In This Issue:
Criminal Case Management System
Real Property Taxation — Self-Assessment
Board of Bar Overseers
Rent Control
Trial Briefs
Plus Regular Features

Gleason Archer
Founder
Suffolk University Law School
1880-1966

VOLUME 6 No. 2 • SPRING 1975
American Gold Exchange

RARE COINS
INVESTMENT COUNSELING

Professional Numismatists
Brokers for gold and silver bullion
Certified Appraisals—Antiques

Send for your free copy of the informative brochure that "Takes the Guesswork Out of Coin Investment."

American Gold Exchange
44 Bromfield St., Suite 205
Boston, Ma. 02108
617-482-2524
Toll Free Watts Line
1-800-225-1571

LAW BOOKS
for Suffolk Law School

NEW AND USED LAW BOOKS
BOUGHT AND SOLD
NEW ENGLAND'S BEST SELECTION OF LAW OUTLINES AND STUDY AIDS

Harvard Book Stores, Inc.

NOW AT THREE CONVENIENT LOCATIONS
Harvard Square; 12 Plympton St. (Corner of Mass. Ave.)
Boston University; 732 Commonwealth Ave. (Next to Radio Shack)
Copley Square; (At New England Law School)
Vol. 6 No. 2 Spring 1975

Table of Contents

A Statewide Superior Court Criminal Case Management System for Massachusetts. by Burton Kriendel and John P. Moreschi ............... 1
Self-Assessment: Should it be adopted for real property taxation? by Professor John R. Sherman ...................................... 9
The Board of Bar Overseers: Massachusetts' Plan for Disciplinary Enforcement. by Dennis E. McHugh ...................... 13
Rent Control: Solution or Diversion. by Paul T. Cronin ............... 16
Why a Trial Brief? by Professor Charles B. Garabedian ............ 22
Notes and Quotes: ............................................. 25
The Bartley-Fox Gun Law Judicial Accountability Fifth Amendment The Juror: A Profile Malpractice Perspective Collective Bargaining Condominium Reforms Retirement Law Courts and Computers Suffolk Law School Notes ...................................... 31

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

All articles and editorials reflect the personal views of the authors and are not necessarily the views of the administration or faculty of Suffolk Law School.

Guest editorials by students and faculty are welcomed by The ADVOCATE, which recognizes its obligation to publish opposing points of view. Persons desiring to submit manuscripts, to be put on the mailing list or to communicate with the staff please address all letters to: The ADVOCATE, Box 122 Suffolk Law School, 41 Temple Street, Boston, MA 02114.

All Rights Reserved
Summary

Faced with ever increasing workloads, too few court personnel and budgeting restrictions, the Massachusetts Superior Court is implementing a novel and innovative court case management system to deal with its criminal caseload. Using modern information and management techniques, the statewide system will provide all court organizations, judges, prosecution, defense, probation, clerks and sheriffs with the day-to-day operational support needed to speed the flow of criminal cases as well as providing much needed management and statistical information to court administrators.

Among its unique features the system utilizes the case trial unit (CTU) concept in which criminal defendants who are to be tried together and all charges against them are designated as a single unit, identified by a special CTU number, and are scheduled for trial and all court appearances as a single unit. Also, while the system provides busier courts with the ability to directly access a central data base via CRT terminals, it allows less active courts to mail certain data on each case to the data base. This data is merged to generate integrated management reports covering all aspects of the statewide court system. Printers in selected courts provide daily court calendars and other operational data to court personnel and district attorneys while systemwide management reports are furnished to the Office of the Chief Justice from a data processing center.

In Massachusetts, as elsewhere in the state and federal courts, the machinery for the prosecution, defense and court disposition of criminal cases is wholly inadequate for handling the volume of litigation. The most effective and practical method of improving the courts is not through any major reorganization but through the enlargement of the resources of each court in those respects in which they are needed, whether it be in the number of judges and of supporting personnel, in their facilities, or in the improvement of the procedures by which their business is conducted.

The Superior Court of Massachusetts, through the design and development of the Court Case Management System has moved to meet the challenges to the administration of justice posed by an ever-increasing workload, limited numbers of court personnel, budgetary restrictions imposed by financially pressed state and county governments and the rapid expansion in the exercise of constitutional rights by criminal defendants. The Court Case Management System (CCMS) is part of the Court's attempt to achieve the most effective use of its limited resources. The CCMS has been designed as a computer-based information system which will provide all court organizations — judges, prosecution, defense, probation, clerks and sheriffs — with day-to-day operational support, as well as with much needed management information and statistical summaries. With the tools provided by CCMS, it is expected that court administration can assume a more active management role, thereby improving both case handling and court resource utilization.

The Massachusetts Superior Court is a statewide court of general jurisdiction. It is the great trial court of the Commonwealth and may hear and try all cases, criminal and civil, at law and in equity, with jury and without. In criminal proceedings, the court is responsible for both appeals for trials de novo from the lower court level and indictments for criminal offenses returned by grand juries sitting in the 14 counties. The Court consists of a Chief Justice and 45 associate justices who are assigned to sit in the different county courthouses on a modified circuit basis.

Criminal court business is conducted in each of the state's 14 counties, holding criminal sessions in 19 locations, as shown in Figure 1. Of the 3950 trials conducted by the Superior Court
during 1973, 1048 were held in Suffolk County (Boston), 774 trials took place in Middlesex County (Cambridge), the next busiest court, and the remainder were held in the other 12 counties (there were only twelve trials in Dukes County, the least busy). Approximately 90% of the criminal case workload occurs in the eight most populous counties. The busiest courts face a steady schedule of criminal case activities throughout the operating year; the other courts have only periods of intense activity while criminal sessions are being held (typically two or three times a year).

Symptoms of the problems in criminal court operations became evident to the court's Chief Justice in 1969. Among these was a seven month delay in reaching trial, the growing caseload, the exploding backlog, the general low productivity of court personnel, an apparent overall lack of control, direction, or management of the court's operations and an increasingly poor public image of the court and its role in the administration of justice. The Chief Justice, thereafter, initiated a study of the court's management and information system. The study became the first step in a multiphased approach to the design and implementation of a total criminal case management information system. The resulting system, the CCMS, has now been documented in a detailed design specification and is scheduled for implementation throughout all the Superior Court locations in the Commonwealth.

The systems approach taken by the project team and the resulting Total Information System for the Superior Court can be contrasted with approaches more commonly used in applying "automation" or "data processing" to the problems of a court or of other governmental organizations. Many such organizations take the position that if data processing is needed, it is needed primarily to do an existing job more efficiently. Such organizations view data processing assistance only as a means to handle more transactions with the same resources (personnel), a better means to perform certain activities or an improved method to produce statistics. Seldom do they seek to develop a basic understanding of the court's overall information needs. Focusing their attention on performing one immediately important or pressing function, such courts may employ someone with a computer programming background who understands applications, and direct that person to utilize data processing as a means to do the job. The result is usually the "automation" of the ineffective and many times inappropriate present system. As a consequence, functions may be automated that are no longer necessary, the possible inclusion of relatively simple additional operational tasks may be overlooked and interagency applications are usually ignored. In many such cases, the data elements may be too restrictively defined and the input data, constrained by existing forms and procedures, difficult to acquire. As a result of this approach, outputs may be limited and in a form useful only to those immediately involved in the function, and the potential for expansion to other operations and functions is usually severely limited.

A second approach taken by courts and other organizations is to bring on-board the "outside expert" to convert the agency to data processing. With little instruction or direction, the expert and his crew is put to work on a data processing solution to a court recognized problem. His effort is restricted by the funding immediately available and his understanding of the real world problems of the court and his interaction with the organization's managers is many times virtually nonexistent. He seldom develops the depth of understanding or the confidence of court employees and management because of the limitations on his available time. The result is often either a hazy concept for information system improvements or a rigid procedural straight jacket for the organization to follow. In neither case is the chance for acceptance and implementation of the system very high, and consequently such an approach often leads only to stacks of study reports gathering dust.

The Total Information System embodied in the CCMS is the product of an orderly process which dealt with all court organizations, functions, and responsibilities. It relates the capture, storage and retrieval of data and information to the operational and management needs of the court.

There have been three steps in the development of the CCMS, each of which represented a discrete system engineering activity and resulted in a documented output. The completed steps include problem identification, conceptual design, and detailed design and system specifications. Subsequent phases will complete system acquisition and implementation.

a. Problem Identification

Although not initially recognized as needed by court management, this phase of problem identification was undertaken in two steps. The Chief Justice, perceiving the symptoms of a general problem, initiated a very limited survey of court operating problems which resulted in the identification of four significant problem areas — (1) the management and administrative needs of the Office of the Chief Justice, (2) the management of juries, (3) the docket preparation process in the Clerk's Office, and (4) the trial assignment process. The focus of the study was the documentation of these court operating problem areas and included an analysis of court congestion and delay. Its objective was to examine the potential use of modern data processing and other man-
management tools in the Superior Court and to develop and plan for the implementation of effective long-term solutions to the problems of judicial administration through more effective management of resources and improved administrative operations. The methodology for the study included: in-depth discussions with the Chief Justice, judges, attorneys, clerks, district attorneys, probation officers and other court personnel, a general literature search, extensive field research and operational analysis.

