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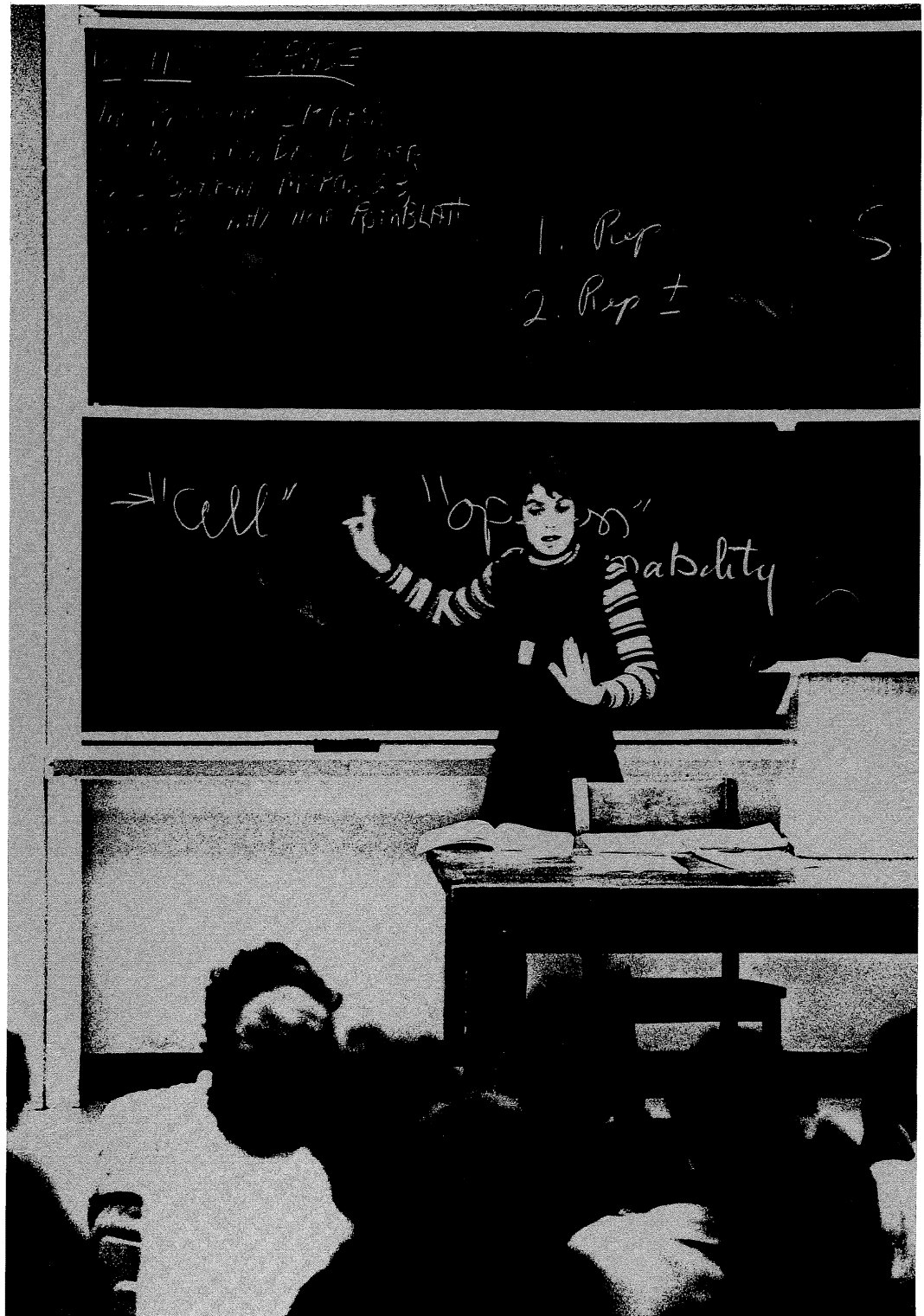
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THE ADVOCATE

A publication of SUFFOLK UNIVERSITY LAW SCHOOL

VOLUME 5 No. 3

SPRING 1974



THE ADVOCATE

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A Year of Progress — But There Is More to be Done

The academic year has been highlighted by renewal and achievement. Under the prudent, progressive and practical leadership of Dean Sargent, the first alumnus to serve as Dean in the Law School's history, students and faculty have had a busy and exciting experience.

Through the Dean's initiative, course offerings have expanded; clinical programs have been enlarged; seven additional lawyers of outstanding reputation and promise have been appointed to the fulltime faculty for the next academic year; committees of the faculty have been reassessing all phases of Law School life; students have been accredited to major faculty committees; student financial aid has been increased, a separate financial aid office has been established and a financial aid advisor appointed; nearly 5,000 applications have been received for next year's first year class; students, faculty, the Law School administration and Trustees are working closely and cooperatively; a summer school program (the only one in New England) will be inaugurated in June. In short, the Law School is alive and well numerically and in the quality and content of its programs and objectives.

We eagerly await the first summer school program which will begin in June. Several hundred students have expressed an intention to attend the summer session and members of the faculty have responded to student needs by rescheduling vacation plans and other professional projects and pursuits.

Continued progress, however, demands that each succeeding year be better than the last. The Law School administration is determined to sustain this progress and achievement. There are, however, areas of concern which merit close attention. Three of these are space, alumni relations and Law School development.



Although the Law School received more space this year in the Donohue Building, it is imperative that much more space be acquired to provide additional classrooms, library facilities and offices. The administration is reviewing plans to acquire the necessary additional space, and it will be obtained by the beginning of the next academic year.

Suffolk, in the last decade, has slowly changed from a metropolitan Boston law school to a regional law school serving primarily the New England and mid-Atlantic states. We now have concentrations of successful alumni in all of the New England states and in the New York, New Jersey, Washington and Pennsylvania areas. Surprisingly, we also have many graduates now practicing in the State of Florida. We are determined to re-establish sound professional rela-

tionships with these graduates. A questionnaire has been forwarded to all alumni to assess their continuing legal education needs. The Dean, Associate Deans and members of the faculty want all of our alumni, wherever located, to realize that we want and need their continuing support and good will. Our alumni should know that we are and always will continue to be interested in their professional growth. Therefore, our alumni are encouraged to form regional groups in key geographical areas of the country, and we stand ready to assist them in these endeavors. We will provide our alumni groups with whatever assistance we can and look forward to receiving invitations to have members of our administration and faculty attend their functions.

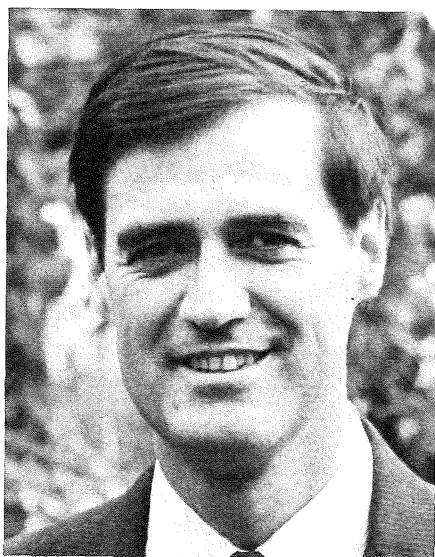
The Law School, of course, hopes that its alumni will provide substantial financial resources to aid in its future development. However, the Law School must initially earn the support it seeks by providing services and programs to its graduates.

The Law School administration will accept change where it is constructive but will reject it where it is only a fad or an end in itself. We prefer rather to adopt the thesis of Robinson Jeffers who once observed, "Give us the stone strength of the past and we will give you the wings of the future."

John E. Fenton, Jr.
Associate Dean

Organized Crime — A Prosecutive Program

by Edward F. Harrington, Esquire



Mr. Edward F. Harrington is a graduate of Holy Cross College and received a J.D. from Boston College in 1960. Mr. Harrington has served in the Criminal Division of the U.S. Department of Justice and as an Assistant U.S. Attorney for Massachusetts. From 1970 to 1973 he was the Attorney in charge of the U.S. Justice Department's "Strike Force" against organized crime for the New England area. Mr. Harrington is a candidate for Attorney General of the Commonwealth of Massachusetts.

This article is in effect a call for law enforcement, especially those police agencies in our urban areas, to intensify their investigative effort in a cooperative, concerted, and permanent force to drive the major organized criminals from their respective local jurisdictions and to rid American society of the insidious threat of the criminal organization.

Local law enforcement with its greater resources in manpower, its broader statutory criminal jurisdiction, its close physical proximity to the criminal scene, with the concomitant access to wider ranging sources of intelligence, rather than the federal or state government, has to be the vanguard of any successful campaign against the syndicate. Local law enforcement should not look to the federal and state government to wage their war and to tear away that threat to the quality of their democratic life. All crime, including organized crime, is primarily a local problem. It is the local citizen who is the victim of this blight. The federal and state government can only warn of the evils of the syndicate and point out the path to combat it — maybe develop new legal and investigative techniques and tools, and in some instances, fund the weapons and protect the witnesses — but, it is the local police authorities who must do the fighting in the city streets.

Now is the time for the major racketeer to feel the "heat from the local police; now is the time for the major racketeer and his illegal organized operation to be driven from every local community by an intensive investigative effort; now is the time for the local citizens to demand of their public and police official, and they will respond, to declare to the hoodlum element by deed that their kind and their illegal and oftentimes brutal services are to be no longer a part of the community and to get out!

Without an all-out effort on the part of the local police authorities, any gains against the organized underworld made by the federal or state governments will be largely of superficial impact. The federal government has neither the manpower, jurisdiction, or familiarity with the local community to have a permanent effect on the syndicate.

Prime responsibility to maintain pressure on the syndicate being that of the local police, it is the function of the District Attorney and members of his staff to be the catalyst of this investigative force. It is their responsibility to inspire and to lead this campaign for the welfare of their local constituents and for society as a whole.

The great cooperation on the part of the District Attorneys with the federal government is here publicly acknowledged and profoundly appreciated. Without their aid, the federal government can do but little. But more can be done by them. More must be done in order to render the syndicate impotent. Now is that time for an all-out mobilization on the part of local law enforcement, instigated by leadership and skill, as past investigative efforts have already left the organized underworld vulnerable, due to the present incarceration of some of its most formidable leaders. Law enforcement, local, state, federal, with the locals being in the forefront, should now make use of its advantage and, using all of its legal weapons, not cease its effort until every major racketeer — that parasite of society — is placed behind bars where he can no longer feed on the vices of the public.

That I can call for the complete eradication of the criminal organization from our social fabric is proof in itself of the great strides made in this field of law enforcement over the last several years. Fifteen years ago certain specialists were trying to persuade law enforcement itself

into believing that there was such a reality as the syndicate, and that organized crime was not a myth, as was then believed by many, even in law enforcement. The Appalachian Conference of 1957 and Joseph Valachi's revelations concerning the structure of the criminal organization before the McClellan Congressional Committee in 1963 have exploded forever the theory that organized crime is a myth. The question for law enforcement today is not whether organized crime exists, but what government can and must do to destroy it.

That organized crime is a vicious and potent threat to the integrity of American government cannot be gainsaid; that it still thrives cannot be denied. But organized crime still thrives because a government has failed to act with sufficient vigor to bring its full force against the syndicate in order to tear its roots from the soil of American life. American governments, especially local government, should act now and destroy the criminal organization.

The people should tolerate the syndicate no longer and demand of its governmental officials its obliteration, for organized crime is the most pernicious form of criminal activity, *not only* because of the crimes in which it is itself *directly* involved, such as illegal gambling, loan-sharking, extortion, the protection racket, labor racketeering, infiltration of legitimate businesses, and the financing, the importation and wholesale distribution of narcotics, *but also* because of the crimes it causes *indirectly*, such as, (A) *Crimes in the streets* — the assaults, muggings, burglaries, and murders, committed by individuals driven to satisfy an addiction for gambling, usurious loans, and drugs, and also (B) *Such other crimes* as major thefts, hijacking, and bank robberies which cannot even be conceived of without the perpetrators arranging with organized criminal figures for their aid in the disposal of the stolen securities, the "hot" merchandise, and the "bait" money, through the organization's interstate connections.

Organized crime is the most pernicious of criminal activity because its leaders are the most important criminal figures in a given geographic area — most important because (A) *No crime* of any significance, organized or unorganized, except rarely, can be committed without their permission first being obtained in advance — their "OK" being given — from the purchase of securities stolen from a Wall Street brokerage house to the "putting

out" the contract to kill one who has violated some rule of the organization. Even such a per se non-criminal, yet lucrative, activity as operating a gambling junket to London or Las Vegas cannot be undertaken by the junket operator without the syndicate leaders' permission first being obtained; (B) *The most important criminal figures* because they are the richest and being armed with millions of dollars reaped from the rackets, are able to corrupt public officials, and thereby to tarnish the quality of public life.

Organized crime is the most deleterious form of crime, lastly and fundamentally, because its continued existence breeds a disrespect for law. "Law and order" is today under attack by the young, the poor, and minority groups because they have witnessed individuals from their ranks receive prison sentences disproportionate to the crimes committed, while major racketeers remain conspicuously immune from prosecution. Major racketeers have long been the "untouchables" of society, and their continued freedom is a constant rebuke to the unresolve and indecisiveness of all government to use its full power, or if used, used in a discriminatory manner. How can youthful offenders be rehabilitated with a new found respect for the "equal protection of the law" while languishing in jail cells, while notorious racket figures remain brazenly unscathed, and in some instances, protected by those servants of that law which they so contemptuously flout.

I am not so naive as to believe that the crimes of illegal gambling, "shylocking," and narcotics are themselves going to be readily eliminated. As they are goods and services demanded by the public, such crimes will be with us so long as human nature remains unchanged, which will be a long time indeed. But parenthetically, even as to these so-called consensual crimes public officials should continually re-educate the public by means of public forums, advertising, grand juries and commissions that monies spent on commercial vice finance the underworld. "A two-dollar bet means the bullet and the bribe" would be an effective, because truthful, slogan in this regard.

It is my judgment that the criminal organization itself, that confederation of major criminal figures and their groups or "families," which is the real threat to our society, and not the gambling, shylocking, narcotics per se, (which are goods and services that are demanded by the public) can be destroyed by the intensive

and concerted campaign of all government — local, state, federal, *especially local* — toward one goal — the selective investigation and prosecution of every syndicate figure within each jurisdiction. For it is the major syndicate figure who controls all important criminal activity within a geographic area — who has interstate associations so necessary to "layoff" gambling, to the distribution of narcotics imported from abroad, to the fencing of stolen merchandise — who has the wealth and contacts to corrupt public officials, whose very notoriety as a conspicuous unincarcerated lawbreaker — a status of being "above the law" — breeds disrespect for the law. Society must be free of his corrupting influence.

Organized crime is not an inanimate machine; it is a vital social organism, which if its vital organs are destroyed, dies. If the leaders of a business corporation died at about the same time, and there were no replacements of equal stature or competence available, that business would soon be defunct. So it is with a criminal organization; it prospers because of its leadership and being deprived of such leadership, soon atrophies.

If the major leaders of a criminal organization can be convicted and jailed and their money-making enterprises be subjected to continued investigative pressure, and if that pressure be converted into a permanent force, the organization can be destroyed. To accomplish this the organization must be attacked on two planes: *The first plane* being the concerted investigation of all activity of predetermined designated targets, which targets would be the leaders of the criminal organization in a given geographic area; *the second plane* being that such investigations would be concentrated on that criminal activity from which the organization derives its greatest profits — in Massachusetts, illegal gambling and loansharking. In brief, a prosecutive program should have for its dual goal the conviction of the leaders of the criminal organization and the stoppage of the flow of illegal revenue.

The main weapons to be used to achieve this dual goal are four in number. The first is the gathering of intelligence. Local police officials, so knowledgeable regarding the local scene, are the pre-eminent collectors of criminal intelligence. Intelligence is the bedrock of a successful prosecutive program. It is an absolute necessity to know who your target figures are, who are their as-

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The Energy Crisis, The Price of Electricity and The Environmentalists — Another View

by Paul K. Connolly, Jr.

The crisis in the supply of oil because of the Arab embargo has made most Americans aware of the finite nature of the world's energy reserves. A result not generally recognized, however, is the effect of the increased price of that energy is having on consumers of electricity and the long term benefits that can be derived by examining the price elasticity of that use.

For years environmentalists across the country have been concerned with the promotional aspect of electric utility rate structures. They argue that under the present declining block structure, where the more a consumer uses the cheaper the electricity becomes per K.W.H., there is no incentive for the consumer to avoid wasting it. In fact, the use of this type of structure seems to lead to the use of more and more electricity by the average consumer.

An example used to show the lack of concern of the average consumer is the purchase of an air conditioner. Most would choose one based on size, color, and manufacturer and not on efficiency, even though it has been shown that there is up to a 40% difference in the amount of electricity used by different models producing the same B.T.U.'s of cooling power.

There is no doubt that historically a promotional type of structure was needed by the electric industry, for there were certain economies of scale in the production of electricity. If industries could be persuaded to use more, or to convert from other sources of power, there would be economic savings to all. The environmentalists argue, however, that whatever economic benefits that might have been derived from this type of structure in the past, they are now greatly outweighed by the dangers to the environment from the increased production of electricity. They argue that just about all

the known ways of generating electricity commercially, besides depleting our natural resources, are damaging or potentially damaging to the environment. The use of oil or coal leads to air pollution — even with low sulphur fuel. Strip mining can cause lasting damage to large parts of the country. There is always the danger of radioactive waste escaping from nuclear plants and with hydro there is the damaging effect on the land where the necessary water would have to be dammed and stored.

To curb the wasteful use of electricity, a new type of price schedule may be needed to put the emphasis on the conservation of energy rather than promoting its use.

The new structures advocated by environmentalists take many forms. The most radical would be to completely invert the price scheme so that instead of the price declining per K.W.H. used, the price would increase for every K.W.H. used. A less drastic change would recognize that there are certain economies of scale for a small amount of usage, but that for large use these savings are lost. Thus, instead of a declining or an inverted structure, some argue for a U shaped schedule where the price would decline per K.W.H. for a certain amount of usage and then, at a given level, would rise again. A third theory also recognizes the economies of scale and calls for a leveling or flattening of the structure so that the cost remains relatively the same regardless of usage. (See *Robert H. Quinn et al v. Boston Edison Co. et al*, 73-94 Eq. now pending before the Supreme Judicial Court).

