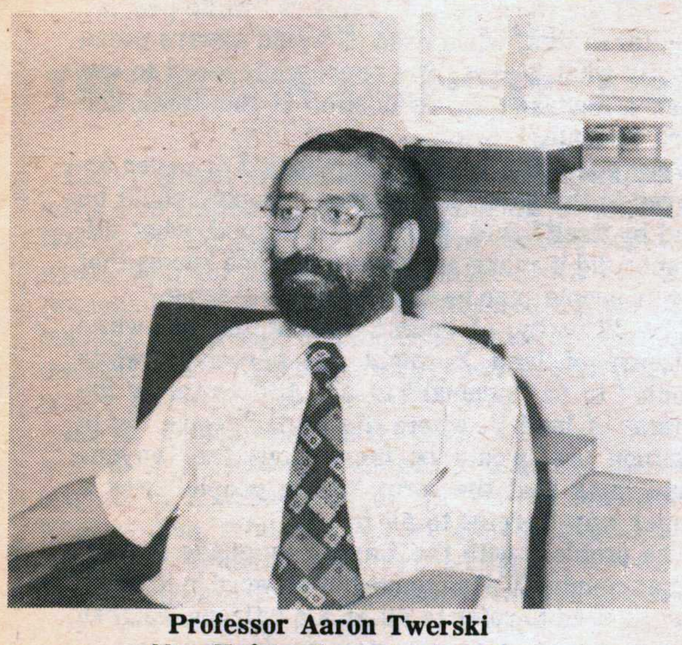
HOFSTRA UNIVERSITY SCHOOL OF LAW

CONSCIENCE

The Hofstra University School of Law Newspaper

Volume 1, Number 5 | "Asking you to ask yourselves . . ." | March 1, 1974



Professor Aaron Twerski
New Hofstra Associate Dean

Associate Dean Judith Younger
New Syracuse Dean

(The March 15 issue of Conscience will include feature articles on Aaron Twerski and Judith Younger.)

3 Orthodox Students Teaching; Plan Jewish Law Students Union

Three first year, orthodox Jewish students at the Hofstra School of Law are currently teaching courses in Hofstra's undergraduate Jewish Free University Program. The three students, Jack Nelson, Hyman Stramer, and Neal Hendel, are teaching, "Ethics of the Fathers," "The Mishna," and "Judaic Attitudes Towards Love," respectively.

Jack Nelson explained to Conscience that "we all feel very good about transmitting knowledge of the Torah; we feel we can positively affect students." Jack and Hyman are Yeshiva University graduates; Neal is of N.Y.U. vintage. All three acted as advisors to Hofstra's undergraduate Hillel program during the Fall semester, and all three are now working to establish a Kosher Kitchen for orthodox Jewish students.

In addition, the trio are actively planning on establishing a Jewish Law Students Union before the end of the semester. This project is being assisted by newly appointed Associate Dean Aaron Twerski, who, Stramer says, "is a symbol of what we aspire to."

"Twerski has been able to integrate a dedicated Jewish motivation into a secular world," Neal added, "and has compromised nothing." Professor Twerski, as many students know, is a Hasidic rabbi. He has been conducting classes on the Talmud this past semester.

One of the projects of a Jewish Law Students Union would be the curricular addition of a course in Judaic Law. Jack explained that "so much of American constitutional law rests upon fundamental Judaic ideals, a Judaic Law course would be very beneficial." Hyman added that a course so structured would give religiously oriented students an opportunity to integrate their Judaic background into the legal environment.

Interestingly, all three students noticed at least a little conflict between the intensive Judaic studies they adhere to, and the discipline of law they aspire to. However, as Jack Nelson indicated, "the Torah can dominate life in more ways than just studying the Torah. If I can work within the community, and be a model of Judaism, I can minimize any conflicts."

During the semester some classes were scheduled on religious holidays. Each occasion was met by a professor who scheduled a makeup class for the students who could not attend the original meeting. "The Hofstra Law professors have gone out of their way to safeguard our religious interests," Neal indicated.

Another idea for the Jewish Law Students Union is a speaker's program, whereby practicing attorneys and observant Jews might relate some of the problems they encountered in the legal profession.

In the meantime, teaching will keep all three students busy. The classes meet once a week, and in order to be prepared, each student must have a lesson plan laid out. However, Neal's "Judaic Attitudes Towards Love" course just seemed to take off at its first session. "We wanted to draw upon the relationships between Man and God, Man and Man, and Man and Himself," said Neal. "Everyone was excited about the topic and a vibrant discussion ensued." More of a lecture was Jack's first class in "Ethics of the Fathers," and the Yeshiva grad brought point after point home with emphatic hand gestures and enthusiastic tones. "The only way you can keep Torah is to give it away," Jack explained.

"Jewish education is important," Hyman continued, "People have a tremendous desire to do their part, and to help others. We feel this is a good way to do it. Rabbi Kook once said, 'Just as there are Laws in Poetry, so there is Poetry in Law.'"

From left to right, Jack Nelson, Neal Hendel and Hyman Stramer.

ABA President Wants Professionalism: 'Stain of Watergate Must be Removed'

ATLANTA, Ga., Feb. 16—The Watergate affair has created a demand by the legal profession for much greater enforcement of lawyer ethics and competency, the president of the American Bar Association said here today.

Chesterfield H. Smith said the profession, spearheaded by the ABA, "will move far beyond the limited problems of Watergate and establish stronger disciplinary procedures throughout the United States."

The ABA president spoke at the first of a series of regional conferences, sponsored by the ABA Standing Committee on Professional Discipline.

He noted that the profession already has taken "strong steps to remove the stain of Watergate" by taking disciplinary action against those lawyers involved.

As examples, he noted the following:

—G. Gordon Liddy has been disbarred by the New York Court of Appeals.

—John W. Dean III has been suspended from legal practice by the District of Columbia Court of Appeals, pending a further order of the court.

—The State Bar of California has opened disciplinary investigative files on Richard M. Nixon, John D. Ehrlichman, Donald H. Segretti, Herbert M. Kalmbach, Gordon G. Strachan and Robert Mardian.

—The State Bar of Washington is investigating Erlichman and Egil Krogh.

Smith also noted, unrelated to Watergate, that a special three-judge panel in Maryland has unanimously recommended to the Court of Appeals of Maryland that former Vice President Spiro T. Agnew be disbarred, a position recommended strongly by the Maryland State Bar Association.

The ABA president said that authority for lawyer discipline and licensing rests solely with the states where a lawyer is admitted to practice. "Neither the American Bar Association nor any other national group bears any authority to discipline lawyers at the national level," he pointed out.

Nevertheless, he said, the ABA has assumed leadership as the national coordinator and resource center for the states in efforts by the legal profession to improve lawyer discipline.

He cited the following ABA actions:

Chesterfield H. Smith

—Creation early last year of the Committee on Professional Discipline to "develop, coordinate and strengthen" state discipline programs and procedures.

—Creation of a National Center for Professional Discipline to maintain a National Discipline Data Bank and a National Discipline Brief Bank. The Center now has a special liaison representative in Washington, D.C., who is assisting state disciplinary agencies in obtaining computerized public records of the Senate Select Committee on Presidential Campaign Activities, chaired by Sen. Sam J. Ervin, Jr. (D-N.C.). State disciplinary agencies can use the records in investigating attorneys allegedly implicated in professional misconduct connected with the Watergate and related investigations.

—Sponsorship of regional disciplinary conferences, such as the meeting in Atlanta, which are attended by state supreme court justices, bar officials and members of disciplinary agencies, to discuss disciplinary problems and evaluate innovative concepts.

In this connection, Smith said he favored participation by laymen in disciplinary proceedings of the various bars, as a method for increasing credibility and effectiveness.

He said several states, including Iowa, Michigan and Minnesota, already are including laymen in their disciplinary programs.

Also, Smith said disciplinary trials and proceedings should be opened to the public and that there should be a "strong system of reciprocity between disciplinary agencies," especially in the sharing of information, files, records and testimony.

State disciplinary agencies, he continued, "should have self-starting grievance committees to initiate and maintain independent investigations."

The Lakeland, Fla., attorney said he also believed disciplinary action should be taken against attorneys who "fail to maintain or exercise competence as attorneys. Incompetent lawyers," he said, "do a disservice to the public as much as the disreputable lawyers. Maybe lawyers' performances should be checked and audited on a periodic basis. The organized bar, I feel, should support

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"Asking You to Ask Yourselves"

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Letters to the Editor

To the Editor:

Relevant to the ongoing discussion in CONSCIENCE about "Language and Liberation" is an article entitled "De-Sexing the English Language," which was written by Kate Miller and Casey Swift and appeared in the Preview issue of Ms. magazine. The authors note that an increasing number of writers and speakers are attempting, with various degrees of success, to avoid using the masculine gender where no specific gender is needed or intended, e.g. "his or her;" "his-her;" "him-herself." The authors cited as an attempt which particularly abused the language a full-page advertisement in the **New York Times** for its college and school subscription service, which began with the headline: "If someone you know is attending one of these colleges, here's something they should know that can save them money."

The conclusion drawn by the authors is that there is a definite need in our language for common gender singular pronouns. They suggested that these singular pronouns be based on existing plural forms, and be pronounced to rhyme with the plural, as follows:

Singular

	Distinct Gender	Common Gender
Nominative	he and she	tey
Possessive	his and her (or hers)	ter (or ters)
Objective	him and her	tem

Plural

	Common Gender
Nominative	they
Possessive	their (or theirs)
Objective	them

Dean Younger, in the December 14, 1973 CONSCIENCE, quoted with approval a letter written by the Harvard Linguistics Department to the CRIMSON, which contained the following language: "For people and pronouns in English the masculine is the unmarked and hence is used as a neutral or unspecified term." I contend that how a word is used, in terms of its usefullness for purposes of communication, depends not on the intent of the user but rather the comprehension of the listener. Thus simply saying that the use of the masculine pronoun is appropriate because in a given context it is intended to reflect a neutral term is not helpful when an increasingly large number of readers and listeners do not perceive the masculine pronoun as a neutral term.

