to become first-rate attorneys. Take advantage of the opportunity that has been presented to you and utilize your time wisely. Study and work to make the law reasonable, just and responsive to the needs of our Society.

The Law School has the responsibility to provide you with the best legal education possible. Basically, you will be expected to "think like a lawyer" - develop legal analysis. The Law School uses a combination of the case method and problem solving as the basic means of instruction. This technique you will learn, is referred to as the case method of instruction. You will be learning

and analyzing what the law is - whether it is statutory law enacted by the legislature or law established by judicial decision. This is the practice-oriented or profession-oriented approach. This method has created outstanding practitioners of the law and legal technicians and is concerned with the realities of law practice.

Another school of thought advocates the social-oriented or policy-oriented approach to legal education. It is concerned with training architects of society and policymakers for the future. The emphasis would be to adjust law school curriculums to turn out sociologists and political scientists. They would make the law school a graduate school for social planners and they would be turning out non-lawyers, researching in other interdisciplinary fields.

The first approach recognizes that law is stable but that changes may be made within the legal educational system, if necessary. This year we are including within our curricula a broader base of electives to relate to community needs. Upper-classmen will have the opportunity to elect such courses as: Consumer Law, Law and Society, Labor Law, Civil Rights and Liberties and International and United Nations Law. The addition of these electives will in no way interfere with required substantive and procedural courses that the Faculty believes are necessary to help prepare a student for the ultimate practice of law. Recently, "demands" by students have been made to the administration and faculty. They have touched upon such problems as: curriculum, class schedules, grades, examinations and moratoriums. Law students have worth-while suggestions to improve the legal education process and, if reasonable, they will be honored. It is important that they have lines of communication open to them and to present their proposals to those segments of the law school family that have the responsibility for making the ulti-

mate decisions. The channels of communication available to law students are fourfold:

- (1) Present your requests through the Student Bar Association.
- (2) Present your requests through the Chairman of the Faculty Committee affected.
- (3) Present your requests to the Faculty - Student - Alumni Committee.
- (4) Come in and talk to the Dean personally.

Thus, law students have the means available to them for communicating to the Faculty and Board of Trustees about any institutional problem concerning student welfare. The Standards of the American Bar Association for Legal Education requires that the primary function of the Faculty is in the formulation and guidance of educational policy in the recruitment of faculty members, and in matters relating to student admissions, dismissals, scholarship and discipline. It is the faculty which makes the final decision on matters affecting educational policy. Similarly, the Board of Trustees, pursuant to appropriate New York Statutes is charged with the responsibility over the physical facilities, approves the fiscal budget each year, awards degrees and disposes of such other matters as may come properly before it. The role of the Dean is to serve as the mediator and chief administrative officer of the institution and to advise the Board of Trustees and faculty on the most recent school developments and to outline plans for the future growth of the Law School. In addition, it is the Dean's responsibility to see to it that the rules and regulations of the American Bar Association, American Association of Law Schools, the New York State Department of Education, the New York State Board of Law Examiners and the New York State Court of Appeals are not being violated. It is for this reason that some of the student demands may not be granted because they would come



DEAN WALTER A. RAFALKO

in direct conflict with the Court of Appeals rulings or the State Board of Law Examiners rulings of the aforementioned accrediting associations' rulings and regulations. For example, the New York State Education Department requires that:

"Institutions shall be responsible for insuring that credit for each course shall be earned only upon the completion of the requirements for the course and demonstrated student accomplishment."

The Court of Appeals stated that:

"...the Court having decided that under Rule 4 of the Rules of the Court of Appeals for the admission of attorneys and counselors at law an application for admission to the bar must establish that he attended an 'approved law school' and successfully completed its program. Such an approved law school is one which requires;

- (1) a program of not less than

that number of classroom periods specified, and:

- (2) a final course examination whenever such examinations are appropriate to test the student's understanding of the content of the course"

In other words, no applicant for admission under the applicable rules is permitted to take an examination for admission to the Bar of the State of New York unless he has first taken and been tested by an authentic written examination in each of his courses of study in accordance with previous practice in the school.

In short, what this means is that written examinations will be required and that regular class attendance must be taken. Therefore, any requests for changes by the law students will be reviewed by the faculty, administration and Trustees after thorough discussion and consid-

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Advice To First Year Law Students

BY MARVIN S. KRAMER

Help! This is the ever familiar cry of a fledgling law student shortly after he begins his journey through a seemingly ever increasing judicial quagmire of legal decisions, opinions, articles, lectures and debates. When and where is it going to end? Is this what the practice of law is all about?