Each one of these proposals is based upon the premise that the use of electricity is price elastic to some degree. In other words, the more expensive electricity is, the less the consumer will use. Besides arguing about the environmental ef-

fects of producing electricity, the utilities also disagree that the use is price elastic. Unfortunately, up to this point in time all the studies conducted by both sides have been theoretical in nature for no state public utility commission has adopted one of the proposed rate structures so that its effect could be studied under actual conditions.

Now, however, with the energy crisis and exorbitantly priced oil, economists have their chance to see the effect of a flattened rate structure on electric usage.

This flattening is occurring through the operation of the fuel clause — the adjustment that appears on the bottom of everyone's electric bill. This adjustment allows electric utilities to pass on to its consumers the cost of the fuel purchased to generate electricity. Simply stated, the total cost of the fuel purchased by the utility in a given month is divided by the number of K.W.H. sold to all consumers. The resulting figure is then multiplied by the K.W.H.s used by each individual consumer to determine each customer's share of the fuel cost. Just about every electric utility in the country has been allowed an adjustment of this type. Here in Massachusetts the fuel clause has been in existence for over forty years.

In usual times, when residual oil costs \$3.00 to \$4.00 per barrel the adjustment factor would be only two or three mills per K.W.H. Since large users were able to purchase electricity in the range of fifteen to twenty mills, an additional two to three mills was hardly a deterrent to the use of electricity.

With the energy crisis however, the cost of residual oil has risen dramatically, up to \$11.00 to \$12.00 per barrel with spot purchases by some utilities of up to \$23.50 per barrel. With this rise in the cost of fuel, the fuel adjustment has risen to a

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Landlord-Tenants: Selected Rights and Duties

by Paul Cianelli

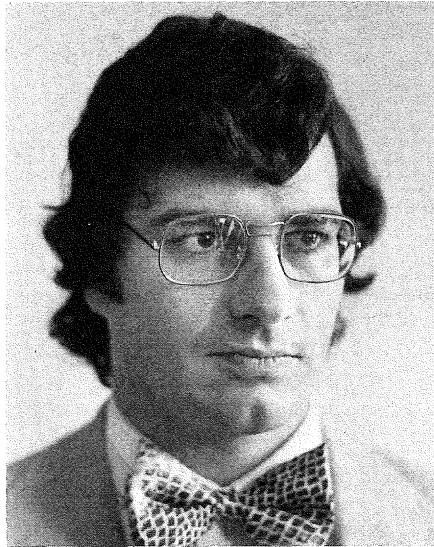
Introduction

In the last decade the Massachusetts law of Landlord and Tenant has undergone such a transition that it is more appropriate to employ the adjective metamorphic rather than merely dynamic when describing the change. This is especially true in the two broad areas of: (1) liability of landlord and tenant for injuries; and (2) rights and duties between the landlord and tenant. This article will focus on the latter and attempt to blend the old and new statutory and case law together to present the existing law. The material is not intended to be an exhaustive treatment of the area but rather a general guide to the more salient aspects. Thus I have deleted material which one might want to categorize under rights and duties, but which fit better under a general heading of formal aspects of landlord-tenant law.¹

The relationship is contractual with respect to residential property

A basic premise of Mass. Landlord-Tenant law is that a lease (or tenancy) of residential property is essentially a contract between the landlord and tenant wherein the landlord promises to deliver and maintain the demised premises in habitable condition and the tenant promises to pay rent for such habitable premises.¹ The contractual nature of the law is of more than mere technical significance not only because it is necessary to understand recent changes, but also because the contractual approach will most probably be used to initiate further changes.²

It is important to note that non-residential leases (or tenancies) are still predicated on the old common law characterization of the lease as a conveyance of an estate in real property for a term. The covenants and promises contained in these leases are incidental to,



and part of, a conveyance, and that therefore, the ancient law of real estate and not the modern rules of contract, govern most of the problems which may arise.³

This view is commensurate with the proposed *Uniform Residential Landlord and Tenant Act*⁴ under which a commercial lease would be interpreted according to traditional principles of landlord-tenant real property law while similar wording in a residential lease will be interpreted according to contract principles.⁵

The implied warranty of habitability¹

Boston Housing Authority v. Hemingway (hereinafter cited as *Hemingway*) held "that in a rental of any premises for dwelling purposes, under a written or oral lease, for a specified time or at will, there is an implied warranty that the premises are fit for human occupation. 'This means that at the inception of the rental there are no latent (or patent) defects in facilities vital to the use of the premises for residential purposes and that these essential facilities will remain during the entire

term in a condition which makes the property livable.'"² The Court pointed out that this warranty, in so far as it is based on the State Sanitary Code and local health regulations, cannot be waived.

Contractual remedies of a tenant afforded by the warranty of habitability

A threshold consideration is that although the remedies in this section are available for all types of tenancies, as a practical matter, generally only tenants for years will utilize these remedies.² A tenant at will can terminate his tenancy upon thirty days notice.³ As a result, these remedies would be relatively cumbersome for him under normal circumstances.

1) Rescission of the written lease from point of time of a *material breach* of the implied warranty of habitability. If such a breach is found the tenant may terminate the lease and recover any security deposits made although he is liable for the reasonable value, if any, for his use of the premises.

Re Proof: The existence of a material breach is a fact question to be determined in the circumstances. The Court in *Hemingway* lists five factors (not all inclusive) to be considered with respect to materiality.⁴ Proof of any violation of the State Sanitary Code's minimum standards of fitness for human habitation and/or any relevant health regulations will usually constitute compelling evidence that the apartment was not in a habitable condition.⁵ However, the Court points out that there may be instances of isolated Code violations which may not warrant a decision that the warranty has been breached; and, on the other hand, there may be a breach of the warranty even though the Sanitary Code or local regulations have not been violated.⁶

Also, proof of a constructive eviction (discussed *infra*) is sufficient proof of a material breach.⁷ Thus it should come as no surprise that the trial court is given "broad discretion to determine whether there is a material breach . . ."⁸

2) If the tenant of residential property wishes to keep his lease and continue to occupy the premises when there is a breach of warranty of habitability, he has three possible remedies.⁹ They are: (1) G.L.c. 239 §8A (withhold rent for violations), (2) G.L.c. 111§§ 127A-127H (rent receivorship) or, (3) G.L.c. 111§ 127L (repairs by tenant(s) to cure violations).

Under G.L.c. 239§ 8A, a landlord cannot recover for nonpayment of rent or where the tenancy has been terminated without the fault of the tenant if there is a breach of the implied warranty of habitability, and such violation may endanger or materially impair the health or safety of an occupant. This section is applicable provided that: (1) the tenant, while not in arrears in his rent, gave written notice to the person to whom he paid rent that he is withholding rent until the violation is remedied, and that a report of inspection by an appropriate agency¹⁰ stating there is a violation has been issued; (2) the tenant, or someone under his control did not cause the violation; (3) violations can be remedied without the premises being vacated; and (4) the dwelling is not a hotel, motel, or rooming house occupied under three months.¹¹

There are two statutory substitutes for the above written notice by the tenant: (1) written notice by an appropriate agency to the landlord of such violation or; (2) if the owner, his agents, servants, or employees knew of the violation, and they had not taken reasonable steps to remedy the condition it is sufficient notice provided that the tenant was not in arrears of his rent when such notice was acquired.¹² Also, written notice of a common defect by one tenant is equivalent to notice by all.¹³

The court, in its discretion, can require the tenant who uses this defense to an action by the landlord for nonpayment of rent to pay all or any portion of the rent due or to become due into court, or to make a deposit of the entire amount or installments.¹⁴

If the tenant fails to comply with this section the breach of the warranty is no defense to eviction for non-payment of rent. However, it is still a defense to the landlord's claim for rent. The tenant is only liable for the reasonable value of the premises; i.e., the value of the dwelling in its defective condition.

Rent receivorship is the second remedy. It is a judicial process whereby the tenant or appropriate agency can petition either the District Court or Superior Court in equity to obtain written authority to make rental payments then due or becoming due to the clerk or a receivor, respectively.¹⁵ However, the judge must first find that the violation may endanger or materially impair the health or well-being of that tenant, and that his rent money is needed to remedy the violation. Furthermore, the tenant must not be in arrears in his rent, or, if he is, he must be willing to pay any arrearage into the court as ordered.

The Superior Court judge may alternatively order all the tenants to vacate and direct the board of health to close the building. However, the Acts of May 18, 1973, c. 295 amending G.L.c. 111§ 127B must be strictly complied with by the board of health before such an order can be issued.

The requirements and form of petition for District Court are set out in G.L.c. 111§ 127C; and for Superior Court in G.L.c. 111§ 127H. For a complete understanding of this law, c.111§ 127A-127K must be examined carefully.

Under either of these statutes (i.e., c.111 §127A 127H; or c.239 §8A), the landlord's breach of warranty renders the lease voidable at the tenant's election.¹⁶ If the tenant stays on for the term and the landlord promptly remedies the violation, the tenant's rental obligations are revived from the point in time when the dwelling becomes habitable. Until that time he is liable only for the reasonable value. If the tenant stays on for the term and the landlord makes no repairs, the tenant is only liable for the reasonable value of the premises.

The third remedy under "habitability" available to the tenant is to cure the violation himself.¹⁷ Where the dwelling has been inspected by an appropriate agency, certified to be in violation of local health regulations or the Sanitary Code (tantamount to a breach of habitability) so as to endanger or materially impair the health or well-being of an "occupant," and provided that the tenant or one under his control has not caused the condition, then the agency may send written notice to the owner of the violations.

If the owner has failed to begin repairs or contract for repairs within ten days after receipt of notice, and has not substantially completed all necessary repairs within twenty-one days, then the tenant(s) may repair or have repaired the violation and subsequently deduct a

reasonable amount (totaling not more than two months rent in a twelve month period) from the rent becoming due. Alternatively, they may treat the lease as terminated, pay only a fair value for use and occupation and vacate the premises within a reasonable time.

Constructive eviction: non-residential property

Hemingway held that since the tenant's covenant to pay rent is dependent upon the landlord's implied warranty of habitability, there is no need for the doctrine of constructive eviction. As this rule applies only to residential property, constructive eviction is still applicable to non-residential property.

There is an implied covenant of quiet enjoyment that the tenant will not be deprived of peaceful possession of the premises, nor substantially disturbed in the use and enjoyment of the premises by the landlord or persons claiming under him. The covenant is broken if the landlord does or omits to do an act which deprives the tenant, not only of a physical part of the premises (actual eviction) but also of the use and enjoyment of them (constructive eviction). Thus it has been held that withholding of steam needed for manufacturing by the tenant is a constructive eviction.¹

At law the tenant's abandonment of the leased premises must take place with a reasonable time after the constructive eviction, but it has been held that "abandonment" of the premises is not essential to equitable relief.² This may be of lesser significance under the new *Massachusetts Rules of Civil Procedure* to take effect on July 1, 1974.

Implied warranty of fitness

Although this section is concerned essentially with liability, it is considered more appropriate to place warranties under the general heading of rights and duties. The general rule is that the lessor is not liable for concealed defects.¹ Furnished dwellings for a "short term" provide one exception to this rule. The rationale for liability is that the person hiring the furnished dwelling pays for the opportunity of enjoying it without delay and without the expense of preparing it for use.²

In *Ingalls v. Hobbs* it was held that one who for a short term of a few days, weeks, or months lets a fully furnished house, supposedly equipped for immediate occupancy as a dwelling without the neces-

sity of any fitting up or furnishing by the tenant, impliedly agrees that the house and its appointments are suitable for occupation.³ In *Horton v. Marston* the "short term" was extended to a nine month lease.⁴

This warranty is both narrower and broader than the warranty of habitability. It is narrower in the sense that it applies only to short term demises; the court has refused to extend it to unfurnished apartments, partly furnished dwellings or commercial property; and recovery has been limited to the lessee because of the contract privity requirements.⁵ Yet, the warranty is broader in that it extends to more and different defects than the warranty of habitability, and there is no doubt that there can be recovery in tort for breach of this warranty.⁶ For example: in *Hacker v. Nitschke* where a beach cottage was rented for four weeks, this principle was extended to apply to an action of tort by the tenant to recover for injuries caused by a defective ladder included in the furnishings for easy access to the upper berth of bunk bed.⁷ It is very doubtful that the ladder would be construed as a facility "vital to the use of the premises for residential purposes" within the meaning of habitability.

To further illustrate this point, there is the case of the man who slipped on a piece of soap embedded in a crack in the linoleum at the top of a stairway adjacent to his room.⁸ The plaintiff had rented a room from the defendant, which included use of a small kitchenette on the landing and hallway area on the second floor. Before retiring for the night, he left his room and went to the landing at the top of the stairway to see if the lights were out. At this time he slipped on the soap embedded in a crack and fell down the stairs injuring himself. The lower court found for the plaintiff on the basis of the fitness principle. The Superior Court reversed on the ground that there was no demise, and stated *obiter dictum*, "Because of this disposition of the case, we need not decide whether the piece of soap on the landing was such a defect as to bring the case within the *Ingalls* rule."⁹

This approach is useful in its limited application to recover damages for it is a form of strict liability. Moreover, one can certainly use the underlying rationale to argue for recovery in tort under the warranty of habitability since this issue was not decided in *Hemingway*.¹⁰

Express Warranties

If the express warranty is a statement of

fact, and not of opinion (i.e., dealer's talk), is false in a material respect, and the tenant relies thereon to his detriment, the tenant will have the same remedies as in the case of fraud or deceit.¹ Such a warranty is subject to disclaimers.²

Care must be taken to distinguish fraudulent misrepresentations for which the lessor will always be liable.³

Summary Process

Summary process is a statutory procedure whereby the landlord may recover possession of the leased premises if he falls into one of the eight enumerated categories of persons who may bring an action.¹ Self-help is no longer authorized in Mass. The landlord goes into District Court, Superior Court, or the Housing Court in his jurisdiction and obtains a writ in the form of an original summons which directs the tenant to answer to the complaint that he holds the premises against the right of the landlord.² If the landlord prevails, he receives a writ of possession which directs an officer to evict the tenant.³

Proper notice for termination of the tenancy must be given or the action fails.⁴ Essentially there are two other defenses to an action of summary process: (1) G.L.c. 239 §8A discussed *supra*; and (2) G.L.c. 239 §2A whereby the commencement of such an action against a tenant within six months after the reporting of a violation of the law or tenant's union activity creates a rebuttable presumption that such action is a reprisal against the tenant.

In addition, tenants who are so victimized are allowed to institute a private action for damages with a minimum recovery of one month's rent and a maximum recovery of three month's rent, or the actual damages sustained by the tenant, whichever is greater, and the costs of the suit, including reasonable attorney's fees.⁵

A tenant can also obtain a stay of execution of judgment for possession (except for nonpayment of rent) for a period up to six months in some cases.⁶ The judgment of the District Court may be appealed to the Superior Court for a trial *de novo* causing further delay.⁷ Appeal bonds may be waived after judgment where the tenant is indigent and the court is satisfied the defense presented is not frivolous.⁸

In a rent controlled city or town, a landlord seeking to recover possession of a controlled rental unit must apply to the

board or administrator for a certificate of eviction or be subject to criminal prosecution.⁹ Furthermore, evictions of tenants from controlled rental units are prohibited except upon one of the enumerated grounds.¹⁰ Among these ten grounds are the failure to pay rent and "for any other just cause, provided that his [the landlord's] purpose is not in conflict with the provisions and purposes of this act."¹¹

In this respect, rent control legislation is superimposed upon traditional landlord-tenant law.

Rent and eviction control¹

In 1970 the Legislature enacted the Acts of 1970, c. 842, enabling any city or town, with a population of fifty thousand or more, to accept this act controlling rents and evictions.² In *Marshal House, Inc. v. Rent Control Board of Brookline* it was held that the Enabling Act (c. 842) and the rent control by-law for the town of Brookline, passed pursuant to the Enabling Act, are constitutional on their face.³

The Acts of 1970, c. 842, grants the city or town's rent control board or administrator general, broad, regulatory powers; unencumbered by various restrictions and exceptions in c. 842 §3 to deal with its particular housing crisis. For example, a town may apply rent control to owner-occupied two or three family houses, notwithstanding c. 842§3(b)7.⁴ These powers also include investigatory and rule-making authority.⁵

The general mechanisms of rent control include: (1) "the six month roll back rule" that the maximum rent of a controlled rental unit shall be the rent charged the occupant six months prior to acceptance of the act;⁶ (2) a maximum rent to be charged in any controlled unit;⁷ (3) individual petitions by the landlord or tenant for individual adjustments either upward or downward;⁸ (4) the board may remove maximum rental levels from any class of controlled units if it determines that the shortage of that type of unit at those rental levels has ceased;⁹ (5) and the landlord is entitled to a "fair net operating income" to ensure him a reasonable return of his investment.¹⁰ A great deal of controversy centers about what a "fair net operating income" is. The definition of it is essentially determined by the local board or administrator.

There are severe civil remedies and criminal penalties for non-compliance,

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DRUGS AND THE LAW

EDITOR'S NOTE — DRUGS — From the squalid, teeming ways of the urban ghetto to the too-green lawns of prosperous suburbia, the word evokes visceral visions of hell, violence and impending societal destruction. Drug abuse is a comparatively new phenomenon and as such has severely challenged and taxed the imagination and resources of the legal community. In this issue, the Editors of THE ADVOCATE offer our readers an assemblage of viewpoints. In a sense, each writer is simply describing the portion of the problem which he knows best in his professional capacity, be it as defense counsel, prosecutor, or physician. No overall solution is offered nor was this our purpose. Rather, it is hoped that the ideas presented here will serve to educate and perhaps provoke a better legal response to the problem of drug abuse. As lawyers — it is our problem; it is our war. Until it is solved or won we are all the vanquished and none the victor.

Editorial

by Judd J. Carhart
Editor-In-Chief

On January 1, 1971 the Massachusetts General Court enacted into law what it considered to be one of the most progressive steps ever taken in the area of criminal prosecution of drug offenses. The statute took effect as Massachusetts General Laws Chapter 123 Sections 38-55 and sought to deal in an intelligent and enlightened manner with what has become one of society's most pressing problems. The most progressive aspect of this statute is that it attempts to initiate a system of pre-trial diversion of certain drug offense cases from criminal prosecution to therapy. The need for a statute providing for such pre-trial diversion has long been enunciated by those cognizant of the recurring cycle of incarceration and addiction by drug offenders. As a means of meeting this need, however, Chapter 123 has failed.