For example, suppose that in country X, it is the norm to refer to all "white people" rather than simply "people." The Harvard Linguistics Department would probably respond that the addition of the word "white" renders "white people" specific so that, when used, it would always mean exactly what it says. The appropriate word to use when a neutral term is desired is the unmarked word "people."

Very good. But what if in country X it never occurred to the good citizens that "people" could be used by itself? And, it might be argued, what difference did it make anyway—everyone knows that "white people" can be used in a neutral sense.

The difficulty, of course, is that the non-white citizenry of land X might not perceive "white people" to be "neutral" at all. And certainly the citizens of land Y, where the word "people" is in common use, would be incredulous that anyone could think that the term "white people" was a proper way to refer to all people.

The problem with the English language is that, just as country X's language has no word in it which may be used to refer to all of X's citizens, English contains no singular common gender pronouns to take the place of "he," "his" or "him." And that is precisely why the Miller-Swift proposal warrants serious consideration. In the words of the authors:

"Language constantly evolves in response to need. It is groping today for ways to accommodate the new recognition of women as full-fledged members of the human race. If the new pronoun helps anyone toward that end, tey should be free to adopt it.

"If anyone objects, it is certainly ter right—but in that case let tem come up with a better solution."

Sincerely,
Fred Eisenbud

EDITOR'S NOTE: The editor apologizes for the non-publication of a letter by William Martin from the first year class. The letter was regrettably misplaced, and subsequently lost. Similar apologies are extended to Mike Vaccar for a column he wrote some months ago. And thank you's are graciously extended to Mrs. Kaufman for finding a packet of letters addressed to the editor, which he inadvertently lost in the library. Sorry, but these things happen when you try to work without an office or a desk. —Kent

Editor's Oriel

A TEAR AND A SMILE

By Kahlil Gibran

I would not exchange the sorrows of my heart for the joys of the multitude. And I would not have the tears that sadness makes to flow from my every part turn into laughter. I would that my life remain a tear and a smile.

A tear to purify my heart and give me understanding of life's secrets and hidden things. A smile to draw me nigh to the sons of my kind and to be a symbol of my glorification of the gods.

A tear to unite me with those of broken heart; a smile to be a sign of my joy in existence.

I would rather that I died in yearning and longing than that I lived weary and despairing.

I want the hunger for love and beauty to be in the depths of my spirit, for I have seen those who are satisfied are the most wretched of people. I have heard the sigh of those in yearning and longing, and it is sweeter than the sweetest melody.

With evening's coming the flower folds her petals and sleeps, embracing her longing. At morning's approach she opens her lips to meet the sun's kiss.

The life of a flower is longing and fulfillment. A tear and a smile.

The waters of the sea become vapor and rise and come together and are a cloud.

And the cloud floats above the hills and valleys until it meets the gentle breeze, then falls weeping to the fields and joins with the brooks and rivers to return to the sea, its home.

The life of clouds is a parting and a meeting. A tear and a smile.

And so does the spirit become separated from the greater spirit to move in the world of matter and pass as a cloud over the mountain of sorrow and the plains of joy to meet the breeze of death and return whence it came.

To the ocean of Love and Beauty—to God.

SOLZHENITSYN

Alexander Solzhenitsyn's exile was a tragedy in many ways. Let it remind us that dissidence is often the highest form of patriotism. Let it serve notice to our nation that our freedoms are indivisible, and that governmental incursions therein are tyrannical. The high duty of protecting these rights falls squarely on the shoulders of the legal profession.

It was almost five years ago last month that Jan Palach, a Czechoslovakian student, burned himself to death in an anti-soviet protest. His country, you may remember, had become too liberal for the Kremlin klan.

During a ceremony last year honoring his 1969 self-immolation, an anonymous verse was found lying in the huge pile of flowers commemorating him. The poem, written as a conversation between father and child, read as follows:

"Who is lying here under that blanket of flowers, father?"

"He who let himself alight so that the whole nation would be ablaze."

"And who are those people who only silently look on?"

"Oh, those are only dying embers from his sacred torch . . . "

May we never so be.

P-FO AND OTHER JOYS

I humbly offer the following proposals, courtesy of my good friend Don Lorelli, a student at the University of Baltimore School of Law. These suggestions manage to touch on many of those issues which have been debated in our school during recent weeks.

1. In order to ameliorate the strain of examinations, all open book tests will be given in the library. As for closed book examinations, the student representatives will be directed to provide a complete set of Gilbert outlines, Universal briefs, and West Hornbooks, to be strategically situated in men's and women's lavatories. Magnifying glasses will be provided for those who prefer their scratch sheets and scribbled notes. In addition, teachers will provide advance notification as to the color of the exam book, so enterprising students can hypothesize prospective questions and be prepared to submit those.

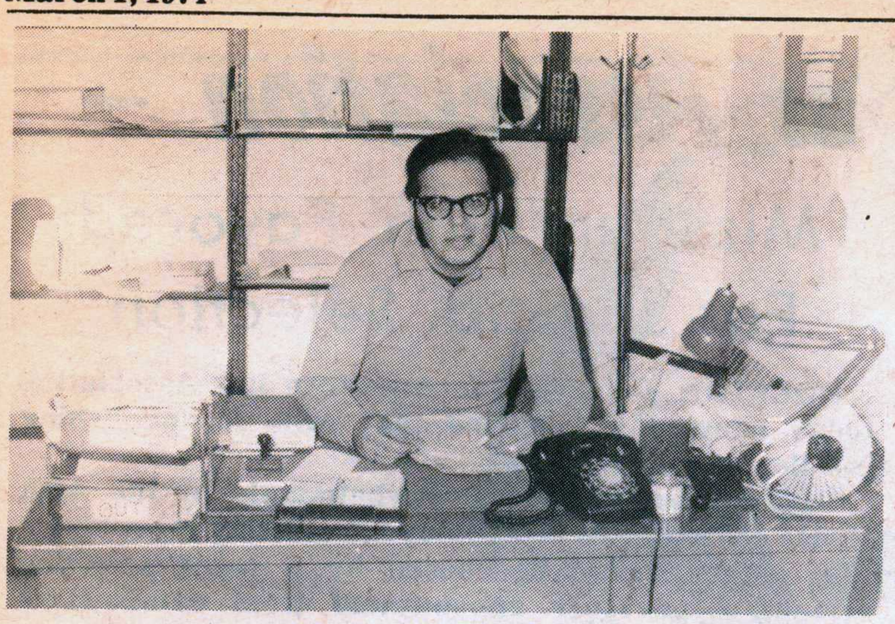
2. All students intending to "borrow" hornbooks from the library at finals time, must first give the library at least three weeks advance notice of those books to be so borrowed, in order that the staff keep up with the demand.

3. All cheating must be directly reported to the offender, who must turn himself in. Violations must be reported either one week in advance of the suspected offense, or no more than eighteen seconds afterwards. If the Congress thinks eighteen minutes warrants an impeachable offense, why shouldn't we narrow it down? Offenses so reported must be accompanied by a special prosecutor's approval, eighteen witnesses, and aerial photographs.

4. Professors must submit to the Dean makeup exams, but any student who finds the first test arbitrary and capricious may so request the makeup. In addition, all prospective questions must be submitted in advance to a team of students who will rule on their fairness. In the absence of a team of students, we can always give it to Louie the janitor, Tony in the Fish market, or Charlotte Hoffer, the school's recorder, since she must record the grades anyway.

5. The Judicial Administration course proposed by Dr. King should be negated, in favor of **Louisiana Practice and Procedure**, a cursory study of pleading in Louisiana and its relationship to the Code Napoleon. Women and the Law should be deleted from the curriculum in favor of **Midgets and the Law**, a study of the ways the law discriminates against midgets, and the underlying rationale for such treatment in the areas of criminal law, employment, civil rights, and family law. Finally, we should add **Circus Law**, an examination of the Congressional record; **The Wit and Wisdom of Hammurabi, Wormtub Law**, (and its relation to wether fleeces law) and any and all other courses proposed by a group of students numbering more than two but not less than three of which one does not count.

(This editorial was originally written in response to the decision making P-FO retroactive. Deans Younger and Freedman have overruled that decision, and we congratulate them for doing so.)



Mr. English Historian

THE ENGLISH BARRISTER: A BRIEF LOOK

By Ralph M. Stein

Charging that American litigation often features "Piper Cub" trial advocates attempting to handle "Boeing 747 litigation," Chief Justice Warren E. Burger, in a November speech, suggested that much is wrong with our methods of training courtroom lawyers. A lifelong Anglophile, he admiringly commented on the English barrister's training, "very high standards of ethics and conduct." How, in fact, does the white-wigged and long-robed English litigator differ from his or her American counterpart?

Barristers comprise but ten percent of England's lawyers and they are the only persons privileged to argue a case in a high court of original or appellate jurisdiction (in the semi-autonomous Scottish legal system, trial counsel are called advocates). The barrister's client is the solicitor who, after listening to and analyzing his client's matter, engages the trial specialist. The solicitor retains, at all times, control of the case. A solicitor's client may not even meet with the selected barrister unless the solicitor or a member of his staff is present.

While few American lawyers are Perry Mason type sleuths, we do expect those who represent us in court to conduct pre-trial investigations which often are quite extensive. The British counterpart, on the other hand, receives in advance of the trial whatever the solicitor feels he should have. Perhaps he or she will be given the statements of favorable witnesses. Usually, a bare statement of the case and the expected evidence will be provided. The trial is often the first encounter between a barrister and his own witnesses, never mind those of the adversary. This lack of advance preparation is one of the reasons English trials proceed rapidly, a quality much admired by our Chief Justice. Fast progress is also assured by judges (generally drawn from the ranks of barristers) who upon encountering a fishing expedition or a search for those wider truths which fascinate many American trial lawyers ask, first softly, then sharply: "Where is this taking us?" It is an unfortunate or very inexperienced litigator who does not take the hint straight away.

