Policy Statement

The objectives of The Advocate are to publicize the activities and outstanding achievements of the Law School and to present articles by students and guest writers on timely subjects pertaining to the law.

1969-1970 EDITORIAL STAFF

Left to right, first row: Robert Conners—Associate Editor, Kenneth Rampino—Editor-in-Chief, Brian Gildea—Feature Editor, second row: John Cyr—Layout Editor, Delphis Jones—Layout Editor, Joseph Sollitto, Jr.—Managing Editor, David Shuckra—Alumni Editor, Martin Tomassian, Jr.—Business Manager, absent from the picture—Stephen Kressler.

Special Appreciation:—
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Professor Alfred I. Maleson
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Warren Freedman Esq.
At its meeting held on Wednesday, December 11, 1968, the Board of Trustees voted to approve the recommendation of the Faculty of the Law School that commencing with the class graduating in February, 1969, the degree of Juris Doctor will be awarded in lieu of the degree of Bachelor of Laws.

The Trustees also voted that the degree of Juris Doctor be conferred upon all prior graduates of the Law School who have received the degree of Bachelor of Laws: the degree to be awarded without convocation and only upon the application of a qualified alumnus.

Procedures are now being established whereby the exchange of diplomas may be accomplished, and as soon as this is done each alumnus will receive a letter containing the necessary information.

Pending the receipt of such letter, the alumni are requested not to contact the School. The matter will be handled as expeditiously as possible and the necessity of answering written and oral inquiries will only cause delay.
EDITORIAL

COMMENTS

The recent action by the Board of Trustees granting the Juris Doctor degree (J.D.) should be commended, in that it reflects contemporary thinking in legal education. Furthermore, that Suffolk University was the first major law school in the area to award the Juris Doctor degree indicates the initiative taken at our law school.

The students of Suffolk University Law School do not entertain unwarranted or unreasonable visions of increased stature or prestige but merely feel that they have finally achieved a professional title which indicates their true educational attainment.

We congratulated John A. Acampora and his committee for their effort in behalf of the student body.

(Editors' note)

Our recent article in the last issue of The Advocate requested the administration and Board of Trustees to investigate and determine the validity of the Juris Doctor degree.

The Advocate still is in need of office space. The staff urges the faculty and administration to consider this request.

The Advocate would like to know whether or not the faculty and administration have acted upon the student-faculty committee's recommendation to hire a Law School Placement Director?

The Advocate feels that the S.B.A. has been burdened with too much financial responsibility. They finance the Moot Court National Team, defray part of the Law Review's expenses, finance Law Day festivities, and finance The Advocate. We urge the administration to relieve the S.B.A. from this heavy load, so that the S.B.A. may be able to concentrate on student matters.

The Advocate once again urges that the proposals for a new Law School building be given every possible consideration. The great need for expanded facilities by virtually every organization in the Law School is apparent, and urgent. We ask the faculty, trustees, and alumni to give their vigorous support and immediate attention to these proposals.

The Advocate urges the faculty to adopt a uniform system of grading. Each professor has a different interpretation on the meaning of, as an example, an 80, and this only results in confusion and frustration.

The Advocate has overheard many objections from the student body. However, many of the more vociferous students are
reluctant to become involved with any student organization.

The S.B.A. is in need of reform: the election procedure is a farce for many reasons. They must be given more authority in matters concerning school policy and certainly in matters involving changes in their own organization.

The Advocate urges the faculty to reconsider and revise the current course offerings. We are distressed that the students must take required courses all three years. We do not doubt the wisdom of imposing required courses during the first year. But to place such a burden on the students for three years is unreasonable.

EDITORIAL COMMENTS
The Advocate having noted the problems

of law students in obtaining clear readable and reasonably priced copy from the library’s Xerox machine suggests that the Administration recognize this problem and act upon it. The Boston University Law School Library copy machine not only provides good copy at five cents per page but also contains a change maker so that students do not have to travel all over the city asking for change. The installation of a copy machine similar to those now used at Boston University would be a significant and much needed improvement, saving law students a great deal of time, money, and frustration. The very least that could be done would be to keep a supply of change readily available to our students to facilitate their use of the copier.

"ODE TO THE FOUR-LETTER WORD"
Anonymous
Oh perish the use of the four-letter words
Whose meanings are never obscure,
The Angles and Saxons, those bawdy old birds,
Were vulgar, obscene and impure.
But cherish the use of the Weaseling Phrase
That never says quite what you mean.
You had better be known for your hypocrite ways
Than vulgar, impure and obscene.

OBSCENITY IS IN THE EYE OF THE BEHOLDER by Kenneth J. Rampino

It was a sultry day in London during the Summer of 1663. Three years had elapsed since the disintegration of the Cromwellian Protectorate - a protectorate that not only governed the Commonwealth but imposed a rigid standard of morals later to be called "The Puritan Ethic." The restoration of Charles II ("The Merry King") ushered in a new era which contrasted sharply with the theocratic form of government preceding it. It was a time when the King himself openly flaunted the keeping of a paramour, and when contemporary literature was permeated with ribaldry and a preoccupation with sexual themes. It was the hey day of the sexual comedy, a time when the King's entourage were openly contemptuous of any vestiges of Puritanism and were renowned throughout London for their witty lampoons of the pompous middle class. There was a "Merry King" and it must have been a "merry city" on that summer evening when one of the more incorrigible of the libertines, Sir Charles Sedley, while standing on a balcony overlooking Covent Garden, and while in an inebriated and nude condition, poured bottles of "offensive liquor" upon passers-by while being most profuse in his profanities. Sir Charles was subsequently convicted and fined by the courts for offending religion which was held to be an integral part of the common law. With this episode, the so-called "law" of obscenity was born.
Leo M. Alpert, author of the oft-quoted Harvard Law Review treatment of Judicial Censorship of Obscene Literature, has credited the Sedley incident with the touching off of "The Three Hundred Year War" between the censorious-minded and the advocates of free expression.

The battle has been and continues to be waged between many groups attempting to protect a diversification of interests. This has created innumerable issues, many of which, after three hundred years of conflict, though closer to resolution, continue to remain unanswered.

That many issues still remain unanswered had to be a glaring fact to anyone in attendance at a trial which took place on March 10, 1969 in the Boston Municipal Court. City of Boston v. Joseph L. Sasso. Despite the docket, the name of Mr. Sasso (manager of Sach Cheri Theatre) was mentioned only two times in nearly three hours of trial time - once to acknowledge the parties to the suit and again to sentence Mr. Sasso to six months in the house of correction and a $1,000 fine. The issue actually dealt with was whether the movie - The Killing of Sister George - was obscene under the Mass. Gen. Laws Ch. 364(2) as amended 1967 in view of the test for obscenity formulated by the Supreme Court of the United States in the case of United States v. Roth, 354 U. S. 476 (1957).

U. S. v. Roth was an attempt by the Supreme Court to resolve several of the many conflicts in the "law" of obscenity. An effective comprehension of the Roth solution necessitates a brief historical treatment of the factors that confronted the Court. An evaluation of the success or failure of the Roth decision and its application to problems which continue to haunt theorists and practitioners of the law will follow.

(A) STATE OF THE LAW PRIOR TO ROTH

Approximately 200 years after the Sedley incident, Lord Chief Justice Cockburne drafted a test for obscenity which in substance was followed in both England and in some of the States for close to a century. Queen v. Hicklin, L.R. 3 Q.B. 360 (1868). In this case, a member of a Protestant union, Henry Scott, motivated by a staunch desire to prevent papacy-controlled Catholics from gaining political influence in England, published an anti-Catholic tract entitled The Confessional Unmasked. Included within this tract was dialogue, between a priest and female penitent, which proved to be shocking to many, including Lord Cockburne. The Chief Justice took note of defendant's argument that the "shocking" dialogue must be kept in context, that the overall purpose of the tract must be given weight and that "the defendant was within his rights to pamphleteer against the vices he thought he saw in the confession." Lord Cockburne rejected the argument posed by Scott and held that every excerpt must be judged independently, and if any excerpt read in isolation was obscene, then the entire book was contraband. In addition to not ascribing any weight to the overall effect of a publication, the following test was advanced:

Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort many fall.

*What the court euphemistically referred to as offensive liquor were actually bottles of wine in which Sir Charles had urinated. Pepys, S. (Wheatley, H. B., ed.) The Diary of Samuel Pepys.
An application of this test would run the gamut in its "protection" of the moron to the genius and of the grade school student to the college educated. All material was judged by the standards of the lowest common denominator of intelligence and education. Needless to say, this type of "overkill protection" was not accepted with impunity by the intelligencia, patrons of the arts, and simple lovers of freedom.

In the United States, the first reported obscenity case was that of Commonwealth v. Sharpless, 2 Serg. & R. 91 (Pa. 1815). Here the defendant was indicted for showing a picture "of a man and woman in an imprudent posture." The decision referred to the Lord Sedley case and it was said that since the gravamen of Sedley’s offense was the exposure of his private parts, the case at bar was clearly in reconciliation with precedent. The judge would not allow the picture to be submitted in evidence for fear that to do so would be to "wound our eyes and ears."

Six years later, the first obscenity case involving a book came up in Commonwealth v. Holmes, 17 Mass. 336 (1821). The book involved was John Cleland’s Fanny Hill, Memoirs of a Woman of Pleasure. Holmes, the publisher of the book, was convicted on the basis of a mere description of questionable excerpts since the book itself was not admitted into evidence. Chief Justice Parker emphasized the potential harm that could be generated if the book got into the hands of youth. The emphasis placed upon the deleterious effect of the subject matter upon youth manifests a tendency in the U.S., even prior to Hicklin, to protect the youth at the expense of literary achievement to society at large.

In "answer" to the issue of whether or not a description of the material is sufficient to convict, Parker went through a circuitous reasoning process: "Holmes was convicted fairly, even though the jury didn’t see the obscene material because the stuff was obviously too obnoxious to show respectable people."

Although American decisions were applying a test which was similar to the one later formulated in the 1868 case of Queen v. Hicklin (supra page 3), Hicklin became the landmark case which was cited in both the United States and England.

Until 1945, Massachusetts courts espoused a policy of applying the Hicklin test unless the book was an accepted classic, in which case there was immunization. In 1930, in Commonwealth v. De Lacey, 271 Mass. 327 (1930), D.H. Lawrence’s unexpurgated version of Lady Chatterley’s Lover was declared "obscene, indecent, and impure and manifestly tending to corrupt the morals of youth." Whereas in Commonwealth v. McCanse, 164 Mass. 162 (1895), Boccaccio’s Decameron was held not obscene since it was written before the invention of the printing press and therefore "could not have been written with the intention of corrupting youth." It was not until 1945 (Commonwealth v. Isenstadt, 318 Mass. 543 (1945)) that the Massachusetts courts began to apply a standard sensitive to what was acceptable to the community rather than a limited segment. It was clear that a test that was more objective in nature was evolving.

The state of New York reflected an ambivalent viewpoint of what constituted obscenity. The ambivalency was caused by a schism in the judicial hierarchy. The
Magistrate Courts had formulated a test which gave recognition to the literary value of the work and used as a criteria the tastes and standards of the reasonable man instead of a man or child of the lowest intelligence and/or morals. A publication was also to be judged in its entirety, and evaluations by notable critics were to be given weight. People v. Gotham Book Mart, Inc., 158 Misc. 240, 285 N.Y. Supp 563 (Mag. Ct. 1935). This test is remarkably similar to the present standard and serves as a mockery of the higher state courts who followed the more rudimentary Hicklin test with inconsequential deviations.

It was not until 1933, in a Federal Court in New York City, that the trend away from Hicklin was given fuel by District Court Judge John M. Wolsey in the case of U. S. v. One Book called Ulysses, 5 F. Supp. 182 (S.D. N.Y. 1933). Under a Tariff Law enacted three years prior, the federal government was empowered to institute proceedings directly against a book itself. The book involved here was James Joyce’s Ulysses. Judge Wolsey’s decision reads like a literary critique as he dedicates a good part of the decision to an analysis of the literary technique employed by Joyce. Although observing that certain excerpts of the book may affront the sensibilities of certain people, Wolsey stated that the book was not obscene since the questionable parts were not extraneous to the novel, which in his opinion was a fine literary achievement.

Although the cases cited above manifest a notable trend toward more objective standards, it was not until the Supreme Court case of United States v. Roth that the Hicklin test received the coup de grace and the obscenity law in the United States was thereby unified.

Why is it that the Hicklin test endured for centuries? Why was there no objective test of law to be relied upon by a judge, but only a frame of reference upon which he was to impose his subjective feelings, (that is, his emotional impulses and responses), to rule on the obscenity of material? There are, of course, many reasons for the confusion which developed, but a substantial part of it can be traced to four sources. (These four issues were dealt with by the Supreme Court in Roth. After a discussion of these problems, there will follow an evaluation of the Roth solution and a treatment of other problems left unanswered by the Roth decision.)

1) THE INHERENT SUBJECTIVITY OF THE MATERIAL.

The meaning of ... (obscenity) ... to the ordinary mind defies misunderstanding. It deals with subjects which are felt, understood, and appreciated by the layman. Instantaneous is the reaction, instinctive the revolt to better feelings when disregard occurs. (Emphasis supplied).

These words were written with regards to the discernment of obscenity by Judge Robert F. Wagner in People v. Seltzer, 203 N.Y. S. 809 (1924). Certainly Wagner knew, instinctively, what was obscene to him. But the question is - could he universalize his conception of obscenity so that it would apply to the majority of society? Many psychological studies dictate that there is no universal standard which, if deviated from, would induce cries of "indecency" by all men in all societies. Even non-environmentalists would concede that attitudes are based upon socio-economic status, religion, education, child rearing and many more environmental influences. Since the stimuli differ, it follows that the responses will differ.
Anthropologists such as Margaret Meade and Ruth Benedict have established, through observation and experimentation, that much of what were once thought absolute Truths are at best relative situations of a given society related to geography, economy, climate, etc. Mores differ from society to society. One of the most strict societies was a cult of Muslims which had as one of its basic tenets a mandate that the exposure of any part of a woman’s body to any man, except her husband, was highly objectionable. Diametrically opposed to the Moslem society, the Kwoma men and women of New Guinea wear no clothing whatsoever. However, it is considered shocking if a woman does not carry a net bag that hangs from her forehead, down her back and almost to her knees. In still another culture, the Trobriand Islands, a betrothed couple may talk freely to others of their sexual relations. Pre-marital sex is the norm, yet they would be considered immoral if it were disclosed that they had eaten dinner in each others presence before the marriage ceremony.