The problem areas were documented and recommendations were made for immediate and long-term actions which could be taken for their resolution. Action to implement recommendations for improved information flow and management of juries has been taken and the suggested improvements are now operational in the Superior Court.

A second more detailed study of the "Case Disposition Process", which dealt with problems of docket preparation and trial assignment was then undertaken. Following an extensive and detailed analysis of the case handling process, the existing processing of information and the trial assignment process, two major products were produced. These products included, first, a unique detailed description of the Superior Court criminal case process, including detailed charts of information flows and extensive court operating statistics gathered through interviews, observations and the use of statistical sampling techniques. This analysis (as updated) indicated, for example, that although the number of new cases entering the court each year has grown by some 35% since 1968, the undisposed backlog of cases grew by almost 148% during the same period. A 200% increase (a backlog of some 40,000 cases) has been forecast by the end of 1974. Much of that increase can be attributed to the court's relatively informal case management policies which result in the continuance of five out of every seven court appearances scheduled.

The second major product of the analysis was a detailed listing of suggested improvements in the process by which the court dealt with criminal cases. Among these recommendations was the development of a totally revised court information system. Other recommendations involved court management, case scheduling, personnel and organizational interrelationships. Following a review of these recommendations, Chief Justice McLaughlin made the decision to proceed with the development of the revised information system.

b. Conceptual Design
Based on the in-depth understanding of court operations, court management needs, and of the case handling process developed during the problem identification phase, a new information system concept was devised. It described an improved system for the day-to-day operation and management of the courts' criminal caseload. It was conceived as a computerized on-line information and communications system providing the court's operating personnel with the records, calendars, notices, dockers and other data required for daily court operation using remote, on-line computer display terminals connected to a central statewide data base and computer. The system concept included many features that were simply impossible to accomplish under the overburdened manual system, such as time of day case scheduling, telephone reschedule capability, automatic production of jail lists, participant notifications for every court appearance, conflict-free scheduled dates, case information for assignment judges including the number of previous continuances, pre-printed data collection forms, and many other operational features.

While providing support to all court operational tasks, the CCMS concept

A 1971 graduate of Suffolk Law School, Dr. Burton Kreindel currently directs MITRE Corporation's legal, judicial and law enforcement administration and informational projects. He has worked as a consultant to the Massachusetts Governor's Committee on Law Enforcement and is presently a project leader in implementing a court case management system for the Massachusetts Superior Court system.

Dr. Kreindel is active in the Massachusetts Bar and presently serves the Boston Bar Association as a consultant to the Law and Technology Committee and has made numerous presentations in several conferences and programs on improving judicial administration. He is also a consultant to the Massachusetts Land Records Commission and to the Chief Justice of the Superior Court.

Prior to joining MITRE, Dr. Kreindel was a planning manager for Honeywell Corporation. He also holds an A.M. in Economics from Queens College and an M.S. in Industrial and Management Engineering from Columbia.

John P. Moreschi is employed by the MITRE Corporation in Bedford, Massachusetts which analyzes, designs and implements large scale information systems. He is presently working on a criminal justice information system for the State of Connecticut. His earlier projects have included the design of a case management system for the Massachusetts Superior Court and analysis and system designs for court and police systems.

Mr. Moreschi holds a B.S. in Physics from Trinity College and an M.B.A. from Columbia in management. He recently published "How Information Systems Can Improve Court Management" in the May/June issue of Law and Computer Technology.
included the utilization of the same operational data base to produce court management reports and statistics. These periodic outputs were designed to alert court management to problems or potential problem areas so that appropriate actions might be taken. Examples of planned court management reports include listings of potential participant conflicts, reports of cases which exceed a predetermined case movement schedule, reports of excessive caseloads for private or public defenders, prosecutors, or courts and many others.

Statistical reports to court management, summarizing various aspects of court operations, will also be provided. In addition to reports of total caseload, backlog, cases disposed, etc., more sophisticated statistics to aid in policy making at the Chief Justice's level will also be provided. These additional management statistics will include continuance rates and causes; bail levels and default rates, attorney and judge workloads and related continuances, as well as other measures of court activity.

In the conceptual design, the operational and management outputs were identified, the system inputs were defined, and the general data flows and data base structures described.

Following a review of the CCMS concept by court personnel approval was given by the Chief Justice to proceed to the design phase of system development.

c. Detailed Design and System Specification

In order to encourage a competitive bidding environment for the procurement and implementation of the CCMS, a series of specifications for the computer programs, computer and communication hardware and facilities were required. Such specifications define the performance, design, development and test requirements for the system and will be included in the request for proposal package.

Prior to writing specifications, however, it was first necessary to prepare a detailed system design. The concept of the previous phase was expanded; each system output report was completely defined and samples of the reports were prepared; input forms were similarly designed. All files, segments of files, and data elements were defined and related to both system inputs and outputs. As each of these were prepared, they were reviewed with a team of court operating personnel who provided valuable insights into their utility and acceptability in the court environment. As a result of both the detailed design process itself, and the reviews with court personnel, changes and improvements were made, not only to the detailed design, but in some cases to the concept itself. The resulting specifications were prepared to allow the broadest range of hardware and software approaches to possible vendors, yet included specific requirements in the areas of performance and physical characteristics, reliability, maintainability, availability, construction, documentation, maintenance and support personnel and training, quality assurance and system interfaces.

d. System Acquisition and Implementation

The final steps in the Total Information System approach will be the procurement of the system's hardware, software, communications and facilities; the installation, test and operation of the system; and the training of its operating personnel. These steps will be accomplished by contractors selected through open competitive bidding based on the specifications prepared during the previous phase. Although the Chief Justice felt that before dissemination the system should be comprehensive, complete, and thoroughly tested, the pressing needs of the already overloaded Suffolk County (Boston) Court suggested the following plan: major functional elements will first be tested in a relatively inactive court (Norfolk County Superior Court in Dedham, Massachusetts). When both data processing and personnel problems have been eliminated, these elements will be introduced into Suffolk County. At the same time the next major element will be tested in the Norfolk County court. In this way the Suffolk Court will benefit from CCMS at the earliest possible time and will not face any additional problems caused by the introduction of an untested system. Following comprehensive testing CCMS operations will be expanded to the other Superior Courts throughout the state.

System Description

The most important function of the CCMS will be to provide the court's management and operational personnel, at both a local and statewide level, the ability to access a single, coordinated data base of case information (see Figure 2). This capability will be achieved through a system which contains the following major features:

a. Single Point Data Entry via Remote Terminal

All data to be entered in the CCMS will be generated through court appearances or other activities which occur in the county Superior Courts. In eight of the busiest county courts, designated Terminal Access Courts (TAC's), the clerks' and district attorneys' offices will have one or more interactive cathode ray tube (CRT) and keyboard terminals connected to a central Judicial Data Processing Center in Boston. Data on cases, defendants, court appearances, indictments, attorneys, appeals and current status will be entered directly from such locations using the on-line terminals provided. Data on courtroom events will be recorded by the clerk present using data collection forms, some of which will be preprinted with case and defendant information by the system itself. Personnel in the Clerk's Office will then enter the data from the forms into the CCMS data base using formatted displays on the terminals.
In the other six, less busy counties where on-line operation would not be cost effective, courts designated Mailed Access Courts (MAC's) will employ a more traditional manual system and will mail data to the Data Processing Center. That data will be used to produce management and statistical reports, but will not create current operational documents for those courts.

b. Establishment of a Single Data Base
The CCMS will include a single data base containing calendar, docket and participant information for 92% of the active Superior Court felony and misdemeanor appeal cases in the Commonwealth. Uniform and comprehensive statistical information on the activities of the remainder will, in addition, be contained in the central data base.

Clerks, Probation Officers, District Attorneys, Judges, Attorneys, Witnesses, Bail Bondsmen, and all court organizations and case participants will, as a result, have a central source of verified data for their use in processing the criminal caseload of the court. Once criminal case data, concerning an event, court appearance or other transaction (such as bail release, case initiation, arraignment or trial) has been entered into the data base, it will be available for the variety of daily court requirements for information (see Figure 3).

c. Case, Participant and Criminal Charge Tracking
Each participant in the Superior Court criminal case process, each criminal charge (indictment and/or appeal) and each case unit will be tracked by the system as the case moves from indictment to final disposition.

A case unit, or the aggregation of defendants and charges, which will be tried together as one entity, will be tracked by the system. Such tracking is necessary because the judge and the court generally deal with such a unit at each court appearance, rather than with an individual criminal charge or individual defendant.

Probation and certain prosecution functions, on the other hand, require dealing with individual defendants. Therefore, the CCMS will, in addition, record and track each defendant whose case or cases are before the Superior Court.

