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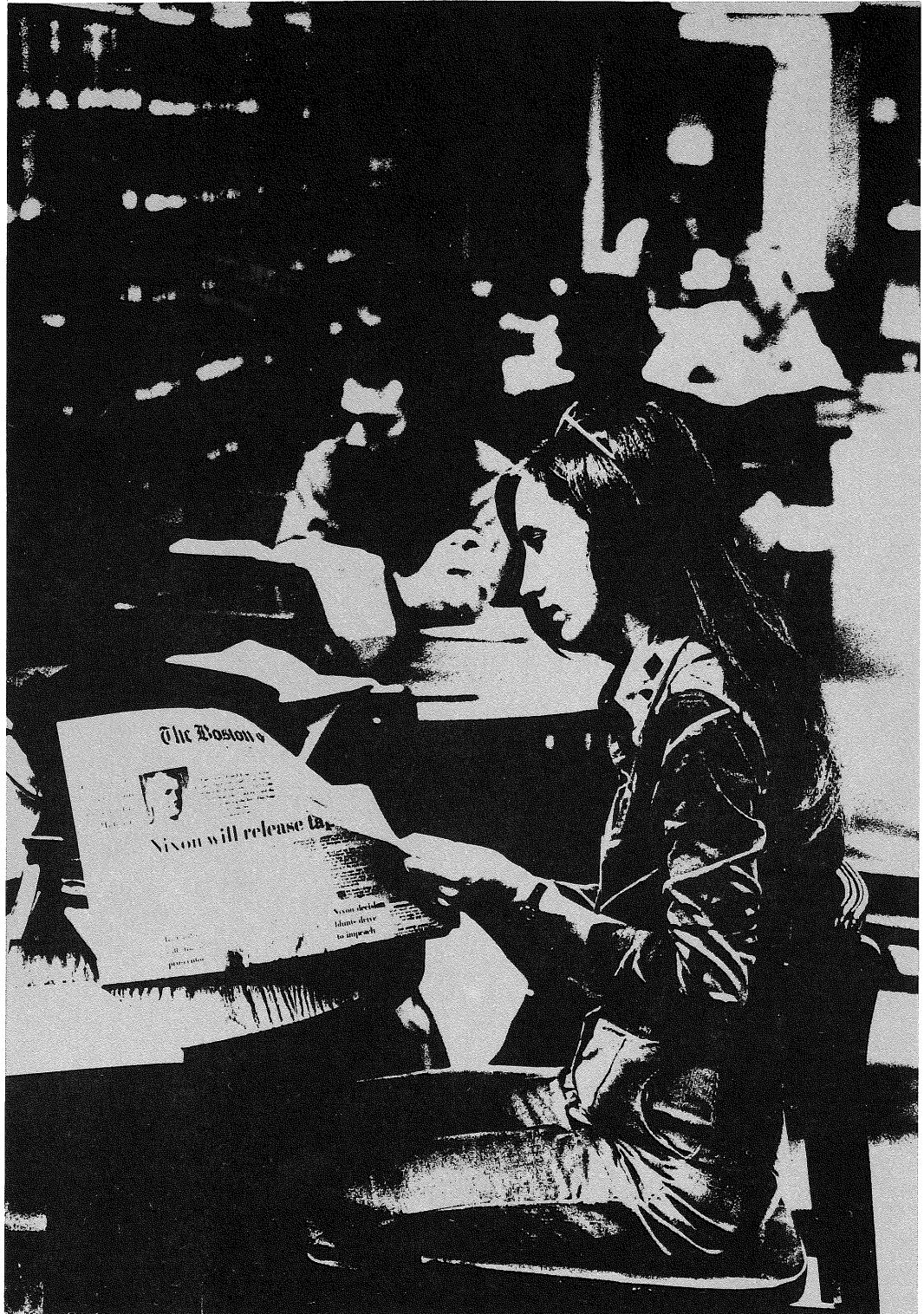
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THE ADVOCATE

A publication of SUFFOLK UNIVERSITY LAW SCHOOL

VOLUME 5 No.2

FALL 1973



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A Message from the Dean

As an alumnus and long-time law professor at Suffolk Law School, I am obviously deeply honored and extremely pleased to have been appointed Dean of the Law School. Through long personal association as a student, and as a teacher at Suffolk, I believe that I have a profound appreciation of the constructive role which our Law School has historically played in the life of the community as well as a sensitive realization of what must be done, what changes must be made, in order to enable us to move into the forefront of legal education in the 1970's.

Legal education is of necessity a dynamic and ever-evolving concept. Any law school which merely attempts to stand still, to hold its own, to preserve the status quo in legal education, is doomed to mediocrity. Change is inevitable — in legal education as in the life of the law itself. But wisdom dictates that we not accept change blindly for the sake of change. It is easy to rush off madly in pursuit of every new educational will-o-the-wisp, and every educational fad that happens to come along. It is infinitely more difficult to evaluate, to weigh carefully, every proposal for change — not only in terms of its intrinsic merit objectively perceived, but most importantly, against the background of practice and experience from the past.

In my judgment, true success in legal education demands the adaptation of the best in the past to the best of the present in order to contrive to produce the best in the future. While remaining alert and sensitive to new and emerging trends and vistas in legal education, I shall constantly endeavor to reassess existing programs in the light of past performance and demonstrated value in order to achieve that approximate blending of the old with the new which is most conducive to a successful legal education.

While this initial report to the Alumni obviously cannot set forth in detail all of the plans and programs which are underway, let me in general touch upon some of the most important developments which bode well for the future of the Law School.

By vote of the Trustees, enrollment has been stabilized for the first time and authorization granted for a doubling of the full-time Law Faculty over the next few years. Already seven new full-time members have been added to the Law Faculty this September. Their presence will enable us to diversify our elective course offerings and add to our existing intellectual strength in several basic areas of the law. In addition, it will result in a more realistic and acceptable teacher-student ratio than in the past.



In terms of the physical facilities of the Law School, we have recently acquired additional space in the modern Donahue Building for faculty offices and classrooms and, ultimately, for expanded library facilities. Our space needs continue to remain pressing, but we have begun to make significant progress.

Finally, we have plans underway for greatly expanded clinical education programs. Our highly successful voluntary defenders criminal program will soon be joined by a civil clinical program designed to make available to our students comparable trial experience on the civil side of the court. In addition, we have developed — and are continuing to develop — new clinical opportunities for qualified students in governmental agencies and even in private law offices. An essential element to the success of all of our clinical programs is, and must be, strong and continuing Faculty supervision and control over the conduct of such programs.

As I assume the reins of Leadership of the Law School I believe that I have a realistic recognition of what can and must be done if the Law School, true to its past glory and accomplishments, is to remain a vital force in legal education in the years ahead. Our problems are many. They need not be minimized. But working together, facing up to these problems, I have every confidence that they can be overcome and that Suffolk Law School can continue to add justly deserved lustre to its earlier achievements.

As the new Dean of Suffolk Law School, I respectfully ask for the help and cooperation of all my loyal Alumni in the days ahead. In return, I pledge to you my most earnest and dedicated efforts.

David Sargent
Dean of the Law School

This Side of Paradise

"Government, like dress, is the badge of lost innocence; the palaces of kings are built upon the ruins of paradise."

Thomas Paine in *Common Sense*

While we hesitate to join that cackling chorus of political harpies and fatalists which proclaims the imminent collapse of the Republic, we must concede that America has died a little in recent days. The nation's collective sense of outrage has been numbed by the cascade of events and disclosures which emanates daily from the seat of power. The obvious query now is not whether the timbers of the ship of state are rotten, but rather, to what extent are they salvageable?

Today, the honorable men in public service are recognizable by the fact that they have left that service, either via resignation or firing. Others, purportedly less honorable, have left under shadow of criminal indictment.

John Kennedy used to speak of public or political service as a noble and high calling. Today, it seems to be the private preserve and peculiar habitat of the moral eunuch, the oligarch and the megalomaniac. The citizenry stands by, watches transfixed, and yet, still seems incredulous. They seem to ask, as one Boston journalist did in a recent column, "Just what the hell is going on here?"

While the list of abuses and banal excuses visited upon the nation is both too long and too arguable to bear recounting here, it is sufficient to say that, in recent days, the operation of national government has devolved into a virtual burlesque of banana republicanism. Public confidence in the present Administration has been irretrievably lost somewhere in a vast moral wasteland populated by G. Gordon Liddy and an horrendous host of other tragi-comic figures. Elliot Richardson, who, laudably, has chosen to stand apart and leagues above current machina-



tions, has observed that, "Confidence is as fragile as it is precious, as hard to restore as it is easy to destroy." We agree and add that without public confidence, governing becomes an impossibility.

Mr. Nixon's pre-occupations during his reign have been near-fetishistic concerns with "national security", "respect for the Presidency", "law and order", and the Washington Redskins. We can conjure up no better way to serve these ends than for Mr. Nixon to resign his office forthwith.

The President, crippled by crisis on the domestic front, seems particularly ill-equipped to guide this nation in the delicate operation of its foreign relations. While rapprochement with both China and the Soviet Union are now possibilities because of Mr. Nixon's bold initiatives, it seems nigh impossible for the President to now devote his full time, talent and energies to a follow-through in these areas.

Moreover, one is unable to recall any Chief Executive whose actions and appointments have done more to bring dis-

respect and opprobrium upon the Office of the Presidency. The difference between "accepting responsibility" and "accepting blame" seems more an exercise in sophistry than a distinction capable of intellectual discernment.

As for "law and order", our sense of credibility vis-à-vis Mr. Nixon's oft'-pontificated beliefs in this area has, very simply, been demolished by his actions.

In summary, one wonders what Tom Paine, the author of the words prefacing this article, would say of the present situation. Paine had, at best, a cynical view of government. In light of recent events, many Americans probably share that view. While Mr. Nixon's resignation will by no means resurrect the "paradise" Paine spoke of, it will at least empty the palace of a king and place the stewardship of the Republic in the hands of one who, while commanding the respect of the people, would neither demand their fealty nor abuse their patience.

Say good night, Dick.

Please, in the interests of national security.

James W. Clarkin
Associate Editor

Counseling of Separated Parents for the Benefit of Their Children



Richard Hoffman is a graduate of Middlebury College and Boston University Law School. He is presently a member of the Family Law Committee of the Massachusetts Bar Association and the Criminal Law Committee of the Massachusetts Bar Association. He is in private practice in Walpole, Massachusetts, with his brother, Mark Hoffman, and is also an assistant district attorney in Norfolk County where he has successfully prosecuted three murder cases this past year for District Attorney George Burke. This editor had the opportunity of working for Mr. Hoffman during the prosecution of two of these cases. During this period he learned of the counseling service he offered his clients and requested that he write this article.

Judd J. Carhart

For the past year and a half my office has provided the services of a psychiatric social worker to counsel the separated parent in domestic relations cases. The purpose of this service is to mitigate or prevent the psychological trauma which children undergo when their parents separate. The psychiatric social worker we employ clearly understands that her function and role in this type of counseling situation is not that of a marriage counselor.

The service evolved from a philosophy continually espoused by my father, Samuel R. Hoffman, Esq., when I first began the practice of family law. Many attorneys feel quite properly that it is the lawyer's responsibility and duty in a domestic relations matter to insure that both the emotional and financial needs of the children are met. The attorney is acting in the capacity of a guardian ad litem for the children although not appointed as such by the Probate Court.

Protecting the children financially did not pose as great a problem as attempting to meet their emotional needs during the crisis period of the initial separation of their parents. Initially, I attempted to meet the child's emotional needs by discussing with the separated parent in my office certain basic principles to be followed during this period of time. I found this approach to be unsatisfactory for several reasons. First, I did not possess the necessary expertise both in counseling techniques and actual knowledge to provide meaningful counseling. Secondly, I found the client to be so involved in his own financial and emotional problems that he could not devote the appropriate time and attention to the basic principles that I was suggesting. Thirdly, I did not have the necessary time available to accomplish the task that I was undertaking. Lastly, I found that my office was not the appropriate place to conduct such

counseling. The atmosphere of a law office was such that the parent could not focus on the subject matter at hand. The conference was constantly interspersed with questions from the client as to how his litigation was progressing in Court, what was going to happen to the family real estate, numerous financial questions and other matters unrelated to meeting the emotional needs of the children. All of these questions by the client were understandable. The client was seeing the attorney that she had retained to give her legal advice and this was her reason for being in my office and seeking my services.

The solution to the problem I have outlined above is very similar to that which many attorneys have utilized when a client expressed an interest in marriage counseling — namely referring the client to a professional marriage counselor. It took some time before I found a counselor who had the necessary expertise, the desire to undertake this type of counseling and who was able to arrange a fee schedule that would enable all of my clients to utilize this type of service. After reading several books and articles on this type of counseling, I thought it very important that the counselor share the same basic principles that I had adopted and evolved from my experience in handling domestic relation matters. I was fortunate to find a counselor who possessed the above qualities as well as the personal warmth and interest to do an effective job of communicating with my client during this period of crisis.

Putting the program into operation turned out to be a far easier task than finding a suitable counselor. At the initial interview the client is advised that the choice of what direction she will take with respect to the reconciliation of the marriage or to the termination of the marriage is solely hers and the alternatives are described in detail. It is then explained to the client that the attorney considers it his duty as well as the client's duty to look after both the physical and emotional needs of the children of this marriage. The client is then advised that in this particular area both the attorney and the client will work together for what is in the best interests of the minor children. I then furnish a detailed explanation of the counseling program and the role of the counselor. This enables the client to distinguish this type of counselor from the professional marriage counselor that we refer our clients to if they so request.

The client is given a book authored by Dr. Richard A. Gardner, a child psychiatrist and faculty member at Columbia

University, entitled "The Boys and Girls Book About Divorce".

It should be noted that Dr. Gardner's book was written primarily for children of separated parents. Not only can the parent pass the book on to their older children but it makes for quick and easy reading. The basic philosophy and principles espoused are easily obtained by the reader regardless of her educational background. Our office was able to purchase this book in paperback in a large quantity which greatly reduced the cost. The reduced cost enables us to provide the book without cost to the client and her spouse.

The client is then advised that the services of the counselor are also available free of charge to the client. In order for a client to get the most benefit out of the counseling session, he or she is encouraged to read the book prior to the session. Certainly not all of my clients avail themselves of this counseling service. In some cases the client is a professional who has expertise in this area or the child and/or parent is already receiving similar professional services. On the other extreme, there are some clients whom I will not represent unless they agree to avail themselves of this counseling service.

The next step in our office procedure is the preparation of a letter to the client, once again stressing the importance of this type of counseling and informing her how to contact the counselor to make an appointment. After the initial interview the counselor sends me a bill for the first interview which lasts approximately one hour and a half. At the end of the first interview the counselor will discuss with the client further counseling in this area if the client so requests or the counselor thinks it necessary. The client is advised of the cost of further sessions and the client is billed directly by the counselor. The particular counselor whom I have employed sees my clients at either her office or the client's home. The counselor offers the client the choice of the location. From the counselor's experience the interview at the home of the client has resulted in a more relaxed atmosphere, with greater communication being a major benefit.

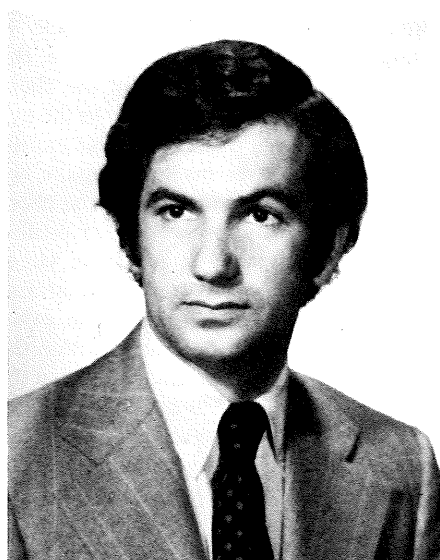
If the client's spouse is represented by an attorney, a letter is sent to the attorney advising him of the counseling and inviting his client to attend the counseling session. If the client thinks that the presence of his spouse would detract from the counseling, we do not send such a letter. When the client's spouse is not represented by an attorney, we ask that the invitation to the client's spouse be com-

municated directly by our client. Unfortunately, the client's spouse seldom responds positively to the invitation to attend the counseling session.