Many entering law students quickly lose their fervor and excitement over becoming another Perry Mason (whose courtroom antics have become legend - most of which never would be permitted in modern courts of law), or a Judd for the Defense (a millionaire, who practices law as a hobby). Dreams of grandeur and notoriety quickly fade behind countless numbers of cases, the points of which become obscured by fear that you might bemissing them.

Today's law student is of a different breed. He is more dedicated, more committed, more anxious to use his legal training to "right" the "wrongs" extant in our society. His goals are redirected from defending the corporate magnate to the defense of an unpopular client, such as a Charles Manson or a Black Panther. He is truly earnest in his desire to change the system rather than destroy it.

Before any of his numerous goals can be realized, however, before

he can help others, the freshman law student soon realizes that he is the first to need help. He accustomed himself to slouching off while in college. To cutting classes, to cramming it all in just before an exam. These bad habits should be broken and a note of caution should here be injected. Keep on top of your work, do not let it get on top of you! Wherever possible, you should try to stay eight to ten cases ahead of where your class left off. Unfortunately, there will always be those who neglect their work and try to pick it all up at the last minute. Some manage to scrape by, while most others fall by the wayside. One of the realities of being in a large class is that many students will never make it to graduation. Did you notice the people sitting to your left and right at the orientation sessions? The chances are good that either one or both of them will not graduate with you.

Few individuals will dispute the fact that self-help is the best help, but it is by no means the only help available. By self-help, I mean that you should begin to take your work seriously. True, much of the materials you study in law school you may never come across in

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ORIENTATION



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EDITORIALS

WHAT HAPPENS NOW

Last May, every law school in the country came face to face with something many had never seen before, law students. We showed for the very first time that we were more than automats who came to class, briefed cases and worried about Contracts 2. The very same professors who didn't know seat 32 from 56 were made to realize that we too have a share in the world around us. The world we are being taught to govern.

Projects were planned, committees were organized and teams were chosen, to do our share to correct the mistakes and imbalances that have arisen under less enlightened generations. We had the support of administrations and examinations were cancelled or postponed. Now it is September, a new year but where are the plans of yesterday. The ideas were good, let's do our share and go to work on them.

CONSTRUCTIVE CHANGE THROUGH DISSENT

"No American young or old must ever be denied the right to dissent. No minority must be muzzled. Opinion and protest are the life breath of our democracy - even when it blows heavy."

Lyndon B. Johnson

Extremism in the proper time and place is a virtue. But it can only be considered such in retrospect. The strike last Spring at New York Law School has had far reaching affects on the Law School Community that should not be overlooked or considered insignificant in light of the action taken by other institutions.

Prior to the ruling on final exams last semester by the New York Court of Appeals, the faculty of New York Law School unanimously supported the goals set forth by the Law School Ad Hoc Committee for Peace. Such support was not obtained by what many students thought was a threat to obtain this end by any means. Support was voluntarily offered based on the faith of the faculty in the student body. The faculty and students are finally getting tight in stead of up-tight. The communication between the faculty and the student body is becoming quicker and clearer. There is a drastic change in the atmosphere of the school. The faculty is ready, willing and able to meet the needs of the students and to facilitate not hinder constructive reform.

Last year Dean Rafalko created the faculty-student committee in order to consider all matters concerning the interests of the Law School and the stu-

dent body. Here student representation will serve to even better the communication between the student and the faculty and Board of Trustees. Electives are now a fact of life at the Law School and not merely the theme of futile verbiage of a graduating senior. Such initiative illustrates that there is not only a willingness but a desire on the part of the administration to aid in instituting reform measures here at the Law School.

We as students owe a duty to the administration to continue to present reasonable proposals for change within the school. If we remain apathetic about future change and antagonistic about minor defeats in the past it will serve only to negate our accomplishments thus far.

Last semester at the outset of the student strike many upper-classmen were afraid of the consequences of such radical opposition to the administration. This fear was tantamount to absolute panic and the result was apathy and stagnation. Not until a few sincere students decided to carry the ball did the indifferent and the lethargic jump on the band-wagon. When unity of the movement was attained and a semblance of organization maintained a constructive effort was well under way.

It is therefore incumbent upon the students, in order to maintain the support of the faculty, that we abolish and function as a harmonious group. Reform is forthcoming only if we present feasible proposals backed up by the strength of a unified student body.

FROM THE EDITOR

BAR-LINE

By WILLIAM PAUL NOLAN

I would like to thank my staff for their efforts which made EQUITAS first prize winner in our category in this year's American Bar Association Law School Division Contest. Special thanks must go to recent graduates Joel Slomsky, Kerry Katsorhis, Phil Papa and Martin Dunne, who were last year's founding fathers.

However, there is much room for improvement. Most important is that we have greater participation from our own community. Included in this community are all students, both day and night, faculty and administration. It is only through such group action that we can be the communication medium we desire to be.