Finally, in order to meet the legal record-keeping responsibilities of the Clerk, who must maintain a complete history of the court activities affecting each separate criminal charge (indictment or appeal), the CCMS will track each such charge throughout its life in the court.

d. Preparation of Operational Reports, Notices and Calendars
The CCMS has been designed to prepare the daily, weekly and monthly reports which are required for effective court operation. Daily calendars, notices of scheduled appearances to all case participants and docket preparation are some of the currently manually prepared documents which will be produced by the CCMS. Other operational documents to be prepared include indictment and defendant index cards, jail transportation lists, probation disposition reports, attorney workload reports, prosecutor assignments and lists of overdue cases. Although many of these reports are produced by the existing manual system, the CCMS will not only provide more accurate and up-to-date reports (since they are all created from a common data base) but many of the system's outputs will contain important new data. Calendars, for example, will be organized by time of day for court appearances, will summarize the number of previous case continuances, and will identify all case participants and charges.

e. Preparation of Management Reports
A central feature of the CCMS will be the preparation of statistical and management reports for the Office of the Chief Justice, and for management personnel in the district attorney, clerk and probation offices at each county court. Included in such reports will be workload summaries and case backlog reports, listings of potential conflicts among participants scheduled for appearance, case aging reports, default summary reports, and defendant's bail and attorney reports. In addition to these regularly prepared management reports, other reports can be produced on a demand basis by authorized court management personnel. Such "demand" reports may include summaries of indictments/appeals initiated, case profiles, most serious offense and bail at arraignment reports, sentence and disposition summaries, ages of completed cases, identification of drug-related crimes, and other special reports. Such management reports will provide information on problems or potential problems to those persons who can take appropriate action such as the Chief Justice, a local presiding justice, a district attorney, court clerk or the head of the public defenders organization.

f. Remote Query Capability
From its central data base, the CCMS will provide court agencies with timely information regarding cases, participants or future schedules through a remote on-line query capability. With such a comprehensive and up-to-date source of data, court personnel may make inquiries as part of their daily operational processing of the criminal caseload or in response to inquiries from the public. In addition to the terminals in the clerks' and district attorneys' offices, a remote display terminal will also be installed in the central assignment courtroom in each Terminal Access Court so that if necessary, queries can be made during a court appearance. Within the constraints of security and privacy, queries may be made from any of these terminals on cases (indictment,
appeal or case unit number), on participants (attorney, defendant, witness) or on dates (calendar for any future date). A hard copy printout of any query response may be secured through printing equipment associated with certain terminals.

g. Privacy and Security Provisions
The design of the CCMS has included provisions for both the physical security of the system's facilities and equipment and for the controlled access to its database, either for file updates or for inquiry. These are accomplished through terminal identification, restrictions of each terminal to specific functions, and operator identification by passwords, authorization keys or identification cards. Privacy of certain CCMS data will be maintained by restricting access to lists of witnesses, and by limiting information on a defendant's case to only the county Superior Court from which the inquiry is made. Error corrections and other updates to existing data will be strictly controlled and a complete transaction log with both terminal and operator identifiers will be maintained.

Unique Features of the CCMS
The designers of the CCMS feel that several of its features are unique in court information systems. These include the use of the "case trial unit" (CTU) as the basic data focus for the collection and storage of case information, and the coordinated use of remote entry CRT terminals in the busier courts, with the use of mailed data entry, from the less active courts, into a common data base.

a. Case Trial Unit (CTU)
The use of the Case/Trial Unit (CTU) to represent a group of indictments and/or appeals and defendants which will come before the Superior Court for a trial as a group will formalize the present court practice. Arraignments, hearings, trial and dispositions are currently scheduled, rescheduled and managed on such a basis. However, no formal means of identifying the unit now exists. In the CCMS, all defendants, and all charges against those defendants which are expected to go to trial as a group, will be uniquely identified as a CTU.

As a new case enters the court, it will be assigned a self-checking CTU number by the Clerk's Office following the receipt of a CTU initiation authorization form from the Office of the District Attorney. The form will authorize the establishment of the CTU and will identify the defendant(s) and charge(s) involved.

The Clerk will maintain an individual folder for each CTU (see Figure 4), which will contain all of the indictments, complaints, bail bonds, attorney appearance forms, motions and other papers associated with that CTU as well as a copy of the CTU initiation form. Data collection forms containing the results of court appearances, such as hearings, arraignments and trial, and disposition will also be placed in the folder, so that an up-to-date file of all case papers will be available at all times.

Although the CCMS will provide computer-generated index cards for easy cross-reference between a CTU number, the associated indictment and/or appeal number(s), and the name(s), of the defendant(s), the CTU number will be the principal identifier used by the system for the court's calendar, dockets and management and statistical reports.

The number of CTU's awaiting arraignment, trial or disposition will, for the first time, provide the court with an accurate measurement of its criminal caseload. Such a measure will provide not only a better picture of the current backlog, but also provide a basis for projections of future requirements for judicial personnel, facilities and other resources.

The use of the CTU will also eliminate the need for multiple duplicate entries on case papers currently made by the assistant clerks in the courtroom and by docketing personnel in the clerk's office. It will also end the need for grouping of case papers each time a number of related indictments and/or appeals are scheduled for court appearance, followed by their separation in order to file them numerically. The CTU folder will provide a convenient, orderly means of handling papers for the use of the presiding justice and other court personnel, as well as providing a complete backup to the computer files.

The use of the CTU was introduced into routine criminal case operations at the Norfolk County Superior Court during 1973 and has been made the principal basis used in the court's criminal case calendar. The CTU number is utilized by the staffs of both the Clerk's Office and the District Attorney's Office.

The accomplishment of this initial step included the following:
(a) Conversion of the pending case files for new indictments and complaints to a "flat-filing" system. All 1974-75 criminal case entries and all 1973 entries since October 1, 1973 have been set up in the CTU format.

(b) Determinations were made by the District Attorney's Office of which indictments and defendants were to be grouped together as a CTU for purposes of court appearance and possible trial. Notification of the CTU groupings is made to the Clerk's Office by means of a numerical listing showing the related indictment numbers and defendant names.

(c) Individual CTU folders which are maintained in the Clerk's Office were established and contain all the indictments, complaints, bail bonds, attorney appearances, motions and other papers associated with the CTU. Folders and jackets were purchased for use as CTU folders and lateral filing cabinets which expedite folder storage and retrieval were installed. "Hanging" files have
been utilized to store the CTU jackets and CTU folders.

(d) A CTU numbering system was established and each CTU jacket was given a CTU number in the form of 75-XXX and the jackets are filed in numerical order.

(e) Cross-reference indicators between a defendant's name and his CTU folder were established and noted on the existing circular index maintained in the Clerk's Office. The District Attorney's CTU authorization listing was used as the cross-reference between an indictment number and the defendant's name and CTU number.

(f) CTU numbers were included on the daily criminal calendar prepared by the District Attorney's Office and were used by the Clerk's Office in preparation of the case papers for each day's court proceedings. This procedure greatly eased the task of assembling each day's needed case papers.

(g) CTU grouping of pending criminal appeals from the Norfolk County district courts were determined by the District Attorney's Office after entry of the appeal in the Norfolk Superior Court. CTU folders and jackets were established for the appeal CTU's and the appeal CTU numbers were used on the daily court calendar prepared by the District Attorney's Office.

(h) The clerical personnel in the criminal business section of the Clerk's Office were trained in the manual CCMS procedures including establishment of a CTU, preparing the unfolded case papers for insertion into the CTU folder and jacket, and retrieval and filing of CTU jackets.

b. Coordinated Data from All Courts
The CCMS will provide the Chief Justice and other court managers with much needed statistical information which will be extracted from the central data base. Some of these periodically produced statistics will cover case backlogs, defendants, attorneys, trial results and dispositions, types of offenses, bail, continuances, defaults and other summaries of court activities. These and other statistics will, in addition, be produced to meet the reporting requirements of other governmental agencies for annual reports of total Superior Court criminal caseload.

As a result of an analysis made by the project team, it was determined that the six county Superior Courts, which in 1972 produced only 8% of the total caseload, do not have sufficient volume of CTU's to justify remote terminal access to the central judicial processing center. However, the management of the Superior Court, and Statistical reports on criminal case activity require that data be acquired from all courts including these six counties. The design solution used in the CCMS involves these courts as off-line or Mailed Access Courts (MAC's). A collection form will be prepared by court personnel when a CTU is originated, to which more data is added after CTU final disposition. One copy of this form will be mailed to the Judicial Data Processing Center when the case is initiated and another copy when the case is completed. Data will be entered into a MAC data base which will then be used, together with the data entered from the eight terminal access courts (TAC's), to generate integrated monthly and annual statistical reports covering each court and the system as a whole.

Conclusion
The Court Case Management System represents a significant step forward in providing the Commonwealth of Massachusetts with the information and operational support required to improve the handling and disposition of criminal cases in the Superior Court. It will be comprised of a central data processing facility including computer, communications hardware, the system software; remote data terminals located in eight terminal access courts; mail access courts in six counties submitting and receiving data from and to the central data processing operation in a manual mode; telecommunications to provide for interactive operation of the remote data terminals; computer programs and documentation; a trained and capable staff; and the necessary facilities for system operation.