To date, I have been completely satisfied with the results of the service we have provided for our clients. The primary benefit which has been communicated to me most often by my clients is that they are better able to explain to the children the reasons for the separation of their parents. Some spouses were not providing their children with enough information and others were providing too much information. Other specific benefits obtained by the clients depended on a number of variables and the specific problems in the home and would be too involved to enumerate in this article. A tangential benefit received from the counseling is the exposure of the client and the problems of the family to the eye of a professional counselor. This exposure enables the counselor to make appropriate recommendations to the client and to suggest referrals to other professionals or agencies so that the client would be aware of the need and source of further counseling to deal with other problems he might be having within the family. It is also important to note that the counselor employed by our office will not see the client for counseling in any other area. The client is also made aware that her communications with the counselor are confidential.

In my opinion, the hope for large scale implementation of this type of program rests with the family service officer of our Probate Courts in the Commonwealth of Massachusetts. I am pleased to have served on the Family Law Committee of the Massachusetts Bar Association at a time when it was one of the major catalysts in bringing about a family service officer in each of our Probate Courts. The Middlesex Probate Court has already begun programs initiated by its family service officer which are designed to meet the needs of separated parents and their children. Such programs could be expanded and implemented in all of our Probate Courts. I am sure that the attendance of recently separated parents in a program similar to that described in this article would be encouraged by the judges and attorneys who appear in the Probate Courts. Under appropriate circumstances the Court might consider such attendance mandatory and enforce such an order by making the initial granting of temporary custody orders and the granting of visitation rights conditional upon such attendance to be completed by a date set in the future.

The Problem of Procuring Witness Immunity



Attorney Joseph I. Macy is associated with the firm of Clarkin, Waldron and Tucker in Fall River, Massachusetts. Mr. Macy received an A.B. from Brown University in 1965, and a J.D. from Boston University School of Law in 1968.

In the course of conducting a criminal practice every lawyer will sooner or later find himself confronted with the problem of representing not the defendant, but a witness. Generally, the witness has been called, or expects to be called, to testify in the trial of a crime in which, to some extent, the witness was involved. Very often the testimony which the witness will give would tend to incriminate himself. There is often implication of a crime of a lesser degree than the principal defendant's crime; for example, being an accessory after the fact.

Upon being confronted with this situation, counsel immediately thinks of two situations: 1. The witness has a Fifth Amendment right to remain silent; and, 2. The witness may be entitled to immunity.

The former alternative has been dealt with at length in a great many articles and treatises and will not be discussed here except as it relates to the second alternative.

The second alternative, that of witness immunity, is one that should come to the mind of any practitioner quite readily, particularly in these days of Watergate hearings. However, the lawyer who expects to have his client immunized in Massachusetts is in for a bit of a shock when he reads the Massachusetts Witness Immunity Statute for the first time. This law, Massachusetts General Laws, Chapter 233, Section 20C, states as follows:

In any investigation or proceeding before a grand jury involving any offense listed in section twenty C, a witness shall not be excused from testifying or from producing books, papers or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, if he has been granted immunity with respect to the transactions, matters or things concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence by a justice of the supreme judicial court, as provided in section twenty E.

In short, a witness will be granted immunity only when the witness has appeared before a grand jury and refused to testify. This immunity can only be granted by a justice of the Supreme Judicial Court (20E).

This is a very restricted view of Witness Immunity and it will be shown that there are many situations in criminal practice in which it does not apply.

One such situation is that of the witness called to testify at a probable cause hearing in the District Court. Here, although the witness is certainly subject to self-incrimination if he testifies, he cannot be granted immunity no matter how much

his counsel, the district attorney or the presiding Justice of the District Court desire the same. Witness immunity is not available at this level because the witness has not yet appeared before a grand jury, and is therefore not within the contemplation of the statute. Therefore the careful practitioner will have his client assert his Fifth Amendment rights and refuse to testify. The argument could be advanced that the witness can be ordered to testify by the Judge, thereby providing evidence sufficient to warrant a finding of probable cause, in regard to the defendant, by use of this compelled testimony. If the witness is subsequently indicted or charged on the basis of his testimony before the District Court the testimony can be suppressed since it was the product of compulsion.

However, this neglects the very basic fact that the right to remain silent attaches at any stage of the criminal proceeding including the point where the defendant is arrested. Certainly if the right to remain silent attaches at such an early stage, the ends of justice are ill-served by making the District Court Judge an instrument of the denial of a citizen's rights when the citizen is before his Court.

A second situation is that of a witness called to testify for the first time in the Superior Court. Here, the defendant has already been indicted and the witness is again not eligible for immunity. This can pose a dilemma for the prosecutor as well as the defense counsel. An indictment can often be secured without the testimony of a key witness. A conviction is an altogether different matter.

Certainly, the witness can refuse to testify. This is a temporary measure however, for the witness can be ordered to testify if the trial justice finds that the answers will not incriminate the witness. Moreover, the Commonwealth's case is not strengthened by compelled testimony

from a reluctant witness.

It is interesting to note that the only instance in which a witness may be given immunity by a Superior Court Justice is when the witness has previously been given immunity before a Grand Jury (20F).

A third situation arises when a non-immunized witness is requested to be interviewed by counsel for the defendant. This situation can arise frequently and has been the subject of much litigation in our Courts. The Commonwealth must make a witness available to be interviewed by defense counsel if that witness is in the Commonwealth's custody. However, once this has been done the right to speak with defense counsel and the right to refuse to speak rests particularly with the witness.

It is recognized in this Commonwealth that "counsel for a defendant should be accorded, as of right, an opportunity to interview prospective witnesses held in the custody of the Commonwealth". *Commonwealth v. Balliro*, 349 Mass. 505, 516(1965).

However it has also been consistently held that once a witness has been made available, the decision whether or not to speak with defense counsel rests with the witness alone. In a case interpreting *Balliro*, in which a Commonwealth witness refused to speak to defense counsel the Supreme Judicial Court stated, "The holding of that case [*Balliro*] was directed at the actions of the prosecutor. Here, it is conceded that the prosecutor had fully informed Josselyn [witness] of his right to talk or remain silent. Yet he stated in the presence of McGlaughin's [defendant's] counsel that he did not wish to speak with them. Josselyn could not be compelled to talk if he did not want to." *Commonwealth v. McGlaughin*, 352 Mass. 218, 224 (1967).

More recent cases have been in agreement with McGlaughin, supra. In *Commonwealth v. Doherty*, 353 Mass. 197, 210 and 211 (1967), the Court stated that a judge could appropriately inform witnesses before they decide whether to be interviewed, that they might have counsel, that the witness should not act on "whim or caprice", that prior testimony before a grand jury or conversations with the district attorney were not reasons to decline to talk with defense counsel, and that the witnesses could consider the risk of self-incrimination or personal danger. The Court further stated that if a witness "elected" to be interviewed defendant's counsel could talk to them separately and without the presence of the prosecutor or

police officers. The Court held unequivocally, "The decision whether to be interviewed lay with the witness".

The right of the prospective witnesses to "consent or not to consent to an interview" was upheld in *Commonwealth v. Carita*, 356 Mass. 132 (1969), and in *Commonwealth v. Gibson*, 357 Mass. 45 (1970). These cases show clearly that a witness is the final arbiter of the decision to speak to defense counsel.

It is important to note that none of the above decisions required a constitutional basis for the witness' refusal. The witness was not required to allege possible self-incrimination or deprivation of any other constitutional right. The witness simply could or could not assent to be interviewed.

The careful lawyer must protect the rights of his client to every extent. If he can negotiate a reasonable grant of immunity which he thinks protects his client all well and good. Chances of this are, however, slim given the restricted nature of our statute. The lawyer must also preserve the Fifth Amendment rights of his client. This is more difficult than one might imagine since our decisions show that the witness may be compelled to take the stand and to testify to any matters which will not incriminate him even though he might feel that such testimony would tend to be incriminating. The standard which is used to determine whether or not the testimony would, in fact, tend to incriminate the witness was set forth in *Malloy v. Hogan*, 378 US 1, and adopted in Massachusetts in *Commonwealth v. Baker*, 348 Mass. 60 (1964). Under the "Malloy" rule, it must be "perfectly clear, from a careful consideration of all the circumstances in the case, that the witness is mistaken, and that the answer cannot possibly have such tendency to incriminate". Since this determination must be made on a case-by-case, question-by-question, basis it is apparent that a judge can order a witness to answer non-incriminating questions without any immunity whatsoever. Very often such tactics will result in the witness being given immunity if it is absolutely necessary before the grand jury or any indictments against the witness may be noprosecuted by the prosecutor.

Offers of a nol-pros of indictments to a witness or no prosecution at all may be made in return for testimony. However, these offers rest, in large measure, on the amount of authority a particular prosecutor has. They must be viewed on an individual basis as there is no practical way to insure that a judge will not order

prosecution of a witness despite assurances to the contrary from a District Attorney.

It can readily be seen that the current Massachusetts Immunity Statute poses almost as many problems as it solves. It provides for witness immunity in only one of the many situations where such immunity may be desirable or even necessary. Positive reforms should be made in order to make our statute more workable.

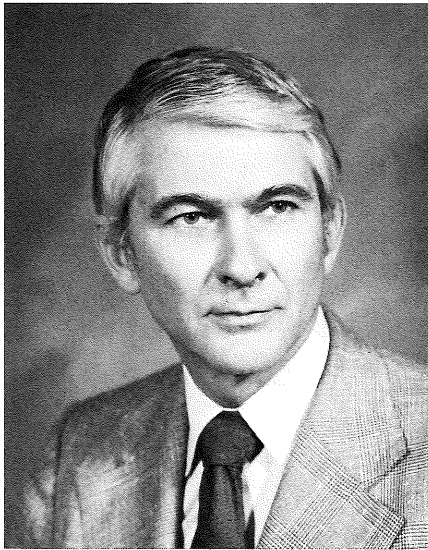
The discretion should be left with the District Attorney and the Trial Judge at either the District or Superior Court in regard to the granting of witness immunity. If it is felt that immunity should come from the SJC, and should the District Attorney feel that his case will be compromised without the testimony of a witness, he should have the right to petition the Supreme Judicial Court for such immunity at any stage of the proceedings, whether it be District Court, Grand Jury or Superior Court.

It is arguable whether the witness should actually have to refuse to testify before immunity can be granted since it is reasonable to assume that a witness, particularly one represented by counsel, who refuses to testify, or who indicates he will refuse to testify, will, in fact, refuse to testify when called upon to speak. It would save much delay and would eliminate the possibility of a witness surprisingly refusing to testify at the trial if the District Attorney were able to grant, or at least petition for, immunity at any stage of the proceedings. This would also eliminate much conjecture and worry on the part of the witnesses and their counsel in view of the present situation in which guaranteed immunity can only be offered at one stage of the proceedings.

One of the main problems with the witness immunity statute, as it is presently structured, is that it reduces the District Court proceeding to a nullity when a necessary witness refuses to testify. Certainly, probable cause cannot be found absent the very basic evidence needed in such proceedings. When a witness refuses to testify at District Court and the Commonwealth must begin anew with the Grand Jury much time is lost and money is wasted.

The situation is clearly one where relief is desirable. Hopefully, the statute will be modified along the lines suggested.

News Reporters' Sources — Privilege v. Necessity



Atty. William H. Carey, Partner Law Offices of Desmarais, Carey & Burke, New Bedford, Massachusetts. Graduate of Boston College Law School 1950. Former President of, and present counsel for WTEV — Channel 6 Television, New Bedford, Massachusetts; counsel for WNBH radio, New Bedford, Massachusetts, WOCB, radio South Yarmouth, Massachusetts; Ottawa Newspapers, Inc., New York; New Bedford Standard Times; Cape Cod Standard Times; counsel for Paul Pappas in matter of Paul Pappas, Petition on Writ of Certiorari to Mass. Supreme Court 408 US 665.

The most distressing conclusion to be drawn from the recent decisions of the U. S. Supreme Court involving the lack of testimonial privilege for newsmen subpoenaed before Grand Juries is aptly stated in the minority opinion of Mr. Justice Stewart in *Branzburg v. Hayes*, 408 U.S. 665, 725 (1972): "The Court's crabbed view of the First Amendment reflects a disturbing insensitivity to the critical

role of an independent press in our society."

The U. S. Supreme Court has held that the First Amendment does not relieve a newspaper reporter of the obligation that all citizens have to respond to a grand jury subpoena and answer questions relevant to a criminal investigation. *Branzburg v. Hayes*,¹ supra. Furthermore, the First Amendment does not afford him any constitutional protection for his confidential information. In so doing, the Court upheld a decision of the Massachusetts Supreme Judicial Court which ordered Paul Pappas, a news photographer for WTEV Channel 6, New Bedford, Massachusetts, to appear before the Grand Jury and answer questions put to him regardless of the confidential circumstances surrounding his news-gathering function. *In Re Paul Pappas*, 358 Mass. 604, 266 N. E. 2d 297 (1971)

The majority opinion constantly equates the press with the general citizenry and seems to strain the point to make certain that newsmen are not accorded constitutional rights not given to other members of society. Of course, the fact of the matter is that the Constitution of the United States, through the First Amendment established an independent, free press by providing that "Congress shall make no law...abridging the freedom of speech, or of the press..." thus carving out a certain professional segment of our society for unique consideration. If freedom of the press means anything at all, it should be the right of newsmen to gather and report news to an informed public without threats of disclosing their confidential sources. Although the Court, through this decision emphatically guarantees "news-gathering" by means of the First Amendment, it does not grant any protection to newsmen's confidential sources which are an integral part of the news-gathering process. It is

difficult to see how "news-gathering" is constitutionally protected when the source must be revealed. It is important to understand that the beneficiary of the rule, which suggests a testimonial privilege for newsmen, is not the newsmen per se, but the right of the public to be informed by an independent press without government interference through the thwarting effect of the subpoena power. The Court, instead of being skeptical about the freedom of the press in this area, should guard this freedom very jealously, for a free press is the true bulwark to a free society and the cornerstone of our constitutional edifice. This has certainly been well evidenced by the role of the press in Watergate matters and related Washington occurrences. By the indiscriminate use of the subpoena power of Grand Juries through law enforcement officials, the "Court", as Mr. Justice Stewart wrote, "invites state and federal authorities to undermine the historic independence of the press by attempting to annex the journalistic profession as an investigative arm of government." This is a justified and alarming conclusion that can be drawn from the majority decision.

The majority decision went on to state "...but the evidence fails to demonstrate that there would be a significant constriction of the flow of news to the public if this Court reaffirms the prior common law and constitutional rule regarding testimonial obligation of newsmen". *Branzburg v. Hayes*, 408 U.S. 665, 693 (1972) The evidence, however, disclosed much to the contrary. The record in all three cases before the Court, the testimony of the most seasoned reporters, and the empirical data available, all demonstrate with clinical authority that if the Court is to protect the free flow of information to the public, it cannot allow the State or Federal governments to force newsmen to reveal either their confidential sources

or the information received from such sources. In failing to grant this protection, not only will sources dry up out of fear of public attack, but reporters may very well temper their reporting so as to reduce the possibility of being interrogated. Certainly, reporters do not want to spend their time in and around grand jury rooms. To put it another way; given a choice between using confidential information and thus running the risk of subpoena, or leaving confidential information out of their stories, it is not unreasonable to assume that newsmen on numerous occasions will choose the latter course, particularly if they feel that their Grand Jury appearance will in turn sever the very sources that gave them the confidential information in the first place. This form of censorship is more than chilling, it is cryonic. The fact that news sources will dry up, resulting in a less informed public, is the single most compelling reason for a First Amendment privilege. There was an overwhelming amount of evidence in the record to sustain this position, but the Court did not choose to ignore it.