"Lewd," "Indecent," "Obscene," "Pornographic" - these words "mean" something different to each of us. Unlike the application of the reasonable man standard which attempts to coalesce man’s subjective with his objective faculties, obscenity, or what is purportedly obscene, generates a response which is always peculiarly glandular and never intellectual or rational. Some judges, lawyers, and scholars have labored under the fallacy that obscenity is an absolute concept when the very discord which is rampant dictates the conclusion that it is relative.

(2) ENACTMENT OF STATUTES USING VAGUE LANGUAGE

The names of lobbyist groups seeking to either directly or indirectly impose censorship upon publishers, vendors, theatre owners and managers are voluminous. They are religious, like the Catholic Church’s Committee of the National Office for Decent Literature, secular and civilian, like Boston's Watch and Word Society, and governmental, like the Obscene Literature Control Commission of Massachusetts. Throughout the entire Three Hundred Years War, no individual has fought so adamantly for the forces of censorship as one Anthony Comstock, founder of New York’s Society for the Suppression of Vice. As his biography tells us (which was prefaced by his imprimatur), he destroyed "something over fifty tons of vile books, 28,425 pounds of stereotype plates for printing such books, 3,984,063 obscene pictures, and 16,900 negatives for printing such pictures."

Supported by J. P. Morgan in 1873, Comstock lobbied in both Houses of the United States Congress and "caused" the enactment of 18 U.S.C. 1461. The bill is entitled Mailing Obscene or Crime-Inciting Matter and it prohibits anyone from sending through the mails any "obscene, lewd, lascivious, or filthy books; pamphlet, picture paper, letter, writing, print, or other publication of an indecent character." This was indeed a tremendous demonstration of tautology and obscurity which is further accentuated by dictionary definitions of the four words which "define" the crime:

LEWD: Characterized by lust or lasciviousness or given to licentious; libidinous; unchaste; as lewd action or lewd person.

LASCIVIOUSNESS: Having or denoting wanton desires, lustful, lewd; as a lascivious person; lascivious feelings or words.
INDECENT: Offensive to common propriety or adjudged to be subversive to morality; offending against modesty or delicacy; unfit to be seen or heard; immodest; gross; obscene.

OBSCENE: Offensive to chastity, delicacy, or decency; expressing or presenting to the mind or view something that decency, delicacy and purity forbid to be exposed; offensive to morals; indecent; impure.

The wording of the "Comstock Law," as it has come to be known, is representative of obscenity statutes on both state and federal levels. In fact, some modern statutes use words which are even less concrete: Mass. Gen. Laws Ch. 364, Section 2 as amended 1967.

Whoever, as owner, manager, director, agent, or in any other capacity prepares, advertises, gives, presents or participates in any lewd, indecent, immoral, or impure show or entertainment suggestive of lewdness, obscenity, indecency, immorality or impurity, or in any show or entertainment manifestly tending to corrupt the morals of youth, shall be punished by imprisonment for not more than 2 years or by a fine of not more than $5,000 or both.

Perhaps it is not possible to draft legislation which will define in a concrete way just what actions will lead to an indictment on obscenity charges. Perhaps this is because of the subjective nature of the subject matter. At any rate, the statues for the most part not only afforded no assistance in delineating obscenity from non-obscenity, but actually obscured the issue.

(3) CAN UNORTHODOX IDEAS BE OBSCENE?

In 1927, Radclyffe Hall’s novel, The Well of Loneliness became the subject of a great deal of controversy. The novel dramatized the harrowing experiences of Lesbians. The publisher was indicted in New York and both the prosecution and the defense were armed with psychiatrists. Some testified that such novels could conceivably turn our nation into an "Isle of Lesbos" while others contended that the way to cope with ideas is through rebuttal in the form of open debate and not suppression which could cause these unorthodox ideas to crop up at a later date and in a more perverted form. Judge Bushel, after praising the artistic merit of the novel and remarking that there were no "unclean" words, held that he could not say, as a matter of law, that the novel was not obscene since it "does not argue for repression or moderation of insidious impulses." People v. Friede, 133 Misc. 613 253 N. Y. Supp. 567 (1927).

The publisher appealed and three of Judge Bushel’s brothers reversed, holding that the same book, words, and theme were not obscene. Clearly Judge Bushel was attempting to suppress not an overly descriptive account of sexual behavior, but what he believed to be an odious idea.

Of course, just as the vagueness of obscenity statutes is subject to constitutional attack via the Fifth Amendment, the suppression of ideas is violative of the First
Amendment. The lack of an adequate test in the area of obscenity made it possible for judges to suppress ideas which were repulsive to them personally, or to what they considered the contemporary community standards. Complacency of society with judicial ability to suppress unorthodox ideas is based upon the fallacy that literature, drama, or cinema cause no effect and do not contribute to the progress of society. Art forms do not take place in a vacuum. Mutations of community standards do not induce similar changes within the art community. The opposite is closer to the truth. William Wordsworth, in one of his published letters, mused that "poets are the unacknowledged legislators of the world." It was the Romantic School of Thought, from Jean Jaques Rosseau to John Keats, who spoke of an intrinsic value in all human beings. Literary themes shifted from concern for the hero of "magnanimous stature" to concern for the individual with all his idiosyncrasies, foibles, and peculiarities. Maybe the French and American Revolutions would have ensued without The Confessions of Jean Jaques Rosseau, but Lord Byron disagreed. He said of Rosseau: "from him came those oracles which set the world in flame . . . (which ceased) . . . to burn till kingdoms were no more." Many of the ideas of freedom expressed by the Romantics are no more than cliches to 20th century Americans, but to many 18th century French and 19th century English, they were vile and odious thoughts deserving of suppression.

Society must and fortunately did progress, thus resulting in First Amendment ideals - that is, preserving free expression to provoke debate and well thought-out solutions. It could be argued that not even an 18th century judge would have held freedom to be obscene - immoral possibly, to an 18th century Frenchman who believed in Divine Right of the King, but not obscene. But obscenity and immorality are interrelated and herein lies the danger of a test which allows for interjection of a judge’s subjective attitudes.

(4) REDEEMING VALUE OF COMMUNICATION

If a publication, play, or movie is offensive to a significant segment of society, but there is a probability that it will in some way contribute to society, is it more important to protect sensibilities or to "nourish" those who choose to be "nourished." Based on some facts, the answers come easy. No one would deny a medical obstetrics book protection from censorship, but the question of whether there are redeeming aspects becomes more complex when we deal with Art. What is Art and what is not is as difficult to delineate as is the obscenity-non obscenity "dichotomy." This unfortunately has afforded the judiciary another opportunity to make personal judgments after listening to art critics who disagree with one another.

(B) ROTH AND POST ROTH

In 1957, the effects of Comstock’s achievements were still being felt. In New York, Samuel Roth, a vendor of books and magazines, was using the interstate mails to advertise his wares. He was convicted under the “Comstock Law” (18 U.S.C. sec 1461) in a Federal District Court in New York. The case was appealed to the Supreme Court of the United States where the defendant’s counsel tested the federal statute on the grounds of two Constitutional amendments. Roth contended that, in
the absence of proof that the material would incite criminal action, to censor the material would be in violation of the First Amendment. Roth also argued that vagueness of the statutory words would deny him due process of law as guaranteed by the Fifth Amendment.

Mr. Justice Brennan wrote the decision for the majority, affirming the conviction. He first dealt with the constitutional issues raised by the defendant and concluded that obscenity is not, and never was, protected by the First Amendment. Skirting the question of whether or not the statute was vague, he stated that the standard which the Supreme Court was about to espouse sufficiently described the crime so that the Fifth Amendment was not violated. Justice Brennan then cited the Penal Code definition of obscenity, which has, with some modification, come to be the standard applied ever since:

(a) The dominant theme of the material taken as a whole appeals to the prurient interest in sex.

(b) The material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters.

(c) The material is utterly without redeeming social value.

(The three elements must coalesce . . . if material is not found to be utterly without socially redeeming value, it cannot be proscribed). Redrup v. New York, 386 U.S. 767 (1967)

Mr. Justice Harlan, dissenting in Roth, accused the Court of begging the question by speaking of obscenity in such broad and general terms, and then concluding that obscenity is not protected by the First Amendment—as if what constitutes obscenity were already clearly defined.

The criticism of the Roth standard is by no means limited to Mr. Justice Harlan’s frontal attack. The Roth “solutions” to the four problems raised above are capable of evaluation in light of admonitions offered by the dissent in the Roth case and rulings which have been made since Roth.

(1) THE OBJECTIVE TEST - CAN IT BE APPLIED?

There is no doubt that the Roth test is an objective test. It is aimed at protecting the society from what is patently offensive. Nothing is said about youth or impressionable individuals although the Supreme Court has noted, in later decisions, that when minors are involved, irrespective of the Roth test, obscenity may be based upon less flagrant grounds. Redrup v. New York, 386 U.S. 767 (1967). The question then becomes: can a judge, sitting as fact finder, or a jury apply the test with just results?

The following excerpt is taken from the instructions given by the trial judge to the jury in the Roth case. The instructions were one of the bases of Roth’s appeal, but were upheld by the Supreme Court:
The test is not whether it would arouse sexual desires or sexual
impure thoughts in those comprising a particular segment of the com-
munity, the young, the immature or the highly prudish or would leave
another segment, the scientific or highly educated or the so-called
wordly-wise and sophisticated indifferent and unmoved.

The test in each case is the effect of the book, picture or publica-
tion considered as a whole, not upon any particular class, but upon all
those whom it is likely to reach. In other words, you determine its
impact upon the average person in the community . . . .

In this case, ladies and gentlemen of the jury, you and you alone are
the exclusive judges of what the common conscience of the community is,
and in determining that conscience you are to consider the community
as a whole, young and old, educated and uneducated, the religious and
and the irreligious - men, women, and children. (Emphasis supplied).

Even if we presume that there is a breed of "average-persons in the comm-
unity," we cannot be assured that all the fact finders are average. Therefore, it
is conceivable that we must ask a twenty-two year old man to react like a seventy
year old woman and vise versa; we must ask a Ph.D. to react like an illiterate and
vise versa; and we must ask an Athiest or Agnostic to react like a priest, minister,
or rabbi, and vise versa.

Admittedly the Supreme Court has formulated an objective test, but fashioning
an objective test does not alter the fact that it is psychologically impossible for a
fact finder, whether a seventy year old judge or a twenty-two year old juror, to
prevent his own reactions, and to react vicariously as if he had no past experi-
ences.

(2) WERE VAGUE STATUTES SUPPLANTED BY A CONCRETE STANDARD?

Mr. Justice Brennan in Roth impliedly acknowledged the vagueness of the
"Comstock Law" by stating that the standard about to be set forth was sufficiently
descriptive to ward off any attack based upon due process. Yet, twelve years after
the standard became official, at the trial of Sasso (the Sister George case), Boston
Municipal Court Judge Elijah Adlow remarked:

I have been asking everyone from scholars to truck drivers what
socially redeeming value means and no one can give me a satisfactory
answer. There isn't a lawyer practicing who knows how to apply the
(Roth) test. Maybe some writer or professor at Harvard knows how.

Later, Judge Adlow, after admitting that "the case could not be disposed of on
the basis of Roth," held that if the Lesbian-love making scene, (which lasted three
minutes out of the 135 minute movie), would be deleted, he would find the movie not
obscene. Judith Crist, noted movie and T. V. critic, and David Manning White,
Journalism Professor at Boston University, had testified that artistically the scene
was not extraneous, but rather necessary for the development of one of the char-
acters. After the defense counsel refused to comply with Judge Adlow's ultimatum,
the movie was held obscene. It is difficult to determine what the decision was based
upon. It was obvious that Judge Adlow felt that the acting of Beryl Reid, as Sister George, was excellent and he mentioned that the movie, for the most part, was artistically done and educational. However, he objected to the three minute scene since what was done was criminal and if it had been done on the streets, it would have been indictable. (Of course, if this test were applied, much of what is seen on T. V. and in the movies would be censored). The decision was not based upon Roth since it was not the dominant theme that was considered but simply an isolated segment. If it can be said that any test was applied, Hicklin was (although unwittingly), but more likely no test was applied. Most likely, the subject matter of the scene was simply repulsive to Elijah Adlow, the man.

We must be mindful of the fact that we are speaking of only one judge who admits he cannot apply the Roth test. However, it is indeed probably that many fact finders are incapable, like Judge Adlow, of justly applying the test and it is at least possible that the test is unrealistic and impossible of application.

What then does a manager of a theatre, like Sasso, have to rely upon in guiding him in his choice of movies that the theatre will feature; if he has any choice at all. He may peruse Mass. Gen. Laws Ch. 364, Section 2 as amended 1967, which uses vague generalities, and he may attempt to apply a test which, while giving the appearance of being objective, deals with the subjective. He has the same plight as the fact finder in discerning obscenity; he must be able to respond vicariously. Some may argue that the law of obscenity is adequately defined, but as a practical matter, we cannot expect theatre managers to properly apply the Roth test before showing a movie. What is more preposterous, we cannot expect a publisher to consider the standards of every community in the country before he releases a book into national circulation.

(3) ARE UNORTHODOX IDEAS PROTECTED?

One of the anomalies that the Roth test has created is that the strict application of it necessarily results in censorship of material which appeals to those with "normal or natural" sex instincts, and in immunization of material which would appeal to the perverted or sexually aberrant. This is probably not a desirable result from the point of view of any modern day "Anthony Comstocks." The Roth Court said:

All ideas having even the slightest redeeming social importance - unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion - have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of First Amendment is the rejection of obscenity as utterly without redeeming social importance.

As Mr. Justice Harlan dramatically commented on the majority decision: "the Court assumes that obscenity is a peculiar genus of 'speech and press' which is as distinct, recognizable and classifiable as poison ivy is among plants."