The CCMS design is a Total Information System and is the result of a deliberate, orderly process which addressed the statewide needs of the Massachusetts Superior Court and provided a carefully considered solution tailored to meet those needs.

Footnotes
2 Ibid., p. 40.
3 Honorable G. Joseph Tauro, since 1970 Chief Justice of the Massachusetts Supreme Judicial Court. He was succeeded as Chief Justice of the Superior Court by the Honorable Walter H. McLaughlin.
7 Massachusetts Superior Court Case Management System Specifications, Ibid.
Self-Assessment: Should it be adopted for real property taxation?

John R. Sherman

Associate Professor of Law, Suffolk University Law School

On December 24, 1974, the Supreme Judicial Court, by handing down its decision in Town of Sudbury and others v. Commissioner of Corporations and Taxation, and others (hereinafter Sudbury), mandated a virtual revolution in real property tax assessment practice by requiring the assessors to obey the unequivocal statutory mandate to assess real property at its fair cash value. Although Sudbury itself turns on the somewhat narrow ground of the assessors' duties under the statute, the genesis of the problem addressed in Sudbury and its predecessors is the seemingly elusive goal of equality in apportioning the real property tax burden, at the heart of which lies the assessment practice.

One court stated the requirement for equality as nothing less than complete parcel by parcel revaluation together with appropriate measures to keep the rolls current. It now appears beyond dispute that current assessment practices and tools are simply incapable of either accurately valuing real property or keeping its values current in the face of a fluctuating market. To satisfy the twin mandates of fair cash valuation and equality of tax burden, constant updating of property values, which in actuality is nothing more than constant revaluation, is essential. To accomplish this, new assessing practices must be adopted and appropriate new tools such as data processing must be introduced. A self-assessing system for real property taxation is one such new tool that warrants careful examination.

With the sole and notable exception of the real property tax, every major tax system in the United States is grounded on self-assessment. Annually, each taxpayer discloses his entire financial history for the previous year, applies the appropriate tax rate and, as so self-assessed, pays the federal and state governments their annual tax levy. Admittedly, a good piece of that levy has usually already been garnered through the check-off of payroll withholding but it is the individual tax return that finally determines the tax liability. Similarly with corporations, partnerships which file information returns, and trusts and estates where fiduciaries lay bare the transactions conducted on behalf of their beneficiaries, all compute the gains and losses and pay the tax.

Both personal generosity and death are also triggers for self-assessment. A gift in excess of the annual exclusion or the life-time exemption must be reported, its fair market value self-assessed and a tax rate applied with the resulting levy paid. On death (usually nine months after death for federal taxes and varying periods for state inheritance tax returns) the executor or administrator must undertake a comprehensive detailing of all a deceased's property and assign a fair market value to it. Further, actions taken by a deceased prior to death, often where the facts and circumstances were known only to the deceased, must be analyzed to determine tax liability for gifts in contemplation of death and gifts with retained life estates and similar transactions resulting in an estate or inheritance tax being due, often years after the transaction. This requires no small feat of judgment and ultimate self-assessment on the part of the executor or administrator. Yet, it is routinely done each year for thousands of deceased's estates.

Contrast this self-assessment, outlined above only in the barest skeleton, with present procedure in the real property tax system. In the income, estate, gift and inheritance tax systems (and in a less comprehensive but equally pervasive way in the state sales tax system as well) all the information, computations, valuations, assessments and levy, i.e., actual payment submitted based on what the taxpayer claims to owe, come from the taxpayer. The administrators of the tax system have a collecting, reviewing, auditing and, where a dispute arises, litigating function. Interestingly, in the event of a dispute, it is the taxing authorities that initiate the action, disallow claimed deductions or refuse to accept claimed values and generally
question the taxpayer-developed figures and assessment. In all these functions the tax administrators start with, react to, and accept or reject the taxpayer-developed data.

The real property tax system is quite another matter. In fact it is the exact reverse of the other major tax systems. Here the tax administrators develop all the data to levy the tax on each taxpayer. The taxpayer has no input unless he disputes the tax bill. In the event of a dispute, it is the taxpayer who must react to the assessors' data, figures, values and assessment. With real property taxes, the party having the best, sometimes the only, knowledge of the property and data on which an assessment is based is passive until the assessment is made. Then, except to pay the bill, the property owner plays no role unless there is a dispute. In that case, he reacts to the assessor-developed levy by perhaps bringing to bear information and judgments that were not available to or were not made available to the assessors originally. The taxpayer reacts to an assessment in which he played no meaningful role with data which the assessors did not have and which, had they had it, might have caused them to make an entirely different assessment. This topsy-turvy arrangement places the initial burden on the tax administrators who are perforce ill-equipped to bear it and shut out the taxpayer at the point where he is best equipped. Unlike the self-assessing system which requires the taxpayer to make the initial disclosures and judgments about his property from his own data and knowledge to which the tax administrators then react, the real property system requires judgments based on what the assessors can find out about the property. In the event of a dispute, the assessors must defend their judgment against a taxpayer reaction which may bring forth other data and judgments to which the assessors were not originally privy.

By placing the onus on the tax administrators to develop the data and determine the fair cash value initially, the present system virtually guarantees failure to produce fair cash value assessments. No reasonable or affordable number of assessors can ever visit, study and meaningfully evaluate all the property in any but the very smallest locale each year or even, for that matter, each decade. Herein lies the rub between present assessing practices and the statutory expression of the constitutional requirement of equality in property taxation.
If we were to posit a self-assessing system of real property taxation, what might it look like? Such a system could, or course, accommodate multiple variations in response to local needs and peculiarities, but its basic outline would not vary substantially from the system used now for all other major taxes.

Fundamentally, a self-assessing real property tax system would require a property owner to file an annual real estate tax return on a form designed by the tax administrators, in most instances the local assessor. This could be done at the state level if the system were centralized and unified on a state-wide basis. On such a return, the owner would disclose all pertinent information about the property, declare its fair cash value, assess the tax due based on the prevailing tax rate and mail the completed form together with payment to the taxing authority. Obviously, the form used would require careful design to elicit sufficient pertinent information to permit review, audit and evaluation of the return.

Inasmuch as the tax rate is a function of the total taxable real property value and the revenue needed to balance the local budget, the rate usually cannot be set until both the total value of taxable real property and the budget are established. This problem is hardly insurmountable and could be handled by requiring an information return a year in advance of the inauguration of the program in order that an accurate picture of the overall fair cash value of the locale can be computed and the tax rate for the succeeding year announced. Indeed, if announcing the tax rate in advance of the known current fair cash value became a problem, the self-assessing system would still function except that the taxpayer returns would be informational only with a bill mailed later, based on the fair cash value as disclosed by the returns. Such a two-step process would hardly impair the operation of the system.

Once a self-assessing system was adopted, a wide variety of options would be available to the administrators. For example, the taxpayer could be offered a choice of methods for determining the value of his property, i.e., replacement cost, reproduction cost, comparable sales data basis or rental income with different schedules and information required for each method to support the final declared value. Once a taxpayer chose a particular method, he would not be permitted to switch methods without the prior permission of the taxing authorities, much as one may not switch accounting of depreciation methods for federal tax purposes without the permission of the Commissioner of Internal Revenue.

Still another variation might be to require the taxpayer to adopt the same method of depreciation and the same expenses used for his income taxes if the capitalization of income method of valuation were chosen, as it almost certainly would be for commercial and apartment house property. Indeed, under a self-assessing system the capitalization method could be mandated for such properties. This variation would eliminate the current situation where one method of depreciation and total expenses may well be used for income taxation and quite another for the real property tax.

A still further variation has been adopted by Pierce County in the state of Washington. There a program called T.A.P.E.S. (Taxpayer Assisted Property Evaluation System) had been in operation as a pilot program for approximately one year and has now been adopted by the county on a permanent basis and by several other counties on a trial basis. T.A.P.E.S. is actually a modified self-assessment program. There the county assessors send each taxpayer a computerized report on his property including the physical and other bases for the assessed value. If the taxpayer accepts the description and value, he signs the report and sends it back. If he disputes any part of it, the taxpayer notes the disputed part, returns the form and is visited by an assessor to resolve the dispute. In the trial county, compliance has been well over 90% with attendant economies in the operation of the assessors' office.

Whatever variations and mechanical options are finally decided on by local administrators or by a centralized state-administered program, a self-assessing system would establish the initial flow of information from the taxpayer to the tax administrator who would then have the same review, audit and possible collection function as the authorities handling our other tax systems. Thus would be eliminated the virtually impossible task of a relatively few assessors (many of them part-time) attempting to keep a current valuation on all the property in a city or town. The available assessors (hopefully all full-time) could then concentrate on reviewing, auditing and analyzing taxpayer returns. The availability of computer technology (the adaptability of this to real property taxation is obvious from its use in almost all other tax systems) would further simplify and accelerate the review and audit process. In short, a self-assessing system would make it possible for the assessors to at least approximate the standards of fair cash value and equality of real property tax burden. Further, the economy and efficiency of self-assessment would permit the assessors themselves to devote time and attention to those properties requiring specialized or detailed analysis.