A major difference between English and American trial counsel—and one with broad political and social implications—is found in the role assigned and assumed by the barrister through the combined weight of court procedure, tradition, and peer group regulation. In both common-law countries, the lawyer is an officer of the court, that is, he or she is considered part of the machinery of justice with a distinct responsibility to the judicial forum. In America, to the rue of some, this role, especially in criminal cases, is in name only and the lawyer's commitment to the client is defined by the nature of the adversary system as being total. Lawyers can and do engage in the much debated practice of participating in perjurious examination and cross-examination in the unremitting effort to secure acquittals.

English court rules and bar custom insure that the barrister will not lose the sense of being a part of the legal establishment with a positive obligation to assist the court in expeditiously processing cases. The defendant sits alone, usually forlornly, in a special dock. Rarely will a barrister consult a client during a trial, hardly ever does he expect the assistance of the charged party. Involvement in the system is enhanced by the fact that the barrister who defends today may receive his fee from the government to prosecute tomorrow; only cases of special significance are actually prosecuted by the government itself.

The attributes just described are not meant to diminish the defense's zeal. That zeal is, however, circumscribed by the traditional English sense of playing by the rules (until fairly recently, appeals were considered outright unsporting and even today, the right to appeal is granted, often grudgingly, by leave). The rules prescribe utter non-involvement in a client's cause, an unyielding respect for the dignity of the judicial process, and total respect for all engaged in the system.

As a result of these procedures and standards, the violation of which brings instant professional disciplinary action, the barrister has not become involved, much less the leader, in challenging questionable

(Continued on page 8)

Law and Integrity

"Our profession is good if practiced in the spirit of it; it is damnable fraud and iniquity when its true spirit is supplied by spirit of mischief-making and money-getting. The love of fame is extinguished; every ardent wish for practical knowledge repressed; conscience put in jeopardy, and the best feelings of the heart indurated by the mean, money-catching, abominable practices, which cover with disgrace some of the modern practitioners of law."

Daniel Webster

The Lighter Side

"From the Same People Who Gave You the Gas Shortage . . ."

By Mitchell Gilbert

There is a wave of pessimism moving swiftly across our country, induced largely by the gasoline shortage. This crisis has become so severe in recent months that the President had to go on national television to tell us that the recession we are now experiencing does not exist. Almost everyone in this country is affected by the gas shortage. Drivers can't help but wonder where their next tankful is coming from. Consumers are paying almost twice as much for the preciously toxic liquid now than they did a year ago. No one could care less if the gas they buy contains Platformate, STP, lead, or hominy grits . . . as long as they can get it. The days of pulling right up to a gas pump, having your oil checked, your windshield cleaned, and your tank filled are a thing of the past . . . something you can tell your grandchildren about, as you wistfully long for the "good 'ol days."

All this said, there have been some beneficial side effects of the gas shortage. For example, the shortage has inspired some hope for reforms in our criminal justice system. It has been suggested that judges can use the gas shortage as an excuse to reduce the prisoner populations in our already overcrowded jails. For instance, instead of sentencing a man to three years on a chain gang in Mobile, a judge can now sentence him to three years on a gas line at Shell.

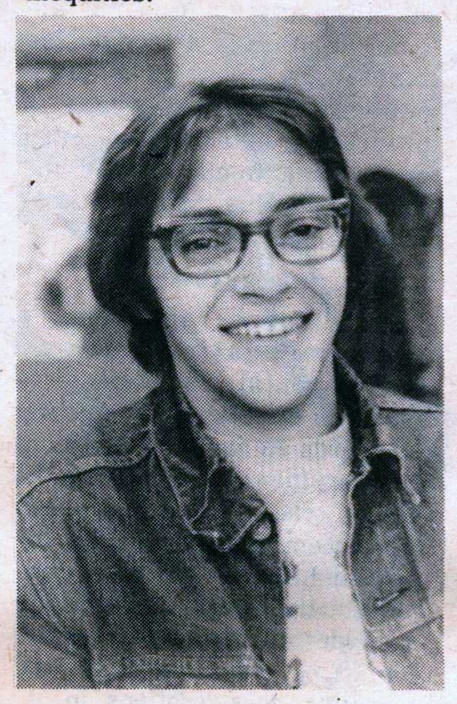
Already our language has changed as a result of the gas shortage. The expression "fill it up," once so popular amongst truck drivers, automobile owners, and interstates, has become an anachronism, to be used only in conjunction with the term "twenty-three skidoo."

Drinking and alcoholism have risen tremendously as the shortage has become more and more critical. Bartenders report a large increase in the demand for martinis, whiskey sours, black Russians, and other mixed drinks, but none as big as the increased demand for Molotov cocktails.

Psychiatric journals have noted an alarming increase in complaints from patients who pull into gas stations, only to find a palm tree surrounded by sand dunes. It is not surprising to find that gas station owners are being honored at numerous social events. Indeed, it is not at all uncommon to see a local gas station attendant, a guy who you used to see a lot down at Joe's Bar, turn into a folk hero overnight.

Unfortunately, the gas shortage is only the first in a series of consumer goods shortages. Many informed people have become fearful of both a food shortage and a toilet paper shortage in the near future. However, if there is a food shortage, a toilet paper shortage seems highly unlikely. Nevertheless, should there be a toilet paper shortage, West Publishing Company has developed plans to print its advance sheets in roll form. A Madison Avenue ad firm has already produced a thirty second television commercial for the Company, featuring Mr. Whipple politely warning customers not to squeeze the Southeast Reporter.

Sources in the Governor's Mansion insist that Governor Wilson has formulated a plan for toilet tissue rationing in the event of a shortage. According to those sources, New York State residents with an even number of bathrooms would be able to purchase toilet paper on Mondays and Wednesdays, while those having an odd number of commodes would have to rely on the Sunday Times until Tuesday and Thursday. In addition, a state regulatory commission would be set up to **wipe out** any inequities.



Mitch Gilbert

If a toilet paper shortage were not bad enough, there is increasing speculation that, due to a total lack of any long-range governmental policy, the demand for air will soon far exceed the supply of this popular commodity. Because of international politics and world-wide inflation, the major oil companies claim that they have to pay exorbitant prices for their investments in foreign air pockets. For years, the oil companies have not charged American consumers for the use of their air in an attempt to improve their public relations image. However, this policy of "free air for everyone" may be scrapped for a scheme that is more economically sound.

In recent months the oil lobbyists have been in contact with Congressional leaders from both parties, pushing for an air depletion allowance. This allowance would give the companies beneficial tax treatment, enabling them to compete with foreign air exports. Despite the decreasing reserves of raw air, company executives insist that there is no plan to ration the commodity at the present time. However, they didn't rule out that possibility entirely. They emphasized that, if air reserves are to last until 1975,. the American public must be made aware of the dangers of panic breathing. Instead of hoarding the atmosphere, Americans must be encouraged to spend more time exhaling and less time inhaling. A spokesman for Standard Oil of New Jersey expressed confidence in the ability of the American people to join together in this common effort, saying, "If the American public realizes that air is really a luxury, and they stop taking it for granted, future generations will be able to breathe a lot easier."

In addition to the impending air crisis, I have heard reports, although unsubstantiated, concerning Gleem toothpaste. The FDA reportedly will announce that the manufacturers of Gleem toothpaste will cut back their production and sales in certain states in violation of the UCC. The cutback is due to an alleged shortage of MFP, the cavity-fighting ingredient. The ADA and the AMA have protested this cutback, suggesting that MSG be used instead of the MFP, The AMA, the ADA, and the FDA have allegedly met to discuss MFP and MSG, indicating that the USA will not tolerate violations of the UCC by ITT, the parent company. There has been speculation that the cutback in production and sales is also affecting the company's tax structure. Now it is up to the IRS, with its CPA's and the FDA, with its SOB's, to iron out their difficulties with ITT when they meet next month at the RCA building, across from the 47th Street IRT.

After briefly examining the possibility of increased consumer goods shortages, I would now like to conclude this article on a more optimistic note. Unfortunately, that would be an impossibility. However, I am going to leave you with the words of a great athlete, former Vice President Spiro Agnew (he had the highest number of kickbacks while playing for Maryland State), who once said, "Ask not what the oil companies can do for you . . . ask what you can do for the oil companies."

Hoping there's a better idea from Ford, I'll see you next time!

The Poet's Corner

"HACE FRIO"

by STEVEN CRAIG

Love
barely existent in a world of hate
Trust
a bond you seek and make
Then the hate
That follows the Love
Then the hurt
that breaks the trust

The disbelief,
The lack of faith,
The refusal to love,

So the cold war goes on. And on.
Getting hotter every day-
But it's Winter everywhere.

When will we ever learn?
When there are no more graveyards, everyone.
None for God,
None for Glory,
None for America

— News of the American Bar Association —

Delegates Approve Legal Services; Table LSD Impeachment Proposal

HOUSTON—The American Bar Association's policy-making House of Delegates has approved establishment of a corporation to aid and encourage development of prepaid legal service plans.

In other major actions during its midyear meeting here, the House:

—Approved eight Uniform Acts, including a Uniform Marriage and Divorce Act.
—Endorsed creation by Congress of a national division of the U.S. Court of Appeals.
—Rejected a proposed journalists' shield law.
—Tabled a motion of the Law Student Division calling for public hearings on impeachment of President Nixon by the U.S. House of Representatives.

Duties of the newly-created corporation, the American Prepaid Legal Services Institute, include collection and evaluation of data on prepaid plans, and education of state and local bars and others about such programs.

The nonprofit, educational institute also will encourage development of prepaid plans to increase availability of legal services to the public.

The corporation will be directed by a 13-member board with seven members to be elected by the ABA Board of Governors and three each to be elected by open and closed panel plan members of the corporation.

The House of Delegates voted not to oppose any plan encouraging development of prepaid legal services, and endorsed any method making legal services "more truly available" to more individuals. However, the House adopted, 144-117, an amendment to the ABA Code of Professional Responsibility which tends to place more restrictions on closed panel plans.

Divorce Proposal

Heavy debate also preceded House approval by a 136-105 vote of the proposed Uniform Marriage and Divorce Act. The delegates went along with a view tending to accept a couple's word that their marriage had suffered an "irretrievable breakdown."

