



# CONSCIENCE

The Hofstra University School of Law Newspaper

Volume 1, Number 4

"Asking you to ask yourselves . . ."

February 1, 1974



## More Women in Law Schools

CHICAGO, Jan. 9—A dramatic increase in the number of women law students was reported today by the American Bar Association.

The ABA also noted a substantial gain in minority group enrollment and said that for the first time there was not a single "unfilled seat" in the first-year class of any ABA-approved law school.

Women enrolled this past fall numbered 16,750, a 37.8 percent increase over 1972. Minority group enrollment rose 12.9 percent, far outpacing the overall enrollment increase of 4.3 percent.

Total enrollment in the 151 approved law schools rose by 4,395 to 106,102 from 101,707 in the fall of 1972, according to Millard H. Ruud, who served as ABA consultant in preparing the report.

Enrollment of first-year women law students this past fall, totaled 7,464, a 35.2 percent gain over 1972. The additional 1,956 women this fall contrasted with a decline of 69 in men.

The study showed that women were admitted at a somewhat higher rate than men, reflecting a slight edge in law school admission test (L.S.A.T.) scores.

Minority group enrollment climbed to 7,801 from the fall, 1972, total of 6,730. The 1973 figure is two and one half times higher than the 1969 enrollment.

Enrollment of blacks grew 394, or 8.9 percent, and Mexican-Americans increased 187, or 17.7 percent.

The full house dilemma facing prospective law school students comes after a phenomenal increase in demand for legal education combined with comparatively little growth in facilities.

In the three years ending with 1971, only one accredited university—Hofstra—established a law school. Six more have begun classes since—Antioch School of Law, University of Puget Sound, Brigham Young University, Franklin Pierce College, University of Hawaii and Southern Illinois University at Carbondale.

Next month, however, the council of the ABA's Section of Legal Education and Admissions to the Bar will consider nine

applications for provisional approval.

Despite predictions that law school admission test administrations would level off this year, the ABA said test administrations are running 11 percent ahead of last year. Indications are that the number of law school applicants next fall will be about 10 percent higher than this year.

Professional degrees in law awarded by approved law schools have tripled since 1963, reaching 27,756 last year. At the end of 1973, there were an estimate 375,475 lawyers in the United States.

The ABA Task Force on Professional Utilization which viewed the situation a year ago, expressed optimism for employment possibilities. It said that "the existence of a large pool of well-qualified, legally trained individuals—should be viewed as a significant national resource."

Prof. Ruud is now on leave from the University of Texas Law School to serve as executive director of the Association of American Law Schools in Washington, D.C.

## New Course Proposed: Judicial Administration

By Prof. Josephine Y. King

I am suggesting for consideration of the Curriculum Committee and the faculty a proposed course in Judicial Administration to be offered in the fall or spring semester next year.

Ideally, this should be a seminar with a limited enrollment, but it can be offered as an elective course if necessary. The problem of making it a regular course offering, is the fact that this type of subject would not lend itself to a final examination and it would be an impossible task to supervise and critically assess 50 or 60 research papers.

The course should have 2 or 3 credits assigned to it. One aspect of the course which might make it somewhat different from other offerings, is that a student who becomes very deeply involved in a valuable research project during the semester he is taking the course, should be permitted to continue his investigation, possibly as an independent study. This is the system used at Yale and I believe it provides the students with a genuine opportunity to pursue a complex topic over a two-semester period. This is not essential to the course, but might have to be considered as an outgrowth of it.

The seminar would be designed to provide an over-view of the criminal and civil courts and the problems of administering justice. Topics to be covered would include:

Court organization and administration;  
Cost of operating the court system;  
Selection, tenure, removal and training of judges and other court personnel;  
The function, selection and size of juries;  
Processing the business of the courts (calendar, court delay)

Fair trial issues;  
Prosecution and defense functions;  
Professional responsibility;  
The role of discretion and the decision-making process;  
Assessment of system performance and effective utilization of resources;  
Alternatives to traditional litigation.

As time permits, particular problems of specialized courts might be considered, e.g., Juvenile Courts and Family Courts.

From my recent survey of AALS schools and the course content, structure and materials utilized by faculty who now give a seminar in Judicial Administration, I have a fairly comprehensive knowledge of the available tools for teaching Judicial Administration. Of course, it would be foolish not to draw upon the excellent judges and former judges we have in the area and possibly individuals from other disciplines. Once we get started on this project, my aims would be:

1—to associate with the teaching of the seminar one or more faculty members from other departments of Hofstra who could supply us with information on social science research tools for use in our empirical studies;  
2—to have more specialized seminars offered by other members of our faculty in particular areas, such as Criminal Justice Administration;

3—to establish a substantial research program and professional skill at this law school to undertake investigation of court administration problems on Long Island.

However, it seems that the appropriate place to start is with a substantial and intensive introductory course in Judicial Administration.


## Faculty Changes Grading System

Present grading system which will continue to apply to the classes of 1974 and 1975:

A	4.00
A-	3.75
B+	3.50
B	3.00
C+	2.50
C	2.25
D+	1.75
D	1.00
F	0.00

New grading system which will apply to class of 1976 and thereafter only:

A	4.00
A-	3.66
B+	3.33
B	3.00
B-	2.66
C+	2.33
C	2.00
C-	1.66
D+	1.33
D	1.00
F	0.00



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Volume 1, Number 4  
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"Asking You to Ask Yourself"

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## Editor's Oriel

Editing a law school newspaper requires a judiciousness and temperance sometimes incompatible with my wholesale irreverence to authority. I've even been asked by a close friend how someone who can be so devastatingly derisive in class can be a picture of moderation in print. Well, the answer is simple: I wanted to lend credibility to the paper as an entity before people started taking pot shots at me. Conscience could not be seen as the voice of Norman Kent, but had to be portrayed as the representative voice of the law school community. I think we've achieved that. Now if you don't mind, I'd like to be myself.

When student revolts rocked campuses a few years ago, law schools were left relatively untouched. This is easy to understand; law and revolution have never made very congenial bedfellows. For a while though, we could see the media jumping on top of the 'new breed' lawyer—a person with a commitment to social activism. But the longevity of law student activism has equalled only the marketability of the Edsel. The question I ask today is whether silent students are hollow ones.

And the answer is a demonstrative yes. There are no more excuses. It wasn't too long ago that elderly faculty members and novice administrators were threatened by student dissidence. Those challenging moments enabled us to see the links between defoliation agents and university chemistry departments; caused the English professors to debate the very essence of language; required that sociologists look at the rat-infested ghettos. We asked that corporations have a conscience and that businessmen assume a social obligation. But the fever pitch has become a faint decibel, and it is with a touch of irony that I note Hofstra Law's most prominent activist is its senior administrative officer, the Dean.

Does the name Jeffrey Miller mean anything to you? I'm sure that Kent State does. Jeff died there on May 4, 1970, a long way from his Plainview, Long Island home. Three and a half years of embarrassing silence have passed since that infamous date, but perhaps the reopening of the Kent State case marks the rebirth of

# Conscientious Insurgency

"When do the causes worth fighting for get fought for?"

NORMAN KENT

student dissidence. I see the signs.

In Greece, courageous students recently met with Jeffrey. There, where dissent is comparable to death, students rose against Tyranny. There, where Democracy gave birth, the bullet has been the only governor. The inconsistencies are painful and mind-boggling: that the home of Socratic thought should meet with death again; that the open university is transformed into a battlefield of war; that all this is met by a silent world looking instead to a fleeting comet.

We are lucky in America. Ours can be a constitutional revolution. If we can impeach the President, we can show the world that the United States can do civilly what other countries must do militarily. Authoritarian regimes would be shattered by the democratic and constitutional show of force. Our country would come to represent something other than an imperialistic bullet sponsored by the corporate dollar. We would instead come to represent a People, united and strong—letting every nation know that freedom is not divisible within our borders. Power to the people would not be a countrywide dream, but a countryman's truth.

The throes of impeachment are illusory. That's why the Constitution is there. Hell, Nixonian governance has been a tenure in Constitutional incursion. His impeachment would be an exercise in Constitutional preservation. Yet he remains—a small and sneaky man in a house meant for honor. Yes he remains—because silent students have forgotten their enormous strength. And there are no excuses.

Oh yes, I can put together eloquent phrases demonstrating the rule of law our misguided government has abandoned, and its nullifying effect upon us. But adversity should reinforce conviction. It is an old reality of political life that if our course remains that of apathetic acquiescence, our destiny is one of inevitable defeat. Your silence, my friends, is ugly. I want to know how students of law can so quickly forget preventative detention, legal intimidation, and electronic surveillance. I want to know how law students justify abominable Supreme Court appointments, Presidential conspiracy, and Executive defiance to federal court rulings. I want to know how men and women studying the legal profession can remain silent as the first amendment is assaulted, as legal aid programs are abandoned, and as Presidential privilege becomes a guise for Nixonian vice. I want to know how the man who was such a shrew in the Senate can become a God in the White House.