Finally, a word is in order regarding compliance under a self-assessing system. Those who feel that to allow taxpayers to self-assess is to invite wholesale under-assessment, in other words fraud, should note that virtually every dollar raised in this country from income, estate, gift and sales taxes, is raised through self-assessment based on self-disclosure. If the overwhelming majority of American taxpayers were not basically and substantially honest in reporting their income and assessing a tax on it, the system, both state and federal, would long ago have broken down. There is no reason to believe that the manifest honesty of taxpayers in every other major American tax system will not carry over into a real property tax system based on the same kind of self-assessment.

In the cases of the few who do cheat, and unfortunately some always will, the tax administrators would hardly be powerless. All assessors now have fairly complete records and physical descriptions of the property in their jurisdiction. Computerizing these descriptions, as was done in the Washington state T.A.P.E.S. program described above, would provide an immediate check on any return. A return that varied materially from the records would be an immediate target for audit. Similarly, any property for which a return was not filed would be disclosed. Further, computerizing each year's returns would quickly build a readily available record not only for each parcel but for city-wide studies as well.

Additionally, the usual techniques of spot audit and audit of unusual properties or properties with a history of disputed or even fraudulent returns would be available. All of this, of course, should ultimately be backed by a system of criminal penalties for false and fraudulent returns such as now underlie the income and other self-assessed taxes.

The nature of real property valuation could lead to deliberate undervaluation of an amount that, while not enough to trigger an audit, would amount over a
period of time to substantial underpayment of property tax. The degree of undervaluation in this instance would directly depend on the sophistication of the audit techniques available to the tax administrators. However, such an abuse could be attacked by taxing at a punitive or penalty rate the difference between the last valuation of the property for property tax purposes and the sale price of that property. A further extension of this would apply the punitive or penalty rates to the estate of a deceased who had undervalued his property in the year before death. The apparently obvious device of raising the valuation in the year before an intended sale to escape the tax penalty from prior undervaluation ought to be thwarted in most cases by the computer triggering an audit based on the sudden, one-shot increase in valuation.

To be certain, some fraud will exist and of that some will be successful since no tax system is airtight. However, it is completely unrealistic to assume that a self-assessing system will be rampant with fraud. Of course, a vigorous and well-publicized enforcement program is essential to any tax system, no less for self-assessed real property taxes than for our other major tax systems.

Although the questions of valuation involved in real property taxation are difficult, occasionally complex, and require a good deal of judgment, there is no reason to believe that a taxpayer qua taxpayer is not as capable of valuing his own property for an annual tax return as that same taxpayer qua seller is of valuing it for sale purposes. It is an unusual owner who has no opinion as to the value of his property. Indeed most have an opinion that, if honestly and fairly expressed, is surprisingly close to the property’s market or fair cash value. Such an opinion can be expressed as readily on an annual tax return as at the time of sale. Further, no one is as aware of the changing conditions of a property, its neighborhood, its use or its economy as the owner. If that owner discloses such knowledge each year in a tax return, the tax administrator will have current, realistic and meaningful information upon which to base the tax rate and administer the real property tax system. The tax administrators must have such information to support the statutory requirement of fair cash valuation and the constitutional requirement of equality of property tax burden. The present procedures are demonstratably inadequate to such a degree that no amount of tinkering or bandaid legislation will cure them. We should instead look to our other major tax systems and seriously consider the merits of self-assessment: A new/old procedure with much to offer.

Footnotes

1. 74 A.S. 2405 (Mass.).
The past decade has been one of increased discussion and activity concerning the problems of lawyer discipline. In 1964, the American Bar Association House of Delegates [hereinafter the ABA House of Delegates] impaneled the Special Committee on Evaluation of Ethical Standards to examine the Canons of Ethics in effect since 1908. The work of this committee resulted in the Code of Professional Responsibility, consisting of Canons of Ethics, Ethical Considerations, and Disciplinary Rules, which was adopted by the ABA House of Delegates in 1969.

Somewhat contemporaneous with these efforts were those of the American Bar Association Special Committee on Evaluation of Disciplinary Enforcement impaneled in 1967. This committee, chaired by former United States Supreme Court Associate Justice Tom C. Clark [hereinafter the Clark Committee], engaged in an extensive survey of disciplinary problems existent throughout the United States. From the results of regional hearings and questionnaires, the Clark Committee compiled a list of thirty-six problem areas in the field of lawyer discipline. The report of the Clark Committee [hereinafter the Clark Report], adopted unanimously by the ABA House of Delegates, disclosed the “existence of a scandalous situation that requires the immediate attention of the profession.”1

The Clark Report called for a centralized, adequately financed, professionally staffed, properly rotated disciplinary agency. The Report noted that the discipline system should provide informal admonitory procedures, resignation provisions, reciprocal discipline, stricter reinstatement standards, provisions for handling incapacitated attorneys and for the elimination of unnecessary formalities.

The adoption of the Clark Report, with its purposely pointed language, was followed by the creation of the American Bar Association Special Committee on National Coordination of Disciplinary Enforcement which was to be concerned with the prompt implementation of the Clark Report. Various states also impaneled their own committees to study the Clark Report and its application to their respective jurisdictions.

The Massachusetts Bar Association appointed a Committee on Professional Responsibility, chaired by Monroe L. Inker, Esq., which noted fifteen problem areas enumerated in the Clark Report present in Massachusetts.2 The Bar Association petitioned the Supreme Judicial Court in 1970 for unification of the Massachusetts bar asserting, among other things, that an integrated bar would provide the centralized structure recommended by the Clark Committee through which the disciplinary problems could be confronted.

The Supreme Judicial Court acted in June, 1974, by rescinding paragraph six of Supreme Judicial Court Rule 3:013 and promulgating Chapter Four4, effective September 1, 1974. Pursuant to the Court’s power to supervise the conduct of attorneys, Chapter Four creates the Board of Bar Overseers to regulate the conduct and discipline of all attorneys "admitted to, or engaging in the practice of, law in this Commonwealth."5

I. Structure

The Court through Chapter Four has addressed the recommendations of the Clark Committee in a most comprehensive manner. Chapter Four of the Supreme Judicial Court Rules [hereinafter the Bar Rules] provides for the appointment of nine members to the Board of Bar Overseers [hereinafter the Board] with the power to select a Bar Counsel, "such assistants as may be required,"6 and hearing committees in the six designated districts.

The creation of the Board establishes a centralized system of discipline impossible under a fragmented structure of individualized bar associations. Though the Board and the hearing committees serve on a voluntary basis, the Court has addressed the problem of inadequately
financed disciplinary agencies by providing that the Bar Counsel, assistants, and staff will be full-time, salaried positions.

The appointments to the Board initially are for one, two or three years; subsequent appointments are for three-year periods with a two consecutive term limit. This provides for the continued presence of some experienced Board members, yet prevents personal domination by extended seniority. Appointments to the two hearing committees per district are regulated in a similar manner. An appointee may be returned to the Board or hearing committee after a one-year absence from membership.

This simple structure which includes the Supreme Judicial Court, the Disciplinary Board, the Bar Counsel, and the hearing committees is even less cumbersome than the structure recommended by the Clark Committee. The Court has merged the Inquiry Committee and the Formal Hearing Committee into the one Hearing Committee which performs both functions. Enabling the Board to appoint necessary assistant counsel, appointments being approved by the Court, allows for an adequate staff to operate effectively.

II. Substantive Rules
The Court has declared through Supreme Judicial Court Rule 3:22 that the Canons of Ethics and Disciplinary Rules (as appear in the ABA Code of Professional Responsibility), with certain noted exceptions, shall govern the conduct of attorneys in the Commonwealth. The Ethical Considerations attached thereto are expressly excluded by the Court. In addition, the act need not be committed in relation to a court proceeding or an attorney-client relationship to be a violation under Rule 3:22.

III. Procedure
The complaint process, as enumerated in the Bar Rules and in the Rules of the Board of Bar Overseers, may be initiated by a complainant or by the Board itself. Though the complainant is immune from liability based on complaints made in good faith, if he or she refuses to sign the complaint, the Board may proceed without the complaint. Moreover, investigations may be commenced upon receipt of information concerning infractions from any source, be it client, lawyer, judge, or public media.

The Bar Counsel and his staff, after conducting an investigation of the complaint, will recommend to the hearing committee dismissal, informal admonition, private reprimand, or formal charges. The committee may accept or modify the recommendations. If either the Bar Counsel or the respondent attorney is unsatisfied with the committee's decision, they have recourse through the Board. The Bar Counsel may appeal a dismissal, an informal admonition, or a reprimand from the hearing committee; the respondent attorney may refuse an informal admonition and demand that formal charges be brought against him.

The Board may affirm the hearing committee's findings or designate a different hearing committee to hear the formal charges, with notice to the respondent attorney, in accordance with its own discretion or a respondent attorney's demand. Both the Bar Counsel and the respondent attorney have power to subpoena witnesses.

