“John B. Hynes was a man whose accomplishments were sterling, yet a man who always remained humble.” This eulogy was delivered by Judge Walter H. McLaughlin while addressing the Alumni of Suffolk Law School.

Mr. Hynes was graduated from Suffolk Law School in 1927 and was admitted to the Massachusetts Bar in 1928. He served as life Trustee of the University and was Treasurer at the time of his death.

After 39 years of distinguished service to the City of Boston including ten years as Mayor of the City, Mr. Hynes has come to be known as “the father of the new Boston”. During his administration, (1949-1959) the municipal government of Boston was restructured; a compensation and classification plan for city employees was implemented; a building boom occurred which resulted in the construction of the Prudential Center, Government Center and the Travelers Insurance Building; and extensive neighborhood rehabilitation and urban renewal were accomplished.

We salute the memory of John B. Hynes — the man, the Alumnus, the “father of the new Boston.”
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THE CHICAGO STORY —
An Assault Upon the Citadel

By Kenneth J. Rampino
Editor-in-Chief

There is universal knowledge among the citizens of this Nation that the fountainhead of our system of government is the Declaration of Independence and the United States Constitution. There is also a collective awareness that the principles expressed by these documents are the foundation by which our society, our culture, our way of life is countenanced.

Despite this general awareness, a fundamental concept which inheres in both documents seems to be devolving in significance within the minds of many citizens and government officials. This underlying concept is that although the Founding Fathers displayed confidence in the potential of mankind to create and implement a better form of government, they realistically imposed certain prohibitions upon the actions of government officials. These prohibitions were designed to insure that the government exist as the servant of its people.

Both documents manifest a sensitivity by their drafters to the threat posed by men in positions of leadership. Certainly to know George III was to know that leaders are, after all, afflicted with human weaknesses and that among those weaknesses, is caprice. By definition, a leader is one who influences others. The more influential one is, the more extensive the impact of his caprice will be upon others. It is this realization which gave rise to the dire necessity for certain inalienable rights to be vested in the people—rights which are insulated from the influence of those empowered by the people to act "for the people."

The documents read together provide us with the basic tenets of our political philosophy: The Declaration of Independence expressing certain self evident truths — the equality of man; the inalienable rights vested in man, the right to life, liberty and the pursuit of happiness; the right of the people to alter or abolish the government when it becomes destructive of these ends.

The Bill of Rights and the Fourteenth Amendment of the Constitution enumerating specific rights — freedom of speech, freedom of assembly and to petition the government for a redress of grievances, freedom from deprivation by government of life, liberty or property without due process of law.

The purpose of the Constitution is set forth in its Preamble: "to secure the blessings of liberty to ourselves and our posterity." By these words, the intention of the drafters was expressed in unequivocal terms. The United States Constitution was meant to be a "legacy" of rights to all generations of the United States citizenry.

The United States has just experienced a decade which can be described as a demonstrative era. People took to the streets and parks to demonstrate their feelings by carrying handbills and placards. Unfortunately, some people demonstrated their hostilities by resorting to violence and destruction of human lives and property. Government is faced with the prodigious task of ferreting out the root causes of the hostility and dealing with those causes. However, there is the threat that in dealing with the effects of the hostility, government (in the name of law and order) will vitiate the constitutional freedom of its citizens in a piecemeal fashion. To the extent that constitutionally provided rights are compromised, to that extent does the Constitution become cliche-ridden and irrelevant. To that extent does the Declaration of Independence become solely a memorization exercise for school children. Ideas deteriorate into cliches when individuals, by their conduct, drift further and further away from the precepts contained within those ideas and that conduct subsequently gains wholesale acceptance by the people.

Some of the events leading up to the so-called "Chicago 7 Trial" and the Trial itself exemplify, in a dramatic way, a disregard by certain government officials of basic constitutionally provided rights.

In the summer of 1968, hundreds of thousands of concerned people from throughout the country gathered in Chicago. The purposes for coming to Chicago varied. But it is fair to say that the general purpose was, by massive demonstration, to influence the Democratic Party to adopt a peace plan as part of its platform. The Republican Party had failed to adopt such a plan at its convention in Miami. Hence, the party in power was being petitioned by citizens in accordance with the First Amendment to establish an alternative to its current foreign policy so that the voters would enjoy a meaningful choice when they went to the polls in November.

Prior to the Democratic Convention, (former) U.S. Attorney General Ramsey Clark had sent a representative to meet with Mayor Richard Daley of Chicago. On voir dire examination of Mr. Clark in the "Chicago 7 Trial," he explained the purpose of the representative's mission was to "do what he could to maintain stable community relations among all elements that might be involved in the convention . . . including groups planning to demonstrate." The report of the representative based upon his meeting with the Mayor was that "he did not feel that the Attorney General was likely to get the cooperation that he hoped for and that the attitude from the Mayor's office did not seem conciliatory."

Hotel accommodations during the convention being at a minimum, many of the organized groups of protesters applied for permits to assemble in Lincoln Park. The City Government denied the permits. As Judge Hoffman later charged the jury in the trial of the "Chicago 7," "... it is a constitutional exercise of the rights of free speech and assembly to march or hold a rally, without a permit when applications for permits were made in good faith at a reasonable time prior to the date of march and rally and the permits were denied arbitrarily or discriminatorily." Two of the defendants in the trial, Abbie Hoffman and Rennie Davis had applied for permits three months
prior to the convention. The City Government denied the permits and refused to negotiate. Armed federal troops were pre-positioned in the Chicago area the weekend before the convention began. Thus the demonstrators were placed on the defensive since speeches and assemblies would be "unlawful" and subject to disruption.

Millions of people watched confrontations between police and demonstrators on nationwide television broadcasts. There have been attempts by Chicago police officials to explain the event as a reasonable and justifiable use of force by the police who were attacked by protesters. There are those who disagree. Among those who disagree is Thomas Foran, Chief U.S. Attorney for Northern District of Illinois and the Chief Prosecutor in the "Chicago 7 Trial." In a speech delivered to the Boosters Club of Loyola Academy in Illinois he stated that he had observed the altercations between police and protesters which had erupted on Illinois and Balboa Avenues while seated in his automobile. His observation was that the "police attacked the protesters to purge themselves of all the guff they had taken during the previous three days."

There are those, within government, who have publicly supported the actions of the Chicago police as described by Mr. Foran. This amounts to an attempt to legitimize an indiscriminate assault upon protesters, members of the press and bystanders by those who are entrusted with the task of maintaining harmony within the community. This is a reaction which is based upon the fallacious assumption that the basic problem with most dissenters is native disrespect for law and order. The fallacy of this assumption is then compounded by those who advocate the use of force and violence as a means of resolving differences — as if this will result in the conversion of dissenters into members of the "silent majority."

The dissenter who came to Chicago did so to exercise their Constitutional right to demonstrate their disapproval of certain government policies. They were confronted with a Mayor who took a "non-conciliatory" approach to the Federal Government's initial attempt to insure peaceful demonstrations within Chicago during the Convention. They had to contend with a Mayor who refused to issue permits for assemblies and speeches and who refused to negotiate with the leaders of groups seeking permits. They were faced with a mayor who saturated the Chicago area with stick toting, mace-carrying policemen. To all of this, the demonstrators reacted with anger which many erroneously interpreted as innate, vile disrespect for law and order.

A lack of respect for the rights of citizens to express themselves will ultimately evoke a lack of respect for the government which attempts to repress dissent. Therefore, governmental repression not only violates the spirit of the Bill of Rights but can only lead to polarization of the citizens of this Nation. It is the responsibility of our elected leaders to work for unity and not act in such a way as to further divide the nation's citizens.

Certain members of the Federal Government also have shown a willingness to encroach upon constitutionally provided rights in the name of "law and order."

The cry of "law and order" was the original motive for enactment of the Anti-Riot Law under which the eight defendants in the "Chicago 7 Trial" were indicted.

The actual enactment of the Law, however, was brought about as the result of a compromise. After the as-
true justice as administered by the American Judicial Process.

The reason why this trial has given rise to such controversy throughout the Country is that the defendants succeeded in creating a microcosm of society within the court room. They did this in various ways. Basically they did it by exposing exactly what they were. In a speech delivered at the University of Rhode Island on April 1, 1970, Defense Attorney William Kunstler said "we felt that the government was prosecuting the defendants because of their politics, because of their life styles..."

"We decided to offer evidence to prove this and we decided that there would be no compromise — that the defendants would not cut their hair and would not wear ivy league suits because it would not really be them on trial; it would be them making a false appearance to a jury."

The defense made an all out effort to exhibit precisely what they were and what they believed in. Defendant Rennie Davis, the intellectual of the group, read some forty books during the course of the trial, ignoring the testimony of even defense witnesses. Jerry Rubin and Abbie Hoffman, the Yuppies, wore colorful costumes, long hair, beards and beads during the trial. William Kunstler, a practicing attorney for thirty-five years called to the stand Allen Ginsburg, a known homosexual; Dr. Timothy Leary, avowed user of hallucinogenic drugs; and Bobby Seale who had been quoted in newspapers as saying "let's barbecue some pork" (a reference to policemen).

The theory of dialectics, born of Karl Marx, was thus translated into reality in an American court room. Thesis created its antithesis. Judge Hoffman and Prosecuting Attorneys Thomas Foran and Richard Shultz developed a comradeship which took on more and more substance as the trial progressed.

Defendant Jerry Rubin remarked to Judge Hoffman during the trial, "I like it here, Judge. It's good theatre." It was indeed good theatre. Revolutionaries face to face with those whom they consider their oppressors—those who prosecute the laws which perpetuate a system which they mistrust. Officers of the Court face to face with those whom they consider "the devil's advocates" — those who show contempt for the laws of the system in which they repose their trust.

The danger posed by a trial which is an enactment of clashes between life styles is that critics tend to become less analytical and objective and more apt to react on the basis of their own personal life styles and philosophies. Critics of the trial became either pro-defendants or pro-Judge Hoffman; very few prove to be pro-justice.

How can pro-defendants justify the defendants unruly behavior in the court room, even if there was provocation by the Judge? They know that our judicial system is based upon appeals of error made on the trial level. They know that our time honored judicial system (in spite of its faults) has arisen to the occasion time after time in furthering the civil rights movement and protecting the rights of the accused in criminal trials despite vigorous opposition by influential segments of the other two branches of government. They know that disruptive behavior in the
court room, if it became the norm, would probably destroy the Anglo-American System of Justice.

Likewise, how can those who are pro-Judge Hoffmann justify his conduct in the court room? Did he not demonstrate a callous disregard for the constitutional rights of the defendants and their attorneys? Certainly substantive rights should not be forfeited because of misconduct of the defendants. Any judicial measures should be designed to insure an orderly trial in the administration of justice, not a deprivation of justice. It must also be noted that much of the unruly conduct occurred after the defendants were deprived of their rights.

Can those who are pro-Judge Hoffman honestly contend that the defendants were afforded their right to be tried by an impartial jury composed of their peers? How can they contend this when Judge Hoffman would not allow questioning of the jurors on matters of utmost importance — such as their feelings concerning the political views of the defendants and whether they were subject to pre-judicial mass media coverage of the defendant's activities?

Can it be said that defendant Bobby Seale enjoyed his right to counsel and his due process right to confront witnesses? His attorney, John Garry, had undergone major surgery at the inception of the trial. Garry's motion for continuance was denied while a week earlier, Judge Hoffman had granted a six week continuance to an attorney so that he could take a Carribean vacation. Seale was present in the court room for five weeks without any defense being made on his behalf. At this point, Seale requested the opportunity to cross-examine a government witness who Seale contended was lying. The judge refused the right which Seale has by virtue of the due process clause of the Fifth Amendment. When Seale persisted in demanding his rights, he was shackled and gagged. How can those who are pro-Judge Hoffman allow the disrespectful conduct of Bobby Seale to negate the cold fact that an accused in a criminal trial was denied the right to counsel and his right to confront the witnesses.

Can it be said that the defendants were tried by an impartial tribunal when the following is considered: Judge Hoffman continuously made derogatory remarks about the defendants and their attorneys in the presence of the jury. He often denied defense motions refusing to listen to the arguments for the motions. He, on occasion, refused to entertain constitutional arguments on the basis that, "you Easterners think you are the only ones who know the Constitution. You would be surprised how well we Midwesterners know the Constitution... You speak as though the document was written yesterday." Judge Hoffman allowed the prosecuting attorneys to belittle the competence of the defense attorneys without admonition while retorts by the defense attorneys drew criticism from the Judge. The Judge persisted in mispronouncing the name of one of defense counsel. The Judge (who allowed the testimony of 200 witnesses without voir dire to determine the relevancy of their testimony) disallowed former Attorney General Ramsey Clark to testify for the defense on the basis that he had nothing relevant to offer whereas, in fact, it was Mr. Clark's job to insure peaceful demonstrations during the Convention.

Is it not true that Judge Hoffman violated the due process rights of the defendants and their attorneys by

CONTINUED ON PAGE 10
HABEAS CORPUS AND THE DRAFT LAW--
NEW DIRECTIONS FOR THE GREAT WRIT?

by Ronald F. Kehoe and James A. Sharaf

The growing dissent against the Vietnam War and the draft system during the past 2 or 3 years has generated a dramatically increased volume of Selective Service litigation. Hundreds of young men refuse military induction each year in Massachusetts, while thousands more seek legal advice prior to their induction dates. This article will discuss what forms of judicial review, if any, are available to test the legality of an induction order, or of the I-A classification which underlies such an order. For purposes of our discussion we assume that a registrant has already been classified I-A by his local board, has unsuccessfully exhausted administrative appeals within the Selective Service System, and has received an order to report for induction in the near future.

Under existing law there are two avenues of judicial review open to the registrant, but neither is satisfactory. He can refuse induction and defend a criminal indictment, but he runs the risk of conviction and a possible jail term if his classification and attempted induction are held to have been legal. Alternatively, he can accept induction and immediately bring habeas corpus to test the legality of the induction order, but he risks continued military jurisdiction if he loses in court. The losing litigant who stays in the military faces certain opprobrium and possible harassment; if he refuses to obey orders he is subject to military discipline and prosecution. Most important, the registrant who is truly opposed in conscience to military service cannot accept even temporary induction to obtain judicial review of the Selective Service System’s wrongful denial of conscientious objector classification.

