HOFSTRA UNIVERSITY SCHOOL OF LAW

CONSCIENCE

The Hofstra University School of Law Newspaper

Volume 3, Number 8 | "Asking you to ask yourselves . . ." | April 29, 1976

ABA - LSD REPORT ON QUALIFICATIONS TO PRACTICE . . .

I. History

In response to recent mounting criticism of the poor quality of trial and appellate advocacy, Second Circuit Chief Judge Irving R. Kaufman appointed, in early 1974, a committee of distinguished trial attorneys, law school professors and judges to study the quality of advocacy in the Second Circuit. The committee's surveys of the judges of the Second Circuit Courts established that the quality of trial practice and appellate proceedings was alarmingly low. Nearly all judges believed that imposition of more stringent requirements for admission to practice would substantially alleviate the problem.

In June 1975, the committee submitted its recommendations to the Judicial Conference of the Second Circuit. The committee recommended major revisions in the requirements for admission to practice before the Second Circuit Courts.

An applicant for admissions to the district courts under the proposed rules would be required to be familiar with the federal rules of procedure and the Code of Professional Responsibility. He or she would have to have taken courses in the following areas (whether before or after graduation from law school): Evidence; Civil Procedure, including federal jurisdiction, practice and procedure; Criminal Law and Procedure; Professional Responsibility and Trial Advocacy. Continuing legal education programs could be substituted for those law school courses. The applicant would be required to have assisted in the preparation of and attended four judicial hearings, two of which must have been brought in federal court. To be admitted to the Second Circuit Court of Appeals, the applicant must have observed six complete appeals on the merits, three of which must have taken place in federal court; or participated in three law school moot court programs. Alternatively, a committee would be empowered to pass upon other qualifications and experience to determine whether the requirements were satisfied by such equivalent work.

Despite the proposed rules' tremendous impact on law students, both nationally and in the Second Circuit, no law student had served on the committee appointed by Judge Kaufman. Consequently, to enable students to study the proposals, the Second Circuit of the Law Student Division of the American Bar Association sponsored a panel on the rules in conjunction with that Circuit's Fall Roundtable meeting. This committee is an outgrowth of that program. Appointed by Circuit Governor Connie Raffa, the committee was vested with the responsibility of ascertaining student sentiment on the proposed rules.

II. Scope

It was the mandated task of the committee to inform law students as to exactly what the proposed rules are and to poll students as to their feelings about the proposed rules. The committee members viewed it as essential to subjugate their own opinions in order to remain objective. Consequently, what is presented here is a summary of the committee's findings and a presentation of the collective sentiment of the Second Circuit Law Student community.

III. The Work and Procedures of the Committee

The committee's work was basically three-fold:

1. **To determine if the courses required by the proposed rules are available at all law schools:** A questionnaire was sent to each Law School Dean to determine the availability and credit allocation for each of the required courses.

2. **To poll student opinion of the proposed rules:** A ballot was attached to each flyer and newspaper article. The Law Student Division Representative at each school was charged with the responsibility of distributing and collecting the ballots.

3. **To educate law students in the Second Circuit as to the substance of the proposed requirements and the arguments both for and against the proposed rules:** The committee prepared an article stating the proposed rules, the arguments against them, and the response to those arguments. The article was published in law school newspapers throughout the Second Circuit and was distributed via one page flyers at each law school in the Circuit.

IV. Findings and Recommendations

A. Course Availability

Out of twelve law schools in the Second Circuit, seven replied to the course availability questionnaire. In each one of those schools, the courses required by the proposed rules are already available. At no school did the course requirements constitute more than 25 percent of the number of credits needed to graduate. On an average, 21 percent of the credit hours required for graduation are filled by the courses required by the proposed rules. In addition, most schools require Civil Procedure.

In view of these facts, the criticism that fulfillment of the proposed rules will require the law student to make an early career choice does not seem to be valid. Furthermore, since all the responding schools offer the courses that the proposed rules require, the criticism that law schools would be unable to afford the required courses is similarly invalid.

B. Method of Student Input

As already indicated, the committee appointed by Judge Kaufman had no student member. Consequently, before student input could be organized, the proposed rules had been considered in all but two of the districts in the Second Circuit. As a result, the careers of many law students will be affected without their having any say in the matter.

It is the opinion of this committee that no further steps affecting law students should be taken without PRIOR student input. It becomes an extremely difficult task to motivate students post hoc. Much time and effort goes into ascertaining student input after the fact. (e.g.—this committee worked six months to produce this report.) By the time that information is collected, the issue itself may well be moot.

Recommendation 1:

The Law Student Division of the American Bar Association express to Chief Judge Kaufman its disapproval of his failure to appoint a voting student to the Advisory Committee on Qualifications to Practice Before the United States Courts in the Second Circuit.

Recommendation 2:

The Law Student Division of the American Bar Association oppose the work of any future committee of the Court or the organized bar which does not contain at least one voting student member.

C. Student Opinion of the Proposed Rules

Law students in the Second Circuit oppose the proposed rules propagated by the Advisory Committee at the Judicial Council. Students voted 178 to 98 against the proposed course requirements; 170 to 105 against the proposed trial observation-participation requirements; 170 to 102 against the proposed appeal observation-participation requirement.

Nevertheless, as the vote tally indicates, there is substantial support for some kind of preparatory experience prior to actual courtroom practice. The comments most frequently indicated a dissatisfaction with the present constitution of the rules, rather than the concept of rules themselves. For example, students commonly felt that one course or the other is not necessary for effective trial advocacy. Additionally, many students feared that unless rules were uniformly propogated, standards varying from circuit to circuit and state to state would create an impossible burden on the student who attempted to fulfill the appropriate requirements.

Recommendation 3:

The Law Student Division of the American Bar Association oppose the proposed rules for practice before the United States Courts in the Second Circuit as those proposed rules are presently constituted.

Recommendation 4:

That the Law Student Division of the American Bar Association urge the Chief Justice of the United States Supreme Court to appoint a committee, with at least one voting student member, to study the problem of advocacy quality on a national level.

Recommendation 5:

That the Law Student Division of the American Bar Association oppose the implementation of ANY rules for admission to practice before ANY court pending the report from the national committee.

ABA-LSD Committee On Qualifications To Practice Before the United States District Courts In The Second Circuit:

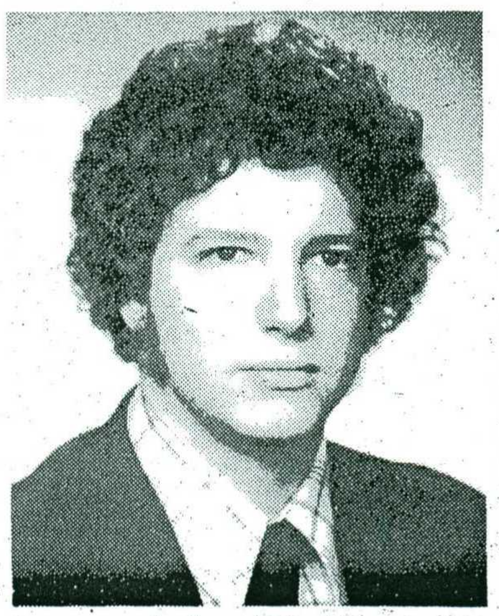
Andrew J. Goodman, NYU Law School, Chairperson

Jean Smith-Hoffman, Hofstra Law School; Andrew H. Eibel, Hofstra Law School, Co-Chairpersons

Alan Smilowitz, New York Law School, Secretary-Treasurer

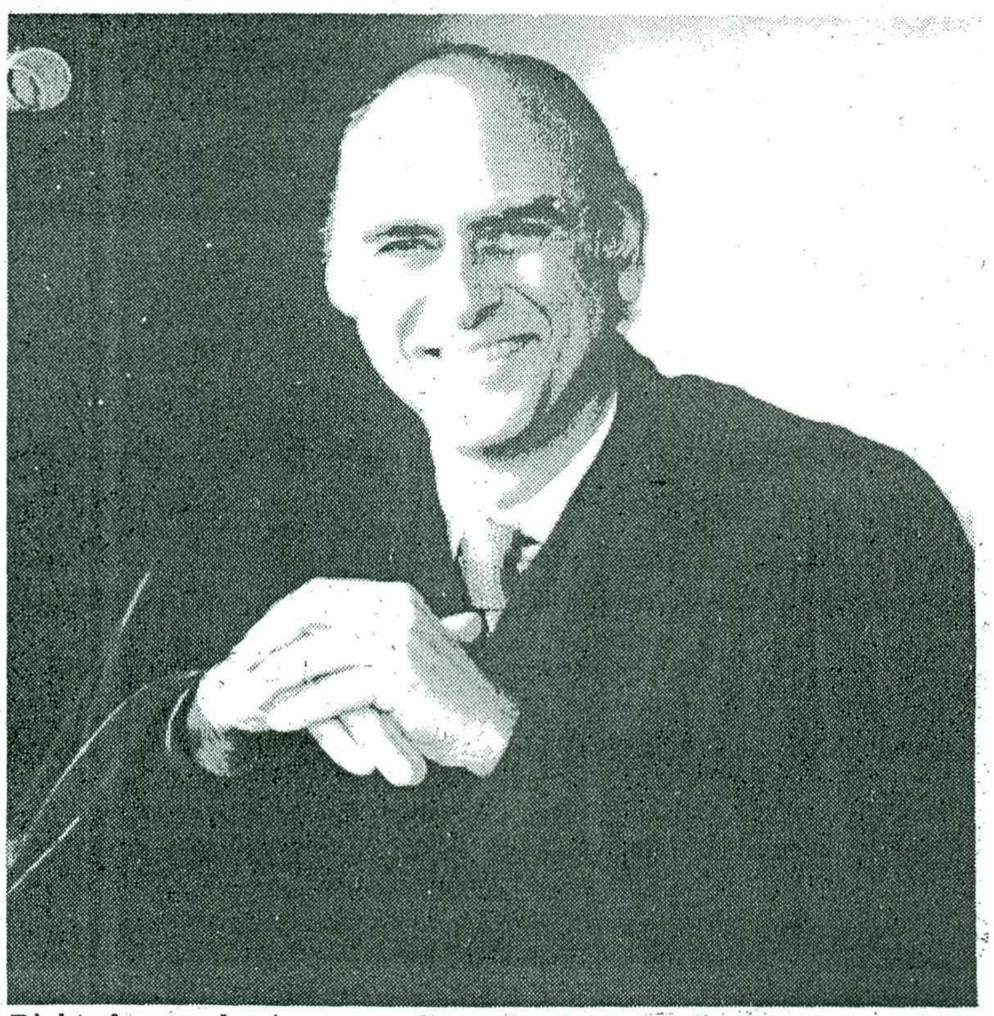
Sharon Landers, Albany Law School

Connie Raffa, Brooklyn Law School



Andrew Eibel

Jean Smith-Hoffman



Right of counsel gains a new dimension in Judge Jack B. Weinstein's article on page 4.