The Court, particularly through the concurring opinion of Mr. Justice Powell, did recognize that newsmen were not to be harassed and that there would be some circumstances where a newsman would not be forced to testify. His concurring opinion said in part:

“As indicated in the concluding portion of the opinion [majority], the Court states that no harassment of newsmen will be tolerated. If a newsman believes that the grand jury investigation is not being conducted in good faith he is not without remedy. Indeed, if the newsman is called upon to give information bearing only a remote and tenuous relationship to the subject of the investigation, or if he has some other reason to believe that his testimony implicates confidential source relationships without a legitimate need of law enforcement, he will have access to the Court on a motion to quash and an appropriate protective order may be entered. The asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct. The balance of these vital constitutional and societal interests on a case-by-case basis accords with the tried and traditional way of adjudicating such questions.” *Branzburg vs. Hayes*, 408 U. S. 665, 709 (1972).

This seems to be more rhetoric than comfort to newsmen since the Court placed the burden of proof squarely on the newsman who claims the privilege. Having in mind the sweeping investigational powers of Grand Juries and their secrecy, this is an impossible burden for a newsman to meet and the approach is alien to the one that the court has repeatedly asserted in cases where First Amendment rights are involved. The decisions of the Court prior to the *Branzburg* case have repeatedly required the Government to prove whether the circumstances warranted invasion into the sphere of privacy protected by the First Amendment. The Supreme Court now takes that burden away from the Government.

In connection with the matter of Paul Pappas, the Government made no showing of any kind in a hearing on a motion to quash the subpoena as to why Pappas should testify. It offered no evidence as to the reason for his testimony, the need for it, the scope of the grand jury investigation, the relevancy of his testimony, or that he had information unobtainable from other sources. There was no evidence of his witnessing a crime. The State simply offered no evidence and carried no burden. Pappas, on the other hand, gave unequivocal and repeated testimony that if he were forced to testify, “I would find it difficult to get information in the future through the same or similar sources,” his “livelihood would be impaired”, testifying “would jeopardize me, in the future of



(sic) obtaining any information” and “any future possibilities of obtaining information to be used in my work would be jeopardized, insomuch as I wouldn’t be trusted or couldn’t gain any one’s confidence to acquire information in reporting news as it is”. This testimony from a seasoned reporter with many years of gathering news was never rebutted by the State.

Certainly, once a newsman asserts and offers evidence in support of his First Amendment privilege to gather news, the burden would normally be upon the State to show why, on a case-to-case basis, the asserted right should be sacrificed for the paramount needs of a Grand Jury. To place the burden of proof on the one asserting his First Amendment rights to prove why the State should not be able to infringe upon them seem to me to be contrary to our whole judicial philosophy.²

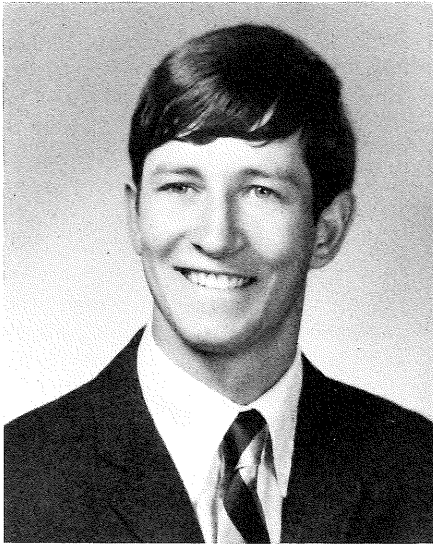
The great respect that the Court gives in the decision to Government informers as compared to news informers is equally disturbing. The Court makes the distinction by saying, “Clearly, this system (of government informers) is not impervious to control by the judiciary since the decision whether to unmask an informer or continue to profit by this anonymity is in the public, not private hands. We think it should remain there and that public authorities should retain the options of either insisting on the informer testifying relevant to the prosecution of crime or of seeking the benefit of further information that his exposure might prevent”.

However, no constitutional right attaches to the Government in its search for information as it does to the press in its news-gathering and publishing functions. On what possible public policy grounds can the privilege of anonymity be accorded someone who informs the Government, but be denied the same immunity if he informs the press? The Court has recognized that a rule virtually prohibiting the use of informers would severely hamper the Government in the prosecution of some crimes. It would seem to be an equal result that forcing newsmen to reveal their sources will seriously hamper the press in its pursuit of the truth for public consumption. As a matter of fact, it is no secret that many bona fide informers would prefer the press to public authorities in “leaking” information relevant to criminal conduct.

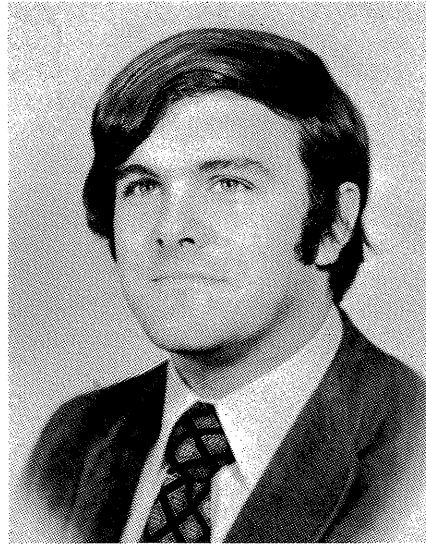
There appears to be no doubt that this

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A Comparative Analysis of Standards for Judicial Administration



Richard M. Lane is a February, 1973 graduate of Suffolk University Law School. An attorney from South Boston, Mr. Lane is a member of the Massachusetts and Boston Bar Associations. Presently, he is the Research Director for the Joint Special Committee on Judicial Reform. He also acts in an advisory capacity for: the Administrative Officers of the Mass. Courts, the Mass. Judicial Conference's Committee on Legislation, the Regional Office for the National Center for State Court Study on the Mass. Court System, and for the American Judicature's Study on the Mass. Court Budgetary System.



James F. Green is a June, 1973 graduate of Suffolk University Law School. He is presently on the staff of the Joint Special Legislative Committee on Judicial Reform and acts as legislative liaison for the Joint Judiciary Committee. Mr. Green has been recently notified that he has successfully completed the written examination for admission to the Massachusetts Bar.

Introduction

Many problems have plagued the judicial system of Massachusetts. The Judiciary of the Commonwealth includes a number of types of courts, each with a particular jurisdiction and each with a complex series of relationships with other courts and with other aspects of the law-enforcement and criminal justice community. Each local court usually has had its own procedures which also vary between justices adding further to the complexities of the fabric of the Massachusetts Judiciary.

In reference to the complexities of the court management field, it was stated that:

While a judge must look back in exercising much of his adjudicative role, he must when managing—look ahead, plan, and forecast the needs of his court and the citizens it serves. The task placed upon the judge to manage courtroom personnel, courthouse personnel (probation workers, clerk of court, employees of the court, etc.) requires tools appropriate to the task. These management tools are not acquired in law school or from private practice of law. How to organize or reorganize departments of the court, projecting program costs, establishing manpower training and development programs, deciding upon computer processing of information, preparing space utilization and building programs appropriate to a public agency, strengthening ties to budget and financial agencies outside the court, building sound relations with a legislature and with executive departments — all of this departs rather substantially from the activities associated with judicial adjudicative role carried out on the bench and in the judge's chambers.¹

Court management tries to accommodate multiple values some of which are obviously in conflict, e.g. uniformity vs. individualization of cases, and it attempts to seek a practical daily accommodation of value differences. Management is a ra-

tional activity, and it suggests goals, plans, guided actions, and valuations of programs on many different fronts. This presumption of rationality does not rule out sensitivity to persons inside or outside the courts. Consequently, better court management does contribute to domestic tranquility, order and liberty.²

The A.B.A.'s Commission on Standards of Judicial Administration has published a tentative draft of a report dealing with a number of topics relating to the organization of courts.³ The topics include:

1. A Unified Court System.
2. Selection and Tenure of Judges.
3. Rule Making and Administrative Authority.
4. Court Administrative Services.
5. Court Budgeting.
6. Court Records Systems.

This article will attempt to demonstrate in a general way how the Massachusetts Court System fits into these tentative standards set out by the Commission. This capsulized version is by no means a substitute for any extensive review of the present court system. The aim is to present an informational foundation in these areas. The ultimate goal is to demonstrate the basic differences in direction of these administrative principles in light of the Commission's recommendations.

I. Unification in the Court System

The A.B.A. Commission suggests that the aims of court organization can be most fully realized in a court system that is unified in its structure and administration.

The structure of the court system should be simple, preferably consisting of a trial court and an appellate court, each having divisions and departments as needed. In the outline for a unified court structure the following characteristics were deemed necessary:⁴

- a. Uniform jurisdiction.
- b. Simple jurisdictional divisions.
- c. Uniform standards of justice.
- d. Clearly vested policy-making authority.
- e. Clearly established administrative authority.

It was concluded that the direction of effort should be consistently toward unification of court structure and management. Rendition of equal justice through-out a court system is possible only if the system as a whole applies equal standards through equitably employed effort.⁵

It is unclear at this time whether or not unification of the Massachusetts Court

would benefit the Commonwealth. Efforts are being made by means of a study by the Regional Center for State Courts.⁶ In 1972, the National Center for State Courts was established for the organization and administration of the judicial system by rendering assistance, undertaking research projects and disseminating information regarding techniques proven effective in other jurisdictions.⁷

The Regional Center's first major project will be to conduct an in-depth study of the Massachusetts Judicial System, to make recommendations for its improvement and to propose a plan for their execution.⁸ The Executive Secretary's Office, the Bar Associations, Judicial Reform Committees, and other interested groups are engaging in these inter-related activities for the reform of the judicial system. The result may be a master plan of sorts indicating a systematic change over a period of years.

Massachusetts has specialized courts that have parallel authority with the trial court of general jurisdiction. Examples include juvenile courts, probate courts, land courts, and the housing courts. Most of these courts serve a very useful purpose and fulfill a particularized need. However, these same advantages could be achieved if these specialized courts fell under a unified trial court system. Thus, further fragmentation into more separate specialized courts should be discouraged. This might provide for more uniform procedures throughout the trial court system.

A popular example of the lack of a unified district court system is the traditional presence of the Boston Municipal Court. It acts as an independent body having its own Chief Justice within the framework of the entire system. It is not directly accountable to the Chief Justice of the District Courts and supervises its own management adding further to the complexities of establishing a unified system of justice.

On the Appellate level there has been progress made in one particular area, the creation of the Intermediate Appellate Court. This Court handles many of the cases that previously would have been transferred to the Supreme Judicial Court. It appears that it has relieved some of the congestion in the caseload for the Supreme Court, but it too will eventually be back-logged. This Court does give the Supreme Judicial Court an opportunity to concentrate its efforts in the administrative field, enabling it to recognize more fully its management role of the court system.

II. Judges

The American Bar Association's Standards deal with the concept of competent judges in section 1.20; entitled *Competent and Independent Judges: General Principle*.⁹ The commission declares that a court system is determined in large part by the quality of its judges. The study goes on to point out what a judge should be and what a judicial system should provide.

For the informational purposes of this general analysis, certain basic principles will be raised in a comparative fashion between issues presented by the A.B.A. and the current position of the state of Massachusetts.

The competence of an individual judge, or more properly a candidate for judicial appointment, should be evidenced by superior self-discipline, moral courage and sound judgment. The ability to be detached, even-handed, and decisive with a broad educational base sufficient to understand the variety of problems before the courts are equally necessary attributes. The potential judge should also be professionally qualified as a lawyer so that the law may be interpreted and applied competently.¹⁰

This definition encompasses qualities which cannot be argued. However, it must also be recognized that one person possessed of all those qualities, who would accept a judicial appointment, is a rare find indeed. In general, the majority of Massachusetts judges evidence the qualities mentioned to varying degrees, and bad judges have been the exception in the Commonwealth.

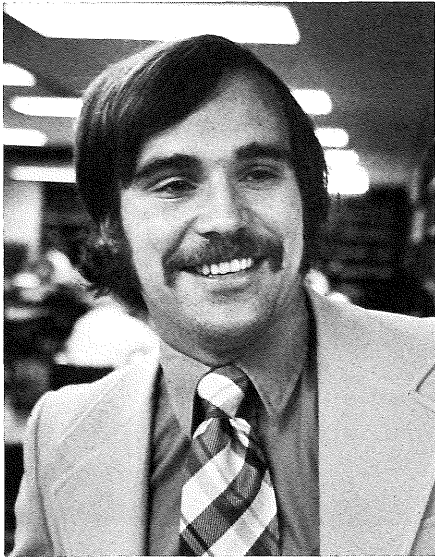
Section 1.21

The Selection of Judges is the next area of concern. The A.B.A. Commission recommends that the selection of judges should not be political. The election method of selection involves either political contests or, in non-partisan elections, contests based on little more than name familiarity. Therefore, an appointive system is preferable to the election method. However, executive appointment of judges, as we have here in Massachusetts, is also subject to political influence. The old saying that "a judge is a lawyer who knew a governor" evidences the concern of the A.B.A. report.

The Commission believes that a proper method to end the potential for political considerations determining judicial appointments lies in a judicial confirmation commission. Judges would be appointed

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Ouellette v. Building Inspector of Quincy or Requiem for a Statute



Richard Glidden is a third year student at Suffolk University Law School.

On June 29, 1972 MGL Ch.40A s.11 was pronounced dead on arrival at One Pemberton Square by the Supreme Judicial Court of the Commonwealth of Massachusetts. The death of s.11 surprised few people, for the writing on the wall had become rife over the last few years. In fact, those who knew s.11 well, knew also that it was no longer a question of whether it would survive or perish but rather when the fatal blow would be dealt. The principal adversary of s.11 over the years was MGL Ch.40A s.7A, the two sections being on opposite sides in innumerable conflicts, since the introduction of s.7A in 1957. While the gradual

decline and eventual demise of s.11 was primarily due to the presence of s.7A, it should be mentioned that s.11 remained alone and without aid in this conflict while s.7A was continually reinforced through eight different amendments enacted by the Massachusetts General Court.

MGL Ch.40A s.7A deals with subdivision plans and the effect of zoning enactments or amendments on said plans. MGL Ch.40A s.11 is concerned with the issuance of building permits and the applicability of zoning by-laws and amendments to their issuance. (see appendix 1 and 2) Each section deals with problems inherent in a particular sector of zoning regulation and adequately delineates criteria which must be followed if the sections are to be satisfied, thus entitling an applicant to the protection afforded by that particular section. The difficulty arises when the two sections overlap causing a confrontation of opposite philosophies. Section 7A was enacted to protect the developer from changes in the zoning by-law during the planning stage of his development. It basically provides that when a preliminary plan is submitted to a local planning board the land shown on said plan is to be governed by the zoning by-law in effect at the time of the submission of the plan, for a period of seven years from the date of the approval by the planning board. There are a number of procedural requirements that must be fulfilled, but the basic purpose of the section is to give the developer the benefit of a "seven year freeze". In order to build on the land which one has protected with this seven year freeze, one must now obtain a building permit, the issuance of which is controlled by s.11.