Speaking for the staff, I would like to welcome Professor Avner to our school, along with the new freshman class.

Last year's funds were allocated to the Student Bar Association for a guest lecture series but these funds remained untouched. We had three lectures throughout the school year, excluding Law Day, thanks to Professor Koffler's efforts. All of these were well attended but unfortunately only by day students. The Student Bar Association should take steps to arrange a guest lecture program for both divisions because it is only through such talks and actual experience



WILLIAM NOLAN

that the interest of the law student is kindled.

I hope we shall see many of you at the first staff meeting this fall and on the many new Student Bar Association committees.

FROM THE PRESIDENT

STUDENT BAR

By ALAN J. SCHNURMAN

"DEAR ENTERING FRESHMAN"

Entering a new school is usually an experience that you like to forget. You're nervous, apprehensive, filled with all the anxieties and frustrations that go with wondering what mystical problems they have in store for you.

Combine all these feelings and then add the usual talk you hear from upper classmen about how you are going to have to give up all your ball games, hobbies weekends, and even your wife if you should have one and all I can say is, "Welcome to Law School." The only maxim or bit of advice I can think of for the student who finds himself in the category of entering Freshman is the single word attitude. If you start Law School with the idea that you are indifferent to it or that you are only going to please someone else or because it's something to do while you find yourself—experience has shown me that you'll probably either drop out after the first month or after you find you're so far behind in your cases that you could never catch up in time for finals.

Your worst enemy around here is definitely yourself. You have to have the attitude that you are going to give it your best and not a half hearted effort that later you can use as an excuse to your family and friends and more so to yourself, that if you've had time to do the work you wouldn't have had to drop out.

Every individual who has been admitted to New York Law has been proven to have the necessary capabilities for success here. But now is the time he must prove it to himself. You must have the self confidence that you can be a lawyer and the perseverance to make it so. Often I have thought that you don't need to be a Cardozo, or a Brandeis to make it in Law School, but all you have to learn is to glue the seat of your pants to the



ALAN J. SCHNURMAN

chair in front of your desk. I'm not going to say the tired worn words of good luck because luck is not one of the elements that is going to get you through your first year. I will say give it the best you have for then there will be no doubt that just a few years from now you'll have different problems—like finding a job as a new attorney.

Largest Class In NYLS History At Extensive Orientation Program

(Continued From Page One)

read for this session and each of them analyzed those cases to indicate how essentials should be presented within a brief. After these lectures were completed

the first year students were assigned to "big brothers" who will act as upper class advisors during the coming year. Each of these advisors spoke with his students separately and answered any questions that the first year students might have concerning New York Law School.

It was the most extensive orientation program ever attempted at NYLS and it covered virtually every aspect of law school life with the hope of adequately preparing the new law students for the rigors of legal study.

EQUITAS invites its readers to write "Letters to the Editor" on any topic relevant to the New York Law School community. The right to edit letters to conform to space requirements is reserved by Equitas. If one wishes to remain anonymous, he should sign the letter and then indicate that he wishes the letter to be published anonymously. Letters should be sent either to the Editor of EQUITAS, New York Law School, N.Y.C., N.Y. 10013, or deposited in the EQUITAS mailbox on the main floor of the law school building.

FRATERNITY PRESIDENT

PHI DELTA PHI

By ED RYAN



ED RYAN

A law school curriculum is of great importance to each individual law student. The trend today is toward more elective courses and fewer required ones, particularly after the first year of study, during which the fundamental subjects of Torts, Contracts and Property are taught. After this foundation of legal education is laid, the law student can choose the direction and mold the character of his formal legal training by choosing courses in which he is interested and which will assist him most in the pursuit of his career before the Bar.

Many institutions of legal training have in the past geared their curriculums to the most appropriate subjects which would enable the maximum number of graduating students to fair well on the Bar Exam. These courses of study should, of course, remain in the curriculum and usually do. But, in preparing a curriculum with greater elective choices, often former required courses are made electives, thus leaving a possible gap in one's legal education in an area which may, and usually does, appear on the Bar Exam. This behooves the student who chooses to have formal instruction in specialized fields covered by elective subjects to do more individual research and study those more generally necessary topics on his own in preparation for the Bar.

Liberalization of our formerly rigid law school course of study is a progressive step for New York Law School. For, in keeping with the liberal trend, and in response to student requests for elective courses, it has revamped its schedule, leaving at least one two hour period per semester available for elective subjects after the first year of study.

Of course, the electives from which we may choose are somewhat limited this year, this being the result of financial restriction and further, that this semester marks the initial attempt at this type of scheduling here at New York Law School. These difficulties will hopefully be overcome in the near future when the

number of electives available will be increased and improved.