The dissatisfaction I have with legal education is pervasive and just. The reasons are not extraterrestrial. Law school has stunted my growth. Effective learning involves risk and experimentation, but law seems to involve a plane of study so lacking in creativity, development, and growth that even the Chief Justice of the United States has decried its efficacy and called for reform. (I don't want to shock first year students, but Chief Justice Burger would like you to know that all cases do not begin on the appellate level.)

The dissatisfaction I have with law students is more acute. Many of you are my friends who share with me the love and warmth of lighter moments. But too many of you are jellyfish, poisoning your souls in a frivolous enterprise. For you of this gender, commitment is putting a band-aid on a wound that major surgery cannot mend. You are the shallow souls that thought contributions to the McGovern campaign could be measured in dollars rather than devotion. Your measure of participation probably involved one weekend trek in the New Hampshire snows. You are part of the Magic Answer syndrome that looks for solutions by turning outward instead of within. And for a few fleeting seconds, you found justification for your silence in my condemnation of legal education. No way, baby. It's really you that should be up against the wall.

The legal environment is ripe for vigorous dissidence. Ours must be the voices of protest, of leadership, of redirection. The caterpillar, you know, becomes a butterfly. The tame cub becomes a roaring lion. And the small egg of an eagle one day becomes a bird soaring to great heights. When do students become men? When do the causes worth fighting for get fought for? Look carefully at this issue of Conscience. We've tried to touch some of those causes.

I don't know why we permit beautiful butterflies to become attractive paperweights, but I'm certain Richard Bach didn't write Jonathan Livingston Seagull for seagulls only. I'm sure the naked ape can master his environment, but I don't quite understand why, when we put on certain clothes, we think differently.

Lying with the lamb is okay, but sometimes, my friends, you have to face the lion.

Some weeks ago a butterfly found its way through a window and into the law school library. No sooner than it had perched itself upon a desk did a student grab it. "This would really look beautiful in a glass paperweight; I have one at home just like it," he said. But then he walked to the window, all the while looking at the blue and orange butterfly. I was desperate to know his thoughts, and I got to the window still just as he was letting the butterfly free. "What were you thinking when you said you wanted to make the butterfly into a paperweight?" I asked him. "To tell you the truth," he responded, "I didn't think that. You see, whenever I'm studying at home, I look at the paperweight on my desk and stare straight at the butterfly. I often equate his predicament with my own; locked into a situation he just can't get out of. Sometimes I think being in law school makes me a dead butterfly. That's why it felt so good to take hold of that butterfly and let it free. I felt I was almost liberating myself."

The story says something about legal education and a frustrated human being. I believe that the demand for relevance is a demand for reality. We have at Hofstra a few noble experiments: the NLO, the ACLU, for example. We need more. And we need to do this now while we are still young—before the net falls forever.

Vital education will give birth to vital students. Anything less will perpetuate the disaster we have now.

## Dean Objects to the Honor Code

THE TROUBLE WITH HONOR SYSTEMS

by Monroe H. Freedman

My objection to honor systems for examinations is simply stated. There are some few people who never cheat, whatever the temptations. There are others who will seek out opportunities to cheat whenever possible. Then, in the middle, there is a much larger group that includes you and me. We resist temptation as best we can but, on rare occasions, the combination of pressure and opportunity is such as to induce us to do what we consider wrong and would prefer not to do.

The trouble with honor systems for exams is that they inevitably—and unnecessarily—create large numbers of instances in which heavy pressures

are combined with easy opportunity. Grades are important to people's careers; some people are known to be cheating and profiting by it; the chances of being caught and punished are slight. Why shouldn't I do it too, just this one time? And, of course, one time makes it more likely that there will be additional times.

I am not arguing that people are essentially evil or that no one should ever have to learn to resist temptation. On the contrary, my concern is that people are fundamentally good, though vulnerable, and that there are more than enough temptations to wrongdoing in a lifetime, so that there is no need for us to go around manufacturing more of them unnecessarily.

Finally, a postscript is in order, lest the foregoing be misunderstood. I consider cheating to be a serious offense by the one who cheats against those who do not. Insofar as I would have a role in punishing it—regardless of the system—I would feel compelled to deal with cheating severely.

## Professor Filler Stresses Student Integrity

PERSONAL REFLECTIONS ON STUDENT RESPONSIBILITY UNDER THE CODE OF HONOR by Stuart Filler

When a student enters the law school community, he or she consents, with or without knowledge aforethought, to be bound by the regulations of the school. One such regulation is the Community Responsibility System.

The most important feature of the Code is that the primary responsibility for maintaining the ethical or moral standards of the student body during an examination is placed on the students themselves. This responsibility permits students to police the conduct of their fellow students during an examination and report any suspicions of academic dishonesty to the professor administering the exam.

It is assumed that most, if not all students, would consider this responsibility to be extremely onerous; nevertheless, the responsibility is present and cannot be ignored whether or not

the means to the end that cannot be accepted as reasonable conduct under any circumstances.

Arguments generally presented by students for not reporting the academic dishonesty committed by a fellow student are: (1) The student who cheats only hurts himself; (2) If only one or two students cheat, it won't substantially affect the curve; (3) There is substantial peer pressure not to report another student; and (4) Without explicit consent to the Honor Code, students are not bound by its responsibilities.

As a member of the law school community, a student's responsibility to enforce the Honor Code extends, not only to him or herself, or to the law school, or even to the university, but also to society in general. A recognized flaw in the moral or ethical character of a law student (particularly a student who often cheats on examinations) is but a step from succumbing to the economic pressures of management on a lawyer to aid

(Continued on page 6)

**BULLETIN . . . Professor Harvey Spizz's wife has had a baby. At presstime, its sex was indeterminate.**



Stuart Filler

a student consciously agreed to accept the responsibility.

Academic dishonesty on a law school examination clearly reflects a substantial blemish on the ethical or moral character of a student, and this is true whether the academic dishonesty results from peer pressure, a desire to please parents, or a desire to obtain a better job. It is

# HOFSTRA LAW SCHOOL'S HONOR CODE: A CLOSER LOOK

## A SYSTEM OF COMMUNITY RESPONSIBILITY

### I. GENERAL STANDARD

The Law School Community expects its members, both faculty and students, to maintain standards of ethical conduct. In partial fulfillment of this aspiration, we prescribe a general standard of conduct for taking law school examinations:

Students shall take law school examinations without giving or receiving assistance during the course of the examination.

### II. APPLICATION OF THE STANDARD

1. Students shall not communicate with each other in any manner, or at any time or place, respecting the examination while the examination is in progress.

2. Unless specifically authorized in advance of the dates of the examination, students may not consult texts, notes, outlines or any other sources while the examination is in progress.

### III. ADMINISTRATION OF THE EXAMINATION

1. The faculty member, in whose course the examination is being given, will exercise general supervision over the conduct of the examination, will visit the examination room(s) as he or she deems appropriate and facilitate the progress of the examination.

2. Where feasible, students will be seated in alternate seats rather than consecutive seats of a row.

3. Bluebooks and examination questions are not to be removed from the examination room except to "sign out" when the examination is completed. Pages may not be removed from or added to the bluebooks.

4. Students are expected to surrender bluebooks and examination questions promptly at the time fixed for the close of the examination.

### IV. PROCEDURES GOVERNING DISPOSITION OF CHARGES OF ACADEMIC DISHONESTY

#### Phase I—Preliminary Inquiry

A student who personally observes an act which, in his opinion, does not accord with the general standard of

conduct in its application to the taking of law school examinations (Parts I and II, above) may communicate his or her observation to the faculty member in charge of the examination. Such report may be made no later than one hour following the termination of the examination in which the alleged infraction is observed. The faculty member in charge of the examination, the reporting and reported student shall meet together as soon as reasonable following the termination of the examination, and discuss the incident.

If a faculty member personally observes a violation of the standard of conduct, the faculty member in charge of the examination shall confer with the student(s) involved as soon as reasonable following the termination of the examination and discuss the incident.

The conference will be confidential. Its purpose will be to inquire into the events which gave rise to a charge of academic dishonesty.

If the faculty member does not find that a *prima facie* case of dishonesty is substantiated by the facts, he or she shall declare the matter closed. No record of the conference shall be entered in the student's file.

#### Phase II—Submission to Review Board

If the faculty member does find sufficient evidence of dishonesty at the preliminary inquiry so as to preclude a Phase I disposition, the faculty member shall submit the matter to the Review Board. The faculty member shall give notice of the submission to the Dean, the student(s) involved, and the Chairman of the Review Board no later than five days following the conclusion of the preliminary inquiry.

#### Phase III—Review Board; Composition;

##### Proceedings; Rights of Parties

The Review Board shall be composed of the following members:

1. One (two) student(s) from each class (each section of each class) to be elected during the first week of November and to serve for one year. The student members shall select one of their number as chairman for the year.

2. One faculty member selected by the student charged with academic dishonesty, and one faculty member selected by the faculty member in charge of the examination in which the alleged infraction has occurred. The term of the faculty members shall expire when the case they were selected to hear has

reached final disposition.

The Review Board shall convene within 10 days of submission of a case to it by the faculty member in charge of the examination. If such submission occurs after the close of the academic year, the Review Board shall convene at the earliest reasonable time and no later than the first (second) week of classes in the following September.