The three most critical sections of the statute in relation to the prosecution of drug offenses are sections 47, 48, and 49. Of these, Section 47 is the most progressive and hence, the most controversial. It provides for treatment in lieu of prosecution for those who are charged with a drug offense other than manufacture or sale. The statute provides that those who are deemed either "drug addicted" or "drug dependent" may qualify to have their cases stayed and receive treatment. In cases of first offenders a stay of the criminal proceedings is mandatory upon the defendant's request for treatment, while a stay of criminal proceedings is discretionary for repeating offenders. Upon

successful completion of the prescribed treatment the Court must dismiss the charge against the defendant.

Sections 48 and 49 do not provide for treatment but they do provide for evaluation of the defendant by a psychiatrist in order to determine any possible dependence or addiction. As an alternative, Section 49 provides for treatment for drug dependency or addiction as a condition of probation upon a suspended sentence. Section 48 can be used in the prosecution of crimes other than drug offenses, in which the defendant requests evaluation after he has been convicted. In cases where dependence or addiction are found, the only avenue open to the Court are either to order treatment at a penal facility or to suspend the sentence and order treatment in accordance with provisions of Section 49.

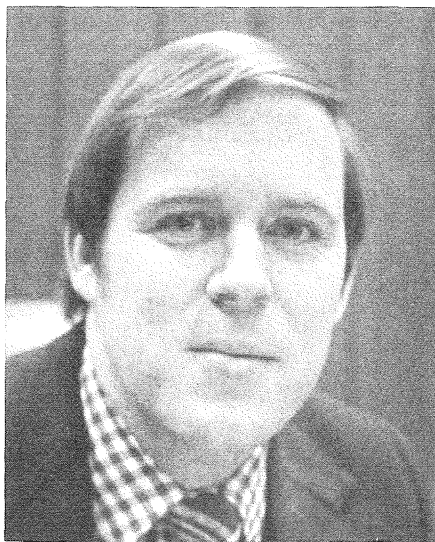
The provisions of Chapter 123 appear to take a major step towards dealing with the drug problem in a reasonable manner. Although the theoretical solution to a

major aspect of the drug problem appears to have been reached, the implementation of this solution has failed miserably. The ultimate goal of dealing with drug cases through treatment rather than incarceration has not been attained for a number of reasons. No single organization has acted to block the General Court's intent, but several have refused, or are unable to comply with the mandate handed to them by the Legislature.

In order to effectively assess the reasons for the failure of Chapter 123, it is necessary to analyze the effect of the law and its implementation by various agencies. If the legislative intent was to treat rather than incarcerate the drug abuser, then it is clear that Section 47 must be used more often than it is currently being used. Since this section is mandatory only for first offenders the Courts have been reluctant to use it when they have the alternative of suspending the sentence and prescribing treatment.

The Court's reluctance to use Section 47 is not unfounded. Section 47 contemplates an up-to-date analysis and report to the Court of the progress of the individual committed to the care of the Department of Mental Health. By its own admission, the Department of Mental Health has been unable and remains unable to make an effective evaluation of all drug cases referred to its care. The reason for this inability is directly related to the Department's shortage of personnel. Without a trained staff to evaluate the defendant's progress, contact with the Court is lost and the use of Section 47 becomes unpalatable to the Court.

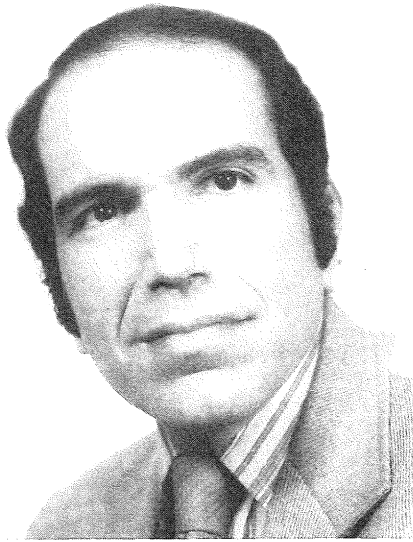
Another problem that stands in the way of the effective implementation of Section 47 is the stigma attached to being



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A Defense Attorney's View of Drug Law Enforcement at the Local Level

by Richard L. Zisson



Editor's Note: Attorney Richard L. Zisson is a partner in the law firm of Zisson and Benjoya, Boston, Massachusetts; Instructor in law, Suffolk University Law School; counsel to Massachusetts Narcotic Enforcement Officers Association; consultant to Drug Section of the Department of the Attorney General, Commonwealth of Massachusetts. Mr. Zisson is a graduate of Boston University B.S. 1964 and Suffolk University Law School J.D. 1967.

As a practicing defense attorney who has been involved with nearly 2,000 drug cases, I have been witness to many of the problems confronting law enforcement at both the Federal and local level. This critique will focus upon some of the problems confronting local police departments in their dealings with the drug law violator.

The one factor that should be evident to any attorney who defends drug cases against local police departments is the lack of uniformity of competence in the prosecution of those cases. That is, the quality and professionalism in the preparation and prosecution of such cases vary substantially according to the particular agency and/or officer involved. Quite commonly two police officers will confront an almost identical set of facts and because of the difference in competence or attitude of the particular officers, one case will result in a conviction where the other will require a dismissal due to the illegality of a search.

This lack of uniformity manifests itself most frequently when an officer is called upon to draft an affidavit in support of a search warrant. There seems to be a significant flaw in the administration of the police function when an officer has sufficient probable cause to obtain a search warrant but because of his lack of training, or the lack of resources from which he can draw, he cannot adequately commit the relevant facts to paper so that his affidavit can withstand the test of judicial scrutiny. Such errors are costly and are of the type which undermine the confidence that the public has in the police.

What is more disappointing and costly to our system of criminal justice is the repetition of a particular error by the same police officer in case after case. I have in mind one officer in a local police department in Massachusetts who never includes in the body of his search warrant

affidavit the date when an informant might have seen certain drugs at the location in question thereby raising the issue of whether or not the information from the informant was fresh. I have a brief dealing with this issue all prepared for filing in anticipation of confronting one of this officer's affidavits. I have already discovered this defect on three separate affidavits all sworn to by the same officer.

This officer's consistent error is a manifestation of several shortcomings common to many local police departments. In the case of this officer, he might not have been adequately trained to keep abreast of the latest court decisions affecting Fourth Amendment rights; he just might not want to change old habits ingrained in him over the years; or more importantly, he might not have been properly supervised. Proper supervision by a trained police administrator and/or a competent legal advisor could prevent a recurrence of the problem.

My experience as a police officer prior to becoming an attorney has given me some additional insight in analyzing the shortcomings of drug law enforcement. The police in this country have suffered from the fact that demands were suddenly made upon them for which they were totally unprepared. Drug abuse, which started affecting all levels of society in the 1960's caught the police both unprepared and ill equipped. Yet, police were thrust into the front lines. In most police departments there were only a few narcotics specialists and these men were used primarily in the urban ghetto setting. Suddenly, traffic patrolmen in white middle class areas were stopping people for traffic violations and unexpectedly discovering white powdery substances and greenish-brown vegetable-like substances. These officers were totally puzzled and perplexed as to how they should handle the situation. From this lack of

drug enforcement experience by street patrolmen, an interesting interplay emerged among the various members of the local police unit. The trained narcotic specialists, if there were any, saw the opportunity to form elitist cliques and power factions within the department and therefore were slow in disseminating the necessary expertise to street patrolmen for fear of weakening their power base. Petty jealousies flourished. Many patrolmen who were interested in acquiring the sophisticated skills necessary to enforce the drug laws were, to state it simply, "turned-off". The narcotics education schools that did exist at the time were usually attended by higher ranking officers who never worked in the streets themselves. Many patrolmen were all too quick to call a narcotics detective to the scene of a motor vehicle accident after they discovered a bag of marijuana on the front seat of a vehicle and would thereby waste manpower and perpetuate their own ignorance.

This attitude is changing, but the change is not as rapid as some would have us believe. The street patrolman today has to be blind or criminally negligent to avoid narcotics arrests. The administrators of most police departments have begun to realize this and are allowing more of their men to attend state and federally sponsored training schools in the area of narcotics law enforcement.

Since 1969 I have been a consultant and instructor at the training schools for law enforcement officers sponsored by the Drug Abuse Section of the Massachusetts Attorney General's Office. In this capacity I have come in contact with literally thousands of police officers in a classroom setting. Many of these men complain that they are finding it extremely difficult to keep abreast of the latest judicial decisions dealing with the areas of arrest, search and seizure. They further indicate that when they are able to read the latest cases, further problems arise since many times a new case might be in direct conflict with a long-standing departmental policy which police administrators might not be that quick to change. This is particularly true in the area of police inventories of motor vehicles which have been towed under questionable circumstances to a police garage for "safe keeping". Police administrators have justified such inventories made without a warrant and without probable cause as being for "the protection of the owner" when they are in my opinion nothing more than warrantless exploratory searches made in violation of the

Fourth Amendment. The officer gets discouraged when the evidence found during the "inventory" is excluded at the trial although he was following a strict departmental policy in conducting the search.

As an example of how police administrators have failed to provide for dissemination of necessary information to the patrolman on the street, I recall an informal survey which I took over the past few years while instructing at the Attorney General's Drug Education School in Boston. In 1969 the United States Supreme Court in *Chimel v. California*, 395 U. S. 752 (1969) established a precedent that limited the scope of a search incident to a lawful arrest and therefore modified and codified a vital aspect of the job of every policeman.

Within one month of the publication of that decision, I asked a class of approximately seventy police officers whether or not they had ever heard of the *Chimel* case. Ninety-five percent responded "No". One year later I asked the same question and fifty percent responded "No". As recently as December 1973, four years after the case had been decided, I asked the same question and still twenty percent responded in the negative. Such a poor showing indicates to me that the communication gap between police administrators and the men they supervise still exists.

My views are not all negative. I have found the efforts of many police departments in the area of drug law enforcement to be quite encouraging. As an example I cite the efficacy of police performance in Barnstable County as being comparable to any law enforcement effort in New England at either the federal, state or local levels.

What is primarily a semi-rural community, the population of Barnstable County, which encompasses Cape Cod, swells to staggering proportions in the summer. Along with this seasonal influx of people comes every imaginable type of drug abuse problem to plague the seventeen local police departments. To deal with this crisis situation the police departments on Cape Cod decided a few years ago to pool their efforts and form an association of narcotic enforcement officers. They now share their information and use the resources of other departments in areas of expertise in which they are lacking. They share intelligence information and thereby avoid duplication and increase their efficiency. The association holds monthly seminars on subjects vital to its work. These seminars deal

with every aspect of the drug abuse problem. The association draws upon resources in the Boston area for special lectures on highly specialized areas of law enforcement. Police officers who are members of the association seem to be more aware of the legal principles that protect the rights of the individual. Their degree of competence is manifested in their high conviction rate.

The Barnstable County experience illustrates that the small size or limited resources of a local police department does not necessarily preclude such a department from being effective in fighting drug abuse. The seeking of competent advice and the pooling of resources seem to adequately compensate for limited manpower.

Today, the police function vis-a-vis drug control and abuse is compounded in its difficulty. We have learned from experience that rehabilitation has become an additional issue toward which police must develop an approach.

In order to deal more effectively with the community, the police must realize that most of those arrested for narcotics violations have had no dealings with law enforcement. They are not "typical criminal types." The way they are treated during and after arrest will form the basis of their opinions and the opinions of their families toward the police function for many years to come.

Police must be taught to realize that in many of these cases, they are dealing with highly disturbed and emotional people in need of serious help. In many instances the officer is thrust into an impossible dilemma. The statutes require him to prosecute and convict drug law violators while his training and personal instincts tell him to help people in need. Many police officers have done noble service when faced with these conflicts. Many have worked with local rehabilitation agencies in pointing the young offender in the right direction. It is not uncommon to see a police officer make a plea to the court on behalf of a defendant that he has arrested. However, there is not enough policy-making at the administration level to help the average policeman solve some of these conflicts. Often times an officer is severely criticized by his superiors for taking the time to participate in a young offender's rehabilitative process.

Hopefully, the attitudes of police administrators will change whereby a chief of police in a small town will not have to feel that he can eliminate the drug prob-

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Chapter 889 — The Greatest Show on Earth

by Vernon D. Patch, M.D.

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"How can I beat the rap?" asks the defendant. "Easy!" is the reply. "Have yourself declared a drug-dependent person. Then the judge will send you to a treatment facility and you're on your own. Doesn't that beat going to jail? Probation is too busy to keep track of you, man. When you are assigned to a treatment facility, you can be out of trouble in no time at all. Split when you want to."

The previous conversation, in one form or another, has been repeated hundreds of times over in Massachusetts since the enactment in 1969 of Chapter 889 of the Enactments of the General Court. Simply stated, Chapter 889 created a Division of Drug Rehabilitation within the Department of Mental Health in Massachusetts to take cognizance of all matters affecting drug dependency in the Commonwealth. Under this same statute, the Division of Drug Rehabilitation was charged with the creation of treatment facilities for drug-dependent persons; both inpatient and outpatient services as well as residential after-care facilities and penal treatment facilities. Section 132 of Chapter 889 permits any person believing he is a drug-dependent person to apply for admission to a treatment facility and to obtain a psychiatric evaluation to determine his drug dependency. Section 134 permits any individual charged with a drug offense to request of the court an examination to determine drug dependency, and if the psychiatric evaluation determines that the defendant is drug-dependent, the defendant may request commitment to the Division of Drug Rehabilitation for treatment. Fortunately, the court is given permission

under Section 134 to consider the past criminal record of the defendant, the availability of adequate and appropriate treatment at a treatment facility, and the nature of the offense with which the defendant is charged when it considers granting a request for commitment to the Division of Drug Rehabilitation.

Section 135 of Chapter 889 gives the same right to request psychiatric evaluation for drug dependency to any person found guilty of a violation of any law other than a drug offense. Under this Section when the defendant is judged drug-dependent, the court can order that the defendant be afforded treatment at a penal facility if he is to be confined, or, the court may order a period of probation with treatment imposed as a condition of probation. In this last circumstance, under the law, if the defendant does not cooperate with the treatment which is a condition of probation, the administrator of the treatment facility "may make a report" to the court which can then consider this conduct as a breach of probation.

To the casual observer, these provisions of Chapter 889 seem to constitute a reasonable and humanitarian approach to the problems of drug dependency. Conversely, for one who is versed in the cunning, conning, and guile of the drug-dependent person, Chapter 889 has holes in it large enough for the entire population of Walpole Prison to emerge. Specifically, the major defects are three in number, and involve (1) the ability of a psychiatrist to properly assess drug dependency, (2) the availability of adequate and appropriate treatment facilities, and (3) the availability of adequate and appropriate probation officer follow-up of persons assigned to or committed to the Division of Drug Rehabilitation.

To elaborate on these defects, let us consider first the psychiatric evaluation

of drug dependency. It can be stated categorically that the psychiatric evaluation for drug dependency is almost totally dependent on the history of drug use provided by the patient. What other information can the psychiatrist rely on? Psychiatrists might decide to obtain several urine samples from the patient over a period of days while the patient is free in the community with access to drugs and, then, if the urine tests showed the presence of drugs of abuse, the psychiatrist could decide that the patient was drug-dependent. In fact, current drug use, even as measured by urine testing, would determine current use and nothing more. Moreover, urine tests are not required by the statute for the assessment of drug dependency and are generally not used by the psychiatrist in performing his evaluation. The psychiatrist might examine the patient for physical signs of drug use, i.e., fresh injection sites or the scars, "track marks," of many previous intravenous injections, but, fresh injection sites or their appearance can be created by an interested defendant using a pin and a few minutes of time. To complicate the matter, the appearance of old track marks would indicate no more than the fact that at sometime in the past the patient used intravenous substances and would give no information about current drug dependency. In short, the psychiatrist is forced to make, at best, an educated guess concerning the individual's dependence on drugs. Moreover, when the psychiatrist is asked to comment on the possible benefit of treatment to the drug addict or drug-dependent person, the psychiatrist is forced to attempt an assessment of the patient's motivation for treatment. Accurate assessment of treatment motivation is next to impossible and can be done with effectiveness in probably no more than 1% of cases.

Secondly, to elaborate on the adequacy

and appropriateness of treatment for a particular drug-dependent person, it can be stated for drug-dependent persons as for alcoholics that it is exceedingly difficult to predict in advance whether or not any particular treatment will work for any individual patient. The standard psychiatric treatments of individual or group psychotherapy have been notorious failures with drug-dependent persons. Inpatient detoxification units generally operate with a three, four or five percent success rate. Rap sessions, therapeutic communities, outpatient detoxification programs, and methadone maintenance share in common an extremely low rate of success in providing the definitive treatment which leads an individual to a drug-free state which can be maintained.

The third defect rests not with Chapter 889, but with a mistaken assumption by those persons who drafted Chapter 889 that the system in Massachusetts for probation follow-up and supervision is adequate. In fact, the Commonwealth has a system for supervision of probation that is spotty and tarnished by excessive case loads. Nonexistent supervision of a probationer suggests to the drug-dependent person that the "system" is "creaking with age" and relatively unimportant. These comments are not intended to reflect adversely on highly motivated probation officers. The problem rests with their case overloads. The fault in the system is not with the Probation Department or the probation officers themselves, but with the mistaken notion in Massachusetts that one gets something for nothing. One should express no surprise when a state institution that has been set up to fail does, in fact, fail. Underpaid employees, work overloads and limited budgets guarantee limited success or failure in any enterprise.

To consider some of the less glaring defects of Chapter 889, we must consider the statutory definition of a "drug-dependent person"; more specifically, "a person who is unable to function effectively and whose inability to do so causes or results from the use of a dependency-related drug." A "dependency-related drug" is further defined as "a narcotic or harmful drug." The definitions go no further and I am forced to ask what does it mean to function effectively, and, furthermore, what is a harmful drug? Although it seems unlikely that the authors of this legislation had in mind a cigarette smoker with chronic lung disease, the definitions seem to fit such a person. Moreover, if an individual uses

dependency-related drugs regularly and is psychologically and physically dependent on those drugs while at the same time maintaining a high level of effective function at his work, in his home, and in his community, would that person be ineligible for the "protections" afforded a "drug-dependent person" by Chapter 889.