Despite the fact that the Court is still faced with the question of defining obscenity, it must be concluded that the Roth test protects a far greater scope of
ideas than did the Hicklin test. Under the Roth test, ideas which are vulnerable to censorship are limited to those which appeal to prurient interests, i.e., which create an itching, desire or curiosity of a lustful nature. Under the Hicklin test, any idea, which would tend to corrupt those who could gain access to that idea, could have been denied promulgation. A few examples of pressure group censorship may serve to emphasize the threat of encroachment upon the First Amendment if a broader test than Roth were used: In a high school library in Phoenix, Arizona, Brave New World, The Magic Mountain, and The Short Stories of Ernest Hemingway have been placed on the restrictive list. In Little Rock, Arkansas, a private group attempted to exclude Exodus and a book called Great American Negroes from the school libraries. In California, a pressure group attacked Richard Wright's Black Boy and works by Carl Sandberg, John Steinbeck, and William Saroyan. A spokesman was quoted as saying: "a common trait of atheistic totalitarianism is an intense preoccupation of sex."

Fortunately, the present test affords scant weaponry for those desirous of censoring certain political, ethical, or ideological concepts through the guise of an all-encompassing definition of "obscenity."

(4) WHAT CONSTITUTES REDEMPTION?

The Supreme Court has been emphatic in the view that if the dominant theme of the material in question appeals to the prurient interests of the average person in the community, and is patently offensive to the standards of that community, the material will, notwithstanding, receive constitutional protection unless it is utterly devoid of socially redeeming value. The test does not require that a fact finder weigh the harm which may result with the potential contribution to society. If there is any redeeming value whatsoever, under Roth, there can be no censorship.

At the Sasso trial, Judge Adlow became involved in a "debate" with one of the defense's expert witnesses, Judith Crist. Judge Adlow had voiced his opinion that probably every movie has some redeeming value. Miss Crist, who reviews 500 films yearly, retorted: "I can show you films that have no socially redeeming value." She was referring to films which she had earlier defined as "pornographic" - viz. "the depiction of something in completely inhuman terms, terms which bear no relation to reality, terms which are so thoroughly contrived, that they arouse no feelings." Miss Crist differentiated between erotic and pornographic, defining the former as "seeing or hearing something happening to someone with whom you empathize so that you share their sexual feeling," and the latter as "dehumanization of the characters so that there is no empathization but only a stimulus designed to titillate the moron." Miss Crist, after informing Judge Adlow that she advocates self-censorship, suggested that if there must be external censorship, it should effect the pornographic and not the erotic.

The issue of what constitutes redeeming value is further obscured when drama or movies are dealt with in cases where Art critics testify as to artistic achievement. The play version of The Killing of Sister George with Beryl Reid in the lead-
ing role played in London for 18 months and was later brought to Broadway where Miss Reid was recipient of the Toni award for her 1966-1967 performance. She is a respected television comedienne in England and the appearance in her first movie, The Killing of Sister George, certainly proved her competency as an actress. Watching Miss Reid act is to many an enriching experience and in this sense there is redeeming value. However, if acting can be taken to redeem a movie or play, obscenity will be based upon form instead of substance. It would be possible that the same script could be judged differently in accordance with differences in acting ability.

Since tastes are so diversified, Judge Adlow may have been correct when he stated that practically everything has socially redeeming value. If one looks long and hard enough, he is almost certain to discover some redemptive aspect of a publication, play or movie, and some redemptive aspect is all that is necessary.

CONFLICTS CREATED BY ROTH

The dissents of Justices Douglas and Black in the Roth case were vigorous in their criticism of a system of censorship which questions whether the material would tend to provoke lustful thoughts without consideration of whether those thoughts would be translated into anti-social conduct. The two dissenting justices argued that freedom of expression must be preserved unless there is a "clear and present danger" of anti-social conduct emanating from that expression. Mr. Justice Douglas, writing for the dissenting justices, stated:

I can understand (and at times even sympathize) with programs of civic groups and church groups to protect and defend the existing moral standards of the community. I can understand the motives of the Anthony Comstocks who would impose Victorian standards on the community. When speech alone is involved, I do not think that Government, consistently with the First Amendment, can throw its weight behind one school or another. Government should be concerned with anti-social conduct, not with utterances.

There has been a wealth of research aimed at establishing correlations between books, magazines, and movies high in sexual and/or violent content, and behavior which is sexually deviant and violent.

The Harvard Law Review article, Judicial Censorship of Literature (52 Harv. L. Rev. 40 (1938)), was cited by Douglas in the Roth case in support of his argument that, based upon research by two authorities on juvenile delinquency, it was discovered that books had very little effect upon the behavior of juvenile delinquents since they are less inclined to read. Of course, the effect of material upon juvenile delinquents is of no concern if the Roth "community" test is applied. Mr. Justice Douglas missed the mark. However, Douglas premises his dissent upon the value of freedom of expression as something which should be protected in the absence of a proximate danger of anti-social conduct.
Many states and the Federal Government have conducted research projects in an effort to somehow measure the impact upon society of the prolificacy of violence and sex in movies, books, and magazines.

A Commission, set up in Massachusetts in 1957, was designed to investigate the effect of magazines and comic books upon juveniles. The Commission's Report, after acknowledging that a U. S. Senate Committee estimated the pornography trade in the U. S. to be $500,000,000 a year, commended the strides made by the comic book industry in curbing violence by self-censorship. The Report pleaded with other publishers to take a similar course. The Commission spoke of a need for censorship but judiciously avoided mention of whether pornography or violence cause anti-social conduct.

On the Federal level, in December of 1963, the Joint Committee for Research on Television and Children, consisting of representatives from the Department of Health, Education and Welfare, the three major television networks, and two university professors, was designed to assess the influence of television on children. This Committee evidently was even less successful than the Massachusetts Commission since it has not released any reports or recommendations.

On March 5, 1969, Senator Pastore (D. R.I.), Chairman of the Subcommittee on Commerce, sent a letter to the Secretary of Health, Education, and Welfare asking him to direct the Surgeon General to appoint committees to establish "scientifically insofar as possible what harmful effects, if any, television programs with crime and violence have on children." The difficulty involved in establishing a proximate cause between pornography and/or crime and anti-social conduct stems from the age-old "horse and cart problem." It is difficult, and heretofore it has not been possible, to determine with scientific accuracy whether someone's behavior is changed by pornography or whether he is predisposed in such a way that there is no real behavior change even though there is a response.

Some scholars advocate censorship of crime-inciting material in the absence of scientifically based correlations. Ernest van den Haag, Professor of Social Philosophy at New York University, and author of The Fabric of Society became appalled by a celebrated crime which had taken place in England, and in response wrote an article in Encounter Magazine (Dec. 1967), entitled Is Pornography A Cause of Crime? After a discussion of the crime, in which a couple compelled three children (ages 14, 12, 10) to pose for obscene pictures, recorded their screams and pleas for mercy, and killed the children, van den Haag notes that the library of the couple was composed almost exclusively of sexual and sadistic material - the most prominent of which were the works of the Marquis de Sade.

Van den Haag syllogizes that "obviously not all readers of de Sade become sadists; nor do all non-readers lead blameless lives. It follows that reading de Sade is not sufficient to become a sadist, nor necessary. It does not follow that reading him has no effect, . . . " The article then, conceding that "lewdness and prurience are matters of opinion," states that the distinction between pornography
and literature is not as difficult to define as some lawyers make it. He calls for governmental censorship of the pornographic which tends to dehumanize characters, reducing them to objects devoid of feelings.

In terms of classical Pavlovian conditioning principles, and the more modern Stimulus - Response School of Psychological Thought, the curtailment of pornography should be of prime concern. Consistent reading or viewing of material in which sexual offenses or violence are perpetrated upon "objects" depicted in inhuman terms may lead to internalization, and possibly responses on the part of the reader or viewer.

The Roth test, in its emphasis on the arousal of thoughts, arguably includes within the realm of censorable material, that which may have an innocuous effect upon society. In some cases, the thoughts which the test is aimed at preventing may have no impact upon the behavior of the viewer. If society would therefore not be effected, who or what is the test, in these cases, protecting.

Since the test de-emphasizes the translation of thoughts into conduct, material which (according to psychology) may very well have a deleterious effect upon society may be free from censorship. For example, violence for the sake of violence is clearly not censorable under the Roth test.

OTHER CONFLICTS NOT YET RESOLVED SINCE ROTH

(1) SHOULD THE JUDGE OR JURY DETERMINE OBSCENITY?

Justice Douglas has argued that the jury, as a microcosm of the community, should test for obscenity, and not reviewing justices who would be imposing their own standards. Yet as a practical matter many attorneys, like Arthur Gilman, attorney for Joseph Sasso, will waive the privilege of jury so as not to run the risk of drawing recalcitrant fact finders whose concern for their children's moral well-being may be disproportionate to their receptivity to artistic achievement.

(2) WHO OR WHAT IS THE DEFENDANT?

Chief Justice Earl Warren, though concurring in the result of Roth, has consistently held that a conviction can be based only upon the conduct of the defendant. As mentioned before, the conduct of the defendant was not even alluded to in Boston v. Sasso. The net result is that a conviction is based not upon defendant's conduct but upon the merits of the movie or publications involved. Despite Chief Justice Warren's consistency, his argument has largely gone unheeded and has gathered little support.

(3) ADMINISTRATION OF JUSTICE

Inherent within our judicial system is the concept that a man is presumed inno-
cent until proven guilty on the merits. This has been carried over so that a movie or book is not to be denied exposure unless it is judged obscene on its merits. Inherent within a system of successful censorship is the necessity for swiftness and secrecy. The collision of these two principles leads to undesirable results from many points of view.

This is exemplified by the mechanics involved preceding the Boston v. Sasso trial. At the request of Captain Joseph Jordan of the Boston Vice Squad, Detective Garrett Flanagan was sent to view the film. In his opinion the film was obscene. Shortly after, on February 28, Municipal Court Judge Vincent Mattola issued the criminal complaint and the vice squad confiscated the film and arrested the theatre manager, Joseph Sasso. Defense attorneys Gilman and McLaughlin, on the same day, obtained an injunction from Justice Spiegel of the Supreme Judicial Court enjoining the confiscation of the film before the merits of the case are decided. As a result, those intent upon censoring have indirectly and involuntarily conducted a very successful "advertising campaign" for a movie which may have gone unnoticed by all except those authentically interested in its artistic merit and educational value.

CONCLUSION

Laws, whether statutory or decisional, should be made with a view towards protecting segments of society from threats of harm. The test posed by Roth in 1957 has itself been tested. Not only has the difficulty of applying the standard been severely criticized by legal scholars and practitioners, but whether the standard properly serves the interests of society is open to question.

The fact that there is disillusionment with the present law of obscenity does not lead to the conclusion that there is no need for governmental censorship in any form. Advocates of self-censorship argue (sometimes with appealing logic) that the only duty government has is to require publishers and theatre managers to warn potential customers that the publication or movie offered may offend certain individuals. It follows that if a potential customer chooses to purchase the publication or view the movie, he has chosen not to heed the warning and has assumed the risk of subjecting himself to that which may offend him. Proponents of this argument misconstrue the role of government, not in what the government should attempt to protect in its role as censor, but in whom it should try to protect. If the class of persons within the scope of protection is limited to potential customers, waivers by these potential customers, theoretically, leaves government with no one to protect. In theory, this may be true despite the legal proposition that consent is not, in all cases, a defense to criminal conduct. However, the scope of persons protected should be broader. It should extend to all of society whenever there is a threat of criminal conduct by people who may be adversely effected by the material.
Testing for whether a dominant theme presents a clear and present danger of socially reprehensible conduct by significant segments of a likely audience would not be free from difficulty. With the guidance of psychology it is a plausible test, the application of which, unlike the Roth test, may prove productive.

The inadequacy of the Roth standard is based upon several factors, most of which stem from the fact that it is a test for obscenity and obscenity alone. In formulating a more fruitful test, the search should not be limited to that which is of prurient interest to the average viewer. By the same token, much of what may be prurient to many people should not be censored since the only reaction caused may be the prurieny itself. Not only is prurieny relative and therefore difficult to determine, but it is not wrongful unless it leads to other conduct. With this last proposition, many moralists and theologians may disagree. Whether prurieny, in and of itself, is wrong, is a legitimate moral question. Legislators and judges, in their capacity as such, should not be attempting to answer that question.

KENNETH J. RAMPINO
Class of 1970

PRODUCTS LIABILITY by Warren Freedman Esq.

The following article is written by Attorney Warren Freedman, of New York City, as a commentary on two recent California Supreme Court findings, Elmore v American Motors, and Walter v American Motors.

Once again the products liability defense bar has ample justification for viewing the California Supreme Court as the uncompromising crusader for the consumer, for this Court has again refused to consider balancing the equities between a consumer, a product manufacturer, and a bystander or stranger. In two consolidated personal injury and wrongful death actions growing out of an automobile collision, the California Supreme Court completely "reworked" the facts of the case so as to extend the doctrine of Strict Liability in favor of a bystander against a product manufacturer and a retailer. According to the Court:

"If anything, bystanders should be entitled to greater protection than the consumer or user where injury to by-
standers from the defect is reasonably foreseeable. Customers and users, at least, have the opportunity to inspect for defects and to limit their purchases to articles manufactured by reputable manufacturers and sold by reputable retailers, whereas the bystander ordinarily has no such opportunities. In short, the bystander is in greater need of protection from defective products which are dangerous, and if any distinction should be made between bystanders and users, it should be made, contrary to the position of defendants, to extend greater liability in favor of the bystanders."