The Board shall conduct a full and fair hearing, observe and protect the Rights of Parties, *infra*, and transmit its findings and recommendations in writing to the student accused of academic dishonesty, the Dean and faculty within 10 days of the close of the hearing.

A record will be made of all proceedings before the Board. If the ultimate disposition of the case is a determination that the student is not guilty of academic dishonesty, the record will be sealed. It can be opened only upon order of the Dean, the Provost, or a justice of the Supreme Court of the State of New York.

If the Review Board finds that the student has violated the standard of conduct prescribed in Parts I and II *supra*, the Board may recommend to the Dean and faculty a sanction ranging from censure to dismissal.

The Dean and the faculty shall review the recommendation of the Review Board and render their decision within days of receipt of the Review Board's recommendations. The Dean shall promptly notify the student of the faculty's decision in writing.

#### The Rights of Parties

The term "Party" refers to the student charged with academic dishonesty, the faculty member in charge of the examination and the reporting student.

Each party may:

1. Call witnesses
2. Present evidence
3. Be represented by counsel of his or her choice
4. Cross-examine witnesses and parties.

Each party must receive a copy of:

1. Notices of proceedings before the Review Board
2. Written statements presented to the Review Board
3. The findings and recommendations of the Review Board
4. The decision of the faculty.

## The Lighter Side of the Honor Code: A Mitchell Gilbert Look

### CHEAT & CHONG

A portion of this issue of the *Conscience* is dedicated to a discussion of the Honor Code, a system which is supposed to guide our conduct throughout law school. Surprisingly enough, many students do not know what the Honor Code is, how it functions, or its relation to frigidity.

The editors of this newspaper have commissioned this writer to formulate a questionnaire to be used by each of you to determine just how much you know, don't know, or don't care to know about the Honor Code. All you have to do is answer each question as honestly as you can. If you feel you must cheat, then by all means do. But try not to get caught. When you have finished answering the questionnaire, you can find out how well you did by exchanging your paper with the person sitting next to you, and by reading the analysis at the end. If no person is sitting next to you, a shower might be in order before proceeding any further. A word of caution: Do not fill out this questionnaire while masturbating, or blindness may result! On second thought, if you're masturbating, who has to see?

Instructions—Circle the answer which you think is closest to the truth. This may be done by placing the questionnaire on the floor and walking around the perimeter of the answer you have chosen. You may begin now . . . Good Luck!

- 1) Honor Code is:
  - a) the name of Andy Warhol's new girlfriend
  - b) a language used by ham radio enthusiasts
  - c) a green vegetable
  - d) a new game from Milton Bradley
- 2) The Honor Code was invented by:
  - a) a pharmacist for use by his own children
  - b) Zeppo Marx
  - c) The Committee for the Reelection of the President
  - d) a distant relative of Samuel Morse
- 3) The Honor Code was formulated to prevent:
  - a) venereal disease
  - b) open faculty meetings
  - c) interstate commerce
  - d) more uniform grades
- 4) The Honor Code is also known as the:
  - a) Plastic Ono Band
  - b) Hammurabi Code
  - c) Longines Symphonette Society
  - d) Community Responsibility System
- 5) Under the Community Responsibility System, a Proctor is:
  - a) necessary
  - b) unnecessary
  - c) overpaid

- 6) According to the Honor Code, if you see a classmate cheating, you should report it to your:
  - a) professor
  - b) rabbi
  - c) astrologer
  - d) favorite pair of socks
- 7) If caught breaching the Code, you should:
  - a) hire a lawyer
  - b) hire a doctor
  - c) hire an Indian chief
  - d) buy Israeli war bonds
- 8) Cheating on an exam is justifiable:
  - a) if you know the person sitting next to you
  - b) if you don't know the person sitting next to you
  - c) if you'd like to know the person sitting next to you
  - d) if you're a registered Republican
- 10) The Review Board has the authority to conduct hearings regarding breaches of the Honor Code. This Board should consist of:
  - a) the Dean and his family
  - b) 3 faculty members and 2 students
  - c) 2 faculty members and 3 students
  - d) a lesbian and a bowl of creamed spinach
- 11) Plagiarism means:
  - a) saluting the flag
  - b) causing Egypt to be overcome by frogs
  - c) paying homage to another's ideas
  - d) committing an unnatural sex act
- 12) If a student pleads guilty to a charge of plagiarism, he should be:
  - a) censured
  - b) censored
  - c) incensed
  - d) beaten silly with a No. 2 pencil
- 13) If a student is caught stealing a copy of an exam, he should be:
  - a) dismissed
  - b) dismembered
  - c) dismayed
  - d) forced to go out with a census taker
- 14) An absolute defense to a charge of breaching the Honor Code is:
  - a) that you had a temporary loss of your faculties
  - b) that you had a temporary loss of your students
  - c) that you know Professor Wypyski personally
  - d) that you wanted to get on law review
- 15) After being charged by the Board of Review with copying a paper verbatim, you should probably:
  - a) plead nolo contendere, and have Frank Sinatra get you a job
  - b) switch the topic to the oil shortage
  - c) blame it on the news media
  - d) threaten to withhold your tuition



Mitch Gilbert at it again.

- 9) A student should be expelled if he is caught cheating with:
  - a) the person sitting next to him
  - b) a person in another room
  - c) a friend who's a lawyer
  - d) the Dean's wife

Now that you have completed the questionnaire, you may sit down and relax . . . you must be dizzy if you have properly circled your answers. I must confess at this point that no one has ever answered all fifteen questions correctly, although Dean Younger insists that Betty Friedman could do so if given the chance.

The answer to question 1 is definitely not "b". Those who answered by circling this letter were probably thinking of the Hammurabi Code. The other answers were too far fetched for even someone on law review to have chosen.

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## THE SPECIAL SKILLS OF ADVOCACY

Are Specialized Training and  
Certification of Advocates  
Essential to Our System of Justice?

by

**WARREN E. BURGER**  
Chief Justice of the United States

The Fourth John F. Sonnett Memorial Lecture

at

Fordham University Law School  
Lincoln Center Campus  
New York, New York

November 26, 1973  
8:00 P.M.

This occasion is one on which friends of John F. Sonnett undertake to pay tribute to him as a person, as an outstanding advocate and as a distinguished public servant. It seems an appropriate occasion, therefore, to raise for the consideration of our profession a problem of large scope and profound importance to all judges, to all lawyers, to the public and, of course, to law schools. I believe that John Sonnett, as a skillful advocate and one deeply committed to our system of justice in all its manifestations, would have shared some of the anxieties I express concerning the quality of advocacy in our courts.

To say we have a "crisis" in the availability of adequate legal services may go too far, but sober, careful and responsible observers of the legal profession have posed the need in almost precisely those terms. My objective in this discussion is not to canvass the swiftly growing need for all kinds of legal services, but to discuss narrowly the need for skilled courtroom advocacy with a special emphasis on the administration of criminal justice. I submit that we can deal with this critical situation if we direct our attention to the causes and think imaginatively about a remedy. We will not lack patterns or precedents.

What I will propose later in this discussion is that some system of certification for trial advocates is an imperative and a long overdue step. Beyond any particular system, however, is the fundamental fact that how lawyers are trained—during and after law school—will determine their skills as advocates and ultimately the quality of our justice. That fundamental fact is nowhere better revealed than in the English experience.

Although our system is a child of the common law, the legal profession has developed in ways that do not parallel England's. Our wide expanse of territory, our heterogeneous and turbulent diversity, and our more than 50 jurisdictions with 150 accredited law schools would make it impossible to transplant the English system here, and I do not suggest it by any means. But simply because we cannot adopt the English system does not mean that we cannot learn much from its operation.

Several aspects of the English legal profession stand out clearly when we look for causes of effective advocacy:

1. England separates its trial lawyers—the Barristers—into a separate branch of the profession and they engage exclusively in trial work.
2. Of the 30,000 lawyers in England, 3,000 are Barristers.
3. England has about 65 lawyers per 100,000 population; the United States has about 160 lawyers per 100,000 population.
4. All English Barristers are trained in a centuries-old school conducted by the four Inns of Court. After training in this school of advocacy, a Barrister must spend a period of "pupillage," or apprenticeship, with an established Barrister.
5. The four Inns of Court occupy quarters in or near the Royal Courts of Justice, and Barristers' offices are situated in the same area, thus creating a unique professional community.

I will not try to compare a Barrister's productivity with that of an American trial lawyer. That would be unfair in part because the methods and procedures in English courts are generally conducive to speedier justice than we manage to deliver.

Every qualified observer of the English system with whom I have discussed this subject makes the same observation that I have made, drawing on 20 years of rather close contact with the British system, namely that their trials are conducted in a fraction of the time we expend in the United States for comparable litigation. This is a generalization that has a solid basis and can be readily documented. At once I must note another difference in that, except for libel, fraud and a few other kinds of cases that arise infrequently, civil cases are tried without a jury, and judgment is almost invariably rendered forthwith at the close of trial. Appeals are the exception and are only by leave.