The fundamental regulations of s.11 are, that once a notice of a hearing to consider a proposed zoning amendment is published, anyone subsequently apply-

ing for a building permit is put on notice of the proposed amendment and if it becomes law, he must comply with the new amendment. The issuance of a valid permit prior to the adoption of the new amendment will not justify its violation and offers no defense to a revocation of the permit. One of the rewards realized from the statute's enactment has been to protect the legitimate developer during the building stage of his development, but the statute's primary concern is preventing builders from subverting the applicability of new amendments. Once notice of an amendment is published, the builder is bound by said notice and he cannot rush down to obtain a building permit for the erection of an, in effect, non-conforming structure.

But does s.11 prevent approval of a subdivision plan filed after notice of a hearing to consider a new amendment has been published? This article will sketch the history of this conflict through a discussion and analysis of the major cases, formulate a statement as to where the law stands today, as a result of the *Ouellette* decision, and hopefully present an informed opinion as to its future.

The case of *Smith v. Board of Appeals of Needham* 339 Mass 399 (1959) was one of the first decisions of the Supreme Judicial Court interpreting these incongruous provisions of Ch.40A. The plaintiff submitted a plan to the planning board which was approved one month later. Seven months elapsed and then the town changed the zoning by-law so that plaintiff's land did not comply with the ordinance. Smith applied for a building permit and it was refused as he was said to be in violation of the zoning ordinance then in force. The Supreme Judicial Court reversed the decision of the planning board, granted the permit and said: "There is no uncertainty or ambiguity in s.7A, the statute gives a period of three

years within which the owner of the land shown under the approved plan may proceed under the provisions of the zoning by-law in force prior to their amendment.” This case offered a starting point but it was relatively insignificant for the following reason: it did not deal with the real problem which occurs when a subdivision plan is submitted subsequent to a notice of a hearing to consider a new amendment being published, or even more of a problem, when a plan is submitted after a zoning by-law is adopted.

That is precisely the question dealt with in the case of *Doliner v. Planning Board of Millis* 343 Mass. 1 (1961). The town of Millis adopted an amendment to its zoning by-law in March of 1959 and Doliner submitted a plan to the Planning Board in April, 1959. The plan satisfied the old requirements but did not comply with the provisions of the adopted amendment and the Planning Board disapproved the plan because of this non-compliance. Section 7A as originally enacted, section 7A applied to the facts of this case since subsequent amendments to s.7A were without retroactive effect. The 1957 enactment read as follows: “Notwithstanding any other provision of law, no amendment to any zoning ordinance or by-law shall apply to or affect any lot shown on a definitive subdivision plan for residences which has been previously approved by a planning board until a period of three years from the date of such approval has elapsed, provided said lot complies with the provisions of the zoning ordinance or by-law existing at the time of said approval”.

In order to reach a decision the court had to consider s.7A, s.11 and MGL Ch.40 s.32 which deals with the effective date of by-laws. The comparatively weak language of s.7A prompted the court to decide that s.11 was to be controlling. In the decision at page 6, the court said: “In the sense that Ch.40A s.11 and the new by-law would prevent issuing a valid building permit, the new by-law was ‘applicable’ to Doliner’s subdivision plan. Accordingly, having in mind Ch.40A s.11, the Legislature can hardly have intended that a planning board must disregard the terms of a zoning by-law, already adopted by the town even if not yet approved by the Attorney General, when called upon to consider a subdivision plan violating that by-law. Particularly is that true, where the submission of the plan, a substantial time after the town’s action could have been found to have been a belated attempt to circumvent the new by-law. If the planning board were to ap-

prove such a plan, its action would be an empty gesture, and, in view of s.11, might be seriously misleading to a purchaser of the lot from Doliner”.

This case marked the zenith of s.11’s influence, for it not only governed the issuance of building permits but could also be employed to regulate the time for submission of subdivision plans. However, maintaining such a pinnacle was a precarious venture and for the succeeding ten years legislative enactments and judicial decisions attacked and weakened the preeminence of s.11.

The case of *Ward and Johnson, Inc. v. Planning Board of Whitman* 343 Mass. 466, (1962) initiated the shift in emphasis away from s.11. In this instance the notice of hearing on a proposed amendment was published four days prior to the plaintiff submitting a plan to the planning board. The plan was disapproved in reliance on the proposed amendment and the plaintiff appealed the decision. The court reversed the ruling of the planning board and ordered approval of the plan, but in the course of the decision the court alluded to the *Doliner* case (supra) as precedent. The statute involved was s.7A but it was s.7A as amended by st.1959 Ch.221 which was quite different from the form of s.7A considered in the *Doliner* case. As this was the situation, no reference should have been made to the *Doliner* case as it was not applicable. However, the court said at page 467: “s.7A of Ch.40A as appearing in st.1959 Ch.221, provided that the preliminary and definitive plans of a proposed subdivision ‘shall be governed by the zoning ordinance or by-law in effect at the time of the submission of the preliminary plan’. The proposed by-law was not in effect when the plaintiff’s preliminary plan was submitted since it had not been adopted by the town meeting. Compare *Doliner v. Planning Board of Millis* 343 Mass. 1”. The statute controlling in *Doliner* made no mention of the words “in effect” and for that reason the court was able to reconcile Ch.40 s.32 with its decision. But in the instant case the words “in effect” are an integral part of s.7A and as such should force the court to apply Ch.40 s.32 which states: “Before a by-law takes effect it shall be approved by the Attorney General or ninety days shall have elapsed without action by the Attorney General after the clerk of the town in which a by-law has been adopted has submitted to the Attorney General a certified copy of said law with a request for its approval....” However, the court chose to disregard express statutory lan-

guage and stated, in a behind the back fashion, that a zoning amendment is to be considered effective when adopted by a town meeting. Thus the ramifications of *Ward and Johnson Inc.* were circular. s.11 was curtailed in its relations to s.7A in that it was established that a by-law would have to be adopted by a town meeting before s.11 could prevent approval of a subdivision plan, while an application for a building permit, with nothing more, could still be denied if notice was published before the application was made. But s.7A itself was permanently crippled when the court decided, contrary to express statutory language, that a by-law was in effect when adopted by a town meeting. It is apparent that this was a policy decision on the part of the court as opposed to a blatant misreading of the law. Compromising the provisions of Ch.40 s.32 was considered to be a more reasonable interpretation of legislative intent than strictly construing the statute which would have effectively done away with s.11.

In 1963 the high tribunal considered the case of *Lavoie Construction Co., Inc. v. Building Inspector of Ludlow* 346 Mass. 274, which dealt with similar circumstances. The only significant difference being that the form of s.7A controlling was St.1960 Ch.219. The new amendment did not change any provisions of St.1959 Ch.221 but merely added to the protection of s.7A those lots which did not require approval under the subdivision control law. Otherwise the facts were nearly identical to those considered in *Ward and Johnson Inc.* (supra). The plaintiff submitted a subdivision plan two weeks before the town meeting adopted an amendment, but well after notice of said amendment had been published, and the planning board disapproved the plan. The court held that the plaintiff was entitled to approval of his plan, but, once again, Ch.40 s.32 was disregarded and a by-law was considered effective when adopted by a town meeting.

The law in this area remained fairly constant over the next few years. The only real change being the constant amendments to s.7A, the Legislature finally arrived in 1965 at a form which has remained unchanged up to the present. Whether or not the law as it stood was technically correct, it was understood and applied with only minor difficulty. However, no rule of law is beyond reexamination in the light of imaginative, yet relevant, new arguments. The dynamics

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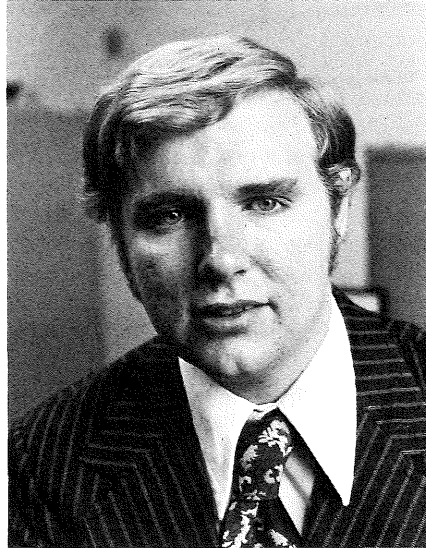
Student Bar Association Report

The opportunity to communicate with you, the Alumni of Suffolk University Law School, is an honor. By virtue of my position as President of the Student Bar Association, I sit as a voting member of the Suffolk University General Alumni Association Board of Directors; I intend to fulfill this position to the best of my ability for I feel that a much closer relationship should exist between the alumni and the students.

I hold a Bachelor of Arts degree from Suffolk University and am, therefore, not only aware of the present Alumni-Student relations, but also am an alumnus myself.

Suffolk Law School has made progress in recent years and is potentially on the verge of substantial advancements. Great progress will derive from the University enlarging its decision-making process to include its many constituencies. Suffolk has long been a "closed" institution in that the student body, the Alumni and the faculty have not had the impact upon the decision-making process that is so necessary for the success of an institution of higher learning. Only through the input of all members of an academic community can a university fulfill its promise. Only then, can Suffolk become an involved, dynamic and creative congregation of scholars and professionals rather than a mere collection of people.

Suffolk is in the critical stages of this



transition. The faculty, this past year, has increased in number with a concomitant increase in its influence on the Law School. The Dean is providing the leadership and is organizing and tapping this reservoir of talent.

The student body, now the largest of any law school in the country, is beginning to assume the responsible role that rightfully belongs to it. This year, for the first time at Suffolk Law School, students will serve on faculty committees. There is emerging a feeling of pride when one

identifies himself as a Suffolk Law student.

A critical component of a successful academic institution is an active Alumni Association; for this, we, the members of the Student Bar Association, turn to you. We believe that your role in the decision-making process of Suffolk University should be expanded in recognition of your expertise and experience. We observe that, counted among your numbers, there are distinguished men and women who are members of the bar and, indeed, distinguished sons and daughters of Suffolk Law School. One has only to look to the office of the Dean of the Law School to see a truly outstanding member of the Alumni.

We invite you to assume the role that is yours. As a practicable means to accomplish this end, I am requesting that a Committee of Alumni be established, to be composed of nine persons: three Alumni appointed by the President of the Alumni Association; three faculty members appointed by the Dean; and three students appointed by the President of the Student Bar Association.

The challenge of being a contributing member to the on-going transformation of Suffolk Law School is before you. You have only to meet it.

Richard A. Voke
President
Student Bar Association



Ouellette

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of the law demand imaginative advocacy to ward off stagnation and this was the situation which prompted the court to consider the case of *Nyquist v. Board of Appeals of Acton* 71 Mass. A.S. 803.

In this case, Nyquist submitted a subdivision plan to the planning board and received approval thereof. Some months later, notice of hearing to consider a proposed zoning amendment was published and subsequent to said notice, Nyquist applied for a building permit which was granted. The plaintiffs are adjacent landowners and brought this appeal to have the permit revoked. The facts of this case are not such as would be expected to foster an appeal to the Supreme Judicial Court. It is not the close case where notice is published and then the subdivision plan is filed, rather it is very similar to the *Smith* case (supra) which was a rather basic and uncontroversial decision. However, the plaintiffs presented some unique assertions which the court felt required attention. The two significant arguments made by the plaintiffs were: (1) "the protection afforded by s.7A extends only to the use of the land and does not protect a building permit" which they assert "is protected only by s.11" and (2) the only possible way to harmonize s.7A and s.11 is to make the issuance of a building permit "a more meaningful event" than the filing of a plan. Both contentions were discussed by the court and both were unceremoniously rejected. This case afforded the court an opportunity to discuss the relationship between s.11 and s.7A as it existed in 1971, an opportunity it did not squander. Using emphatic language, the judiciary left no doubt that the relationship which had existed between s.11 and s.7A at the time of the *Doliner* decision (supra) had been entirely reversed. The court said: "The result ignores the clear and unequivocal language of s.7A which extends a broader protection than that offered by s.11 and is not restricted by it.in order for s.7A to be meaningful, it must be held to protect the developer from zoning changes during the planning stages. Otherwise the broad protection extended by s.7A to undeveloped land would be meaningless. Such a result cannot have been intended by the Legislature. The broad protection offered by the words 'the use of the land' as they are embodied in s.7A cannot be restricted on the ground that the issuance of a building permit, as protected by s.11, is a 'more meaningful event' than the filing of a

plan".

Where was the law as a result of this decision? Literally speaking, nothing had changed for the court's decision was merely an affirmation of its holding in the *Smith* case (supra) decided some twelve years earlier. But the tone of the decision was another matter. s.7A was now the controlling factor and s.11 was, at best, subservient to the mandates of s.7A. But this was only a feeling one received from an analysis of the case and there was nothing concrete to substantiate it until the case of *Ouellette v. Building Inspector of Quincy* 72 Mass. A.S. 1369.

The facts of the Ouellette case do not encompass any aspect of s. 7A rather they deal solely with the issuance of a building permit. There are a number of procedural problems which tend to confuse the chronology of events and distort the real issue in the case. However, the facts simply presented are that notice of a hearing to consider a proposed amendment was published in February of 1970 and in December of 1970 plaintiff applied for a building permit and was refused. During the 10 month period from February to December the town had taken absolutely no action on the proposed amendment and it was not until March of 1971, some thirteen months after notice had been published, that the town adopted the by-law. The Supreme Judicial Court overruled the decision of the building inspector and granted the permit to Ouellette. There are two possible interpretations of the court's decision which may be advanced by those analyzing the result.

First there is the argument that this was not a controversial decision but rather a fundamental opinion consistent with the provisions of s.11. That due to the unusual circumstances of the case, a thirteen month period from notice to adoption, the court was merely applying s.11 as written. Indeed, in the final paragraph of its decision, the court alluded to these circumstances in justification of the result.

"Furthermore, there is nothing in the record to show that the proposed zoning amendment was ever adopted. Even if, however, it was adopted in March, 1971, as the intervenor asserts in his brief, and even if notice of the initial public hearing thereon was given in February, 1970, it cannot be said that 'the subsequent steps required for the adoption of . . . the amendment . . . were taken without unnecessary or unreasonable delay' (see GL 40A s.11) Adoption therefore would not bar the issuance of the

building permit".

If this interpretation happens to be correct then s.11 is completely viable in the area of zoning regulation. And under normal circumstances, where notice of a hearing to consider a proposed amendment is published and the town proceeds without unreasonable or unnecessary delay to adoption, an application for a building permit filed subsequent to said notice but prior to adoption may be justifiably refused by the building inspector.

The second possible interpretation, the one advanced by this author, is that the Ouellette decision is of major significance in that it judicially altered s.11. In the case, the city of Quincy argued that the decision of the building inspector should be upheld on the grounds of the court's decision in the *Doliner* case (supra). The Ouellette court discussed the *Doliner* decision and said at page 1372:

"In the *Doliner* case, the court held that under statutes then in effect, a planning board could properly disapprove a subdivision plan as inconsistent with a newly adopted zoning amendment even before it was approved by the Attorney General under GL Ch.40 s.32. In reaching this result we gave dispositive weight to GL Ch.40A s.11.

The court conceded before discussing the *Doliner* case, that the rationale employed in that decision had no application to the instant case, nevertheless, the discussion was undertaken apparently to lay the groundwork for what was to follow. The court proceeded from the *Doliner* decision to an analysis of s.11 itself and for the first time since its enactment in 1954, the provisions of s.11 were being attacked, not as in conflict with s.7A, but as unreasonable in and of themselves. The court discussed notice of a proposed amendment or compared to an adopted amendment and decided that the express language of s.11 was no longer viable.