The manipulation of the senior schedule to conform to the restyled elective schedule was an extremely arduous task. But, through the fine work of Professor Koffler and the curriculum committee which he chaired, New York Law School has taken another positive step in improving the school as well as responding to the needs and requests of the students.

New York Law School is not just another law school, but a law school of increasing distinction in the legal and academic communities. A good example is this award winning newspaper, published jointly by the Student Bar Association and Phi Delta Phi Legal Fraternity of New York Law School.

Through the continued cooperation and interests of the students and faculty, innovations such as elective scheduling are made possible and practicable.

When this occurs, you, as freshmen, should seek help from the members of the faculty, or from the upper-classmen who would usually be very happy to render some assistance to you.

The Brothers of Phi Delta Phi, Dwight Inn, will be most happy to assist you in matters pertaining to problems encountered while at New York Law School, be they of a legal nature or otherwise. Remember, do not be shy or afraid to ask a question - it may be the only way you will ever find out the answer.

As you are now members of our law school community, I should just like to mention that to those with whom you come in contact outside of school, you not only represent New York Law School, you are New York Law School. It, therefore, behooves each and every one of you to make the best impression you possibly can. You will find this will help you more than you think. On behalf of the Brotherhood of Phi Delta Phi, I should like to wish all entering students a happy, healthy and successful year.

A TALE:

'Foibles Of A Freshman'

BY JOEL HARVEY SLOMSKY

It rained lightly on my first day of law school. But its misty presence certainly could not be significant. After all, rain always appeared the first day of every school I attended, as I recall. I ignored its current intrusion; not intentionally though, but because THIS time I was diverted by something more urgent - casebooks squeezed into my now-distorted attaché were causing my arm to stretch . . . and S-T-R-E-T-C-H! The pain multiplied; but somehow I endured it. Why? Because in my arms between the familiar covers of blue Foundation Press publications were years of condensed knowledge - written for bewildered beginners with aching arms.

An alert mind, I remember, courageously weathered two days of orientation. The atmosphere was boringly friendly. Professors, draped with rueful smiles, gave spirited talks aimed at stimulating and motivating our novice minds. I recall thinking then, as I do now, if only they remembered their orientations, maybe they would realize that this ritual, from the student's viewpoint, is as empty and burdensome an affair as meeting relatives.

Yet, the experience confronting me caused a strange, but welcomed anxiety. I was clothed with doubts. The challenge spanned three years. No rainbow would appear at the end of that period, nor would there be an instant "pot of gold" awaiting. But the lawyer "mystique" had so absorbed my imagination that I felt compelled to follow the path ahead and proceed.

"What is the Law?" was the giant, simple question puzzling me. In college I had taken such courses as Constitutional Law, which had introduced cases written by eminent Supreme Court jurists. I understood that "a" law was, as the revered Holmes had succinctly pronounced, that a man cannot yell "fire" in a theater. Yet, I wondered, why did it take an isolated instance of Holmes' brilliance to state what plainly appears to be a common sense assumption?

The first day of classes burst upon me as suddenly as sunlight pierces through an open window. I entered the law school building, awed by the vast majestic structure facially adorned by famous quotations. I felt engulfed by a strange omnipresent phenomena: by an unfelt pressure that subconsciously controls my conduct: by a tacit compassionate noun - the law.

I sat in class silently, at times glancing at other students. All seemed gripped by a degree of anxiety. The professor entered. He explained - "Brief the cases: stay ten ahead: be prepared when called upon". The class ended. I loosened my tie and fled home to begin to brief, brief, brief.

"Good Grief!!!" I muttered as the professor roared my name and bellowed, "STATE THE CASE!" "Well sir," I retorted nervously while standing. "The facts are. . . OH" I replied puzzled. THAT fact is not important? Sir. . . You're right. Sir. . . The holding is. . . OH." I said unassuming. "THAT is not the holding?"

Sir. . . Yes, I understand it now, Sir. . . Thank you!!!" I sat down, forever shaking like last night's jello.

The days passed as the concepts materialized. Analyzing some cases was as simple as reading Dickenson's poetry: others required thought. THOUGHT . . . I was THINKING, exercising legalistically the delicate fibres in my brain through a foreign method called inductive reasoning - that God-foresaken systematic approach contrived by the seers of the past. This method was to guide me, as it does every law student, in my quest for a legal education. Under its protective logic, principles are piled high as they shape and develop into rational knowledge - civilization's backbone.