Given this unsatisfactory choice between criminal litigation and in-service habeas corpus, may the registrant choose any other form of review? In enacting the 1967 amendments to the Military Selective Service Act, Congress attempted to foreclose most pre-induction judicial review. Section 10(b)(3) of the Act provides that “No judicial review shall be made of the classification or processing of any registrant . . . except as a defense to a criminal prosecution . . . after the registrant has responded either affirmatively or negatively to an order to report for induction . . . ” Although the Supreme Court has held that this section does not bar a pre-induction injunctive suit in certain cases where the registrant has been deprived of a statutorily-granted deferment or exemption (e.g., ministers and students), the statute does bar such relief where the claimed deferment or exemption depends upon factual and discretionary decisions of the local board, as in the cases of conscientious objectors, occupational and dependency-hardship deferments. We do not here concern ourselves with the constitutionality of Section 10(b)(3), although serious doubt on the question survives the Supreme Court’s decision in Clark v. Gabriel, upholding its constitutionality. We turn instead to a possible alternative means of review, available prior to induction or the refusal of induction.

One possible mode of review is habeas corpus. It is clear that Section 10(b)(3) cannot curtail the availability of habeas corpus, because the Constitution narrowly limits Congress’ power to suspend the writ to “Cases of Rebellion or Invasion.” Without pretending to a comprehensive examination of the subject, we now raise the question whether habeas corpus will lie after issuance of an induction order but prior to the induction date.

Under the federal habeas corpus statute, the writ will issue only in cases where the petitioner is in custody, either “under or by color of the authority of the United States,” or “in violation of the Constitution or laws . . . of the United States.” The crucial, determining question is thus whether a registrant who has received an induction order is in “custody” within the meaning of the statute and the traditional body of habeas corpus case law.
The registrant clearly is not in custody in the same sense as a prison inmate, and then it has never been necessary that the petitioner be confined to jail. This is increasingly so since the federal courts began dramatically to expand the availability of the writ in the modern era. A leading case on the point is **Jones v. Cunningham,** where the Supreme Court held that a parolee was sufficiently in "custody" to utilize habeas corpus for review of the conviction underlying a sentence from which he had been paroled. Speaking for a unanimous court, Mr. Justice Black reviewed the common law usages and the Anglo-American history of the Great Writ. While conceding that habeas corpus is classically brought by persons who are in actual, physical custody in jail or prison, the Court's opinion indicates that there is sufficient custody if the petitioner is not free to go where he pleases. The examples cited include a woman who was constrained to stay away from her husband, and a whole series of Supreme Court cases in which habeas corpus was used by aliens who had been excluded from the United States but were otherwise free to go where they pleased. Noting the constantly expanding role of habeas corpus as a vehicle for judicial review, the **Jones** opinion stated:

It is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty.**10**

There is sufficient custody, the **Jones** court said, if the petitioner is under "significant restraints" upon his liberty to do those things which free men are entitled to do, or restraints in addition to those imposed upon the public generally.

Is a Selective Service registrant, who has received his induction order, under "significant restraints" upon his liberty so that the courts would regard him as being "in custody" for purposes of a habeas corpus suit? Certainly there are limitations upon his freedom which are not shared by the general public. Most significantly, he has been ordered to report to a given place at an appointed time to surrender himself to military custody.**11** As a practical matter, his freedom to seek and find employment is severely limited, as few, if any, employers are interested in men who are subject to induction orders. The legend on his draft classification notice**12** warns him that he is required to notify his local board in writing of every change in his address, physical condition,**13** and occupational, marital, family or dependency status — reporting requirements like those imposed on parolees. Whether such restrictions on his freedom are sufficient custody for habeas corpus purposes is still an open question in the federal courts.

There are only a handful of decisions in point, and these are in conflict. In the 1952 case of **Ex Parte Fabiani,** a Pennsylvania federal district court held that habeas corpus was available before the registrant had accepted induction and become subject to the physical custody of the armed forces. Stating that the registrant is not "driven to choose" between the "desperate alternatives" of criminal prosecution and post-induction habeas, the court held that the petitioner was in the "constructive custody" of the Government because he was not free to go where he pleased, and enjoyed only "jail liberties." The **Fabiani** decision was cited approvingly by the Supreme Court in a footnote to its opinion in **Jones v. Cunningham,** but a subsequent district court case calls in question the vitality of **Fabiani,** holding that there is no custody within the meaning of the federal habeas corpus statute.**15**

It thus remains an open question whether our hypothetical registrant is in custody for habeas corpus purposes, but enterprising Selective Service attorneys can be expected to attempt expansion of the custody concept so as to gain acceptance of the Fabiani doctrine in those federal courts which have not yet decided the question.

There is the further question of whether habeas corpus affords an appropriate remedy to a Selective Service registrant. Even if the petitioner is in custody as we have suggested, the court cannot release him in the sense that it can release a prisoner from jail. If the induction order or the underlying classification were held invalid, the registrant would still remain subject to the jurisdiction of his local draft board for further classification and processing. Thus, the most that the court could accomplish would be modification of the terms of the "custody." Such modification, however, meets the needs of the registrant, and the unavailability of complete release from all forms of custody should not block issuance of the writ.**14**

Pre-induction habeas corpus thus may offer the draft registrant an opportunity for judicial review of the actions of the Selective Service bureaucracy, free from the risks of criminal prosecution and safe from Congressional induction. Such review could prove salutary in forcing draft boards to observe more closely the regulations, statute and Constitution to which they are subject. The Supreme Court has recently dealt with a number of draft cases in which it found draft board conduct which was "basically lawless",**17** and judges who must consider whether habeas corpus lies in these cases might well remember that an historic office of the Great Writ is to vindicate the rule of law.

### NOTES

1. One index of the increased legal activity is the publication of a legal service devoted solely to draft law, the Selective Service Law Reporter, providing comprehensive reporting of statutory, regulatory and judicial material, together with a thorough treatise.


3. 50 U.S.C. App. § 460(b)(3).

4. **Oestereich v. Selective Service Local Board No. 11, 393 U.S. 233 (1968).**

5. **Clark v. Gabriel, 393 U.S. 256 (1968).**

6. The doubts about constitutionality stem from such cases as **Ex parte Young, 209 U.S. 123 and Reisman v. Caplin, 375 U.S. 440.** See **Peterson v. Clark, 285 F. Supp. 700 (N.D. Cal., 1968).** These doubts survive decision of **Clark v. Gabriel** in part because that case was decided without full briefing and argument and without adequate consideration of the constitutional questions.

7. **U.S. Const., Art. I, § 9, Cl. 2.** See **Ex parte Milligan, 4 Wall. 2, 125-126.**


10. 371 U.S. at 243.

11. As already discussed, a person in the armed services is in "custody" for purposes of habeas corpus.

12. Selective Service System Form 110.

13. Draft lore (perhaps apocryphal) tells of the registrant who sent his local draft board daily reports on his health. After a year of this, it is said, he was classified IV-F.


16. See **In re Bonner, 151 U.S. 242 (1894).**

James S. Erwin has been Maine's Attorney General since January, 1967.
He is a graduate of Dartmouth College and Columbia University Law School.
The Attorney General has been active in the Maine Legislature since 1960.
He was elected to the Senate in 1960 and served as Chairman of the Judiciary Committee. In 1964, he was elected to the House and became a member of the
Public Utilities Committee.

A member of the Maine State and American Bar Associations, Mr. Erwin
maintains a law office in York, Maine. He was State Republican Committeeman
from 1958-64 and served as President of the Maine State Bar Association in
1967-68.

STATE-WIDE PROSECUTION AGENCY—
THE WAVE OF THE FUTURE

by James S. Erwin, Attorney General of Maine

The attorney general's job in every state is multi-faceted.

Besides being counsel to the entire state complex of
government and being known as the chief legal officer,
in most of the states he is also chief prosecutor and is con­sidered to be the chief law enforcement officer of his state.
It is to this latter responsibility of those attorneys general
who possess common law powers that I would like to
address myself.

It would seem to me that the most pressing problem
with respect to law enforcement in the next decade is
involved with the problems of prosecution. In only a hand­ful of states, such as Rhode Island and Alaska, is the
Attorney General made directly responsible by statute for
all prosecution within his state. This is an interesting
concept, and one which I introduced in Maine at the last
session of the Legislature unsuccessfully. Maine has many
serious problems with what is rapidly becoming a break­down of the old County Attorney System. Therefore, it
seemed to me that a new statute modelled on the experi­ence of the above-mentioned States would be useful to
Maine. Interestingly enough, Rhode Island and Alaska
present two parallels applicable to the State of Maine.
Rhode Island in its small territorial area has about one
million in population. Alaska with an enormous geographi­cal area has about a half a million in population.
Maine has a large area and contains about one million inhabitants,
the majority of whom are concentrated into the south­western area and along the coast. It seemed, therefore,
that if a million people could be cared for by the Attorney
General's Office in Rhode Island, and half a million people
could be cared for by the Attorney General's Office in
Alaska, Maine was not pioneering either something un­heard of or impossible to effectuate.

The County Attorney System in Maine was designed at

the time when the Superior Court System was brought
into being in the early 1930's. County Attorneys in Maine
are elected within their counties for two-year terms. They
are charged with the responsibility of prosecution only
within their counties. It was intended that they should
prosecute as part-timers only when the Superior Court had
a term to be held within their counties. Most of the coun­
ties have had not more than three terms until very
recently, and many of them in the beginning had only one
term a year.

As time passed, the court loads became larger and the
number of terms in the counties increased making the job
of the County Attorneys more demanding. Nevertheless,
during this entire period a County Attorney was considered
to be a part-time prosecutor and paid as such, and was
further allowed to carry on his normal law practice with
the sole proviso that he would not take cases which in­
volved the State of Maine.

This worked, although somewhat lamely, in most of
the counties even though prior to the beginning of the
decade of the 1960's a young lawyer in the county ran for
the office to augment his income, "cut his teeth" so to
speak on the county's criminal problems, which were not
then very severe in rural Maine, and then moved on to a
law practice which would support him and in which or for
which his experience as county attorney would be a use­ful adjunct.

In 1960 the Supreme Court of the United States began
to render a series of decisions which revolutionized the
problem of law enforcement people at every level. Coinc­
cidentally in 1961, in Maine, the legislature enacted a Dis­
trict Court System which did away with approximately
one hundred Municipal Court judges and recorders who
served part-time in a system which was not answering the problems as a court-of-first-instance should. The District Court was substituted as a court system with thirteen districts, having a full-time judge in every district who sat every day in his various court rooms within the district.

The great contribution of the District Court System to criminal prosecution was that it provided a uniform system of justice in every district in Maine and gave dignity and renewed public acceptance to the court in which most people found themselves for the first time. But it required, rather suddenly, that trained prosecutors be available for the more serious cases which began increasing in number. At the same time, of course, starting with Mapp v. Ohio the Supreme Court began making the problem of prosecution more complicated and demanding, and made it no longer useful or profitable for young lawyers to begin to “cut their teeth” in the practice of law at the county’s expense.

It became obvious, soon after the District Court system came into effect in the State of Maine, that the County Attorney System would simply be unable to handle the case loads and the requirements of the District Court. This is the situation in which we find ourselves now.

The Legislature, as a partial answer, has increased the salaries of the part-time county attorneys and has given many of them one or more assistant county attorneys. This has helped, but it has not really answered the problem of shoring up the “sinking city.”

Prosecution today requires professional men with a continuity of term of office and with expertise which makes them equally as familiar with the strictures placed upon law enforcement by the Supreme Court of the United States as defense lawyers must be.

It is axiomatic that while prosecution and investigation must be bolstered at every level, the best police investigator and police forces in the state will be of no avail if the prosecutor doesn’t know how to prosecute his case. More and more in the State of Maine we are seeing that the amateur on the ticket as part-time prosecutor is simply unable to come up with sufficient number of convictions which successfully deter criminal activity and place behind iron bars those who clearly are guilty and ought to be incarcerated.

This downward trend, in my opinion, is going to continue until such time as the legislatures of the various states are willing to face certain unavoidable facts. The first of these facts is that for too long law enforcement at every level in our society has been treated as a second cousin. The second fact is that prosecution must become uniform, professional and expert. The basic difficulty with any elected County Attorney System is not to be found in the fact that salaries are not sufficient. The basic problem relates to the fact that prosecutors who have to get themselves re-elected every other year are basically politicians and that they are part-timers. Because of this politically elective system, they are forced to keep their private practices open and deal with the attorneys in their counties. They are frequently under pressure to make deals in the corridor as to who will be prosecuted and who will not. This is not to say that such deals are illegal, but the pressures brought to bear upon the young, inexperienced prosecutor by the established and sometimes fearsome defense lawyers in a small county are the kinds of pressures which such a young lawyer usually is unable to handle well.

A final problem with the County Attorney System as it exists in Maine and elsewhere is that county prosecutors are, in fact, locked into particular geographical areas. In many cases there will be a pile-up in the county court of one county while the county attorney, residing in a neighboring county, is unable by law to give any assistance to help relieve the load of the prosecutor living thirty or forty miles away. It ought to be recognized that all cases against criminals are the state and not county cases. Any uniform system of prosecution under the control and direction of the Attorney General will obviously have the advantage of state-wide prosecutors with state-wide powers moving from county to county, from courthouse to courthouse, from term to term, and from judge to judge, without any artificial barriers or geographic lines. The system is logical, economical, and right; and I predict that it will be the system of the future as the legislatures begin to recognize that the problems of crime and law enforcement will not be put off any longer. In Maine the basic reason that this particular concept has not been accepted in the last two years is the adherence of some county officers, such as county commissioners, to the concept that every move that takes an elected official off the ballot weakens the County system of government. It should be obvious that the county attorney has nothing to do with the government or administration of the county. He is the state’s prosecutor within that county and is paid by the State of Maine (actually from the Attorney General’s budget). He has nothing whatever to do with the government of the county. The only relation he bears to county government is that every two years his name appears on the ballot for people to vote upon. As long as this particular luxury is continued, prosecution will suffer. Rural counties, which hold fast to the belief that they must keep their county attorneys on the ballot, will find that they are not getting proper prosecution; that criminals from petty gangs up to serious felons are simply not being prosecuted successfully in their counties. I hope the situation does not have to deteriorate even further before the legislature or the county politicians will be willing to face reality and accept the proposition that prosecution needs to be headed and directed by the Attorney General’s Department.
RESTITUTION FOR THE CONSUMER IN MASSACHUSETTS

by Robert H. Quinn, Attorney General of Massachusetts

Robert H. Quinn was elected Attorney General for the Commonwealth of Massachusetts on January 23, 1969. As the chief law officer of the state, legal counsel for the constitutional officers and departments, and the lawyer for the people of the Commonwealth, the Attorney General is charged with a varied and ever-increasing area of responsibility.