Seven additional uniform state law proposals also won House approval. They are the Uniform Residential Landlord and Tenant Act, Uniform Drug Dependence Treatment and Rehabilitation Act, Uniform Parentage Act, Uniform Crime Victims Reparations Act, Uniform State Antitrust Act, Uniform Abortion Act and an amendment to the Uniform Controlled Substances Act.

The proposed national division of the U.S. Court of Appeals would be aimed at easing the caseload burden of the U.S. Supreme Court and Circuit Court of Appeals. It also would deal with many cases the high court is unable to hear for lack of time, and eliminate conflicts in decisions by other federal courts.

The proposed journalists' shield law generated lengthy debate before it was voted down, 157-122. The House agreed with opponents that the measure to protect journalists against compelled disclosure of confidential news sources would create "a privileged class." It also was argued that it is too difficult to clearly and narrowly define who the proposed law would protect.

A large majority of the House approved tabling of the open impeachment resolution after hearing arguments that the recommendation was not appropriate. Opponents pointed out that the impeachment deliberations were already in progress and that open proceedings would deprive the President of his right to a confidential hearing.

Energy Crisis

The House approved a recommendation urging governmental agencies to maintain existing environmental standards as far as possible in adopting measures to resolve the energy crisis. It deferred action on a recommendation calling for establishment of an administrative agency on both state and federal levels to help resolve conflicting environmental and economic considerations in industrial site selection.

An end to the election of judges is sought in another recommendation adopted by the House. The approved ABA standards of Judicial Administration call for governors to select appointees from a list prepared by a nonpartisan judicial nominating commission.

The standards also call for mandatory retirement of judges at age 70, judicial discipline and removal commissions, adequate salaries and compensation for judges, and unified state court systems.

The House endorsed an amended proposal to implement the 1967 ABA recommendation to abolish the Electoral College and substitute a system of direct popular election of the President and Vice President of the United States. The amendment would provide that the newly-elected Congress—not the lame duck session—would select the President or Vice President if any candidate failed to garner at least 40 percent of the popular vote. In addition, each senator and representative would have one vote.

Two Law Student Division proposals dealing with discrimination were approved. They would prohibit employers and landlords from discriminating on the basis of marital status, and eliminate alleged discrimination against single persons in tax matters. The House also adopted a similar motion opposing discrimination in credit practices based on sex or marital status.

After spirited debate, the House overwhelmingly adopted a recommendation that the ABA support retention of workmen's compensation laws in the states rather than have them incorporated into a federal program.

In other action at its February 4-5 sessions, the House:

—Expressed ABA opposition to legislatively or administratively imposed mandatory minimum prison sentences not subject to probation or parole.
—Opposed the proposed Industrial Reorganization Act and any similar legislation declaring unlawful the possession of monoply power and creating machinery for the enforcement of its provisions.
—Approved a recommendation opposing on constitutional grounds a U.S. House of Representatives bill to restrict travel by American citizens to foreign countries engaged in armed conflict with the United States.
—Went on record opposing a U.S. House of Representatives bill which would establish procedures and programs in the executive branch to ensure that the constitutional oath of office required of federal employees be taken in good faith.
—Approved a recommendation asking all nations involved in the recent Mideast conflict to fully adhere to the provisions of the 1949 Geneva Convention dealing with treatment of prisoners of war.
—Endorsed a proposed National Conference of Representatives of the American Bar Association and Representatives of the American Association for the Advancement of Science. Created a Section of Economics of Law Practice.

'Missouri Plan' Favored For Judicial Selection

HOUSTON, Feb. 14—The American Bar Association today adopted a standard that calls for abolishing election of judges.

The standard, passed overwhelmingly by the ABA House of Delegates at its midyear meeting here, states that judges should be chosen by a merit selection system of governor appointment from nominations made by a judicial nominating commission.

After long debate, the House rejected the selection of judges by either partisan or nonpartisan elections, and opposed judicial confirmation commissions.

The new standard is one of a series of standards on judicial administration that provide guidelines on some 30 facets of court organization.

"The selection of judges should be non-political," according to Judge Carl McGowan, of the U.S. Circuit Court of Appeals, District of Columbia.

Judge McGowan, who is chairman of the ABA Commission on Standards of Judicial Administration, said the initial election of judges was rejected because such elections are usually political battles or nonpartisan contests based on little more than name familiarity.

The delegates rejected judicial confirmation commissions—which confirm or reject the appointment of a judge made by the governor—after numerous speakers said this approach was too political.

ABA President Chesterfield Smith, of Lakeland, Fla., opposed the confirmation commissions and favored the nominating commission approach.

Smith said the recommended method of merit selection, often called the "Missouri Plan," has long been advocated by the ABA and such court-reform organizations as the American Judicature Society.

A total of 17 states have some type of "Missouri Plan." In these states, judges are appointed for a limited term and if they seek a subsequent term, they must enter their names in a retention election in which voters decide either to retain or remove them.

Under the new standard, a judge would be appointed by the governor from a list of at least three qualified candidates nominated by the judicial nomination commission.

The commission should have eight members and should be chaired by the chief justice of the highest court, or a justice of that court selected by him. The chief justice should be the commission's presiding officer but should not have a vote.

The commission also should have four public members, who are neither judges or lawyers, and three members of the legal profession.

The standards of judicial administration also call for the compulsory retirement of judges at age 70, and for the establishment of judicial inquiry boards, and for discipline and removal of state judges by the supreme court or the highest court in a state.

Voting Rights for Released Felons Sought

WASHINGTON, D.C., Jan. 16—The American Bar Association has filed a friend-of-the-court brief here in a current Supreme Court case aimed at restoring voting rights to convicted felons after their release and parole.

The ABA amicus curiae brief urges the high court to affirm a decision by the Supreme Court of California in **Richardson vs. Ramirez, Gill and Lee.** The California court in March, 1973, ruled that provisions of the state's Constitution and election laws were invalid in denying voting rights to ex-felons whose terms of incarceration and parole had expired. The California court found such voting disqualifications in violation of the Equal Protection Clause of the 14th Amendment.

The case before the Supreme Court here is being prosecuted by the Attorney General of California in behalf of Viola N. Richardson as Mendocino County clerk and registrar of voters, and other state voting officials. The California Attorney General has filed an amicus curiae brief supporting her action.

The respondents, Abran Ramirez, Larry Gill and Albert Lee, are filing for themselves as ex-offenders and for all others in their state who are allegedly discriminated against in their right to vote. Three California prison reform groups and The League of Women Voters of California also are respondents.

The ABA brief is signed by the Association's president, Chesterfield Smith, by Richard J. Hughes, chairman of the ABA's Commission on Correctional Facilities and Services, and by five Commission attorneys, four of whom work for its Resource Center on Correctional Law and Legal Services.

Joining the Commission in submitting the brief are two major ABA components—the Section of Individual Rights and Responsibilities and the 65,000 member Young Lawyers Section.

The ABA brief's basic portion is that the Supreme Court of California was correct in finding the California voting laws in violation of the 14th Amendment. The brief adds: "Whatever special consideration may exist for felons still under sentence, both the Constitutional priority for protection of voting rights and the language of the Equal Protection Clause warrant no exception for discharged ex-offender citizens."

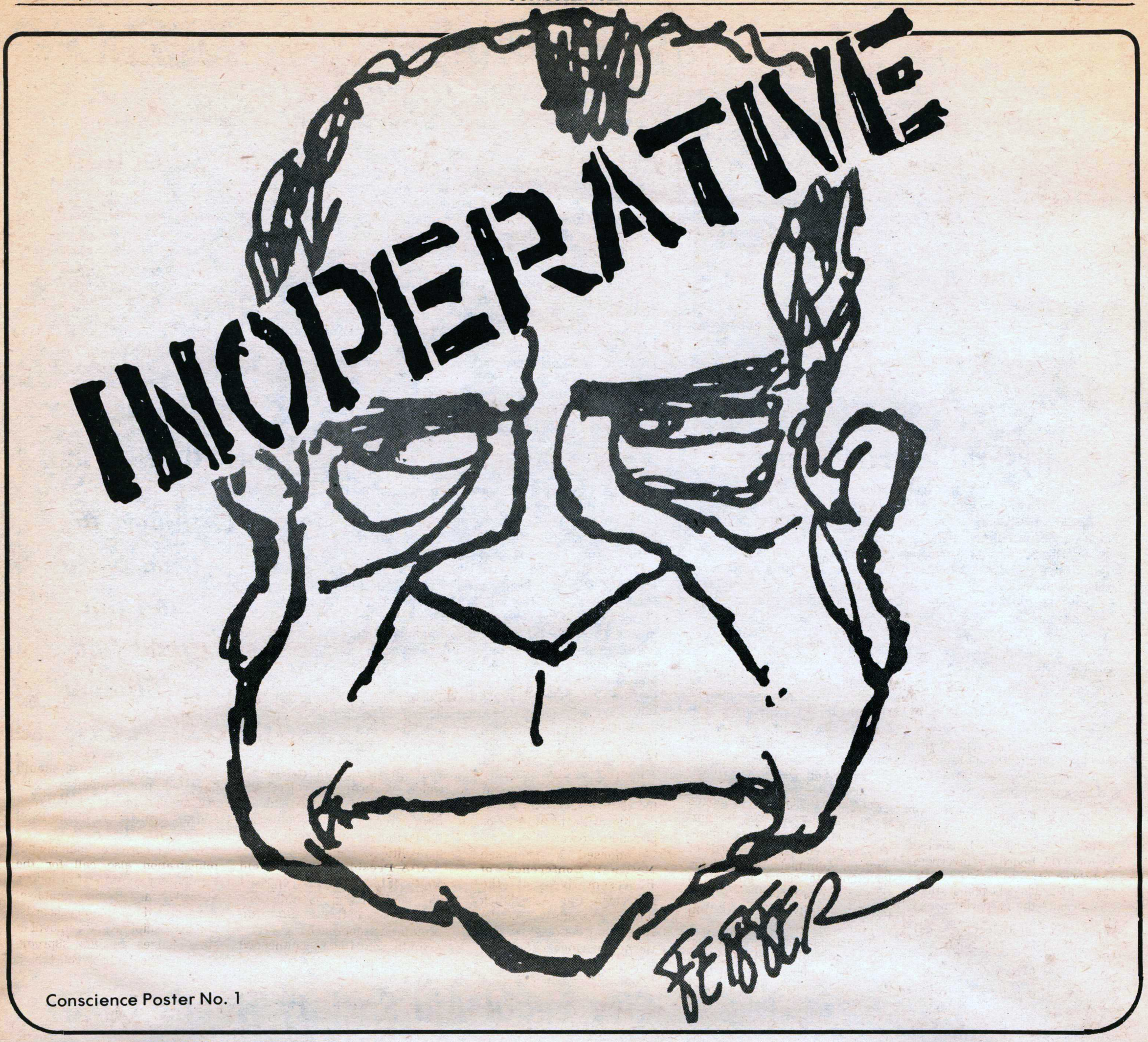
The brief also notes that the ABA's position is in agreement with the Association policy adopted by its House of Delegates in 1964 and since that time by other leading national commissions and legal groups.