The trial courts had granted defendants' motion for nonsuit at the conclusion of the plaintiff's case and dismissed the jury, and the California District Court of Appeals had upheld the nonsuit as having utterly failed to establish any "defect" in the Elmore vehicle, which defect was the proximate cause of the accident. Accordingly, the trial courts would not even consider the question of whether Strict Liability extends to the so-called bystander. Indeed, the California Supreme Court manipulated the facts so as to sanction its crusading principle that the doctrine of Strict Liability should be extended even to those persons wholly outside of the zone of foreseeability. Obviously, the California Supreme Court ignored the vigorous dissent of Justice O'Hara of the Michigan Supreme Court in Piercefield v. Remington Arms Co. (375 Mich. 85, 1965): "Nor do we care to become, without a clearly demonstrated need, judicial pioneers ordaining new theories for recovery merely because regrettable injury has occurred . . . . (We are not convinced that we should extend our doctrine . . . to bystanders outside the distributive chain." (pp. 93, 94)

In brief, the facts (as presented in the California Supreme Court opinion) were that on or about March 16, 1962, Mr. and Mrs. Elmore purchased a 1962 Rambler American station wagon from defendant, dealer Mission. The car was serviced by Mission after it had been driven about 1,500 miles. Thereafter Mrs. Elmore noticed Shimmying when she drove the car between 60 and 65 miles per hour. She advised her husband about the Shimmying, but when he drove the car he barely detected the Shimmying and did not think it was sufficiently serious to warrant taking time from work to return the car for service. The car had then been driven 2,751 miles when the accident occurred shortly after noon on April 29, 1962, a bright clear day. There was testimony from a driver who was following the Elmore car for about 1-1/2 miles before the collision that the Elmore car was traveling about 45 miles per hour and that as the Elmore car started to pull out, there were "sparks underneath the car like something fell . . . . like something in front was dragging . . . . like a big hunk of metal suddenly hitting the ground." The Elmore car started "fishtailing" and went over the wrong side of the road and struck the Waters vehicle. A mechanical engineer and automobile expert, in essence, testified that some piece of metal from the Elmore vehicle came against the roadway and gouged it. (He did not, however, examine the vehicle.) Another witness, a licensed engineer, examined the Waters and Elmore vehicles at the wrecking yard (apparently eight days after the accident) and gave his opinion that the drive shaft
fell down while the Elmore car was moving, and that normal wear and tear or "anything the driver did" would not cause the drive shaft to break down in a vehicle driven only 2,700 miles.

The California Supreme Court ruled that plaintiffs' injuries "were proximately caused by a defect ("the disconnected drive shaft") in the Rambler which existed at the time of sale." The Jakubowski case (199 A.2d 826), the leading New Jersey opinion on the necessity for direct evidence of "defect," was distinguished upon the basis that there was evidence in the New Jersey case that the "defect" was due "to mishandling by prior users." In the instant case, as incredible as it appears, the Court found that "there is no evidence that anyone handled the drive shaft after the sale of the Rambler, and the evidence furnishes an inference that a dangerous condition existed prior to sale." Truly Justice Peters and his fellow Justices had no reservation whatsoever in twisting the facts: (1) Mrs. Elmore's husband had previously driven the car as had the dealer Mission; thereby at least two persons had indeed handled the drive shaft after the sale; and (2) the "dangerous condition," which may have existed prior to sale, i.e., the piece of plastic impregnated tape in the gearbox, had little if anything to do with the accident, for it was the disconnected drive shaft (which may have disconnected long after the sale) that allegedly caused the accident.

It should be that under article 2-318 the Uniform Commercial Code, a seller's warranty is extended only to any natural person who is in the family or in the household of the buyer, or who is a guest in his home, if it is reasonable to expect that such a person may use, consume, or be affected by the product and who is injured by breach of the warranty. The Restatement (Second), Torts, the veritable Bible of Strict Liability enthusiasts, expresses no opinion as to the application of 402 A to injuries or harm to persons other than the ultimate user or consumer, or to their property. Official Comments under 402 A spell out the necessity that the product may be "expected to reach the user or consumer in the condition in which it is sold." The fact that the product "can be damaged in the course of use and thereby become unreasonably dangerous" (Jakubowski v. Minnesota M & M Co., 42 N.J. 177, 186, 1964) is perhaps a major reason for refusing to extend the benefits of warranties to mere bystanders, strangers, or members of the public. If the warranty is to be a "vehicle of social policy," as expressed by Harper and James (2 Torts 1571), then the interest to be protected is that of the consumer or user of the product and not the stranger or bystander. Accordingly, such warranty protection necessarily excludes bystanders, complete outsiders, and other third parties who happen to be in the path of harm when the alleged danger culminates in an accident. The injury is not a foreseeable risk of the manufacturer's enterprise, and considerations for imposing such risks on the manufacturer without regard to his fault do stop with those who undertake to use or consume the product. To extend the warranty benefits (and Strict Liability) beyond the user or consumer presents a distortion of law and equity wholly incomprehensible in terms of "social policy."

It should be discerned that the instant case involved an automobile (certainly a dangerous instrumentality); similarly, the two cases cited by the California Supreme Court involved dangerous instrumentalities: Piercefield v.Remington Arms Com-
pany (133 N.W.2nd 129, Mich.) involved an allegedly defective shotgun shell which exploded, and Mitchell v. Miller (214 A.2d 694, Conn.) involved a rolling automobile. In direct contravention to this position of the California Supreme Court is Hahn v. Ford Motor Co. (126 N.W.2d 350) wherein the Iowa Supreme Court in 1964 refused in this automobile case involving defective brakes to permit the Strict Liability extension to the bystander. Accordingly, it should be obvious that the instant Elmore case, of necessity, is limited to a product which is inherently dangerous, and does not apply to the ordinary household or consumer product. In addition, the "zone of foreseeability" which is essential to identify the "foreseeable plaintiff," must be reasonably determined in the sense that the product manufacturer must have reasonably anticipated or reasonably known that proper use of the product would entail danger to a given bystander who was expected to and actually did come into contact with, or was adversely affected by the product. The burden of proof identifying the foreseeable plaintiff remains upon that plaintiff to bring himself into the "zone of foreseeability." Also, let us not overlook such tortious defenses to Strict Liability as contributory negligence, assumption of the risk, last clear chance, intervening negligence, et al., all of which defenses absolve the product manufacturer from liability to the bystander. The fundamental question remains, "How 'Innocent' Is The So-Called Innocent Bystander?"

CONSUMER CREDIT REGULATION

By: ALFRED I. MALESON

On July 1, 1969, several parts of the Federal Consumer Credit Protection Act will go into effect, signaling the entry of the federal government into fields of regulation previously occupied solely by the states. This will be the culmination of a ten-year effort to provide federal legislation affecting consumer credit. For the states, it will mark the beginning of frantic efforts to revise and consolidate masses of existing legislation and to adopt new legislation.

Prior to World War II, abuses of fair practices with regard to consumer credit did not pose any significant national problems. Aside from the financing of homes, credit purchases were miniscule by today's standards. Thirty years ago, only about 20% of the purchases of automobiles were on credit. Today, cash sales are the rarity. Varieties of appliances which might be sold on credit did not compare with those that today are commonplace even for less-than-affluent members of society. Credit purchases of non-durable consumer goods through revolving charge accounts and open ended bank credit was virtually unknown. Consequently, there was no movement for federal legislation.

During World War II, federal control of credit sales was undertaken. The purpose was to discourage demand for consumer goods which were in short supply, not to protect the consumer from any sharp practices. This control was provided by the Federal Reserve Board in what was known as "Regulation W." Regulation W prohibited credit sales of consumer goods unless a stated minimum down payment was made and unless the balance remaining was payable within a relatively short period of time. This regulation was again adopted during the Korean War. It was lifted in 1952, even before that war ended, because it was found that consumer goods were not in fact in short supply.
During the Eisenhower administration, discussion of possible federal legislation still centered around the Regulation W concept. However, the economic problems of that period seemed to require an increasing demand for consumer goods. The problems of dealers with oversupplies of automobiles and other goods outweighed the needs for consumer protection. Overpurchasing by consumers became the patriotic thing to do. This was hardly a propitious time for congressional action that might curb spending, and no effective movement was evident.

By 1960, consumer credit and personal bankruptcies both had increased at such alarming rates that some sort of federal consumer protection became a vital issue. This time, hearings concerned the unfair advantages taken of consumers by sellers and finance companies. The control suggested was to meet the new peacetime problems. "Regulation W" solutions were inappropriate. The first "Truth in Lending" bill was introduced in Congress at the beginning of 1960. During the Kennedy administration a Consumer Advisory Council was formed, and at the beginning of the Johnson Administration, a special Assistant for Consumer Affairs was appointed. Support for the Truth in Lending bill came through the Council and from the President, but Congressional action was slow.

Congressional hearings in the mid-1960's had an immediate, though unexpected effect. The Department of Defense became so shocked at the testimony of sharp practices given by servicemen that it issued a directive prescribing comprehensive standards of fairness for contracts of sale involving military personnel. These standards contained both disclosure and substantive requirements. They provided that no deficiency could be claimed after a repossession, that no defenses could be waived in favor of finance companies, and that orders could be cancelled without penalty before receipt of the goods. While these standards might be applied only to sellers doing business on military posts, other sellers who committed flagrant violations could find that their places of business might be put off-limits to military personnel. In addition, they would not get the cooperation of the military in attempts to collect their debts.

In January, 1967, seven years after the introduction of the first Truth in Lending act, a second act was introduced in the Senate. The major purpose of this bill was to define credit charges in terms of a true annual rate of interest so that consumers could make an informed use of credit. (Massachusetts had already adopted such a measure, the only state to do so, and this had been followed by additions to the Department of Defense Directive.) Without a requirement of this type, sellers and lenders both had used totally misleading figures in quoting credit charges. Even banks participated in the deceptive practices, advertising loans as 4%, 5%, or 6% per year when that amount would be added to the initial balance, and when repayments of the balance would begin at the end of one month so that the borrower would have the use of the full principal for only one month. Different methods of stating the charges compounded the problem. Testimony had made it obvious that the method of stating the charges often enticed the consumer into making purchases that he might not otherwise have made, or in using a form of credit far more expensive than other available forms.

As this bill worked its way through Congress, its purposes were expanded. When it was finally enacted in May, 1968, it had become known as the Consumer Credit Protection Act. This act contains four parts, or "Titles." Title I covers the disclosure of credit costs and it retains the short title "Truth in Lending
Act.” (In addition to requiring disclosure of the true annual interest rate both in the contract and in advertising, this title also indulges in a small amount of regulation. It provides that if a consumer’s residence is to be used as security in any consumer credit transaction, he shall have the right to rescind within three days of the time of the making of the contract or of the disclosure.) It is this title which becomes effective on July 1, 1969.

Title II has quite a different purpose. It creates a new federal crime for engaging in “extortionate credit transactions.” These are defined as credit transactions in which violence or other criminal means of enforcement are contemplated in the event of default. Authority for the creation of this federal crime is stated to come from the interstate commerce clause, because of the interstate nature of organized crime which indulges in these transactions, and from the power of Congress to provide effective laws concerning bankruptcy.

Title III sets limits upon garnishment of wages in the collection of consumer debts. Authority for this also is stated to be derived from the powers of Congress to regulate commerce and to provide for bankruptcy laws. This title does not become effective until July 1, 1970.

Title IV creates a National Commission on Consumer Finance. This commission will make studies of consumer credit and will report to Congress from time to time, with a final report by January 1, 1971. It can be anticipated that proposals for additional legislation will be made quite soon!

A large number of federal agencies will be involved in the administration of the Consumer Credit Protection Act. These include: the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Comptroller of the Currency, the CAB, FAA, ICC, and FTC, and others!

Much of what is covered in this act touches existing state legislation in varying degrees. In nearly all cases, the effect will be cumulative. In the case of the requirements of disclosure contained in Title I, however, the act permits the Board of Governors of the Federal Reserve System to exempt from its coverage any classes of credit transactions covered by state laws with substantially similar requirements, provided that the state has adequate provisions for enforcement. It is for this reason that in the past months the legislatures of a number of states have been asked to adopt a new, comprehensive uniform law, the Uniform Consumer Credit Code. (The abbreviation for this is UCCC. The stuttering effect can be avoided by calling it the “UC3,” spoken as it is written, “You See Three.” Some writers call it the less euphonious, “U3C.”)

The UC3 was prepared by a special committee established in 1963 by the National Conference of Commissioners on Uniform State Laws. The initial purpose was to achieve uniformity among the various states. In addition, it was intended to bring uniformity to each state, to replace the piecemeal legislation that had grown to cover different phases of credit transactions, often in conflicting manners. As Truth in Lending legislation began to be discussed in Congress seriously, the purpose of the UC3 changed, at least for some of its sponsors. The Credit industry helped to finance the project, in the hopes that this might forestall passage of any federal legislation! When Congress did enact the Consumer Credit Protection Act, the focus of the UC3 changed again. It was to produce something which would be acceptable to the Federal Reserve System to substitute for the disclosure portion of the CCPA, and thus to retain local control of the credit transaction.
The UC3 has become a paradoxical document. It is not limited to disclosure, but it covers terms of the contract as well, to provide real protection for the consumer despite his propensities for entering into harsh bargains. It governs conduct after default also, to prevent forfeitures, forceful repossessions, and other things. Yet, it was sponsored, at least in part, by the credit industry, and it has been opposed by many consumer organizations! A leading consumer organization, Consumers Union, has stated: "We don't think any state, no matter how bad its existing credit laws, should adopt the UCCC without extensive amendments in favor of consumers."

The most often criticized provision of the UC3 is the provision limiting the maximum interest or credit charges. The theory of the framers of this act was that competition ought to set the rates, short for "extortionate" rates. The maximum rates were set so high that there would be plenty of room for variation. Critics claim, however, that the maximum quickly becomes the norm. This, it has been stated, has been the experience in Massachusetts with most of its regulations of interest rates.

The UC3 has a number of interesting features, and it does bring together many concepts of consumer credit protection that have never been treated together before. Among its salient features is a provision that if dollar amounts are set out in the act, (for example, to distinguish among loans of different magnitudes to permit sliding scales of interest) the amounts may change with changing price indexes. This type of provision could eliminate the great number of changes which Massachusetts makes each year in its legislation controlling banking practices.

The UC3 prohibits a type of sales practice already declared fraudulent in Massachusetts - the "referral" scheme, by which the purchaser is promised commissions on sales made in the future to people to whom he refers the salesman. If such a practice induces the sale, this code permits the buyer to keep the goods without any obligation to pay.