Robert H. Quinn assumed the office of Attorney General after a career in the House of Representatives. His participation in government began in 1937 with his election as Representative to the Massachusetts House of Representatives from the Roxbury-North Dorchester area.

As Majority Whip in 1963 and Majority Leader in 1965, he played a major role in fashioning and directing all legislation passing through the House of Representatives. He was elected the 78th Speaker of the House of Representatives on December 20, 1967, without opposition, and thus became the first Democratic speaker ever elected from the City of Boston.

A Magna Cum Laude graduate of Boston College, Quinn was awarded the Governor William Stoughton Scholarship, and received his law degree from Harvard Law School in 1955. He served as law clerk to Justice Harold P. Williams of the Supreme Judicial Court of Massachusetts in 1955 and 1956.

It has now become redundant and even commonplace for me to say and hear that Massachusetts is in the forefront of the rapidly expanding and extremely vital area of consumer protection. Consumer protection laws and effective enforcement of those laws by the Attorney General must be responsive to the changing needs and aspirations of the consumer. I am grateful for the chance here to discuss two recent and important amendments to our Consumer Protection Act, Chapter 93A of the Massachusetts General Laws.

Chapter 93A, with the somewhat cumbersome but quite informative title of "Regulation of Business Practice and Consumer Protection Act", was enacted in 1967 as Chapter 813 of the Acts of 1967. This law, sometimes referred to as the "Baby FTC Act" because of its similarity to the federal law and also because of the sponsorship and encouragement by the FTC of local enactment, added an exceptionally significant array of weapons to the arsenal of the Attorney General. Under Section 4, the Attorney General was empowered, in the event that he had reason to believe that a person was engaged or about to engage in an unfair or deceptive act or practice, to seek an injunction against such act or practice. As such, illegal conduct could be halted in appropriate cases by a civil proceeding in equity.

Extensive as the power conferred by Chapter 93A, section 4 may have been, a nagging but highly relevant question was often raised by the justifiably irate consumer. Why, asked the consumer, is the Attorney General content merely to stop the practice? All of the injunctions in the world would not return the consumer's money or property obtained through unfair or deceptive practice. In so providing, Section 4 was made consistent with the rights of the Attorney General under C. 93A, §5 to include within a voluntary assurance of discontinuance, signed by the seller, a provision for restitution.

Certain fascinating legal questions are raised by the application in a vacuum of the new rights granted to the Attorney General by Chapter 814 of the Acts of 1969. It is theoretically possible that the Attorney General could proceed against an individual for violations of Chapter 93A and obtain an injunction and a court order of restitution in a case in which the consumer would be unable to obtain the return of his money or property (Chapter 690 of the Acts of 1969, discussed below, may eliminate this theoretical legal difficulty).

A further unanswered question is whether the right of the Attorney General to seek restitution may be utilized in a situation in which the respondent has engaged in the past in an unfair or deceptive act or practice but is no longer so engaged. Section 4 of Chapter 93A authorizes the commencement of an action to restrain the use or imminent use of such an act or practice, but might be construed to be silent with respect to an action for restitution of money or property obtained by means of a practice discontinued by the time of commencement of the action.

Further questions may be raised concerning the applicability of Section 4, as amended, to acts or practices which occurred prior to November 24, 1969, the effective date of Chapter 814 of the Acts of 1969. Might it not be argued that the change worked by that law is applicable to acts or practices occurring before November 24, 1969, but discovered in the exercise of reasonable diligence after that date? Further, might it even be argued that the amendment was not substantive but procedural, conferred no new right but merely a remedy, and is therefore
applicable even with respect to acts or practices perpetrated and discovered prior to the effective date but made the subject of litigation after the effective date?

Chapter 690 of the Acts of 1969, the so-called "private action" bill, complements Chapter 814. This landmark legislation confers on the person who has suffered the loss of money or property due to an unfair or deceptive act or practice the right to bring an action in the Superior Court in equity for damages and equitable relief, including an injunction. A "class action" is also authorized.

There have been countless accusations and cross-ac­cusations, rhetoric and hyperbole, directed at the concept of a private action being available to the consumer. Some argue that under no circumstances should such a potent weapon be made of the consumer's rights; apparently, the thought is that the consumer will act irresponsibly. Others argue that if the consumer or consumers are to have a private cause of action or a class of action, such an action should only be commenced after a successful prosecution by the appropriate enforcement authority; i.e., the Attorney General acting under Chapter 93A. Massachusetts law requires no such condition precedent; in fact, there appears to be no provision which would preclude a private action and action by the Attorney General from proceeding simultaneously or consecutively.

It would appear extremely unlikely that a court in a private action under Section 9 would duplicate an order of restitution in an action by the Attorney General under Section 4, but it should be noted that Section 4 provides for restoring money or property to any person having suffered a loss by reason of the act or practice while Section 9 allows the court to award damages. Theoretically the dollar amount could differ. Under Section 10 of Chapter 93A, also enacted by Chapter 814, a permanent injunction obtained by the Attorney General will be prima facie evidence of the use by the respondent of an unfair or deceptive act or practice unlawful under Section 2.

The absence of any condition precedent, involving prosecution of a civil action by the Attorney General does not mean that Chapter 814 is without some valuable safeguards. At least thirty days prior to the filing of a private action, a demand for relief must be made upon the prospective respondent, spelling out the unfair or deceptive practice and identifying the claimant and his injury. The prospective respondent has thirty days from the date of mailing or delivery of the demand to make a written tender of settlement. If rejected and later found reasonable by the court, this tender of settlement delimits the recovery. If the court does not find the tender reasonable, and if the finding is for the petitioner, the recovery will be twenty-five dollars or actual damages whichever is greater.

By means of the thirty day interval between demand and commencement of the action, along with an opportunity for the prospective respondent to make a reasonable offer of settlement, protection against substantial abuse of the private remedy is provided. That a consumer problem has reached the level of considering an action under Section 9 is attributable to many different factors, but the thirty day period may coerce or encourage a rational consideration of the merit of a particular claim.

On the other hand, it should be noted that if the prospective respondent fails to make a reasonable offer of settlement, more serious consequences may obtain. If the court finds for the petitioner and finds either that there was a knowing or willful violation of Section 2 of Chapter 93A or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice violated Section 2, then recovery will be up to three but not less than two times the actual damages or twenty-five dollars, whichever is greater. In addition, if the court finds a violation of Section 2 and that the tender of settlement was not reasonable, then the petitioner shall be awarded reasonable attorney's fees and costs incurred in connection with the action.

The police assaults upon protesters in the streets and parks of Chicago, the indictment of the eight defendants under a law which violates freedom of expression, and the bold violation of the due process rights of the defendants at their trial—unhappily has led to a radicalization process among many which seems to be bent upon destruction.

Rennie Davis remarked, after the verdict was returned by the jury, "our jury will be in the streets tonight." They were in the streets that night—the streets of Chicago, Seattle, New York, Ann Harbor, Washington, D.C., Boston and several other cities. In many instances, people were injured and property was destroyed.

During the presidential campaigns of Senator Eugene McCarthy and the late Senator Robert Kennedy, two fingers held high in the air signified victory of the Liberal cause by means of massive peaceful demonstrations. The symbol of that cause is changing into the clenched fist held high in the air—the symbol of resistance. Some civil rights leaders who, two or three years ago, advocated peaceful demonstrations are beginning to assert that peaceful demonstrations have outlived their usefulness and that government encroachment upon the rights of its citizens must be met with resistance.

There is a lesson to be heeded by those in government which has been dramatized by the Chicago story: radicalization is a response to stimuli. It results from repression. There is constructive as well as destructive radicalization. While it is true that many of today's radicals are destructive, it is also true that those who ignore the constitutional rights of others are likewise being destructive—of the very essence of democracy.
A PLEA FOR THE ADOPTION OF CIVIL DISCOVERY RULES IN CRIMINAL CASES
by James S. Jeffords, Attorney General of Vermont

James M. Jeffords has been Vermont's Attorney General since January, 1969. Mr. Jeffords served as State Senator from Rutland County prior to his being elected Attorney General. While in the Senate, he energetically served on the Senate Judicial Committee, Senate Finance Committee, Special Committee Administrative Procedures and as Chairman of the Highway Investigation Committee.

Mr. Jeffords launched his political career in 1963 when he began his term as Republican Town Chairman. His political activities also include service as Town Agent of Shrewsbury and Town Grand Juror.

Educated at Yale University where he received a B.S. in Industrial Administration and Harvard Law School, Attorney General Jeffords began his legal career as Law Clerk for Judge Ernest W. Gibson of the U.S. District Court. Mr. Jeffords is a partner with Clayton Kinney and J. Fred Carbine, Jr. A member of the Vermont Bar Association, Mr. Jeffords is also a member of the American Judicature Society, a Trustee for Legal Aid and has been admitted to practice before the U.S. Supreme Court.

Despite the plethora of decisions attempting to create a judicial process consistent with our concept of well ordered liberty, a modern criminal trial still involves too much litigious combat featuring skillful thrusts and parries. The defendant is armed with an arsenal of rights provided by recent judicial decisions and protected by a shield of silence secured by the Fifth Amendment. Not only is it incumbent upon the prosecution to prove its case beyond a reasonable doubt but the defendant can, if he so chooses, frame a defense most compatible with his innocence without alerting the prosecutor until the moment of defense presentation. It is submitted that such a system only penalizes today's law enforcement officers for the alleged abuses of their predecessors. It does not promote the search for truth through orderly procedures.

Discovery has long been used in civil litigation to eliminate or at least diminish surprise at trial. The overwhelming number of pre-trial settlements of civil litigation has been in great part directly attributable to all litigants having been able to realistically evaluate the merits of their position as a result of the extensive discovery procedures available to them. Although most civil litigation brings together litigants of unequal resources (e.g. an injured person v. an insurance company or a consumer v. a business entity) discovery rules generally do not attempt to eliminate this imbalance.

On the criminal side, however, the zealous regard for individual liberty has led our judiciary to attempt to eliminate the disparity between the power of the State to gather information in aid of its prosecution and the ability of a defendant to collect evidence for his defense. This has been done, generally, by engraving into the Due Process Clause of the Fourteenth Amendment the enumerated rights of the First Eight Amendments and at the same time broadening their interpretation and application. Unfortunately, too little attention has been given to the effect of these "rights" on the trial process. The retroactivity problem is the most conspicuous example. The dictate in Miranda v. Arizona, 384 U.S. 436 (1966), that all trials after that decision date should be governed by its holding brought indelible havoc to the courts. It is submitted that the focus must shift, that the Courts must recognize that the object of all litigation is to seek the "truth" and that while there are cherished "rights" designed to protect an accused, these "rights" should be reviewed in relation to the object of the system for which they were created.

A fertile area for the Courts to generate useful change is that relating to discovery in criminal proceedings. A Vermont criminal defendant has the right to depose any witness whose testimony "may be material or relevant on the trial or of assistance in the preparation of his defense." (13 Vermont Statutes Annotated, Sec 6721.) Since deposition of the prosecutor's chief investigating officer invariably will uncover all witnesses whose testimony will bear on a defendant's innocence or guilt a defendant can easily evaluate the case against him. The prosecutor has no counterpart to this deposition statute. Apart from this illogical approach, the system's pernicious feature is that it favors the unscrupulous defendant to whom perjury is but a meaningless obstacle to his liberty.

The doctrinal implications of the defendant's Fifth Amendment privilege preclude interrogation of him without appropriate safeguards. However, this personal privilege does not extend to other witnesses or evidence to be presented in the defendant's behalf. Vermont requires 48-hour notice of a defendant's intention to interpose the defenses of insanity and alibi (13 Vermont Statutes Annotated 661) but the defendant must only tell where he was, not whom he expects to call to verify his alibi, and he need not indicate any ramifications of his insanity defense. Juxtaposing the defendant's right to depose against the minimal alibi and insanity notice information given to the prosecutor, there apparently is a lack of trust in prosecutors to conduct an honest investigation or a misconception of the probability of defendants abusing their tactical advantage to obtain unwarranted acquittals.

Inasmuch as trials are an attempt to ascertain "what in fact happened," it is essential that the most reliable methods be used to make this determination. It is incongruous that in our system a court instructs a jury that cross-examination has long been used to test the credibility of a witness and should be considered by the jury in assessing a witness's testimony while at the same time depriving the prosecutor of the opportunity to use this method of impeachment effectively by denying him meaningful discovery. This is especially true in complicated cases involving extensive documentation and reports. Counsel must use part of the examination to learn about the documents and then must attempt to impeach their authenticity or diminish their importance. This procedure creates an artificial situation wherein the success of the prosecution depends more on the advocacy skills of the prosecutor (and also his ability to run an investigation during the trial) rather than on the merits of the controversy. It is suggested that criminal procedure parallel civil procedure,
The turmoil over religious activity in the public schools of the United States is not a new one. Recently, however, the debate has gained momentum as a result of several decisions of the United States Supreme Court. The debate has, however, been a continuing one from just prior to the adoption of the First Amendment to the Constitution. Thomas Jefferson voiced his concern that there should be a wall of separation between church and state, and in 1817 he introduced an education bill into the Virginia Legislature which specifically prohibited religious reading, instruction or exercise of any kind in the public schools. In 1875 President Ulysses S. Grant indicated in his speech before the Convention of the Army of Tennessee his attitude toward the commingling of religion with public schools. He stated that we must:

Encourage free schools, and resolve that not one dollar appropriated for their support shall be appropriated to the support of any sectarian school. Resolve that neither the state nor nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church, and the private school . . . Keep the church and state forever separate. (emphasis added)

In the eye of the hurricane rests the seemingly benign First Amendment to the United States Constitution which provides, in pertinent part, that "Congress shall make no law respecting the establishment of religion . . ." This provision, as well as all the freedoms contained in the First Amendment, was made applicable to the States via the "Due Process" clause of the Fourteenth Amendment by the case of Cantwell v. Connecticut2 thus placing the same restrictions on the states as have been levied upon the Federal Government. Perhaps if the Founding Fathers had seen fit to preface the word "religion" in the First Amendment by the article "a" then much of the judicial history surrounding this portion of the Constitution might never have developed. Rather than enjoying a relatively quiet existence, however, the so-called Establishment Clause has been surrounded by controversy, and the U.S. Supreme Court has been called upon many times to interpret it. One of the earliest cases in which the freedom of religion was at issue was the case of Reynolds v. United States4 in which the Court upheld the bigamy conviction of a member of the Church of Jesus Christ of Latter-Day Saints, commonly called the Mormon Church. The petitioner, as a member of the Mormon Church, believed that if he did not practice polygamy, circumstances permitting, he would be punished by damnation in the life hereafter. In upholding the conviction the Court stated that the First Amendment had deprived Congress of "all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order."5 The Court pointed out that polygamy had always been considered odious to good order and, therefore, the First Amendment guarantee of freedom of religion was not intended to prohibit legislation which proscribed its practice.