Indeed, I reflected, what a brilliant way to learn the law! But, BUT . . . why am I - why is anyone - required to learn the law? It has been instilled in us from birth that we are "presumed" to know it, and that ignorance of it is no excuse. If this is true, then why did I learn so much of something that I am presumed to know? What was the rationale behind this curious phenomena? Was this presumption valid? The answer can be found, I thought with certainty, in the utilization of our friend - the inductive method: to wit, the analytic procedure of the legal mind which works syllogistically as follows:

1) I am presumed to know what I am certain that I do not know.

2) My ignorance of what I do not know is no excuse for not knowing what I am presumed to know.

3) Therefore, I am presumed to know that I am ignorant of that which I do not know and of that which I am presumed to have no excuse for!!

EXACTLY CORRECT!??

However confusing this may be, these meager excursions in logic consumed a great deal of my time that first year until subconsciously I became mesmerized by their frequency. Passively, I tolerated their presence.

Finals confronted me as May arrived. The "hairy hand," "Davies' ass" "Mrs. Palsgraf," - all greeted me as the exams tortuously tested my fledging ability. I discovered - by way of necessity and panic - how to assume more facts than were given, and I wrestled with each final until all were part of my immediate past.

The day I received my grades my mother called. I explained to her that I possessed "promise", mainly because I passed all my courses, and that I would be home tomorrow. She said it was raining at home, and inquired as to whether I had found a summer job. I told her that I did - with Good Humor Ice Cream. She asked me other questions concerning the job; but regardless of my efforts to explain, somehow she could not believe that "my lawyer" would not be writing briefs for them. . . I was, I told her sadly, assigned to other duties - in a white uniform!

Advice To First

Year Law Students

Continued From Page Two

your actual practice. But, conscientious efforts now may very well stay with you after graduation, making your practice before the Bar a little easier and more enjoyable. Self-help also means that you should be anxious to seek out answers to questions that arise during your course of study here at New York Law School. Do not rely on the fact that someone else may ask that particular question in class and thus free you from the task of performing what may be menial legal research.

There are times, however, when you simply cannot find an answer to a problem, or you are unable to understand any given case.

EQUITAS

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Standing To Sue In Pollution Cases-Palliative Or Panacea

BY PROF. SYLVIA E. KELMAN

In 1965 Tom Lehrer's record, "That Was The Year That Was", popularized his song "Pollution". The former Harvard mathematics professor was then in the vanguard of those concerned with the ravages industrialization and urban neglect had wrought on our environment. In the brief period since then this issue has become the political glamour girl, avidly embraced by all and effectively dealt with by none.

Traditionally the common law remedy for environmental pollution was the action of nuisance or trespass brought by an aggrieved property owner or one having an interest in property against the polluter. The most serious limitation of these actions was that since these were "private wrongs", if the suit was settled privately, the polluter could continue his activities. Moreover, if action was not started timely, the statute of limitations would run against the claimant. Inherent in this remedy is the view that the air and water are free and the social costs were absorbed by the population at large. Only if there was specific damage to or trespass upon a given piece of real estate did a cause of action accrue. Even if one could prove such damage, one was faced with a set of variables that courts considered in nuisance actions that could result in differing outcomes depending upon facts other than damage. So, for example, it might be perfectly fine to pollute in Long Island City because it is an industrial area but smoke emission in Forest Hills, a few miles away, might be enjoined because the area is residential. (And then again it might not!)

In order to cope with the problem that actions such as these could be brought only by affected owners of real property or by frequently desultory governmental agencies where the pollution

constituted a public nuisance, Michigan enacted a law drafted by Professor Joseph L. Sax of the University of Michigan School of Law which permits any Michigan citizen to sue polluters both public and private. Similar legislation is pending in seven other states, including New York, and in Congress. While presumably all individual citizens or groups of citizens would not be able to prove damages in the traditional sense, this legislation by making them aggrieved parties would permit them to move to enjoin the pollution causing activity.

This legislation has been hailed as a step towards making each citizen a potential attorney general to enforce pollution controls. The question is to what end? Can the problem really be solved by the courts on the basis of private suits? Are we not asking the courts to solve economic, sociological and technological problems that really need concentrated legislative and executive action?

This dilemma was pointed out by the New York Court of Appeals in its recent decision in *Booner vs. Atlantic Cement Co.* (March 4, 1970). The court overruled the long-standing doctrine in this state in nuisance actions that the courts would not "balance the equities" and held that it would not enjoin a business employing hundreds of people in order to redress the "private" grievance of individual property owners. The court held that if the industrial activity created a pollution hazard, the solution lay in proper governmental regulation and should not be the subject matter of a private suit. Undoubtedly an unspoken but real factor in this decision was the economic stagnation in that part of New York State where the plant is located.