One common complaint of consumers is that they are sometimes pressured into signing contracts for things they really do not want or need. The Massachusetts Retail Installment Sales Act, enacted in 1966, recognizes this problem by giving the purchaser a chance to cancel without penalty if the salesman has come to him. (If the buyer goes to the seller's store, it is less likely that he may have purchased something which he did not want because of high pressure tactics.) The Massachusetts statute, however, gives the buyer so little time to cancel and it requires him to exercise his option in such a technical manner that it is doubtful whether many buyers will ever be able to benefit from it. The Massachusetts clause is an obvious result of compromise between those who wanted real protection and those who did not want to give any. The Federal act, as already mentioned, provides a meaningful cooling-off period of three days, but it is limited to cases in which a residence is security for the credit transaction. The UC3 would provide a three day period for any "home solicitation sale." Furthermore, the method by which the buyer is to give notice of his intention to cancel is a reasonable one, unlike the gibberish of the Massachusetts act.

The UC3 prohibits confession of judgment notes, as Massachusetts did nearly forty years ago. It prohibits the use of negotiable instruments so that a buyer will not be stuck with the "holder in due course" concept, forced to pay a finance company even though it turns out that the merchandise he purchased is defective.
It provides an optional rule concerning waiver of defenses against purchasers of security agreements. One option prohibits such waivers. The other adopts the type of protection used by New York, whereby a buyer is given a period of time to disclose his defenses after he has been notified of the assignment of his account to a finance company. If he does not complain within that time, the defense is cut off. New York makes the period ten days. The UC3 makes it a more realistic three months.

Consumer credit protection in Massachusetts is scattered through many parts of the general laws, and it has a long history. It is very unlikely that all of this will be discarded in favor of the UC3 in the foreseeable future. However, the impetus brought about by the promulgation of the UC3 as well as the emergence of federal legislation requires some review, coordination, and updating of our legislation. The attention to consumer problems drawn by these developments has even had its effect in the curriculum of the law school, in which the traditional course has been called "creditors' rights." Provision must now be made for courses emphasizing consumer rights. Consumer credit has become the subject for the avant-garde among commercial lawyers.

THE ILLUSORY PROMISE OF BASIC PROTECTION

By: MEL LaMOUNTAINE*

On August 15, 1967, the Massachusetts House of Representatives voted in favor of the Basic Protection or Keeton - O'Connell Plan. The ensuing public debate brought many of the Plan's flaws to light and the House subsequently reversed its position and joined with the Senate to defeat the Basic Protection Plan.

In an effort to cloud the true issues, proponents of the Plan have unfairly charged that members of the legal profession oppose the Plan because it would reduce legal fees from automobile injury tort claims. Furthermore, an attempt is again being made to secure the Plan's adoption while the general public is still uninformed of the most important issues in the controversy. It is imperative that the public understand fully the changes that would result if Basic Protection were adopted.

Under our present tort system, a claimant who seeks to recover for injuries from auto insurance premium dollars must show that he was injured as a result of the negligence of another and through no fault of his own. If these facts are not established, he will have to depend upon his own resources. This method of compensating auto accident victims indicates a recognition of the principle that a man should not be allowed to profit from his own wrongdoing.

Professors Keeton and O'Connell, on the other hand, believe that all auto accident victims should receive some compensation, regardless of fault. They would abolish (at least partially) the traditional concepts of negligence and substitute the philosophy that it does not matter how you drive your car, you are still entitled to recovery.

In order to provide recovery to an increased number of claimants, a method must be devised to finance payments to those such as the drunken driver who is injured in an auto accident and who will become eligible to recover under Basic Protection. The Plan attempts to provide the necessary funds by drastically reducing the benefits that can be recovered and changing the type of insurance policy that will be purchased. Damage awards will

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be given to less deserving victims - the negligent driver entitled to recover under the Keeton-O'Connell Plan - at the expense of deserving victims, whose benefits will be sharply reduced in order to finance the increased number of payments.

Under our present system, the claimant who proves that his injuries were caused by another's negligence is entitled to full compensation: medical expenses, loss of earning capacity and pain and suffering. Basic Protection would require the victim's own insurance company to pay the claimant's "net economic loss." To arrive at "net economic loss," a claimant must deduct from medical expenses, wage loss and other expenses:

1. All amounts received or which he is eligible to receive from collateral sources (Blue Cross, Blue Shield, union fringe benefits, sick leave benefits, etc.).

2. The first $100 of economic loss in excess of collateral sources or 10% of all work loss, whichever is greater.

3. Fifteen percent of the actual wage loss in excess of the amounts previously deducted in 1 and 2.

4. All payments for pain and suffering.

The inherent injustice of the proposed Plan can readily be seen in the following example. Assume a drunken driver lost control of his car, ran onto the sidewalk and struck a five year old girl, causing injuries which included permanent facial scarring. Although her medical expenses total $500, she has no loss of earning capacity. If her family has Blue Cross and Blue Shield, her medical expenses would be covered. Since she has no "net economic loss" and neither pain and suffering nor disfigurement are compensable under Basic Protection, she would receive nothing from the insurance carrier. She cannot recover from the driver on a liability basis because he has an exemption from liability to the extent of the first $5,000 of pain and suffering.

Assume now that the driver hit a tree and was injured. If he is unable to work at his $100 a week job for a month, and incurs medical expenses of $250, his economic loss would be $650. In the absence of collateral sources, he will be entitled to recover for "net economic loss." He will be required to deduct 15% of his wage loss and from the remaining sum, an additional $100. Thus the drunken driver will receive $490 while his victim with permanent scarring receives nothing.

If the victim had been the driver of another car and this victim had been responsible in obtaining medical insurance and wage loss protection, the result would be similar. It is apparent therefore, that Basic Protection would require the purchase of a policy which is vastly different from our present compulsory policy.

Perhaps the greatest misconception about the proposed policy concerns its very nature. It is essentially an accident and health policy not a liability policy. Undoubtedly, its purchase would represent an unnecessary duplication of coverage the purchaser already has. Although the coverage might be purchased twice, it has been shown that benefits would be drastically cut.

Although, the Plan gives an exemption from liability for pain and suffering up to $5,000, it does not prevent an inspired person from bringing suit against a driver for pain and suffering in excess of that amount. Since the proposed policy is not a liability policy, the holder will not be afforded the protection of being defended by an insurance company who will have to pay if the holder is liable. (Recovery under the Plan is against your own insurer.) Even if the defendant is success-
ful, he will have to incur great expense, such as hiring lawyer, medical experts and investigators to do the work now done by insurance companies for the holder of a compulsory.

While there are many other objections to the Keeton-O'Connell Plan, the public should be aware of what it will receive for its premium dollar. The Keeton-O'Connell Plan would cost the good driver more and reduce his benefits, allow negligent drivers to benefit at the expense of their victims, completely reverse the present rating system so that today's bad risk driver would become tomorrow's good risk, and deprive motorists of defense protection by an insurance company in the event a suit was instituted against them.

SOME THOUGHTS
on
THE STUDY OF LAW

by Charles P. Kindregan*

Professor Charles P. Kindregan has been making a number of contributions to the study of legal-medical aspects of human reproduction. In addition to his studies of genetics and sterilization which have been published in magazines and law reviews in the past few years he has just finished a major study of the law governing eugenic abortion which will be published in the next issue of the Suffolk University Law Review. His latest book THE QUALITY OF LIFE: REFLECTIONS ON THE ETHICAL VALUES OF AMERICAN LAW includes studies of abortion, sterilization and transformationalist eugenics; this will be published in the Spring by Bruce Publishing Co., a Division of Crown, Collier & Macmillan of New York. Several recent medical journals have noted his contributions to this field of study. In the November 1968 issue of Linacre Quarterly his ideas on the law of abortion are examined by Paul Harrington along with the ideas of Law Professors Byrn of Fordham and Louisell of the University of California at Berkeley. His contribution to a Symposium on Abortion Law was recently published in The Journal of Existential Psychiatry. He was recently invited by the editors of "Medical Science" to write an article on the law governing artificial insemination by donor. Professor Kindregan's writing on conception control in his book A THEOLOGY OF MARRIAGE, which is used as a textbook in over fifty colleges and universities, was praised by Cardinal O'Boyle as "excellent material for study and discussion" on September 8, 1968. Professor Kindregan has just been named to a panel of lawyers, psychiatrists and obstetricians which will study and discuss the law of abortion for the Catholic Archdiocese of Boston. In addition, he has lectured at Assumption College, Boston College and has been invited to give a two weeks series of lectures this summer in the Graduate School at LaSalle College in Philadelphia, Pennsylvania.

The study of law is the development of a way of thinking. A lawyer in America is above all a "generalist," a man who contributes to government, to business, to the advancement of civic development. He does this by contributing in a creative way to that great living thing we call "the law." As John W. Davis put it: "... we smooth out difficulties, we relieve stress, we correct mistakes, we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state." To make this contribution a man or woman must first be a lawyer. I am not referring

to passing a bar examination but to a mode of thinking. "Think like a lawyer," "write as a lawyer writes," "speak with a lawyer's vocabulary" professors have told students for generations. "At least make a noise like a lawyer," I once found myself telling a student who for ten minutes mumbled his way around a case analysis. In spite of this urging some men and women manage to achieve a J.D. degree without ever developing a lawyer-like way of thinking. To develop the art of thinking and communicating the law I have attempted to state four goals for the law student and some techniques which I believe will assist him in developing this art.

1) You must learn to analyze fact patterns. A lawyer deals with specific fact problems. There is no legal theory or set of rules which are divorced from a specific set of facts. There are human problems for which an imperfect solution has been provided by courts. These adjudicated cases create "rules," but the rules are never isolated from the fact patterns in which they are applied. The meaning and usefulness of these adjudicated cases for a solution to the client's problem is for the lawyer to discover and understand. The law requires its practitioners to think in terms of facts rather than theory. This is important for the student. It means that when he reads a judicial opinion he must first understand the circumstances which gave rise to the litigation. The student who learns only a "rule of law" from a case has learned nothing. The student who studies from a "can" (which stresses, and frequently misstates, the "rules"), who studies only "outlines," or who is unable to relate or discuss fact patterns in relation to legal theory is cutting the heart out of the case method of study. In your class notes, study notes, examination answers, term papers, briefs or memorandums, you should practice the art of building your thoughts on fact-pattern analysis.

2) Develop in yourself the skill of analogous thinking. Relating the problem you are now considering to the similar problems which have been adjudicated is the essence of the lawyer's act. Analogy is fundamental to the Anglo-American legal system. Through use of analogy our lawyers and judges provide both continuity in the law and the continued use of wise solutions to human problems which have developed over the years. Use of analogy is not, of course, mere technical comparing of cases; the best lawyer will make original, inventive and creative use of analogy to achieve the result he seeks. This art is one which can be developed by a student in only one way, i.e., daily, thoughtful use of analogy over a period of years in each problem which the student considers. The student who attempts to argue a case in class on the basis of disembodied rules of law or who attempts to write an examination question on the basis of abstract theories should know that he is not "thinking as a lawyer."

3) Learn to find answers yourself. A law professor does not exist to provide answers for students. Although he may fall short of the ideal, a law professor is a man wise in the law whose presence is felt in the students' life as one who channels the students' skill-developments in the right direction, challenges him to master the lawyers art, and asks the questions which stimulate legal learning. I have observed students who ask a professor questions the answer to which could easily be ascertained from other sources. Yet these same students will ignore or treat as unimportant questions asked by the professor. The paradox of this is that a professor usually asks a question to stimulate some vital thought process, while his answers to student questions may only represent a single man's view of the matter. A lawyer doesn't have a law professor in his back room. He will have to find the answers to his client's
problems through his personal skill and diligence. The law student must begin to develop this skill. His ability to use the tools of legal research can be developed only by actual and constant research in the library.

4) Develop the communication skills needed by the lawyer. A lawyer serves his client by written and oral communication. He advises clients, he files motions, he speaks to judges, he draws wills and trusts, he argues with internal revenue agents, he writes briefs, he negotiates with opposing counsel. A lawyer is a "word man." The use of language, in oral or written form, is basic to the daily practice of law. From the start of law school a student should practice writing clear, precise but legally meaningful essays. He should ask others to criticize his writing. He should review his notes and papers to determine what progress, if any, he has made. He should participate in class. The experience of class recitation, in the presence of a professor and other students who have studied the same problem is invaluable. If he is not reciting, he should listen to the student who is, and mentally criticize the recitation. I have met students who think they can develop lawyer-like skills without class recitation, by private study alone. For hundreds of years, in the Inns of Court and in American law schools, public recitation and discussion have been a cornerstone of legal education. The student who believes he can bypass this experience is in error. If he practices law, there will come a time when someone is going to pay him to stand up and advance a position. Hopefully, the lawyer will have learned something of this in law school, not at his client's expense.

EDITOR'S NOTE:

Frank G. Hutchinson received his A.B. degree from Lafayette College in 1966, and is presently a third year student at Suffolk University Law School. He has worked as a student intern with the Civil Branch of the New York Legal Aid Society and is presently a Law Student Administrative Assistant with the Mayor's Office of Human Rights in Boston. He has participated in the Legal Intern Program at Suffolk by working in the Office of the Suffolk County District Attorney and is Co-Editor-in-Chief of The Advocate.

EMERGENCY PLANNING for CIVIL DISORDER

by FRANK G. HUTCHINSON

The recent major civil disorders which have violently erupted in American cities have presented the broad and complex problem of the response of the law to civil disturbance and riot. Because the riot constitutes a total breakdown of law and order and jeopardizes our very system of law, the rights of the individual, and the protection of society, the legal profession has been particularly concerned and responsive to the need for immediate planning, not only to avert these disorders before they begin, but also to institute procedures to protect the rights of the individual once an emergency is in existence.

The American Bar Association Section of Criminal Law at the 1968 mid-year meeting, found an urgent need for such emergency plans to avoid a total breakdown in the system of criminal justice "when thousands of additional cases may be presented to the courts in a matter of days during civil disorders and emergencies." The Section of Criminal Law stated however, that the existence of such emergency plans should never prevent the safeguarding, protection, and guarantee of the right to lawful dissent.

On March 1, 1968, the President's National Advisory Commission on Civil Disorders (the Kerner Commission) published
its report. In order to insure prompt and efficient response to civil disorders, the report recommended proper planning by units of local government, including the allocation of duties and responsibilities and the creation of an effective common structure. On March 4, 1968, the Boston City Council, recognizing the Kerner Commission Report as the product of careful investigation serious thought unanimous interest in the contents of the report and its relevance to the city of Boston. After a series of public hearings, Mayor Kevin H. White established a Human Relations Task Force which studied the recommendations of these hearings and began the preparation of specific programs for implementation. From these studies have come proposals for planning and preparedness and the administration of justice in the event of civil disorder.