Once again in the case of Sherbert v. Verner7 the Court was called upon to determine whether a state had abridged an individuals freedom of religion. In this case the Court held that the denial of unemployment benefits to a Seventh Day Adventist because she would not work on Saturdays, her Sabbath, was a violation by the State of the right of free exercise as guaranteed by the First Amendment.

While these past decisions relating to peripheral issues perhaps indicated that a storm was about to erupt, such did not really become evident until June of 1962 when the U.S. Supreme Court decided the case of Engel v. Vitale.8 Here, the Board of Education of the Union Free School District No. 9 of New Hyde Park, New York, acting in its official capacity, directed that the following be said aloud, voluntarily, by the students in the presence of a teacher at the beginning of each school day:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."9

The above quoted prayer was adopted on the recommendation of the State Board of Regents. Several parents brought suit in the state courts challenging the constitutionality of the activity, claiming that it was contrary to their religious beliefs and the beliefs of their children, and a violation of the "Establishment Clause" of the First Amendment. The New York Court of Appeals upheld the action of the lower courts denying the relief sought, holding that the State Board of Regents had the power to adopt a prayer to be said in the public schools so long as the schools did not compel any student to join in the prayer over his or her parents' objection.10 A petition for Certiorari to the United States Supreme Court was granted11 and the decision was ultimately reversed. The Court held that under the Establishment Clause both the State and Federal Governments were without power to prescribe any particular form of prayer. The Court further pointed out that the prayer adopted by the State Board of Regents officially established the religious beliefs contained therein.12 The essence of the decision, however, was the holding that neither the fact that the prayer was denominationally neutral nor the fact that its observance was purely voluntary served to bring the activity within the First Amendment.13
The *Engel* case was perhaps an omen of things to come, but it did not prohibit all religious activity in the public schools. It merely held that a state could not adopt one prayer to be used in its public schools. Limited to this point, as I feel the case should be, one can see that the area of prayer in the public schools was still not totally proscribed.

In 1963, however, the U.S. Supreme Court decided the companion cases of *School District of Abington Township Pennsylvania v. Schempp* and *Murray v. Curlett* and the battle was on.

At issue in the *Abington* case was a Pennsylvania statute which required the reading of at least ten verses from the Holy Bible, without comment, at the opening of each public school on each school day. The statute further provided that any child could be excused from such exercises upon the written request of his parent or guardian. These exercises were conducted in the home-rooms at the beginning of each school day. The Schempp family, the husband and wife and two of the three children, sought and received injunctive relief, claiming that their rights under the First and Fourteenth Amendments had been violated. The School Board of Abington Township appealed directly to the U.S. Supreme Court.

In the *Murray* case, the Board of School Commissioners of Baltimore City, Maryland adopted a rule providing for opening school exercises consisting primarily of the reading, without comment, of a chapter of the Holy Bible and/or the recitation of the Lord's Prayer. Participation in these exercises was strictly voluntary. Mrs. Murray, the mother of the Petitioner, unsuccessfully sought a Writ of Mandamus in State Court to compel a cessation of these activities. In accordance with the provisions of the program, Mrs. Murray's son, William, was excused from participating in the exercises. In the *Schempp* case the parents did not request that their children be excused. Their father testified that he had considered having his children excused, but felt that this would adversely affect their relationships with both their teachers and their fellow students.

These cases were joined for purposes of decision by the Court in that the legal issues involved were virtually identical — i.e. whether the Establishment Clause forbids a state to conduct religious exercises in the public schools.

In the decision, written by Mr. Justice Clark, it was first pointed out that the scope of the First Amendment was not merely to prevent the establishment by a government of one official religion, but rather it was meant to create a total separation of church and state by forbidding every form of public aid to religion. Justice Clark stated that when the power and prestige of the government was placed behind any sort of religious activity there is at least an indirect coercive force upon the people to conform to the approved plan. In determining the validity of the legislation in question the Court utilized the following test:

What is the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.

In applying the above mentioned test to each of the legislative enactments being considered, the Court concluded that each required activity that was basically religious in nature, and therefore was not secular as required by the Constitution. Such required exercises were held to be a direct violation of the rights guaranteed by the First Amendment freedom of religion.

This one case is possibly the most unpopular decision ever to come from the United States Supreme Court, for it is nationwide in scope, and does not merely reach into certain areas of the Country as do the decisions relating to segregation. Indeed the Court's ability to enforce its decisions is being challenged in many quarters today, and prayer programs have been instituted in several school districts throughout the Country. In *New Jersey a plan has been adopted and put into effect whereby the "remarks" of the Chaplain of the U.S. Senate and House of Representatives are read from the Congressional Record.*

In Massachusetts the School Board of Leyden adopted in August of 1969 a resolution providing for religious exercises in the public schools of Leyden. It is this resolution which I intend to examine, and to offer an opinion as to whether or not it is repugnant to the Establishment Clause of the First Amendment. The resolution passed by the Leyden School Committee reads as follows:

**I**

"On each school day, before class instruction begins, a period of not more than five minutes shall be available to those teachers and students who may wish to participate voluntarily in the free exercise of religion as guaranteed by our United States Constitution."

**II**

"This freedom of religion shall not be expressed in any way that will interfere with another's rights."

**III**

"Participation may be total or partial, regular or occasional, or not at all."

**IV**

"Non-participation shall not be considered evidence of non-religion nor shall participation be considered evidence of recognizing an establishment of religion."

**V**

"The purpose of this motion is not to favor one religion over another nor to favor religion over non-religion, but rather to promote love of neighbor, brotherhood, respect for the dignity of the individual, moral consciousness and civic responsibility: to contribute to the general welfare of the community and to preserve the values that constitute our American Heritage."
This plan was implemented in the schools of Leyden in the following manner: At 8:35 A.M. the school bell rings indicating that it is time for the students to gather for prayer. At 8:40 A.M. another bell sounds signaling the commencement of the activities. A bell signaling the end of the prayers and the beginning of the regular school day is rung at 8:45 A.M. During this five minute period either the Bible is read or the Lord's Prayer is recited. The regular school day begins with a flag salute, a patriotic song and a period of silent meditation.\(^5\)

This practice as stated in the motion adopted by the Leyden School Committee has been declared unconstitutional by the Massachusetts Attorney General,\(^26\) and court action is now pending. The Leyden authorities steadfastly claim that their plan is within the test laid down by the U.S. Supreme Court. While the claim of constitutionality is at best a tenuous one, this article will attempt to determine whether it has any merit, or whether the Town of Leyden is simply defying the Supreme Court.

Before passing on the main issue involved here, the constitutionality of the Leyden Plan, it is necessary to pass on the threshold question of whether the decisions of the Court prohibiting prayer in the public schools are binding on all or merely on those who were parties to the action.

This issue may be quickly dealt with, for the Court has held on several occasions that its decisions interpreting the Constitution are binding on all whether they were parties to the action or not. In *Cooper v. Aaron*\(^27\) the Court decided that its holdings in *Brown v. Board of Education*\(^28\) were binding on the Governor of Arkansas who, in defiance of the U.S. Supreme Court's orders compelling desegregation, had sent National Guard troops to prevent the integration of Central High School in Little Rock. In deciding the case, the Court quoted Chief Justice Marshall who said in *U.S. v. Peters*:\(^29\)

> "If the legislatures of the several states may, at will, annul the judgements of the courts of the United States, and destroy the rights acquired under those judgements, the Constitution itself becomes a solemn mockery ..."\(^30\)

In the *Cooper* case this philosophy was extended to include legislatures as well as state governors. The New Jersey Supreme Court, in the case of *Sills v. Hawthorne Board of Education*,\(^31\) held that the *Abington* and *Murray* cases were applicable to their laws even though those laws had not been tested before the Supreme Court. In the *Sills* case the Hawthorne Board of Education had passed a resolution to continue Bible reading exercises in spite of the decisions in *Abington* and *Murray*, for they felt that these decisions were not binding on them, and not applicable to the laws of New Jersey. The New Jersey Court states unequivocally, however, that one did not have to be a party to the decision of the U.S. Supreme Court to be bound thereby.\(^32\)

It appears clear, then, that the *Abington* and *Murray* decisions are binding on the Leyden School Committee. Possibly, however, they believe that these decisions bind only state governors and legislatures, and not local school boards. This contention, however, must not stand, for if it did, the Constitution would still be the mockery that Chief Justice Marshall spoke of in the *Peters* case. Further, the case of *West Virginia State Board of Education v. Barnette*\(^33\) specifically held that local boards of education are not exempt from the operation of the Fourteenth Amendment and cannot with impunity deprive any person of his Constitutionally guaranteed rights.

Having thus determined that the edicts of the Supreme Court relating to prayer in the public schools are binding on the authorities of Leyden, the next logical step is to determine whether the Leyden Plan is of such a nature that it will pass the test of constitutionality under the Establishment Clause.

The first area of inquiry is what type of activity is to be engaged in; is it religious or secular in nature. Upon examining the resolution adopted by the Leyden School Committee it would seem that there can be little doubt but that the plan anticipates activity which is basically religious in nature in the classrooms. It thus appears that the plan as adopted does not possess the requisite "secular legislative purpose" as required by the test set forth in the *Abington* and *Murray* decision. The first paragraph of the resolution adopted by the Leyden School Committee expressly states that there will be a five minute period for the voluntary "free exercise of religion." Attempting to deny the basic religious purpose of this motion is futile, even in the view of paragraph V of the resolution which states that the purpose of the plan is not to favor one religion over another, but rather to "promote love of neighbor, brotherhood, moral consciousness, etc. . . ." It is possible that the members of the Leyden School Committee felt that the insertion of the final paragraph would convert the plan to a secular one, thereby satisfying the test of a secular legislative purpose. The logic of this argument is questionable at best, especially in view of the case of *Chamberlain v. Dade County Board of Public Instruction*.\(^34\) In this case, the Florida Supreme Court had upheld a Florida Statute\(^35\) which required Bible reading and the recitation of prayers in the Florida public schools. The Florida Court held that the basic purpose of the legislation was secular, and therefore withstood the strictures of the Establishment Clause because of the introductory language which read as follows:

> "Whereas it is in the interest of good moral training, of a life of honorable thought and good citizenship, that the public school children should have lessons of morality brought to their attention during their school days, therefore be it enacted . . . ."\(^36\)

The applicability of the *Chamberlain* case to the Leyden Plan is painfully obvious, and the lesson seems to be that the Court will look past the stated purpose of the enactment and into its heart in order to determine whether or not the basic legislative purpose is secular, or if the stated purpose is merely a cover for activity amounting to the establishment of religion by the state. The only valid conclusion which can be drawn is, therefore, that a prayer by any other name is still a prayer, and the final paragraph of the Leyden Plan will not convert the basic purpose from a religious one to a secular one.

In two instances, the Supreme Court has upheld plans attacked under the Establishment Clause because the basic
purpose was secular rather than religious. In *Everson v. Board of Education* the Court, speaking through Mr. Justice Black, upheld a New Jersey Statute which provided for the reimbursement to parents of money expended by them for school bus transportation, even to private parochial schools. The enactment in question was held to be one which merely provided all children, regardless of religion, with safe and expeditious transportation to and from accredited schools. In other words, the legislative purpose was secular and the statute did not breach the wall of separation between church and state. Again in the case of *Board of Education v. Allen* the Court upheld a statute as having a basic secular legislative purpose. In the *Allen* case, a New York statute which authorized and directed the local boards of education to purchase textbooks and loan them, on individual request, to all children enrolled in grades seven through twelve of a “public or private school” which complies with the compulsory education laws of the State. This statute was upheld as having a secular purpose and a primary effect which neither advanced nor inhibited religion, but rather enhanced the educational opportunities of the young.

A point on which the Leyden Officials may hope to save their plan from an unfavorable judicial determination is the fact that it is silent as to what specific type of activity will be engaged in by the students, and it may be felt that any plan which is silent on this point is constitutionally permissible. While all of the cases thus far have dealt with resolutions or statutes which specify what type of activity will occur, the Court would, in all probability, not view this as a saving feature which would bring the activity within the Establishment Clause. The controlling feature in any plan seems to be, thus far, according to the *Abington* and *Murray* cases, whether the basic legislative purpose is secular or religious; does the enactment aid religion. As I have already indicated, I believe it quite clear that the Leyden Plan is religious in nature. Thus the fact that the plan does not call for specific activity is not determinative at the present time.

To date, the only reason offered, publicly at least by the Leyden School Committee in support of their claim of constitutionality is the fact that participation in the “free exercise of religion” is strictly voluntary, and that “Non-participation shall not be considered as evidence of non-religion...” To believe at this late date that the feature of voluntariness alone will save such a plan is to close one’s eyes to judicial reality. In the *Abington* decision, Mr. Justice Clark specifically stated that the fact that individual students may absent themselves upon parental request furnishes no defense whatsoever to a claim of unconstitutionality under the Establishment Clause. The fact that the Leyden Plan does not require a parental request in order for the student to be excused, as have all other plans considered thus far, will not save it. Non-participation, whether by parental request or simply because of the desires of the individual student, regardless of motivation, may still hold the non-participant open to ridicule from his fellow students, and accusations that he, or she, is an atheist. Mr. Justice Douglas, in his concurring opinion in the *Abington* case, hinted at the indirect coercive effect that the fear of being labeled an oddball would have. He went further, however, and said that when a state requires voluntary participation in a religious exercise that it is violating the neutrality required by the First Amendment between the church and state.

Since the decisions in the *Engel, Abington, and Murray* cases many state plans calling for religious exercises of one type or another in the public schools have been struck down, and any hope that the Supreme Court will retreat from its position of absolute prohibition is slim. Since *Abington* and *Murray*, the Court has had the opportunity to amend its position in two instances, and has either refused to grant certiorari or has dealt with it summarily via a per curiam decision holding the practice unconstitutional. In the case of *Stein v. Oshinsky*, the United States Court of Appeals for the Second Circuit in a decision by Judge Friendly struck down the following prayers which were being recited by kindergarten children in Whitestone, New York before partaking of milk and cookies:

“God is Great, God is Good and We Thank Him for Our Food, Amen.”

and

“Thank You for the World So Sweet, Thank You for the Food We Eat, Thank You for the Birds that Sing Thank You, God, for Everything.”