Although the intent of Chapter 889 was to provide treatment rather than incarceration for drug addicts and drug users who would benefit from treatment, the statute assumes that someone is in a position to accurately judge whether or not an individual patient can, in fact, benefit from treatment. The facts of life in drug treatment make it impossible to predict with any degree of certainty whether a particular patient will do well with any particular treatment. The net result has been that the courts regularly receive recommendations from psychiatrists, doctors, and drug counselors to the effect that a particular patient will benefit from treatment when this statement constitutes little more than a pious hope that the individual, confronted with another treatment situation, might make some therapeutic gains. I strongly suspect that most judges in the Commonwealth have yet to encounter their first letter stating that a drug-dependent person *would not* benefit from treatment. The net result of this statute or of any other statute which attempts to base the administration of justice on an unrealistic notion of the ability of the medical profession to accurately assess an individual's motivation for treatment or to predict the future, i.e., to predict that a patient will benefit from treatment, must create, at least temporarily, its own special form of judicial chaos. Because drug dependency and addiction as covered under Chapter 889 can be viewed as illnesses sharing the same treatment limitations as alcoholism, it seems only a matter of time until the judges in Massachusetts recognize that seeking an evaluation for drug dependency is seeking the obvious.

Some of the district courts in Massachusetts have already created screening boards for the purpose of more carefully evaluating drug-dependent persons and for the purpose of acting in an advisory capacity in regard to treatment recommendations for any drug-dependent persons appearing before the courts. As the screening boards have been constituted to date, they constitute a very special conflict of interest. Specifically, when a screening board is comprised of

representatives from a variety of treatment programs, and, when those same treatment programs require patients to obtain treatment dollars for the continuation of those same treatment programs, there exists a clear bias in the minds of the screening board members in favor of recommending defendants for treatment. It is my contention that this conflict of interest would exist in all drug screening boards constituted of representatives from existing treatment programs as long as those same treatment programs needed patients. In Massachusetts at the present time with a majority of scarce state drug treatment dollars going to self-help or therapeutic communities, treatment programs which have little popularity with drug-dependent persons, this conflict is painfully obvious. Since state and Federal treatment dollars flow to programs in proportion to the numbers of patients treated or in treatment, programs need patients to stay in business. In street parlance, "running a number on the judge" is, therefore, standard practice for the drug-dependent person and becomes fair game for treatment programs. For the programs, this practice constitutes survival.

Another major defect in Chapter 889 concerns the assignment, by default, of excessive and unreasonable powers to the Director of the Division of Drug Rehabilitation, i.e., the Assistant Commissioner of Mental Health for Drug Rehabilitation. By failing to call for reports of performance of the Division which include data on cost effectiveness of the Division's activities, the legislative branch of state government permitted Massachusetts to develop an experimental approach to drug treatment which by 1974, five years after passage of Chapter 889, has no demonstrated efficacy. The loosely defined "treatment" of 889 has become an elixir of highly uncertain nature, dispensed as though it were penicillin, to an unsuspecting public under the name of "self help". This form of human experimentation, customarily subjected to careful review by human studies committees, has been foisted on Massachusetts as though it were an established and effective treatment. It is not! The prestigious 2nd Report of the National Commission on Marihuana and Drug Abuse, published in March of 1973, had this to say of our major drug treatment effort in Massachusetts: "The dramatic rehabilitation of those drug-dependent persons who complete long-

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Solutions to Drug Abuse

One District Attorney's Approach

In 1967 George Burke was sworn in as District Attorney for Norfolk County which, as a suburban county of Boston, is comprised of 535,000 residents in 28 cities and towns. Immediately confronting the new District Attorney was the burgeoning number of indictments especially in offenses of the drug laws. More than fifty-percent of the 1967 grand jury indictments were for drug and drug related crimes. What gave D.A. Burke more reason to pause was the increasing trend of younger and younger people coming before the court for these drug offenses, compromising their health and risking their futures.

It became clear that the punitive aspects of dealing with drug cases were ineffective. Confusion, lack of accurate drug abuse information and a host of poorly compiled statistics left leaders at every level of government and community all but impotent against this newly developing culture.

Historically, the small but very effective Federal Bureau of Narcotics and Dangerous Drugs was the only agency that was then dealing with drug related crimes; such crimes were a perennial problem found mostly in the poor communities of large cities.

The proliferation and complexity of the drug abuse epidemic which took hold of this country in the early sixties could no longer be dealt with from a strictly law enforcement viewpoint. Yet law enforcement personnel had more of a comprehensive knowledge of the problem than did members of specialized disciplines such as medicine, psychiatry, religion and other social sciences. This knowledge of the drug problem could be used and so it would be.

Taking up his duties, District Attorney Burke launched an all-out investigation of the drug problem in Norfolk County. The chiefs of police and state police submitted

reports. A clear and startling picture was beginning to emerge. The drug problem was not a fad that would die out readily. Unless some definitive action was taken more young people would continue to jam the courts, damaging their minds and bodies. They would become enslaved by their recreational chemicals, at times killing themselves with overdoses.

District Attorney Burke began his counter-offensive on drug abuse quite simply by getting the word out. The District Attorney would admonish the audiences of the fraternal, social, civic, religious, professional, business and governmental groups to become well informed about the nature of these drugs, to speak freely with their children about them and above all to become involved in dealing with the drug problem in their towns.

Efforts to deal with the problem were broken down into 3 areas: law enforcement, rehabilitation and education. A bill was submitted to the state legislature which would establish a drug unit in the District Attorney's Office of Norfolk County. In 1969 Governor Sargent signed the bill into law, creating for the first time two full time drug investigators and educators in the office of the district attorney.

Many requests were coming from the schools in Norfolk County to have the district attorney's office address them at weekly assemblies. The drug unit responded to these requests by teachers and students for facts concerning drugs. Credibility increased for the drug team when students, parents and teachers found that far from the stereotyped image of a one-sided, hard-nosed law enforcement oriented lecture, the District Attorney's drug educators were presenting cold facts for decision making, without moralizing or frightening the listener. The skeptics found that an unbiased presentation of the drug dilemma and sug-

gested alternatives could be given by a chief prosecution office in an understanding and comprehensive manner. The Drug Unit has directed their efforts into these areas:

Pharmacology: describe accurately and without exaggeration the effects of the many differently abused drugs on the mind and body.

Communication: appraise the media of drug facts and request its cooperation in factual and non-sensational reporting of drug abuse incidents.

Education: encourage school superintendents to fulfill the state law requiring mandatory drug abuse instruction. Carry out workshops for teachers and offer confidential assistance in time of need.

Law Enforcement: seek coordination and cooperation with other agencies. Institute a county-wide Narcotics Officers Program.

Parents: show them understanding of their problems and means of coping with the pressures of school, home and society.

The Law: strive for revamping drug law relative to prohibition and rehabilitation.

Rehabilitation: encourage concept of half-way houses as a useful means of treating the drug dependent person.

Court: make just and humane recommendations to judges.

Family and Profession: promote a policy of openness and sharing among those working in the drug and youth fields.

While active in all these areas, the District Attorney's Drug Unit planned and carried out an eight week conference "Mass Attack Against Drugs," for teachers and other professionals. After the conference the Drug Unit expanded in personnel and evolved into a specialized educational and counselling unit.

IN-SCHOOL DRUG EDUCATION PROGRAM

The school year 1970-1971 saw a development of the Norfolk District Attorney's Drug Program from a general awareness-raising effort among student groups, P.T.A.'s, fraternal and social organizations that reflect a cross section of communities to a more specific approach to the individual experimenter, casual user or heavily dependent user of controlled substances among the youth.

This approach was first used in two pilot programs during 1970-71 school year at Bicknell Junior High in Weymouth at the invitation of the Principal, Mr. John Cotter and in Avon Junior and Senior High School at the request of Mr. Shanahan, High School Principal.

Upon invitation of the school administrators, a schedule was arranged that allowed for a drug education workshop for the teachers of the school calculated to stimulate their interest in the problems of students and to supply them with basic drug information. In this way, even without an on-going school program, knowledgeable and open teachers hopefully would serve as a reinforcement and a follow up of the District Attorney's program.

The main part of the program, contact with the students, opened with a general assembly (more than one if the number of students in the school would require it), at which the drug educators introduced themselves, presented a brief audio-visual on some aspect of the drug problem and then conducted a question and answer period. This opening assembly served merely as an introduction and orientation for the students and offered the educators an opportunity to explain their part in the District Attorney's office as non-law enforcement, to emphasize the importance of personal responsibility and decision-making and to assure them that complete confidentiality would characterize the drug education program.

On a designated day each week for four or five weeks, the drug educators visited the schools, conducting classes sometimes five, six or seven periods a day, depending on the schedule. Often all the classes of a particular subject such as history, science, English more than the others, since all students were obliged to attend these classes and all would thereby meet the drug educators several times in a small informal classroom setting.

The "drug day" at a school represents a full day of teaching for each of the Drug

Educator-Counsellors often consisting of about 30 drug staff teaching hours in a day's visit at a school. To facilitate open and uninhibited discussion, teachers, often viewed by students as unacceptable authority figures, are not present at classroom sessions.

The content of the discussion themes focuses on the various categories of drugs: marijuana (treated separately), the stimulants (including caffeine and nicotine), the depressants (with special emphasis on alcohol), the hallucinogens, and the opiates. Each session included a description of the drug (and its street-use equivalent where applicable), its origin, its medical use if any, its physical and psychological effects, the effects of experimental, occasional, and habitual use, the dependence (physical or psychological) that may be generated by use of drugs and the legal consequences that may result upon their possession, use and sale.

In these informal classroom sessions, student expression was encouraged through open, non-judgemental discussion of various attitudes and beliefs about drugs and their place in life, and of the myths and inaccuracies currently in vogue. The rehabilitation modalities available to drug users were discussed with an explanation of court procedures and the new Massachusetts drug laws relative to controlled substances and to rehabilitation in lieu of incarceration.

Running through all the sessions with students is the thread of the importance of values, of the uniqueness and personal worth of each individual, of decision-making based on adequate, reliable data, and of personal responsibility for decisions and their consequences.

At the beginning of the classroom session, the names and office telephone numbers of the drug-educator-counsellors are given for student use in cases of emergency, for information relative to classroom projects on drugs and for counselling. The drug staff's secretary, Jeanne McBrine, is engaged in an on-going project of packaging and mailing literature and information in response to the hundreds of requests from students.

Predictably, confidences relative to drug use and other problems were given the drug educators which school authorities encouraged and respected. In the larger schools, therefore, an added service is offered in the form of counselling.

One of the District Attorney's drug education staff will spend a day every two weeks at a school, making himself avail-

able to the students for consultation. This is only done when the school requests it and in so far as possible, the school guidance personnel or adjustment counsellors are, with the student's permission, involved in the proceedings.

The effectiveness of the pilot programs was reflected in the often repeated request of the students that similar programs be initiated in elementary grades where the older students felt the children could be prepared for the decisions they are asked to make already in the 7th and 8th grades relative to drugs and alcohol. The District Attorney's program was subsequently expanded downward to include the 4th grade.

Before any classroom sessions with the students, as part of preparation, a Parents' Night with the drug educator is arranged by the school administration in order that parents and guardians of the drug education program to be conducted in the classrooms of their children's school and to elicit general parental and home support for the drug education effort. The meeting serves also as a forum at which parents may voice objections and fears they might have and at which they become themselves exposed to the education and literature their children receive.

The parents' response has been generally favorable as evidenced by new requests to repeat the program in schools where their older children had found drug education helpful three years ago. The feed-back from students who had advanced to higher grades in other schools is encouraging in that many said they felt they had received helpful, reliable data for their own later decision making. But as with most educational efforts, effectiveness will be judged only many years later in the lives of the students being educated today.

From the pilot programs in Bicknell Junior High and Avon High School, the District Attorney's program, upon invitation of school administrators, went into the whole Avon School System, into all the schools of Dedham, Weymouth, Plainville, Franklin, King Philip Regional Junior High and in parochial schools such as St. Mary's, Uxbridge, St. Catherine's, Norwood, Ursuline Academy in Dedham, Sacred Heart, St. Ann's and St. Joseph's in Quincy, St. Francis and Sacred Heart in Weymouth, St. Ann's in Weymouth, Font Bonne Academy in Milton and Archbishop William's High School in Braintree.

YOUTH AWARENESS PROGRAM

As the in-school student drug education program was taken up by the various school systems, a new need was felt — more community involvement, especially of that part of the community closest to the students, the family. From some panic meetings of parents concerned about the marijuana use of their teenagers came the Youth Awareness Program.

This new community contact involves getting people together in a neighborhood for discussion, dialogue and exchange in an informal living room atmosphere, with the help of a "facilitator".

Someone in the neighborhood takes the responsibility for hosting "the gathering" at which about 10 to 15 neighbors are invited to take part in the discussions. A larger group would prevent full participation by everyone present. A member of District Attorney's Drug Education Unit acts as "facilitator".

The facilitator's role is to make the proceedings go smoothly, to remove obstacles that might impede discussion, to clarify points where he can, and in general to assist the group to engage in open dialogue. At the first of such meetings the adults met usually without the young people. But it was early seen that for an effective community program, young people and their input were a plus for open communication.

The YAP programs sprouted up in Canton and spread to Westwood, Randolph, Holbrook, Weymouth and Quincy. When the drug staff was unable to take up the in-school program in Franklin until the following school year because of commitments to other school systems, a series of over 20 YAP programs was successfully scheduled and completed as a remote preparation for the projected student program to follow.

The feedback from persons who had participated in YAP brought out the advantages of this type of meeting over the larger public meetings. Misconceptions, often left unchallenged in public meetings, and misunderstandings of general responses made by speakers, and misinterpreted questions were obviated by the small home discussion groups in which people can feel free to question, explain, explore and to correct impressions in a non-threatening atmosphere. Parents of older children also have an opportunity to share their experiences with others who are anticipating or actually experiencing difficulties with younger children in the drug scene.

PRE-TRIAL PROGRAM

On January 1, 1971, the Comprehensive Drug Rehabilitation and Treatment Act (Chapter 123 of the General Laws) went into full effect as it affected drug law offenders. The new law gave drug dependent persons an opportunity to seek rehabilitative help both before and after involvement in drug law violations. At the same time this law freed the court to use its discretion in disposing of cases according to the needs of the individual defendants.

For the first year and a half, the law did not seem to be working too well for a number of reasons: the Department of Mental Health to whose care and supervision the drug defendants were committed, lacked a system of supervision and follow-up. Also, there was little, if any, evaluation of the needs of the drug user that would lead the defendant into the appropriate rehabilitation modality.

To remedy this to some extent, the Drug Unit initiated a pre-trial program in conjunction with the drug examination permitted by the law to determine drug dependency and eligibility for treatment in lieu of prosecution. Before trial, the defendant is interviewed by a panel composed of a representative of the drug unit, generally Mr. David Hayes, representatives of rehabilitation facilities such as Survival (Quincy) and Project Discovery (Framingham), to discover the needs and motivation of the defendant. During this informal interview, the drug law defendant is asked about his drug use, his family or school problems, his work record and in general, any data that could be used to make an appropriate recommendation for his rehabilitation. The fact that former users are on the panel minimizes the chance of a defendant's "conning" the interviewers.

The psychiatrist or medical doctor who gives the "drug examination" and the panel members meet afterward to work out a "consensus recommendation" which is then given to the district attorney who must make the final recommendation to the judge.

This pre-trial "probing" of the defendant, of his needs and his strengths and of his motivation is really a substitute for a full evaluation which ideally should be made of every defendant, if the criminal justice system is to be an effective medicinal effort of the community and not merely vindictive.

Tentative plans are being made to try to establish a court clinic that will bring community resources to the aid of the

judges who are burdened with the responsibility of disposing of the cases that come before them.

COURT TOURS

As part of an overall drug abuse and crime prevention program, and to offset the negative attitude of many toward authority, law enforcement and the administration of justice, the District Attorney's Drug staff initiated the Guided Court Tour as a means of contacting more of the young school population. Teachers and other youth-oriented adults (Campfire Girls' Counsellors, Boy and Girl Scout and 4H Club leaders) bring their groups, generally no more than twenty-five at a time, to the Drug Resource Center for a brief discussion of the drug scene and of the new laws relative to controlled substances and rehabilitation. (Chapters 94C and 123, Massachusetts General Laws.)

At the Superior Court House, either the District Attorney himself or one of his assistants speaks to the group explaining the function of the Grand Jury and the indictment process and the procedure that is followed from arrest to disposition of a criminal case. If a defense attorney is available in the Court House, his part in a typical case is explained as well as the jury system under which the courts operate.

When personnel from the Probation Department and the Court Clerk's office have an opportunity, they too share with the "tour" their role in the justice system which is otherwise explained by the drug educator-counsellor. The most interesting part of the tour is the actual experience of a court room procedure. For this reason, tours are scheduled for the most part during the felony sessions which are in January, June and October (these are often double session and extended into February and occasionally into a summer session in July). But court tours are available to groups at any time of the year even though only civil cases or no court action at all, make for a less than complete tour.

In addition to, and often in conjunction with, court tours, the District Attorney's Educator-Counsellors or one of the Assistant District Attorneys make themselves available to schools that have introduced legal education into the curriculum. At these classes the criminal justice system is explained, the rights of citizens, and the duties of arresting officers, with special emphasis on the Massachusetts drug laws.

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"Let not the cries of the wretched inflame your cruelty,"

The Abbé Simon-Joseph de Pellegrin.

Politics, Drugs and Law

by Harvard Hollenberg



Harvard Hollenberg received his undergraduate degree at New York University with Honors in Political Science. He studied Government at Victoria University of New Zealand on a Fulbright and then returned to attend Harvard Law School, from which he graduated in 1965. He was Senior Attorney for the New York State Mental Health Information Service (a public defender and ombudsman system for the alleged mentally disabled). He is currently serving as Chief Counsel to the Temporary [N.Y.] State Commission to Evaluate the Drug Laws, authored the New York State Controlled Substances Act, and recently taught a seminar for attorneys, sponsored by the New York Law Journal, in which he dealt with New York State's new drug laws.

In January of 1973, Nelson A. Rockefeller, then Governor of the State of New York, delivered a message to the Legislature which called for mandatory life imprisonment, without parole, for sellers of any quantity of narcotics, cocaine, hallucinogens, amphetamines and hashish. Mandatory life was also proposed for persons who committed crimes other than drug offenses "under the influence of dangerous drugs." A presumption was to be established that when traces of a dangerous drug were found on the person of a suspect within 48 hours after the crime, then, if he committed the act, he would be found to have been under the influence of the drug at that time.