The Kerner Commission had indicated that the administration of criminal justice in the many cities which experienced disorders during the summer of 1967 very nearly collapsed. This was the result of long standing deficiencies in criminal court systems and of community failures to anticipate and plan for the emergency judicial needs resulting from such disturbances. The Commission discovered that the breakdowns in the administration of justice were characterized by few successful prosecutions for serious crimes committed during the riot periods, serious deprivation of legal right from the massive influx of arrested individuals, and judicial procedures oriented to man rather than to individualized justice. Absence of adequate screening procedures to distinguish the more serious offender from minor offenders, inordinate delays in arraignment and admission to bail, shortage of judicial and non-judicial personnel, probation officers, and experienced defense counsel, serious overcrowding of detention facilities, and failure to provide adequate food, water, toilet facilities, and medical treatment were all cited as contributing to the breakdown. Laboring over these problems, The Lawyers Committee for Emergency Legal Services During Civil Disturbance, an informal group of concerned Attorneys, recommended possible solutions during the summer of 1968.

In regard to the arrest or dispersal of individuals during the course of a civil disorder, the Lawyer's Committee recognized that arrests except for major crimes should be part of a coordinated crowd dispersal and riot suppression plan. General arrests for minor crimes or violations during periods of relative quiet would only act as incitements, and such arrests during general disturbances would only reduce the manpower available to the police for action on a broader scope. Thus the planners suggested that the Police Department prepare general categories of violations as guidelines for policemen to follow at the scene of the civil disorder to desist progressively from ordering arrests in less serious categories of violations as a disturbance intensifies. It was pointed out that wherever possible warning or dispersal techniques should be used before a final resort to physical arrest, except in cases of major crimes. The committee indicated that arresting officers should attempt to identify the offending party for a later warrant or summons, rather than completing the arrest by long detention and the resultant overloading of detention facilities.

The Lawyer's Committee favored the presence of an Assistant District Attorney at each police station in the area of civil disorder to determine whether charges should be bought and to represent the Commonwealth in recommending the conditions of release, whether on bail or on personal recognizance. Also prescribed was a bail attorney to gather all appropriate information bearing upon the probability that the arrested person will be in court when required. Bondsmen, photographers, and
fingerprinters should be available at each station to avoid the transportation problem of the offenders to police headquarters. A stenographer to transcribe interviews, a probation officer to facilitate early release, and the clerk of courts to draft and issue complaints, would all contribute to the fair but efficient administration of justice if present at the station during the time of the disorder.

Proposals were made to obtain commitment from attorneys to assist arrested persons at the police station and to aid as coordinators on behalf of the Mayor and the Police Commissioner. In view of possibilities that the emergency might last several days, the attorneys would be available on a rotating basis.

Concerning detention facilities, the recommendations pointed out that the maximum number of arrested persons that can be held at any one time in even the largest police station is thirty. The detention facilities at city prisons have space for 516 male defendants and 192 female defendants. The Suffolk County Jail is normally filled to two-thirds of capacity, and it was observed that facilities would be extremely crowded. Thus release on personal recognizance on a more extensive basis, and instruction of bail commissioners and assistant clerks acting as bail commissioners as to the policies underlying release on recognizance was advocated. Considered also was the establishment of emergency detention facilities in such places as gymnasiums or armories for those accused of minor offenses. The problems of feeding, housing and medical for large numbers of arrested persons were all emphasized as was the fact that the available facilities should be evaluated from the point of view of sanitary and public health problems.

A model emergency courts facilities act was proposed which would authorize the chairman of the administrative committee of the District courts, the Chief Justice of the Boston Municipal Court or the presiding Justice of any District Court (upon a declaration of the Mayor of a state of domestic emergency) to order any public building in the judicial district or contiguous district as the site for sessions of of any district, and to appoint a member of the Bar as a temporary assistant clerk for a period of not over fourteen days. This would alleviate the burden on the present court buildings and effectuate a more efficient administration of justice. Consideration was given to night court sessions but only for arraignment and bail setting purposes, the concentrated efforts being to move offenders out of the police station and into emergency arraignment facilities for these purposes. The Committee noted that people retained overnight should be brought into such an emergency arraignment facility not later than 12 to 18 hours following arrest. In order to accomplish these ends additional judges, clerks, and probation officers, and court officers must be brought into the area of disorder or in the less-approved-of-alternative, the alleged offenders would be taken outside the area where emergency facilities and personnel have been established. Finally The Committee emphasized that available courtroom facilities should be decided now by consultation with the justices of the appropriate local courts and their clerks. The Roxbury Court will normally handle between ten and fifteen trials in a morning and with five hundred cases and no additional facilities or personnel, cases would pile up for weeks. The recommendation was that a determination should be made in terms of the possible number of cases and the expected length of trial so that each defendant would be treated on an individual basis.

Of course, along with these proposals also runs the idea of prevention of riot
and disorder by attacking the reasons for these riots at their core. Mayor White has established The Office of Human Rights as an arm of his own office to try to effectively deal with such problems.

The Office of Human Rights functions to increase the living options available to the people of Boston by more adequately utilizing the city's physical resources to develop its human resources. A Manpower and Career Development Division of this office develops and coordinates job opportunities and training programs for careers in City Government and supports both municipal and state legislation to more greatly facilitate this end. A Contracts Compliance Division assures that contractors doing business with the city of Boston comply in all contracts with anti-discriminatory legislation. In this way the use of the city's operating functions will assist in the economic development of the total community. A Public Communications Division increases the contact of minds by means of seminars, conferences and special programs utilizing all aspects of public media. Finally the Administrative Services Division of the office provides response machinery to citizens grievances by coordination of complaints to proper City Departments; state agencies, outside civil rights groups and legal aid organizations.

Conclusion

The creation of an effective common structure can be established only by unity and cooperation between the courts, the prosecuting officers, the defense offices, the police agencies and all other agencies and individuals that form a part of the machinery for the administration of justice. By assisting these organizations, the legal community will contribute to the prevention, if possible, and to the control, at the very least, of these crises which threaten our constitutional system. Then we will better be able to protect the rights of the individual without sacrificing the protection of society during periods of civil turmoil.

The Safety Syndrome
by John R. Graham
Minister, First Universalist Church of Denver

Not long ago I participated in a debate on a proposed anti-pornography law for Colorado. One of my opponents, a strong supporter of this legislation, summed up his argument with these words: "Pornography is the chief cause of crime, adultery, juvenile delinquency--and venereal disease!" With this sweeping indictment, he urged passage of the bill.

Perhaps I should not have been surprised by such a statement but I was stunned to think that almost every social ill facing the nation could be attributed glibly to one single cause--pornography! My shock has continued as I have heard more and more people express similar views.

WHY ANTI-PORNOGRAPHY?

Why is there such a resurgence of interest in anti-pornography legislation in this country? What is producing the irrational fear that obscenity is "sweeping the nation"? Over and over again I hear the statement made that pornography is a 2 billion dollar a year business. Few persons stop to question the figure. If it were accurate, then each man, woman, and child in the United States spends $10 a year on pornography! Why are many people so eager to think that we are being drowned in a sea of obscenity?

There is no rational basis for the anxiety created by pornography. This is no different, of course, from anything
else. Anxiety by definition is irrational. The problem is not one of facts but of fear.

The day in which we live is characterized by considerable "disorder." Nothing is staying in place. All of which is to say that people are not meeting our predetermined expectations. Students' behavior is not as we think it should be. All of our traditional values are being called into question. Confusion reigns in the land. Such conditions are deeply disturbing to almost everyone.

As a society becomes seemingly more permissive and people are freer to make their own decisions, the level of anxiety is raised among those who have never learned to be independent. Because most people have not come to terms with the question of their own sexuality successfully, they are severely disturbed by changing sex attitudes and practices. For them pornography is a mirror. It depicts their unconscious fears about themselves. In order to maintain some sense of psychological equilibrium, the mirror must be smashed.

Rather than dealing with the anxiety in any creative way, it is much more comfortable to focus on something far more tangible and less threatening. As a result, pornography is their scapegoat. The control of this material provides some momentary resolution for their anxiety, although one suspects that the pattern will be repeated throughout their lives as they move from cause to cause in an effort to alleviate their fears.

ANTI-PORNOGRAPHY AS "LAW AND ORDER"

Implicit in the anti-pornography question is the "law and order" issue. An open society is frightening to most people. They may say that the fear is because of what others may do. In other words we want strong laws, more stringent police protection, and tighter court procedures in order to protect the public from harm. That's what we say, but is it really what we mean? I don't think so.

My contention is that pornography has a strong symbolic value for a majority of people in our society. If persons can feel that obscenity is being controlled, they are able to reassure themselves about their own safety and security.

For the most part the advocates of anti-obscenity measures believe that they are protecting society. My feeling is that such attempts are actually directed toward providing a safety for themselves. Deep down inside we are more concerned with what we might do in an anti-social way than with what we fear others will do to us.

It is my view that there is nothing accidental in the anti-pornography moves which can now be found in every part of the country. The basis of the action, however, is not obscenity. It is the internal fears which have been aroused by a society of rapid change.

CENSORSHIP

Amid all the emotionalism over pornography some rather serious questions need to be asked. The first of these has to do with the issue of censorship.

When it comes to "freedom of speech", the matter has nothing to do with whether or not pornography is "good" or "bad". That's a separate and important question. There is something far more fundamental involved. It has to do with ideas and who is to decide which ones are safe and which are unsafe for people. Who shall be allowed to determine the type of thought which is to prevail in the land?

Those who advocate some form of control on ideas remind us that no liberty is
absolute. For example, they are quick to point out that we do not have the freedom to shout “Fire!” in a crowded auditorium. What has this to do with “freedom of speech”? What they are talking about is an overt act and not an idea!

What this view represents is a growing tendency in our society to equate words and deeds. For too many people words are actually “things”. They are real -- even alive! The thought seems to be that words and ideas will destroy us unless we control these “symbols” in the same way that we curb “the criminal element”.

We often act as if the individual is at the complete mercy of every word or image that confronts him. Unless he is protected from so-called “unclean” or “damaging” ideas, he will be adversely affected by them. Perhaps this goes back to the old religious dictum that to think a “sinful thought” is the same as committing the act. How much guilt has been spilled upon human beings by this tragic idea?

Evidently we don’t trust ourselves -- or at least we aren’t ready to trust each other! During a program on obscenity, a woman said to me, “I’m not worried about your children. It’s those ‘dirty faced kids’ that concern me.” The message is clear. Somehow the deprived members of society are more susceptible to error than are the rest of us! The “good” people are affluent, responsible, and hardworking according to the old Calvinism. It seems as if we have not escaped from such outmoded views.

Although our society has attained unbelievable levels of technological sophistication, many continue to believe that certain “right thinking” individuals have an almost inherent right to determine the thoughts of others.

THE LEGISLATIVE PROCESS

Beyond the censorship issue is the matter of the legislative process itself. This is of supreme importance. More and more of our various legislative bodies are passing anti-pornography laws almost indiscriminately. Responding to the emotional pressures from constituents, many representatives endorse these proposals without question.

In Colorado a number of cities including Denver have enacted ordinances prohibiting pornography to juveniles and the state legislature has considered similar measures. Each proposal has contained a section stating that such material is “harmful to minors.” In other words, the legislation is founded on the premise that so-called pornographic or obscene materials such as books, magazines, and movies do in fact result in abnormal and anti-social behavior.

Anyone has a right to believe that pornography is harmful to human beings but to base legislation on mere opinion or emotional prejudice can be catastrophic.

Certainly many vice squad officers across the country report that pornography is found in the possession of persons arrested for sex offenses. But is this evidence? What else is discovered when such persons are arrested? As yet there is no logical way to establish a relationship between pornography and sex offenses on a scientific basis.

So, too, J. Edgar Hoover of the FBI maintains that pornography causes people to behave in an anti-social manner: Mr. Hoover may be an expert on law enforcement but this does not mean that he is necessarily qualified to establish a meaningful connection between obscenity and criminal arts.
The issue is simply that there is no scientific evidence to indicate that pornography is a causal factor in producing destructive acts or disturbances of the personality. It is interesting to note that the Kinsey studies of sex offenders and pornography offers a fascinating conclusion: "... We reiterate that pornography collections follow the preexisting interests of the collector. Men make the collections, collections do not make the men." (Sex Offenders, Gebhard, et al., p. 678) Interest in pornography may be a symptom of emotional difficulty, but there is no evidence to indicate that it produces problems.

Pornography is not the issue! To focus on devising methods of controlling obscenity only serves to avoid the question of the more hidden and deep-seated causes of mental disturbance.

There is still a strong tendency in our society to deny the reality of psychological problems. We like to believe that difficulties are objective and all that people need to do is to "think straight."

It is becoming increasingly clear that the legislative process is being used as a means of solving every human concern. As a result we are willing to ask legislators at every level to pass laws which are based on opinion, fear, and prejudice. This is the way we try to alleviate anxiety.

A few months ago I appeared on a radio "talk program" with a state representative who was advocating anti-pornography legislation. When I said that there was no scientific proof for his position that pornography is "harmful to minors," he replied, "Do you need evidence for everything?" "Yes," I answered. It is true that we have thousands of laws on the books which are less than rational but that does not justify the continuation of this method of enacting bills.

In many ways the current wave of interest in pornography control is symbolic of what is happening throughout our society. The desire for a safe existence often leads to the abrogation of freedom.

The current craze to "make the streets safe" is another facet of this security syndrome. When it comes right down to it, there is no problem in dealing with "crime in the streets." All we need to do is to remove everyone from them! In the name of freedom we can destroy our free society. This also applies to pornography. We can, if we want to do so, "clean up the minds of men." But what is the price? In the name of goodness and purity, we have the power to eliminate every "evil" or "bad" influence. If that happens, let no one think that we will have made progress. For in the process of making our lives safe, we will have destroyed our humanity.