It was argued in the *Stein* case that the collective effect of the *Engel* and *Abington* and *Murray* decisions was only that a state could not, under the Establishment Clause, direct the use of public school teachers and facilities for the recitation of prayer, whether composed by a state official as in *Engel* or merely having a religious content as in *Abington* and *Murray*. Judge Friendly assumed that this argument was true, and that the Establishment Clause would allow a state to permit such activity. Even if such was the case, however, a state is under no compulsion to do so, and the school principal who had ordered the kindergarten classes to cease their prayers could not be compelled to allow them to continue.

In a similar case, *Despain v. Dekalb County Community School District*, a prayer identical to the second one being recited in the *Stein* case, except that the word “God” had been deleted from the last line, was being recited by another kindergarten class and was declared violative of the Establishment Clause. The United States Court of Appeals for the Seventh Circuit, applying the secular purpose test laid down in *Abington* and *Murray* decided that the deletion of the word “God” did not change the basic purpose of the plan and that it was still the religious act of praying and thanking a Deity.

In the light of this entire body of case law, the Leyden School Committee still insists that its action is within the mandate of the Supreme Court, even though, as I have pointed out, the basic purpose of the enactment was clearly not secular, and in view of the fact that voluntariness of participation is no defense to a claim of unconstitutionality. It becomes necessary, therefore to proceed even further into an analysis of the Leyden Plan to determine whether or not there is any valid basis for this contention.

It is important to note at this point that every case decided to date has dealt with programs that have been conducted during the regular school day and as a normal part of it. The Leyden Plan, however, as implemented, is not a part of the regular school day, but occurs before
the school day begins. As implemented, the period of time set aside for the exercises is five minutes before the school day begins. Perhaps this is akin to the released time programs approved by the Court in *Zorach v. Clauson*.

In the *Zorach* case, a New York law permitting absence from school for religious observance and education was being questioned.

By way of background to the concept of released time, the case of *McCollum v. Board of Education of School District No. 1, Champaign County, Illinois* must be examined. In the school district in question a released time program was initiated whereby religious teachers, including representatives of the Catholic, Protestant and Jewish Faiths gave religious instruction in public school buildings during the normal school day once a week. Pupils whose parents requested were excused from their secular classes during the periods of religious instruction, and were required to attend the religious classes. Other students were not so released. A resident taxpayer of the district whose child was enrolled in the public schools unsuccessfully sought a Writ of Mandamus from the State Court requiring the Board of Education to terminate this practice. The U.S. Supreme Court held that this was clearly a utilization of the tax established and tax supported public schools in aid of certain religious groups, and that it fell squarely within the ban of the Establishment Clause of the First Amendment.

The *Zorach* case dealt with a program whereby students desiring could leave the school premises and go to religious centers for religious instruction or devotional exercises. *Zorach* was distinguished from *McCollum* on the basis that the program in question involved neither the use of public school classrooms nor the expenditure of public funds for a religious purpose. The Court held that there is no violation of the First Amendment when a state encourages religious instruction or adjusts its schedule to sectarian needs.

Clearly, then, the First Amendment not only forbids programs which are religious in nature from being conducted in the classrooms, it also prohibits the use of public buildings and public funds for functions that are basically sectarian in nature. It would appear, then, that any claim that the Leyden Plan is a valid released time program must be discarded. As in the *McCollum* case, the time set aside for the religious activities will be held in a public school, and will utilize public funds, perhaps small in amount, but public nonetheless. The prohibition on the use of public funds and facilities was also mentioned in the concurring opinion filed by Mr. Justice Black in the *Abington* decision. There it was pointed out that the "Establishment Clause is not limited to precluding the State itself from conducting religious exercises. It also forbids the State to employ its facilities or funds . . ." in a way that favors any church or gives it greater strength than it would have by relying on its members alone.

Before discarding completely the idea that a five minute period set aside before the beginning of the school day may be activity which could not violate the Establishment Clause, despite the substantial weight of authority against such a proposition, one more case must be examined. The case of *Reed v. VanHoven* is either a misfit in this area of Constitutional Law or it is a case which offers some real hope to the advocates of allowing school children to pray in their classrooms. A plan allowing prayer in the public schools was adopted, very similar to the one adopted in Leyden. In the *Reed* case the plan was implemented as follows: At 8:40 A.M. a warning bell sounded followed by another bell at 8:45 A.M. to indicate that the homerooms were open for use by those students desiring to pray. At 8:50 A.M. another bell sounded indicating the end of the prayer period and that the school day was about to begin. A final bell rang at 9:00 A.M. signalling the actual beginning of the school day.

It is distinctly possible that the authorities in Leyden were relying on this decision when they formulated their plan. It is doubtful, however, that such a plan as that outlined in *Reed* would be upheld as within the Establishment Clause. It is true that the exercises do not open the regular school day and are not a part of it. It is also true that the teaching staff have a minimal role to play. Also under the plan outlined in *Reed* there would be a commingling of the entire student body, thereby minimizing the possibility that those who do not participate will be labelled oddballs by their fellow students. I doubt, however, that even these safeguards would save such a plan, for public facilities are being used, thus violating the dictates of the Establishment Clause.

The wall of separation built between the church and the state is such that a state may not author a prayer to be used in its schools and it may not require that the school day be opened with a reading, without comment, from the scriptures. Furthermore, the state is prohibited from allowing its buildings or funds to be utilized for a religious purpose. It may, however, adjust the public schedule to allow pupils to leave the school for religious training or devotional exercises.
The United States Supreme Court has been quite specific as to what a state can and cannot do within the Establishment Clause. The lines have been clearly drawn, and it is my conclusion that the Leyden Plan is well outside of these limitations. The activity anticipated is religious in nature, as can be readily seen from a quick glance at the resolution adopted by the Leyden School Committee. The fact that the participation is totally voluntary does not bring it within the mandate of the Court, nor does the fact that the resolution states that the purpose of the plan is not to promote religion, but merely to advance morality, etc. Clearly, the activity is to take place in public buildings, and will involve an expenditure of public funds for a religious purpose. Even assuming, as was done in the Stein case, that a state could permit such activity if it so desired, the Massachusetts Attorney General has not been so inclined, and has officially declared the Leyden Plan unconstitutional and has instituted court action to compel its cessation.

I personally believe that the members of the Leyden School Committee know that their plan does not meet the requirements of the Establishment Clause as it has recently been interpreted. The Leyden Plan is not different as is claimed. Rather, the plan represents, I believe, open defiance of the Supreme Court. But then how else does one get the Court to reverse itself and adopt a new position. The Leyden Plan is, in my opinion, an attempt to place the issue again before the Supreme Court and to try and convince the Court that it should at least relent slightly from its hard line position. Since the Leyden officials stress the voluntary features of their plan, I believe that their ultimate goal is to persuade the Court that a voluntary plan is within the Establishment Clause. It is an attempt and perhaps it will succeed in as much as by the time the case comes up there will be at least two new justices and possibly more, all appointed by President Nixon, and possibly more predisposed to such a position.

EDITOR'S NOTE
During the first week in April, 1970, The Honorable Paul V. Rutledge of the Massachusetts Superior Court decreed on a Bill of Complaint for declaratory injunctive relief brought by Neil V. Sullivan, Commissioner of Education of the Commonwealth of Massachusetts, against the members of the Leyden School Committee that that portion of the enactment which provides for prayer in the classrooms prior to the opening of school did not stand in contravention of the Establishment Clause. The presence of teachers or other school officials during the religious exercises did, however, violate the Constitution.

NOTES
2. "The President's Speech at DesMoines," 22 Catholic World 433, 434-35 (1876)
3. 310 U.S. 296 (1940)
4. 98 U.S. 145 (1878)
5. Id. at p. 164
6. Id. at p. 165
7. 374 U.S. 398 (1963)
8. 370 U.S. 421 (1962)
9. Id. at p. 422
10. 10 N.Y. 2d 174, 176 N.E. 2d 579
11. 368 U.S. 924
12. 370 U.S. at p. 430
13. Id.
14. Recently in Epperson v. Arkansas, 393 U.S. 97 (1968), the Court held that a state may not tailor teaching and learning to the principles or prohibition of any one religion. In the Epperson case a statute which prohibited the teaching of Darwin's Theory of Evolution was held in violation of the First Amendment. The Court said that such a statute violated the government neutrality needed in relation to religious matters.
15. 374 U.S. 203, 10 L.Ed. 2d 844, 83 S.Ct. 1560 (1963)
17. 374 U.S. at p. 206
18. 201 F. Supp. 815
19. The appeal was taken under 28 U.S.C. 1253 which allows direct appeal to the U.S. Supreme Court by any party from decisions of a three judge court. The Supreme Court noted probable jurisdiction in 371 U.S. 807.
20. 228 Md. 239, 179 A. 2d 698. A Petition for Certiorari was granted in 371 U.S. 809.
21. 374 U.S. at p. 217
22. Id. at p. 221
23. Id. at p. 222
25. M.G.L.A. C. 71, sec. 1A. Period of Silent Meditation. This statute requires the opening of each public school day with a period of silent meditation not to exceed one minute. This provision was declared constitutional by the Attorney General in Op. Atty. Gen. April 4, 1966, p. 299
27. 358 U.S. 1 (1958)
29. 5 Cranch 115
30. Id. at p. 136. Quoted in Cooper v. Aaron. 358 U.S. 18
31. 84 N.J. Super 63, 200 A. 2d 817 (1963)
32. Id. at p. 819
33. 319 U.S. 624, 637 (1942)
34. 377 U.S. 402 (1964)
38. 392 U.S. 236 (1968)
39. N.Y. Education Law sec. 701 (3) (1967 Supp.)
40. 374 U.S. at pp. 224 & 225
41. Id. at p. 228
42. Id. at pp. 228 &229

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ALUMNI DAY PLANS ANNOUNCED

The General Alumni Association of Suffolk University has announced that the Motel 128 in Dedham, Massachusetts, will be the setting for this year’s Alumni Day Banquet. The theme this year will be “The Gay Nineties.” The festivities promise to be most enjoyable for all those attending. Tickets are priced at $7.50 per person and are available at the Alumni Office, Suffolk University, 41 Temple Street, Boston, Massachusetts, 02114.

Class of 1918

PHILIP P.A. O’CONNELL was feted by his family and friends on the occasion of his 75th birthday. He founded the Charlestown News in 1923 and in 1940 was appointed special assistant to the United States Attorney for the District of Massachusetts. Mr. O’Connell resides at 24 Boynton Road, Malden, Massachusetts.

MANUEL MARGET has just completed forty years of sports broadcasting in the Fargo, North Dakota area. Marget has aired over 5,500 sports events and at 73 years of age is probably the oldest active sports broadcaster in the business. Mr. Marget receives his mail at Station KVOX, Box 97, Moorhead, Minnesota, 56560.

Class of 1932

LEONARD SHEINFELD of Brighton has been elected President of Temple Bnai Moshe, Brighton. He was twice president of the Brotherhood in 1951 and 1961, and is now Honorary President and Life Member of the Brotherhood.

Class of 1937

ROY K. PATCH, a former mayor of Beverly, was named “Man of the Year” for 1970 by Lodge 1304 of B’nai B’rith. Patch, in association with Thomas Fitzgibbon, practices law in the city of Salem.

Class of 1943

JOHN P. DONNELLY is the newly elected President of the Middlesex County Bar Association. In his new post, Donnelly said he will be seeking a “unified bar to better serve the state and community,” a restructuring of the Probate Court system, particularly on the area of divorce and family law; and will be seeking to make a greater use of the U.S. Office of Economic Opportunity legal assistance programs for the needy.

Class of 1953

ERIC W. ANDERSON treasurer and controller of the Friendly Ice Cream Corp. of North Wilburham, was elected to the Board of Directors of the Western Bank and Trust Company, West Springfield, Massachusetts. A native of Woburn, Anderson now resides with his wife and four children in Wilburham, Massachusetts.

Class of 1955

JOHN H. O’NEIL has given up his post as Assistant Clerk of Courts in Fall River. Mr. O’Neil is returning to private practice with John F. O’Donoghue, whose offices are located at 60 Rock Street, Fall River. O’Neil is a former member of the Fall River City Council and was a candidate for mayor in the last mayoral election.

Class of 1956

GILBERT M. COROA has been sworn in as an Assistant Clerk with the Superior Court on Clerk of Courts, William P. Grant’s staff. Mr. Coroa, who is a native of Fall River, has served as a State Representative, a city assessor, and, until his most recent appointment, counsel for the Housing Authority. Mr. Coroa resides with his wife Cecilia and their three children at 587 North Underwood Street, Fall River, Massachusetts.

Class of 1959

WILLIAM A. BURKE has been elected National Treasurer of The Bentley College Alumni Association. Burke, who serves as the Executive Secretary of The Massachusetts State Group Insurance Commission, will also head the Alumni Association’s Planning and Programming Committee. Mr. Burke presently resides in Lynnfield, Massachusetts.

FRED J. MATERA, Jr. of Medford has been named an Assistant Attorney General by State Attorney General, Robert Quinn. Matera, who served four terms on the Medford City Council (1962 through 1969) will be assigned to the contracts division of the Attorney General’s office. Mr. Matera, who is also a member of the Federal Bar, maintains his law office in Medford Square.

PAUL E. RYAN was recently appointed Assistant Attorney General for the Commonwealth by Attorney General Robert H. Quinn. Ryan is a former Assistant District Attorney for Suffolk County and is presently serving his first term as a selectman of Rockland. Mr. Ryan maintains law offices in Rockland and Boston.

Class of 1961

FRANCIS A. COUGHLIN, Treasurer of the Town of Arlington, has been appointed a member of The Municipal Advisory Committee of the Boston Safe Deposit and Trust Company. Coughlin, who has been Arlington’s Treasurer since 1956, is a practicing attorney, a member of the Massachusetts Trial Lawyer’s Association and first Vice-President of the Association of Massachusetts Collectors and Treasurers.

Class of 1962

RICHARD P. HOWE has been elected the 89th Mayor of Lowell, Massachusetts. A practicing attorney, Howe is a member of the Lowell and Massachusetts Bar Associations and in addition, has served for four years on the City Council. Mayor Howe, his wife Mary and their three children, make their home at 506 Wilder Street, Lowell, Massachusetts.
Class of 1964

BENJAMIN W. NASON recently spoke on the “Politics of Conservation” at the University of Massachusetts. Mr. Nason is the only full-time paid lobbyist on environmental issues on Beacon Hill. He is also executive director of the Conservation Law Foundation (Boston), which he founded in 1966, and vice chairman of the Massachusetts Conservation Council.