A recent position taken by a national organization—the National Advisory Commission on Criminal Justice Standards and Goals—will come before the ABA House of Delegates in Houston on February 4 or 5. It states: "Loss of citizenship rights—the right to vote, hold public office, and serve on juries—inhibits reformative efforts. If corrections is to reintegrate an offender into free society, the offender must retain all attributes of citizenship . . ."

As voting laws now stand, 19 states automatically restore civil rights when imprisonment, parole or probation are ended. Five other states and the District of Columbia restore rights after fixed time periods.

If the U.S. Supreme Court upholds the Supreme Court of California in **Richardson vs. Ramirez**, etc., no state in the country could in blanket fashion prohibit ex-offenders who have completed their sentences from voting.

Such a ruling, according to the ABA corrections commission, could affect an estimated 100,000 persons a year, plus the many hundreds of thousands who have been out of prison or jail for several or many years without the privilege of resuming their rights as citizens to vote.



Conscience Poster No. 1

A scene from "Twelfth Night."

THURSDAY, MARCH 14
8:30 A Midsummer Night's Dream

FRIDAY, MARCH 15
3:00 Scenes from Shakespeare (presented by high school dramatic societies)
8:30 A Midsummer Night's Dream

SATURDAY, MARCH 16
3:00 The Dark Lady of the Sonnets followed by The Festival Concert by the Hofstra Collegium Musicum. Tour of the Globe Stage (about 5:15)
6-7:00 Supper, Student Center
8:30 A Midsummer Night's Dream

SUNDAY, MARCH 17
3:00 A Midsummer Night's Dream

Shakespeare Festival:

"A Midsummer Night's Dream"

Hempstead, N.Y.—Marking the 25th consecutive presentation of its Annual Shakespeare Festival, Hofstra University has extended the 1974 event to include production of a contemporary opera, "Twelfth Night," composed by David Amram and adapted by Joseph Papp. The production was presented in the Hofstra Playhouse from Thursday, Feb. 21 through Sunday, Feb. 24.

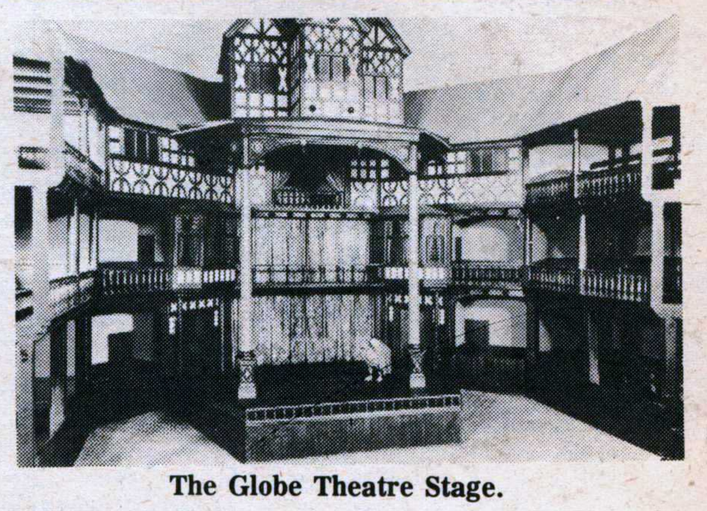
In his score, Amram consciously attempted to give the feeling of 16th century Elizabethan music within a 20th century idiom, as well as to underline the dramatic impact of the lyrics. He conducted the Hofstra production, which was staged by Miriam Tulin. The libretto devised by Joseph Papp condenses the action in Shakespeare's play to about a third of the original length.

The Globe Theatre stage set, which was used for the opera, as well as the play being presented in March, has excellent acoustical properties, according to Herbert Beattie, a basso in the opera. "Shakespeare's theatre was built to bring the audience close to the performers, rather than for scenic impact," he said. "Its wooden construction helps to amplify voices."

Costume and set designer Lloyd Evans has had two staircases built on the Globe set for this production. Ms. Tulin stated that the addition provides more movement and visual variety in the staging.

More highlights of the 1974 Shakespeare Festival are scheduled to be presented during March. Performances of "A Midsummer Night's Dream" will be given from Thursday, March 14 through Sunday, March 17 and from Friday, March 22 through Sunday, March 24. The afternoons of Saturday, March 16 and March 23, the Hofstra Drama Repertory Company will perform G.B. Shaw's one-act play, "The Dark Lady of the Sonnets," and the Collegium Musicum will present a program of royal English music. Between the afternoon and evening performances on those Saturdays, audiences will be able to tour the Globe set.

Tickets for the play—$3.50, $3 and $2.50 each—are available by mail or at the Playhouse box office (516) 560-3283, open from 11:00 A.M. to 4:00 P.M. Monday through Friday and also during special evening hours on performance nights.



The Globe Theatre Stage.

FRIDAY, MARCH 22
3:00 Scenes from Shakespeare (presented by high school dramatic societies)
8:30 A Midsummer Night's Dream

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3:00 The Dark Lady of the Sonnets followed by The Festival Concert by the Hofstra Collegium Musicum. Tour of the Globe Stage (about 5:15)
6-7:00 Supper, Student Center
8:30 A Midsummer Night's Dream

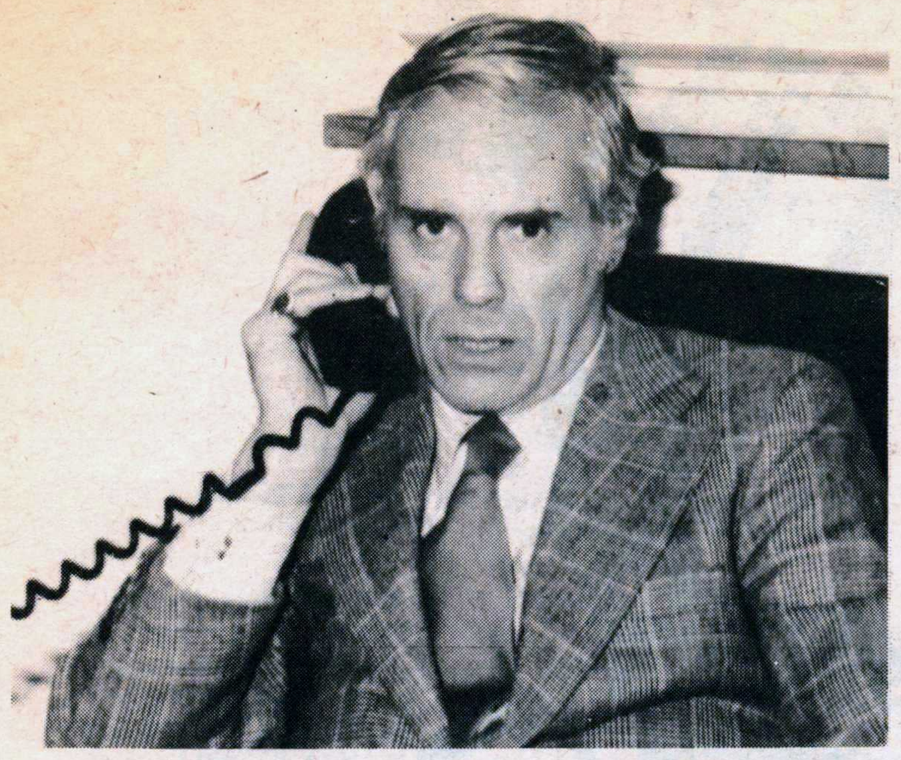
SUNDAY, MARCH 24
3:00 A Midsummer Night's Dream

MONDAY, MARCH 25
8:30 Film – The Taming of the Shrew

TUESDAY, MARCH 26
8:30 Film – Ballet of Romeo and Juliet

WEDNESDAY, MARCH 27
8:30 Film – Test shots of John Barrymore as Hamlet and The Rest is Silence

THURSDAY, MARCH 28
8:30 Film – A Double Life and The Boys from Syracuse



Faculty Profile: Eric Schmertz

By Chad Russell

". . . It requires certain attributes—a certain amount of patience, a well-developed sense of timing, imaginativeness, and the ability to frame various alternative ideas, suggestions, and proposals, and to recast various demands and counter demands in different lights which might be more acceptable to the parties." The foregoing words are used by the Law School's resident labor expert, Prof. Eric J. Schmertz to encapsulate the requirements for a successful labor mediator.

Beyond these apparent qualities, Prof. Schmertz carries a variety of hats which would challenge Rep. Abzug's collection. In addition to the courses in labor law, collective bargaining and remedies which he has taught at Hofstra since 1970, he is also an Impartial Member of New York City's Office of Collective Bargaining. It was in this latter capacity that he came into the news last fall during negotiations between the City and the Uniformed Firefighters Association.

A large share of the 200 or so cases he handles each year involve private arbitration duties with a variety of unions and industries—the New York City firemen's unions and the taxi industry being among them. He has been retained by the NYC Transit Authority as a referee in disciplinary cases, and as a contract arbitrator for a number of employers and their employees' unions—from General Electric and the aerospace industry, to the NYC milk industry and OTB.

Although he teaches a course in Disputes Settlement, Prof. Schmertz admits that mediation does not lend itself to conventional law school methods. It is not the sort of career which can be consciously pre-selected. He suspects that "certain people have a kind of personality makeup, the consequence of which is that they gravitate toward the neutral conciliator's role."