While permitting private individuals to act in the public interest in anti-pollution suits

appears to be such an easy solution to a vexatious problem, it certainly does not attack the root causes. Money must be spent to develop methods of coping with public and industrial waste. Economic decisions must be made as to the allocation of the costs for both the research and plant facilities. Sociological decisions must be made concerning possible economic dislocations that may ensue. Political decisions must be made concerning who is to pay both dollar and social costs. Regulatory agencies must start to regulate rather than "represent" the industries they are supposed to control.

It would appear that a more fundamental approach to a solution is embodied in Illinois legislation which recently created an over-all Environmental Control Agency which consolidated all activities pertaining to the field in one body. This agency is empowered to set standards for industries and gives the Attorney General wide powers to enforce the standards. If the public were represented on such boards and were given standing as "aggrieved parties" in determinations made concerning standards so that the public would police the police, it seems that we would be approaching a more rational solution.

This is the first of a series of articles to be written by members of the faculty of New York Law School on or about recent developments in the law of interest to the New York Law School community.

Professor Kelman is best known for her expertise in the field of Property law, and this semester will be conducting a voluntary seminar on the subject of "Social Justice Through Law" in that field.

Some Thoughts From A Long-Haired Law Student

BY BARRY SIMONS

The polarization of the American society has created a xenophobic atmosphere dangerously conducive to violence. It has already transcended the political game of national elections and has infected the normal intercourse of the population in derogation of the civil and political rights of those who choose to follow a life style inconsistent with that of the majority. Distrust, fear and animosity have created an unfortunate and unwelcome paranoia among many of the nation's youth, a paranoia that at least, in the experience of this author, is justified.

Social rejection of strangers is a character trait of all primates, and is present in all societies in varying degrees. However, the political climate in this country and the polarization resultant therefrom has created a critical stage, from which widespread repression or revolution become presently possible.

Robert Ardrey, author of "African Genesis" and "The Territorial Imperative" has observed that: "xenophobia is as widespread a trait among social species as any single trait (among)...(a) limited group of familiars...known to each other as individuals. Each has learned what to expect from his neighbor, and in such groups sufficient order comes easily. But the stranger presents a problem...normal procedure will probably condemn him to the bottom of the social rank where his potential for social disruption will be minimum." The stranger in our society is the hippie, the long-hair, the leftist or the black man.

Alienation is the word - the result and perhaps the cause. I read of Chicago - Wall Street - Kent State - Jackson and infinitum and I feel alienation. Hopefully I have been given the tools to deal with a system which I feel has become oppressive without resort to violence, but when I read of the burning of the Bank of America or the bombing of the Math Center at the University of Wisconsin I can comprehend the alienation that is part of the cause. This comprehension stems from experiences of having a valid system perverted by those affected by xenophobia, those who have the misapprehension that those who are different are ipso facto subversive. The following should serve as examples of the abuse and harassment that a large portion of today's youth are subjected to, which I, because of my legal background, was able to transmute into psychological victories, but which, under different circumstances could have been a precipitant to violence.

A suburban roller skating rink in New Jersey has a policy which denies the use of its facilities to persons having long hair. I along with others attempted to purchase tickets and use the facilities. We were thereupon informed of their policy. I asked if my hair would be a health or safety hazard to other skaters or if its length would cause any other difficulties. The manager, in perfect candor, then told me that the reason for the rule was that they only catered to "good clean cut Americans." Needless to say my first thoughts were of Ollie's Barbecue and the Civil Rights Acts - but alas, I'm not Black - what do I do? When in doubt, I bluff; so without any warning, I proceeded to bombast him with the greatest outpouring of legal terminology since my Con. Law exam. It didn't work, he even hated long haired law students. Two letters from the New Jersey A. C. L. U. finally allowed me an evening of roller skating and, I believe, I enjoyed it more.

In consideration of space, I shall forego inclusion of several other similar occurrences and deal with an instance of governmental action that is, unfortunately, indicative of what many of my

generation is confronted with - overzealous and vindictive police.

Once again the setting is New Jersey (not to malign this date but this is non-fiction). I had just paid a toll on the Garden State Parkway when I was summoned to the side of the road by one of the State's Troopers. I presented my license and registration on request and without any explanation, he went around to the passenger side of my car and attempted to open my glove compartment. Oh, shades of Mrs. Mapp. I asked him if he had "probable cause" and informed him that if he didn't his actions would contravene the Fourth Amendment of the Constitution of the United States, and continued the rap as if it was the last ten minutes of a class in Criminal Procedure. His response was unexpected. He put his hand on his gun and told me that if I said one more word I would be arrested. Flash-Character Committee. I remained silent for the moment. Strange twist, I used to think that police were for my protection - well, that's politics.

My protector then issued a summons for my failure to sign the drivers license and issued this caveat: "your gonna have to make it in my world, we don't like your kind here" - words I'll never forget. I sat stunned and silent as he returned to his vehicle with my right hand clenched in a fist above my head.