These proposals represented so profound a reversal of New York State's policies that their rationales are worth a brief outline here. The Governor based his case on the following assumptions:

- a. Rehabilitation of addicts and drug abusers was ineffective.
- b. Rather than as victims of drugs taken to relieve the psychological burdens of their lives, addicts and abusers were seen as sources of infection, whose eternal isolation would be required to end the market for drugs.
- c. Crime was not only a product of drug abuse, but most crime was committed by "drug-crazed" individuals.

It is not very difficult to dispose of these assumptions. Between 1965 and 1972 many techniques had been used to rehabilitate narcotics addicts. It was not until 1972, however, that the State and federal governments concluded that the most effective approach to treatment and rehabilitation was a pragmatic offer of a variety of alternatives to the addict. Most important was the decision to expand methadone maintenance, weighing the satisfactory behavior and work performance of those on methadone against the

moral implications of perpetuating their addiction. Since the commitment to expand treatment programs and to approve methadone maintenance took place from 1970 to 1972, with final decisions being made as late as December of 1972, the Governor's conclusion that rehabilitation had failed was, in the strictest sense, premature. (And with widespread corruption in the New York City Police Department which sold drugs itself, rehabilitation in the context of honest law enforcement had never even been tried.)

Our Commission had undertaken a study of the work performance of reformed addicts (*Employing the Rehabilitated Addict*, Legislative Document No. 10, 1973). Our finding was that an individual who had adhered to treatment for a minimum of one year, was found ready to work by the medical or therapeutic director of his program, and was found qualified by an employer, could work indistinguishably from any other employee of similar background, regardless of his mode of treatment. We pointed out, however, that unless suitable employment were made available to them, it was indeed likely that rehabilitated addicts would relapse. In a sense, we brought the wheel full circle — high unemployment and a high rate of school dropouts among many deprived youngsters led some of them to take drugs. Since jobs and realistic job training were good drug prevention prior to addiction, they continued to be good prevention subsequent to addiction.

If, as the Governor, one sees drug addicts and abusers as sources of infection rather than as victims, perpetual isolation would appear to be the answer, (assuming, of course, that failure to correct social problems would not simply continue to create addicts and alcoholics). However, a rehabilitated addict earns in excess of six thousand dollars a year, and pays in excess of eleven hundred dollars a

year in taxes. A perpetually detained criminal would cost the State in excess of eight thousand dollars a year to maintain, or after forty years, a drain of three hundred twenty thousand dollars.

Moreover, because an undercover agent can easily obtain a heroin sale from a user, particularly an unsophisticated user, the thrust of a "law" aimed at the lowest level of drug traffic would be to encourage the police to take the least risk to themselves by arresting street-addicts and thereby obtaining maximum felony convictions. Low-level arrests for conviction would not lead to arrests of organizers and mill-operators, since street-user A implicates street-user B who implicates street-user C who implicates street-user A. This was not only our conclusion, but also the 1972 finding of the Temporary New York State Commission on Investigation.

The subject of addict-related crime was also brought under scrutiny by our Commission. Most addicts who commit crimes do so *to obtain* money for their drugs, not *under the influence* of a drug. So that the presence of the drug in the system is more likely to denote that it was taken after the crime than before. In a larger sense, the whole subject of addict-related crime has been severely distorted. The fact that a high percentage of prisoners have been addicts may reflect the fact, attested to by police authorities, that addicts are easier to catch than other offenders. When violent crime rises in a neighborhood recently subjected to an anti-addict dragnet operation, one ought to begin reassessing the wisdom of attributing most crime, and particularly most violent crime, to addicts. The causes of crime are arguably more basically related to the ills of society than to addiction, *per se*. Seen in this light, crime and addiction are both symptoms of other factors, perhaps malign neglect of children of all backgrounds in this country.

Having made these arguments, by way of rebuttal to the policy considerations underlying the Governor's proposals, our Commission and others were told that even if the assumptions were false, the dramatic nature of the proposed new laws would act as a significant deterrent to the sale and use of dangerous drugs. There was a general consensus that this position by the Governor would find agreement with a substantial majority in a legislative vote.

The next phase of study then undertaken by the Legislature's Joint Codes Committee, the District Attorneys Association, the Bar Associations and our

Commission was, therefore, to question whether the politics of the Rockefeller approach could be translated into good law. It might be of interest to others to describe what may be a local problem in New York State regarding the quality of liberal debate on this issue. Instead of dealing with the Governor's Bill as potentially bad law, the liberals, including leading attorneys and judges, voiced three objections which got them nowhere. First, they denounced the Governor as a tyrant. Propelled forward by the incisiveness of that observation, they contended that there were not enough judges or courtrooms to handle the foreseeable increased number of cases. The Governor proposed more judges and more courtrooms. Finally, the liberals decried any system of statutory mandatory minimum sentences. When it was pointed out to them that judges almost uniformly failed to impose judicial minimums out of disgust with the prison system, although penal reform is supposed to be quite a separate issue from that of the danger to society of the premature release of a particular felon, liberal opposition totally collapsed.

Conservatives, on the other hand, who chose to deal with the specifics of the proposal, began to make considerable headway. The proposal regarding higher penalties for the same crimes committed under the influence of drugs quickly became a dead letter. Opposition to mandatory life sentences centered not only about humanitarian considerations, which were stated, but also about an anticipated increase in violence when the penalty for murdering the star witness is no higher than the penalty for selling drugs. In addition, no rational scheme of penalties could meet with respect if the housewife or student who gave away one dexedrine tablet were put in the same criminal category as the importer of a pound of heroin. The Commission's insistence on a distinction between "pushers" and users who may incidentally share or sell their drugs began to yield results in the Governor's office, itself.

Three sets of proposals were finally submitted to the Legislature: (1) A modified proposal by the Governor, which stiffened penalties for most crimes, not only drug offenses, but which did away with the concept of eternal incarceration; (2) a proposal by our Commission listing all of the subtle distinctions in culpability relating to drug offenses; and (3) a proposal by the Assembly Codes Committee, which related to crimes in general,

but only to certain of the more well-known drugs. Since only the Governor's modified proposal was reported out of Committee in both Chambers of the Legislature, that was the bill, or series of bills, upon which criticism was focused.

The bills were very badly drafted. Weights of various drugs were erroneous and possession penalties were, in some cases, higher than sale penalties. Plea bargaining was curtailed so drastically that pleas could not be accepted even if the prosecution's case were weaker than the defendant realized and even if the defendant were willing to turn state's evidence. The most significant element of the bills was the retention of a "life" concept by establishing three categories of life sentences. After two drastic legislative overhauls to correct certain of these defects, the most controversial elements of the bills still remained these three life categories.

Prior to the law's effective date, the maximum drug penalty for possession or sale of more than sixteen ounces of heroin, morphine or cocaine, was fifteen to twenty-five years to life. That maximum was retained with greatly reduced weights of those drugs, but in the event of the convict's release from prison, parole is *never* to terminate. Other life sentences were also enacted ranging from six years to life and from one year to life carrying the same mandatory lifetime parole. In other words, if a person were convicted of selling a bottle of amphetamines, and because of his lack of a previous record and good behavior in prison, he were released after one year, his parole would be life-long. A charge of criminal assault at any future time could bring him back into prison for life. What deterrent, then, against his committing murder rather than stopping with simple assault? Would juries convict such a person, in the first place, to an indeterminate life sentence? These questions remain unanswered, although the reluctance of some juries to convict has been reported.

After but four months of experience with the new law, only a few tentative observations are possible. First, heroin street-traffic has decreased. Cocaine traffic and use have dramatically increased. Cocaine, although not physically addicting, creates psychological dependence, tissue damage, and increased paranoid ideation. Prolonged use results in psychosis and death. Tranquilizer abuse and alcohol abuse, either separately or together, have increased, and the age of

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The Decriminalization of Marijuana

by John J. Buckley

Sheriff John J. Buckley is the chief law enforcement official of Middlesex County, Massachusetts. He is a noted reformer in the criminal justice field and has made many innovative changes at the Middlesex County House of Correction and Jail. Prior to his appointment as Sheriff in April 1970, Mr. Buckley was the state Director of the Mass. Council on Crime and Correction.

The issue of decriminalizing marijuana and the manner in which this issue has been handled answers some questions about the so-called "alienation" of society.

The disenchantment of people in our society today manifests itself in a distrust of the establishment, a suspicion of our government institutions, a questioning of society's values and a disrespect of many of our laws. We as a people have always held our laws in high esteem. Laws, which are respected, are the cornerstone of a stable society.

Unfortunately, our present approach toward marijuana encourages disrespect of society's laws. The present policy on marijuana ignores reality and is hypocritical.

Young people are being told by the men and women who make laws that "grass" is harmful, will decay their spirit and destroy their lives. These individuals, who use marijuana, know from first hand experience this is not so. They realize marijuana is only harmful if abused excessively, has less of a negative effect on their spirit than alcohol — the drug of choice of their elders — and will only

destroy their lives if they are caught under the present laws and thrown in prison.

We know more about the effects of marijuana than we do about aspirin. I doubt if any drug has received as much research attention as marijuana. Starting with the Indian Hemp Commission Report in 1894 countless studies have been conducted on the subject. The New York Mayor's Committee on Marijuana in 1944, the Wootton Report done for the Home Office of Great Britain in 1968 and the National Institute of Mental Health Report to Congress in 1971, to name a few, have all documented what every teenager in the United States has known about the drug for many years.

Most recently, these observations about marijuana have been re-substantiated by the President's National Commission on Marijuana and Drug Abuse, the majority of whose members were appointed by President Nixon. This commission recommended that the "possession of marijuana for personal use would no longer be a criminal offence ...". In short, the commission felt that the question of private use of marijuana be taken out of the Criminal Justice System.

Presently there is a great variation among state law in regard to the penalties for simple possession of marijuana. The penalties vary for the use of marijuana from a six month prison sentence for a first offence to a maximum penalty of 10 to 15 years.

It is estimated that over 24 million people in this country have tried marijuana at least once. A majority of these people are under twenty-five years of age. In 1970, for example, 88% of those arrested for possession of marijuana were under 26 years of age.

There are presently over eight million people who are violating the cannabis

laws regularly in the United States.

The vast number of law enforcement personnel occupied with marijuana cases diverts valuable manpower away from areas where they are critically needed. The American Bar Association estimates there were 226,000 marijuana related arrests in the United States in 1972. Law enforcement officials are fond of saying they are after the "men at the top" — the pusher and not the user. Unfortunately, statistics compiled by the Marijuana Commission do not bear this out. Only seven per cent of the state arrests were against the seller while 93 per cent were for possession and use. Two-thirds of these arrests were for possession of less than one ounce. It has been estimated that the cost of enforcing the marijuana laws in California, for example, exceeds 100 million dollars annually. Our nation can not afford to attempt to enforce these laws. Law enforcement priority must be given to the more serious crimes against persons and property.

More recently there has been a trend on the part of many law enforcement officials to pay only "lip service" to the laws regarding "pot." The very people who are charged with enforcing the laws ignore them. In 1972 at least 48% of the adult cases and 70% of the juvenile cases were dismissed by the police, the prosecution or the judiciary. Presented with this example it is not surprising that many people, especially our younger citizens, have lost respect for the law and those who are supposed to enforce them.

On a far grander scale, the implications are even more clearly defined by the illustration of the Watergate affair. People holding some of the highest positions of responsibility in the land — individuals representing the established institutions in the nation — apparently only paid "lip service" to, or, in some cases, actually broke the law. This is not the kind of

example which encourages a respect for the law from the average citizen.

The fact of the matter is that our laws do not keep up with the changing society which they are intended to regulate. To be effective our laws must reflect as accurately as possible the social attitudes of the nation as a whole. The Marijuana Commission found that 51% of the American people would prefer a non-criminal approach for simply smoking marijuana. As long as those in a position to change or influence the law-making process refuse to recognize this, individuals living with these outdated unrealistic laws will continue to lose respect for the law.

It is time we realize we are advocating a policy which is hypocritical.

It is time we stopped ignoring the reality that many, many people smoke marijuana, that it is not as harmful as cigarettes or alcohol if used with discretion, that those who are going to use it already do so illegally, that we are not enforcing the laws.

If such a policy is repulsive to those in a position to make the laws, then we must be consistent and enforce the law as it stands. If this alternative is embraced it will only end in further disenchantment of our citizens and turn a large number of them into "criminals". The long term results of such a policy are neither positive nor propitious.

The Marijuana Commission concluded, that "elimination of marijuana is unachievable and the drug's relative potential for harm does not justify a social policy designed to seek out and punish those who use it."

It is encouraging to see in some areas in the country the issue of revamping our marijuana laws is beginning to be approached with more of a sense of reality than in the past. In Oregon a law was recently passed by the legislature and signed by the Governor which makes the possession of one ounce or less of marijuana for personal use a violation (similar to a parking ticket) rather than a criminal offence. A recent report in the *New York Times* on the effect of the new law in Oregon said there is "no evidence that the state has become a haven for drug pushers." An increase in the number of users has not been noted. A similar law was defeated last year by the Massachusetts General Court.

In Texas, a state which a few years ago gave 18 individuals life sentences for the possession of marijuana, the penalty was reduced to six months. The latest group to recommend the decriminalization of

marijuana was the American Bar Association.

While all agree that our policy should not endorse the use of any drug — alcohol, cigarettes, marijuana, and "hard" drugs — more and more people are beginning to believe that our attitude toward marijuana should be updated.

Hopefully, the laws will reflect this change. Let us hope this process is not too slow because the longer we wait, the more people will become "turned off." Unfortunately, most of these people are young and are the ones we are looking toward to give us strength in the future.

JOHN J. BUCKLEY
Sheriff

Editorial

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declared a "drug dependent" or "drug addicted" person. Section 47 is mandatory only for first offenders; there are few, if any, first offenders who would agree to be labelled a "drug dependent" or "drug addicted" in exchange for the opportunity to have their cases stayed. The irony of the situation is that the true addict, who has several drug convictions and cares little about any "stigma" which might attach, is not guaranteed the opportunity of treatment rather than prosecution. Considering the problems that the Department of Mental Health has had in keeping the Court informed, it is more likely that the defendant will have to be found guilty before treatment will be prescribed.

It is difficult to believe that the legislative intent was to have this statute applied only in limited instances. Rather, we feel that the General Court intended to initiate a genuine system of pre-trial diversion for first offenders without forcing the offender to choose between a criminal trial or being stigmatized as an addict. Unless the statutory stigma attached to Section 47 is dropped it appears that the section will continue to be ineffective as a means of implementing a system of pre-trial diversion of drug cases.

Section 48 has had little effect on changing the method of dealing with drug cases. The provisions of the Section allow the Court to order treatment in a penal facility for a drug dependent or drug addicted defendant convicted of a non-drug related offense. It appears that the section was meant to assure treatment for the drug addict who commits a crime such

as armed robbery in order to support a drug habit. Although the Legislature's concern that such defendants be removed from society until cured is understandable, the attempt to solve this problem by ordering drug treatment in a penal institution is totally ineffective in Massachusetts. The cold, hard fact is that no effective drug treatment is offered in any of the Massachusetts Correctional Institutes. Although some prisons offer a better degree of treatment to the inmate than others, they are all joined by their common bond of ineffective drug rehabilitation programs. We do not mean to imply that those who work as drug counselors are incompetent or unconcerned. Rather, somewhere along the bureaucratic line the prisons have been shortchanged in the area of staff for drug rehabilitation. Until drug rehabilitation programs which can handle the numbers of patients referred to them by the Courts are established in the prisons of the Commonwealth, continued use of Section 48 will be meaningless.

The enactment of Chapter 123 was a bold initiative which took a major step towards dealing with the problems of rehabilitation of the drug abuser. If nothing else, the statute demonstrated the Legislature's willingness to view drug addiction as a disease rather than a crime, and to deal with it as such. The Statute must be amended to broaden the implementation of pre-trial diversion. In order to effectuate the increase of cases diverted from trial the Legislature will have to make a substantial increase in the staff of the Department of Mental Health's Division of Drug Rehabilitation. Finally, the drug rehabilitation programs in the prisons of the Commonwealth must be established and funded so as to assure an adequate inmate-counselor ratio. If Chapter 123 is ever to be viewed as a working solution to the problem of drug abuse, rather than as a mere paper pronouncement of alleged progressive legislative thinking, these changes must be made.

A Defense Attorney's View

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lem in his particular locale by putting his two narcotics men back in uniform thereby reducing the number of narcotics arrests.

Hopefully, these administrators will start to realize the need to employ competent legal advisors either as part-time consultants or full-time employees.

Hopefully, local government officials will view the part-time enrollment by police officers in local colleges as a positive step toward the professionalization of police rather than regret that a statute requires them to now pay these men more money.

Plato once said that the policeman was the guardian of law and order and as such he placed him at the very top of his ideal society endowing him with special wisdom, strength and patience.

In the area of drug law enforcement as well as the entire police function the police must establish themselves as respected professionals. They must not be used merely as symbols in the polarization that currently marks our society. They can only do this by taking a professional approach towards the problems that they are called upon to solve. They must draw upon whatever resources are necessary to acquire those skills that will allow them to get the job done efficiently and effectively and yet without compromising the rights of the individual.

Chapter 889

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term community residence or remain in the permanent programs has somewhat obscured the fact that the therapeutic community method is suitable for very few."

Finally, Chapter 889 establishes under Section 2 the authority for the Commissioner of Mental Health to appoint an Assistant Commissioner for Drug Rehabilitation. The Director of the Division of Drug Rehabilitation must have "administrative or managerial experience in drug dependency" according to this Section of 889. One might reasonably ask in what way the experience of Massachusetts' present director met these statutory re-

quirements when he was appointed in 1970. If a psychiatrist evaluated one drug addict during his residency training in psychiatry, would this permit his qualification as director of the state program under the loosely drawn Chapter 889? Perhaps those readers of this review of Massachusetts' present drug legislation will find further cause to review the present statute as they peruse these words of the present Director of our Division of Drug Rehabilitation: "Drugs should be as free and legal as water, to drink, to swim in, drown in or ignore."¹ Or, better yet, "In reality, what needs constant emphasis is that heroin, along with other opiates, is among the most innocent drugs that nature or the mind of man has produced."²

Some other interesting questions about the implementation of Chapter 889 are raised by these words from our present Assistant Commissioner for Drug Rehabilitation speaking of our national drug abuse control effort: "The usual law enforcement paraphernalia are being extravagantly focused on people who are neither sick nor criminal, but who are being called sick as they are treated as criminals."³ Clearly, it seems that one way to deal with our drug problem is to define it out of existence. How a person can hold this view and at the same time accept responsibility for all matters affecting drug dependency in Massachusetts is a most perplexing question. Chapter 889 is the interface between the drug-dependent person and the law enforcement system in the Commonwealth. If, indeed, we are to believe that law enforcement has no place in this interaction, the very existence of 889 seems farcical. If there are those who feel that law enforcement and corrections do have a significant role to play in enforcing drug laws and rehabilitating the drug-dependent offender, I suggest that someone is remiss or something is amiss in Massachusetts.