This gravitation commenced for the trim, poised professor after he returned from a year of graduate study in France in 1949. Working for the State, County, and Municipal Employees' Union, he began attending NYU Law School at night. Later he took an administrative position with the American Arbitration Association, where he continued after joining the New York Bar in 1954.

In 1960, without any prior mediation experience, he accepted an appointment as executive director of the New York State Board of Mediation. In two years he acquired sufficient expertise to become a regular member of the Board, a position he held for several years until he shifted his activities to city labor affairs.

Over the years, Prof. Schmertz has come to believe that mediators should be "active—indeed, aggressive—but not overbearing in their role." Although colleagues disagree regarding how active the neutral should be, Schmertz says, "It is up to such individuals to decide, subject to the parties' approval, when the propitious moment for a proposal has arrived, when the parties should meet or not meet, and generally open eyes to other possibilities."

He finds that the public rhetoric of the negotiators remains present in the private sessions, but diminishes towards the later stages of negotiations. As an "unemotional innovator and persuader aiming for a total package which is reasonably palatable, fair and equitable to the parties," Prof. Schmertz is also concerned that any public employees' agreement be "conscionable to the public and taxpayers."

As an example of "framing alternatives," he cites with quiet pride his introduction of the Weighted Response Index to measure productivity gains by firemen. It seeks to do so in a manner which is acceptable to the union, yet sufficient to meet the City's demands that wage increases be justified by productivity increases as well as rising living costs.

Under this system, points are given to companies according to the type of firefighting activity, the time spent at the scene, and the number of runs. Once a certain combined point level is reached and maintained over a specified time, the unit is deemed to have made a gain in productivity.

It is because of the inherently delicate position of the mediator that Prof. Schmertz is unable to make any substantial comment on the recent fire contract negotiations. His insistence in preserving ethical and statutory confidentiality has been upheld in two recent instances arising out of the firemen's strike vote last September.

The first occurred when he notified the District Attorney that he could not, under mediation statutes, testify either voluntarily or involuntarily before the grand jury investigating the strike vote. He also successfully invoked mediator's immunity in the criminal contempt hearing held by Justice Fine after the brief strike.

Despite his specialty in fire department affairs, Prof. Schmertz confesses he never had a youthful desire to be a fireman—or, apparently, a baseball player—since he turned down a major league career after high school in order to join the Navy.

Otis G. Pike

Exxon Loves Us!

"Exxon loves us, this I know - 'Cause their ad men tell us so . . ."

This could well become the children's gospel song of the 70's as the oily hucksterism of the 60's (anybody here remember Platformate or TCP?) gives way to the oleaginous institutional advertising currently being wafted our way via the media, courtesy of the giants of the petroleum industry.

At Texaco they're "working to keep your trust." In folksy accents which instinctively inspire our confidence, Johnny Cash tells of the heroic efforts of Amoco to see us all safely through the energy crisis. Another major refiner buys expensive network time to tell us how offshore drilling rigs have miraculously (if inexplicably) revived the all-but-moribund fishing industry in the Gulf of Mexico and even restored the balance of nature in the Louisiana bayous. On cue, Disney-like, little, furry creatures assemble in a forest glade to hear the dulcet off-camera voice of Exxon assure them of its corporate goodwill towards their future survival.

Of course, there are other institutional activities that go unremarked in these amiable little fantasies. They don't, for example, report on the prodigious and successful efforts of the oil industry to gain unique exceptions to the provisions of the National Environmental Protection Act in the Alaska Pipeline bill passed by Congress last session. Neither do they boast of how hard they worked to keep amendments prohibiting excess profits in the current oil "seller's market" out of the Energy Emergency bill, and how that contributed to the bill's stalemate as time expired for the 1st Session of the 93rd Congress.

It's a certainty that the oil lobby will be on hand to greet us when the Second Session convenes to take up the Emergency Energy bill again. They will be giving special attention to those of us who did not knuckle under on the aforementioned amendments. They'll be telling me that which is all too obvious in a growing volume of mail to my office: environmental concerns are beginning to take a back seat to concern over where the next tank of fuel, whether for home or for car, is coming from and what the price will be. It's going to be increasingly difficult to defend the proposition that America need not be turned into one vast archipelago of refineries and tank farms in a sea of asphalt and concrete, all of it fenced in by offshore drilling rigs, to meet the demands of the energy crisis.

But I've got both the energy and the will and I intend to keep on trying.

[The writer is Congressman from the 1st Congressional District, in New York.]

Beginning this month, Conscience becomes a bi-monthly publication. Deadline for the next issue, due March 15, is therefore March 7 at 3 p.m. Please cooperate accordingly. Late copy is not accepted.

Classified Ads

Typing . . . for the professional law student. Call Barbara after 6 p.m. 223-1974

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The Runway Inn

"Where the legal palate and fine food find fulfillment"

N.E. Kent

Pizza, Supreme Cheesburgers, Even Better, Prices You Can Afford

City Legal Aid Society Needs Funds

by Paul B. Goldhamer

Despite the vast knowledge and morality imbedded in pre-attorney minds, many lawyers, when they reach the field of law, allow causes in which they believe to slip from their own helping hand.

Gideon and Argersinger assured the indigent client of representation by council in any criminal matter involving a possibility of incarceration. However, there is another side of the law. The Civil side. As the law stands today there is no definitive statement constitutionally guaranteeing the right to legal representation in the civil courts.

It will come as no great surprise to those educated in the esoteric art of practicing law that without an attorney, one is at a great disadvantage to protect one's legal rights.

The connection that is difficult for attorneys to realize (not comprehend) is that if criminal defense is constitutionally guaranteed and civil is not, then who will pay for the cost of the civil lawyer?

This is where the Legal Aid Society arrives on the scene. A ninety-eight year old, non-profit organization that will supply a lawyer for those who cannot afford to pay for one.

WHO FUNDS THE LEGAL AID?

In New York City and many other places the Society's Criminal Branch has taken the place of a public defender's office. This is funded by government funds. Many believe this is best because it avoids two government attorneys facing one another in court.

The Civil Branch of the Society is funded by private contributions. These funds are raised by volunteers and a professional staff. The primary approach is direct mail. A direct mail campaign is a systematized appeal by post to various interest groups. To attract a donor is very expensive, it requires advertisement and a great deal of postage, letter writing and general wear and tear on not just office equipment, but personnel as well.

Last year the Development Office of the Legal Aid with the help of many volunteers were able to raise the dollars needed to fund 40,000 civil cases for persons unable to afford council. These are all indigents who would have been deprived of their fair day in court.

The people at Legal Aid hope that those in the know, (attorneys and students of the law) will not forget the poor. If you wish to help, send a gift. Your dollars are needed.

ONLY LAWYERS KNOW

. . . that a person without counsel is lost in a maze of legal complexities.

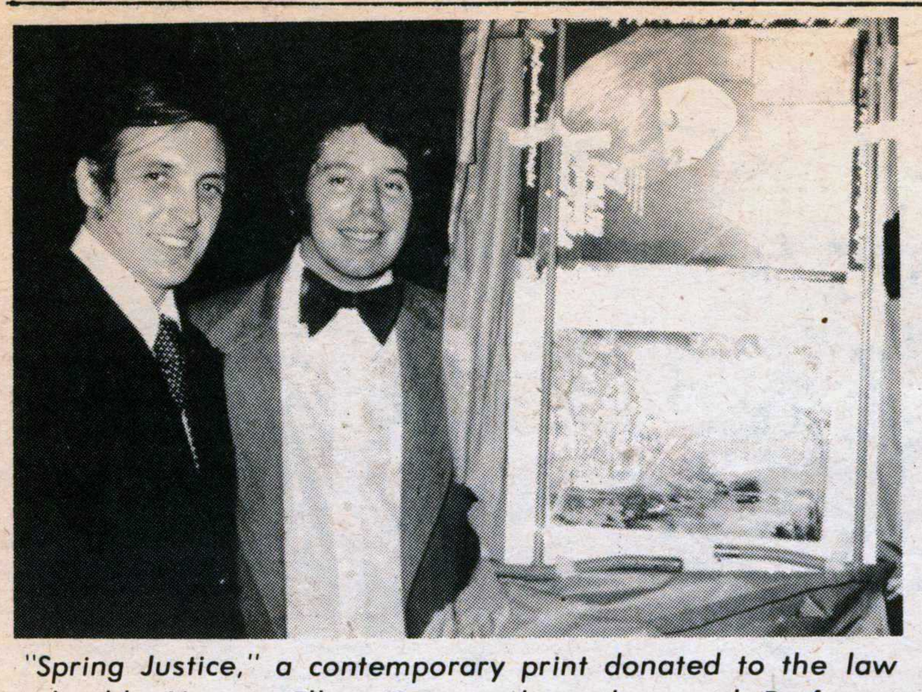
THE LEGAL AID SOCIETY HELPS.

The CIVIL BRANCH of the society survives primarily by private contributions.

If those of us that understand do not help . . . Who will?

SEND YOUR CONTRIBUTION WITH THIS NOTICE TO:

THE LEGAL AID SOCIETY
11 Park Place, New York, N.Y. 10007



"Spring Justice," a contemporary print donated to the law school by Norman Elliott Kent, is shown here with Professor Abraham Ordover and Donee Kent as it was unveiled at the school's annual Christmas Party. "S.J." is currently being displayed in the second draw of the file cabinet in Room 226.

Hofstra Law Joins Columbia to Litigate Environmental Issues

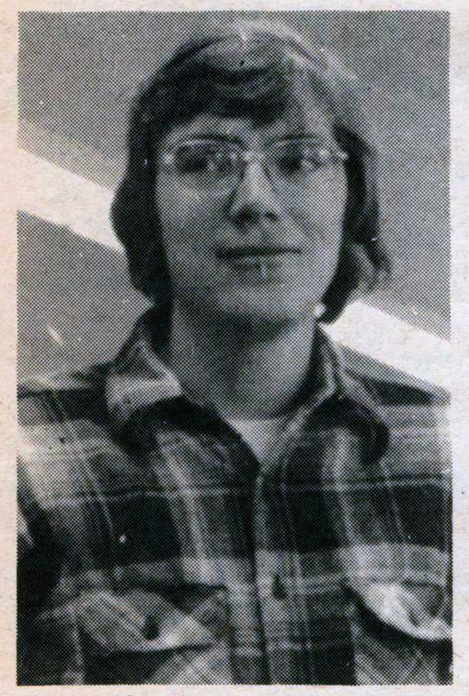
And God said let there be Light:
And there was Light . . .
And Man said let there be Light:
And there was Neon . . .