CONSCIENCE

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"Asking You to Ask Yourselves"

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Law Student Division,
Best Law School Newspaper

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Daniel P. Guido

EDITORIALS

Congratulations, Daniel Guido

The new Nassau County Police Commissioner is Daniel Guido, a graduate of Hofstra Law School. We wish him great success in his new position, and are pleased to note that he has already received plaudits in the community-at-large for his common sense approach to "long hair" as well as his restraint in disarming someone of a dangerous weapon.

Open Letter To Nassau County Agencies

Many people have moved to Nassau County not only because of a particular house they have found, but also in anticipation of the excellent governmental and quasi-governmental services that would be available to them.

Nassau County residents can be justly proud of fine schools, recreational facilities, and public services. They can also point with pride to the Hofstra School of Law, which, within a short period of time, has already merited national attention for the high quality of its students and staff.

Some county agencies have seen the obvious advantages of working cooperatively with Hofstra in an effort to complement the training of students with clinical experiences, as well as utilizing the services of these students. However, the hiring practices of county agencies have not displayed similar awareness of the professional capability that lies so close at hand. Some of these agencies actively recruit students from other prestigious law schools throughout the country, and appear uninterested in the legal talent that is available to them close at hand.

Nassau County residents have the right to expect highly qualified men and women to be employed by their county agencies. However, when there are highly qualified people available at a school in the County, there is no reason not to utilize its students.

Hofstra's student body is drawn from those with high cumulative averages, high law school admission test scores, and from those who have shown both the willingness and the ability to serve their communities. In the aftermath of Watergate we contend that county agencies should look to their surrounding schools for those who have the ability to serve, for those who have the integrity to serve, and for those who will serve the community well. THE PEOPLE OF NASSAU COUNTY DESERVE NO LESS!

End Pot Penalties

According to FBI Uniform Crime Reports, there were over 445,000 marijuana arrests throughout the country in 1974 at an estimated cost of $600 million. Even more startling is the fact that seven of every ten drug arrests in 1974 were marijuana violations. Since 1965, almost two million Americans have been arrested for marijuana-related offenses. It is impossible to measure the unnecessary pain and suffering inflicted on those individuals who have been prosecuted under the archaic, hypocritical, and unfair pot laws.

Led by the National Organization for the Reform of Marijuana Laws, a movement has begun which advocates a common sense approach to the marijuana situation. Oregon, Alaska, Maine, Colorado, California, Ohio, South Dakota, and Minnesota have recently enacted legislation decriminalizing possession of small amounts of marijuana. Similar legislation has been introduced in New York, but has been blocked primarily by upstate Republicans. The most ironical aspect of the New York situation is that a recent poll conducted by the Knickerbocker News, an Albany newspaper, revealed that one out of every five members of the Legislature have smoked pot at least once.

The success of the reform movement depends entirely on people who are concerned with this issue. The next time you think of lighting up a joint, write a letter to your State Senator and Assemblyman and tell them how you feel. Please support N.O.R.M.L., 275 Madison Ave., New York, N.Y. 10016.

Letters to the Editor

Dear Editor:

Mr. Joseph Goldstein, who recently spoke at Hofstra at an attorneys-in-residence program, seems to have joined that obnoxious fraternity that promotes itself by falsely downgrading its counterparts in New York City. He claimed that, unlike the court he supervises, the city courts are uncooperative and disdainful of young lawyers. Nothing could be further from the truth on several levels. Which courts do you mean, Mr. Goldstein? You do know that there are five counties in New York City, each with its own Civil Court and Supreme Court. In Manhattan, where the heaviest case load seems to be, in both Civil and Supreme, all the clerks I've encountered have been extremely helpful on all occasions. They are highly cognizant that to a law student or an inexperienced lawyer, the administration and physical layout of the courts may seem to be an endless maze and the clerks are most willing to teach anyone who is willing to learn. Even in the past year, when their own job security has been at its lowest level, the clerks in all five counties have continued to do a yeoman's job.

Nassau County is not the only county attempting to modernize and facilitate law practice. In Richmond County, Special Term Part I (motion part), motions are decided on the same day that they are returnable. This will speed up "motion practice" and bring cases to trial that much sooner.

In none of New York's counties are papers "thrown back without an explanation." The clerks don't want to see the same mistakes over and over from the same lawyer. They recognize that it is to their advantage to demonstrate the correct procedure and thus contribute to the efficient administration of the courts.

Certainly, Mr. Goldstein, if your courts are really everything you say they are, you should be able to prove it without resorting to demagoguery. It is time for people to realize that if they must drag down New York City, is is around their own ears that it will come crashing.

Thank you,
Stuart Rosenthal ('77)

Dear Editor:

It is rather unfortunate that Dean Filler chose to base his reply to my article, "Tea Party Revisited," through the use of comments on statements he has taken wholly out of context.

For example, Dean Filler alleges that I advocated active war as a "stimulus for the economy." In fact, the article clearly stated that I opposed the tax structure because it brought about an economic situation where only massive weapons expenditures aided the economy. He also states, in his second paragraph, that our tax base is eroded, and intimates that if it were not, the whole tax structure would be more workable. In my article, I chose to deal with reality, not the ivory tower daydreams of a tax attorney.

Only by honestly facing the real-life aspects of a problem, can a solution ever be found. It is dismaying to realize that some critics prefer to attack the bearers, rather than the cause, of bad news.

Very truly yours,
Frank V. Vernuccio, Jr.

Dear Editor:

The Moderate Law Student's Association's analysis of the busing controversy (Conscience, April 6) was indicative of a "chic" conservatism that is stifling America's political and social maturation. This emerging trend of thought varies in its reaction to busing from the demagogic and racist passion of Louise Day Hicks to proposals for anti-busing constitutional amendments. Although there is admitted widespread dissatisfaction with busing in both the black and white communities, the column written by Frank Vernuccio was replete with off-target analysis of the "problem."

If we may concede that equal educational opportunity is both a constitutional mandate and a national goal, then quality education is a basic premise. The main problem, which was obviously overlooked or ignored in MLSA's article, is how to remedy both de jure and de facto racism which effectively denies most non-whites that equal opportunity. Busing is a purported corrective measure—and that's all. It was never designed to function as a cure-all for the main problem. But interestingly enough, years before and after **Brown**, whites were bused to white schools and blacks to their schools to correct demographic inequities. There was no outcry then that intra-racial busing would deny middle Americans their so-called "rights."

MLSA concludes that busing " . . . spreads the effects of poverty to somewhat higher income groups." This observation is totally without any factual or intelligent foundation. If these "effects" are alienation and powerlessness, how can they be spread like some sort of communicable disease to those children who have more financially fortunate parents. Would Vernuccio propose that we quarantine poor children to their own sectors? Moreover, this attitude completely ignores the fact that not all black Americans are poor Americans.

My final objection goes to MLSA's equation of busing with the deterioration of American race relations. Since MLSA positions itself philosophically to the "Right of Left," they should well know that power concedes nothing without struggle. Whatever economic and political gains were won during the sixties were the result of both moral and political battles. This progress was not halted by busing, but rather through the aid of the socially ineffectual administration of Richard Nixon. Through Nixon's social policy of "benign neglect," blacks became alienated and whites in Boston, Louisville, and Rosedale saw a presidentially sanctioned backlash. This is the real irony of the busing controversy. Past images of 1956 Little Rock were revived and blacks who are now aware that education provides one of the few routes out of the maze of oppression, are again alone.

Very truly yours,
Joe Turner '77

Marijuana In The Courts

By Peter H. Meyers,
Chief Counsel of the
National Organization
for the Reform of
Marijuana Laws

NORML Releases Data on Marijuana Testing by Military

In mid-September, NORML filed requests under the Freedom of Information Act with ten U.S. military and intelligence agencies seeking documents relating to any tests or research conducted with marijuana.

In response, NORML has received materials on 18 separate research projects involving marijuana, many of which were previously unpublished, including:

A study funded by the Army for $382,000, headed by Dr. J.H. Mendelson of Harvard Medical School, which found that heavy marijuana use did not significantly affect the level of performance on a broad number of tests, including tests involving military skills.

An Air Force study on the effectiveness of military dogs in detecting marijuana, which concluded that "specific packaging techniques, distractor substances, and interference agents were effective in preventing the detection of marijuana."

A CIA study in which marijuana was injected into male albino rabbits in varying dose levels.

A study funded by the BNDD in which chimpanzees performed tasks for "food reinforcement" after the administration of marijuana.

Appeals are still pending with two agencies—the CIA and the Air Force—for additional materials. A Special Report is available from the National Office for $1 which describes the research projects which have already been provided to NORML.

Court Orders Citadel to Recognize NORML Chapter

The U.S. District Court for the District of South Carolina has held that students have a constitutionally-protected right to form a NORML chapter at The Citadel, also known as The Military College of South Carolina.