REPORT on JOINT FACULTY-STUDENT COMMITTEE

BY
PROFESSOR CLIFFORD E. ELIAS CHAIRMAN

Since its formation and appointment by Dean Simpson, the Joint Faculty-Student Committee has met several times to establish standards for itself, and to make affirmative recommendations to the Law Faculty and Administration. Although this committee, which is composed of members from the faculty and student body, has only been in existence for a short period of time, its importance to the students and faculty has already been amply demonstrated.

First, a prime concern of law school administration, faculty, and student body
has been placement for law graduates. A sub-committee studied the placement service at Suffolk, and found that while the University Placement Office had made great strides in building a useful placement service for law students, the law school's population had reached such a point that a placement director exclusively for law students was required. The Joint Faculty-Student Committee unanimously voted to adopt the report; to recommend the appointment of a full-time Law School Placement Director as soon as possible; to forward the report and recommendations to the Dean and Law School Faculty for their concurrence, and to transmit the report and approvals to the President and Board of Trustees of the University. The Law Faculty voted unanimously to recommend to the implementation of this report.

Second, another matter of great interest to the student body was the awarding of a Juris Doctor degree in lieu of the Bachelor of Laws degree. After much discussion, the committee unanimously voted to recommend to the Dean and Law Faculty that the Juris Doctor degree be awarded. The Law Faculty voted to recommend to the Trustees the awarding, retroactively as well as prospectively, of the J. D. degree. Since that time, Boston College and Harvard have voted to change their law degrees to conform with the continuing national trend.

Third, this committee discussed the matter of charges for transcripts. It was felt that with the increasing number of transcripts required for graduate schools and prospective employers, the existing straight charge for transcripts was becoming burdensome. After consultations with the Dean, Registrar, Assistant Treasurer, and President, the committee prepared a memorandum, recommending a reduction of the fee when multiple transcripts are ordered. This recommendation was recently approved by the Board of Trustees.

Fourth, in addition to the above actions taken by the committee, it has provided a forum whereby the students have been able to communicate certain of their questions, complaints, and suggestions to the faculty. For example, a memorandum was received from the curriculum committee of the Student Bar Association, regarding the number and variety of electives being offered to third-year day students during the second semester. As a result, the breadth of electives has been broadened and efforts are being made to insure that the law school curriculum continues to be relevant to law practice in a changing society.

Fifth, various ways have been established to permit students to channel their ideas, recommendations, and significant problems to this committee. Several methods have been created whereby the committee can disseminate to the students information concerning its deliberations and actions.

By unanimous vote, certain guidelines have been adopted by this committee, after extended discussion about policy approaches. Those that are worthy of note:

1. Recognition that the Law School exists primarily for study, teaching and research.
2. Recognition that most law students come to Suffolk University principally and primarily to learn, and to become trained in, the law.
3. Recognition that the law student in Suffolk University is the most important single concern of the faculty and administration.
4. Recognition that the law student is a mature and responsible individual whose ideas and recommendations are worthy of attention and respect.
5. Recognition that ultimate determination of curriculum, activities and programs
in the academic process rests with the faculty collectively.

6. Recognition that the administration's role is to manage the resources of the Law School and have ultimate responsibility for its direction as an educational institution.

When there is a sincere desire among faculty, administration, and students to sit together and discuss the problems common to their schools and universities, then change will occur; new programs will be developed, and problems will be solved. The Joint Faculty-Student Committee provides an effective avenue of communication between faculty and students and should be utilized as much as possible. This committee has made an excellent start, and has greatly increased the communications among the faculty, administration, and students.

**STUDENT BAR REPORT**

In December, Suffolk University Law School became the first professional school in the Commonwealth to award the Juris Doctor degree to its graduates. After an intense debate on the advantages or disadvantages of the degree, 90% of the student body, and a unanimous faculty expressed their support for the degree. Special recognition should be given to John Acampora for his efforts.

Placement opportunities have been expanded due to the efforts of Mr. James Woods, Director, and Dennis Sousa, a third year student. Certainly, in the near future, the law school will have its own placement office.

Special recognition should be given to the S.B.A.'s Board of Governors. They displayed aggressiveness, an admirable trait for prospective attorneys, and dedication while being inundated with an inordinate amount of work.

I am grateful to Paul Kaufman for designing the law school's first official ring; Larry Schecterman for his efforts in recommending changes in the curriculum; and Joan Farcus for her efforts as social chairman.

My term of office will be complete with the publication of The Advocate. The new president is Terry McCarthy, an aggressive, intelligent and practical person. I feel that Terry will carry out and expand many of the programs established this past year. I urge all second and first year students to stand in support of Terry so that he will be speaking for all of you.

I am very grateful to the student body for electing me president last fall. I appreciate the opportunity to speak for you to the faculty and administration.

Good luck with exams; good luck to the new Board of Governors, the new editorial staffs of The Advocate and Law Review and to my successor Terry McCarthy.

1968-1969 SBA President Paul Clark
During the academic year the law school publication took on a new format and a new name. Under the guidance of Co-Editors-In-Chief Frank G. Hutchinson and David J. Hallinan and with an initially meager staff, the first issue of The Advocate was published and distributed. The magazine is devoted to the publication of the activities and outstanding achievements of the Law School and to the presentation of articles by students and guest writers on timely subjects pertaining to the law. It was distributed to the students, faculty, trustees, alumni of Suffolk University Law School, the Attorney General of Massachusetts, the Supreme Judicial Court, and 135 other law schools throughout the country. The Advocate was well received and praised as a noteworthy and significant improvement.

The editors felt that a magazine would be more readily accepted and retained by its readers. In addition, a publication which concentrated more on timely issues of law rather than solely on news of school activities, was felt to better serve the purpose of gaining greater recognition for the law school from the outside legal community (including an improved response from the law school alumni). With the present issue, even greater emphasis is placed upon the contributions of the students, law professors, and distinguished guest writers. However, student activities and law school news have not been eliminated as they are of significance and interest.

The Editors for the first time have selected their own Editorial staff for the forthcoming year. Formally the Student Bar President selected the editor following the elections in late Spring. This had the disconcerting result that the publication would have to begin anew upon the return to school in September; a staff would not be organized until October, and the first issue would be late in publication. With the selection of Kenneth J. Rampino as the 1969-70 Editor-In-Chief and the continuation of this new policy, The Advocate will be kept alive and active from year-to-year, and an entire re-organization every Fall will no longer be necessary.

**PHI ALPHA DELTA**

**LAW FRATERNITY**

**FELIX FRANKFURTER CHAPTER**

In keeping with its motto "Service to the student, the Law School, and the profession" Phi Alpha Delta has initiated several new programs and activities during the year.
At Suffolk, a unique series of medical lectures highlighting issues of legal liability of doctors was introduced. The series featured leading Boston physicians and was designed to stress the many complex problems of medical practice; as well as emphasize the need for close professional discourse between the legal and medical fields. This series was presented to the school through The Felix Frankfurter Forum. The Forum’s Mediocrelegal Symposium, 1968-1969 series dealt in general with the “Problems of the Newborn Infant” as related to doctors and lawyers.

Along with its normal membership Frankfurter Chapter was proud to initiate, as brothers, twelve (12) faculty members. This addition achieved one hundred (100) percent membership of those faculty members who are eligible to join our brotherhood. We now boast twenty (20) faculty brothers.

On December 6, 1968, eight Justices of the Supreme Courts of Rhode Island and Vermont were initiated as Honorary Members of Phi Alpha Delta Law Fraternity during en banc ceremonies held in the Moot Court Room of the Suffolk University Law School, Boston, Massachusetts.

The presiding officer during the initiation was Henry C. Rohr, Supreme Justice of the Fraternity. Mr. Justice Tom C. Clark (ret), past Supreme Vice-Justice of PAD, administered the oath of membership. The laudatory remarks were given by Donald R. Moore, Supreme Historian. Special arrangements were handled by Thomas R. Nellpowitz, past District XI Justice, and Frankfurter brothers.

Initiate were: Chief Justice Thomas H. Roberts, Associate Justice Thomas J. Paolino, Associate Justice Alfred H. Joslin and Associate Justice Thomas F. Kelleher of the Supreme Court of Rhode Island. Also initiated were: Associate Justice Albert D. Barney, Jr., Associate Justice Milford K. Smith, and Associate Justice F. Ray Keyser, Sr., of the Supreme Court of Vermont.

Participating in the ceremonies were active members from Burton Chapter of the Boston University School of Law and Frankfurter Chapter of the Suffolk University School of Law plus Burton Chapter Justice Kenneth Kramer and Frankfurter Chapter Justice Ferdinand S. Pacoine.

Following the initiation a luncheon was held in the Hawthorne Room of the Parker House Hotel in honor of the newly initiated jurists. Attending as special guests of the Fraternity were representatives of the student body at the Boston College of Law who plan to establish a Phi Alpha Delta Chapter within the near future. Mr. Justice Tom C. Clark (ret.), now Director of the Federal Judicial Center in Washington, D.C., addressed those attending the luncheon.

Standing, left to right: Treasurer- Dr. R. Gibbs, Marshal- D. Leach, Clerk- F. Kaufman, sitting: Justice- F. Pacoine Vice Justice- J. Riaffa.
On February 18, 1969, the Law School began its first Voluntary Moot Court Competition under the direction of Thornton Percival. Second year day division and third year evening division students were eligible to participate. Two losses were required for elimination during the preliminary arguments which were presented before a bench comprised of faculty members. Local attorneys served as judges for the semi-final rounds during which one loss meant elimination.

The final round was held on March 13, 1969. The Honorable Edward F. Hennessey of the Massachusetts Superior Court, and The Honorable Francis G. Poitrast, Chief Justice of the Boston Juvenile Court of Massachusetts were the members of the bench for the decisive argument. Philip Chesley and Ronald Douatte, second year day students, won the competition. They will be the recipients of a scholarship made available to each member of the winning team by the Board of Trustees. The runner up awards were to Robert Senn and Joseph Repetto.

The response to the new program was excellent. Those third year evening students who participated agree that the experience was beneficial because they had no other opportunity to take part in a similar program while in law school. Several of these students have agreed to work with the Moot Court Board next year to assist the evening students who wish to participate in the Voluntary Competition and gain practical experience in brief writing and oral advocacy.

During the month of March, the revised First Year Competition, under the direction of Kenneth Greenbaum, assisted by Michael Hull, was also held. Oral arguments were scheduled over a three week period and an effort was made to hold all arguments in the Moot Court Room. Students argued as Co-counsels before a bench composed of student advisors and a faculty member or local attorney.
Many third year advisors served in the same capacity last year and created original records during the summer. It is the hope of the Moot Court Board that third year students will continue to be selected as advisors. The initial invitation to serve in that capacity will be extended after second year grades are made known, and selections will be based on interest and achievement in Moot Court as well as academic standing. These students will be asked to create original records before the fall for use during their term as third year advisors. Those who participate in the Voluntary Competition as second year students will receive primary consideration for selection as advisors.
The Suffolk University Law Review recently elected its new Editorial Board for the 1969-1970 academic year. The eleven man board, headed by Michael Flynn as Editor in Chief, has already planned its policy for next year. The editors meet at the beginning of every week to review the work done and plan detailed work schedules for each week ahead.

The Law Review will accept twenty new members from next year's second year students (day and night sessions). During the summer, invitations will be mailed to thirty-five students on the basis of academic achievement and the permanent staff will be selected by a writing competition and comprehensive interviews. The Review will also invite a number of third year students to participate in this competition.

A law review is the most prestigious student organization of any law school, participation on which is a rewarding and beneficial experience. It trains a student in the highest quality of legal research and writing. The Suffolk Law Review wishes to inform all students that they are welcome to speak to the editors and inquire how they might take advantage of working for and contributing to the publication. Michael Flynn will also be coming to all classes to further inform the student body on the importance of law review to them and to our school.

The Suffolk Law Review, which is in its third year of publication, publishes three issues a year. The Review is experiencing constant growth and is always striving for excellence. The first issue this year presented a successful symposium on "Marihuana and the Law" and the new editorial board is presently considering other contemporary problems for another symposium next year.

Membership on the Law Review also creates substantial employment opportunities. The present Editor in Chief, William Diller, is the first Suffolk graduate to procure a clerkship in the Supreme Judicial Court of Massachusetts; Lead Article Editor Robert Serino has obtained a position in the Federal Justice Department Honors Program; and Samuel Rosen (Case Comment Editor) will be working for the National Labor Relations Board. Of course, these are just a few of the many fine positions obtained by the members.

Those students wishing to subscribe to the Review should contact the Law Review office on the third floor of the new building. Past issues can also be obtained.
NEWS BRIEFS

Professor Pizzano Named as Faculty Advisor to The Advocate

Professor Richard G. Pizzano has recently been named Faculty Advisor of The Advocate and chairman of the Faculty Advocate Committee. Professor Pizzano received his B.A. degree cum laude from Suffolk University in 1963. He was graduated from Suffolk University Law School in 1966 where he ranked first in his class and served as President of the Student Bar Association. Presently, as Assistant Professor of Law, he teaches classes in Business Associations I and II, Civil Procedure and Legal Methods.

The other members of the Committee are Professors David Sargent, Charles Kindegran, Richard Vacco, and Doris Pote.

Turner Heads ABA Committee on Lay Assistants

H. Lee Turner of Great Bend, Kan., has been named chairman of the American Bar Association Special Committee on Lay Assistants for Lawyers. His law firm has been a pioneer in the employment of sub-professionals who perform routine tasks under the supervision of lawyers.

The ABA House of Delegates created the committee to consider tasks which may be performed by laymen under the direction of a lawyer; the nature of training required for lay assistants and the bar’s role in providing it; the desirability of recognizing the skills of lay assistants through such means as academic recognition; and methods for increasing the efficient use of non-lawyer assistants.

Also appointed by ABA President William T. Gossett to the five-member committee were: Austin G. Anderson, director of Continuing Legal Education for the University of Minnesota; Edward Q. Carr, Jr., New York City; Bernard A. Ryan, Jr., Philadelphia; and Kline D. Strong, Salt Lake City.

Wright Nominated as ABA President-elect

Edward L. Wright of Little Rock Ark., former chairman of the ABA House of Delegates, has been nominated for the office of President-elect of the Association. Upon his formal election by the House in August, he will serve one year as President-elect before becoming the 94th President in August, 1970.