"While a proposed zoning amendment may undergo substantial changes or may be abandoned entirely, once the town has adopted an amendment, it will generally receive the Attorney General's approval and, after appropriate publication, will take effect. Because of this fundamental difference, while a building inspector may refuse to issue a permit because of a newly adopted zoning amendment, we are unwilling to say that he may refuse to issue a permit merely because of a proposed zoning amendment. In any event, under GL Ch. 40A s.12 a building inspector is empowered to withhold a permit if the proposed building

as constructed would be in violation of any zoning ordinance, or by-law or amendment thereof. While the emphasized language is sufficiently broad to encompass an amendment which has been adopted but is not yet effective, we think that a fair construction must exclude a mere proposed zoning amendment.”

There are those who will contend that this second interpretation is incorrect in that it journeys to extremes never intended by the court. These advocates, while admitting that the language quoted above is quite adamant, nevertheless will contend that the decision must be viewed in the light of the extraordinary circumstances of the case and in such light it becomes clear that s.11 has not been altered. If this be the case why did the court relegate the basis and reasoning for its decision to a three sentence paragraph at the end of the opinion, said paragraph beginning with the word, *furthermore*. Beginning a paragraph in such a manner connotes that the material contained therein is of a supplementary nature, not necessary to the decision but available should future arguments ensue. And if the first interpretation, previously discussed, is correct then how is a building inspector to determine if the town is “proceeding toward adoption without unnecessary or unreasonable delay”? And what exactly constitutes unnecessary or unreasonable delay? And finally, is there any assurance that the town will adopt the proposal? It would not appear to be within the spirit and intent of the zoning by-law to force an applicant for a building permit to abide by a proposal which may never be adopted by the town. For these reasons it is believed that the second interpretation is correct and an analysis of the ramifications of the Ouellette decision must be based on this premise.

The Ouellette decision judicially amended s.11 so as to place the application for a building permit on a par with the filing of a subdivision plan. While s.7A was not specifically applicable to the instant case and played no express part in the decision, there is no question but that s.7A’s emergence as the controlling statute in the development area was the major force prompting this finding. The Supreme Judicial Court carried the ramifications of the *Nyquist* decision (supra) to their ultimate end. The protection of the developer, which naturally encourages future development, had become the primary concern. If a developer was to be protected from subsequently adopted amendments merely by filing a subdivision plan, shouldn’t a landowner

who is simply building a house, as opposed to subdividing and building, be equally as well protected?

The rationale was a logical extension of s.7A, unfortunately it was also contrary to the express and unambiguous statutory language found in s.11. This judicial usurpation of legislative authority cannot be condoned. The system within which the judiciary operates is delicately balanced and requires constant surveillance to insure its stability. Once a statute is deemed constitutional by the judiciary, the life or death of that statute should no longer be a matter for judicial concern. The judiciary can exercise reasonable discretion in interpretation and offer enlightened commentary on possible future amendments, but it is not the province of the court to amend even if such amendment would benefit each and every member of society. The benefits accrued through this “judicial legislating” would be far outweighed by the detrimental effect on the system within which the judiciary must function.

It is difficult to formulate an exact opinion as to the future of s.11. It still exists on paper, exactly as enacted in 1954, but it is not the same statute in light of the *Ouellette* decision (supra). Its potency has been seriously diluted in the name of “development”. Nonetheless it cannot be entirely disregarded by those desirous of obtaining building permits. The decision, prompted by the existence of this statute, that a by-law is effective when adopted by a town meeting, is still viable precedent in the zoning sphere. This ruling, while contrary to express statutory language, can be justified as a judicial attempt to interpret and harmonize ambiguous provisions of MGL Ch.40A. But in light of the totality of circumstances, can it survive much longer?

The period between adoption and effectiveness of a particular amendment can be as long as ninety days, with the ultimate possibility being a determination by the Attorney General that said amendment is unconstitutional. A cogent argument can be presented that to subject a developer to the uncertainties of such an arrangement — that is, to force him to comply with regulations which may or may not be valid — would be subverting the very intention of s.7A. And, upon reexamination, considering the demise of s.11, there is an excellent possibility that a court would decide that the explicit language of s.7A is to be followed exactly as written and a by-law will be considered effective only after the requirements of Ch.40 s.32 have been met.

Appendix I

1. MGL Ch.40A s.7A: When a preliminary plan referred to in section eight-one S of Chapter forty-one has been submitted to a planning board, and written notice of the submission of such plan has been given to the city or town clerk, the land shown on such preliminary plan and on the definitive plan evolved therefrom, or in the absence of a preliminary plan, the land shown on a definitive plan submitted under the provisions of the subdivision control law, shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of submission of the plan first submitted while such plan or plans are being processed under said subdivision control law; and, if said definitive plan becomes approved, or is disapproved and thereafter amended and duly approved, said provisions of the ordinance or by-law in effect at the time of the submission of the first submitted plan shall govern the land shown on such approved definitive plan, for a period of seven years from the date of endorsement of such approval notwithstanding any other provision of law; provided, that if a preliminary plan is submitted, the definitive plan is duly submitted within seven months from the date on which the preliminary plan was submitted. Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving such plan is made under applicable provisions of the subdivision control law. Such appeal shall stay, pending an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted. When a plan in section eight-one P of Chapter forty-one has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import, provided that a city or town may, in the manner proscribed in this Chapter, increase the number of permitted uses of any land shown on such plan.

Appendix II

MGL Ch.40 A, S.11: In a city, no zoning ordinance or amendment thereof shall affect any permit issued or any building or structure lawfully begun before notice of hearing before the planning board or the zoning board, as the case may be, or, if there is neither, before the city council, has first been given; and, in a town, no zoning by-law or amendment thereof shall affect any permit issued or any building or structure lawfully begun before notice of hearing before the planning board or the zoning board, as the case may be, or, if there is neither, before the selectmen, has first been given or before the issuance of the warrant for the town meeting at which such by-law or amendment is adopted, whichever comes first, provided, that construction work under such a permit is commenced within six months after its issue, and the work, whether under such permit or otherwise lawfully begun, proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances. The issuance of a permit or the beginning of work upon a building or structure, or a change of use, after such notice has been given or such warrant has been issued, shall not justify the violation of a zoning ordinance or by-law or an amendment thereto subsequently adopted as the outcome of such hearing and in substantial accord with such notice or warrant; provided, the subsequent steps required for the adoption of such ordinance or by-law or amendment thereto are taken in their usual sequence without unnecessary or unreasonable delay.

Report from the Law School Admissions Office

The first year of operation of the Law School Admissions Office was recently completed with the opening of classes in September. The current first year day and evening class is the first class which has been admitted to the law school through the operation of the Law School Admissions Office. The Admissions Office was created in the summer of 1972 to screen the thousands of applications the law school receives annually.

The work of the Admissions Office might appear to be somewhat sporadic, however, this is not necessarily the case. In the fall of the year the Admissions Office sends out thousands of admissions bulletins and catalogs to applicants, and computes statistical information on the previous year. Additionally the Director of Admissions travels to many colleges in the fall of each year to meet with and interview prospective candidates. As the academic year progresses the application forms, along with letters of recommendation, LSAT (Law School Aptitude Test) scores, and LSDAS (Law School Data Assembly Service) reports are returned to the Law School Admissions Office.

This year there were 4,030 applications for the Day and Evening Division Class commencing in September of 1973. These 4,000 plus candidates comprised the most qualified applicant pool the law school has ever had to choose from. Approximately 800 candidates were ultimately offered a seat in the day or the evening division. Of these 800 candidates, 575 actually enrolled. The remaining 3,200 applicants were either denied as a result of poor qualifications or a lack of capacity on the part of the school to offer them a seat. As a result of the decision to decrease the total number of students in the law school, only 575 students were admitted this year into both the day and evening divisions, as compared with 750 students being admitted as first year students last year.

The day and evening divisions for the first year class enrolled in September 1972 possessed the following characteristics:

Currently 20 percent of the first year day and evening students are women. This is the largest percentage of women ever to enroll in a first year class at this Law School and is the result of an increased number of applications from women last year. The Law School has also enrolled a significant number of minority students in the 1973 first year class.

During the past year the Admissions Office has had a number of responsibilities directly and indirectly associated with admissions including:

1. The publication of the new Law School Catalog.
2. The publication of the Law School Admissions Bulletin of Information. This booklet contains the law school application blank, recommendation forms, and relevant information for applicants.
3. The publication of the first year student picture book.

The Law School in conjunction with the Educational Testing Service and the Law School Admissions Council adopted the use of the Law School Data Assembly Service. The Law School Data Assembly Service (LSDAS) is designed to make the operation of a Law School Admissions Office more efficient. This service collects transcripts of an applicant's academic work, summarizes the undergraduate transcripts into a uniform format, and sends an LSDAS report, containing the LSAT score, transcript summaries, and a copy of each transcript to the Law School.

A validity study of the correlation of LSAT scores to law school grades was also done at Suffolk for the first time. This study supported what it has previously shown at other law schools, that is that there is a strong correlation between LSAT scores and first year grades at Suffolk University Law School.

The key question which most people concerned with law school admissions are asking themselves today is: Has the flood of applications peaked? Last year several of the other law schools in the metropolitan Boston area had fewer ap-

plications than they did in the preceding year. Suffolk University Law School had a greater number in comparison to previous years. This was probably due to the cumulative factor of Suffolk's evening division and lower tuition fees than other private law schools. From all of the early indications, it appears the increase in the number of applications has not peaked as yet for Suffolk University Law School.

Environmental Law Society

The Environmental Law Society began another successful year with an attendance of 25 students from all three classes at their initial meeting. Following the meeting the club convened to discuss the years' activities at the home of Tom Lord. The society resolved to direct its efforts toward two projects this year. They will continue the environmental law intern program, which places students in private and public interest groups to do volunteer work in environmental law. Their other project will be a continuing speaker and group discussion program.

Three society members are presently working for Assistant U. S. Attorney Allen Hoffman investigating an oil spill matter, which is scheduled for trial in early November. Assistant Attorney General Gregor McGregor is currently interviewing six club members for similar positions on his staff in the Environmental Protection Division of the State Attorney General's Office. Two private groups, the Conservation Law Foundation and the Massachusetts Forest and Parks Association, also have expressed a desire to fill internship positions in their offices. Any interested students should contact Society Chairman Brian Silvestro.

An attempt is being made to bring more speakers to Suffolk this year to lecture on Environmental Law. In addition, at each society meeting interns will discuss the current status of their work in the field. Society meetings are held bi-weekly on Thursdays at noon. Information concerning workshops and lectures, in the field of environmental law, in and around Boston are posted on the club bulletin board, located on the 3rd floor of the Donahue Building. The Society looks forward to a productive year and hopes to make a larger part of the Suffolk community aware of the expanding field of environmental law.

	<i>Average Age in Years</i>	<i>Average LSAT Score</i>	<i>Average Undergraduate GPA</i>
Day Division	24½	617	3.1
Evening Division	27 1/3	608	3.0

Suffolk Voluntary Defenders

When the Suffolk Voluntary Defenders was formed in February 1970, the number of students involved was small and, due to the competition from other local law schools, the number of opportunities to appear in court was limited.

The Advocate, from time to time, has reported the continued growth of the defender program. Since September 1971, the defenders have covered the district courts in Salem and Lynn on a regularly scheduled basis and have furnished representation in other courts, particularly in Dedham, when needed.

During the 1971-1972 school year 85 senior students were taken into the program when it appeared that an assistant was to be added to the staff. Although the assistant did not materialize, there were no problems during the year reviewing cases with that many students.

Because the 1971-1972 year was so successful, it was decided to again take 85 seniors into the program for the 1972-1973 school year. That decision was a mistake. Even though the seniors were extremely competent, the unexpected and substantial increase in the number of cases handled coupled with the bizarre working conditions under which they were handled made it a difficult year. [The defender group is in reality, a large law firm; yet its office contained 166 square feet for 2 people - 2 desks - 2 telephones - 4 chairs - 3 bookcases and 1 geranium which had to be dwarf.]

Last spring, for obvious reasons, it was decided to take only 60 students into the senior program but with the understanding that additional students would be subsequently accepted if plans for the expansion of clinical programs were adopted.

During the summer many things happened.

Professor Sargent who has always had the highest respect of students and faculty became dean of the law school. I believe that he will, as Dean, strongly support the clinical programs.



*Clinical Law Professor
Wilbur Hollingsworth*

Because of the substantial additions to the faculty it became necessary to move the clinical programs (along with the placement office and Professor McEtrick and his entire staff) to the Charles River Plaza office building on Cambridge Street.

Supplied, for the first time, with adequate working facilities for the foreseeable future 30 additional seniors were accepted and, after discussions with the judges of the District Court of Brockton, a regularly scheduled program was established in that court.

Heretofore it has been necessary to rotate the students among the various courts so that each student shared the travel load equally. With the opening of the Brockton Court it became possible for the first time to assign students to the court of their choice. With few exceptions, every student in the Brockton program lives near or south of Brockton.

Working conditions are now excellent. The entire program is moving smoothly and I am sure we will have our assistant in the near future.

Phi Alpha Delta

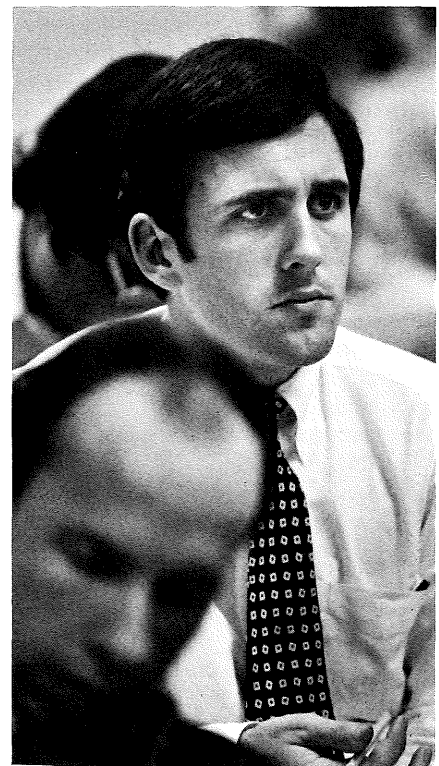
Phi Alpha Delta began its activities this year with a successful orientation program, in conjunction with the S.B.A. for the first year students. On October 24th the members attended a cocktail party run by the Massachusetts P.A.D. Alumni.

Suffolk was host for this year's district conclave, attended by brothers and sisters from New York, Connecticut, and Massachusetts. The day consisted of meetings and a luncheon and was highlighted by a dinner at the Parker House.

Tuesday October 30 was the day the first initiation of the 73-74 year was held. The formal induction was held in the Moot Court Room at 5 p.m. and was followed by a cocktail party at the "99" in Boston.

P.A.D. is arranging for a tour of the United States District Court in Boston. The tour will take place sometime in November. The fraternity is also planning to present a speaker in late November or early December. As in the past P.A.D. will organize a composite review for the first year students. This program will be presented in mid-December, prior to the end of the fall semester. Any student interested in applying for membership should contact Raymond Dettore - Justice, or any member of P.A.D.

Raymond Dettore Jr.



Suffolk Women's Law Caucus

We are women interested in learning how our law education may best be utilized to fight for and protect the rights of women, and of all people; in keeping abreast of and involved in struggles which women face in all aspects of life, including those legal in nature. S.W.L.C. is comprised of women law students from evening and day divisions at Suffolk Law School, as well as Suffolk Law Alumnae.

The caucus has worked to improve the law school for all students, men and women, by constant communication with Dean Sargent, and by pushing for: increased clinical programs (especially with the Boston Legal Assistance Project); an openly notorious and available student health insurance plan (which was unknown to law school administrators, but did and does exist!); a committee to standardize examination and grading procedures (this has been approved by the Dean); greater security measures for student protection (as a result, we now have uniformed guards, increased surveillance, and police patrol); expansion of financial aid services and the hiring of a Financial Aid Director; publicity of the fact that we may take courses at other Boston Law Schools for credit, if the course is not offered at Suffolk; and a task force on the status of women (professors, secretaries, cafeteria workers, etc.) in the University. SWLC ran and continues to sponsor a speaker's program presenting

speakers on various legal issues, from many diverse fields of law. It also publishes twice monthly a newsletter for all students, pertaining to all legal interests, with a focus on women's legal issues and the caucus' activities. A summer issue was prepared for all registered law students by S.W.L.C.