The Court ordered The Citadel to extend to NORML the same privileges it extends to other recognized campus organizations, which would include a listing in the student directory, access to the school's physical facilities, and newspaper, radio station and bulletin boards. The Court also held that sufficient space for an orientation booth during semester registration must be provided.

The Court's decision relied upon a number of recent federal cases involving student's First Amendment rights to free speech and to association.

Adams v. **The Citadel,** Civ. Action No. 75-1640 (Feb. 6, 1976).

Update on Right of Privacy Suits

The Federal three-judge Court which is hearing NORML's Constitutional right of privacy suit in the District of Columbia has vacated the stay of the case, which had originally been imposed in November, 1974, and had kept the case in a kind of legal "limbo" since that time. The Court's order, entered December 23, 1975, means that the case can now go to the full trial on the merits.

The Court had originally imposed the stay on the basis of the doctrine of "exhaustion of administrative remedies," referring to NORML's petition to reschedule marijuana in the CSA (see above). After the DEA Acting Administrator denied NORML's petition, the three-judge Court decided that the administrative remedy had been "exhausted" and that the stay of the Constitutional suit should be vacated.

In its order vacating the stay, the Court also set for hearing on February 19, 1976, the last motion to dismiss filed by the D.C. defendants. The Court had previously denied a motion to dismiss filed by the Federal defendants.

Similar lawsuits focusing on the right of privacy were filed recently by NORML and others in the Superior Courts of San Francisco and Los Angeles Counties. California recently amended its constitution to explicitly protect an individual's "right of privacy," and the suits argue that this right is broad enough to protect an adult's private possession and use of marijuana, as the Supreme Court of Alaska held in **Ravin** v. **State,** 537 P. 2d 494 (Alaska 1975).

The lawsuits were brought by Mark Soler of San Francisco, and Jonathan Adler of the Beverly Hills Bar Association Law Foundation, among other attorneys. The cases may be cited: **NORML** v. **Ferndon,** No. 697-445, Sup. Ct. for S.F. County; **NORML** v. **Davis,** No. C-140940, Sup. Ct. for L.A. County.

Similar suits are expected to be filed shortly in New York and Tennessee.

In Illinois, the Cook County Circuit Court has dismissed a similar suit, and NORML is seeking to have this decision overturned. This suit, **Illinois NORML** v. **Scott,** No. 74-CH-8125, was brought by Thomas P. Sullivan and other attorneys at the law firm of Jenner and Block, in Chicago.

In Brief

The U.S. Supreme Court vacated and remanded **Downey** v. **Perini,** the case which held Ohio's marijuana penalties were cruel and unusual punishment. The Supreme Court sent the case back to the Court of Appeals for reconsideration in light of the lighter penalties contained in the new Ohio law. **Perini** v. **Downey,** 44 U.S.L.W. 3330 (Dec. 1, 1975).

The U.S. Supreme Court has held that physicians can be prosecuted for violation of Section 841 of the Controlled Substances Act when they distribute or dispense controlled substances outside the usual course of professional practice. This case involved dispensing of methadone. **United States** v. **Moore,** 44 U.S.L.W. 4023 (Dec. 9, 1975).

The deportation of John Lennon from the U.S. for his marijuana conviction in England has been permanently blocked by the U.S. Court of Appeals. This case is an important case on the immigration laws. **Lennon** v. **Immigration and Naturalization Service,** 44 L.W. 2169 (2d Cir. 1975).

The Tennessee Supreme Court has held that a defendant is entitled to a sample of the drugs for which he is being prosecuted, to enable his attorney to do his own analysis and testing of the drugs. **State** v. **Gaddis,** 18 Cr. L. Rep. 2247 (Tenn. S. Ct. Nov. 10, 1975).

It has been reported that the Mexican Supreme Court ruled recently that airline passengers stopping in Mexico without going through immigration cannot be charged with importing drugs into the country. This decision may lead to freedom for many Americans presently in Mexican jails.

The U.S. Court of Appeals held that the DEA acted unconstitutionally in seizing a truck containing 400 pounds of marijuana without a warrant when the seizure was the result of an intensive investigation and surveillance. **United States** v. **Mitchell,** 18 Cr. L. Rep. 2392 (5th Cir. Jan. 16, 1976).

Another U.S. Court of Appeals has held that an informer who received $17,400 from two persons to buy cocaine in Peru, and who obtained the cocaine with the help of the U.S. and Peruvian governments without relinquishing the money, was entitled to keep the money. **United States** v. **Seventeen Thousand, Four Hundred Dollars in Currency,** 18 Cr. L. Rep. 2160 (10th Cir. Oct. 17, 1975).

There are now seven federal appeals courts which have rejected the "multiple-species" argument. The most recent case is **United States** v. **Gavic,** 17 Cr. L. Rep. 2373 (8th Cir. 1975).

The California Supreme Court has held that the transportation of different kinds of illegal drugs in one indivisible transaction constitutes only one illegal act, and not a separate offense for each different drug. **In re Adams,** 17 Cr. L. Rep. 2305 (Cal. Sup. Ct. 1975).

The New Jersey Supreme Court recently held that a person can be convicted of both possession and sale for a single transaction in which a controlled substance is sold to an undercover agent. **State** v. **Davis,** 17 Cr. L. Rep. 2313 (N.J. Sup. Ct. 1975).

A bribe offer following a minor marijuana arrest supplied probable cause for a search of the defendant's entire apartment. **United States** v. **Pravo,** 18 Cr. L. Rep. 2159 (S.D.N.Y. Nov. 31, 1975).

A "scorned" wife cannot consent to a search of her husband's bedroom for marijuana. **Lawton** v. **State,** 18 Cr. L. Rep. 2263 (Fla. Ct. App. 1975).

Police officers who trespassed to observe a marijuana farm violated the Fourth Amendment. **Gedko** v. **Heer,** 18 Cr. L. Rep. 2006 (W.D. Wisc. 1975).

NORML has appealed to the U.S. Court of Appeals for the D.C. Circuit the decision of the Acting Administrator of the Drug Enforcement Administration (DEA) which rejected NORML's petition to reschedule marijuana in the Federal Controlled Substances Act.

NORML originally filed this petition in 1972. It was rejected by the Bureau of Narcotics and Dangerous Drugs, the agency which preceded DEA. On appeal, the U.S. Court of Appeals reversed and directed that the Justice Department give the petition a full hearing. **NORML** v. **Ingersoll,** 497 F. 2d 654 (D.C. Cir. 1974). Hearings were held at the Drug Enforcement Administration in January, 1975, and the DEA's Acting Administrator, Henry S. Dogin, subsequently published a decision in the Federal Register which again denied the petition

(Continued on Page 8)

"Attorneys-In-Residence"

Legal Ethics From A Prosecutor's Viewpoint

by Hector Lugo

"For eight years, I was a Federal and later a State Prosecutor. As a result I never had a private client. The type of client one defends makes a difference on one's viewpoint on legal ethics," said Special Assistant Attorney General Stephen M. Behar, speaking on "Legal Ethics from the Prosecutor's Viewpoint" at the Attorney's-in-Residence lecture on April 21, 1976. "Although the private practitioner serves his client, the prosecutor serves the public-at-large," said Mr. Behar.

Mr. Behar, a former student of Dean Freedman at George Washington University Law School, is presently the Special Assistant Attorney General working with Mr. Joseph P. Hoey, Special Prosecutor of Suffolk County. Mr. Behar served as a Trial Attorney with the Anti-Trust Division of the Department of Justice, and as an Assistant United States Attorney in the Criminal Division of the United States Attorneys Office for the Eastern District of New York.

Upon reading Dean Freedman's book "Lawyer's Ethics in an Adversary System," Mr. Behar commented that several situations presented in the book could be applied to the role of the prosecutor. "The prosecutor is faced with the fact that he must serve the public, so he must be able to strike fair blows at the opposing counsel," said Mr. Behar.

The prosecutor's activities are always observed by the public. If the prosecutor is not defending his public client properly, the court would grant a reversal of the case and would critically evaluate the prosecutor's conduct. "Under great pressure, the prosecutor must perform to high moral and ethical standards before the court and the public. Consequently, very few people spend their lives as prosecutors," said Mr. Behar.

Since the time allocated to the lecture did not permit Mr. Behar to present all of his views on Legal Ethics, he presented a few. Mr. Behar said, "The prosecutor must maintain fairness and must strive for perfect balance for a fair trial. I recommend that both the prosecutor and the defense attorney must become familiar with the ABA Canons of Ethics in order to uphold fairness in the courts."

Also, the young prosecutor must carry a high moral committment to serve the public. A situation may occur in which the prosecutor may have his friend in prison and he is faced with the dilemma of helping his friend or remaining out of the case. Mr. Behar presented the example that, during the Viet-Nam War, several prosecutors could not morally prosecute draft-evaders. So Mr. Behar's office provided a separate Legal specialist to handle all draft-evader cases. "The prosecutor should be morally committed to serve the public and he should question his personal feelings if he is faced with these types of situations," said Mr. Behar.

Finally, Mr. Behar commented on several topics discussed in Dean Freedman's book:

With regard to the selection of targets—"The choosing of targets is very important in presenting goals for the prosecutor's allocation of time and money."

Special cases that require the appointment of a Special Prosecutor—"The appearance of one's bias for a prosecutor does not require one to pick and choose for a special prosecutor."

Turning over discovery information to the defense counsel—"It is morally and ethically required for one to turn over any information, on the record at the trial, requested by the defense counsel."

If the defense counsel is incompetent—"The prosecutor should not go to court and object to the defense counsel's presence in court due to incompetency. The prosecutor must assure a fair trial for all involved even if one is incompetent."

Treatment of Witnesses—"Counsel must inform the witness that he has a duty to testify and may be held liable for perjury. The witness must be informed of the consequences of his actions. The prosecutor must also inform the witness on what the law is and how it pertains to the case."