In cases where civil or criminal proceedings are pending concerning similar material allegations, the Board, in its discretion, may, for good cause, postpone the proceeding. If the respondent attorney is acquitted the Board may continue its proceeding. On the other hand, if the respondent attorney is convicted, he shall be ordered to show cause why he should not be immediately suspended. Further, a certificate of conviction for a "serious crime, " defined in Rule 4:01 § 12, shall be conclusive evidence of guilt in any proceeding based on the conviction. Although a reversal will mean reinstatement, it will not necessarily mean an end to the proceeding.

The Board may accept or modify this hearing committee's determination or it may set dates for additional hearings or submission of briefs at the objection of either the Bar Counsel or the respondent attorney. If public censure, suspension, or disbarment is the finding of the Board, an information together with the entire record is filed with the Clerk of the Court for Suffolk County.

An attorney may, at any time, terminate the proceeding to save time and expense by submitting his resignation coupled with an affidavit admitting the implications of his resignation, his knowledge of the proceedings, and the truth of the allegations. A resignation without an affidavit does not comply with the Bar Rules and is insufficient to terminate the proceeding. This will prohibit the practice of instituting reinstatement procedures shortly after resignation with no clear proof of guilt. The Board's order, accepting his resignation, is public, although the affidavit is confidential. Actually, all proceedings are confidential unless made public per order of the Court, by demand of the respondent attorney, or because the proceeding is predicated on a conviction for a crime.

The Bar Rules provide for reciprocal action if an attorney has been disciplined in another jurisdiction, and procedures to notify other jurisdictions of discipline in this Commonwealth.

The Bar Rules further enable the Board to suspend attorneys judicially declared incompetent, or incapacitated by mental infirmity, or addiction to drugs or intoxicants. Where an attorney has been suspended under this section, dies, or disappears, the Court may appoint an attorney to attend to the affairs of the former clients when no other "partner, executor, or other responsible party" is available.

Once suspended for incompetence or incapacity, an attorney may apply for reinstatement on an annual basis or as the Court permits, whereas in other cases of suspension or disbarment, an attorney may not petition the Court for a period of five years unless otherwise directed by the Court. The burden in reinstatement is on the petitioner to affirmatively show to the hearing committee, designated by the Board, that he has the "moral qualifications, competency, and learning in the law required for admission to practice law in this Commonwealth."

IV. Resources
In order to finance the expenses of the Board and the salaries of the Bar Counsel, assistant Bar Counsel, staff, and the Clients' Security Fund, an assessment of twenty dollars per attorney will be collected from all attorneys in the Commonwealth. The registration procedure through which this assessment is collected also furnishes, for the first time, an accurate figure of the number of attorneys practicing in the state. As of this writing, approximately 15,000 attorneys of the approximately 17,500, for which the Board has names and addresses, have been assessed. Original estimates in the order of 12,000 to 13,000 have obviously been surpassed, making the registration an unexpected burden. Prior to the Bar Rules, notation was made of admission to the bar, but no subsequent records were kept.

The registration will be an annual obligation. Although the assessment will not be levied on inactive members, even they will be required to register for at least three years after assuming inactive status. A member may maintain inactive status by meeting the registration re-
quirement. Though he may not practice before the bar while inactive, he may regain active status by paying the assessment to the Clients' Security Fund, which is managed by the five member Clients' Security Board created by Bar Rule 4:04. The Fund's purpose is to "discharge, as far as practicable and in a reasonable manner, the collective professional responsibility of the members of the Massachusetts bar with respect to losses caused to the public by defalcations by members of the bar..." This figure is presently expected to expand to $100,000 in the future.

The Board currently has three Bar Counsel and twelve hearing committees, two per district. Whether this number is sufficient is yet to be proven. There is an estimated backlog of approximately 600 cases acquired from various grievance committees which places an immediate burden on the Board's operations.

Additional hearing committees and counsel may be required to meet these demands and those unforeseen at the present time. The hearing committees are operating without reimbursement; supplementary committees may be necessary should this become an excessive strain on the attorneys daily obligations. Pennsylvania, which has a comparable disciplinary structure, employs eight prosecuting counsel to satisfy its needs.

Ultimately, the Board must win the confidence of the bar and the public. Whether additional publicity, training programs, educational seminars, or speeches will be beneficial or detrimental to the Board's operation is a question yet to be resolved.16

The Bar Rules extensively incorporate the recommendations of the Clark Committee in providing for a well funded, professionally staffed, reasonably flexible disciplinary organization. It would appear that the Board of Bar Overseers has the qualities necessary to succeed in its purpose.

Footnotes

3. The introduction of Chapter Four of the Supreme Judicial Court Rules explains that paragraph six of Rule 3:01 is not rescinded "...as to matters which may validly be dealt with only under that rule...
4. Chapter Four is an additional section available in the 1975 edition of the Massachusetts Supreme Judicial Court Rules.
6. Id. § 5.
7. The exceptions stated in Rule 3:22(5) are as follows:
   (1) DR1-102(A) (3) not adopted.
   (2) DR 1-103(A) not adopted.
   (3) DR 2-103(D) (5) adopted in amended form as follows: beginning at line 3 delete the words 'at the time of the rendition of the services.'
   (4) DR 2-106(B) adopted in amended form as follows: at line 2, between the words 'prudence' and 'would' insert the words, 'experienced in the area of the law involved,' at line 4, between the words 'is' and 'in' insert the word 'substantially.'
   (5) DR 2-106(C) adopted in amended form as follows: beginning at line 3 delete the words 'for representing a defendant in a criminal case' and substitute the words 'except as permitted by Supreme Judicial Court Rule 3:14.'
   (6) DR 2-107(A) (5) adopted in amended form as follows: at line 1 delete the word 'clearly.'
   Adopted Oct. 2, 1972."
8. The ABA Code of Professional Responsibility consists of three types of provisions. Nine Canons of Ethics express the general standards of performance in the profession. The Ethical Considerations, derived from the Canons, are ideals to which a lawyer should strive. These provide guidance in many situations. The Disciplinary Rules, also derived from the Canons, are black letter principles marking a minimum level of conduct.
9. The Board of Bar Overseers issued on November 6, 1974, the "Rules of the Board of Bar Overseers," printed by the Massachusetts Lawyers Diary and Manual, Newark, New Jersey. The Board Rules provide a specific and extensive guide to procedures to be followed and are available from the Board of Bar Overseers, Box 797, Boston, Massachusetts, 02102.
10. Complaint forms (now BBO-1) (Complaint Against Attorney) should be available through clerks of court in the various districts. If the clerks as yet do not have any forms, they are available from the Board at Box 797, Boston, Massachusetts, 02102. The Board is located at 1 Winthrop Square, Boston, Massachusetts and the telephone number recently has been changed to (617) 426-8999.
11. Mass. Sup. Jud. Ct. R. 4:01 § 12(2) provides that a "'serious crime' shall include (a) any felony, and (b) any lesser crime involving conduct of an attorney demonstrating unfitness to practice as a lawyer,... which includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy, or solicitation of another, to commit a 'serious crime.'"
12. Id. § 20(2) states that relevant information will be available to "authorizes agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice or considering reciprocal disciplinary action, or to law enforcement agencies investigating qualifications for government employment where discipline under this Chapter Four has been imposed, or, except as the court may direct, where the proceedings are pending and the Board in its discretion believes disclosure is warranted."
13. Id. § 14(1).
14. Id. § 18(4).
16. The Board as of this writing has not embarked on a campaign to inform the legal community or the general public of its existence or its procedures through extensive publicity.
In 1970, the Massachusetts legislature determined that a serious imbalance existed in the relationship of apartment supply and demand. Especially in metropolitan Boston, the vacancy rate was so low that the effect was a condition of constantly rising rents. This, in addition to the general pressure of inflation, promised to create an unbearable situation for residents of the Commonwealth. The legislature termed the condition "a serious emergency detrimental to the public peace, health, safety and convenience," and took the bold step of passing the rent control enabling act as an emergency law.

This article will consider just how bold this step was, and will discuss the approach which various rent control boards have taken in applying the law, as well as making an evaluation of the effectiveness of the program and its long term effect on the community.

The Mass. Rule
Since this article will frequently refer to the Massachusetts law, it will be helpful for the reader to have some understanding of its provisions. It is an act which enables towns with a population of fifty thousand or over, and all cities to adopt a rent control program as outlined in the statute. The method of adoption is approval by majority vote of the city council or town meeting. At the time of local adoption, the adopting body determines whether rent control will be administered by a board or an administrator. The appointee(s) then recruit a staff to administer rent control for that community. The program covers all houses, apartments, and rooms offered for rent as dwellings, except: those offered to transient guests, those managed or regulated by the government, two and three family houses which are owner-occupied, units above a rent level stipulated by the community (luxury apts.), and all dwellings on which construction was completed since 1/1/69. Any class of dwelling may be removed from control if the board (administrator) determines that the demand for such units has been met and that the need for control no longer exists.