There may be saving graces for 889 in the field of politics, however. By placing a medical treatment, i.e., care of the drug-dependent person in the hands of "self help" groups as Governor Sargent did in 1970, a \$3 million a year lobby group was created, dedicated to the perpetuation of their treatment programs, their own salaries, and their creator, the Governor. Like a conquering hero, the Governor is greeted as he tours a therapeutic community for drug addicts or addresses a statewide meeting of "self

help" programs. Never mind the fact that the programs don't work very well. Never mind the fact that this kind of human experimentation belongs in the special realm of demonstration research, i.e., fund it well, study it well, and see if it works. As long as no one demands the research data that a reputable medical program would provide, the system will continue and the public will remain content.

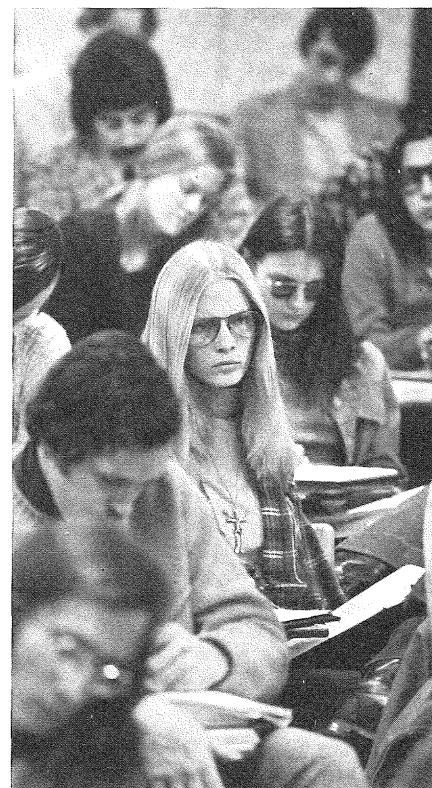
Public contentment, unreasonable as it may be in this case, translates easily into votes. Nevertheless, P. T. Barnum, speaking of another kind of circus, gave us these reassuring words, "You can't fool all of the people all of the time." Perhaps the time has come for Massachusetts to reconsider Chapter 889 and render it in Republican parlance "no longer operative".

Footnotes

¹Dumont, Matthew P., Assistant Commissioner for Drug Rehabilitation in the Massachusetts Department of Mental Health. "The Demystification of Sex and The Death of the Spirit," *Psychotherapy and Social Science Review*, Vol. 6, No. 10 (August, 1972).

²Dumont, Matthew P., Assistant Commissioner for Drug Rehabilitation in the Massachusetts Department of Mental Health. "The Politics of Drugs," *Social Policy* (July, August, 1972).

³*Ibid.*



Solutions to Drug Abuse
Continued from page 16

RESOURCE CENTER AND NEWS-LETTER

With the help of a modest grant from the Law Enforcement Assistance Administration, the Drug Unit established a resource center for drug education information. It consists of a library specializing in drug literature and an audio-visual section of over one hundred films and film strips.

In addition to the library items, the Unit obtains in quantity, and makes available to anyone on request, drug literature in the form of pamphlets and brochures. Mailings of posters and other literature are made daily by the secretary in response to teachers' requests and those of students, from elementary grades to college level, for drug information for school projects and classroom presentations.

With permission of publishers, the Drug Unit has undertaken to reprint useful items for mass distribution within the communities of Norfolk County and the Commonwealth. Among these is the new Massachusetts law relative to controlled substances of which 10,000 were printed and distributed to law enforcement personnel, teachers and youth workers throughout the state. A pocket-size fold-out of the main provisions of the law is available.

To stimulate awareness in the "drug problem" and community action to meet it, the Drug Staff publishes a monthly newsletter called "SCRIPT". The "script" or prescription for many of the ills of society, including the so-called drug problem, is education in its broadest concept. The newsletter is dedicated to community education.

Now in its fourth year, the newsletter calls attention to new publications in the field of drug education and human development and reviews films and filmstrips. It offers program suggestions to schools and teachers and raises issues for fuller community consideration.

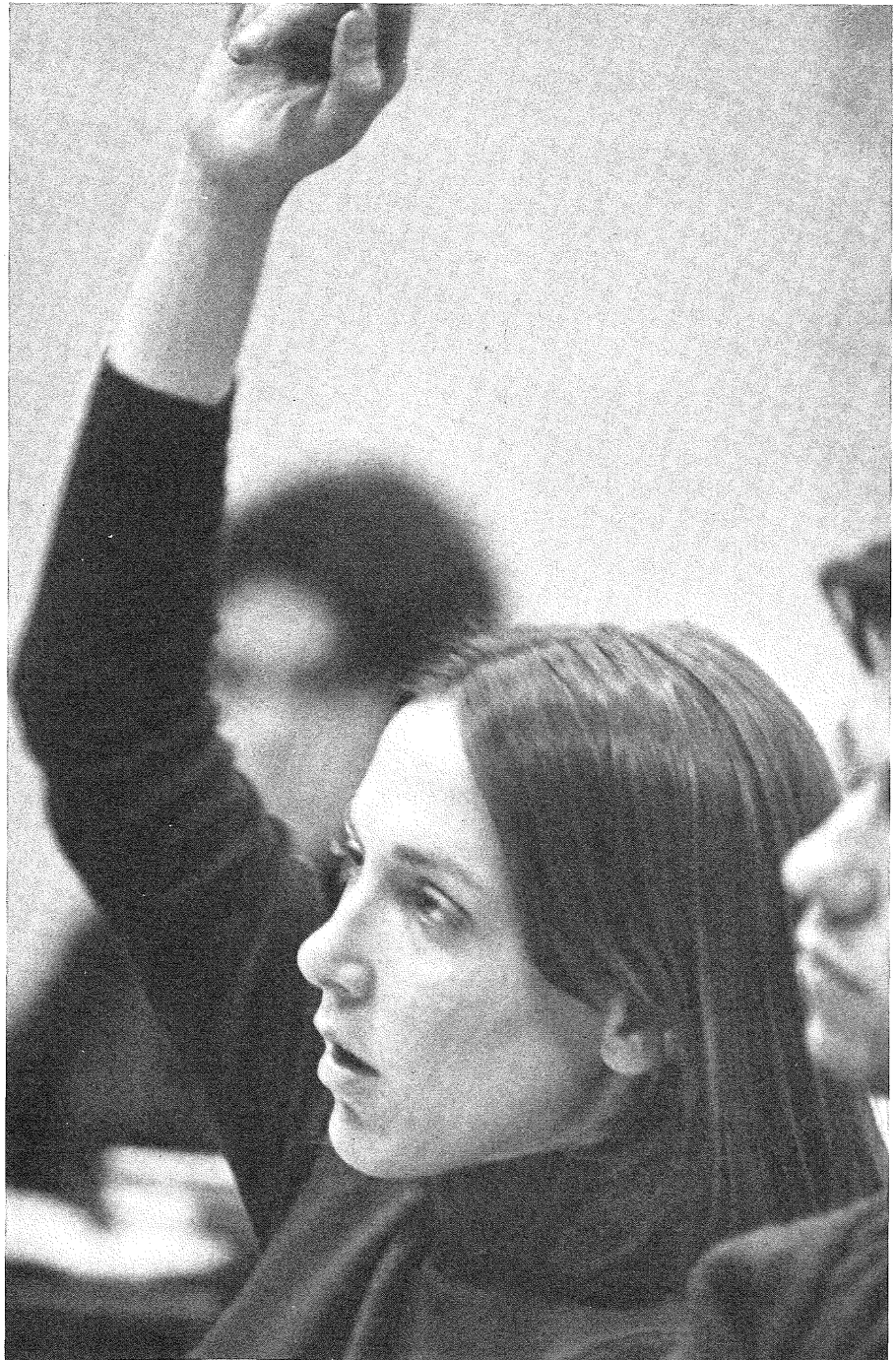
"Script" acts as a local clearinghouse for information and ideas that can be utilized by law enforcement persons, professionals, teachers, action groups and individual citizens. A simple request sent to "Script," 650 High Street, Dedham, Massachusetts 02026 (Tel. 326-7810) is sufficient to have one's name placed on the mailing list.

Politics, Drugs and Law
Continued from page 22

the abusers, particularly of alcohol, has decreased. Problem drinkers have recently been seen as young as nine years of age, and alcoholics are now being treated as young as ages eighteen to twenty-five. Violent crimes have increased substantially, including rape, robbery and aggravated assault. The economic recession forecast for 1974 is likely to result in

further increases in these problems when more younger people — and even some older people, seek relief from the enforced idleness of unemployment.

Nevertheless, the heroin problem has abated, so that perhaps it may be inferred, at least temporarily, that politics can effectively palliate a symptom of social malaise. That is to say, if one cares nothing for curing that malaise nor heeds the presage of equally harmful or even worse symptoms to take the place of the one that has abated.



Judge Donahue Honored at Law Day Dinner

Judge Frank J. Donahue, retired senior jurist of the Massachusetts Superior Court was honored by the Student Bar Association of Suffolk University Law School at its Annual Law Day Dinner Saturday March 23 at the Chateau de Ville, Framingham.

The ninety-two year old Donahue, who served for 40 years on the Superior Court before retiring under a new mandatory retirement law in 1972, was presented the Frederick A. McDermott Award in memory of the late dean of the law school.

Judge Donahue, a 1921 graduate of Suffolk University Law School, is a life trustee of Suffolk University and for many years was treasurer of the university. He also holds two honorary degrees. His Suffolk University Law Alumni dinners, held twice a year at the Parker House in Boston always attracted New England's most prominent judges and lawyers and featured outstanding speakers from legal circles throughout the nation.

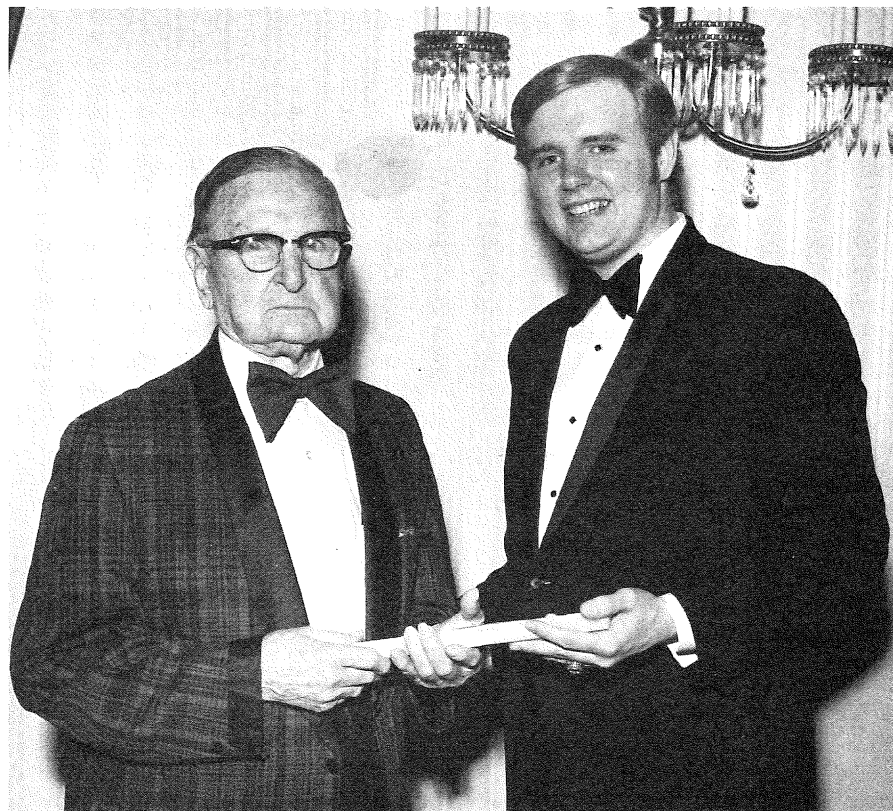
Judge Donahue was honored at a dinner which included an address by noted criminal trial lawyer Henry B. Rothblatt, who has defended U.S. military men charged with Vietnam war crimes and has also served as counsel for defendants implicated in the Watergate break-in.

He has also served as chairman of the criminal law section of the American Trial Lawyers Association and co-chairman of the Committee on Prosecution and Defense Problems of the criminal law section of the American Bar Association. He has authored six books in association with Atty. F. Lee Bailey on criminal trials and procedure and written two books on the criminal law of New York. Rothblatt also co-authored with Robin Moore the novel, *Court Martial*.

Rothblatt is a member of the New York, California and District of Columbia Bars and the Bar of the Supreme Court of the United States.

Student Bar President Richard A. Voke said Judge Donahue was chosen as this year's McDermott Award recipient because of his "long time devotion to Suffolk Law School, its students and alumni."

Judge Donahue began his illustrious career as a reporter for the old Boston



SBA President Richard Voke presenting the McDermott Award to Judge Donahue.

American shortly after the turn of the century. He later served as park commissioner in the town of Needham and was secretary of State in Massachusetts from 1913-1915. He served 13 years on the Industrial Accident Board and was its chairman for two years.

Although he didn't receive his bachelor of laws degree from Suffolk until 1921, he passed the Massachusetts Bar examination three years earlier. He was named to the Superior Court bench in 1932 and during his 40 year tenure presided over some of the notable criminal and civil cases in the Commonwealth. He was also chairman of the Mass. Judicial Council from 1937-1955. Suffolk awarded him the honorary degree of doctor of jurisprudence in 1942 and an honorary doctor of laws degree in 1952. In 1968, he was the recipient of the Silver Medal by the St. Thomas More Society of the diocese of Worcester.

Judge Donahue, a widower, has three sons. Judge Roger J. Donahue of the

Massachusetts Superior Court, Attorney Malcolm M. Donahue, associate dean of Suffolk University Law School and Frank J. Donahue Jr. of Scituate, an engineer.

Dean David J. Sargent was presented a plaque in honor of his outstanding contribution to the Law School as dean, professor, alumnus, student and friend. Sargent is the first alumnus of the Law School to serve as Dean.

Prof. Catherine Judge received the award for Distinguished Teacher of the Year. Professor Judge is an alumna of the Law School and one of the first women appointed to the faculty of a New England law school. She has also served the school as Registrar.

Miss Dorothy MacNamara and Mrs. Evelyn Reilly received special recognition for their long service to Suffolk University Law School. Miss MacNamara is General Alumni Secretary and Mrs. Reilly is Executive Assistant to the President of the University.

Suffolk Law Places in National Client Counseling Contest

Suffolk University Law School students **James Sahakian** of Watertown and **Miss Eleanor R. Randall** of Framingham finished second to the winning University of Texas Law School team last month in the National Client Counseling contest sponsored by the American Bar Association at the University of Notre Dame Law School, South Bend, Indiana.

The Suffolk twosome were edged by Texas in the final judging last Saturday night after both law schools had advanced to the final round following competition earlier in the day. Eight regions of the United States were represented in the competition.

Other law schools competing in the national finals were University of Wisconsin Law School; University of Oregon Law School; University of Miami Law School; Washington & Lee Law School; Capital Law School, Columbus, Ohio, and John Marshall Law School, Chicago.

The two Suffolk students had captured the Northeast Region tournament on Feb. 2 when they defeated Brooklyn University Law School.

Sahakian, formerly of Dedham, is the

son of Dr. and Mrs. William S. Sahakian of 135 Booth Rd., Dedham. Dr. Sahakian is chairman of the philosophy department at Suffolk University. The younger Sahakian was graduated from Dedham High School and received his bachelor of arts degree in 1968 from Northeastern University where he majored in history. He later served three years with the U.S. Marines, including Vietnam duty.

Miss Randall is a graduate of Framingham South High School and is a 1971 graduate of George Washington University where she majored in political science. She also studied at the University of Copenhagen and the American College in Paris. Miss Randall is the daughter of Judge and Mrs. William Randall of 122 Edgell Rd., Framingham. At Suffolk, she is a member of the Student-Faculty Committee for Continuing Education.

The judging was based on the ability of the contestants to counsel a client in a simulated law office situation and subsequent preparation of memorandum. The Suffolk team adviser was Prof. Alexander J. Cella, associate professor at Suffolk University Law School.



Landlord-Tenants

Continued from page 8

especially in those cases where the violation is willful.¹¹ If the aggrieved tenant fails to bring the action within thirty days of the violation, the board or administrator may bring the claim itself.¹² All actions by the board or administrator are subject to judicial review.¹³

Security Deposits¹

A security deposit is any sum received from the tenant in advance for any purpose whatsoever in excess of the monthly rents. Its purpose is to protect the landlord against possible future damage to his property by the tenant. The landlord cannot require a security deposit in excess of two months rent.

A lessor of residential property who holds a security deposit for longer than one year, must pay 5% interest beginning with the first day of the tenancy.² Such interest is payable at the end of each year.

Within thirty days after the termination of the lease or tenancy, the landlord must return the security deposit or any balance plus interest. If he willfully fails to do so, the tenant has a claim for damages in an amount equal to twice the amount of the security deposit.³

However, it appears that the abuse of the unscrupulous landlord who continually retains security deposits was not legislatively remedied. In view of the amounts usually due, tenants generally have neither the time nor incentive to pursue their deposits. Small Claims Court would be their most advantageous litigation remedy provided that the security deposit or damages awarded (the criterion is not clear) is within its jurisdictional limits.

The landlord may deduct from the security deposit: (1) an amount equal to any damage (other than reasonable wear and tear) caused by the tenant or a person under his control; (2) unpaid rent; and (3) the tenant's share of the increase in real estate taxes if there is a tax escalation clause.⁴ It must be noted that the tax escalation clause is void unless the landlord first complies with G.L. c. 186 § 15c; and all damage deductions must be itemized. However, if the tenant does not pay his stipulated share according to the tax escalation clause, the landlord may withhold the entire security deposit and interest until it is paid.⁵

For a material breach of the implied warranty of habitability, the tenant can

terminate the lease and recover any security deposits, subject to payment for the reasonable value of the premises while he was in possession.