By Jim Freeswick

The Hofstra Environmental Law Society has announced plans to join the Columbia Environmental Litigation Law Council in the litigation of two major cases in the environmental field.

The move is Hofstra's first attempt at actual environmental litigation according to the group's chairman Charles (Buck) Rogers. In the past the group's activities have been restricted to the sponsorship of speakers programs.

The "Storm King Mountain Case," which has been in the courts for ten years, is an attempt by the Scenic Hudson River Preservation Society to prevent Consolidated Edison from building an atomic power plant on the banks of the Hudson River.



Charles Rogers, Jr.
The Buck stops here.

According to Rogers the case is significant from a legal standpoint in that it represents one of the first uses of the federal National Environmental Policy Act (1969) as well as a breakthrough in the "standing" requirements for environmental litigation.

The Columbia Environmental Litigation Law Council has been working on the case for some time and now Hofstra will join the cause.

Rogers said Hofstra and Columbia also plan to intervene against an attempt by major American oil companies to obtain permits from the state and federal governments to drill for oil off Long Island's North Shore.

Rogers described off-shore drilling as a "threat to the preservation of the Island's North Shore wetlands."

You can't take it with you but it would be nice to leave it behind.

The Earth.

The Hofstra Environmental Law Society, organized by Rogers in the spring of 1973, will continue to sponsor speakers programs as well as engage in environmental litigation.

The spring semester program will include a talk on Feb. 26 by Walter Tangelsen, described as "a knowledgeable environmentalist" who has appeared on the Barry Farber Show (WNBC) and WQXR's Public Forum. The speech entitled "Systems Analysis and Environmental Law" will be held at 4 p.m. in Room 227.

In March the group will present John Adams, Executive Director of the National Resources Defense Council, a national environmental organization which has spearheaded major environmental litigation in recent years.

Also on the agenda, for April, is the First Annual Environmental Law Society dinner with guest speaker Thomas H. Kean, Minority Leader of the New Jersey Assembly.

Membership in the Environmental Law Society is open to all law students. The group presently consists of 32 members. In addition to Rogers the officers include Lenny Cohen, secretary, and Stephanie Ortoleva, treasurer.

Enduring a Pox with Bagels and Lox

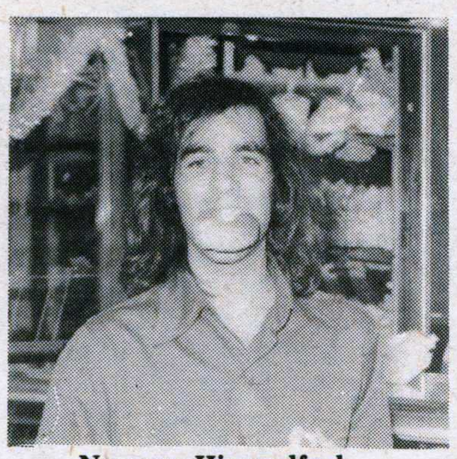
Norman Himmelfarb

This is not concerned with whether Buck v. Bell is good authority on the subtle castration which occurs to individual's minds during law school. Nor is this even an attempt to testify to Virgil Starkwell's daring prison escape, from an institution which was rehabilitating him into a good solid anti-Marx (Brothers, of course) citizen. This essay purports to be nothing more than what it says, and further categorization might only further prove my point.

Reality is the lowest common denominator at which I think, we think we all can communicate. In other words, reality is just a fraction of our thoughts, just a segment of our being. Or is reality so encompassing a concept that it covers all that is known, which of course, is all that is. After all, we can only experience the known. The unknown, by definition, is beyond human experience.

Am I real, or am I a run away bagel in search of a lean piece of orange-red Nova Scotia Lox?

I search around a room. Our denominator is some Latin phrase; one of the many technical rules that the game has. Perhaps one day I will be great enough to write a Law Review article about 2nd mortgages on Baltic Avenue, or just who should have jurisdiction of a playing piece from the time it lands on Go directly to Jail, until its final arrival. We occupy our minds, supposedly, with only the tough propositions.



Norman Himmelfarb
"The Bagel"

A bagel did not feel alone
Until it saw another with cream cheese,
And it all looked so good to the bagel.
But the bagel didn't want to be a mere copy,
So it imagined lox, most assuredly,
Would taste better than a plain bagel.
The bagel tried to sell itself, figuratively, of course,
But the lox, too, had bad feelings about itself.
And then bad feelings about such a bagel.
"Oh, SCHMERE ME WITH CREAM CHEESE!",
said the desperate bagel.
But a voice from within the bagel answered,
"Don't settle for cream cheese when you want lox."

The bagel studied under a guru for quite awhile, until the guru (a graduate of Guru U.) had filled the bagel up, and created a different taste to it. The guru then took a bite of it, and the bagel whispered: "Love."

The bagel was arrested for partaking in a homosexual act, and felt deeply ashamed. The guru didn't care; the bagel still tasted good. And the lot wound up in someone's egg, frying in a teflon pan, eagerly awaiting the next party.

But of course the real problem must now emerge. The only difference between riding on a crowded subway car and being on a train to a concentration camp, is that on a subway car, there are more newspapers, and much less communication.

Libel, Privacy, & Press Freedom: Course Proposed

By Josephine King

I am suggesting for addition to the curriculum next year, an elective devoted to Libel, Privacy and Freedom of the Press. The course could be conducted on a seminar basis. It would obviously not be a final examination course, but one in which the student pursued some phase of the topic in an independent research paper.

My reasons for suggesting the course are:

1—We cannot do justice to defamation and constitutional privileges in the Torts course. We cover the basics, but where I, for example, have become engrossed with the students in constitutional law aspects of the subject, we cannot devote sufficient time to the topic.

2—There is so much ferment and so much interest and excitement in the field of freedom of the press today that students should have the opportunity to pursue this topic.

3—We are weak in our curriculum on First Amendment courses at the present time. This would be one way of filling a part of our need in the area.

4—So far as Torts is concerned, our only advanced course has been Products Liability.

The scope of the seminar would include developments before and after the **New York Times** case but with particular emphasis on very recent opinions. These include Supreme Court cases on congressional immunity, public figures and the right of privacy, private individuals who become part of a public event, and whose action for libel is thereby subjected to the actual malice test of the NEW YORK TIMES. The course would also encompass the newspaperman's privilege not to disclose confidential sources of information, and the asserted executive privilege of non disclosure. Consideration of the tension between the two values of freedom of the press on the one hand and the right to fair and public trial on the other hand leads to a study of issues of contemporary importance; e.g. gag orders and the use of the contempt power.

Obviously the materials for this course would have to be developed by the teacher. In addition to the outstanding recent cases, there are publications on fair trial and free press, and numerous books and articles on privacy, newspapermen's privilege, etc. I think it would be an exciting and valuable elective and one which would enrich our curriculum.

Ben Wasserman (l.) and Ira Lee Falk prepare for publication of the Hofstra Law Review, available this month.

Letter to Editor Notes Review Additions

Dear Mr. Kent:

1—In addition to the articles mentioned in your first story on the Review, there will also be articles by:

a) New School for Social Research Professor of Political Science Jacob Landinski on Constitutional Law. "an eminent scholar who has contributed much to our understanding of the Supreme Court, and civil liberties." "We're quite proud to publish this brilliant article."

b) A Symposium on a recent Supreme Court decision in a tax case which raised important issues relating to a taxpayer's Fifth Amendment rights and the nature of the accountant-client relationship. "Organized and supervised by Professor Stuart Fuller, who wrote both the introduction and conclusion, this Symposium contains two student comments. One of the comments is by the Review's Managing Editor, I. Lee Falk. The other is authored by Gary N. Sazer, a third year Review member. This Symposium should prove of much value to accountants as well as for lawyers."

c) Two notes on criminal law, one by second year student Fred Eisenbud, the other by second year student Michael Davis.

Sincerely,
Ralph Stein

Regina v. Ojibway

(In the Supreme Court)
REGINA vs. OJIBWAY
Blue, J. August, 1965

Blue, J.:—This is an appeal by the Crown by way of a stated case from a decision of the magistrate acquitting the accused of a charge under the Small Birds Act, R.S.O., 1960, c.724, s.2. The facts are not in dispute. Fred Ojibway, an Indian, was riding his pony through Queen's Park on January 2, 1965. Being impoverished, and having been forced to pledge his saddle, he substituted a downy pillow in lieu of the said saddle. On this particular day the accused's misfortune was further heightened by the circumstance of his pony breaking its right foreleg. In accord with Indian custom, the accused then shot the pony to relieve it of its awkwardness.

The accused was then charged with having breached the Small Birds Act, s.2 of which states:

> 2. Anyone maiming, injuring or killing small birds is guilty of an offence and subject to a fine not in excess of two hundred dollars.

The learned magistrate acquitted the accused holding, in fact, that he had killed his horse and not a small bird. With respect, I cannot agree.

In light of the definition section my course is quite clear. Section 1 defines "bird" as "a two-legged animal covered with feathers." There can be no doubt that this case is covered by this section.

Counsel for the accused made several ingenious arguments to which, in fairness, I must address myself. He submitted that the evidence of the expert clearly concluded that the animal in question was a pony and not a bird, but this is not the issue. We are not interested in whether the animal in question is a bird or not in fact, but whether it is one in law. Statutory interpretation has forced many a horse to eat birdseed for the rest of its life.

Counsel also contended that the neighing noise emitted by the animal could not possibly be produced by a bird. With respect, the sounds emitted by an animal are irrelevant to its nature, for a bird is no less a bird because it is silent.