At present, the SWLC has 10 working committees. 1) If you are interested in working on any of them, please leave your committee interest, name, address, and phone number in the SWLC mailbox at the Law Library check-out desk. 2) Alumnae are urged to contact the caucus to help us with placement ideas, and to speak to us about your experiences as women in law.

Working Committees:

1. *Administrative Liaison* (work for change through Dean, Registrar and Faculty)
2. *Newsletter* (staff needed to write and collect articles, ideas, bibliography)
3. *Speaker's Program* (contact speakers of interest, make arrangements, publicity)
4. *Legislative Lobbying* (work for change through legislature; in conjunction with N.O.W.'s lobby efforts)
5. *Law Day and Regional Conference* (plan these events for recruitment of women to law school, and to gather Boston's resources for workshops and

speakers on women and the law.)

6. *National Lawyer's Guild Liaison* (Join with the Guild on various Politico-Legal projects.)

7. *Placement* (Work with Placement office and Alumnae on job possibilities after graduation.)

8. *Day Care Center* (Men and women law students with children to work together for day care arrangements.)

9. *Improved Understanding* between men and women students (promote discussion of differences and similarities in goals, ideas, and the law school experience for men and women.)

10. *Framingham Prison Project* (Investigate feasibility, success of such programs run by other schools, implement program.)

11. *Communication*: If you have any inquiries, newsletter contributions, articles of interest for the *Bulletin Board*.)

1) Address correspondence to
Suffolk Women's Law
Caucus:
41 Temple Street
Boston, Mass. 02114

2) or leave note in mailbox at Law Library Check-Out Desk.

3) See: S.W.L.C. Bulletin Board on 4th Floor by Law Library for Meeting Notices; Speaker's Announcements, etc.

Privilege v. Necessity

Continued from page 9

problem of subpoena power over confidentiality of information gathered in the performance of constitutionally-protected functions will be with the Courts for a long time to come. The problem exists not only for the press but also in connection with the assertion of executive privilege by the executive branch of our government. There is also no doubt that there must be some balancing of interests for the welfare of an orderly and disciplined society. Unfortunately, the Court, at least in these press cases, has not accepted the responsibility of balancing

these interests and has invited the Federal and State legislatures to devise a privilege by means of shield laws. However, the legislature is not the forum where the strict interpretation of constitutional law properly belongs.

The Constitution of the United States certainly justifies a newsman's privilege; whether or not the Court will take this route in the near future is doubtful.

Footnotes

¹ Together with *IN Re Pappas*, on certiorari to the Supreme Judicial Court of Massachusetts and *United States vs. Caldwell*, on certiorari to the United States Court of Appeals for Ninth Circuit. Companion cases consolidated for argument and decision.

² The lack of any need for the testimony of Paul Pappas is demonstrated in the events that followed.

At the time Pappas was subpoenaed to testify, September 22, 1970, the Bristol County Grand Jury was investigating civil disorders that broke out in New Bedford on July 30, 1970 involving the Black Panthers and local police. The Grand Jury brought forward many indictments relating to those civil disorders. The District Attorney "nolle prosequi" the main indictments against ten of the Black Panthers arrested during the racial disturbance. This demonstrates the ultimate uselessness to the government of his testimony. Only the order issued from the U. S. Supreme Court restraining the Justice of the Bristol County Superior Court and the District Attorney from compelling him to appear during the course of the Grand Jury proceedings prevented Pappas' appearance. Had he been forced to appear and testify, he would have breached the confidence, "never be trusted again", his "livelihood impaired" - and the indictments eventually nolle prosequi. A newsman should not be forced to perform such an unproductive and meaningless act, particularly when it would be destructive of his news-gathering capability.

Faculty Notes

Suffolk Law School entered the 1973-74 year with new academic leadership.

Appointed dean of the law school during the summer was **Prof. David J. Sargent**, who had been serving as acting dean following the retirement of Dean Donald R. Simpson in June of 1972. Sargent, 41, has been a member of the law school faculty for 18 years, and is a nationally recognized authority on tort insurance law. A magna cum laude graduate of Suffolk Law School (1954) and president of his class, he is the first Suffolk graduate to be named dean of the law school. Sargent will continue to teach courses in torts and trusts and estates.



Associate Dean Donahue

Named associate law school deans were **Malcolm M. Donahue** and **John E. Fenton Jr.**, both long-time professors at the law school.

Prof. Donahue joined the full-time law school faculty in 1956, having taught part time since 1953. He received his bachelor of arts degree from Harvard College in 1944 and his juris doctor degree from Boston University Law School in 1950. He is a former Assistant Attorney General for the Commonwealth and presently chairman of the Westwood Board of Appeals.



Associate Dean Fenton

Prof. Fenton is a cum laude graduate of Holy Cross College, received his juris doctor degree from Boston College in 1954 where he ranked second in his class and a master of laws from Harvard Law School in 1955. He joined the law school faculty in 1957.

The law school also added 12 new full-time faculty for the current year. The new law school faculty members are:

- **Robert Lisle Baker**, associate professor. Holds an A.B. cum laude from Williams College and an LL.B. cum laude from Harvard Law School. Has been associated with Hill and Barlow, in Boston, been a teaching fellow at Harvard University, and was a reporter for the Louisville Courier-Journal.
- **Charles M. Burnim**, associate professor. Holds B.S. from University of Massachusetts and J.D. from Boston University Law School. Previously served as an assistant district attorney in Essex County, and an Assistant Attorney General for the Commonwealth, and engaged in private practice.

- **Gerard J. Clark**, assistant professor. Received his A.B. from Seton Hall University and his .D. from Columbia University Law School. Previously staff attorney for the Newark-Essex Joint Law Reform Project as well as deputy director. The project deals with legal and political issues involving the urban poor in Newark, New Jersey.

- **Valerie Clare Epps**, assistant professor. Received a B.A. with honors from University of Birmingham, England and a J.D. cum laude from B.U. School of Law. For the past year, she has served as law clerk to the Chief Justice of the Massachusetts Supreme Judicial Court.

- **Alexander Kovel**, associate professor. Holds B.A. from Yale, and LL.B. from Harvard Law School. Most recently served as assistant secretary for the executive office of Communities and Development for the Commonwealth, and acting deputy commissioner for Department of Community Affairs, in charge of elderly and family housing program.

- **Crystal Cousins Lloyd**, associate professor. Received B.A. from Northeastern University and LL.B. from Boston College Law School. She has served as attorney for the Department of Human Services for the Commonwealth and has been a lecturer in law and sociology at Boston University.

- **Barbara C. Schwartzbaum**, assistant professor of law. She holds a B.A. from City College of New York, a J.D. from Howard Law School and an LL.M. from Harvard Law School. She served as deputy regional counsel and acting general counsel of the Office of Economic Opportunity for the New England States from 1971-72.

- **Kathleen H. Blackburn**, teaching fellow. Holds a B.A. from State University of New York at Buffalo and J.D. from Suffolk Law School. Previously with law firm of Ruboy, Deutsch and Krasnow, in Boston.

- **George Franklin Hess II**, teaching fellow. B.S. from Colorado State University, J.D. from Suffolk Law School. Associated with law firm of Hard, Childs, Hepburn, Ross & Putnam in Philadelphia.

- **Thomas E. Mellon Jr.**, teaching fellow. B.S. from St. Joseph's College, Pennsylvania and J.D. from Georgetown University Law Center. Most recently served as law clerk for the late Judge James Rosen of U.S. Court of Appeals for Third Judicial Circuit, Newark, N.J., and Judge William H. Hastie, U.S. Circuit Court, Philadelphia.

- **Bernard V. Keenan Jr.**, teaching fellow. B.A. from Holy Cross, and J.D. from Georgetown University Law Center. Previously research assistant to Prof. John R. Kramer at Georgetown University Law Center.

- **Bernard M. Ortwein**, teaching fellow. B.A. from University of Richmond and J.D. cum laude from Suffolk Law School. Most recently served as law clerk to Associate Justice Herbert P. Wilkins of Massachusetts Supreme Judicial Court.

Additional Faculty Notes

- **Professor Clifford Elias** served as a panelist in the June, 1973 Conference on the New Federal Rules of Evidence sponsored by the Federal Bar Assn. He also served as an assistant to the Reporter charged with drafting the new Massachusetts Rules of Criminal Procedure. Professor Elias has also been named the Chairman of the Committee on Professional Responsibility of the Lawrence Bar Assn.

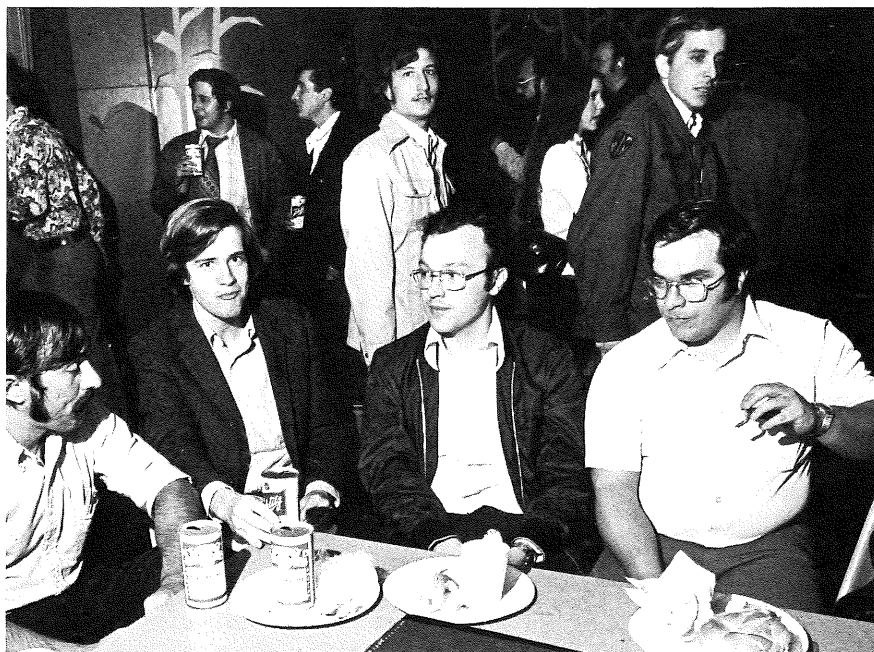
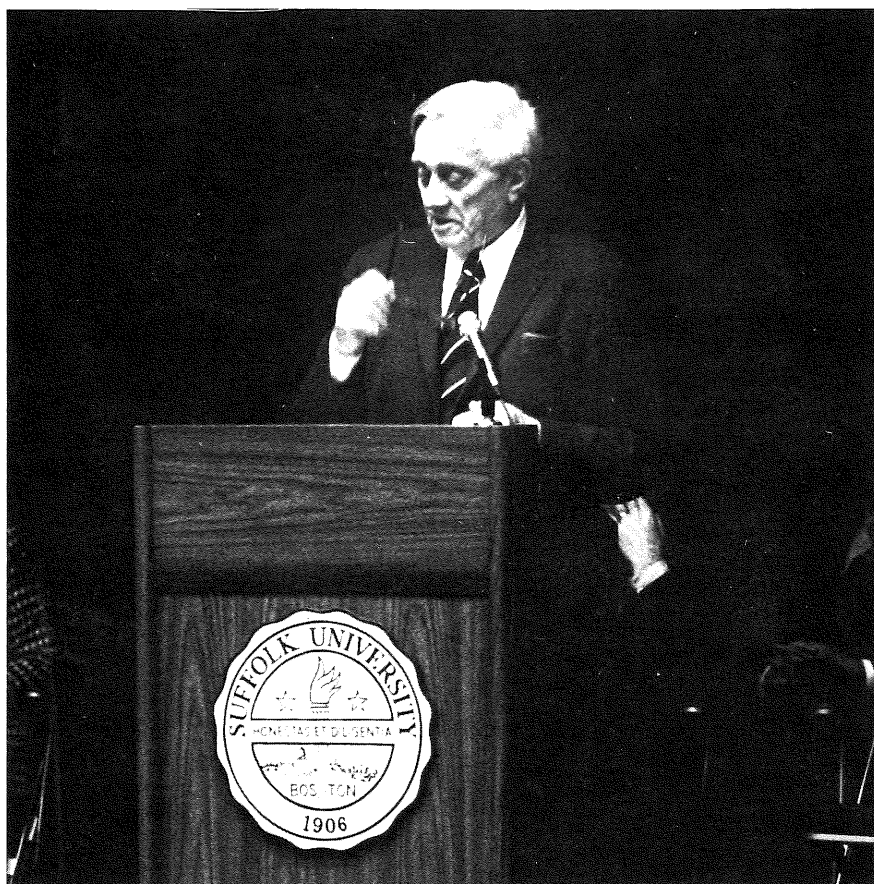
- **Professor Basil Yanakakis** has been named to WHO'S WHO IN AMERICA. He was delegate to the recent conference on international law held at Abidjian, Ivory Coast, Africa.

- **Professor Charles Garabedian** addressed the annual meeting of the Rhode Island Bar Assn. on the preparation of trial briefs in September, 1973.

- **Professor Herbert Lemelman** has been elected a director of both the Temple Shalom and the Hebrew Rehabilitation Center. He has also been appointed to a three year term on the Milton Town Government Study Commission.

- **Dean John Fenton** served as Chief Counsel to the Executive Council of Massachusetts when that body held its first public hearing in the history of Massachusetts on the removal of a judge.

- **Professor Charles Kindregan** has been appointed Co-Chairman of the American Bar Assn. Committee on Family Planning and Law.



The Student Bar Association recently sponsored an address to the law school faculty and students by Justice William O. Douglas. Justice Douglas spoke to an overflow crowd at Suffolk University's auditorium. Following Justice Douglas' address the Student Bar Association sponsored a party for the law school students and faculty. The event was well-attended and enabled the students and faculty to get together socially. The Student Bar Association's Social Committee, which has done an excellent job this year, is currently planning additional social events for the law school community.

Class Notes

1936

Judge Abraham Ankeles was honored by his hometown Temple Ner Tamid of Peabody for "his service to the Congregation, the Community, and the People of Israel".

1951

Ronald A Conant, Jr., of Abington is a member of the 1973 All-American Quality Club of the American Mutual Insurance Company of Boston.

1952

Town Counsel **Richard F. Claffie** of Dalton was reelected to the Board of the National Catholic Council of the Laity.

1954

Lynnfield's **Francis J. Tobin**, who practices from his Lynn office, is Co-chairman of the Legal Services to the Poor Committee of the Mass. Bar Association. **T. Walter Wannie** began this school year with a promotion to Principal at his Alma Mater, Barnstable High School.

1955

Sheldon H. Pitchel and **Thomas H. Hillery** (57) share a practice in Southborough.

1956

John L. Knight, a former member of the Maine State Legislature, is with the firm of Knight, Cohen, and Chalmers in Rockland, Maine. **Dr. William J. O'Neill** of Danielson is the new Superintendent of the Canterbury, Conn. schools. **Judge Rudolph A. Sacco** of Pittsfield was unanimously confirmed as a Special Justice of the Hampshire County Probate Court.

1957

Thomas H. Hillery and **Sheldon H. Pitchel** ('55) share a practice in Southborough.

1959

George H. Slack of West Hartford, Conn. is Vice President of Operations at the Covenant Insurance Company.