Right of landlord to enter premises¹

No lease of residential property can contain a provision that the lessor may enter the premises before termination of the lease, except to inspect the premises, to make repairs, or to show it to a prospective tenant or purchaser. A lessor, however, can enter the premises pursuant to a court order if the premises appear to have been abandoned.

Footnotes

Introduction

¹For example: assignment and sublease, tenancies and their termination, options to renew or extend, etc.

Relationship

¹Boston Housing Authority v. Hemingway, Mass. , 293 N.E. 2d 831, 832 (1973).

²See Note, *The Plight of the Indigent Tenant in Massachusetts: An Attempt by the Law to Provide Relief*, 8 Suffolk U.L. Rev. 106 (1974). For example: reformation, adhesion contracts, recession and so on.

³E.L. Schwartz, *Lease Drafting in Massachusetts*, 3-5 §1.1 (1961).

⁴American Bar Foundation proposed *Uniform Residential Landlord and Tenant Act* (1972) [hereinafter cited as the *Uniform Act*]. See also, American Bar Foundation Tent. Draft: *Model Residential Landlord-Tenant Code* (1969) [hereinafter cited as the *Model Code*].

⁵*Proposed Uniform Residential Landlord and Tenant Act: A Departure From Traditional Concepts*, 8 Real Prop., Prob. & Tr. J. 495 (1974) [hereinafter cited as the *Journal*].

Habitability

¹See Hicks, *The Contractual Nature of Real Property Leases*, 24 Baylor L. Rev. 433 (1972) for a summary of this approach.

²Boston Housing Authority v. Hemingway, Mass. , 293 N.E. 2d 831, 843 (1973).

Remedies

¹Compare the proposed *Uniform Residential Landlord and Tenant Act*, 8 Real Prop., Prob. & Tr. J. 115-124 which examines tenant and landlord's remedies under the *Uniform Act*. See also 8 *Journal* 498-501 which criticizes the proposed *Uniform Act* with respect to habitability.

²In Massachusetts a tenancy for years must be in writing, and must be limited as to duration to a definite and ascertained period. While a tenancy at will is a voluntary, personal, consensual relationship, determinable at the will of either party. See generally, Park M.P.S. Vol. 28, c.15, *Leases* (Supp. 1974).

³Mass. Gen. Laws Ann. c.186 §12 (Supp. 1973).

⁴The factors are: (a) seriousness of claimed defects and their effects on dwelling's habitability, (b) length of time defect persists, (c) whether landlord or its agent received written or oral notice of the defect, (d) possibility that the residence could be made habitable

in a reasonable time, and (e) whether the defect results from abnormal conduct or use by tenants. If the premises are uninhabitable at the beginning of the lease's term and the tenant decides to rescind immediately, factors (c) and (d) should not be considered. Boston Housing Authority v. Hemingway, Mass. , 293 N.E. 2d 831, 844 844n. 18 (1974).

⁵*Id.* at , 293 N.E. 2d at 844n 16.

⁶*Id.*

⁷*Id.*

⁸*Id.* at , 293 N.E. 2d at 843n 13.

⁹It is the author's contention that G.L.c. 111 §127L is applicable where there has been a breach of the warranty of habitability, though not specifically mentioned in the *Hemingway* decision.

¹⁰By "appropriate agency" is meant the board of health or local agency having like powers of inspection.

¹¹Mass. Gen. Laws Ann. c.239 §8A (Supp. 1973).

¹²*Id.* Mass. Gen. Laws Ann. c.239 §8A (Supp. 1973).

¹³Mass. , 293 N.E. 2d 831, 844n 17. (1973).

¹⁴Mass. Gen. Laws Ann. c.239 §8A (Supp. 1973).

¹⁵Mass. Gen. Laws Ann. c.111 §§127A-127K (Supp. 1973).

¹⁶Mass. , 293 N.E. 2d 831, 844 (1973).

¹⁷Mass. Gen. Laws Ann. c.111 §127L (Supp. 1972).

Constructive Eviction

¹Dyecraftsmen Inc. v. Feinberg, Mass. , 269 N.E. 2d 693 (1971).

²Charles E. Burt, Inc. v. Seven Grand Corp., 304 Mass. 124, 163 N.E. 2d (1959).

Fitness

¹Gade v. National Creamery Co., 324 Mass. 515, 87 N.E. 2d 180 (1949).

²Hacker v. Nitschke, 310 Mass. 754, 39 N.E. 2d 644 (1942).

³Ingals v. Hobbs, 156 Mass. 348, 31 N.E. 286 (1892).

⁴Horton v. Marston, 352 Mass. 322, 225 N.E. 2d 311 (1967).

⁵Ackarey v. Carbonaro, 320 Mass. 537, 70 N.E. 2d 418 (1947). This contract is made with the lessee and therefore does not extend to the member of his family or lawful visitors. Whether a privity defense can be used in a tort action under the warranty of habitability remains to be seen. *But cf. Commercial Code* §2-318. Compare the *Model Code* §2-203.

⁶*Id.* "An action of tort as well as an action of contract, may be maintained upon a false warranty."

⁷Hacker v. Nitschke, 310 Mass. 754, 39 N.E. 2d 644 (1942).

⁸Bootman v. Lux, 349 Mass. 426, 208 N.E. 2d 819 (1965).

⁹*Id.*

¹⁰Boston Housing Authority v. Hemingway, Mass. , 293 N.E. 2d 831, 843n 13 (1973).

Express

¹E.L. Schwartz, *Lease Drafting in Massachusetts*, 68-69 §3.13 (1961).

²*Id.*

³*Id.*

Summary Process

¹Mass. Gen. Laws Ann. c.239 §1. For a general comparison see the *Model Code*, Art. III.

²Mass. Gen. Laws Ann. c.239 §2 (Supp. 1973); the judge of the Housing Court of Boston can determine the form of the writ for actions brought in his court.

³Mass. Gen. Laws Ann. c.239 §3, 4.

⁴Mass. Gen. Laws Ann. c.186 §§11, 12, 13 (Supp. 1973).

⁵Mass. Gen. Laws Ann. c.186 §18 (Supp. 1972).

⁶Mass. Gen. Laws Ann. c.239 §9 (Supp. 1972).

⁷Mass. Gen. Laws Ann. c.239 §5 (Supp. 1971).

⁸Mass. Gen. Laws Ann. c.239 §5 (Supp. 1971).

⁹Acts of 1970, c.842 §9 (10) b.

¹⁰Acts of 1970, c.842 §9.

¹¹Acts of 1970, c.842 §9 (a) 1 and §9 (a) 10, respectively.

Rent and eviction control

¹The Act was passed pursuant to the declaration of a housing emergency. The Acts of 1970, c.842 §1.

²The Act expires April 1, 1975.

³Marshall House Inc. v. Rent Control Board of Brookline, 358 Mass. 686, 266 N.E. 2d 876 (1971).

⁴*Id.*

⁵The Acts of 1970, c.842 §5.

⁶The Acts of 1970, c.842 §6.

⁷The Acts of 1970, c.842 §6.

⁸The Acts of 1970, c.842 §7.

⁹The Acts of 1970, c.842 §7.

¹⁰The Acts of 1970, c.842 §7.

¹¹The Acts of 1970, c.842 §§11, 12.

¹²The Acts of 1970, c.842 §11.

¹³The Acts of 1970, c.842 §10.

Security Deposits

¹See generally, Mass. Gen. Laws Ann. c.186 §15B (Supp. 1973). Compare the proposed *Uniform Act* with respect to security deposits, 8 *Journal* 496-498 (1973).

²Some states require interest payments only after allowing the landlord to deduct an amount for expenses incurred in administering these deposits. N.Y. Gen. Obligations Law §7-103 (2a) (McKinney Supp. 1973); N.J. Stat. Ann. §46: 8-19 (Supp. 1973).

³The proposed *Uniform Act* §s. 101(c) allows the tenant to recover the property and money due him together with damages and reasonable attorney fees.

⁴A tax escalation clause is a covenant requiring the tenant to pay all or a proportional share of any increase in real estate taxes.

⁵However, see *Gold Medal Stamp Co. v. Carver*, Mass. , 270 N.E. 2d 834 (1971) which held that the lessee was not bound by a tax escalation clause where the lessor made extraordinary permanent improvements not contemplated by the parties at the time of the execution of the lease, which caused increase tax assessments.

Enter premises

¹Mass. Gen. Laws Ann. c.186 §15B (Supp. 1973).

Law School Receives Record Number of Applications

John Deliso,
Director of Admissions

At the 15th of February 1974, the deadline date, the law school Admissions Office received its forty-five hundredth application for the class commencing in September of 1974. This year's applicant pool to Suffolk University Law School is one of the most unique that the school has ever had. Not only has the law school received the largest number of applications in its history but the composition of the applicant pool is significantly different than it has been in previous years.

1) For the first time over 20% of the applicants to the law school are women.

2) For the first time the law school has received over 100 applications from minority students.

3) More states are represented in the applicant pool than in any previous year.

The above statistics are not in keeping with many of the forecasted trends in legal education. A decrease was predicted in the number of students applying to law schools for 1974. It is apparent that either due to an unforeseen overriding interest in legal education or the downturn in the country's economy with the resulting lack of demand in the job market that law school are and will continue to attract larger numbers of highly qualified applicants.

The intensity of the problem of selecting candidates for the class commencing in 1974 is further magnified when one realizes the law school is furthering the implementation of its goal to decrease the student-faculty ratio. This means the law school will accept fewer first year stu-

dents than in either of the previous two years. Last year 597 day and evening division first year students were enrolled. Next year's day and evening division class commencing in September of 1974 will number approximately 525 to 550 students.

As a result of these limitations, the Admissions Office appreciates input from students, alumni, and friends who have had personal contact with the applicants. Thus, the problem of accepting and rejecting candidates to the law school becomes increasingly difficult. A Candidate's eventual admission or denial in qualified cases may come to depend on the comments made by alumni, students and friends.

Activities of the Suffolk Women's Law Caucus: An Overview of Fall 1973

This Fall, the caucus has been actively involved in a wide range of activities — a speaker's program, committees working on women's issues and on the improvement of the law school in general.

The Speaker's Program has sponsored: *Laura Rasmussen*; (Mass. Law Reform Institute) on Divorce Reform legislation now before the Mass. Legislature.

Dr. Jerri Steiner; (Governor's Commission on Crime and Law Enforcement; Scientists for Peace) on the Criminal Justice System of the People's Republic of China.

Jim Drew; (National Lawyer's Guild; Antioch Law School) on the Legal System of North Vietnam.

Round-table Discussion on Women In Law; Professors Epps, Lloyd, Schwartzbaum, Judge, and Pote.

Stephen Young; (U.S. Civil Service Recruiter) on careers in government for women and minorities.

Capt. Anthony DeVico; (Placement Director, Suffolk Law School) on job-seeking after graduation.

Other items of interest:

— A Lending Library has been established at the Caucus' office in 100 Charles River Plaza, 5th floor, (where placement and legal practice offices are located) which lends out hornbooks, study aids, class notes (eg. Calamari on Contracts; Schwartz's Property Notes; Criminal

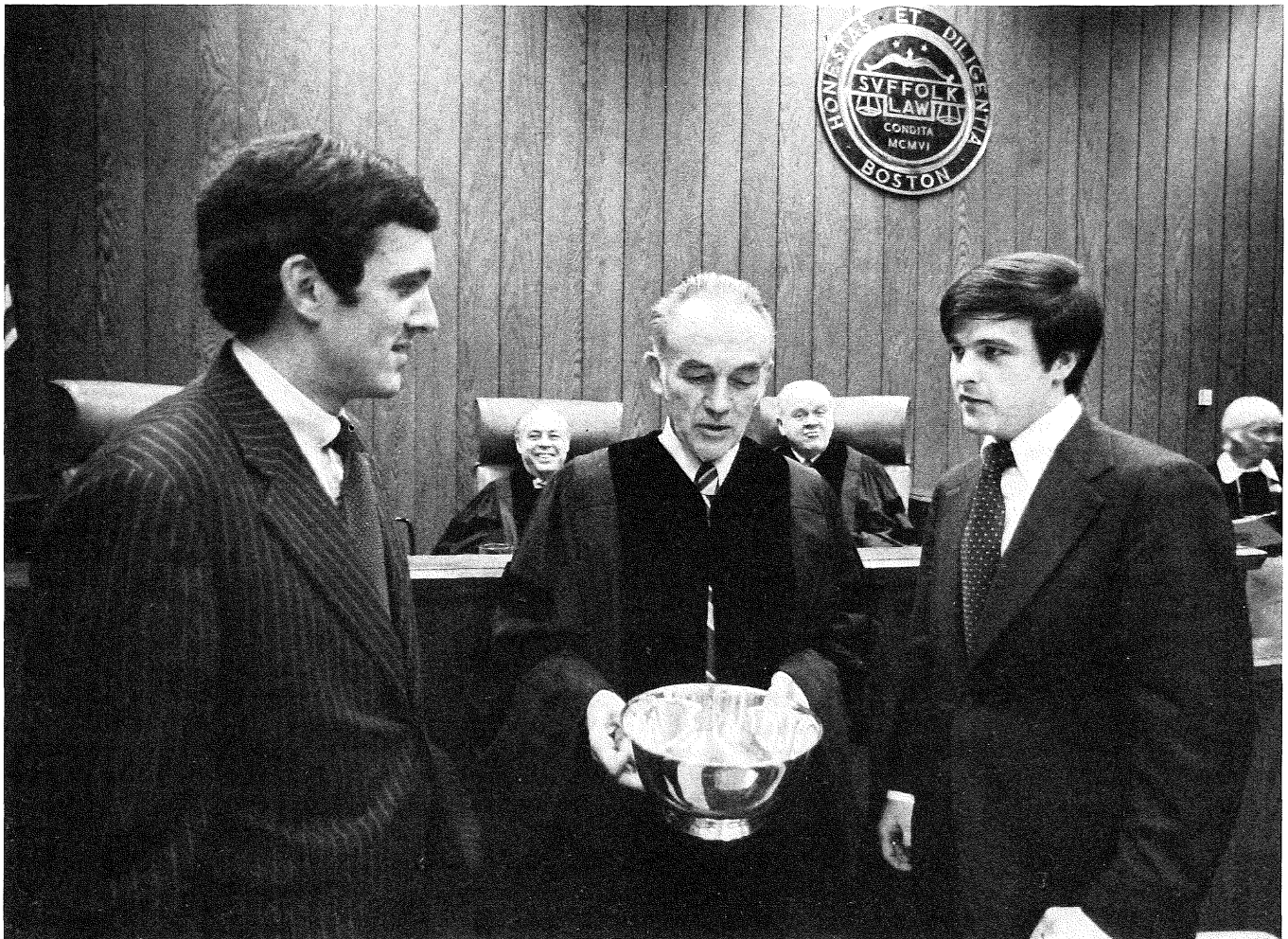
Procedure in a Nutshell, etc.)

— The caucus collected medicines, food and baby care items for Vietnam war orphans through a Christmas benefit project.

— More closely related to Suffolk, the caucus has members working at present on admissions policies for women applicants, financial aid improvements, and a course evaluation project.

Plans for second semester include possible publication of a legislative reporter, legislative lobbying for divorce reform legislation, and a regional conference on women and the law.

1974 Clark Competition Winners Selected



The 1974 Clark Competition was won by the team of Don Baillie and Jack Lahey. Both are third-year day students at Suffolk Law School. Sitting as judges in the finals of the competition were Judge Frank Freedman of the Federal District Ct., District of Massachusetts. Judge Frank Coffin, Chief Judge of the First Circuit Court of Appeals; Judge Edward Hennessy of the Supreme Judicial Court of the Commonwealth of Massachusetts.

Class Notes

1939

"Retired" **Joseph F. McLean**, former Superintendent of the Boston Public Works Department, is in his fourth year as a Volunteer Teacher at the Leen School in Dorchester.

1940

F. Lawrence Doherty of Westwood, a vice president at Stone and Webster Engineering Corp., was named senior personnel manager.

1948

Stephen Keefe of Quincy was promoted to Brigadier General in the United States Army.

1950

Robert Singer, formerly with HUD, opened a law office in Manchester, N.H.

1955

James J. Nixon, Jr. of Belmont was named a Special Justice of the Cambridge District Court.

1958

Robert W. Morse of Beverly, formerly assistant controller at the A.C. Lawrence Leather Co., is now on the State Auditor's staff.

1962

Judge **Samuel Zoll** was elevated to Justice of the Salem District Court.

1963

Charles S. Mc Guire, with offices in Binghamton and Syracuse, is President of the Central New York Patent Law Association.

1965

George Hall of Wilmington is Executive Secretary of the Chelsea-Revere Bar Association. **Joel M. Pressman** is serving as the 1974 President of the Board of Aldermen in Chelsea.

1966

John D. Biafore of Cranston was named Town Solicitor and Probate Judge in Exeter, R.I. **Dennis S. Hager** of Concord, N.H. is with the Allstate Insurance Company.

1967

Michael M. Balsamo, formerly of Providence, R.I. is an Executive Secretary for the National Labor Relations Board in Washington, D.C.

1968

Alan E. Steinberg of Natick is a real estate lecturer at the NU University College.

1969

Donald P. Oulton, an assistant district attorney for Middlesex County, opened an office for civil practice at his home in Natick. **Thaddeus M. Strojny**, a incorporator of the Bristol County Savings Bank and the Taunton Savings Bank, was elected to the board of the Taunton Cooperative Bank. **James E. Sullivan**, former law clerk for the R.I. Supreme Court, is an assistant vice president of the R.I. Hospital Trust National Bank.

1970

Bernard A. Jackvony, who is enrolled at the BU School of Law master in taxation program is serving as research aide for the Republican minority party in Cranston, R.I. **William B. Mc Donough**, special assistant DA for Hampden County, has formed a partnership with Henry O'Connor and Robert J. Eastwood in Holyoke. **David M. Tower** of Rindge, N.H. is an associate with the new firm of Gelinas, Ward and Reynolds, with offices in Fitchburg, Leominster, and Rindge, N.H. **David P. Twomey** of Kingston is an assistant U.S. Attorney, working out of the Boston office.