Another difference is that judges of trial courts of general jurisdiction are selected entirely from the ranks of the ablest Barristers. Thus, there is little or no on-the-job learning for trial judges as is all too often the case in

the United States courts, both state and federal. Only the highest qualifications as a trial advocate enter into the selection of English judges. As a result, an English trial is in the hands of three highly-experienced litigation specialists who have a common professional background. Each has also served an intensive "apprenticeship" before he or she is permitted to appear in court as lead counsel.

The English training in advocacy places great stress on ethics, manners and deportment, both in the courtroom and in relations with other Barristers and Solicitors. The effectiveness of this training is reflected in their very high standards of ethics and conduct. Discipline is strict, but disciplinary actions for misconduct average about three a year for all of the 3,000 Barristers in England. My own personal observation, based on 40 years of professional exposure, is that in any multiple-judge American courthouse, there are numerous daily offenses that would bring severe censure if committed by an English Barrister. How many serious errors of counsel are made in trials, I would not venture to say.

I have heard it said occasionally by critics of the English legal system that it tends to be "clubby" and "establishment oriented." For 20 years, I have watched advocates conduct trials in more than a dozen countries, and nowhere have I seen more ardent, more effective advocacy than in the courts of England.

English advocacy is generally on a par with that of our best lawyers. I emphasize that their best advocates are no better than our best, but I regret to say that our best constitute a relatively thin layer of cream on top while the quality of the English Barristers is uniformly high, albeit with gradations of quality inescapable in any human activity.

What, then, can we learn from the English legal profession? We should first recognize three implicit and basic assumptions about legal training that permeate their system. First: lawyers, like people in other professions, cannot be equally competent for all tasks in our increasingly complex society and increasingly complex legal system in particular; second: legal educators can and should develop some system whereby students or new graduates who have selected, even tentatively, specialization in trial work can learn its essence under the tutelage of experts, not by trial and error at clients' expense; and third: ethics, manners and civility in the courtroom are essential ingredients and the lubricants of the inherently contentious adversary system of justice, and they must be understood and developed by law students beginning in law school.

These three basic assumptions are sound and sensible, whether applied to the English system or to our own. Simply because we cannot implement the assumptions in the same manner as the English have done does not mean we cannot recognize their validity. Even though we cannot have, and most emphatically do not want, a small elite, Barrister-like class of lawyers does not mean we cannot take positive steps to promote qualified courtroom advocacy skills in those attorneys who choose to specialize in trial advocacy. Indeed, our failure to do so has helped bring about the low state of American trial advocacy and a consequent diminution in the quality of our entire system of justice. The high purposes of the Criminal Justice Act will be frustrated unless qualified advocates are appointed to represent indigents.

For centuries most societies have used performance standards for entry into certain human activities that affect large numbers of people. Standards, varying in effectiveness, have been long used in an attempt to assure qualified teachers, doctors, lawyers, electricians, and a host of others essential to a modern society. Yet, in spite of all the bar examinations and better law schools, we are more casual about qualifying the people we allow to act as advocates in the courtrooms than we are about licensing our electricians. We have no testing or licensing process designed to assure that those engaged to protect and vindicate important rights by trial advocacy are genuinely qualified for their crucial role in society. This is a curious aspect of a system that prides itself on the high place it accords to the judicial process in vindicating peoples' rights.

### II

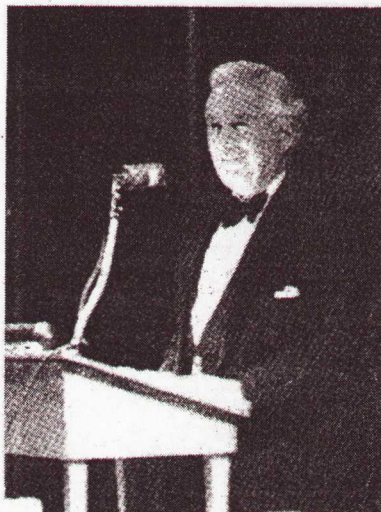
Our failure to inquire into advocates' qualifications—as is done, for example, in separating surgeons from doctors generally—reveals itself in the mounting concern of those who see the consequences of inadequate courtroom performance and look for its causes.

First, and perhaps overriding other causes, is our historic insistence that we treat every person admitted to the bar as qualified to give effective assistance on every kind of legal problem that arises in life, including the trial of criminal cases in which liberty is at stake, civil rights cases in which human values are at stake, and myriad ordinary cases dealing with important private personal interests. It requires only a moment's reflection to see that this assumption is no more justified than one that postulates that every holder of an M.D. degree is competent to perform surgery on the infinite range of ailments that afflict the human animal.

There is no parallel in any other area of life's problems having serious consequence, to our naive assumption that every graduate of a law school is, by virtue of that fact, qualified for the ultimate confrontation in a courtroom. No other profession is as casual or heedless of reality as ours.

We must acknowledge, I submit, that good advocates are made, much as good airplane pilots are made—by study, by observation of experts and by training with experts. To pursue that analogy, an aspiring pilot who can fly a Piper Cub has learned something about flying, but he is surely not ready to fly large commercial planes or a modern jet airliner. The painful fact is that the courtrooms of America all too often have "Piper Cub" advocates trying to handle the controls of "Boeing 747" litigation. (I should add that by no means are all the "Piper Cub" advocates recent law graduates.)

A second cause of inadequate advocacy derives from certain aspects of law school education. Law schools fail to inculcate sufficiently the necessity of high standards of professional ethics, manners and etiquette as things basic to the lawyer's function. With few exceptions, law schools also fail to provide adequate and systematic programs by which students may focus on the elementary skills of advocacy. I have now joined those who propose that the basic legal education could well be accomplished in two years, after which more concrete and specialized legal education should begin. If the specialty is litigation, the training should be prescribed and supervised by professional advocates cooperating with professional teachers, for both are needed. A two-year program is feasible once we shake off the heritage of our agricultural frontier that the "young folks" should have 3 months vacation to help harvest the crops—a factor that continues to dominate our education. The third year in school should, for those who aspire to be advocates, concentrate on what goes on in courtrooms and this should be done under the guidance of practitioners along with professional teachers. The medical profession does not try to teach surgery simply with books; more than 80 percent of all medical teaching is done by practicing physicians and surgeons. Similarly, trial advocacy must be learned from trial advocates.



—Columbia Law photo  
Warren E. Burger

After the third year, those who wish to be advocates should begin a pupillage period, assisting and participating in trials directly with experienced trial lawyers.

Today we spend on the education of a lawyer only a fraction of what is devoted to educating a doctor. If we want an adequate system of justice, we must be prepared to spend more for it—and we cannot train truly effective advocates without spending more.

We know that in the past few years much of what I am suggesting has had small beginnings in some law schools. So-called clinical programs have been developing rapidly, as reflected by the recent survey by the Council on Legal Education for Professional Responsibility. Many of these programs focus on trial advocacy. Recent rules, adopted by a number of state courts and some federal courts, allow students to appear in court as aides to lawyers.

Another development is the growing number of law schools that are finally offering courses in trial advocacy. These are most effective when they provide training which students then use in so-called "clinical" programs. The National Institute for Trial Advocacy has, for the past two summers, offered an intensive training program in trial advocacy designed to channel effective laboratory techniques into law schools as well as in professional circles. The law school, however, is where the groundwork must be laid.

We do not disparage the law as a profession when we insist that, like a carpenter or an electrician, the advocate must know how to use the tools of his "trade." Regrettably the development of these small beginnings in teaching elements of advocacy in law schools is offset somewhat when we see the subject of evidence become an elective rather than a required course. We might, with as much justification, try to make a lawyer without teaching contracts and wills as to omit the law of evidence.

The third cause is the inevitable inability of prosecutor and public defender offices to provide the same kind of apprenticeships for their new lawyers as, for example, the large law firms provide. The prosecution offices and public defender facilities have neither the wealthy clients nor consequent financial resources of the large law firms that enables them to develop whatever skills they need to carry out their mission. Prosecutors and public defenders often learn advocacy skills by being thrown into trial. Valuable as this may be as a learning experience, there is a real risk that it may be at the expense of the hapless clients they represent—public or private. The trial of an important case is no place for on-the-job training of amateurs except under the guidance of a skilled advocate.

### III

Time does not allow a recital of the myriad points of substantive law and procedure that an advocate in criminal cases should know in order to perform his or her task. Suffice it to say that in the past dozen or more years a whole range of new developments has drastically altered the trial of a criminal case. To give adequate representation, an advocate must be intimately familiar with these recent developments, most of them deriving from case law.

Whether we measure the recent changes in terms of one decade or three, we see that the litigation volume, particularly in criminal cases, has escalated swiftly. The Criminal Justice Act and the Bail Reform Act, the extension of new federal standards to state courts, rising population, increased crime rates, creation of new causes of action and expanded civil remedies have contributed to the literal flood of cases in state and federal courts.