PAUL R. TIERNEY has been re-elected to a second term as a member of the Boston School Committee. He is currently a practicing attorney with offices at 151 Tremont Street, Boston, Massachusetts, and also serves as an Assistant Corporation Counsel for the City of Boston. He presently resides with his wife and nine children in the Hyde Park section of Boston.

Class of 1965

JAMES J. McINNIS of 27 Kieran Road, North Andover, recently was named second Vice-President of the Massachusetts Association of Attorney—Certified Public Accountants Inc. McInnis is a former United States Internal Revenue Agent and an instructor of Tax Law for the United States Treasury Department.

Class of 1966

GEORGE K. KURKER has been elected and is presently serving in his first term on the Medford School Committee. Kurker also maintains a law office in Medford Square. Mr. Kurker, his wife Anne and their children, make their home at 14 Kilgore Avenue, Medford, Massachusetts.

Class of 1967

ANDREW J. DOOLEY has been elected to the Taunton City Council and took office on January 5, 1970. Dooley, who is a member of the Taunton, Boston, Massachusetts and American Bar Association, has a general practice of law in Taunton and is also associated with the Boston Law Firm of Segalini and Burke.

DAVID B. GITTLEJOHN has been appointed Massachusetts Deputy Assistant Attorney General on the Division of Health, Education and Welfare by Attorney General Robert Quinn. His work includes the protecting of our environment by enforcing the State's laws designed to preserve the air and water.

ARTHUR W. HICKS has been named to the Finance Committee of the City of Braintree. In addition to his practice of law, Hicks also serves as the Director of the Stoughton Welfare Service Office as well as Chairman of the Braintree Building Code Committee.

JAMES F. HUNTOON has been elected Vice-President, General Manager of BIT, Inc., Natick Computer Manufacturer. A member of the Massachusetts Bar Association, Mr. Huntoon has been active in local civil projects as well, and serves as a Natick Town Meeting Member.

THOMAS LILLY, of Groton, Massachusetts, has been appointed by the Board of Selectmen of Shirley to serve as Counsel for that town. Mr. Lilly, who became a member of the Massachusetts Bar in 1967, maintains his office at 34 Main Street, Ayer, and resides in Groton with his wife Rita and their three children.

ARTHUR P. LOUGHLIN has been appointed by Attorney General Robert Quinn as an Assistant Attorney General in the Health, Education and Welfare Division of the Attorney General's Office. Prior to his appointment, Loughlin was employed as a chemist at the United States Army Natick Laboratories.

Class of 1968

HAROLD A. ADAMIAK of 72 Sylvan Street, has become associated with the law firm of Clifford, O'Connor, Hanlon and McCarthy. Adamiak, who was admitted to the Massachusetts Bar last spring, was formerly associated with The Travelers Insurance Company as a claims representative.

JOHN F. MEE of Brookline, Massachusetts was recently appointed as Assistant to District Attorney Doney in Middlesex County. Mr. Mee is currently completing a thesis for a Master of Laws degree from the George Washington University Law School.

KEVIN D. MURPHY was recently appointed General Counsel to the American Boating Association Inc. Murphy maintains his office in Melrose and lives at 5 Bradford Park, Melrose.

JOHN J. MULVEE of East Walpole, Massachusetts has been named to the post of fifth Assistant Register of Probate at Dedham. While serving as Assistant Register, Mulvee will continue his association with the firm of Martin and Santos.

NICHOLAS A. BUONICONTI has been named an Assistant District Attorney by Norfolk County District Attorney George G. Burke. Mr. Buoniconti, his wife Teresa and their three children, make their home at 27 Gloria Road, Randolph, Massachusetts.

JAMES R. PHALON of West Newton, has been named Business Manager for the Tactical Ground Defense Systems Programs Office at Raytheon Company's Missile Systems Division, Bedford.

FRANCIS S. MORAN, Jr. has been appointed a Military Judge by the Air Force Judge Advocate General. Moran who was formerly associated with the firm of Bowditch, Gowetz, and Lane, resides with his wife and two children at Keesler Air Force Base, Mississippi.

GEORGE E. SHIRE of Dedham has been appointed as an Assistant District Attorney for Norfolk County by District Attorney George G. Burke. Shire is a member of both the Massachusetts and Federal Bars.

ARNOLD N. MONTAQUILA has been elected President of the Rhode Island Chapter of the Suffolk University Law School Alumni Association.

DAVID E. GUTHRO has become associated with James A. McAvoy in the general practice of law with offices at 723 Main Street, Melrose, Massachusetts. A member of the Massachusetts and Middlesex Bar Associations, as well as the American Trial Lawyers Association, Guthro also serves as a member of the Melrose School Committee.

WILLIAM M. CLORAN was recently sworn in as Assistant Clerk of the Supreme Judicial Court for the Commonwealth by Raymond S. Wilkins, Chief Justice of Supreme Judicial Court. Cloran most recently was Assistant Clerk of the Supreme Court for Suffolk County.
EDWARD J. MCTIGHE has joined the law firm of Fisher, Keenan & Foley of Worcester.

RONALD A. McINTYRE of West Roxbury has been appointed Director of Public Affairs for Associated Industries of Massachusetts.

ANTHONY J. SCIBELLI who was admitted to the Massachusetts Bar last November 30, has entered the law office of Keyes, Donnellan, and Danaher of Springfield, Massachusetts.

PATRICK R. CARROLL has been named deputy director of the Massachusetts Hospital Association. Prior to his recent appointment, Mr. Carroll had served as an associate director of the Massachusetts Hospital Association.

GREGORY J. BRITZ of 32 Leland Avenue, Northboro, Mass., has been promoted to manager of personnel to American Airlines in Western Massachusetts. A member of the Massachusetts Bar, Britz is a twelve year veteran of the airline, and had served as Western Massachusetts sales manager before his recent promotion.

DAVID J. HALLINAN has joined the law firm of Liacos and Liacos with offices in Peabody, Massachusetts. Hallinan is also a member of the Peabody School Committee. While in Law School, Hallinan was chosen to participate in the legal intern program and was assigned to the Lynn Neighborhood Legal Aid Society and the Boston Law Department. Further, he was also co-editor-in-chief of The Advocate. Prior to joining the law firm of Liacos and Liacos, Hallinan was employed by the Department of Community Affairs as a municipal liaison officer. Hallinan resides with his wife, Brenda at 16 Palmer Avenue, Peabody, Massachusetts.

JOSEPH P. HANNON has been appointed Executive Director of the Northern Middlesex Area Commission. The Commission, which is made up of local planning board members and alternates, selected by the selectmen and mayor, was formed seven years ago to provide advice on matters of common concern to the towns located in the northern Middlesex area. Mr. Hannon was formerly with the Massachusetts Department of Community Affairs where he was principal planner in the Bureau of Planning Programs, and in addition is also a member of the Boston and Massachusetts Bar Associations.

ROGER PHILLIPS passed the New Hampshire Bar Exam in June of last year. Mr. Phillips is a former member of the National Moot Court Team and is a partner in the firm of Maynard, Dunn, and Phillips of Concord, New Hampshire.

KENNETH GREENBAUM, a former member of the Moot Court Executive Board, passed the New York Bar Exam in '69 and is presently enrolled in the Graduate Tax Program at New York University.

IMELDA LAMOUNTAIN, a former member of the National Moot Court Team, is presently enrolled in the Graduate Tax Program at Boston University and plans to clerk next year at Suffolk Superior Court.

THORNTON PERCIVAL, a former member of the Moot Court Executive Board, passed the Massachusetts Bar Exam in June of last year. Percival is now employed with the Federal Trade Commission.

The speaker at the recent Alumni Dinner on February 26, was Attorney William F. X. Geoghan of the New York Bar. Mr. Geoghan, who specializes in trying cases involving aviation matters, spoke at length on his views for improving court room procedure with regard to the impanellling of the jury. Pictured above, from left to right, are Superior Court Judge Walter H. McLaughlin, Attorney William F. X. Geoghan, Congressman Philip J. Phillbin and Judge John E. Fenton, President, Suffolk University.
Professor Hollingsworth, recently appointed Director of Clinical Programs at Suffolk, is a graduate of Suffolk Law School (1932). Since 1935, Professor Hollingsworth has been extremely active in the practice of criminal law, personally handling over 10,000 criminal cases and directly supervising the handling of some 30,000 additional cases.

Professor Hollingsworth organized the Voluntary Defenders Committee in 1935 and later served as the Committee's Chief Counsel and Executive Director. The Committee was designed to furnish counsel to indigent defendants in the metropolitan Boston area. The Professor later expanded the services of the Committee to furnish legal assistance to indigents in the United States District Court at Boston.

In 1949, Professor Hollingsworth organized the highly successful Harvard University Voluntary Defenders Committee. This carefully selected group of third year law students, later increased to include second year students, assisted the Boston office in research, initial jail interviews, and investigations. Members of the group became the first law students in the country to actually try criminal cases under strict supervision, in a court of original jurisdiction.

In 1960, Professor Hollingsworth assisted in securing passage by the State Legislature of an Act creating the Massachusetts Defenders Committee, a state-wide, state supported public defender system. Later he served as Chief Counsel and Executive Director of the Committee and was solely responsible for the opening of new offices throughout the Commonwealth, the hiring of all personnel, and the training of all attorneys.

QUESTION: Which clinical programs would you like to see instituted at Suffolk within the immediate future?

ANSWER: This is a question in reverse since one of the things that I intend to do, perhaps even prior to publication of this interview, is to put this question to the second year students.

It is difficult for me as a newcomer to Suffolk (as a faculty member) to know in which areas the student feels there is an inadequacy in the legal education offered at Suffolk.

Since I graduated from law school in 1932, I have had the feeling that the law schools, until recently, were stressing the study of law while offering basically nothing in the way of actual practice of law. The student is just that—a student—until he is admitted to the Bar at which time he becomes a lawyer. He has had no opportunity to apply what he has learned until he becomes a lawyer.

Clinical programs furnish an opportunity to students to apply what they are learning in the class rooms. I would like to know what the students think the Law School should do for them; what new programs should be developed; what existing programs they feel are the most important and how they can be improved. I would like the students to indicate their interest.

QUESTION: What are the major obstacles you foresee in initiating clinical programs?

ANSWER: Thus far, the most difficult problem I have had to face is working out a court program which can accommodate the schedules of both second and third year students. Presently, third year students are assigned cases in court and second year students accompany them to assist and observe so that they will be ready to try cases when they become eligible as third year students under Rule 3:11 of The Supreme Judicial Court. Since second year students have classes Monday through Friday from 9 a.m. to 1 p.m. going to court usually necessitates the cutting of classes for them.

QUESTION: Is it feasible to ascribe to the Voluntary Defenders Program the status of an elective course thereby eliminating the conflict with scheduled classes?

ANSWER: Admittedly, I am not thoroughly conversant with the setting up of elective courses.

I know that elective courses run on the basis of one or two hour intervals. The schedule calls for six elective courses. It seems to me that Voluntary Defenders, as an elective, would have to run for the entire day. A schedule would have to be created allowing one-fifth of the third year students to have Monday free from classes, one-fifth have Tuesday free, etc. In other words, as an elective, the Program would run the entire five days. A court program cannot be run on a two day a week basis; it has to be run full time in order to be effective.

QUESTION: Will you explain some of the purposes behind programs such as Voluntary Defenders and the Prosecutor Program? What can the participating student expect to experience?

ANSWER: I would like to see these programs developed into a system that would make Suffolk one of the top law schools in the country in preparing students for the actual practice of law.

I know that everyone does not expect to become trial lawyers upon graduation. On the other hand, it is highly improbable that during the practice of virtually any type of law, a lawyer will not be obliged to go into some type of courtroom. You may plan to become a specialist in Estate Planning, especially the drafting of wills, but somewhere along the line, you are going to have to probate a will and go into a courtroom.

QUESTION: Have you formulated any criteria for admitting students into the clinical programs?
ANSWER: I do not intend at this time to establish criteria, other than interest, for admitting students into the clinical programs. It has been my experience that many of the students who come into a defender program may not be outstanding students from an academic standpoint, yet have an instinctive feeling for this type of work. Many of them do a better job in court than perhaps an honor student would. My present feeling is that marks should not be the sole standard for those who would like to participate in the programs.

I plan to establish the programs in terms of interest groups. If students are interested in this type of work, I am not overly concerned about their marks, unless of course their grades begin to suffer as a result of their participation.

I have left the Voluntary Defenders Program and the new Prosecutors Program open to all students. I have a group of over 120 students and I do not think that this is too many.

QUESTION: What is the most significant problem facing you relative to implementing the Voluntary Defenders Program?

ANSWER: The largest single problem is space within the Law School. This program is going to need its own office with a full time secretary. I do not see how it can be run otherwise.

QUESTION: Has the response of the law students to the initiation of Voluntary Defenders been encouraging?

ANSWER: Frankly, I was somewhat disappointed with the initial response of the students. It was rather luke-warm. On the other hand, I realized before I started that it would be difficult to reactivate a program in the middle of the school year when the students were involved in other activities.

QUESTION: Is it your considered opinion that the luke-warm response was due to lack of interest or lack of knowledge on the part of the students as to what the program involved?

ANSWER: As we developed the program more and more students began to apply. When I asked them why they had not applied earlier they said that they had thought that this was going to be another one of those programs that never got off the ground. It was not a lack of interest as much as discouragement on the part of the students. Once they felt that the program was going to be successful their interest increased substantially. Now you can't drive them away.

At this point I must say that no remark I have made is a criticism of the school or the faculty. I know of no law school in the country whose faculty members have voluntarily put together the assortment of programs now running at Suffolk and have attempted to run them efficiently in addition to their regular duties.

QUESTION: Do you feel that more and more law schools will begin to require participation in clinical programs as a prerequisite for graduation or do you think law schools will continue to offer clinical programs in a non-obligatory manner? Which approach do you favor?

ANSWER: I think that there will come a time when participation in clinical programs by students will be required by law schools. Criticism of the lack of actual training given by law schools has intensified in recent years. The need for more trial lawyers and the need for law schools to work collectively in programs designed to train trial lawyers also will serve as impetus. Today there is practically no law school in the country that does not offer some kind of program, whereas ten years ago, only a few law schools offered training programs. This reflects the trend and I think it will continue.

QUESTION: What are the limitations placed upon second year students participating in the Voluntary Defenders Program?