1971

Lawrence C. Chesler is with the firm of O'Brien, Shafner, Garvey, and Bartinik in Groton, Conn. **Frederick C. Crowley** is associated with the firm of John A. Capineri in Pawtucket, R.I. **John R. Granara, Jr.** was elected to the Medford School Committee. **Alfred Saggese** of Winthrop is an assistant district attorney for Suffolk County. **John F. Sullivan**, formerly with Peat, Marwick, Mitchell, and Company is practicing in Chatham.

1972

Charles L. Field is serving Northeastern U. School of Law in a dual capacity: he's assistant law librarian and an assistant law professor. **Frank V. Hekimian**, a candidate for the masters in taxation degree from BU School of Law, is practicing in Salem, N.H. **Ralph J. Loosigian** of Chelmsford is an assistant district attorney for Middlesex County, assigned to the Lowell Superior Court. **Earl L. Miller** of Swampscott is with the firm of

Stavisky and Greeley of Boston. **Timothy J. Schiavoni** of Bradford is with the firm of Schiavoni, Cirome, and Mooradian in Haverhill.

1973

Thomas F. Almeida was named the new attorney for the Cumberland Housing Authority in R.I. **Kenneth A. Bagley** of Auburndale is with the City of Newton Law Department. **Robert A. Bonner** of Kingston is an attorney in the law department of Sun Life of Canada at its head U.S. office in Wellesley. **John W. Capone** of Melrose is awaiting assignment as a Captain in the USAF Judge Advocate's Office. **Don L. Carpenter** of Barnstable has joined the firm of Keating and Farrell in Falmouth. **James F. Cirillo, Jr.** is an associate in the firm of Greenfield, Kirck, and Jacobs, with offices in Cheshire and New Haven, Conn. **John R. Cox**, formerly of Andover, is Chief, Field Branch, of the Albany District of the Internal Revenue Service. **Michael J. Giammatteo** is associated with the firm of Richard W. Wood in Southington, Conn. **Laurent P. Lambert** of Newburyport is a supervisor at the Merchants Cooperative Bank in Boston. **Patrick E. Lowney**, who received the Alumni Scholarship Award twice while a law student here, is Director of the Criminal Justice Office for the City of Fall River. **Douglas A. Mc Inch** of Manchester is an assistant district attorney for Hillsborough County in New Hampshire. **Russell G. Murphy** of Newton is now teaching law at Boston College. **James F. O'Leary** of West Roxbury is serving as Manager of Congressman Joe Moakley's (JD '56) office in that area. **Richard H. Patenaude** of Taunton is with the Fall River firm of Richard N. LaSalle. **Alan E. Pike** of Winthrop is an associate in the Boston firm of Pike, Pike, and Nagel. **Webb A. Primason** of North Andover is a Public Defender in Salem. **Regina Quinlan** of Brookline joined the firm of her father and brother, Quinlan and Quinlan. **Mark H. Raider** of Natick is attending the BU School of Law for a master's in taxation degree. **J. Michael Roberts** of Rockland is with the Boston firm of Musco and Foynes. **Robert I. Tatel** of Chelsea is a legal counsel with the Governor's Highway Safety Bureau in Boston. **James J. Troisi** of Seabrook is an assistant district attorney for Rockingham County in N.H. **James O. Walsh** of Hamden is an associate in the firm of Connor and Connor in New Haven. Boston Police Officer **Charles Webb** of Division Four is staying on the force nights, as he starts a practice in Newton and Roslindale.

Necrology

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

Class of 1912

Abraham Lelyveld of Rockland died at the age of 89. He was the founder and for 50 years the President of the Rockland Credit Union. He was the oldest living alumnus of the Law School.

Class of 1918

John J. Murphy of Malden died at the age of 82. He was the first Democratic mayor in Somerville when elected in 1929 and a U.S. Marshal under President Franklin D. Roosevelt in 1934.

Philip P. A. O'Connell of Medford died at the age of 78. In 1940, Mr. O'Connell was appointed special assistant to the United States Attorney for the District of Massachusetts in charge of Lands Division, a post he held until 1954. He maintained offices in Boston and Medford for many years.

Class of 1921

John E. Mahoney of Wilder, Vt. died at the age of 73. He served as chief attorney for the U.S. Business Administration at White River Junction until retiring in 1969.

Class of 1923

Frankland W. Miles of Canton died at the age of 76. He was a retired presiding justice of the Roxbury District Court. He maintained a private practice with his sons in Boston.

Class of 1924

Charles H. Bolster of Marblehead died at the age of 85. He was associated with the USM Corp., Beverly for many years.

Class of 1925

William H. Hilbrunner of Woburn died at the age of 75. Mr. Hilbrunner was a Real Estate Broker and was active in the Middlesex County Foundation.

William J. Hines of Norwich, Ct. died at the age of 82. Mr. Hines was a retired lawyer for Travelers Insurance Co. in Boston where he served for 50 years.

Class of 1926

Orvis H. Saxby of Stoneham died at the age of 73. He practiced law in Stoneham and also served as Town Counsel from 1940 to 1949 and was Town Moderator

and Master In Chancery from 1958 to 1963.

Thomas J. Finnegan of Norwell died at the age of 80. Mr. Finnegan taught for many years in the Law School prior to his retirement in 1972. He also practiced law in Boston.

Class of 1927

James E. Bagley of Lynn died at the age of 73. He was associated with the law firm of Bagley and Bagley in Boston. Mr. Bagley was also a member of the Ancient and Honorable Artillery Co.

Class of 1928

John H. Gilbert of Largo, Fla. died at the age of 82. Mr. Gilbert was treasurer of Chase Brass and Copper Co. in 1934.

Class of 1930

James J. McCusker of Quincy died at the age of 68. Mr. McCusker was a former plant superintendent for the American Bank Note Co. in Boston.

Class of 1931

Francis McCarthy of West Roxbury died at the age of 63. Mr. McCarthy joined the FBI as a special agent in 1942 and worked in the Boston office from 1946 to 1965. He later headed the MBTA police.

Class of 1932

John Looney of Winchester died at the age of 76. He was lawyer and purchasing agent for Motors, Electronics and Control Co. of Cambridge for 42 years.

Class of 1933

Ralph G. Howland of Lynnfield died at the age of 62. He was a former Malden attorney and had previously served on the Malden board of alderman prior to World War II.

Alonzo B. Greene of Braintree died at the age of 69. Mr. Greene maintained law offices in Boston and Quincy.

Francis J. Gill of So. Portland, Me. died at the age of 74. Mr. Gill was traffic manager for the Oxford Paper Co. from 1937 until his retirement in 1964.

Class of 1936

Thomas F. O'Donnell of Wellesley died at the age of 65. Mr. O'Donnell was a corporate lawyer and former administrator at

MIT. He was also vice-president and treasurer of Center Associates, a realty investment enterprise.

Class of 1937

Martin T. Camacho of Arlington died at the age of 60. A Boston attorney for more than 30 years, he was active in Portuguese-American affairs in Cambridge.

Class of 1940

Ralph D. Washburn of Hanover died at the age of 81 while traveling in Norway. In 1967 he was elected to a one-year term as town clerk of Hanover. He continued to be re-elected and held that position until his death.

Class of 1941

Lawrence G. Peterson of Brewster died at the age of 71. He was a former patent attorney and former adviser to the Pneumatic Seal Corp. of Quincy.

Class of 1942

John P. Murphy of Middleboro died at the age of 55. Mr. Murphy was a claims adjuster for the NY, NH & H Railroad and office manager at Connor Buick and Pontiac Co.

Class of 1951

Stephen H. Vinal of Quincy died at the age of 51. Mr. Vinal was a lawyer in general practice for 20 years in that city.

Class of 1952

Leonard Mullen, Jr. of Winchester died at the age of 50. He was appointed as a member of the Judiciary in April of 1973. He served as Special Justice of the Somerville District Court.

Class of 1955

Leo A. Burgoyne of Metuchen, N.J., formerly of Lowell, died following a prolonged illness. He was employed as an attorney for the Internal Revenue Service of New York as a Senior Trial Attorney.

Class of 1956

Gilbert M. Coroa of Somerset died at the age of 48. He was an assistant clerk of courts at the Fall River Superior Court. He was also a member of the Massachusetts Legislature from 1957 to 1966.

Organized Crime

Continued from page 4

sociates, their areas of geographic control, their areas of economic control, both legal and illegal, their friends and their enemies within and without the organization. The federal government has been intensely gathering intelligence in the organized crime field for well over a decade — the target figures have been designated, their associates pin-pointed, their areas of control mapped out. The intelligence-gathering process must and will continue. But there comes a time when intelligence reaches a point of saturation, and for it to be productive, intelligence must be translated into evidence. At present, the federal government, with its Strike Force Concept, has drastically shifted the emphasis from the mere gathering of intelligence to the predetermined effort and resolve to put that intelligence to practical use in the courts in order to convict the designated target figure — the major racketeer.

I would suggest that each District Attorney establish a special strike force staffed by an elite group of highly skilled and dedicated investigators for the express purpose of routing out the criminal organization in each district. It is the prerogative of the District Attorneys to establish the investigative priorities of this special force. Exchange of criminal intelligence between District Attorneys throughout the Commonwealth and the entire New England area is of paramount importance.

The second weapon is the substantive statutes whose provisions cover those areas of criminal activity in which organized crime is basically engaged.

No additional substantive legislation is needed. What is needed is the imposition of appropriate jail sentences in organized criminal cases. A major racketeer is by definition a professional criminal who will not be rehabilitated. He fears only one consequence — incarceration — not a fine, not a suspended sentence and probation — only jail. Prosecutors must demand jail sentences in cases involving organized criminal figures in order to segregate them from society and to thereby protect the public from their insatiable appetite for “blood money.” This should be done in gambling cases, even for a street agent of the organization, for only by this means will the source of street personnel — those who take the bets — be dried up. A street-level employee will not be so apt to aid his insulated boss in the accumulation of his wealth if he

knows that he himself faces a prison term on a gambling conviction.

The third weapon is the procedural statutes, such as the court-authorized wire tapping and “bugging” provisions, and the general immunity laws.

The availability of immunity can overcome the wall of silence that is the code of the underworld and which so often defeats investigations in this area. An immunity statute to be effective must be used in conjunction with contempt provisions for those witnesses who refuse to testify after being granted immunity from prosecution, and with false declaration provisions for those who do testify but who testify falsely. An investigative grand jury of eighteen months’ or two years’ duration is a prerequisite to the successful use of the immunity-contempt tandem, so that a contempt citation will result in such sufficient prison time during the life of the grand jury as to compel testimony. The investigative grand jury with full subpoena power is needed by all District Attorneys to initiate an in-depth probe of the organized underworld.

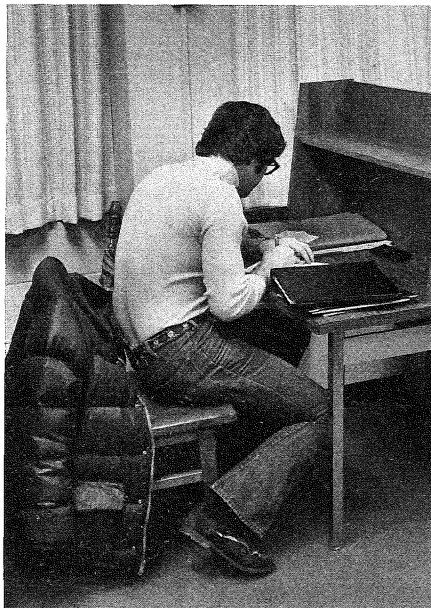
Legal wire tapping and “bugging” is the single most valuable weapon in law enforcement’s arsenal. These electronic devices can penetrate the inner sanctum of the organization and alone can replace the heretofore sine qua non of the successful organized crime prosecution — the testifying accomplice witness.

The fourth weapon is the development of the testifying accomplice witness, who is normally a prerequisite to the prosecution of a major racketeer because of the essential character of organized crime — the “insulation” of the “boss” from the

overt criminal act, thus, necessitating the testimony of an associate of the “boss” who can provide the evidentiary link between the order and the criminal act. This type of witness is rare because of the underworld’s code of silence and the fear of reprisal from the enforcer. Law enforcement should be ever alert to the circumstances ripe for the development of this type of witness growing out of the ever-occurring fallings-out between underworld associates, and be prepared to provide the protection detail and geographic relocation of the witness’ family which is so necessary in this situation. Joseph Baron, Vincent Teresa and John J. Kelley are recent examples of this type witness. Organized crime leaders of stature will not be successfully prosecuted without the development of the cooperating accomplice witness who has close connections with the “boss.”

Purists might assert that the investigation and prosecution of predesignated target figures is not a traditional method of law enforcement. But organized crime is not the normal type of crime. It operates over long periods in an atmosphere of relative secrecy, and for the most part, it continues without complaints. Crimes are committed, but there are no “victims,” or rather the victims are usually willing victims. A bettor does not report his bookie to the police. Thus, the organized crime investigation must not only determine who committed the crime, as is the case in the investigation of common law crimes, such as murder, robbery, etc., but must also first determine whether a crime has even been committed. Because an organized crime is not reported by a complaint filed by a citizen, to determine whether such a crime has been committed requires that an investigation commence with the activities of the major racketeers in the area, who become by necessity — the designated targets.

In closing, I would reassert my belief that a concerted and cooperated investigative effort against the major racketeers and those illegal activities from which their main source of revenue is derived by all investigatory agencies on all levels of government on a permanent basis using the four weapons which I have discussed can destroy the formal criminal organization. The local police — sparked by the District Attorneys and buttressed by their own local strike force and their own investigative grand jury — must be in the forefront of any successful assault. It is a goal worth striving for!



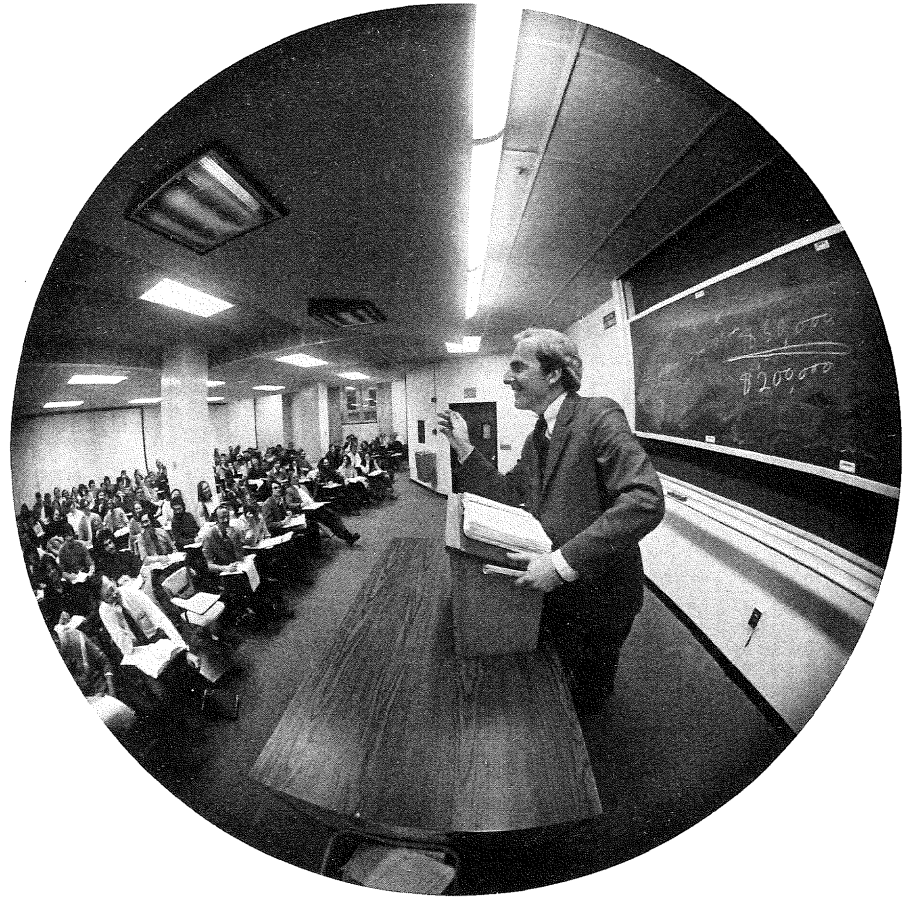
Another View

Continued from page 5

range of one to one and a half cents per K.W.H. Now the larger users are faced with almost a doubling in the price of their electricity. Some residential heating customers have seen their monthly bills go from \$100 to \$200 plus per month. One large commercial establishment in the Greater Boston area saw its bill jump from \$11,000 to \$22,000 per month.

In recent months the electric utilities have witnessed a large reduction in the growth of usage of electricity — with some actually claiming negative growth something the environmentalists have been seeking for years. Boston Edison, Massachusetts Electric and Western Massachusetts Electric, the largest electric companies in the Commonwealth, in their petitions for rate relief before the Department of Public Utilities claim that there are reductions in usage of between ten and fifteen percent from what would normally be expected.


The results the environmentalists were seeking appear to have come about indirectly because of the energy crisis. The promotional nature of the rate structure has been eliminated because of the operation of the fuel clause and usage has been curtailed both voluntarily by the consumer and because of the increased price. More importantly, however, there is some actual data available from which to determine the price elasticity of electric usage — data that was unavailable prior to the crisis. With these results, the environmentalists can arm themselves for the future when, hopefully, the crisis situation will be over.




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If your firm/office has an opening, or if you are aware of a legal or quasi-legal position opening, contact the Director of Placement by letter or telephone, setting forth the prospective employer's requirements in terms of education, experience and salary. The Director then will forward resumes of suitable candidates, i.e. students and Alumni as appropriate, whose qualifications appear to meet the employer's requirements. At the wish of the employer, his name will be kept confidential.

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.

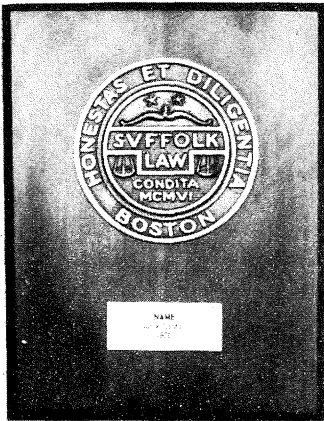
As a rule, Alumni are interested solely in full time employment opportunities. Students, on the other hand, are interested in full time, part time and summer employment opportunities.

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.

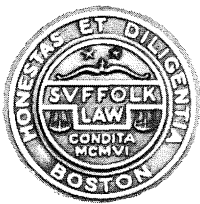
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