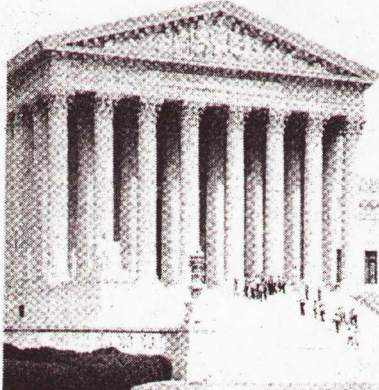
Whatever the legal issues or claims, the indispensable element in the trial of a case is a minimally adequate advocate for each litigant. Many judges in general jurisdiction trial courts have stated to me that fewer than 25 percent of the lawyers appearing before them are genuinely qualified; other judges go as high as 75 percent. I draw this from conversations extending over the past 12 to 15 years at judicial meetings and seminars, with literally hundreds of judges and experienced lawyers. It would be safer to pick a middle ground and accept as a working hypothesis that from 1-third to 1/2 of the lawyers who appear in the serious cases are not really qualified to render fully adequate representation. The trial of a "serious" case, whether for damages or for infringement of civil rights, or a criminal felony case, calls for the kind of special skills and experience that insurance companies, for example, seek out to defend damage claims.

Let me try to put some flesh on the bones of these generalizations concerning the function and quality of the advocates. I will try to do this by way of a few examples, observed when I sat by assignment as a trial judge, while serving on the U.S. Court of Appeals:

1. The thousands of trial transcripts I have reviewed show that a majority of the lawyers have never learned the seemingly simple but actually difficult art of asking questions so as to develop concrete images for the fact triers and to do so in conformity with rules of evidence.
2. Few lawyers have really learned the art of cross-examination, including the high art of when not to cross-examine.
3. The rules of evidence generally forbid leading questions, but when there are simple undisputed facts, the leading questions rule need not apply. Inexperienced lawyers waste time making wooden objections to simple, acceptable questions, on uncontested factual matters.
4. Inexperienced lawyers are often unaware that "inflammatory" exhibits such as weapons or bloody clothes should not be exposed to jurors' sight until they are offered in evidence.

*"The Republic endures  
and this is the symbol  
of its faith."*

ART BY: "THEO" CHARLES IN ANA HUGHES  
Landscape Artist, Supreme Court Building



5. An inexperienced prosecutor wasted an hour on the historical development of the fingerprint identification process discovered by the Frenchman Bertillon until it finally developed that there was no contested fingerprint issue. Such examples could be multiplied almost without limit.

Another aspect of inadequate advocacy—and one quite as important as familiarity with the rules of practice—is the failure of lawyers to observe the rules of professional manners and professional etiquette that are essential for effective trial advocacy.

Jurors who have been interviewed after jury service, and some who have written articles based on their service, express dismay at the distracting effect of personal clashes between the lawyers. There is no place in a properly run courtroom for the shouting matches and other absurd antics of lawyers sometimes seen on television shows and in the movies. From many centuries of experience, the ablest lawyers and judges have found that certain quite fixed rules of etiquette and manners are the lubricant to keep the focus of the courtroom contest on issues and facts and away from distracting personal clashes and irrelevancies.

A truly qualified advocate—like every genuine professional—resembles a seamless garment in the sense that legal knowledge, forensic skills, professional ethics, courtroom etiquette and manners are blended in the total person as their use is blended in the performance of the function.

There are some few lawyers who scoff at the idea that manners and etiquette form any part of the necessary equipment of the courtroom advocate. Yet, if one were to undertake a list of the truly great advocates of the past 100 years, I suggest he would find a common denominator: they were all intensely individualistic, but each was a lawyer for whom courtroom manners were a key weapon in his arsenal. Whether engaged in the destruction of adverse witnesses or undermining damaging evidence or in final argument, the performance was characterized by coolness, poise and graphic clarity, without shouting or ranting, without baiting witnesses, opponents or the judge. We cannot all be great advocates, but as every lawyer seeks to emulate such tactics, he can approach, if not achieve, superior skill as an advocate.

What is essential is that certain standards of total advocacy performance be established and that we develop means to measure those standards to the end that important cases have advocates who can give adequate representation. Law school students are adults who can contribute once they are persuaded of the need for training in this area. Rather than being "lectured" on ethics, they should be invited to discuss with the faculty and the best advocates the ethical element in the practice of law so as to impress them with the reality that courtroom ethics and etiquette are crucial to the lawyer's role in society—and indispensable to a rational system of justice. Woven into the seamless fabric of effective advocacy, professional ethics and professional manners are no less important than technical skills.

Lawyers are—or should be—society's peacemakers, problem solvers, and stabilizers. The English historian Plucknett suggests that England and America have been largely spared cataclysmic revolutions for two centuries, in part because the common law system lends itself to gradual evolutionary change to meet the changing needs of people. Lawyers can fulfill that high mission only if they are properly trained.

### IV

The focus on the inadequacies of advocates has tended to center on the criminal process, and it is plainly correct that this be given close attention and high priority. The first conviction of an accused person may be a determinant that shapes his entire future. Some convicted criminals do not need confinement in prison; neither they nor society can genuinely benefit from it. Effective advocacy can sometimes lead to other alternatives for a first offender—such as suspended sentences or deferred prosecution.

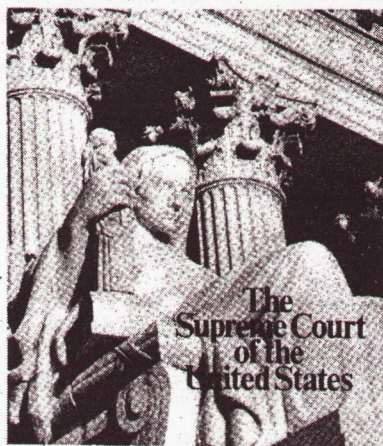
The contemporary literature tends to focus on the plight of the defendant and the inadequacy of defense counsel. For all too long we grossly neglected the needs of defendants, but the inadequacy of defense counsel is not by any means the whole story. Since we are discussing the problems of a system of justice, it is important to bear in mind that criminal justice is not a one-way street. Judge J. Edward Lumbard observed in a speech about 10 years ago that the public is also entitled to due process and justice and that a just conviction is as important to the public interest as a just acquittal.

In our proper concern for criminal justice, we must not forget that the rights and interests of civil litigants should not be brushed under the rug. In nearly 18 years on the bench and more than 20 years of general practice, I have had occasion to review literally thousands of records—civil, criminal and administrative—and I have observed as many miscarriages of justice in civil cases from inadequacy of counsel as in criminal cases. To borrow some lines from Gray's "Elegy," the injustice in some civil cases become part of "the short and simple annals of the poor." In some of those cases, the human tragedy was very real to the principals.

### V

If there is substantial validity to this analysis of the problem, what should we do about it?

Some system of specialist certification is inevitable and, as we know, it has been discussed in legal circles for



a generation or more. Dean Robert B. McKay of New York University Law School has observed that the legal profession has "marched up the hill of specialist certification only to march down again in the face of opposition from practitioners not discontent with the absence of regulation." Our commitment to the public and to the system of justice must not let us be marched down that hill any longer.

I see nothing for lawyers, litigants, or courts to fear, and on the contrary I see a great potential gain by moving toward specialist certification to limit admission to trial practice, beginning in courts of general jurisdiction where the more important claims and rights are resolved. When we have succeeded in that limited area we can then examine broader aspects of specialization. Furthermore, while the legal profession must obviously lead in this effort, the interests of the public dictate that the views of practitioners who are affected cannot be controlling any more than we allow the automobile or drug industry to have complete control of safety or public health standards. There are more than 200 million potential "consumers" of justice whose rights and interests must have protection, and it is the duty of the legal profession to provide reasonable safeguards—unless lawyers prefer regulation from the outside.

The American Bar Association has wisely cautioned that in undertaking certification programs, "it is not desirable for a large number of states to embark upon even experimental programs in specialization before uniform standards can be established, lest unnecessarily divergent programs become prematurely established." The ABA committee, however, is carefully monitoring pilot or experimental programs commencing in California and Texas, among others. Those states certify three specialties, and quite appropriately, the one they have in common is criminal law.

It is in this spirit of cautious progress that I urge that we should concentrate where, in the view of most judges, the greatest need exists. For the initial stage moreover, we should limit ourselves to certification of trial advocates until we learn more about the problems of evaluation and selection. There is danger, as the ABA report stated, in trying to do too much too soon, without knowing enough about the pitfalls. The limited step of certifying trial advocates first will be a large enough task to tax our best efforts. Given the difficulty in terms of dealing with 50 separate state systems, perhaps the prudent thing to do is to begin with the United States District Court after experimenting in several representative federal districts and in state courts the Judicial Conferences in the several Circuits should consider this problem.

### PROPOSAL

What I propose is a broad, four-point program as a first step in specialist certification. We should:

First: Face up to and reject the notion that every law graduate and every lawyer is qualified, simply by virtue of admission to the bar, to be an advocate in trial courts in matters of serious consequence.

Second: Lay aside the proposals for broad and comprehensive specialty certification (except where pilot programs are already under way) until we have positive progress in the certification of the one crucial specialty of trial advocacy that is so basic to a fair system of justice, and that has had historic recognition in the common law systems.

Third: Develop means to evaluate qualifications of lawyers competent to render the effective assistance of counsel in the trial of cases.