The benchmark "maximum rent" is the rent charged six months prior to adoption of the act by the municipality. That limit may be adjusted upward or downward by the rent control board (administrator) to assure that rents yield to landlords a "fair net operating income" (FNOI). Adjustments may be made for such reasons as an increase or decrease in property taxes, operating expenses, living space, services offered, or any substantial change in overall quality of the dwelling. Notwithstanding the above, a rent increase petition by the landlord may be rejected if the property does not conform to the state sanitary code or any municipal codes, and it may reject a rent decrease petition of a tenant who wrongfully withholds rent.

The statute protects tenants from retaliatory eviction by requiring the landlord to petition the board (administrator) for approval of his "rightful" eviction.

The statute provides that the state department of community affairs will establish a bureau of rental housing to assist municipalities to set up their programs, and to ensure that the program is administered according to the intent of the act. (Such a bureau has never been created, and is a topic of discussion below.)

Judicial review of a rent control decision is available to an aggrieved landlord or tenant in a district court having original jurisdiction. On the other hand, landlords and tenants are subject to criminal prosecution for violating any provisions of the act, or supplying false information.

The act was to expire on April 1, 1975, but in June, 1974, was extended to December 31, 1975.

Constitutionality
Rent control is not a novel solution to a housing shortage and its resultant high rents. Such controls were imposed temporarily in New York City after WW I, nationwide during and after WW II, and in various cities since the 1940's as conditions have warranted. Presently, the only major cities in the country with rent control are New York City and (metropolitan) Boston.
On each occasion that a legislature has enacted a rent control statute, landlords have brought litigation challenging the constitutionality of the controls. They have maintained that their constitutionally granted rights have been violated by the legislative interference in their enjoyment of property and the right to make contracts. Specifically, landlords rely upon the three following constitutional grounds:

"No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (emphasis added)

"... nor shall any state . . . deny to any person within its jurisdiction the equal protection of the law." (emphasis added)

"No state shall . . . pass any . . . law impairing the obligation of contracts." (emphasis added)

The areas in the rent control statutes which are claimed to deprive landlords of the above rights are numerous and varied, and involve nearly every section of the statute and its execution.

**Due Process of Law**

Landlords contend that their rights to due process of law have been violated by the statute’s mandating a six month rollback of rent without any opportunity for a hearing. The courts have held as a general proposition the distinction between personal rights and property rights. Although an individual may not be deprived of personal rights without a hearing, where taxation or regulation of property is all that is involved, the lack of a hearing before the regulatory decree will not violate the right to due process of law. As long as there is the opportunity to appeal the ruling on a case, the right to due process is satisfied. As a practical matter, to allow each landlord the right to contest the ruling in his case before it would become effective would defeat the purpose of rent control, which was enacted to deal with a current emergency.

**Taking of Property Without Just Compensation**

Landlords in *Bowles v. Willingham,* challenging the WWII federal rent control act maintained that the statutory limitation of their property rights constituted a taking of property for public use without just compensation, prohibited by the fifth amendment to the Constitution of the United States. The court determined that such regulation did not constitute a taking, in that the landlord is free to sell the property, secure the units to his own personal or family use, convert the property to a non-housing use, or to destroy the structure and rebuild for any other purpose. The court further held that the notion that property rights are exempt from legislation is contradicted not only by the doctrine of eminent domain, under which property taken is paid for, but also by that of the police power in its proper sense, under which property rights may be limited, and to that extent taken, without payment.

**Equal Protection Of The Law**

Classifications of housing types which will, or will not be regulated, and definitions of terms and standards which the local board will use to apply the law are generally attacked by landlords on the grounds of violation of equal protection of the law. Classifications which are defined clearly have been challenged for arbitrariness, in that they regulate a certain class, and exclude all others from the burden (or opportunity) of rent control. Three classifications in ch. 842/ch. 843 have been attacked by landlords in *Marital House, Inc. v. Rent Control Bd. of Brookline* on this
ground. First, the provision that the statute may be adopted by all cities, and by towns with a population over 50 thousand, excludes the smaller towns from the opportunity of adopting it, and on that basis is alleged to deprive small towns of equal protection of the law. Second, 2 and 3 family owner-occupied dwellings are exempt from control under the general enabling act, ch. 842, but Brookline's enabling act, ch. 843, allows them to be controlled. Brookline landlords felt this unfair and a violation of their right to equal protection.

Third, landlords complained that setting the rollback date 6 months prior to local adoption would result in varying standards from one community to the next, as one community may adopt the act several years after another. Further, when the classification or definition is stated so as to allow flexibility to the local board, plaintiffs attack its "vagueness" or "indefiniteness", claiming that they will be deprived of equal protection when each local authority interprets and applies the law in a manner unique to that community. Examples of such terms are "fair net operating income", which is defined very generally, and "luxury", which is not defined at all, except that the local authority cannot classify more than 25% of the housing units exempt from regulation as luxury apartments.

The above classifications all withstand the claims of arbitrariness or vagueness, because the courts indulge every presumption in favor of legislative enactments. Provided that the provisions in the law are founded upon some plausible rationale, they will not be objectionable to the courts. A statute is considered arbitrary if not resting on some ground . . . having a fair and substantial relation to the object of the legislation. Conversely, there is no arbitrary discrimination in a classification which is rational in scope and effect and bears some manifest relation to the main object sought to be accomplished. Such classification does not create inequity before the law.  

Impairing The Obligations Of Contracts

Landlords have also contended that the rollback of rents has impaired their contract rights, as protected by Article I of the Constitution of the United States (above). Such impairment allegedly arises when the dwelling has been leased sometime during the rollback period at a rate higher than that charged on the rollback date. Upon such challenge, the Supreme Court responded that "federal regulation of a future action based on rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it."  

Police Power

Rent control legislation has weathered the numerous challenges to constitutionality because its authority is derived from the sovereign police power of each state, when enacted by the state, or from the emergency regulatory powers of Congress, when enacted federally. Within the police power of the state is the authority to regulate the relative rights and duties of all within its jurisdiction for the purposes of promoting the common good, or guarding the public morals, safety, or health. In doing so, the state has the discretion to devise means to achieve its stated goals.  

Although the Constitution of the United States protects the private right to enjoyment of property and to make contracts as a general rule, the private right must yield to public necessity when the general welfare is threatened. A member of the class which is regulated may suffer economic losses not shared by others. His property may depreciate in value as a consequence of regulation, but that has never been a barrier to the exercise of the police power. Exercise of the police power is an unconstitutional interference with private rights only if its means are arbitrary, discriminatory, or irrelevant to a policy the legislature is free to adopt.

Application of the Law

Since 1970, the communities of Boston, Brookline, Cambridge, Lynn, and Somerville have adopted rent control as a solution to their local housing "emergencies". Lynn revoked its acceptance of rent control in June, 1974. The other four communities expect the need for an extension of rent control beyond 1975.

In Brookline and Cambridge, where statistics are available, the directors have suggested that a 5% apartment vacancy rate is a healthy supply/demand balance. During the late 1960's and to the present, the vacancy rate has been under 2%. This certainly reinforces their expectation that the need for regulation in this area will likely continue past 1975.

If rent control is to be extended beyond 1975 in Cambridge or Somerville, some legislative enactment will be necessary; either another extension of ch. 842 or a newly drafted statute. The reason Brookline and Boston are missing from the above is that ch. 843 and ch. 863 of the Acts of 1970, which apply specifically to Brookline and Boston, have no expiration date. They thereby are effective until it is determined that the "emergency" no longer exists.

The reader will recall that a contention of the plaintiffs in Marshall House was that the indefiniteness of criteria to be evaluated by local authorities in determining "fair net operating income" (FNOI) would result in differing applications of "fairness" from one community to the next. That prediction has come true; however, the author is not convinced that the variations, in most cases, have resulted in regulation contrary to the spirit of the statute. In Boston, Brookline, Cambridge, and Somerville, the local authority has published its set of criteria and formulas used to determine FNOI, to make public what rent adjustment they feel will be a fair one in a given situation. Although each community's approach to determining fair income is different, the variations in the resultant rent adjustment fall within a narrow range, and serve only to illustrate the slightly different estimation which each community has for what constitutes a fair income to property owners in that community.

One ought to recognize at this stage that the FNOI determined in any particular case is generally not considered "fair" by anyone other than the officer himself. Legislative committee hearings at the state house during the week of 3/17/75 indicated a clear polarity on this issue between landlords and tenants. Landlords, who have invested capital in their properties, expect a return commensurate with the degree of risk assumed. Considering that the bond market has been offering 8%-10% return on a guaranteed low risk investment, landlords feel that a 10%-15% return on this medium to high risk investment is easily justified and is therefore their just due. Tenants, on the other hand, frequently feel betrayed by rent control when any rent increase is allowed. It seems that in many cases, their estimation of a "fair" income is that income which will result from a permanently frozen rent. The rent control officer generally sets FNOI about half way between the goals of the two factions, and hence does not make either side very happy.
Has Rent Control Worked?