ANSWER: Third year students, by virtue of 3:11 of the Supreme Judicial Court and under the supervision specified in the rule, can represent anyone charged in a district court with a felony or misdemeanor. The student must be certified by the Dean. Second year students go to court with the third year certified students; can assist in interviewing the defendant or witnesses; can copy court papers and examine probation records; in brief, do everything the third year students can do except actually represent the defendant in court. He does not yet have that responsibility. By learning court procedure this year, the student will be qualified to handle cases immediately when school re-opens in September.

QUESTION: Do you have any general comments or observations relative to the Law School which you would like to bring to the fore?

ANSWER: It has come to my attention that two second year students have been working on the creation of a Suffolk Legal Aid Society. I think that could be a most useful development if it comes to fruition. Law schools all over the country for years have had legal aid societies, The outstanding one in this area, of course, is the Harvard Legal Aid Bureau at Gannett House. It has been in operation for nearly sixty years and is the oldest in the country.

I would like to see the Suffolk Legal Aid Society, if it should be formed, with an office in close proximity to the Law School. Even with the Boston Legal Aid Society just a short distance away, I think the Beacon Hill area could use the services of a school directed legal aid society. Properly supervised, the students would gain considerable experience in all phases of the law.
SUMMARY OF LONG-RANGE PLANNING AT THE LAW SCHOOL
by Alfred I. Maleson

This report has been prepared at the request of the Joint Student-Faculty Committee of the Law School in order that the students may be aware of the activities which have taken place and those which are currently in progress concerning long-range planning for the Law School. It has been reviewed by the Dean of the Law School and by the President of the University.

When the present facilities were being planned in the early 1960's, projected future enrollment for the Law School was about 750. In 1959, the combined day and evening enrollment had been 373, and in each of the years 1960, 1961, and 1962 the combined enrollment was well under 500. Consequently, the figure of 750 seemed reasonable at the time. Even while the new facilities were being constructed, however, substantial increases in enrollment were taking place. When the facilities were opened in the fall of 1966, the enrollment had reached 1294! By 1969, it was over 1500.

The pressures on the physical facilities, administration, and faculty caused by this increase were not unnoticed. Admission standards were raised each year, but not to the point which would have amounted to a total change in the established philosophy of the school, which was to provide an opportunity for a legal education for any qualified applicant. To have raised admission standards to the point which would have called half of the present student body "unqualified" would have been too great a change in policy for the faculty alone to make.

By the beginning of 1968, it had become so apparent that applications for admission would remain large that the Dean appointed a committee to re-study the space needs of the school. This committee prepared a comprehensive report setting out in great detail the need for new quarters even though the present quarters were then only a year and a half old!

Pressures on the College had also been mounting, with the result that a University-wide committee was appointed to consider a co-ordinated plan for the development of the entire University. This committee recommended the hiring of an independent consulting firm to study and evaluate the school and to aid in the development of a long-range plan.

The Board of Trustees engaged the consulting firm of Heald, Hobson and Associates, a firm with a broad background in school planning. After an exhaustive study aided by the University committee and by numerous sub-committees, a comprehensive report was submitted by the consulting firm to the President and Trustees.

This report was then divided into a number of parts, and separate trustee-faculty committees were formed to study each part and to recommend means of implementation to the Board of Trustees. Those portions dealing with the Law School were studied and analyzed, and a detailed explanation with recommendations was prepared and submitted to the Trustees in September, 1969.

The report documented deficiencies in the physical plant, in the size of the faculty, and in the size of the administration devoted to the Law School. Since the problems of faculty and administration are closely related to the physical facilities, complete solutions to parts of the problems are not possible. Furthermore, since the physical facilities depend upon the needs and plans for the entire University, the problems of the Law School cannot be solved by themselves. Thus, the Trustees must first decide whether this is to become a small school with highly selective admissions requirements or whether it is to remain large. If it is to remain large, its space needs must be considered in relationship to the needs of the other departments of the University.

Several immediate decisions have been made and implemented to alleviate the problems on a short-term basis. Authorization has been given to hire a full-time placement director for the Law School, and a search is now underway for a qualified person. Authorization was granted to hire a full-time faculty member to handle clinical programs, and an exceptionally well qualified person was found and hired. Classrooms and office space in the Derne Street building are being thoroughly remodeled at a cost of approximately $1,000,000 so that some of the space problems will be solved. Other solutions to the space problems are being pursued vigorously.

These activities, although extensive, cannot obscure the long-range decisions which must be made. It may be that new and separate quarters for the Law School will be decided upon. It may be that new quarters will be sought for other departments so that the Law School will be able to utilize enough additional space in the present buildings to make possible expansion of the library to provide more adequate seating space, additional offices needed for augmentation of the faculty and administration, additional classrooms to permit greater flexibility in scheduling and further development of curriculum, and space for student activities and student relaxation.

The decisions which must be made by the Trustees obviously cannot be made haphazardly since every decision about any one segment of the University affects the whole. Furthermore, even after making the basic decisions the actual details of acquiring new property, drawing plans, raising money, and constructing new facilities will be painfully but unavoidably time consuming. The school certainly is not unaware of its problems. A great deal of time and effort has gone into the necessary preliminary studies, and it may be assumed that the time and effort now being put into final decision making and implementation will be no loss.

*Professor Maleson was chosen to draft this summary because of his participation in the trustee-faculty committee which studied the Heald-Hobson Report. Ed.
MOOT COURT

(L-R) Philip G. Chesley, Pres., Gary Casaly, Pres.-Elect.

First Year Program

During the last three months, the First Year Moot Court Program has presented approximately three hundred first year students with the opportunity of participating in both written and oral advocacy on the appellate level. The subjects of debate and argumentation before the Supreme Court of Beacon have ranged from the rudimentary law of Contracts and Torts to the abstruse Law of Future Interests. In each instance, however, the issues brought before the High Tribunal were intentionally formulated to raise moot issues of law, so as to test the student on advocacy, rather than to test the particular case on the merits.

The Program, which is directed by an Executive Board, assisted by 26 advisors, began its planning and related activities in September when the advisors undertook the research and creation of records. Indeed, the proper administration of the Program is possible only through cooperation between the advisors and the Executive Board, since it is the advisors who are in communication with and primarily responsible for the instruction and guidance of the First Year Students in writing the required briefs and in preparing for participation in the oral arguments. For these reasons the advisors who are involved in the Program must be well qualified for their position.

The Moot Court, before the end of the present academic year, will select top students from the second year class as potential advisors for the First Year Program which will commence next fall. This will enable the selected students each to write and research a record, over the summer vacation, involving moot issues and to submit a memorandum of law on the issues involved.

Second Year Competition

The Second Annual Voluntary Moot Court Competition is well under way, enabling second year students a further opportunity to develop skills in legal research and writing, as well as in oral advocacy. This year’s Program, under the direction of Richard Danen and Paul Sollitto, began last fall with the creation of a record designed to raise legal issues of current interest and importance. The result of this effort was the creation of a record in which two brothers were convicted of conspiring to print, engrave and counterfeit, and of printing, engraving and counterfeiting postal money orders under 18 U.S.C., sections 371 and 500. At their joint trial each brother’s confession, incriminating the other, was read and entered into evidence. Neither brother elected to testify at the trial, thereby creating the issue of whether the defendants’ right to confront witnesses against them had been violated. In addition to this problem, the record also raised questions concerning probable cause and search and seizure.

The Competition began with a total of seven teams competing for top honors on the basis of brief scores and quality of oral arguments. At the end of the double elimination preliminary rounds, the teams of Leslie Hart and Everett Wyner, Robert Moran and Howard Jacob, Robert Luss and Philip Greffe, and Alfred Saggese and Richard Roy remained in contention. The Semi-Final Rounds, held on March 12 and 13, were judged by prominent attorneys in criminal law from the Boston area, including Joseph Balliro, Albert L. Hutton, Jr., Francis J. DiMento, Thomas Shapiro, Thomas E. Dwyer, and Walter J. Hurley. As a result of the Semi-Finals, the teams of Luss and Greffe, and Saggese and Roy are scheduled to compete in the final round on April 16, 1970, which will be presided over by Justice Charles A. Pomeroy, Associate Justice of the Supreme Judicial Court of Maine.

The winning team will receive an engraved silver bowl and a $500 scholarship.

STUDENT BAR ASSOCIATION

by Terrence P. McCarthy, Ex-President

held on March 12 and 13, were judged by prominent attorneys in criminal law from the Boston area, including Joseph Balliro, Albert L. Hutton, Jr., Francis J. DiMento, Thomas Shapiro, Thomas E. Dwyer, and Walter J. Hurley. As a result of the Semi-Finals, the teams of Luss and

(L-R.) Terrence P. McCarthy, Pres., Frank Lafayette, President-elect.

I think that perhaps the best way to sum up the activities of the Student Bar Association this past year is by the use of this phrase from a recent advertisement, “You’ve come a long way baby, but you’ve still got a long way to go.”

The single biggest factor deterring the organization from being an effective “voice” of the students was its utter lack of structure and organization. The following is an outline of the steps taken in restructuring the Association this year.
INTERNAL DEVELOPMENT

The Association has been operating since its foundation within an unwieldy representative system. We now have a system in which each section has one voting representative, and the officers of the Association are elected separately by each class as a whole and can, therefore, function as officers rather than as section representatives.

The Association has for years been operated out of the President's briefcase, due to a lack of office space. This led to a shoddy and almost non-existent filing system, and in turn to an almost total lack of continuity. We have this year established the Association in an office, acquired the use of a part-time secretary, and begun an effective filing system. With these elemental tools of administration now in operation, the Association is capable of functioning effectively.

EXTERNAL DEVELOPMENT

The Association has been criticized for its failure to communicate with the student members. The greater portion of this criticism should properly fall on the shoulders of the individual representatives who are elected by their constituents to perform this precise function. Now that the Association has the facilities to establish a Student Bar News Letter, it is hoped that many of the problems of communication will be solved by next year.

The Student Bar Association was able to place three students as Advisors to the Law School Committee of the Board of Trustees. It is my hope that the Board of Trustees will listen carefully to these students' views on the condition of the Law School and weigh their opinions in making the decisions which will effect the future of our Law School.

Frank Lafayette has recently been elected as the President of the Student Bar Association for the up-coming academic year. Frank has worked hard and long to affect change within the Association, and I feel confident that he will utilize the administrative tools and the change of communication which we have established this year in making the Student Bar at last an effective and viable organization. Frank's diligent efforts combined with those of Ken Griffin, class of '71, have been responsible for the emergence of the Suffolk Legal Assistance Office, SLAO, to be staffed by Suffolk Law students, and which they hope to have in full operation this coming year.

I would like to wish Frank and the entire in-coming Board of Governors the best of luck in the year ahead.

LAW REVIEW

DELTA THETA PHI
FRANK L. SIMPSON SENATE

SEATED L-R:
GLIFFORD MOY - MASTER OF EXCHEQUER
ROBERT SNYDER - VICE-DEAN
PETER ALOISI - MASTER OF RITUAL-BALIFF
STANDING L-R:
LARRY O'CONNOR - TRIBUNE
FRANK ZITO - DEAN
JOHN NANORTA - CLERK OF ROLLS

The Supreme Senate of Delta Theta Phi National Law Fraternity has instituted a Senate at Suffolk Law School named in honor of the late Frank L. Simpson. The installation was held in the Superior Court chambers of the New Court House in Pemberton Square. This marked the first time that the Superior Court chambers had been used for such a function.

Following a distinguished academic career, Frank L. Simpson became a librarian and professor of law at Boston University Law School. Later he assumed the position of Dean at Suffolk University Law School, which he held between 1942 and 1952. In addition, he edited or authored several legal works including: Bigelow's Cases on Bills and Notes, Simpson's Cases on Torts, and Massachusetts Law, six editions, 1915-1944.

Delta Theta Phi is the second oldest law fraternity in the country, and is one of the Nation's largest professional fraternities, composed of seventy-three student senates and fifty-eight alumni senates.

The Senate has established several programs of research which will culminate in a series of lectures to be presented in the near future dealing with consumer protection, drug abuse in society, and post-conviction remedies.

The Senate has also established a Future Objectives Committee. The Committee, composed of Kenneth J. Rampino, chairman, Anthony D. Toscano, David Shuchra, Delphis R. Jones, J. Peter Cyr, Robert Snyder, Frank Zito, and Clifford Moy, has founded several programs and made recommendations for next year. The programs are: to establish a tutorial program staffed by second and third
year students to aid other students with academic problems; compilation of a list of used books to be made available at the beginning of each semester; to sponsor speakers of note in numerous fields at the Law School for edification of both faculty and students; to present movies on various legal topics; to present the Frank L. Simpson award to the member of the legal profession who best exemplifies the ideals and high level of attainment achieved by Frank L. Simpson.

The above recommendations are not to be considered exhaustive. They are merely meant to offer direction to the Senate; to serve as a substratum upon which other objectives may be formulated and adopted.

The founding officers of Delta Theta Phi were: Stuart Block, Dean; Frank Zito, Vice-Dean; John Nanorta Jr., Clerk of Rolls; Thomas Norton, Clerk of the Exchequer; Clifford Moy, Tribune; John Porcello, Master of the Ritual; and Peter Aloisi, Bailiff.

PHI ALPHA DELTA
FELIX FRANKFURTER CHAPTER

The annual Phi Alpha Delta Christmas Party was held at the Boston Playboy Club. The brotherhood took this opportunity to honor Professor John E. Fenton, Jr., the Chapter's Advisor since its installation at Suffolk in 1965. Through Professor Fenton's assistance, the Fraternity has progressed to a stage where it is now a vital service organization for the Law School. The Chapter sponsors the Felix Frankfurter Forum Speakers Program, the First Year Orientation Program, the American Trial Lawyers Student Advocacy Program and the Inns of Court Program.

Professor Fenton was accompanied by his wife and father John E. Fenton, President of Suffolk University. The Felix Frankfurter Chapter presented Professor Fenton with the Phi Alpha Delta Certificate of Appreciation. Many members of the faculty and their wives attended the holiday festivities.

On March 19, 1970 the Chapter conducted its third initiation ceremony of the 1969-1970 academic year. Thirteen pledges were initiated increasing the Chapters enrollment to 92 brothers. Following the ceremonies a dinner meeting was held at Purcell's Restaurant.

Plans for a final initiation and awards dinner are now under way. The Chapter has received approval from its national office concerning the honorary initiation of Judges Wyzanski and Murray of the United States Circuit Court of Appeals for the First Circuit, and Judge Querico of the Massachusetts Supreme Judicial Court.

The Felix Frankfurter Forum began its annual program by presenting Samuel B. Horovitz, the Father of Workmans Compensation. Prof. Horovitz's topic was "The Law Student and Workmans Compensation."