Fourth: Call on the American Bar Association, the Federal Bar Association, the American College of Trial Lawyers, the American Association of Law Schools, the Federal Judicial Center, the National Center for State Courts and others to collaborate in prompt and concrete steps to accomplish this first step in a workable and enforceable certification of trial advocates.

The fate of this proposal, as with any relating to progress in our profession, depends on the members of that "great partnership" of the law made up of lawyers, judges and law teachers—and I have great confidence in that partnership.

# ABA Launches a Commission for Mentally Disabled

NEW YORK, N.Y.—The American Bar Association's newly formed Commission on the Rights of the Mentally Disabled will launch a four-point action program to help the mentally handicapped receive full protection of their legal rights.

Details of the program were announced here by Jerome J. Shestack of Philadelphia, commission chairman. He spoke to some 400 lawyers and law students at a three-day seminar on the rights of the mentally handicapped sponsored by the Practising Law Institute.

Shestack explained that the ABA earlier this year decided to create the new, 17-person commission because: "Today the organized bar of this nation recognizes the need to be—and will be—an activist in this field." He added that the commission's formation was prompted by a "grim recognition of the magnitude of the problem, the enormity of the neglect, and an exciting new attitude by the leadership of the ABA."

Shestack noted that until now the principal programs to develop the legal rights of the mentally handicapped had resulted from the foresight, skill and dedication of a small group of lawyers who had "labored in this field with neither help nor encouragement from the organized bar."

Shestack said the four projects planned by the commission will be:

1. Delivery of Legal Services.

These should go beyond patient commitment and extend to all stages of the treatment process—during institutionalization, release and rehabilitation.

"What is clearly needed at the outset is the development of a mental health bar—a cadre of trained counsel; knowledgeable lawyers available to deliver the legal services so badly needed and so conspicuously absent."

Such a mental health bar would require the cooperation and energies of local and state bar associations, with the ABA acting as catalyst "to stir those associations," just as they were in the early 1960s by the civil rights movement and later the OEO legal services program.

2. Conflicts Inherent in the Treatment and Institutional Roles of Psychiatry. "This effort will be the commission's second major undertaking, one that goes to the very heart of psychiatric methodology."

Possible conflicts, problems and abuses are inherent in practicing psychiatry when psychiatrists depart from the traditional one-to-one doctor-patient relationship and use their skills while serving institutions such as the military, schools, state hospitals, prisons and the courts.

"Hopefully, from our joint endeavors will emerge significant new undertakings and resolutions of the conflict problems that affect the rights of the mentally disabled."

3. Monitoring. The com-

mission's third major target area will be developing monitoring systems for mental health facilities and programs. Pilot projects are needed to develop model monitoring systems for widespread use.

What is involved in monitoring systems is not inadequate mental health statutes but "the thousand little tortures that make a system unbearable and make therapy impossible."

4. The Developing Law. The commission is keenly aware of the need to pioneer and develop new legal concepts. While there has been rapid development, from no rights for mental patients to some in recent years, "the law in this field is still far from maturity."

"The commission in its prestigious role has a unique opportunity to expand the frontiers of the law through the positions it advances. The rights of children, the ramifications of emergency treatment, the right to refuse treatment, the protection of professionals and para-professionals, discrimination against patients who are out of treatment, all are problems which arouse our concern."

Shestack concluded: "The commission's program is an extensive and an ambitious one. And so it must be—because the abuses and inadequacies are so numerous and so grave."



Monroe Freedman relaxing in his office.

## The Dean's Column

LANGUAGE AND LIBERATION II:  
UNMARKED GEESSE AND MARKED MEN

In my last column for Conscience I wrote about the brain-washing impact of our everyday language in conditioning and corrupting male and female self-images. Dean Younger replied with a discourse on the markings of geese. As a sometime bird-watcher, I was fascinated, but I couldn't help concluding that somehow she had missed the point.

Professor Kadane's response was, always, witty and wise, but it also avoided the matter at hand. Rather than waste energy criticizing sexism in language, he said, lawyers should work to change the system under which women have the right to opt out of jury duty. (It's a very old put-down. If you should then come out for jury reform, he'll complain that you're not doing anything about the really important issues—you know, like genocide or nuclear holocaust.)—Well, it happens that I have in fact litigated the issue of jury reform. Since I still have the energy to criticize sexism in language, why not deal with that issue on the merits?

Professor Kadane does touch on it, though glancingly. He's against using words like "nigger," or calling a grown man "boy." Those usages, he says, are obviously pejorative, whereas referring to a "three-man firm," instead of a "three-member firm," isn't pejorative.

But that isn't the point. Consider this: I have noticed that Professor Kadane studiously refers to "blacks," not "Negroes"—just as, fifteen years ago, he carefully said "Negroes," not "blacks." Now, there is nothing necessarily pejorative about one word or the other. But when a person, today, says "black," s/he is communicating something significant that goes beyond the word itself. S/he is manifesting an awareness of black peoples' struggle for equality, and expressing respect for the feelings of those blacks who have made that word a symbol of their struggle. Similarly, those who care about the problem of sexism and who want to associate themselves with the struggle for sexual equality, will symbolically express that fact, naturally enough, in the words they choose to use. And, Professor Kadane notwithstanding, symbols are worth talking about. As Justice Holmes once remarked, "We live by symbols."

Let's pass by symbolism, though, and get practical. If someone talks about finding "the best man for the job," does that really make it more likely that the focus will be on men and that employment of a woman will be less likely? Common sense says yes. If you Cherchez la femme, chances are you'll find a woman. If you look for a reasonable man, chances are you won't find anyone at all—even if there's a reasonable woman standing right in front of you.

A recent article in *Business Week* is instructive. The president of a major corporation was seeking four top executives. The goal, he said, was "to find men" who would be best for the jobs. A screening system was established, beginning with a request that corporate managers each nominate "the four men" they considered best. The nominees were then narrowed down until the final four were selected. Is anyone (except, perhaps, Dean Younger and Professor Kadane) surprised that all 32 nominees on the original list were men, and that the four people who got the jobs were all men?

Ah, well. As we all know, it's a man's world. But, the person who says that today is, as Dean Younger might say, a marked man.

## Law and Politics

Most lawyers mix into politics or hover on the sidelines of the political game. I have been no exception. It is a dangerous diversion, often devastating if it becomes a pursuit. More lawyers [considering the number who play the game intensively] have been ruined by politics than by liquor, women, or the stock market. The chase after power is as corroding to individual character as the chase after wealth. The virus of public acclaim affects the bloodstream. And if you reach your goal, then what? Your time is not your own, your private life is gone, your independence is whittled away. A few years of swollen importance, and then deflation. Back among the scrambling millions, beginning again to make a living and always with a yearning for the former excitement and power! With the exception of a few men who attain very high office, and those who are elected or appointed as judges and remain on the bench, this applies to the bulk of political lawyers.

—Arthur Garfield Hays

## Gilbert's Honor Code . . .

(Continued from page 3)

There is no confirmed answer to no. 2, although there is some speculation that Thomas Edison invented the first electric Honor Code.

Questions 3 and 4 were inserted in order to segue into question 5.

Question 6 was dealt with in a recent law review article. The authors suggested that each person develop his or her own name for the Code, thereby encouraging independent thought and boldness.

The answer to question no. 7 is obviously "d".

Moving on, questions eight and nine can be dealt with summarily . . . summarily, merrily, merrily, merrily, life is but a dream. (Look, they can't all be winners!)

If you chose answer "c" for question no. 10, you should seek the help of a psychiatrist. If you chose any of the other possible answers, you should consider seeing a podiatrist.

For those of you who do not know the answer to no. 11, I suggest you widen your sexual experiences. Even if you know the answer, it might be fun.

Questions no. 12 and 13 require very serious thought, making analysis outside the scope of this work.

Regarding no. 14, always remember . . . the best defense is a good offense.

Finally, whatever the answer might be to question no. 15, sending a letter and a resume to Frank Sinatra will probably be more profitable than applying to Weil, Gottshal, & Manges.

## Filler's Integrity . . .

(Continued from page 2)

in the preparation of a false proxy statement, prospectus, or income tax return. It is only a somewhat larger step to the means-end analysis of ex-Attorney General Mitchell when he argued that almost any means would have been appropriate to insure the re-election of the President.

When the flaw in a student's character is so obvious, it is clearly the law school community's responsibility to society to prevent this student from obtaining the opportunity to injure the general public as an attorney. As members of the law school community, the student body has been delegated under the Code the primary responsibility to enforce the community's responsibility to society.

If any student is unhappy under the Honor Code, he or she is free to work for its change but not free to ignore the Code.

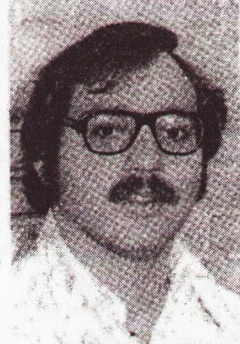
## Students Elected to Representative Positions



Jim Sobers  
Minority Recruitment



Marvin Gutter  
1st Year Rep.



Alan Schlepplin  
3rd Year Rep.