1960

Robert F. Cox of Andover was elected Assistant Vice President of the Legal Department at American Mutual Liability Insurance Company.

1964

Raytheon Manager **Arnold J. Lovering** of Chelmsford got an honorary degree from Lowell Tech, where he is a Trustee, and earned a bachelor's degree in 1961.

1965

Victor M. Forsley practices in Lowell, where he also serves as Vice Chairman of the School Committee. **Dr. William E. Hassan, Jr.** of Newton, Director of the Peter Bent Brigham Hospital, and a member of the Harvard Medical School faculty, got a 1973 Alumni Achievement Award from Mass. College of Pharmacy. **Joseph P. McParland** of East Braintree was elected to the Board of the Mass. Blue Cross, Inc.

1966

C. Harold Krasnow of Brookline became an associate in the firm of Brown, Rudnick, Freed, and Gesmer in Boston. **Frank Toro, Jr.** of Orange, Conn. formed a partnership with Charles P. Costanzo in New Haven.

1967

Anthony J. Catalano now practices in Sarasota, and he is a member of the bars of Florida, Mass., District of Columbia, and the U.S. Tax Court. **Garth H. Chandler**, former assistant attorney general for the State of Maine, has a private practice in Bangor. **Charles H. Riley, Jr.** of Nahant is Community Chairman of the 1973-74 United Way of Eastern Mass. campaign.

1968

Webster T. Copp of West Hartford, Conn. was promoted to Director in the Marketing Division at the Travelers Insurance Company. **Russell Gaudreau** of

Beacon Hill is with the Ropes and Gray firm in Boston. **Philip D. Moran** of Lynn's Kane and Moran firm attended the National Institute of Trial Advocacy in Boulder, Colorado this summer. **Raymond G. Mullen, Jr.**, who is with Richard LaSalle in their Somerset firm, has joined the Federal Bar. **Alan C. Shroyer** of Sutton was made an Assistant Counsel at the State Mutual Life Assurance Co. of America. **Peter A. Velis**, who practices from his hometown of Westfield, is a Public Administrator for Hampden County.

1969

David C. Driscoll of Newtonville is Treasurer of the Charles Stark Draper Laboratory. **Marshall A. Karol** of Brighton is with the Avratin, Olestein and Caccivio firm in Boston. **Robert R. Lundy** of Billerica is Haverhill's Housing Authority Attorney. **Thaddeus Strojny** now practices in partnership with Richard Martin in Taunton.

1970

Sheldon M. Drucker of Watertown became an associate in the firm of Brown, Rudnick, Freed, and Gesmer in Boston. A resident of Newburyport, and President of its Bar Association, **John P. Healey** is Town Counsel for West Newbury, and a partner in Conley and Healey in Amesbury. **Richard E. Hickey**, a member of the Mass. and New Jersey bars, now practices in N.J., after serving as a Superior Court Law Clerk there. Plymouth County Assistant District Attorney **John S. Tara** of Brockton was the only New Englander to attend the National Drug Abuse Training Center in Washington, D.C., this summer. Usually the NDATC is only open to applicants from the Mid-Atlantic States.

1971

Paul Cherewich of Foxboro is Manager of

U.S. Export for the Foxboro Company. **William R. Cummings** heads a private security firm in San Juan, covering Puerto Rico and the Virgin Islands. Town Meeting member **William R. Di Mento** is Swampscott's Chairman for the 1973-74 United Way of Eastern Mass. campaign. **Stephen M. Feingold** of Providence is with the firm of Rogers and Saroult in that city. **J. William Gagne, Jr.**, formerly with the NLRB in Pittsburgh, is with the firm of Ritter and Berman in Hartford, Conn. **Philip F. Heller** of Lenox is a Berkshire County Assistant Public Defender. **Duncan E. McLeod** of Clinton was unanimously confirmed as Clerk of the Fitchburg District Court.

1972

Lawrence E. Cohen is with the Worcester firm of Wolfson, Moynihan, and Dodson. **Peter B. Collins** shares a practice with his father, Peter, in Waltham. **John T. Donoghue** of South Natick is associated with his father, John, in their Needham practice. **Walter G. Hiltz** of Dedham got a Master of Law in Taxation degree from the B.U. School of Law. **Rosalind A. Jordan** of Milton is Projects Director of the Conservation Law Foundation of New England. **Daniel H. Kennedy, Jr.** of West Hartford is with Connecticut's State Judicial Department. **Arthur Kravetz** is Assistant State's Attorney for Prince George County in Maryland. Captain **Clifford Moy** is Legal Officer at Sharpe Army Depot in Lathrop, California. **V. Peter Reis, Jr.** joined the office of Milton L. Cramer in Torrington, Connecticut.

1973

Robin Carter of Ipswich is Staff Assistant to Mass. State Rep. David Lane. Sergeant **Ray R. Dennis** of Bedford got his second Air Force Systems Command's Legal Services 'Airman of the Year' award. Journalist **Neil C. Giroux**, who worked for the AP, Springfield Daily News, and Greenfield Recorder, is with the firm of Benjamin Apkin in North Adams. **Louis E. Goldstein** of North Andover is associated with the firm of Kazarosian, Allison, and Phillips in Haverhill. **George B. Handran** of Gloucester is with the Trust Department at the Boston Safe Deposit and Trust Company. **Richard W. Jones** of Foxboro is Corporate Personnel Liaison at the Gillette Company in Boston. **Curtis G. Levine** is an Assistant Public Defender for Palm Beach County in Fla. **Thomas L. McDonald** of Braintree is Clerk for the Chief Justice in Rhode Island.

Necrology

We at THE ADVOCATE are saddened to report the deaths of the following alumni.

Class of 1923

Wyman P. Fiske, former management consultant and professor at Harvard and M.I.T. died at the age of 72. Mr. Fiske, who was born in Somerville was a Harvard graduate and attended both Harvard Law School and Harvard graduate school of business. He also served as national president and as executive secretary of the National Association of Accountants.

Class of 1924

Edward Ankeles of 83 Hobart Street, Danvers, Mass. died at the age of 72. A former president of the Peabody Bar Association, he practiced law in that town for 40 years.

Class of 1926

Alfred L. Hutchinson, of 15 Richmere Road, Mattapan, Mass. died at the age of 66. He served with the American Mutual Companies of Boston.

Class of 1933

Julian P. Israelson of 103 Washington Street, Rumford, Maine died at the age of 62. Mr. Israelson served with the Berst-Forster-Dixfield Co. division of Diamond Match Co. as assistant to the Vice-President in charge of production. In 1953

he opened his own real estate and insurance business in the Rumford area.

James P. Quinn of 30 Prince St., Wilton, N.H., died at the age of 60. He was employed by the federal government for 25 years, retiring 4 years ago. He served as New Hampshire director of the W.P.A., Administrator of the office of Price Stabilization, and as loan officer for the Department of Education.

John P. Hennessey of 48 Benton Road, Belmont, Mass., died at the age of 64. Mr. Hennessey, a vice-president of Boston Edison Company, was past president of the Boston Edison Employees Credit Union, and of The Credit Union League of Massachusetts.

Class of 1935

Frank A. Welch of 31 Jackson Terrace, Newton, Mass., is dead at the age of 77. Mr. Welch who was a practicing attorney for 37 years, was a member and former secretary of the American Association of Retired Persons.

Class of 1936

Lawrence J. Moore of Cedar Street, Dedham, died at the age of 66. Mr. Moore was a former associate assessor and corporation counsel for the City of Boston.

Judicial Administration

Continued from page 11

by the Governor, but his selections are subject to the review of a commission that is representative of the judiciary, the public, and the legal profession. It combines features of the judicial selection procedures of the Federal Constitution, as in California, with those of the judicial-nomination-commission plan adopted in such states as Missouri, Colorado, and Oklahoma.¹¹

The plan requires the Governor to develop a preliminary list of potential nominees. He must submit a nomination to the commission within 30 days after a judicial vacancy has occurred. The judicial commission determines whether the person nominated by the Governor meets the specified qualifications. If this body confirms (or fails to reject) the nomination, the nominee is appointed; if it rejects him, the Governor must submit another nomination. If the Governor fails to act, the Chief Justice is empowered to nominate a person to fill the vacancy; thus, a deadlock is prevented and prompt action is taken in filling judicial vacancies.

The composition of the commission is one which the A.B.A. Commission believes to reflect interests pertinent to judicial selection. The judges bring the knowledge of the court system's needs and a wide professional acquaintance with persons likely to be considered as judicial nominees. The lay members of the commission introduce public expectations concerning what the judiciary should be and the non-professional attributes of a good judge are recognized through their efforts. These lay members are to be appointed by the Governor as "elected representatives of the people."¹² The lawyer members should be chosen by the official organization of the legal profession in states where such an organization exists, or by the Chief Justice where this is not the case.¹³ The lawyers' task will be to evaluate the professional skills of members of their own profession and the qualities of men and women within the bar with whom they have dealt. Party affiliation and geographical considerations should come into play when the lay and lawyer members of the commission are chosen.

The size of the commission can vary as long as a basic concept of balanced membership is maintained. The report states that a commission composed of the Chief Justice or his designee, two other judges,

two laymen, and two lawyers is large enough to be representative but small enough to deliberate candidly and efficiently.¹⁴

The A.B.A. Committee suggests an alternative method of judicial selection based upon merit. This method entails appointment by the Governor from a list of nominees submitted by a judicial nominating commission. It is a reversal of the judicial-confirmation commission. The composition of the commission involves the same participants, but the number of laymen is increased to four and the number of lawyers is increased to three. This commission compiles the names of prospective candidates for judicial office. When there is a vacancy, the commission submits a list of three candidates deemed qualified by the commission. The Governor makes a selection from that list. If the Governor fails to make an appointment within 30 days, the power of appointment reverts to the Chief Justice and he must appoint someone from the list.

The judicial nominating commission should have an adequate staff for the necessary administrative functions, including investigations of potential nominees, reports, and preliminary evaluations.

Judges selected by either of these procedures would hold office pending good behavior until the age of compulsory retirement; or office could be held for an initial two-year term. Their names would then be submitted to the electorate for confirmation and renewed terms subject to periodic confirmation up to the age of compulsory retirement.¹⁵

In Massachusetts, our Constitution provides for executive appointment to the office of judge, and the Governor's Council must approve the selection of the Governor;¹⁶ the intent being to bring the desire of the people for good judges to bear upon the executive's choice of a person to be a judge.

Governors of the Commonwealth have informally employed a joint committee of the Massachusetts and Boston Bar Associations to rate candidates for the judiciary. The prime criteria of the Committee was legal competence and experience.¹⁷ In 1972 an *Ad Hoc Committee on Judicial Appointments* was formed. The purpose of this Committee, comprised of six lawyers and six non-lawyers, was to supplement and extend methods of judicial selection. The Committee employed questionnaires and public hearings around the state. It rated a

candidate submitted by the public "qualified" or "not recommended," and these ratings with detailed comments were sent to the Governor.¹⁸

The Governor employed the recommendations made by both these committees in filling over thirty vacancies in the judiciary. He acted in this fashion though he was not under any legal obligation to do so. It can only be pointed out that Massachusetts seems to be moving at least philosophically toward the judicial nominating commission concept proposed by the A.B.A.

The popular election of judges as initial means of selection and appointment is disapproved by the A.B.A. Commission.¹⁹ The reason for this rejection of the election method is based upon what the Commission deemed the adverse effects of both partisan and nonpartisan election procedures. Massachusetts at this time does not employ any method of electing judges to their office. Also, there does not seem to be any movement toward such an election process for judicial appointments.

Partisan elections require judges to maintain ties with political parties and leaders, obligate judges to raise and spend money for political campaigns, and subject able judges to ouster if they don't perform well politically.

Nonpartisan election procedures also require judicial campaign fund-raising and inject political pressure into the judicial powers. Both of these methods confront the electorate with long lists of those who want to be judges and are personally known by few of the electorate.²⁰

Very briefly, the A.B.A. suggested standards call for the creation of a Board of Judicial Inquiry ultimately answerable to the Supreme Court of the state (highest court). This Board operates in addition to impeachment, address, or recall if those methods are indeed available. The Board would investigate all complaints and hold both public and private proceedings. The highest court of the state would have the power to remove a judge under this scheme. It could also retire, censure or suspend a judge guilty of misconduct.²¹

Section 1.23 concerns Judicial Compensation. The A.B.A. recommends that salaries should fit the task assigned and that they not correspond to the salary of a legislator. Judges of lower jurisdictional rank should not receive more compensation than those of higher rank. The salary level should be that of other professionals and executives performing responsibilities of comparable significance and complexity.²²

Presently, Massachusetts does pay its judges more money for higher jurisdictional rank. The money sources differ from county to state funds depending upon the court. Massachusetts is starting to look at this problem of salaries and has just granted a pay raise to its judges.

The problem of adequate Judicial Pensions. The A.B.A. recommendations provide at least three quarters salary at age 70, (the compulsory retirement age of this A.B.A. report) with ten years or more of judicial service, and at 65 with 20 years of service, voluntary retirement and the same three quarter pension; one-third salary to a widow or minor children of a judge who dies after having served such a period or after having retired.²³

The present pertinent sections of Chapter 32 Mass. General Laws, section 65A, 65B, and 65C, the judges retirement provisions, meet most of these recommendations of the A.B.A. However, they were operable before Article 98 of the amendments to the Massachusetts Constitution was passed (providing for mandatory retirement at age 70). Therefore, some judges will be forced off the bench before their pension rights vest under the present Ch. 32 provisions. House bill 7650, a substituted re-draft of House 7251, will, if it becomes law, coincide with the A.B.A. standards and, in addition, increase the widows' benefit to two-thirds of what pension her spouse was entitled to at the time of death or retirement over the A.B.A.'s recommended one-third of salary.

Section 1.24 deals with the Retirement of Judges and, as has just been pointed out, both the A.B.A. report and the Massachusetts Constitution agree that a judge should be forcibly retired at age 70.²⁴

The A.B.A.'s attitude is that if a judge is qualified to sit on the bench after age 70 he can sit for a renewable period of six months.

The present attitude in Massachusetts is that once a judge is retired he cannot sit again. Although an advisory opinion of the Supreme Judicial Court to the Senate (in Opinion of the Justices, (Mass. Adv. Sh. (1972) 1303-1402)) stated that temporary service by retired judges would not be in contravention of the constitutional amendment providing for compulsory retirement of judges at age 70, the General Court has not as yet given its approval to the recall of retired judges.

III. Rule-Making Authority

The A.B.A. suggests that it is generally recognized that the courts should have

authority to prescribe rules of procedure governing judicial proceedings.²⁵ Procedural rules have broad effects on the court system and should be a project of a widely reaching process of deliberation and decision. It asserts that the legislature and the bar have a legitimate concern with procedural policy, and the legislature as the elected representative of the community should have the opportunity to participate in determining what that policy should be.²⁶

The Commission further states that there are various procedures by which the views of the legislature and the bar may be brought to bear in procedural rule-making. It also feels that the essential features of a balanced and effective rule-making procedure are the participation of judges, lawyers, legal scholars, and legislators in deliberations concerning the rules, the provision of staff assistance for research and drafting, and circulation of proposals for scrutiny and comment before their adoption.²⁷

The scope of the rule-making authority should extend to all types of rules that may appropriately be called "procedural" as distinct from "substantive." This is said to include both civil and criminal rules, and rules of evidence in all courts in the system. The problem remains as to how to distinguish certain areas which are difficult to define in one classification or the other.

This same Commission feels that the judicial exercise of the rule-making power should not encroach on the legislator's supremacy in matters of substantive law. The proper boundaries of the rule-making power must, therefore, be worked out by process that goes beyond strict definition. One of the processes is reference to legal tradition and precedent.²⁸ Another process for determining the boundary between substance and procedure involves one form or another of consultation and joint deliberation. This is recommended through the formation of "Ad Hoc" study committees and commissions, in which representatives of the legislature, the bar and the judiciary are participants.