In light of the present controversy over the tremendous increase in automobile insurance the Felix Frankfurter Forum presented Professor David Sargent, renowned critic of the Keeton-O'Connell Automobile Insurance Plan which was introduced in the Massachusetts Legislature. In rebuttal to Professor Sargent's attack of the Keeton-O'Connell plan, and others like it, the Forum presented George Katz, Esq., Secretary of the Aetna Life and Casualty Insurance Company's Research Division. Mr. Katz lectured on "Fault versus Auto Insurance."

On March 14, 1970, The Frankfurter Chapter hosted the annual Phi Alpha Delta District Conclave. Representatives from the State University of New York, Syracuse University, Cornell University and Boston University attended. Afternoon speakers for the event were Reginald Eaves, Director of the Mayor's Office of Human Rights and Herman W. Hemingway, Deputy Administrator of the Boston Housing Authority, and graduate of Suffolk Law School. Honored dinner guest and speaker was Abner R. Sisson, Fellow of the American College of Trial Lawyers, also an alumnus of Suffolk Law School.

As a final event for the 1969-1970 academic year, Phi Alpha Delta is presenting the American Trial Lawyers Student Advocacy Program, an all day program to be held on Law Day, May 1, 1970. The program will consist of a series of lectures on the art of trial advocacy, and a complete mock trial, including direct and comparative cross-examination of an expert medical witness. Students of the Law School will serve as jurors during the trial and render a final verdict.
John B. Hynes, who served as Trustee of Suffolk University and most recently as Treasurer, was eulogized on his recent death in terms of great praise and justly so. As Councilman, Mayor of Boston and Commissioner of Banking, he was commended as a worthy public servant and honored as the “architect of the New Boston,” and we can see how prophetic his vision was when we look out on the burgeoning Boston skyline.

He was always grateful for the education he received at Suffolk University Law School and in later years devoted his time as a Trustee in paying the debt he felt he owed to the school. All the political commentators wrote of him as a politician who was at the power center during trying times, yet without exception they called him, a kindly gentle man. This is the heritage he has left to us.

Donald R. Simpson
Dean Suffolk University Law School
by adopting civil discovery rules in criminal cases. It is not suggested that we retreat from the protection afforded by the Fifth Amendment but rather that the discovery given prosecutors under our alibi, insanity, and related statutes be expanded.

It is further suggested that the margin of error in fact-finding be reduced by utilizing mechanical devices wherever they would reduce relying on the testimonial ability of a witness. Video-tape recordings of interrogation of suspects would obviate protracted confession hearings. (I am confident, however, the integrity and credibility of the film editor would be questioned.) This same medium could supplant the extensive appellate record although it probably would not save time.

Other areas wherein the prosecutor must have the power to use discovery are the pre-arrest and pre-complaint stages. Although the grand jury and like methods exist to conduct investigations, prosecutors have reached an era where the technology available to a certain criminal element enables it to carry on its enterprises immune from surveillance. Broadly labeled “organized crime,” it operates as efficiently as its name implies. To combat it, one must pierce the “omerta” which is its symbol. Electronic surveillance and immunity statutes can and have brought success in dealing with this problem. Vermont prosecutors have neither tool available to them although there are bills pending in the Legislature which would give them this power. Hopefully, the legislators will heed the plea—NOW.

Effective law enforcement cannot exist without the necessary tools and methods. Effective law enforcement enhances our chances of convicting the guilty and acquitting the innocent. In order to promote equal justice under law and improve our judicial system, we must give our law enforcement apparatus the equipment to do the job.

NOTES

43. M.G.L.A. C. 71, sec 31. Bible Reading. This statute required the reading of a portion of the Bible, without comment, at the beginning of every school day. C. 71, sec 31 was declared unconstitutional in Waite v. School Committee of Newton, 384 Mass. 767, 202 N.E. 2d 297.
45. Id. at p. 1001
46. 384 F. 2d 836 (U.S.C.A. 7th Cir. 1967) Cert. Den. 390 U.S. 906 Mr. Justice Stewart was of the opinion that the Petition for Certiorari should have been granted.
47. Id. at p. 839. The Federal District Court had held that because the reference to God had been deleted from the last line that the verse was no longer a prayer. See 253 F. Supp. 655 (N.D. Ill. 1966)
48. 343 U.S. 306 (1952)
49. 333 U.S. 203 (1948)
50. 396 Ill. 14, 71 N.E. 2d 161
51. 333 U.S. at pp. 209 & 210
52. 343 U.S. at pp. 308 & 309
53. Id. at pp. 313 & 314
54. 374 U.S. at p. 229
56. Id. at pp. 54 & 55
57. Id. at p. 56
60. McCollum v. Board of Education 333 U.S. 203

The effect of the treble damages provisions, when paired with the authorization for a class action on behalf of those similarly situated and similarly injured, provides for the first time the opportunity for the individual consumer to assert his rights at little or no cost to him. The cumulative nature of a class action may well have a substantial effect upon a prospective respondent, whereas a small number of private actions would have little financial impact.

By enacting these two extremely important amendments to our Consumer Protection Act, the General Court has done a great service to the consumers of Massachusetts. As we are all consumers, it can fairly be stated that the citizens of the Commonwealth and the Attorney General stand in a unique position to demonstrate the advantages of a far-reaching set of consumer protection laws, fairly and wisely enforced and administered. Only time will enable us to evaluate all the implications, legal and moral, of these laws, but I trust that Massachusetts will retain its position in the forefront of the consumer protection movement.
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This summer a limited number of places are available in the Notre Dame Law School program at the University of London.
June 29-August 11, 1970
An American law school summer program in the heart of London.
Distinguished British and American faculty — full credit courses.

Tuition: $270
Lodging: Single persons: $251
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REGISTRATION DUE: MAY 1

For further information, ask for a copy of the program's brochure from the office of your law school dean or write to "Notre Dame at London," Notre Dame Law School, Notre Dame, Indiana 46556

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IF YOU ARE LOOKING FOR COMPETENT AND WELL-TRAINED LEGAL PERSONNEL, THE SUFFOLK UNIVERSITY LAW SCHOOL PLACEMENT OFFICE CAN BE OF INVALUABLE ASSISTANCE TO YOU.

The placement office is designed to provide law firms and other prospective employers with information concerning law graduates and students. This office will be pleased to recommend persons for your consideration.

The Law School graduates students once a year in June. Since most students conduct their search for employment early in their final year, prospective employers should inform the placement office of their needs as early in the year as possible.

The placement office will be pleased to arrange interviews on campus by prospective employers, and will be happy to make all arrangements. If interviews at the Law School are impractical or inconvenient, provisions can easily be made for a visit to the employer's firm.

The placement office will also be pleased to provide employers with students desiring summer employment in law. This can prove to be a valuable means of evaluating persons for employment subsequent to graduation.

For full details, write or call:

THE PLACEMENT OFFICE
SUFFOLK UNIVERSITY LAW SCHOOL
41 TEMPLE STREET
BOSTON, MASSACHUSETTS 02114
227-1040
EXT. 338, 339
"WE HAVE MET THE ENEMY 
AND THEY IS US"

—Pogo

by Jerry E. Benezra, Class of 1971

The Editorial Board welcomes guest editorials by Students and Faculty addressing problems facing the Law School. Guest editorials are disseminated to Students and Faculty of the Law School and the Trustees of the University.

The Editors whose names are subscribed hereto unanimously indorse the views expressed by Mr. Benezra in the following editorial:

Kenneth J. Rampino
Anthony D. Toscano
John P. Cyr
Robert E. Connors Jr.

Brian M. Gildea

There comes a time in the life of an institution when it faces a crossroads in its existence. At some point the infancy is passed and the foundation is laid. At this time a school, like a man, must address itself to those difficult decisions which are a function of maturity. Generally the goals and aspirations must be re-examined. It must direct itself to its reasons for existence and determine whether or not it is keeping faith with those commitments. Those who are part of such an institution must look to the future with renewed enthusiasm and vigor.

The goal of a law school is to educate potential lawyers. But one cannot lose sight of the fact that one must be a man before he may be an attorney. As a corollary, a student must be treated as a man if he is expected to assume that role. He cannot be treated as a child.

This goal is common to both faculty and student alike. Although their respective roles are different, they are involved in a joint venture. In some instances these roles may overlap or even be reversed. For example, where the avenues of communication are open, the professor's skills as an instructor may be increased. To the extent that he is approachable and open to reactions on the part of his students he may increase his expertise as a teacher and/or the substance of any given course. To the extent that the course is improved all parties benefit. A community of interest is highly desirable and although it is questionable whether a professor owes his students an explanation as to the course a particular class is following, he does owe it to himself to have them understand the reasonableness of his approach.

When one becomes a professor of law, he is then a teacher as well as a lawyer. If he is to fulfill his role as a professor successfully he must establish a rapport with the class. When this is lacking, he is failing. It makes no difference whether he is right or wrong, it does make a difference whether or not he is concerned enough to explore the possibility and respect the students right to fair comment.

This venture is a joint one and any artificial divisions between faculty and students may hinder the quality of the legal education. A mutuality of respect is essential if the law school's mission is to be successful. Where this mutuality does not exist, the system will be at a disjunction. It should be noted, however, that this respect must be earned, neither group has it as of right. Similarly one must give respect if he expects it in return. For example, where a professor appears to cut classes or to be unprepared, it would be difficult for him to criticize his students when they follow his example. Likewise, it is wrong not to prepare a class properly for an examination and then penalize them for their lack of knowledge.

Each role has its responsibilities. The student must recognize that he is preparing for entrance into a learned profession. In the future he will be acting on behalf of others. He must be ready to accept this responsibility. However, it should be clearly understood that the responsibility starts now. In the legal profession, as a practicing attorney or as a student, the keynote would appear to be preparation. This involves work—there are no short cuts. The student who uses "canned briefs" at this juncture of his career might be in serious trouble when he gets into practice and finds that there are no "cans" to aid him. For the student who relies that heavily upon the short cuts—a re-evaluation would seem in order for he may not really be interested in the practice of law with the amount of work entailed therein. The law is both financially and personally rewarding, but like anything of value it must be earned.

Those students, for example, who want the law spoon-fed to them, might find that such an approach is undesirable. Most certainly, the immediate effect is to reduce one's workload. However, it does not teach one to think for himself or to find the law. Most certainly the time will soon be coming when he must discharge both these functions for himself. In the same vein he must supplement his classroom education to the extent that it is deficient. Only then does he have standing to complain about the deficiencies which remain. One might question the complaints of those who wait until after the exams to complain about a course. Did they fail to find the law after an attempt to learn it on their own? Did they speak to the professor, did they ask for extra classes? Isn't it possible that the problems might have been remedied? It
is in the nature of an exhaustion of administrative remedies. If the goal is to obtain a legal education, no stone should be unturned. If a professor is lacking in some respect, complaints may well be justified, but it doesn’t negate the present burden of learning the course one way or the other. If the knowledge is not forthcoming in the classroom, it may be found in some library. Where the student and faculty are both remiss they are in pari delicto, but the student is the only one who loses.

The professor, like the student, has responsibilities which are part of the role that he fills. His role is to convey knowledge to the students. Despite his individual expertise in an area, he fails in this particular role if he fails to communicate that knowledge to his students. The student has a right to expect this, and the professor’s superior position should not be used to beat honest grievances into submission. He must understand that these grievances are not directed at his knowledge, but at the way in which he conveys it. The emphasis is on the recipient. If in fact the knowledge is not getting across he is failing in this function, it is in the nature of strict liability. The faculty should be well informed not only in law, but in the students’ reactions as well. In a contract sense the faculty undertake to educate the students and nothing was said about whether the faculty was full-time or part-time. The time is unimportant. Time is not of the essence, but it is in the nature of a best efforts contract. The faculty are obliged to put in as much time as necessary in discharging the obligation they have accepted. It should be re-emphasized that the student also has obligations which must be discharged before he may contend that the faculty are in breach.

Our Law School, like so many educational institutions, is the scene of student unrest. This unrest is not a matter for concern, it might be very healthy. The concern is the factor causing that unrest. However, there is a danger that the unrest will be misguided. The danger is that lines will be drawn between the faculty as a whole and students as a whole, thus needlessly making them into “enemies” rather than allies. If the unrest is caused by defects in the education, both sides suffer, and an alliance, not a polarization, is in order. It just might be that there is no enemy, no guilty persons. It might be that the institution itself is at fault. Even where individuals may retard growth, is it not true that a system which condones such behavior is at fault? Trying to fix blame is futile, any meaningful activity must be aimed at the “wrong” not the individual “wrongdoers.” One must follow the lead of the physician who concerns himself with the whole patient and treats the illness and not the individual symptoms. If in fact the whole patient is to be treated the student and faculty must understand their counterparts’ point of view. Such a procedure seems essential and it is not necessarily met by creating limited committees. This

is sheer tokenism. Such institutionalized formal student-faculty communications are more form than substance. Their formality hinders real communication. Most people are too circumspect when they speak for the record. Similarly there is no guarantee that either student or faculty members are truly representative. Members on either side may have vested interests to protect which are not common to the whole community.

One might suggest that an alliance of all those concerned is indicated. An avenue of communications between a large number of students and faculty and trustees would be extremely productive and well worth the time and effort. Also there should be more activities of an academic nature outside the classroom, e.g. seminars, or more in-depth discussions of course material. All the parties must become committed to alleviating the problems facing the law school. A lack of commitment condemns them not only as student or faculty but as men as well. The real enemy if he exists is the one who is cognizant of the problems and yet walks away asserting past failures as his excuse. The Law School is a microcosm of society and like society it must face its problems or perish. If we are truly interested in achieving the best possible legal education, artificial divisions between student and faculty must be dispelled. We must work together as a team, combining our strength and preventing needless duplication of efforts by groups who cannot afford to waste their time. For example perhaps the faculty and students in each section could meet once a month to suggest the common problems. The two segments might be more in agreement than they realize, and the bones of contention might disintegrate in the light of an open examination. Similarly where differences do exist compromise or solutions may be found. Certainly those involved in the legal profession, be they faculty or student, should be aware that both sides must be heard if one truly seeks the truth—veritas—isn’t that our stated goal?

The problems facing the Law School are recognized by all. One may recall the classic exchange between Thoreau and Emerson when the former was imprisoned for protesting what he considered to be an unjust law.

Emerson: What are you doing in jail?

Thoreau: What are you doing out of jail?

Similarly when one member of our law school community asks another why he is in a state of unrest, the reply must be—considering the problems facing us—why are you content?