Mr. Behar's lecture concluded the "Attorneys-in-Residence" lecture program for Spring, 1976. Judge Edwin J. Freedman, Chairman of the "Attorneys-in-Residence" Committee hoped that the students had enjoyed the informative lectures provided throughout the Fall and Spring. Mr. Edwin Freedman promised to provide even a better presentation of informative and interesting lectures for the student body for Fall 1976 and Spring 1977.

Legal Services Must Be Expanded

By the Honorable Jack B. Weinstein

The law's protection is vital to an individual's well being in a democratic and complex society such as ours. Yet without a lawyer the average layperson cannot cope with our legal system.

The problem is particularly acute in civil cases, since unlike the situation in criminal cases, statutory provision for the appointment of state compensated counsel is rare. We must underwrite a widespread expansion of legal services in non-criminal areas. There are three reasons I feel strongly about the urgent need for improvement.

First, as a judge, I cannot do my job in our adversary system unless all parties are adequately represented by counsel. Once a civil dispute gets into court counsel must be available to every litigant or the courts won't work properly.

Second, the existence of even well recognized substantive rights is an illusion unless there are effective means of enforcing them. Tens of millions of Americans are effectively denied many of their rights because they cannot freely consult with lawyers who can advise them and take necessary action on their behalf—by mediation or by use of administrative or judicial remedies. Widespread availability of legal counseling services is necessary or our system of laws won't work properly.

Third, the law is a potent tool for improving the quality of the lives of many of our people. The great struggle for equality of opportunity and freedom that we are engaged in requires constant work on new legislation and litigation testing outmoded norms. Volunteers in large firms, groups like the NAACP Legal Defense Fund, law school faculties, O.E.O. backup groups and individual dedicated attorneys are needed to provide the theory and the muscle to maintain the necessary pressure for reforms. Lawyers bent on reform are necessary or our system won't change peacefully to meet present and future needs of all our people effectively in a just society.

I. NEED FOR LAWYERS IN COURT

The most visible problem from the perspective of a trial judge is the need for counsel to represent **pro se** litigants. In the federal courts parties commonly appear without counsel in habeas corpus proceedings, suits involving prison conditions, actions brought under section 1983 alleging police misconduct, appeals from social security decisions, and bankruptcy matters, all of which involve the litigation of significant rights. Judges depend on the attorneys who appear before them to operate efficiently and effectively.

The inability of the unskilled litigant to prepare pleadings, conduct adequate investigation, work with the rules of evidence, research decisional law, or persuasively argue the case in court renders fair and expeditious disposition of most **pro se** civil litigation virtually impossible. As the Supreme Court long ago said in **Powell** v. **Alabama**,

> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law" (287 U.S. 45, 68-69, 53 S. Ct. 55, 64).

The potential difficulties which can confront a court in adjudicating a civil action without counsel are poignantly illustrated in a **pro se** prison case now before me, involving allegations of mistreatment of inmates with psychiatric disorders. A recent report of the magistrate I charged with supervising discovery and preparing the case for trial, urged the intervention of the Legal Aid Society, concluding:

"I must advise the Court that when I had these prisoner-witnesses brought down here for examination, they were so completely agitated as to constitute a danger to themselves and to the guards, because they were not under the usual sedatives administered to them on a daily basis.

> I am mindful of the fact, that these actions have placed the Court in a difficult position, since they are adversary proceedings and the Court, of necessity, cannot stretch its arm out in favor of one party against the other, be he rich, or poor, prisoner or guard.
>
> I can only suggest that in the interest of an orderly disposition of this case, that it should be placed upon the calendar on the Court's own motion for trial and disposition, after the plaintiff has received the benefit of counsel. In this case, I . . . have recommended the Legal Aid Society."

Recently, a **pro se** plaintiff before me alleged that he had been unlawfully beaten by police officers. He voluntarily dismissed his case just before the trial was to start because he said he was unable to convince his witnesses to come to court. It was apparent from the pleadings that a fracas of some sort had taken place, the issue being the justifiability of the officer's conduct. The plaintiff may have lost his right to have the incident evaluated by an impartial trier because of his inability to put the case together. Perhaps he really had no case. I don't know and I lack the resources to investigate.

In a case I tried last year the plaintiffs, who claimed they were beaten by a policeman, were represented by five Legal Aid lawyers. The former police officer, then a taxi driver, appeared **pro se**. A substantial verdict and judgment would almost surely have been entered against him, prejudicing his forthcoming police administrative hearing, had some skilled young attorneys from one of our better law firms not appeared without fee on his behalf. The jury found for the policeman and the evidence the lawyers turned up may help get him reinstated to the police force. See **Maldonado** v. **Parasole**, 66 F.R.D. 388 (1975).

These cases typify the findings of recent empirical research. A study of civil actions brought by indigent plaintiffs in the District of Columbia found that **pro se** plaintiffs have little chance of surviving a motion to dismiss on the pleadings and virtually no chance to obtain discovery or a trial on the merits. (Schmertz, The Indigent Civil Plaintiff in The District of Columbia 27 Fed. B. 235, 243 (1967).) A study of debt cases has found that defendants represented by counsel are almost six times as successful in obtaining a release from debt as those unable to obtain a lawyer. (Rubin, Consumers and Courts, 109 Bureau of Social Science Research (1971).) The problem in state matrimonial and consumer cases is well known.

In short, experience demonstrates that a significant number of civil litigants—both as plaintiffs and defendants—are unable to obtain lawyers and that the absence of counsel generally has a significant impact on the outcome of the case.

Procedures must be designed to permit courts to bring private counsel into a civil case by means of appointment.

Existing programs ameliorate the problem to a significant extent. O.E.O. neighborhood legal services, though under increasing fiscal pressure, do provide counsel to the indigent in civil cases. In some instances, legal aid lawyers can be brought into a case after its inception. Law school legal aid programs are also very helpful. Our court has recently adopted a student practice rule which permits students to appear as counsel under the supervision of an attorney. Such student appearances serve the dual function of providing counsel to the litigant and a valuable learning experience for the student.

In some instances a court may be able to appoint counsel without compensation, but the process is haphazard and time consuming. The taxi driver-ex-policeman I just mentioned, had been refused representation by the City. Only after my request to the Committee on Federal Courts of the Association of the Bar of the City of New York, were volunteers from one of the large New York law firms obtained. At the moment civil rights groups and young lawyers appear more willing to represent plaintiffs than defendants in these civil rights cases. It is vital that both sides receive adequate representation.

A useful approach would be the establishment of a permanent panel of attorneys, from which appointments could be made. It could be modeled after the arrangements set up by the Criminal Justice Act. As in the case of Criminal Justice Act counsel, the client could be ordered to pay part of the cost of counsel if his resources permitted. (Report of Proceedings of the Judicial Conference of the United States, Sept. 25, 1975, p. 75.) Habeas corpus and civil commitment proceedings are indistinguishable from criminal cases in the consequences for the person involved. Often civil actions—although not concerned with the prospect of confinement—may have an equally devastating impact on the life of the litigant. Salient examples recently cited by the New York Court of Appeals in the **Matter of Smiley** include matrimonial actions dealing with the custody of a child, eviction proceedings, license revocation, mortgage foreclosures, credit cases involving repossession of important assets or garnishment of income.

To minimize the need for appointments in routine cases, court procedures should be reformed to maximize the effectiveness of **pro se** representation.

There is now an effective, cheap state small claims court available at night. Its services are advertised on radio, proving that methods of protecting legal rights can be devised if we would give them the same attention as we devote to merchandising commercial services. Obviously, much more can be done. In a city such as New York, pamphlets explaining the rights of people in Spanish and other languages are needed. Simple and understandable summonses with a tear-off form for mailing in an answer, and courts holding sessions in places and at times convenient for those who need help can be developed. Clerks and other court personnel, including judges, can be retrained to assist litigants on the theory that they are paid by taxpayers to help people in need, not to enjoy the perquisites of office.

At the very least, court fees should be abolished for all litigants who cannot comfortably afford them. Our court, for example, freely grants petitions to proceed **in forma pauperis**. The Supreme Court's decision in **Boddie** v. **Connecticut**, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971), represented a significant breakthrough in this area, holding unconstitutional the application to indigents of a statute requiring the filing of court fees as a condition precedent to bringing a divorce action. The Court, unfortunately, retreated from this position in **United States** v. **Kras**, 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973), holding that an indigent could constitutionally be compelled to pay fees as a condition of obtaining a discharge in bankruptcy. The limitations set on the broad implications of the **Boddie** case are, in my judgment, unsound. The New York Court of Appeals wisely accorded **Boddie** a more expansive reading in **Deason** v. **Deason**, 32 N.Y. 2d 93, 343 N.Y.S. 2d 321, 296 N.E. 2d 229 (1973), holding that government should be required to pay an indigent's publication costs in connection with a divorce proceeding. That court's subsequent refusal to extend **Deason** to mandate the appointment of paid counsel in divorce cases reflects a reluctance to become involved in the appropriation of funds problem. **Matter of Smiley & Monroe**, 36 N.Y. 2d 433, 369 N.Y.S. 2d 87, 330 N.E. 2d 55 (1975). Nevertheless, if the legislature does not act, the courts will ultimately have to do so. Either they will have to mandate state payments of legal fees for the indigent in matrimonial cases or provide simple forms and court clerks to advise the public on how to fill them out so lawyers will not be needed. The second alternative is obviously dangerous where children, property and support may be involved.

It is not clear whether expenditures for counsel fees—unlike the elimination of court costs—require action by a legislature. As in criminal cases, the courts can mandate payments but they will avoid doing this as long as possible. The State Assembly's passage last week of a bill to reimburse state troopers and correction officers for legal fees incurred in connection with Attica investigations is a commendable step in this diredtion. The announcement in the March State Bar News that the New York State Bar Association has just received a grant of over $1,000,000 from the federal Law Enforcement Assistance Administration to provide legal assistance to state prisoners is also good news to bench and bar and it should be welcomed by both prisoners and law enforcement agencies.