# Southern Poverty Law Center

## "Will You Help?"

Julian Bond

Dear Friend,

A state court, citing a law that favors bankers over poor people, has ordered 71-year-old Viola Hart out of her tiny home.

And that same law, identical to laws in every Southern state, discriminates against poor people who have financed the purchase of anything from a home to a car to a kitchen sink... because bankers and finance companies, under that law, cannot be held responsible for shoddy merchandise or workmanship.

Mrs. Hart and her husband (who died six years ago) purchased their home in 1942 for \$2,000. For most of their lives thereafter, mortgage payments and maintenance took more than half the money they were able to earn; but in 1970, her husband gone, Mrs. Hart could finally call the home her own.

Then 68 years old, and preparing to retire on a monthly allotment of about \$65, Mrs. Hart was approached by a transient building contractor who offered to install in her home the first indoor bathroom she would ever have, a water heater, and a kitchen sink.

He told her only that the work would cost her \$35 a month.

If he had done the job properly, it would have been worth perhaps \$800. But the work was done hastily, cheaply, and incredibly poorly—the bathtub has never been connected to the plumbing, the sinks and commode drain improperly, the walls were never completed, the roof leaks.

And Mrs. Hart, after having paid more than \$850, still owes an out-of-state mortgage banker nearly \$2,500.

Several months ago, Mrs. Hart refused to meet any more monthly payments until repairs were made. It was then she learned that the builder had gotten his money by selling the mortgage—and thirty others on homes in which he'd done similar shoddy work at about the same time—to the Florida mortgage banker who now acted to foreclose.

The foreclosure was upheld in court, because of a state law which gives Mrs. Hart no rights against a "holder in due course."

Because the mortgage banker did not provide the original services, the law states, Mrs. Hart cannot withhold payments. Her only recourse would be to sue the building contractor... who cannot be located.

"Holder in due course" laws have robbed countless poor people in the South of millions of dollars, and will continue to do so unless the laws are attacked and stricken. That's why the Southern Poverty Law Center's attorneys are bringing a major lawsuit in federal court, challenging the constitutionality of the law that threatens Viola Hart's home.

We anticipate a long and arduous lawsuit; moneyed interests will oppose us every step of the way.

We must compile statistical evidence of the widespread use of the law to cheat poor people out of their possessions. Expert testimony on the value and quality of goods and services typical in such cases will have to be given. And imaginative and innovative constitutional arguments must be developed.

I estimate that this one lawsuit alone may cost upwards of \$20,000. And in the meantime the Center's lawyers must not relax in their pursuit of other cases now in various stages.

A great deal has got to be accomplished before the promises won in the Civil Rights Movement of the 'fifties and 'sixties can be translated into meaningful advances in the conditions in which Southern blacks live. And the Center is hard at work in many areas.

The historic Supreme Court opinion on equal education, in *Brown v. Board of Education*, was written nearly twenty years ago; yet today more than three-fourths of the South's black children still attend inferior public schools.

Last year the Center's lawyers successfully stopped a large Southern city from subsidizing segregated private schools. And we set a landmark precedent when we won a lawsuit brought against a private law school which had refused to admit blacks.

The court decreed that federal equal-right-to-contrast statutes apply to private schools; this year we're moving to implement the ruling in suits to integrate "white-flight" segregated academies.

Last year we forced integration of the all-white Alabama State Troopers, opening hundreds of good-paying public jobs to qualified blacks. This year we're involved in several similar equal-opportunity lawsuits—against the federal government, against several Southern cities, against private companies.

The result can be hundreds of thousands of good jobs and an escape route from poverty for poor blacks Southwide.

One Southern county has already agreed to accept a Center-proposed employment plan, as a result of massive evidence compiled by our lawyers proving racial discrimination in its employment practices.

The new Supreme Court showed compassion last year for impoverished individuals accused of crimes when it extended the right to free counsel to those accused of misdemeanors carrying potential prison sentences.

But our lawyers feel that a poor defendant is entitled to more than a court-appointed attorney—we feel that even a poor person is entitled to the best legal defense that money can buy.

In our defense of a young black man accused of murdering a white Alabama woman, we asked



the court to provide funds for a professional investigator to pursue unfollowed leads that could clear him rather than convict him. We feel that's essential to preparation of an adequate defense.

Last year we won a suit involving a poor black community which had been denied paved streets. The resulting decree ordered the county to construct ten miles of paved streets equal in quality to streets provided free to an adjacent white neighborhood.

This year we're suing to win shelter for thousands of unwanted, neglected, and orphaned black children in Alabama. One plaintiff in our suit spent five years in reform school for no other crime than being black; the state simply refused to refer him to any of the all-white orphanages that it licenses and supports.

Last year, after a long and costly court fight, the Center won a lawsuit reapportioning the Alabama State Legislature. Our plan, accepted in its entirety by the court and then affirmed by the U.S. Supreme Court, eliminates racially motivated gerrymandering and will result in the election of as many as thirty blacks to the State Legislature next year.

But the Legislature has not yet surrendered; and our lawyers have had to spend many hours studying an alternate plan which self-seeking politicians submitted to the court this spring. The substitute plan has been declared discriminatory and rejected by the court; the Supreme Court will rule later. The effort still being expended on this lawsuit, "won" many months ago, has taxed our staff enormously. But we have no other choice.

Without the Center's constant attention to these suits and others in which we become involved, Civil Rights advances mean little to poor Southern blacks who still can't get a decent education or a decent job or a fair share of municipal services.

Advances already won mean little to the black child who has no place to live... or to Viola Hart, who has no recourse against a banker and a state law that threaten her home.

The Nixon administration has shown no inclination to move the nation toward equality; federal social welfare programs are under attack, while big business interests have enjoyed preferential treatment. The only way to advance the quality of life

for poor people, I'm convinced, is in the courts.

The Southern Poverty Law Center needs your support to continue the work we've begun. We receive no fees from clients; every case is handled free.

We can finance our efforts only by asking you to join us in the battle.

If you participated in the Civil Rights Movement before, you can take pride in the beginnings of real accomplishment. But unless new support enables us to carry on the fight, much of what was promised will go unrealized.

For that reason, I'll personally appreciate your generosity now. In return for your (tax-deductible) contribution, I'll see that you receive regular reports on cases in progress. Notifying the public of our achievements is extremely important; perhaps you can pass on news of our victories to help poor people in your own community.

If you can send as much as twenty-five dollars or more, I urge you to do so now; every dollar you can spare will advance

important work in defense of the legal rights of poor people who are kept poor by unjust laws and discrimination.

Can I count on you?

Most sincerely,

Julian Bond

P.S. Unless our challenge of laws that favor bankers over poor Southern blacks is brought swiftly, Viola Hart may not live to see her rights vindicated. Let me ask you not to put this letter aside with the intention of answering it later; please write the most generous check you can, and mail it to me at the Southern Poverty Law Center today, in Montgomery, Alabama.

P.P.S. The Center's newest lawsuit, brought in Washington, D.C., seeks to prevent abuses of the legal rights of poor people by federally funded health care programs. Our plaintiffs are young black girls in Alabama and welfare mothers in South Carolina who were victims of coerced sterilization operations. The urgency of my request for your support is heightened by our involvement in this costly lawsuit.

## Family Law Essay Contest

CHICAGO—Junior and senior-year law students have until April 15 to enter the 1974 Howard C. Schwab Memorial Award Essay Contest in the field of family law.

The contest is sponsored by the American Bar Association's Family Law Section in cooperation with the Toledo and Ohio Bar associations. Contestants may write on any aspect of family law. Suggested length is about 3,000 words. Essays that have been, or are, scheduled to be published are ineligible for consideration.

First, second and third-place winners will receive cash awards of \$500, \$300 and \$200, respectively. The winners will be announced and the prizes awarded during the Family Law Section's 1974 annual meeting next August in Honolulu.

The contest is intended to create a greater interest in the field of family law among U.S. law students, particularly members of the ABA Law Student Division. All junior and senior-year students enrolled in ABA-approved law schools are eligible, except employees of the American, Ohio or Toledo Bar associations.

The contest is named for the late Howard C. Schwab, chairman-elect of the ABA Family Law Section at the time of his death in 1969. He was a past president of the Toledo Bar Association and past chairman of the Ohio State Bar Association's Family Law Committee.

Law students who wish to enter the contest should request an entry form from: Howard C. Schwab Memorial Award Essay Contest, Section of Family Law, American Bar Association, 1155 East 60th St., Chicago, Ill. 60637.

## Law Teachers Are Wanted

by Charles Robert

If you feel it is time somebody listened to your legal expertise—besides your spouse or lover—please contribute your services to the Hofstra Community Legal Education Project, currently being co-ordinated by myself.

Beginning this semester, there

will be an opportunity for interested and committed law students to speak to, and possibly even teach, local high school students and other community groups.