Bomb a police station - not my thing, so I went to court. I made a motion to dismiss on the grounds that under New Jersey law this was not a punishable offense by itself without more and then proceeded to confuse both the judge and myself arguing that the case should be dismissed because of the officers conduct - sort of the reverse of the fruit of the poisonous tree doctrine. The judge told me that he could not dismiss the case at this time because there was no law on the subject but stated that he would reserve his decision until I could file a brief with him. Finals were coming (so I thought) so I pleaded guilty with an explanation. The results - no fine and a very heavy lecture for the cop (who never had a chance to say a word). A sweet victory, but one which never should have happened.

I wrote the piece because I am one of the privileged few who, because of education, can repeat the unwarranted conduct of uptight people and, in doing so, protect my rights. "Strangers" to the "Silent Majority" are being arrested, fined, harassed and deprived of their civil rights every day by governmental officials and those who have divergent political views. The legal profession from Wall Street to the National Lawyers Guild responded when they saw the "hard hats" assault demonstrators but that was yesterday, what about today and tomorrow - it seems that the profession has a short span of attention when egalitarianism rather than profit is the fee. The profession has a responsibility in this area and are bound to satisfy it. I for one am tired of being judged, convicted and punished for my appearance. I know my rights well enough in most cases to be able to secure them, but those who are abused, who have no recourse, are more inclined to practice revolution with a capital R.

One final note, the judge cautioned me, after his decision, not to be intimidated into a barber shop. There's hope!

Members of the New York Law School community are encouraged to submit articles for publication in Equitas. All such articles must be signed in order to be considered for publication.

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Criminal Negligence: An Approach

BY ROBERT C. EDMONDS

Section 15.05 of the New York Penal Law, enacted in its present form in 1967, attempts to define "culpable mental states." The most significant departure in this classification is the fourth paragraph, which is titled "Criminal Negligence." Here, in what appears to be lucid prose, the elements are set forth:

"A person acts with criminal negligence with respect to a result or circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

A careful reading of the section, however, leaves the analyst with questions: What is a substantial and unjustifiable risk? What is a "gross" deviation? Is the reasonable man test sufficiently precise in its application? The Penal Law was never before graced with a definition of criminal negligence, although the concept was indiscriminately sprinkled about in SS 1053a, 1053c, and 1053e of the former statute. To discuss the development and ramifications of the new law, we shall concentrate upon two areas: 1) the underlying source of the confusion; and 2) the present impotence of the statute relating to criminally negligent homicide, P.L. S 125.10. It is hoped that future articles may extend the scope of this enquiry.

Under the common law, two elements are required for the attachment of criminal liability, the mens rea (criminal state of mind) and the actus reus (forbidden act). Negligence involves the failure to perceive a risk which one should have perceived, and consequently falls outside of the traditional requirements for criminal liability. Recklessness, on the other hand, demands an awareness and conscious disregard of a risk; the mens rea is unquestionably present. The new definition at S 15.05 seeks to clarify the distinctions.

The Staff Notes state that, "The criminally negligent offender is not aware of the risk created and, hence, cannot be guilty of consciously disregarding it. His liability stems from a culpable failure to perceive the risk...His culpability is appreciably greater than that required for ordinary civil negligence."

Judges, in interpreting the criminal negligence provisions of both the old Penal Law and the new Penal Law, have struggled unsuccessfully with the problem. In the leading case, *People v. Angelo*, 246 N.Y. 451, 159 N.E. 394 (1927), the Court of Appeals stated

that, "Culpable negligence is therefore something more than the slight negligence necessary to support a civil action for damages. It means, disregard of the consequences which may ensue from the act."

Here, the Court has specified a conscious disregard (or what amounts to recklessness) as a requirement for criminal negligence. Most courts have followed *Angelo* for lack of a better solution. Later decisions stress that the act or omission must be of an aggravated character, "as distinguished from the failure to exercise ordinary care." *People v. Waxman*, 232 App. Div. 90, 249 N.Y.S. 180 (1st Dep't 1931); *People v. Decina*, 157 N.Y.S. 2d 558, 138 N.E. 2d 799 (1956); *People v. Haney*, 298 N.Y.S. 2d 415 (Sup. Ct., Crim. Term., Richmond Cy., 1969).

We find, generally, a total unwillingness to sustain a conviction under an indictment for criminally negligent homicide. In *People v. Haney*, supra, at 419, the Court said: "Resolving all inferences in favor of the indictment, all that appears in the minutes of the Grand Jury nevertheless is that the defendant was operating his automobile at an excessive rate of speed, passed a red light, and struck and killed Angela Palazzo." Testimony in the Grand Jury minutes indicated that the defendant was operating his vehicle at a speed nearly three times the prescribed limit at the moment of impact with the deceased. We are left with the question of what, if anything, meets the requirements for criminal negligence?