In many instances more resources will have to be put into the courts and ancillary services. But in many others it is not resources that are lacking but the will and skill to use them well to help people.

II. NEED FOR LAW OFFICE COUNSELING

The **pro se** litigant is the most visible symptom of a substantial dislocation of legal resources. A recent American Bar Foundation study estimated that the "poor" have approximately 7 million legal problems requiring a lawyer every year. Other studies by the American Bar Association and the Industrial Social Welfare Center of the Columbia University School of Social Work demonstrate too that middle income Americans are receiving inadequate legal counseling. Inadequate referral services, and the frequent failure of lay people to recognize problems as legal in nature compound the problem.

We are still using essentially the same system of delivering legal services that existed seventy-five years ago. But at the turn of the century, the average American probably did not own a home, certainly did not own a car, was much less likely to get divorced, was not buying appliances on the installment plan, or borrowing money from finance companies to do so. Nor did the average American have to file income tax returns, pay for Social Security, or come into contact with the myriad of government agencies on the municipal, state and federal levels, which now affect our daily lives. All of these developments have had legal implications for the average person which have for the most part been ignored.

It is time for the delivery of legal services to move into the modern world just as the delivery of medical services has begun to do. No one would now be willing to return to a way of life without health insurance, hospital clinics, medical coverage stemming from employment, or Medicare. Yet these are all fairly recent innovations which have appreciably bettered the quality of life of every citizen. The time has come to view legal services in the same light—as services which are every citizen's right and within every citizen's financial grasp. There are a number of useful devices worth considering, a subject to which I now turn.

With respect to the very poor, government-funded legal service programs, I believe, have gone far to achieve this objective, insofar as they have enabled the indigent to gain access to the courts.

The fight to preserve the Federal Office of Economic Opportunity and like legal services programs must be continued. But changes must be made to make O.E.O. programs even more responsive to the needs to deliver legal services to the indigent. Among these changes are the following:

(a) Income limitations should be made more flexible. There is still some resentment by lawyers over what some of them believe to be loss of fees. This, for example, is apparently still a major problem for the New Haven Legal Assistance Association. I found it a serious obstacle when we were establishing the Nassau County program and I was amazed to see lawyers for the banks and large real estate interests teaming up with storefront lawyers from the Black community to oppose the program. This form of opposition has been reduced in Nassau County since more lawyers now realize that more litigation benefits all of them economically and that protecting the rights of the poor is just. Perhaps fees should be charged on a sliding scale. A case that was started when the client was without

To Meet Needs In Civil Areas

funds might be retained after the client gets a job; some form of referral or joint representation to provide fees in these cases to private lawyers may need to be considered.

(b) Restrictions against criminal representation by O.E.O. programs should be re-evaluated. Representing a whole family with many problems requires work with public and private social agencies, family courts, civil courts and sometimes criminal courts.

(c) Funding of legal services programs should be established on a long-term basis so that availability will not vary with changes in the mood of the legislature. Without such commitments it is impossible to attract able lawyers who cannot afford to sacrifice their careers and livlihood. Something should be done to reduce the nearly 50 percent differential between starting pay in large law firms and in O.E.O. programs. Many students who would like to do this public work cannot afford to do so, particularly since they leave law school burdened by debts assumed to pay for their education. Many good lawyers must leave legal services when they want to establish families and can no longer work for minimal salaries.

(d) Local participation in federally funded legal services programs should be expanded—always keeping in mind that independence from political control by powerful groups in the community is essential. While lay persons should participate on boards of directors, it is important that professional responsibility of the lawyer to the client remain unimpaired.

(e) The lawyers should not be limited in utilizing actions against the government or legislation to protect their clients. They should have exactly the same freedom in this respect as they would representing private clients. Again, independence from political control by powerful groups in the community is vital if the program is to work well. Fortunately, the American Bar Association has recognized this and has fought for autonomy of legal services programs. When I helped establish Nassau County's legal services program, as County Attorney of Nassau County and later as the first Chairman of its Board of Directors, a major problem I had was asserting complete independence of government and representatives of large institutions who were afraid, with good cause, that our attorneys would assert our clients' claims effectively against them. How to keep those who control public funds from asserting operating control over an organization which will tend to make life uncomfortable for them is one of the most difficult problems in this area.

In sum, it has always seemed clear to me, first as a practitioner and later as a judge, that the merits of legal services programs should not only be evaluated by the benefits gained by individual clients of the program—which are by no means insubstantial—but also by the role they play in the administration of justice in this country. Viewed in this light, at a time when our courts are in the throes of a severe crisis, with public confidence in their ability to respond to the demands of today's society diminishing, it would seem to be the height of folly to allow these programs for the poor to be emasculated.

While free OEO assistance may address the legal needs of the poor it offers no help at all for the middle class. Government funding alone is not a practicable method of providing legal services to the broad mass of middle-income Americans. A whole range of reforms must be initiated to bring down the cost of counsel.

PREPAID LEGAL SERVICES

Prepaid legal services can work. This is a system, something like Blue Cross or Blue Shield, which entitles the payor of an annual premium to a schedule of benefits for different categories of legal services such as consultations, negotiations, real estate closings, court appearances, witness fees, and tax advice with deductibles and exclusions. A pilot project in Shreveport, Louisiana, seeded with money from the Ford Foundation and the American Bar Association, began operating without a subsidy two years later.

In New York, District Council 37 of the American Federation of State, County and Municipal Employees has recently started a small test program involving five lawyers and approximately 1,000 union members. By mid-year DC 37 hopes to open the plan to all 125,000 of the union's members, bringing in 80 to 90 lawyers to handle the work. Teamster Local 237 and the New York County Lawyers' Association are preparing prepaid service plans as well. Representatives of labor, the bar and the insurance industry need to coordinate their efforts. Among themselves they have sufficient data and resources for a statewide pilot plan to be put into effect in a very short time. The interests of these three groups are not opposed—the legal services field is as vast as is the field for medical services, and all types of coverage are needed and will complement each other. It is time for our average citizen to be afforded the opportunity of paying a preset reasonable amount in advance in order to be protected against financially crippling legal expenses, and to be enabled to affirmatively vindicate legal rights.

NEIGHBORHOOD LEGAL SERVICES

We could also provide far cheaper legal care for our citizens of moderate means if we established legal clinics which would serve clients on a sliding scale geared to their financial resources. Such neighborhood law offices can be financially feasible if the lawyer's overhead can be kept down. This can be done in a number of ways. First, we might press for revision of the rules of the court on admission of attorneys to make clinical experience for law students mandatory. Hospital clinics would have to close tomorrow if they had to depend solely upon licensed and certified physicians. We have several thousand full time students attending law schools in the New York City area alone, or in Washington, D.C.; and in New York State there are law schools in Albany, Buffalo, Ithaca, Syracuse and on Long Island. George Washington University's Consumer Protection Center, while its law students render a great deal of help to consumers, finds itself handicapped by an inability to provide full legal services. Under our present system, law students complete school and become fully licensed if they pass the bar examination, even if they have never set foot in a courtroom or dealt with a live client.

Use of law students in neighborhood law offices would confer a dual benefit—an educational one for the student, and legal services at a lower cost for the client. Surely the assistance of a law student is not greater cause for alarm than the participation of the medical student in the emergency room. The Council on Legal Education for Professional Responsibility, Inc. has for several years funded test clinical programs that have been gaining useful experience all over the country.

Paraprofessional personnel can also be used far more extensively than they are at present. Some of our Community Colleges are beginning to turn out specialists in this area but many members of the public and the bar are still unaware—or are unwilling to accept the fact—that many legal procedures can be easily routinized so that they can be handled effectively by nonlawyers. This is particularly true in real estate and estate administration. There is no reason why the major work underlying the drafting of wills, deeds, and other documents cannot be handled by paraprofessionals. Such an approach is reportedly being utilized by the Hubert L. Brown Law Offices, P.C. of Norwich, N.Y., a firm with only three lawyers and thirty-five paraprofessionals.

FEDERAL RESPONSIBILITY

Public opinion concerning the role the federal government should play in improving the average citizen's legal care needs to be mobilized. There is some question as to whether personal legal expenses exceeding a certain percentage of one's income should be tax deductible as are medical expenses. Preferably both medical and legal services should be arranged so that catastrophic fees can be borne. If this is done then no tax deduction is warranted. Tax deductions favor the rich who are at the top tax brackets. They do nothing for the poor and little for the near poor. Recent amendment to the Taft Hartley Act to permit negotiations for legal assistance to workers is a small step in the direction of providing them with adequate protection.

We might consider the feasibility of governmental subsidies for legal care. The British have had a system since 1949 providing specified fees for solicitors of the client's choice. The recipient of legal aid under this program may be required to contribute according to his means. Virtually the entire legal profession participates in this subsidy plan for which approximately three-quarters of the population is eligible.

While recent Supreme Court decisions have breached state bar association barriers to some union plans for providing lawyers, a great deal of resistance remains. For example, some former O.E.O. lawyers who wanted to provide services modeled on the Kaiser-Permanente medical plan, have reported opposition by the organized bar in California. Rules against advertising are also utilized to discourage all but narrow insurance plans.

III. LEGAL RESOURCES FOR REFORM

A third level of need is for back-up resource centers and communications networks to guarantee that theoretical equality of representation is equal in fact. Economical methods must be developed to ensure that neighborhood law offices command a level of specialization in areas affecting the poor and middle class comparable to that which is available in large law firms.

A recent conference on Equal Justice sponsored by the New York Bar Foundation called for the creation of back-up legal service centers, modeled after teaching hospitals, which could offer its staff members the use of the most advanced high-technology equipment (in the areas of data processing, information retrieval, copying and the like), a relationship with a law school, access to leaders of the bar, and an in-depth research capacity. Such institutes could initiate broad-scale programs in legal education, training paraprofessionals, and law reform. Lawyers, in return for access to the center's superior research facilities, could agree to render some services such as supervising paraprofessionals or offering clinical education to law students or other lawyers. It would be expected that full-time staff positions would be highly competitive, attracting lawyers with excellent qualifications. Like a teaching hospital, the center would serve as a resource for community law offices. (See New York Bar Foundation, A Lawyer At A Price People Can Afford (1975).)