The project will strive to reach into the community and offer (Continued on page 8)

MARIJUANA: ASSASSIN OF YOUTH

## NORML Promises Legislative Action on Grass

STUART GITTLEMAN

Marijuana has been used in cultures throughout the world for centuries, but its increased use in this country is very recent. Unfortunately for those who smoke it, the attitude reflected in the title above was instrumental in the passage of the Marijuana Tax Act of 1937 and various state laws prohibiting possession of this herb. Those who pushed for these laws saw marijuana as a dangerous drug directly leading to insanity, sexual excess, violent crime, drug addiction, and serious physical and emotional damage to the user, as well as serious detrimental effects upon society.

While we now know that many of these horrors do not result from smoking marijuana, and are somewhat more sophisticated in our scientific knowledge and medical research, many of our laws do not reflect this. In New York, possession of more than 1/4 ounce, or 25 "joints," continues to be regarded as sufficiently dangerous to society to warrant classification as a felony punishable by up to 7 years imprisonment for a first offender.

Groups promoting the legalization or decriminalization of possession, cultivation, use and sale of grass have met a certain degree of success. Possession of less than 1 ounce in Oregon has recently been changed to a violation, punishable by a maximum fine of \$100. Texas, which formerly had one of the harshest penalties for simple possession, 2 years to life, has reduced possession of up to 4 ounces to a misdemeanor.

In the New York legislature there are proposals to decriminalize possession of up to 4 ounces of marijuana, A-8827 (Assembly) and S-5337 (Senate) and to legalize sale, A-4768 and S-3665. In Congress, H-669 and S-746 propose to decriminalize possession of up to 3 ounces.

Legislative action on these bills will be in response to concerted citizen action and lobbying. NORML, the National Organization for the Reform of Marijuana Laws, composed of doctors, lawyers, scientists, and other concerned citizens, is one of the more active groups in this campaign. NORML's position is that the laws punishing possession of

marijuana:

- a) are ineffective in deterring use;
- b) carry overly-harsh penalties, and are grossly disparate among differing jurisdictions;
- c) are selectively enforced against certain groups;
- d) engender disrespect for all laws;
- e) increase the burden on an already clogged criminal justice system with many minor arrests;
- f) encourage the invasion of privacy and violation of individual rights by overzealous law enforcement agents;
- g) divert law enforcement resources from the control of serious and dangerous criminal behavior; and
- h) impugn the credibility of the criminal law which seeks to educate the young of the dangers of hard drug use.

NORML's New York Legislative Counsel, Frank Fioramonti, is attempting to convert our legislators of the need to change some of our laws. Efforts are also being made in other states and in Washington. NORML is also engaged in some litigation, including a suit to be argued by former Attorney General Ramsey Clark.

Of course, the reform effort is supported by many who do not indulge. A change in the law will benefit those who smoke marijuana, or did before being caught, or whose children do, or those who would like the law and the police to have a greater degree of credibility and efficiency. The only groups which should resist change should be those who sell grass, and those who bust those who have grass.

If you are interested in changing the laws concerning possession and sale of marijuana, contact your legislators about the bills previously mentioned. Information about marijuana and about NORML is available from their New York office at 1457 Lexington Ave., New York, N.Y. 10028, (212) 866-7067. Those interested in working on a more local level by educating their neighbors are invited to form a Long Island chapter of NORML; contact myself or Conscience for more information.

## A Poem About Richard Nixon, the Coach

It looked extremely gloomy for the Nixonskins that day:

The score was twelve to nothing with a quarter left to play.

The crowd was growing restless with a definite ill-humor:

All they'd heard from Nixon (Coach) was yet another rumor.

"We want some action now," they cried, and interspersed some booing.

"Calm down, calm down," said Nixon (Coach), "cause I know just what I'm doing.

I've lost the tapes of some great plays, though—don't remember when."

The referee said, "Delay the game—that'll get you ten."

"Years!" asked Nixon, turning white. "The gallows would be quicker."

"Yards," replied the ref (who's known as "Honest John" Sirica).

Cox had been the quarterback but now was getting tired:

He kept refusing Nixon plays, and Coach said, "Arch, you're fired!"

Richardson was Q. B. Two and Ruckelshaus was Three;

When told to replace Archibald each said, "Nope, Coach, not me!"

So Nixon asked Bob Bork to play—a "yes man" to the end—

"We must appease the public and our privilege defend."

"Your procedures are illegal," called the ref, an unbeliever.

"Besides, Rose Woods is on the field—ineligible receiver;

You're penalized another ten!" "You can't!" the Coach protested.

"We're pushed back to our one-yard-line, our spotter's been arrested

(Segretti—you remember him—was just a bit too tricky)—

Please give my team another chance!" The ref said, "Sorry Dicky!

The public calls me "Honest John"—I have a public trust;

I call 'em as I see 'em. Coach, I'm only being just!"

The whistle for two minutes blew; the time was running out.

A grandstand play was called for, with finesse and also "clout."

Nixon called George Allen: "George, I really need your aid—

I've helped you when you needed me to stop a Redskin fade."

But George sighed, "Sorry, Sir, but that's against the Conference

rules;

Besides, you've staffed your team all wrong with jesters and with fools.

The mark of winning coaches is to choose the best of players—

The only help I'll give you now is (Dear God!) lots of prayers."

Nixon's back is to the wall, his hopes are growing thinner;

Even Julie won't attend another White House Dinner.

The fans are mad—"Impeach him!" is the cry throughout the land;

"We've got a winning-record coach, a 'Model G Ford' at hand.

We know that he's religious; why, he's even been confirmed—

We'll bring him in to finish out an unexpired term.

Send Nixon to the showers—or Camp David, that's much better;

He's just not pro material; how'd he ever win a letter?"

It's time to make predictions, to surmise, to conquer doubt—

I leave it to you, readers—has our "Tricky" just struck out?????

Gwen Freitag

Freitag is currently Law Review Secretary.

## Law Teachers Wanted . .

(Continued from page 7)

legal skills before people get into trouble. The purpose of the project is not to supply captive audiences for simplistic rap sessions, but rather to present to the community a chance to understand basic legal concepts that are relevant to citizens. This will require a knowledgeable and polished presentation, with a pre-guaranteed effectiveness.

Prior to any law student teaching there will be intensive peer and professional preparation not only on the legal principles, but also teaching methods. The stress will be on innovative teaching techniques such as role playing, simulation, audio-visuals, and individualized learning although traditional lectures and question and answer periods will be included.

If you are interested, watch for notices beginning this semester.

## Books That Will Never Be Published



## Faculty Profile: Burt Agata

by William Nix

"It may be that times have changed on campuses everywhere, but Hofstra's law school is unlike any I've experienced. The 2nd and 3rd year classes were experimenters—taking a chance on a new place. It was so small the first year, under 100 students. I think that small start gave the school the informality it still retains to a great extent. We've institutionalized informality as much as possible."

The words belong to Burton Agata, the erudite and sometimes esoteric professor of constitutional and criminal law here at Hofstra. Reclining in his tufted red leather chair, which graces an office of wall to wall law books, Agata spoke about Hofstra Law School:

"I think the program here is fairly innovative. Both faculty and curriculum have expanded, especially in the area of clinical education. I would like to see more of a clinical emphasis, but it's hard to know the best method of clinical teaching before the returns are in from the many experiments with it."

Widely experienced as a law professor, having taught most recently at the University of Houston, Professor Agata has been with Hofstra since its inception. Last year, he was one of the final candidates considered for the Deanship.

Graduating from Michigan University with distinction, having been a member of their law review, he went on to teach at Montana State, Wisconsin, New Mexico, Houston, CCNY and NYU. He served a term in the Judge Advocate General Court during the Korean War and returned to join the New York State Government as a senior attorney in the Banking Department. He was the first counsel to Sales Finance—Employee Welfare Fund Division.

His contractual and consultant work has included a study regarding a code of criminal procedure for Vietnam for the U.S. State Department, a research project on "search and seizure" from the police perspective, an HEW project on neglected and delinquent children, and active participation in criminal cases for Hofstra's legal aid office.

Agata finds the pace here in the N.Y. area is exhausting and maintains that one can find here all the work one could possibly want. Currently, in addition to his teaching work, Agata has been Counsel for the Commission on the Federal Criminal Code, planning a total revision of the existing one. There are several bills in Congressional committee to that end. "The major difference in the revision will be in the sentencing provisions. We hope the revision will be organized in such a way as to be more specific and, it is to be hoped, coherent. We're trying to more adequately define jurisdictions and to define more precisely the statutory goals for law enforcement."

Agata's projects have led him to an active involvement with the ABA. He has most recently been Director of a Project preparing a comparative study of ABA Standards for Criminal Law.

"I believe the ABA is changing more today than ever before. Members have been working to set up a bar network from the local to the national level to involve the Association with current issues it has a long history of purposefully avoiding. The organization is less under the control of a few in Chicago and the seniority system seems to be breaking down."

Among his other projects, Agata makes an occasional appearance on Virginia Graham's morning television shows. "I used to do a lot of talk shows in Houston, but ABC called me here out of the blue. I'm not really satisfied with that kind of discussion because it has to be superficial."

The gravel-voiced professor is totally satisfied with his occupation: "I like what I'm doing," he says. "I really believe it couldn't be better, and I'm particularly looking forward to being part of Hofstra's growth."

## The Runway Inn

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