The standards of reasonable care relevant to the operation of motor vehicles are determined by the Laws of the State which appear in the Vehicle and Traffic Law. And yet, without the elemental mens rea the courts are loathe to find criminal liability. The New York Legislature, however, has clearly indicated that mens rea need not be present, P.L.S 15.05 (4). The statute unfortunately falls short of defining just exactly what conduct places one in a culpable position under the criminal law. Intelligent arguments have been advanced in support of the contention that there is no place in the criminal law for sanctions against negligent behavior. If the act is not willful, it is argued, penal sanctions are irrelevant. Hall, "Negligent Behavior Should be Excluded from Penal Liability," 63 Colum. L.M. 632 (1963); Note, "Is Criminal Negligence a Defensible Basis for Penal Liability," 16 Buffalo L.R. 749 (1966). These arguments, while important, do not assist us in the problem at hand; since we have such a statute in New York we must try to give it meaning.

The Editorial Board of *EQUITAS* recognizes the need to express opinions concerning current issues of significance. In conjunction with WCBS Radio we are reprinting the following editorial with the full support of our staff and invite your comments.

Marvin Ray Raskin
Associate Editor

There are disquieting overtones to Attorney General John Mitchell's warning on student support for political candidates in the elections this Fall. He said such backing could aid the opposing candidate.

As the President's chief campaign strategist in 1968, the Attorney General probably remembers Mr. Nixon's public stand at that time on the question of student involvement in social issues.

"In the Nixon Administration," said Mr. Nixon before he was elected in 1968, "students will have a better alternative than to take to the streets to protest. They are going to have a piece of the action."

Isn't Mr. Nixon's campaign position at odds with the Attorney General's statement on the same topic this week?

What standard should be imposed in order to determine "gross" deviation from the standard of care?

If we accept the Vehicle and Traffic Law as a standard indication of the legislative formulation of an individual's responsibilities (what the Legislature believes a reasonable man would do in the exercise of care), we may proceed to a tentative definition of degrees of deviation from the expected standard:

1. Operating a vehicle within the law is the exercise of reasonable care.
2. Operating a vehicle in violation of the law constitutes a deviation from reasonable care, or the negligent operation of a vehicle where such conduct causes damage or injury.
3. Operation of a vehicle in such flagrant violation of law as to render probable the substantial risk of causing death constitutes a gross deviation from the standard of reasonable care, or the criminally negligent operation of a vehicle.

We still have terms in need of definition, but the approach appears to be valid insofar as it brings us closer to the legislative intent. Certainly, were such an approach in use, the Court in *People v. Haney*, supra, would have been obligated to accept the indictment as valid. The extent of culpability would then have become a jury question, as it properly should be.

Guest Editorial

In Mr. Mitchell's words, "If all those kids come off the campuses and campaign for a candidate, it might urge people to vote for the other candidate".

The Attorney General indicated that voter antagonism might follow even without students picketing or otherwise demonstrating on behalf of a political candidate. He suggested that the voter backlash might come into play if a candidate was identified with students who had participated in the protest movement.

The implication of Mr. Mitchell's remarks seems to be that he does not regard mass political activity by students as a desirable objective in itself.

If this is a correct interpretation of his position, we hope it is not shared by the President or other leading members of his Administration.

In 1968, Candidate Nixon noted publicly that many young people, as he put it, "feel frustrated by the lack of communication with the power structure."

Attorney General Mitchell's comments on student political activity will do nothing to reduce the sense of frustration of these young people.

- WCBS RADIO -

Dean Rafalko's Message To New Law Students

Continued From Page Two

eration of the applicable rules and regulations.

You will find the study of law is a full-time job and that the law is a jealous mistress. You must give it your best effort if you are to succeed, but you still will have time to participate in many of the extra-curricular organizations, such as:

Student Bar Association, Phi Delta Phi Legal Fraternity (male), Phi Delta Phi Fraternity (female), *EQUITAS* (Student newspaper), Law Forum (legal periodical) and many other special activities. If there is anything that the Law School family, trustees, faculty and administration can do to make your stay with us more enjoyable, please come in and talk to me. The Dean's office is always open to the law students. The success of the Law School in the past has been due to the dedication, loyalty and enthusiasm of the law school family and alumni. We expect you to bring some of the same spirit to further improve the image and reputation of New York Law School to inspire you on to greater achievements in the future. Again, a very warm welcome to your law school, your home away from home.

Walter A. Rafalko
Dean

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