To be sure, this proposal is not immediately practicable on a full-scale basis. But there is no reason not to begin immediate experimentation. In the meantime community law offices, together with the law schools, should initiate communications networks to meet needs for in-depth research and specialization.

There is already an informal network of lawyers interested in these problems. For instance, Mert Bernstein of Ohio is working with students on a fair pension bill, Rand Rosenblatt of Rutgers on legal problems associated with reorganization of hospital services in a community, and Bruce Ratner of New York University on a special consumer problem. All would be helpful to those handling special pro bono cases. Speaking only of Columbia, for example, I know Frank Grad often gets calls on environmental work and Harriet Rabb on her employment discrimination work.

The public law offices data could be fed into what could turn into a more formal network with advisory bulletins. For instance, Mark Morril of the Legal Action Center of New York has fine materials on drug laws, Ronald Pollack of the Food Research and Action Center of New York has assembled material on issues dealing with food, and the Natural Resources Defense Council attorneys, who teach a clinical course in environmental law at New York University, have materials useful in litigation and agency adjudicatory proceedings.

We might even consider a national informal network of teachers and librarians in the law schools tied together electronically—what would amount to a national back-up institution. It would be spread geographically and thus a legal center in a figurative rather than a literal sense.

This machinery could also be used in the area of legislative work at the state and national levels in fields in which concerted activity was warranted. The areas for concentration could be those previously handled by the OEO centers and other areas such as environmental protection. Some professors or schools might well wish to concentrate on particular areas with primary responsibility for creating think-pieces, basic brief materials, and statutory programs. In other cases a loose conglomeration of professors in their various specialties would cooperate. This kind of cooperation under the leadership of NAACP Legal Defense Fund has been effective in the areas of school desegregation and capital punishment.

In view of the telephone, jets, computers and mails, cooperation among schools and scholars at the ends of the country is quite feasible. The Clearinghouse Review, operating out of Chicago, and primarily concerned with problems of the poor could be utilized as a coordinating center. It now has a library of briefs, complaints, and memoranda in 14,000 cases which it copies for a nominal fee and sends out on request. The work done at the law school centers could be sent to the Clearinghouse so that it could be available to other groups. There are other information centers such as that of the NAACP Legal Defense Fund in the area of prison reform.

In some instances fees will be earned, as in connection with desegregation cases and other private attorney general matters—although the Supreme Court in the **Alieska** case, 421 U.S. 240, 95 S. Ct. 1612, 44 L. Ed. 2d 141 (1975), has limited awards in the absence of statutory authorization. These fees could be fed into the system either directly to the law schools to reinburse for other expenses or through some kind of national funding source. Maximum participation of students at the law schools with course credit and with assistance from the administration in the way of stenographic and other aid would help.

The recent closing of the Race Relations Information Center for lack of funds reminds us that money is needed even when talented professors are willing to donate their extremely valuable time. It is doubtful whether universities, pressed for funds can put much money here when they lack money for scholarships and books and salaries, and foundations are retrenching.

Nevertheless, efforts of the OEO back-up centers have been invaluable and should be continued, not only because they have helped litigants but because the high quality of the work has assisted the courts do a better job.

The National Housing Law Project in Berkeley, California, whose money ran out in March, 1975, for example, formulated model lease and grievance procedures for public housing tenants, produced a widely acclaimed handbook on housing laws, organized a monthly news bulletin on important new housing cases, and conducted training seminars throughout the country. Al Hirshen, the Project's director, has observed, "If you go to a law firm with a tax problem, you get a tax specialist. What the elimination of the back-up centers means is that the rich can have specialist lawyers and the poor can't."

CONCLUSION

Failure to meet the legal needs of poor and middle class citizens is unacceptable in a society committed to the ideal of political and social equality. It is inexcusable particularly when thousands of jobless students are graduating from law schools capable of filling society's needs. I know that government on all levels is feeling severe fiscal pressures. Some will say that we cannot now afford to guarantee counsel in civil cases. We may well ask, can our society afford to falter in its struggle towards justice to all by denying the right to counsel to all? As lawyers we can only answer, "No." An affordable lawyer must be available to anyone who needs legal help.

Admissions Revisited

by Enid R. Klein
Member Student Admissions Committee

At a time when most law schools have left the admissions process to computers and individuals who function like computers, Hofstra Law School has emerged with a system which humanizes the process. The Student Admissions Committee organized last year by Patrick W. Dunn, under the auspices of Dean Monroe Freedman, acts as a buffer between an individual applying to the law school and his rejection from it. The Committee affords each application it considers a thorough analysis of its merits, unlike the numerical analysis which categorizes individuals solely on the basis of a mysterious formula composed of the LSAT score and the cumulative average.

Because of the surprising and welcome response this year, the Committee was increased from twenty members to thirty-six. Even this increase, however, was insufficient to accommodate all of those individuals who wanted to participate. In order to facilitate its functioning, the Committee is divided into five groups of seven members headed by a newly-elected chairman, Mark Caruso. Each of the subgroups meets once every week and reads approximately twelve to fifteen applications per week. Those applications which are approved by the subgroups are then sent on to the full committee which convenes every ten days. The full committee is composed of the chairman and twenty members from the five subgroups. The subcommittee members rotate such that every three weeks all members of the subcommittees participate in the full committee meetings. The full committee discusses, votes, approves or rejects applications sent up by the subgroups. Recommendations are then written to support the applications which are approved, and subsequently, sent to Dean Freedman. It must be emphasized that the Committee does not accept applicants directly. The Committee's recommendations are weighed by the Dean who makes the final determination.

Because of the diversity of its members, the Committee is often the forum for healthy discussion. Basically the concern of the Committee focuses upon the sometimes conflicting purposes of the Committee: is it essentially a committee whose primary function is to aid the applicant who is deficient either in his cumulative average and-or his LSAT score, or is its function to benefit Hofstra Law School by selecting those applicants with "special" qualities who will diversify the student body and eventually bring credit to Hofstra? Although one may think that these functions are not antithetical, there are situations when an applicant fulfills the numerical qualifications yet lacks any unique qualities such as work experience, motivation for the pursuit of law, etc. How should the Committee evaluate that type of application? In order to formulate an opinion each committee person analyzes objective factors within his subjective view. The diversity of each member's experiences makes any subjective evaluation an asset.

A variety of factors comes into play during the appraisal of an application. How significant are the LSAT scores? Does the individual's cumulative average indicate an upward trend in the last two years of undergraduate study? For what kinds of courses did the applicant receive credit? How are the recommendations? Do they support the individual? What is the effect upon the determination when one applicant has four recommendations and another has only one? How can an individual's writing ability be analyzed without any writing sample? Are the applicant's extracurricular activities substantiated by other parts of the application? Has the individual been involved in legally-related activities? How should the individual be evaluated when she-he has been out of the college environment for more than ten years? Is the individual motivated for the study of law? Is this applicant outstanding? These are some of the questions which members must ask themselves in order to reach a determination.

Each participant of the Admissions Committee assumes great responsibility, not only in relation to the applicant but to the law school and himself. Some people may comment "How does it feel to determine the future of an individual?" It is not an easy decision to reject an applicant. Many members of the Committee feel that they might have been rejected from law school had it not been for other countervailing qualities. The Committee focuses, however, not upon the amount of people who are rejected, but on the quality of person it helps to accept. Even if the amount of acceptances is one or two, the gratification is seeing a unique individual who otherwise would have been overlooked walking through the halls the next fall. This year the Committee considered 526 applications out of a total of more than 3000 received by the law school. Of the 526, 411 were rejected, and 115 were sent on to the full committee. Of the 115 which were sent on to the full committee, thirty-five were rejected, fifty were recommended to the Dean and thirty are pending. The Dean has accepted ten applications, rejected four, placed twelve on the preferred waiting list and twenty-four await a decision.

Besides reading applications, the Admissions Committee is interested in related activities, namely creating a charter, re-vamping the application and insuring that the individuals who are accepted will eventually choose Hofstra. The Committee welcomes any additional suggestions and comments from the Law School which will help it in its goals to evaluate applications on a more human level.

The Conscience Staff
Congratulates
1976 Law School
Graduates
and thanks once more
its retiring editors -
Chad Russell
Jim Freeswick
Dick Seltzer

Balsa Speaks . . .

By Ralph T. Byrd

On November 10, 1975, the U.N. General Assembly voted in favor of a resolution condemning Zionism (not Judaism) as a form of racism and racial discrimination. On Tuesday, November 11th, close to one hundred thousand people poured into the streets of New York City to support the Zionist cause and to assail the U.N. resolution. Here at Hofstra University, members of Jewish organizations circulated a petition amongst the faculty of the Law School expressing outrage at the approval of a resolution by the U.N. which "linked Zionism with two of the most monstrous forms of racism of all time—Nazism and Apartheid" and which was therefore "the grossest desecration of the memory of the millions who died as victims of Nazism and of those who continue to suffer and die as victims of Apartheid."

On Tuesday, April 12, 1976, Prime Minister John Vorster of South Africa concluded a four day visit with Prime Minister Yitzhak Rabin in Israel which produced a "sweeping new economic cooperation pact." This new agreement between Israel and South Africa is expected to result in an immediate expansion of two-way trade, utilization of South African raw materials and skilled Israeli manpower in joint projects, and the stepping up of already cordial scientific relations. There are reports that it may also involve a major expansion of the areas supply relationship already existing between the two countries, although the leaders of both countries refuse to comment on that matter. However, Vorster told newmen "Relations between South Africa and Israel have never been so good."