In Massachusetts the legislature serves as the general court. Certain important powers are vested in it which significantly influence the operations of the judicial system: (1) it enacts the general laws of the Commonwealth (2) has certain administrative powers regarding the trial courts, (3) determines certain appropriations and (4) has authority to remove judges.²⁹

The Supreme Judicial Court has a va-

riety of responsibilities. Much of its work is in reviewing appeals on cases originally heard in the lower courts, although it has original jurisdiction over certain matters such as petitions for extraordinary writs and for relief under various statutes. This court is also responsible for the administration of the Commonwealth's court system. It renders advisory opinions upon legal matters to the Governor and the General Court and makes rules regarding admission and discipline of attorneys. Its administrative authority with respect to courts of inferior jurisdiction includes general superintendence powers to correct errors and abuses such as those reported by Chief Justices of the district and superior courts.³⁰

The Supreme Judicial Court has, subject to its direction and supervision, an Executive Secretary to assist the Court in administrative matters. The duties of the Executive Secretary are outlined in MGL. Ch. 211 Sect. 3A-3F.

The Judicial Conference³¹ is closely associated with the Supreme Judicial Court and its justices. It may consider and make recommendations on matters relating to the conduct of judicial business, the improvement of the judicial system, and the administration of justice in such a manner as the Conference from time to time may deem appropriate. The constitution, purpose, and powers of the Judicial Conference is outlined in Rule 3:16 of the Supreme Judicial Court Rules promulgated by the Supreme Judicial Court.

In the case of *O'Coins, Inc. v. Treasurer of Worcester County* the doctrine of the inherent powers of the courts was enunciated, permitting the courts as a co-equal branch of government to compel payments for goods, services or facilities reasonably necessary for the execution of their statutory or constitutionally imposed duties.³² As stated by Chief Justice Tauro:

The doctrine holds that where the Constitution and the Legislature have imposed certain duties on the courts, they cannot be denied the reasonable means necessary for carrying them out. To do so would work injustices upon our citizens who are relegated to our courts to seek the vindication of their innocence or the redress of their grievances.³³

For many years there has been a complete lack of communication between the legislature and the courts. Gradually, this gap is being narrowed by advances made in coordinating the efforts of court reform groups in the legislature, the judiciary, and the public.

Judicial Education

The American Bar Association suggests that all judges and staff members of the court system should maintain and improve their professional competence by regular, continuing education. Court systems should operate or support programs of orientation for new court staff and refresher and developmental programs for experienced staff. Where greater convenience and economy can be achieved, such programs should be operated jointly by several court systems, or regionally or nationally.³⁴

Massachusetts has always been a leader in the educational field and is doing an adequate job of updating educational programs by providing judges and court personnel an opportunity to engage in these types of programs.

The Massachusetts courts have not yet developed and carried out a comprehensive and coordinated plan of this type. The Judicial Conference's Committee on Education is establishing policies for continuing education programs for judges and supporting judicial personnel. There are existing programs being conducted for this purpose which include treatment of constitutional, substantive, evidentiary, and procedural law and judicial administration and court management. Also, there are specialized and technical professional training and interdisciplinary programs related to the operations of the courts in the criminal justice system.

Federal funds have been made available in this area supplementing educational activities funded by previous direct grants to the Superior and District Courts. Other educational opportunities have been made available through other sources.³⁵

Objectives of Educational Programs

As indicated, the Judicial Conference Committee on Education is the main force in this move toward better education for court personnel and judges. Many of these programs are designed to facilitate the transition from the practice of law to the judiciary or from one court to another and to provide newly appointed judges with necessary training in constitutional, substantive, evidentiary and procedural law. Other objectives are: to familiarize them with problems in judicial administration and court management, to present to them matters peculiarly related to their judicial status e.g., "inherent powers" and judicial ethics, to advise them of legislative developments, court rules and decisions affecting their juris-

dition, powers and duties, to acquaint them with the functions of other private and governmental agencies involved in the criminal justice system and to provide them with a forum at which to discuss their problems with their more experienced colleagues.³⁶

Wherever possible and appropriate, the various courts have been encouraged to conduct their own programs for judges recently appointed to their district.³⁷ Nationally, contacts have been made with the National College of the State Judiciary and New York University's Appellate Judges Seminar regarding the attendance of Massachusetts judges.³⁸

Court System Financing and Budgeting

The American Bar Association suggests a total state take over for funding the court systems. It recommends a program be adopted for gradual assumption of this responsibility in the courts over a period of time. The financial operations of the court system should be administered through a unified budget in which all revenues and expenditures for all activities of all courts in the system are presented and supervised. This financial support should be sufficient to permit effective performance of its responsibilities as a coordinate branch of government.³⁹

In Massachusetts, the judiciary is financed by a combination of county, state and federally channeled monies. The recognition of the need for state assumption of court costs is not new in Massachusetts. As a result, there are studies underway in an attempt to solve this complex problem.

The American Judicature Society is conducting a study as an "overview" of the funding, structure and organization of the Massachusetts Judicial System. It was predicated on the opposition to the county system of financing courts and the desire to transfer all court costs to the Commonwealth. Accordingly, the Judicature study is intended by its sponsors to serve as a vehicle for obtaining state assumption of court costs and for developing judicial responsibility for fiscal control within the court system.

The results of the Judicature study are very highly predictable. It would focus public attention on the need for fiscal reform and budgetary control as the key to effective state administration of the judicial system. The usefulness of the Judicature study as an educational device to impress upon the legislature and the public the need to improve court fiscal and budgetary procedures is justifiable.

The Judicature study is intended to examine the financial framework, organizational structure and management of the Massachusetts courts, but not the operations of the various courts. This study is perceived as a foundation providing insight on the management of the Massachusetts courts based upon comparisons with other jurisdictions and resulting in preliminary proposals to be pursued or rejected by the Regional Center.⁴⁰

It is felt that the Governor is not opposed in principle to a bill that would transfer court costs from the counties to the Commonwealth provided it is coupled with the establishment of an effective administrative apparatus within the court. The legislature is currently receptive to judicial assistance on recurring problems affecting the administration of the courts. Therefore, it is suggested that the approach to attain these goals be a gradual and cautious one. Any comprehensive study should involve all three branches of government and produce well-defined, understandable presentations on various subjects at periodic intervals.

The problems of judicial administration in financing the court system in Massachusetts should be approached in a logical manner with severable, identifiable proposals being treated separately against the background of a continuing comprehensive study. In other states, dissent over one item in a total plan had caused the rejection of the entire plan.

Data Processing

The A.B.A. encourages the development of effective statistical monitoring and management systems. This requires reorganization of the records and files in which the events of court activity are initially recorded. Therefore, the operation and valuation of court records and information systems and court statistical systems should be continuously coordinated.⁴¹

The Commission recommends an examination of the manual and mechanical data processing procedures. These two systems should be analyzed to determine whether they are necessary as useful, whether these procedures are being done uniformly and efficiently, and whether they could be done more efficiently by means of a combination of the two methods.⁴²

The potential value of automated data processing procedures can be most fully realized when the administrative organization, records, and information requirements of the court system make it

possible to take advantage of the computer's capacity for high volume, high speed and rigid, repetitive processes.

For many years, the use of electronic data processing as an effective tool for judicial administration has been discussed in Massachusetts.⁴³ To bring the benefits of data processing to the courts in an orderly and systematic manner, while avoiding the errors that have been made in industry and other branches of government in the past, the Supreme Judicial Court through the Office of the Executive Secretary engaged the services of Alex Wilson as its first Director of Data Processing this past April. Mr. Wilson is presently surveying the data processing needs and uses in the judicial system, cooperating in the development of the Superior Court's Criminal Case Management System and exploring the possibilities of organizing a data processing center for the courts.⁴⁴

Conclusion

In Massachusetts, there are a myriad of committees springing up throughout the state attempting to solve these types of problems. Hopefully, it will not dilute a meaningful and positive change in the court system. Further fragmentation of the court system must be eliminated in order that cases are determined justly, promptly and economically.

There is an immediate need for a unified effort to eradicate the duplication of the past and to drive forward jointly in an ever increasing manner for constructive progress.

The Courts must proceed with the resources available to them, constantly seeking improvement of our judicial system. Personal wants and conflicts must be placed aside in order to accomplish this goal. Continuous planning for the future needs of the judicial system should be a concern for all of us.

The A.B.A. standards were developed primarily with a view toward their adoption by state court systems. Standards proposed are recommendations, not mandates. These suggestions are tentative ones and have not as of this writing been adopted by the A.B.A. House of Delegates or the Board of Governors. Criticism of these standards is entirely valid, but it appears to the authors that they serve as a strong guideline for the state courts to follow. It gives the courts some very needed direction in areas that have long been overdue for judicial reform.

Footnotes

¹This para. is an excerpt from Chapter 21 (*Court Management and the Administration of Justice*) of Law and Order Reconsidered. A Staff Report to the National Commission On the Causes and Prevention of Violence (October 1969). pp. 510-511. The Chapter was prepared by David J. Saari, Director of the Court Management Study.

²Id. at 511

³A.B.A. Comm. on Judicial Administration (tent. draft, 1973)

⁴Id. at 2 and 3

⁵Id. at 3

⁶National Center for State Courts, Court Services Package, April '73

⁷Id.

⁸Tauro, Annual Report of the Chief Justice of the Massachusetts Supreme Judicial Court, Based on an Address to the Massachusetts Bar Association on June 9, 1973, Wentworth-by-the-Sea, New Hampshire.

⁹Supra Note 2 p. 32

¹⁰Id. at 37

¹¹Id. at 39

¹²Id. at 40

¹³Id. at 40

¹⁴Id. at 40

¹⁵Id. at 43

¹⁶Constitution of the Commonwealth (Part II ch. 2, sec. 1, Art. IX)

¹⁷Report of the "Ad Hoc" p. 1, *Advisory Committee on Judicial Appointment* (1972)

¹⁸Supra at note 2 p. 2.

¹⁹Id. at 43

²⁰Id. at 43-44

²¹Id. at 45-46

²²Id. at 51

²³Id. at Sp. 51

²⁴Id. at 55

²⁵Supra, Note 2 at pp. 62, 63, 64. Sect. 1.30 *Rule-Making, Policy-Making, and Administration: General Principle*. Authority to formulate rules of procedure for all types of matters and proceedings in the courts should be vested in the court system, under arrangements in which the legal profession and the public have an opportunity to participate. The court system should control its own administrative policies and should have procedures through which all its judges can participate in developing such policies. Authority to implement the courts' administrative policies should be established in a clear and simple set of management relationships under the supervisory authority of the chief justice.

The authority to promulgate rules of procedure may be vested in the members of the state's highest court or in a rule-making committee composed of judges, lawyers, legal scholars and representatives of the legislature. Authority to promulgate administrative policy should be vested in a judicial council composed of judges from various courts within the system or of the members of the supreme court sitting as a judicial council. The judicial council should act as an advisory committee to the chief justice concerning matters of administration. All judges in the court system should convene regularly as a body to deliberate upon and discuss the work of the court system and their problems and responsibilities in its administration.

²⁶Id.

²⁷Id. p. 63. See the following pages for more specific ideas of the Commission pp. 63-64.

²⁸Statutes of limitations and rules regarding survival of causes of action have been treated as substantive and therefore subject to legislative mandate.

²⁹The Judiciary Committee is a Committee dealing with: Major areas of the law considered by The Committee in its deliberations include probate law and family relations, *criminal law and procedure, civil procedure, juvenile proceedings, the motor vehicle law, tort law, laws regarding eminent domain, relocation and the drug laws*. Other general areas explored by the Committee include amendments to the state Constitution, certain housing matters and landlord-tenant relations, *court operations and the administration of justice, civil rights and liberties, and the vast new area of "citizens' rights"* to go to a court of law or equity to obtain relief from consumer and or environmental pollution, found in *The report of the Joint Committee on the Judiciary* (1971 session)

³⁰MGL Ch. 211-3 Gives the power to the Supreme Judicial Court to have general superintendence of the administration of all courts of inferior jurisdiction...and it may issue such writs, summons and other processes and such orders, *directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration.*

³¹Judicial Conference- (1) The Massachusetts Judicial Conference is hereby constituted to consist of the following: (a) the Chief Justice (who shall serve as chairman of the Conference) and the Associate Justices of this court; (b) the Chief Justice of the Superior Court; (c) the Chief Judge of the Probate Courts; (d) the Judge of the Land Court; (e) the Chief Justice of the Municipal Court of the City of Boston; (f) the Chief Justice of the District Courts; (g) the Chairman of the Judicial Council; and (h) the Executive Secretary of this court, who shall act as secretary, and as the principal administrative officer of the Conference. (2) The judges and officers mentioned in paragraph (1) shall serve as the members of the Conference until further order of this court. Any member may designate another member of the court or body which he represents to act for him at any meeting.

³²1972 Mass. Adv. Sh. 1731 (September 19, 1972)

³³Supra at note 8

³⁴Supra Note 2, Sect. 1. 44 p. 83

³⁵Courses offered by the Division of Training of the Commission on Administration and Finance and through the Commission funds have been made available under the Intergovernmental Personnel Act for two seminars for Probate Court Judges.

Special programs have also been conducted for judges appointed to office since May 1, 1972.

³⁶1972 Action Grant Application for Supreme Judicial Court submitted to Commonwealth of Massachusetts Committee on Law Enforcement and Administration of Criminal Justice.

³⁷Judge Hennessey cooperated with Chief Justice McLaughlin in developing and presenting a series of ten meetings for recent appointees to the Superior Courts.

³⁸Other national organizations with similar activities: American Bar Associations (esp. sections dealing with criminal law, Judicial Administration and Juvenile Delinquency), National Conference of Metropolitan Courts, National Conference of State Trial Court Judges, National Conference on Crime and Delinquency Conference of Special Court Judges, and the American Judges Association.

³⁹Supra note 2 at Sect. 1.50

⁴⁰The American Judicature Society's study on the Budgetary System for the Massachusetts Courts (1973).

⁴¹Supra note 2 at 102

⁴²Id

⁴³Tauro, State of the Judiciary, 57 M.L.Q. 209, 217-218 (1972)

⁴⁴Supra note 8

If you are looking for competent and well-trained individuals — students or alumni, the Suffolk University Law School Placement Office offers an invaluable service.

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The Placement Office arranges interviews for students/alumni throughout the entire calendar year. Since most students begin their search for employment shortly after the school year begins in September, it is in the interest of prospective employers to inform the Director of Placement about his/her needs just prior to the beginning of the school year, or as soon thereafter as possible.

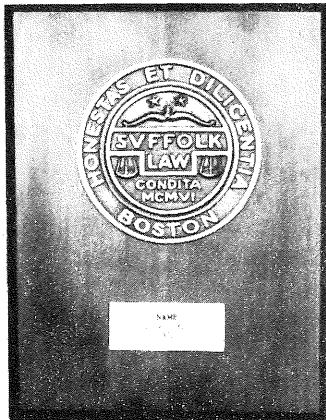
As a rule, Alumni are interested solely in full time employment opportunities. Students, on the other hand, are interested in full time, part time and summer employment opportunities.

Both Day and Evening Division Students can be provided, upon request, to assist in preparing trial briefs, researching points of law and in other forms of temporary, part time legal employment.

If your firm/office is not now interviewing at Suffolk, you could be overlooking an opportunity to meet some exceptionally well qualified young students.

For additional information call or write:

**Director of Placement
Suffolk University Law School
Beacon Hill
Boston, Massachusetts
Tel 723-4700, Ext. 352/353**



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