Edwards Named to Criminal Law Post

H. Lynn Edwards, former executive director of the Philadelphia Law Enforcement Planning Council, has been named administrative assistant to the ABA Section of Criminal Law.

Edwards, for 26 years an official of the Federal Bureau of Investigation, will be assigned to the ABA Washington office where he will be an assistant director. He will work to implement the series of proposed minimum standards for criminal justice developed by an ABA special committee.

CLEO to Prepare 450 for Law School

Summer institutes at ten law schools, directed by the Council on Legal Education Opportunity, will prepare about 450 minority group students for enrollment in law schools next fall. Thirty law schools will co-sponsor the institutes.

The program, created in 1967, is designed to increase the number of minority group members entering the legal profession by assisting them to meet law school admission requirements. Institutes will be conducted in Detroit, New York City, Cincinnati, Durham, N.C., Charlottesville, Va., Baton Rouge, La., Iowa City, Iowa, San Francisco, Los Angeles and Denver. Each of them will present four to six
weeks full-time intensive study programs covering a variety of legal subjects. They will provide training in verbal and analytical skills needed in the typical law school program. Additional special programs will be conducted in Toledo and Albuquerque.

Funding for the institutes will be supplied by the sponsoring schools and the Office of Economic Opportunity. CLEO is seeking funds from foundation, government and other sources to provide scholarships for those who complete the summer program.

Bond Speaker - Suffolk’s Faculty-Student Lecture Series

Julian Bond, the 28-year old Negro State Legislator from Georgia spoke at Suffolk University, December 5, in the school auditorium.

Bond was twice denied his seat in the Georgia Legislature because of his statements on the Viet Nam War, but after being elected a third time in November 1966, the U. S. Supreme Court ruled that the Georgia House had erred in denying Bond a seat.

Bond’s presentation centered on the then incoming national administration. He spoke of Nixon’s pre-election stand on open housing and his conflicting public and private views.

Despite the publicity of the emergence of blacks in America, he felt their plight has worsened. Regarding segregation, he noted that more blacks went to mixed classes in 1954 when the Supreme Court ruling came out than today. Nixon’s views on Black Capitalism, Bond termed “an exercise in semantics. If the black hate the white and the white hate the black, they will probably still hate each other after all equality legislation has been passed.” He said the “we are. working out of hatred,” and his main interest was in stopping this action whether it was legitimate or not.

On civil disobedience and rioting Bond considered himself “on the left of Justice Black.” He though it was all right to cry fire in a crowded theater but if it turned into a riot the people involved should be held responsible. Bond reminded the largely Boston audience that if it were not for a group of men dressing up as Indians we would all be speaking with British accents today.

Bond who appeared as part of Suffolk’s Faculty-Student Lecture Series, was on a tour of 90 colleges and schools throughout the country.

Court Procedure to be Streamlined

Massachusetts’ cumbersome court procedure, parts of it unchanged since the 1800’s and even 1700’s, is at last being brought into the 20th century.

The Massachusetts Judicial Conference, composed of all seven justices of the Supreme Judicial Court as well as the chief justices of other courts in the Commonwealth, has undertaken to revise the antiquated rules of practice.

To draft the needed changes, the Conference has appointed a 25-man committee headed by Superior Court Judge Cornelius J. Moynihan. Professors James W. Smith and Hiller B. Zobel of the Boston College Law School have been appointed reporters. In addition the leading attorneys from all over the Commonwealth will be asked to serve on special advisory panels.

Attorneys John Z. Doherty of Lynn and Paul A. Tamburello of Pittsfield will serve as Vice Chairmen. Attorney John M. Mullen of Boston is the Committee’s secretary.

Taking as its model the highly regarded Rules of Civil Procedure used in the federal courts, the Committee will examine existing Massachusetts court practice from top to bottom.

A committee of the Boston Bar Association performed valuable spade work for
the Advisory Committee by reviewing existing statutes and suggesting changes necessary to adapt the federal rules to Massachusetts use.

Aiming at a January 1, 1970 completion target, the Advisory Committee plans to furnish the judicial conference with a full revised set of rules adapted for the needs of a modern judicial system. The Committee will not propose any changes in the courts themselves, however.

The project has been funded by contributions of $10,000 each from Permanent Charity Funds and the Hyams Fund.

Justice Donahue Receives Silver Medal

Associate Justice Frank J. Donahue of the Massachusetts Superior Court last night became the 13th recipient of the Silver Medal presented annually by the St. Thomas More Society of the Diocese of Worcester.

Bishop Bernard J. Flanagan presented the award on behalf of the society, an organization of Roman Catholic lawyers, at the traditional Red Mass, celebrated at St. Paul's Cathedral.

The Rt. Rev. Msgr. Edmund G. Haddad, chancellor of the Worcester Diocese, gave a biographical portrait of Justice Donahue during the ceremony.

Judge Donahue was born in Needham in 1881. He was elected secretary of the commonwealth in 1912, and was appointed to the Superior Court in 1932. He was a member of the Judicial Council of Massachusetts for 22 years and its chairman 20 years.

In his concluding remarks Msgr. Haddad said to the associate justice, "Our patron, Saint Thomas More, was renowned not only for his impartiality in dispensing justice, but also for his efforts to improve the administration of justice."

During your judicial career and during your 20 years as chairman of the Judicial Council of the state of Massachusetts, you have been a faithful exemplar of his ideals, by your untiring efforts to improve the administration of justice in this our commonwealth."

After the Mass, the society's annual banquet was held in the Hogan Campus Center of Holy Cross College. The Rt. Rev. Msgr. John F. Gannon served as master of ceremonies.

A new society award in the form of a plaque was presented to Judge Walter D. Allen, first justice of the Central District Court of Worcester.
in both the law profession and the church
was presented to Acting City Solicitor
Henry P. Grady.

Grady was presented a portrait of St.
Thomas More.

Bishop Flanagan said Grady was chosen
as recipient for his "trusted and helpful
work" in the Society for the Propagation
of the Faith. Grady is a member of Our
Lady of the Angels Church.

Another first-time award, a $500
scholarship, was presented to Walter J.
Avis, Jr., of 6 Dolan Street, a second-year
law student at Suffolk University Law
School, Boston.

Judge William P. Constantino of
Clinton, who headed the society's first
scholarship committee said the award will
become a traditional part of the annual
banquet.

ALUMNI NEWS

EDITOR'S NOTE:

The Alumni column will be a permanent feature of The
Advocate. Anyone having information they wish to have pub-
lished in The Advocate may do so by sending that information
to The Advocate in care of the Alumni Editor, 41 Temple
Street, Boston, Massachusetts 02114.

ALUMNI DAY PLANS ANNOUNCED

The General Alumni Association of Suf-
folk University has announced that the pool
at the Motel 128 in Dedham will be the set-
ting for this year's "Hawaiian Luau." For
the convenience of all, the luau will be
held in the evening. Further, to separate
business from pleasure, the Board has
agreed to hold the annual meeting at a
subsequent date. Thomas F. Brownell,
Chairman of the '69 Alumni Day Com-
mittee, announced that a general organiza-
tional meeting was held on March 26, at
which time, three subcommittees were
formed for the purpose of working out the
final arrangements.

The details on the "Luau," and how to
obtain tickets, will be mailed out by the
Alumni Committee in the near future.

PLACEMENT SERVICE

The Advocate will in future issues
carry a placement service designed to
assist people looking for new positions,
looking for associates and assistants, as
well as for the recent graduates who are
looking for new opportunities. Those who
wish to avail themselves of this service,
please address those requests to the
Alumni Editor, The Advocate, 41 Temple
Street, Boston, Massachusetts, 02114.

J.D. DEGREE ADOPTED AT
SUFFOLK LAW SCHOOL

Late last year, the Board of Trustees
voted to adopt the Juris Doctor degree in
lieu of the L.L.B. degree. February grad-
uates were the first to receive the degree.
It will be retroactive as well as prospec-
tive. Details on obtaining the J.D. degree
by Alumni will be mailed by the Law
School in the near future.

CLASS OF 1928

Theodore A. Burbank, who has been
elected assessor for the Town of Pem-
broke for the past six years, is seeking
reelection to that post. He is presently
employed by the Town of Hanover, where
he recently did a complete reappraisal
of the town. Burbank is a member of the
Massachusetts Association of Assessors,
the Plymouth County Association of Asses-
sors, and the International Association of
Assessing Officers. He and his wife make
their home on High Street, Pembroke,
Massachusetts.

CLASS OF 1929

Arthur A. O'Shea, recently retired Ex-
ecutive Secretary of the Brookline Board
of Selectmen, has been elected a director of the Brookline Trust Company. O'Shea, a member of the Massachusetts Bar Association, is the author of many articles and has lectured extensively in the field of Public Management, a subject in which he is a nationally recognized authority.

CLASS OF 1931

Henry E. Keenan, prominent Arlington, Massachusetts, insurance agent and realtor, has been reelected President of the Massachusetts Association of Real Estate Boards.

CLASS OF 1936

Edward T. Martin is the newly appointed Special Justice of the Municipal Court, West Roxbury District of Massachusetts.

Judge Martin has most recently served as special secretary to Governor Volpe, and as first assistant Attorney General from 1963 to 1967. Judge Martin also served as Interim Attorney General between the terms of Edward W. Brooke and Elliot Richardson in 1967.

CLASS OF 1938

Francis W. White, of Stamford, Connecticut, has been reelected to his second term as senior vice president of the National Association for Retarded Children, for 1968-1969, at the association's nineteenth annual meeting in Detroit.

In addition to his work with the National Association, he is also a member of the Governor's Advisory Council on mental retardation since 1959. He received the annual Award for Outstanding Volunteer Service to the Mentally Retarded from the Connecticut Association for Retarded Children in 1966.

Presently he is manager of the Eastern Division of Glen Raven Mills, New York City, a manufacturer of women's hosiery.

CLASS OF 1949

James Michael Carney of Dorchester, Massachusetts, has been elected Treasurer of the Massachusetts Federation of Nursing Homes. He has been a member of the Federation Board of Directors and the chairman of its membership committee for several years. Carney has been associated with the nursing home profession for more than a decade, and has, for the past five years, served as the administrator of the Carver Manor Nursing Home in South Boston, Massachusetts.

CLASS OF 1954

Professor David J. Sargent of Suffolk University Law School testified against the Keeton-O'Connell automobile insurance plan before the Illinois House Committee on Insurance, at Springfield, Illinois. Professor Sargent, who is a nationally recognized authority on this plan, called the proposal "a disaster for every Illinois Motorist." After professor Sargent's testimony, the committee by a vote of 12 to 1 rejected the insurance plan.

CLASS of 1956

John C. Bresnahan has received a certificate of admission to practice before the United States Supreme Court. Immediately following his admission, he tried his first case before the Supreme Court. Bresnahan is now serving his eleventh term in the Massachusetts House of Representatives, to which he was first elected in 1948.

CLASS OF 1959

Henry M. Paro, of Pembroke, Massachusetts, has been appointed by the Board of Selectmen to serve as town counsel for the Town of Pembroke. He has been a member of the Massachusetts Bar since 1960, and has his own practice in Duxbury, Massachusetts.

CLASS OF 1961

Francis A. Coughlin is a candidate for reelection to a fifth term as Town Treasurer in Arlington, Massachusetts. He was New England District Credit Supervisor with the International Harvester Company, and has also served as chairman...
of Arlington's Board of Park Commissioners as well as a Town Meeting Member.

CLASS OF 1964

Richard L. Seavey has been appointed the Vermont State Agent for the Royal Globe Insurance Companies, and will operate out of the Manchester, New Hampshire, field office of Royal Globe. He has served as commercial lines underwriter for the company at its Boston Office since 1967.

Robert L. Yasi of Swampscott, Massachusetts, has been appointed and is now serving as Chief Secretary to Governor Francis W. Sargent of Massachusetts. Prior to accepting the position with Governor Sargent, Yasi was head of the Department of Natural Resources, and has been active in Swampscott town affairs.

Joseph Hurley is now Assistant Norfolk District Attorney. A partner in the Braintree law firm of Hannon and Hurley, the Assistant District Attorney is a member of the Massachusetts, Federal and the Norfolk County Bar Associations.

CLASS OF 1965

Luc R. La Brosse is now Special Assistant to the Attorney General of the State of Rhode Island, and represents the same by arguments and briefs before the Supreme Court of the State of Rhode Island.

In addition to have served as Administrator of Escheats for the State of Rhode Island, he is also a practicing attorney associated with R. de Blois La Brosse in the practice of Law, 301 Main Street, Pawtucket, and is a member at large of the Rhode Island Republican State Central Committee.

CLASS OF 1966

Albert A. Gammal, Jr., of Worcester, Massachusetts, will be named United States Marshal for Massachusetts. The name of the former state representative was submitted to the White House on March 24, 1969, by Senator Edward W. Brooke.

CLASS OF 1967

Stanley S. Labovitz of Shrewsbury, Massachusetts, has become associated with the law office of Jacob J. Kressler, 339 Main Street, Worcester. He has been a trial lawyer with the Interstate Commerce Commission in Washington for the past two years.

Thomas F. Brownell, who became a member of the Massachusetts Bar in 1967, is now Attorney and Legislative Counsel for the Massachusetts Taxpayer's Foundation, 145 Tremont Street, Boston, Massachusetts.

A TRIBUTE

As frequently happens when one jousts with a windmill he later realizes he would have been better off if he had just left everything as it was. Fortunately, this was not the result of the incursion of David J. Hallinan and Frank G. Hutchinson on THE BRIEF "CASE. They sought to refurbish this wind-blown "Elisnore" with the glory which rightfully should envelope it; their success exceeded anyone's greatest expectations.

They extended the realm of influence beyond the walls of Suffolk University Law School to include the Alumni, the Attorney General's Office, the Massachusetts Supreme Judicial Court and the one hundred thirty-five other law schools throughout the nation. Their objectives were fulfilled in the presentation of articles by distinguished guest writers, faculty and students on contemporary legal issues which involve everyone. Even the name was not immune from their well guided hand.

Their efforts resulted in The Advocate and varied acclaim. We, The Advocate Staff of 1969-1970, on behalf of Suffolk University Law School, offer our sincere gratitude to David J. Hallinan and Frank G. Hutchinson for their meritorious contribution.
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