Maybe relations between these two countries have "never been so good," but they have never been bad. In his book **The Secret Battle for Israel,** Colonel Benjamin Kagan gives an account of the development of the Israeli Air Force, with the help of "friendly" governments. Colonel Kagan, who played an important role in scavenging the world to collect the aircraft and parts that went to make up the early Israeli Air Force, tells how in 1947-48 the Israel Air Force had no more than a handful of pilots in its own forces and "South African pilots constituted the second largest group after the Americans." Armaments as well as volunteers arrived from South Africa with the blessing and authorization of the officials of that country. During the 1948 war, planes were openly purchased by the Zionists from South Africa with military trade continuing every since.

In 1951 the Gransvaal Nationalist Party opened its ranks to Jewish membership for the first time and in June 1953, the then South African Prime Minister visited Israel.

In short, South Africa and Israel have always been friends. It is only now however, with Vorster's visit to Israel that the relationship of the two countries is coming out of the closet.

Of course Israel is not South Africa's only friend, but Israel is the only friend of South Africa that owes its existence to a belief held by a majority of the countries of the world existing in 1948 that the Jewish people in view of their thousands of years of persecution were morally entitled to a homeland of their own.

But now Israel and South Africa have disclosed to the world their unholy alliance, a partnership which if continued must ultimately lead to Israel's ruin. Obviously the guarantors of Israel's existence cannot help but become cynical toward Israel's need for protection from persecution when Israel is itself collaborating with one of the biggest persecutors of all time.

However, the self destructive potential of Israel's relationship with South Africa is not limited to the effects of cynicism and disillusionment amongst her supporters. By consorting with South Africa for purposes of mutual "benefit" Israel is helping to preserve for herself and the rest of the world, racism, oppression, persecution and genocide—the very evils which the people of Israel have been trying to escape since time immemorial.

The South African government is the only one in the world which has as its fundamental purpose the separation of men according to their physical characteristics and the perpetuation of domination by one race over another. In South Africa the state propagates racism, proclaiming it is a philosophy. South Africa's institutions, laws, police and economy are all designed for the central purpose of upholding apartheid and the priviliged lives which White South Africans have built upon the deliberate humiliation of the Non-White South Africans. Indeed South Africa can be said to have developed racism into a sick science, a disease by design which can just as easily thrive on Jews as thrive on Blacks. Shouldn't Israel be able to recognize that for its own protection that it should do what it can to isolate and eradicate the disease of racism? At the very least they should refrain from strengthening the supporters of apartheid.

Yet Israel as well as any other country that trades with or invests in South Africa, or otherwise treats it as a respectable member of the international community is giving support to apartheid, and everything which follows from it. People do not invest in foreign countries out of philanthrophy. They do it to make a profit. Therefore when Israel and anybody else invests in South Africa, they are investing in a continuation of the status quo there as well as the expected return. The investor's or trader's interest in the "political stability" of South Africa, i.e. apartheid, will be greater the larger the amount invested and the greater the expected return. And the STRONGER THE South African economy, the larger the resources which the South African government can devote to the continuation of apartheid. Thus, outside investors and trading partners with South Africa become allies of South Africa regardless of lip service to the contrary. Because investment is attracted by potentially high returns, the greater the surplus South Africa can extract from the labor of its people the greater will be the attraction of new investment. The greater the amount of new investment, the less reason South Africa will have to accept treatment for its sickness thus jeopardizing the physical, moral, and spiritual health of all people everywhere.

If 100,000 people were outraged at implications of a link between Israel and South Africa on November 10, 1975, they should have been many times as outraged when the connection proved real on April 12, 1976. Yet this writer saw no demonstrations, heard no cries of outrage, and witnessed no signings of petitions of protest.

"Balsa Speaks" is a column written by members of the Black American Law Students Association.

Opinion: Procedural Difficulties

by Kathy Rosenthal

In its vast collected wisdom, the administration has again legislated us right over the edge of a small cliff. This time it is the present 2d year students who will be pushed off.

Someone has decided that Professor Linda Champlin will be teaching Advanced Procedure next year. The selection procedure was obviously made by the proverbial blind-folded dart thrower. There is little sense to the choice and much possible detriment to all concerned, which in the final analysis will extend past next year's graduating class.

Professor Champlin is a member of the Ohio bar. She does not and has not practiced in New York State. She knows little or no New York procedure, nor does it appear that she intends to learn much more. She intends to teach the course with a primary and almost exclusive focus on federal procedure. This is a waste of teaching time and salary, and student time and tuition.

First, federal procedure is well covered at Hofstra; it is taught to all first-year students, and for those desiring to pursue the federal system in depth, there is Federal Courts.

Second, our faculty is limited, as is the selection of courses. They have two teachers teaching the same material with different titles. Better to free one of them for another course, which brings me squarely to point three.

There is no sin in offering one New York practice course in a national law school. The students have again and again petitioned for this course, and the expressed policy of this institution is its alleged desire to follow the reasonable mandate of its students. Here the student's clear choice is being thwarted by this choice of professors. By subterfuge, the administration is inflicting its view of what a national law school must look like and is managing to in effect remove the only New York practice course offered. There are many students here who haven't the time to take NLO and have not been able to get legal jobs where one can learn sufficient state procedure. The material taught in this course is as necessary to a New York practice as Business Organizations, Wills, and Contracts, and should not be summarily discarded and relegated to be learned in a cram bar review course or in the first few months of post-graduate practice by fire. There are many who want to take it as a preliminary to preparing for the bar, and their desires should not be treated lightly. The need for a New York practice course is acute.

The administration has in one fell swoop left a gap in our education potential while wasting its precious resources in duplication of energies. Speaking for the student body, I urge the powers-that-be to reconsider this mistake and reallocate its priorities with the student body in mind.

Guidlines For Law Review Articles

By Fred Heather

This memo outlines the publishable article route to **Review** membership for those students who could not attend the open meeting held on April 26.

1. Comments, notes or casenotes may be submitted by any student in the law school. If the student is not interested in becoming a member of the **Review**, his or her article need not be submitted anonymously, and the student is free to consult with a member of the board of directors.

2. If a student wishes to use an article as a route to membership, it cannot be discussed with a member of the board. The article must be submitted to Inge Klomm in room 202 (preferably with three copies), along with a cover letter tying the author's name and address to the title of the piece. After the board has voted on the article, the student will be notified by mail of the decision of the board. To gain membership, the article must be deemed acceptable by two-thirds of the board of editors.

3. Articles will be accepted if they are "publishable" in the **Hofstra Law Review.** This does not mean that we expect to be able to mail manuscripts directly to the printer without some editing. What "publishable" means is that the article meets the following tests:

(a) Is the topic one which is timely, and interesting to the legal community?

(b) Does the research support the propositions which are set forth as well as exhaust relevant materials on the subject?

(c) Is the analysis, logically sound and tightly reasoned?

(d) Are the author's thoughts clearly conveyed?

(e) Do the footnotes and text conform to "Bluebook" standards.

Unreworked term papers almost always fail to satisfy the second, third, and fifth tests listed.

4. Please note that if a student wishes to avoid writing on a topic, which may be the subject of a law review article already in progress, or wants to discuss generally the appropriateness of an article, the individual may consult with any member of the **Review**, other than a member of the board of directors.

5. It generally takes between two and three weeks for the board to vote on an article—please do not be impatient.

6. Students in their first year of law school are ineligible for membership. Students in their last year of law school who wish to submit an article for membership purposes, must do so no later than Tuesday, September 7, 1976.

Law School Picnic

The annual Law School Picnic will be held on May 1st, commencing at 11 A.M. at the Wantagh State Park.

Activities include the annual student-faculty softball game, beer drinking, volleyball, sangria, and assorted other diversions.

Directions:

Southern State Parkway East to the Wantagh Parkway, south on the Wantagh Parkway to first Merrick Road exit (sign says to Wantagh State Park).

Left on Merrick Road to first light—right on King Road to Park entrance.

2nd picnic area on left—Central Picnic Area—across from the tennis court.

Welcome Back, Weinrib

by Neil Weinrib

Star Trek has its unique breed of followers known as "Trekkies." Similarly, the Community Legal Education Project has attracted a dedicated bunch of students known affectionately as "Cleppies." We don't carry phasers, wear pointed ears or even "beam up"—but we do encounter a strange and mysterious phenomenon: the high school student. Let me tell you about my most recent experience.

Several weeks ago I undertook to deliver a lecture on the subject of legal insanity to a high school class whose interests easily transcend the classroom and seem to lie in state somewhere between the cafeteria and the parking lot. Naturally, I spent a great deal of time putting together a comprehensive outline of the insanity defense, hoping my students-to-be would be impressed by my presentation and knowledge of the topic. Needless to say—they weren't. In retrospect, I think they would have preferred somebody along the lines of Kojak, Doug Henning, Bugs Bunny or "The Fonz" from Happy Days. But instead they got me.

You know, walking down the long corridors of this local high school (whose students would prefer it to remain anonymous) was like taking a giant step back a couple of years to the days when I was hanging out at my school, Lynbrook High. But my experience seemed different—here was a school totally surrounded by a Cyclone fense and about as sterile as either Sing Sing or Stalag 17. The hallways were brightly decorated with graffiti and teeming with trash. Half the lockers had been brutally ripped from their hinges. The only nexus between today's school and good ole Lynbrook is probably just the paint peeling from the walls. How can I forget my high school days: being sentenced to detention at 7:30 a.m. for 4 weeks; eating, sleeping and playing pinball at Nathan's; having Jello fights in the cafeteria; or catapulting the driver's ed. car into the school building on my first day behind the wheel?

And discipline! Back then we students lived in an environment both coercive and caught between the times. There was no shouting out of obscenities in class; leaning out the 3rd story window, or even making out in English. Things have certainly changed, and in a very short time.