Counsel for the accused also argued that since there was evidence to show accused had ridden the animal, this pointed to the fact that it could not be a bird but was actually a pony. Obviously, this avoids the issue. The issue is not whether the animal was ridden or not, but whether it was shot or not, for to ride a pony or a bird is of no offense at all. I believe counsel now sees his mistake.

Counsel contends that the iron shoes found on the animal decisively disqualify it from being a bird. I must inform counsel, however, that how an animal dresses is of no concern to this court.

Counsel relied on the decision in *Re Chicadee*, where he contends that in similar circumstances the accused was acquitted. However, this is a horse of a different colour. A close reading of that case indicates that the animal in question there was not a small bird, but, in fact, a midget of a much larger species. Therefore, the case is inapplicable to our facts.

Counsel finally submits that the word "small" in the title Small Birds Act refers not to "Birds" but to "Act," making it The Small Act relating to Birds. With respect, counsel did not do his homework very well, for the Large Birds Act, R.S.O. 1960, c.725, is just as small. If pressed, I need only refer to the Small Loans Act R.S.O. 1960, c.727 which is twice as large as the Large Birds Act.

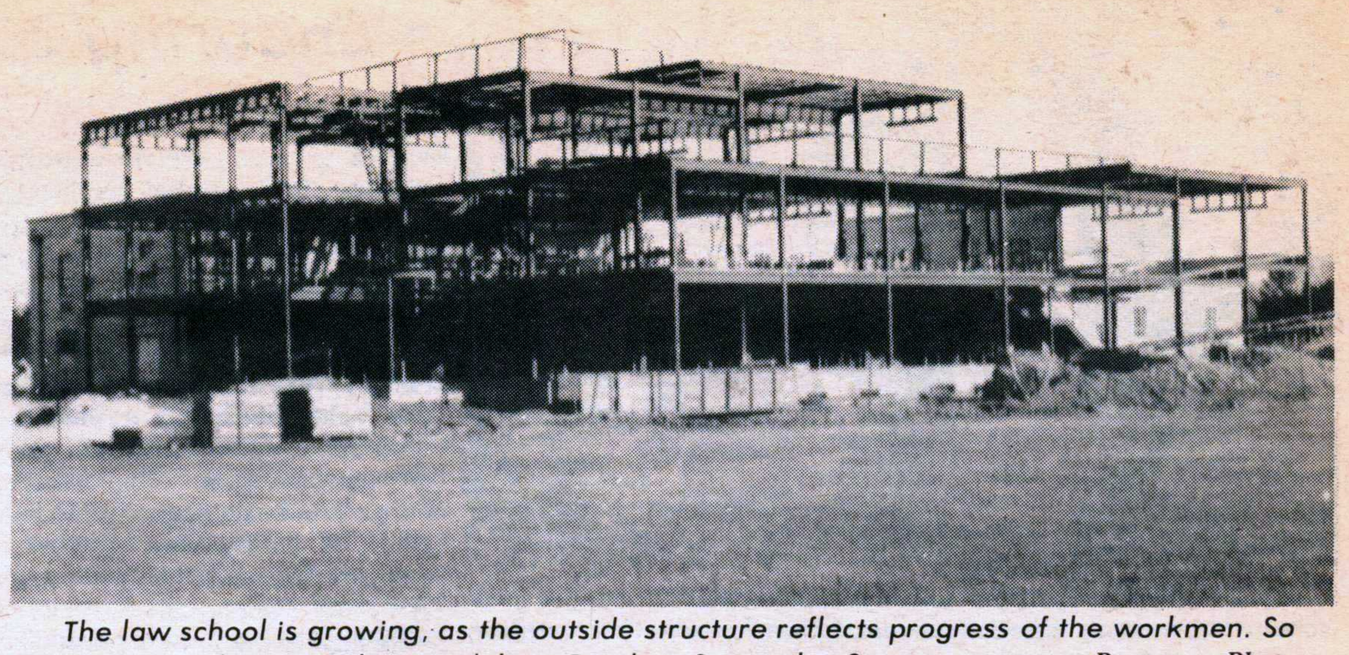
It remains then to state my reason for judgment which, simply, is as follows: Different things may take on the same meaning for different purposes. For the purpose of the Small Birds Act, all two-legged, feather-covered animals are birds. This, of course, does not imply that only two-legged animals qualify, for the legislative intent is to make two legs merely the minimum requirement. The statute therefore contemplated multi-legged animals with feathers as well. Counsel submits that having regard to the purpose of the statute only small animals "naturally covered" with feathers could have been contemplated. However, had this been the intention of the legislature, I am certain that the phrase "naturally covered" would have been expressly inserted just as "Long" was inserted in the Longshoreman's Act.

Therefore, a horse with feathers on its back must be deemed for the purposes of this Act to be a bird, and *a fortiori*, a pony with feathers on its back is a small bird.

Counsel posed the following rhetorical question: If the pillow had been removed prior to the shooting, would the animal still be a bird? To this let me answer rhetorically: Is a bird any less of a bird without its feathers?

Appeal allowed.

Reported by: H. Pomerantz
S. Breslin



The law school is growing, as the outside structure reflects progress of the workmen. So far, so good — no strikes, no delays. Ready in September? —*Paverman Photo*

Some Quips for Trial Practice —

JURY SELECTION:

An unctuous lawyer named Quick
Began his voir dire very slick.
He smiled, syruped and fawned
'Til a male juror yawned
And allowed it was making him sick.

A loquacious young lawyer named Blabberskit
Began his voir dire and just wouldn't quit.
When he finally forebore
The jurors all swore
That they now had a bias and shouldn't sit.

OPENING STATEMENT:

A prattling lawyer named Prance
Leaves nothing whatever to chance.
He spews facts and law
With a piston-like jaw
Putting everyone into a trance.

A pedantic young lawyer named Fission
Reads each word of his 5 page petition.
He misses his aim
By burying his claim;
But he's proud of his vast erudition.

PLAINTIFF'S CASE:

A langorous lawyer named Short
Wouldn't dream of preparing for Court.
His questions at trial
All miss by a mile.
He's in Contract—the case is in Tort.

An eloquent lawyer named Gruited
Is superb at summation, 'Tis bruited.
It's a shame that he's lax
At gathering facts,
For his client is always non-suited.

DEFENDANT'S CASE:

A belligerent lawyer named Bendix
Bullies, brow-beats and plaintiff-pricks.
His passionate furors
Delight the insurers
'Till they learn the size of the verdicts.

A contrary lawyer named Perry Fling
Will never admit to anything.
In his fight over trifles
He usually stifles
Any hope of his client in winning.

CLOSING ARGUMENT:

A vehement lawyer named Benadeaux
Declares to the jury what they must do.
His insistent demands
Are persuasive commands
To the client, his wife and Benadeaux.

A forgetful lawyer named Fairly
Never quotes the evidence squarely.
His errors so wide
Always favor his side.
But the jury favors him rarely.

—from Southern Cal. 'Woolsack'

Stein on Barristers . . .

(Continued from page 3)

laws, exposing the machinations of corrupt bureaucracies, or fighting to correct legally sanctioned social inequities. In court, at any rate, few if any judges would permit such irrelevant appearing expeditions by counsel.

The barrister has always enjoyed public esteem for taking any case regardless of the unpopular nature of a defendant. Serving a basically homogenous population, the profession was shaken in the early 1950's by reports that English trained barristers were refusing to defend Africans accused of anti-colonial administration acts. Lord Shawcross, Britain's chief Nuremburg prosecutor and one-time attorney general, reminded the bar of its duties. Lord Erskine, Tom Paine's counsel, lost his attorney generalship for defending the fiery radical. He responded unflinchingly: "From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the Court where he daily sits to practice, from that moment the liberties of England are at an end." Lord Shawcross' reminder did not go unheeded.

England's trial specialists enjoy working conditions which might evoke envy from foreign colleagues. Since virtually all cases requiring a barrister are heard in London in a few central courts, "a unique professional community," as Chief Justice Burger noted, has grown and prospered.

Barristers, who never control any money or property belonging to the actual clients receive their fees from the solicitors. Although invariably served by a clerk, barristers must practice alone. Partnerships and litigating firms are unknown (solicitors may and often do form firms). A malpractice suit is an unknown terror to the barrister who is immune from the quest for financial damages which disgruntled clients are not averse to undertake here. Solicitors may be sued, but the standard imposed to allow recovery approaches gross negligence so this is still a minor dilemma for most British practitioners.

English barristers strive for justice in a process which places much value on maintaining equilibrium through professional adherence to basic traditions upheld by competent, experienced judges. Whether such a system is viable in a diverse society with elements actively denying the integrity and legitimacy of the judicial and governmental process itself is questionable. The American lawyer's role of involvement in social and political causes is too beneficial for the country to be abandoned or even modified. Hardly anyone, even Chief Justice Burger, seriously suggests adopting the English model. Still, there is much to be learned from a nation that has exported, albeit at times unwittingly and often unwillingly, the best of its libertarian heritage to so much of the world.

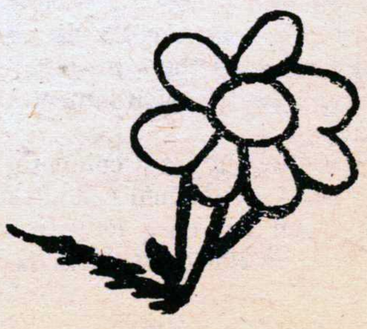
Smith on ABA . . .

(Continued from page 1)

malpractice suits against incompetent lawyers."

The ABA president suggested the following actions by state and local bar associations:

—"Form competence boards to review questions of malpractice and, in all cases in which a complaint is justified, make recommendations for recoverable settlements by the guilty lawyer—or if that fails, furnish witnesses for the injured party in a malpractice suit, or perhaps even bring the suit as the organized bar."

—"Consider the expansion of client's security funds to cover not only dishonest but also incompetent conduct by lawyers."

—"Consider rules authorizing agencies to audit attorney's trust accounts as a condition of the license to practice . . . to insure that the public has confidence in attorneys and confidence that the profession will protect them from dishonest members."