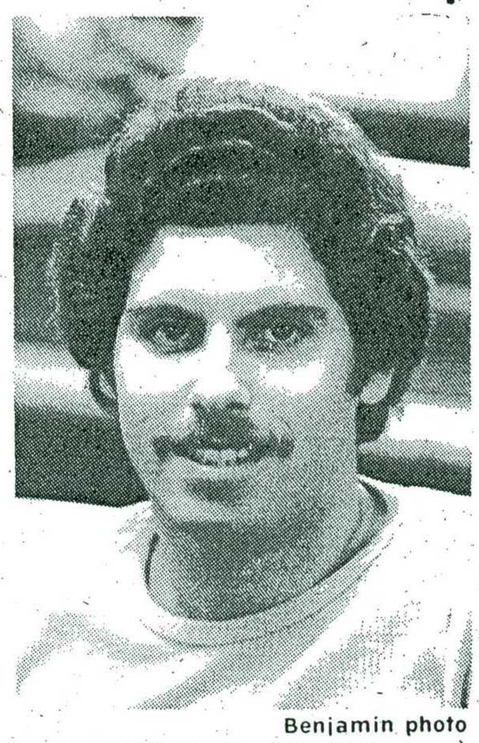
In any event, I walked into the classroom and nervously watched as the students drifted in. They arrived in assorted sizes and shapes, a motley bunch closely resembling the class in Welcome Back Kotter. I stood behind the desk waiting to meet a Vinnie Barbarino, an Arnold Horshack or an Epstein or Washington. I expected some tough dude to come up to me and say "Up your nose with a rubber hose," or "let me introduce you to my friend, he's majoring in assault."

I began the lecture by throwing out an interesting hypothetical. I read them a newspaper article about a recent mass murder in Pennsylvania in which the victims were brutally killed in a ritualistic fashion. I then committed my first error. I asked the class for their opinion as to what should be done with the defendant. I was immediately besieged with emotional screams of "he's a nut, he's off his tree, kill him, hang 'em upside down, give 'em the chair, etc." I could see that I was dealing with a compassionate bunch of human beings who thought more in terms of Judge Roy Bean's frontier justice than either rehabilitation or medical treatment. Undaunted, I pointed out to them that traditional rationales for punishment shouldn't really apply to the insane offender who is unaware of the nature of his act. Of course, they weren't too convinced by my logic. Again, they shouted for castration, torture and blood much like the mobs of the French Revolution who sat around waiting for the heads to roll.

I then proceeded to outline the various tests for establishing the insanity defense. The mention of the M'Naughton test drew lots of laughs as the students associated this legal concept with Ed Norton of the Honeymooners. And when I described the "irresistible impulse" test, the class Vinnie Barbarino smiled broadly and said, "Yeah, I get an irresistible impulse every time I see a good looking girl walking down the street." There really wasn't much I could say in response. I sort of looked the other way pretending to ignore the comment and tried to continue the discussion—but the laughter was drowning me out. I knew I was rapidly losing ground. Then someone asked, "And what about Lenny Bruce." "Tell me about Lenny Bruce." I looked at him slightly confused and said, "What does he have to do with this?" "He was insane, wasn't he?" returned the student. I didn't have the strength to argue.

But then another precocious classmate quickly interjected: "Whattsa matter, didn't you see One Flew Over the Cuckoo's Nest?" "See it," I said, "why this is the cuckoo's nest." That started an open discussion of the movie which succeeded in waking up the student who was sleeping directly in front of me. He lifted up his head, looked around and then went back to sleep.

At last the bell rang. The class darted out as if they'd been sucked down a drain. But I was only halfway through my lecture. A few minutes later the slumbering student got up. He told me what a uniquely stimulating and educational presentation I had given, and hoped that I'd come back again. I thanked him and we both walked out together.



Benjamin photo

Neil (Kotter) Weinrib

Marijuana . . .

(Continued from Page 3)

"in all respects." See 40 Fed. Reg. 44164-68 (September 25, 1975).

Among the issues involved in this appeal are whether medical uses for marijuana should be recognized in this country; what controls over marijuana are required by treaty obligations; and, what is the proper procedure the government must follow in rescheduling drugs in the Controlled Substances Act. **NORML** v. **DEA**, No. 75-2025, U.S. Court of Appeals for the D.C. Circuit, Petition for Review filed Oct. 22, 1975.

English Exchange Program

by Sandy Miller

There is the likelihood that next year a student exchange program will be inaugurated between Hofstra Law School and the Law School at the University of Sheffield in Sheffield, England (about 100 miles north of London).

This would enable a Hofstra student to spend a semester or two at Sheffield and receive Hofstra credit for that work.

Most of the courses that the Hofstra student would take would be in the graduate law program which has a very definite emphasis in the areas of criminology and the sociology of law. However, there should be a certain amount of flexibility available, which would allow the Hofstra student to take some undergraduate law courses (which cover the same basic range of substantive areas as here) as well. The program should be of particular interest to students interested in criminal law and criminal procedure, comparative law or social science approaches to law (including courses in social science research methodology). Course catalogs are in the Placement Office and interested students should look through them carefully.

The Hofstra student would pay Hofstra tuition and receive Hofstra credit. Ideally, the Hofstra and Sheffield students would exchange both a place in their class as well as living accommodations, so the problem of looking for housing could be eliminated. Also, an attempt is being made to raise some money to cover plane travel. However, this cannot be promised at this time, and those students applying for the program should not count on it.

If you are interested in applying to participate in this exchange program next year, please prepare a written statement of your interest in doing so and an outline of the course study you would pursue (catalogs are in the Placement Office). Please submit this application to the Placement Office by Monday, May 17.

If you have any questions, please feel free to ask in the Placement Office.

ERIC THE

by Aaron Twerski

Who knows Eric Schmertz? What is a Schmertz?
That question is truly profound.
For to know the answer to that question, one must a foreign language sound.
For the origin and derivation of the name, the German language must take the claim.
If you really must know, I tell you plain
In German, Schmertz means a pain.

Now you must ask with some justification
How does that apply to Eric's reputation?
And to that I say, think a bit out loud—
How does Eric stand up in the faculty crowd?
To those of us who toil and sweat all week
To bring knowledge and light to those smart and bleak
What else but a pain would you call the one
Who saunters in twice a week as if just for the fun.
And what, my friends, who else but a pain
Who, when asked what in life would he seek to gain,
Would answer, as did Schmertz of Labor fame,
That he seeks his destiny as part of a game.
No Cardoza, no Pound, not even an Agata
Does this man of intellect seek imitata.
No he sees life's work, his holy mission
To be Chairman of the Baseball Commission!

When I was a little boy, I also did dream
Of riding fire engines with the sirens ascream
But as all good Jewish children, I learned well
that such a profession I could not my parents sell.
Riding a fire engine has no status, no clout, no money, no honor, no acclaim to shout
You can't waste your life at that endeavor.
You must a college professor be forever.
And then comes Eric the pain—for real for real
With true ingenuity and a labor expert's zeal
He rides the engines with honors and glee
While picking up at the same time a big fat fee.

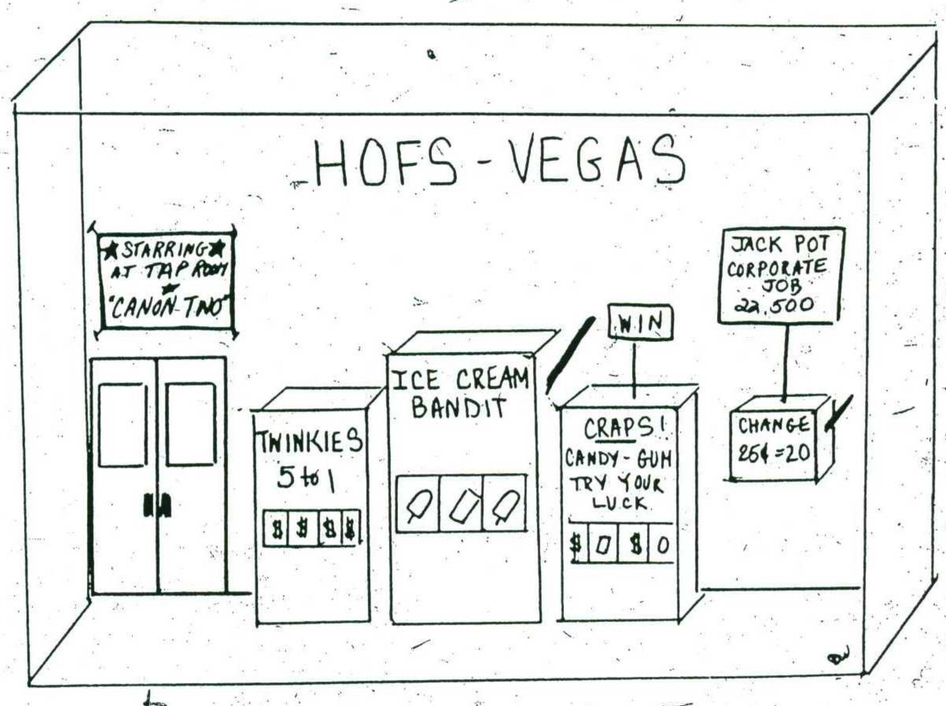
And what else but a pain would you call a rogue
Would you characterize the man who in style and vogue
Acts as advisor to a tyrant bona fide
He's an arbitrator for Marcos. He'll even work the devil's side.
In fact, word has it—would you believe
That when Franco decided this mortal world to leave
His last words to Juan Carlos—his most vital clue
Was "Get Eric Schmertz—whatever you do."

And can I call him something else but a pain
When I sweat and work and break with pain
To teach freshmen students the law of Torts
And Eric sits back and says "Life is too short."

So as I see it, my good colleagues and friends,
The sum of Eric with all the frazzled ends
Is that Eric is lazy, childish, lucky and bad
With a good boy image he's took us—we're had,
But somehow this man with amazing luck
Came to Hofstra and here got stuck.
And this we must admit, he sure is nifty.
God keep him here with us for another fifty.

Brief-Race

By J.B.



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