In order to properly answer the question, we must make a determination of the desired outcome, then measure performance to that goal. The legislation was enacted, ostensibly, to combat the danger of the housing shortage. During a temporary period of emergency, price regulation would be imposed during which time solutions ought to appear to relieve the shortage. The legislation contained the solution which has been traditional in rent control statutes; that new construction is exempt from rent control, a stimulus to investors to construct apartment houses. In conclusion, it seems that the goal was, first, to protect tenants from unfair rent increases during the temporary emergency, and second, to stimulate building construction during the period in order to eliminate the shortage.

To address the first measure above, the reader will recall from earlier discussions that in all but one community, rents have been controlled conscientiously in the pursuit of a fair income to the landlord and a fair rent from the tenant. In this area there generally cannot be much argument about the success of the program. However, as noted earlier, the statute provided that the state department of community affairs would establish a bureau of rental housing which would perform the dual function of assisting and policing the local rent boards in their execution of the statute. It must be noted that in each state budget since the act's adoption in 1970, there has been no funding to establish such a bureau. Such lack of follow-through must be construed as the nadir of legislative irresponsibility. The history of rent control in Lynn is one area where the bureau could have performed an invaluable service in the public interest. The bureau could presently be analyzing means to help solve the current housing shortage, as was contemplated in ch. 842.

Performance against the second measure of success, that of stimulating an increase in the medium priced apartment stock, is a matter for more lengthy consideration. As mentioned above, the exemption of new construction from regulation has traditionally been used as a stimulus to investors to construct apartments. However, one must remember that this is not a period in which traditional economic stimuli have achieved their desired result. During the past four years, construction costs have increased so greatly that it is no longer an attractive investment to construct a quality apartment building (or complex) and offer rentals in the medium price range, the area where the greatest shortage exists. Note that the new wave in "apartment" construction has been condominiums; under present economies and tax structures, they represent a more attractive undertaking to the investor than apartments. While it can be assumed that most buyers of lower priced condominiums are former renters of medium priced apartments, and have left apartments vacant upon their moves to the condominiums, the prevailing apartment vacancy rate under 2% tells us that the construction rate is just not fast enough. It appears that against this second measure of success, the statute has achieved only a stalemate; we are no closer to a free enterprise housing market now than we were in 1970 when the statute was enacted.

Impact on the Community

Upon considering the advantages and disadvantages to landlord and tenant, it is apparent that the program benefits the tenant by keeping rents down, and poses the disadvantage to the landlord of regulating his business and limiting his income. There are, however, numerous other subtle effects that the regulation is having upon the parties concerned.

The tenant who was paying a fair rent in 1970 virtually has only benefits from rent control. First, his rent is fixed; it can only be increased after the landlord petitions the local authority, showing expense increases and just cause. The second benefit to the tenant is that when the landlord petitions for a rent increase, the local authority will frequently inspect the apartment and will require the landlord to correct any deficiencies in the building before the rent adjustment is made.

Tenants who paid less than fair rent in 1970, however, may encounter some problem with rent control, because the effect of the program is to equalize the rent structure. For example, if a landlord has ten apartments of equal quality and size in a building, and he validly petitions for a rent increase, he will likely be awarded a maximum rent which is equal for all the apartments. If one of the tenants is a relative, who is paying a low rent, or an elderly couple to whom the landlord has been reluctant to charge a higher rent, he must now decide whether to absorb the increased cost personally, or increase the rent to a favored party to a "fair" level.

The landlord benefits from rent control in at least two ways. First, the local authority frequently employs the "carrot before the donkey" approach in allowing rent increases, especially in Brookline. That is, upon performing specified improvements to the property, a rent adjustment is granted. The landlord is enticed to maintain and improve his property for current income com-
pensation by rent increase, but also benefits by enhancing the value of his investment. Secondly, rent control authorities sometimes advise a landlord, generally a small property owner, that he is charging less than fair value for his units, and will allow him a maximum rent level higher than the current rate. It must be noted that these two subtle benefits to landlords are generally only realized during a short term of control.

During an extended period of control, however, the landlord may suffer serious economic disadvantages. Inherent in controlling rent is the local authority's policy decision in determining the level of income which is a fair net operating income. One must note, however, that what is deemed fair during a period of regulation and public emergency may not be considered fair in an open market environment in which the supply and demand forces are fairly equal. Consider the posture taken in an amicus curiae brief submitted by the city of Boston in the Marshall House case. It suggested that the flexibility provided by the statute allowed the community to watch its FNOI policy (and rate of return policy), and if they become so stringent that landlords are selling out in favor of other areas of investment, the authority can loosen its standards and allow (greater) rent increases.

Such a strict policy during the moderate duration of ch. 842 is understandable. One could interpret the administrator's intent as subjecting the landlords to a period of austerity during a temporary emergency. An important factor to consider is the duration over which property revenues can be stringently regulated before serious deterioration of the housing stock occurs. The fundamental point here is that although the administrator's plan was to set FNOI at a low level, relying upon a trend of landlord sellout as a warning, the danger is that such a trend is likely not to emerge until serious harm has been inflicted upon the housing stock. The disposition of the landlord toward his investment is significantly different than that of a stockholder or bondholder. The latter has the option to call his broker and unload a lackluster investment in favor of something more attractive. The landlord's market is much less fluid. By and large, during the early stages of regulation he will accept a diminishing return, and possibly reduce expenses by reducing the frequency of maintenance and postponing repairs, with the hope that the controls will soon pass and he will be restored to the prior fair market level of income. If he finally decides to sell out of the housing market, the physical and financial condition of his investment have deteriorated to the extent that he would suffer a substantial loss in doing so. For these reasons, the trend of landlords selling out does not emerge and allow the administrator to adjust his FNOI level before the harm is done.

The trend which is likely to emerge before wholesale sellout by landlords is that which occurred in Lynn, and which is developing in Cambridge at the present time. That is, a drift toward petitioning for reduction in property value assessment and abatement of taxes by some landlords, while others merely fall into arrears on payment of taxes due. The Cambridge assessor, Mr. Charles Laverty, reported several startling statistics regarding property in that city. First, that a greater number of tax abatements are currently being granted than there were prior to rent control. Second, that the tax base prior to rent control averaged a 3% per year increase; it has just posted a 1% annual decrease. Third, that for the first time ever, properties are frequently being sold for a lower price than they were last purchased. Certainly, while all instances comprising these distressing statistics are not due to rent control, the assessor charges the general deterioration to rent control. Mayor Walter Sullivan joins his assessor in opposing the renewal of rent control in 1976.

New York City's experience with rent control over an extended period has yielded much the same result as Cambridge is experiencing, except on a much enlarged scale. At present, 21% of all rental units in the city are in arrears on tax payments. This amounts to five hundred million dollars in uncollected taxes. Consider the long term effect of such a trend on future city financing. Urban studies generally support the finding that bankers are hesitant, if not reluctant to finance mortgages of developers in rent controlled communities, the reason being the risk that regulation may limit the rental income to such an extent as to jeopardize repayment of the debt. Such hesitancy is already developing in the metropolitan Boston banking community.

Paradoxically, an effect which rent control may create for the tenants is significantly higher rents. This results from depressed rents during an inflationary, rent controlled period, which forces the landlord to reduce general maintenance and upkeep, allowing the property to gradually deteriorate. Eventually a massive capital infusion is required to rejuvenate the property, and an entirely new, greatly increased rent schedule is established.

What Will Happen After Expiration of Ch. 842?

After repeal of the statute in Lynn, the immediate reaction was in increase in rent to the fair value level. Landlords began repairs and maintenance on the buildings again, and it appears that after the initial jump in rents, the situation is stabilizing. However, one point to remember is that the population in Lynn has decreased by about six thousand (90,000 to 84,000) since the late 1960's. (This is attributable to the reduction in force of some key industrial employers in the city.) In addition, a substantial number of apartments for elderly housing are under construction at present. The combination of those two factors promises to create a good supply/demand balance in that city.

The more elusive question is, "what will happen to metropolitan Boston if rent control is allowed to expire?" Despite the new building construction, the vacancy rate in that area has not significantly changed since the inception of rent control. It seems an obvious conclusion that if controls of some sort are not enacted upon the expiration of ch. 842, that the inflationary rent spiral of the late 1960's will recur in the late 1970's. However, one must further conclude from the foregoing discussion, that a program in the nature of ch. 842 will not alleviate the burden of the present housing emergency.

We have seen that legislative enactment of ch. 842 with no state follow through is insufficient to solve the problem. A more creative and far reaching program must now be implemented to deal with the complexities of the current situation. The following proposal, by attacking the problem on several flanks, is certainly more encompassing than the mere regulation provided by ch. 842, and may provide the solution to our current dilemma. The three focal points of this proposal are (1) rent stabilization, (2) stimulation of new housing construction, and (3) further development of mass transit.

Rent Stabilization

Rent control and eviction control should be extended through 12/31/78, which contemplates three more years of regulation after expiration of ch. 842. The legislation ought to retain the same classifications of properties to be con-
trolled as are contained in ch. 842, and the local option to exempt any class of housing for which the demand subsides ought to remain effective.

The program ought to be a cost pass through system, in which any increases (or decreases) in operating costs affect rent directly.

Establish a Bureau of Rental Housing, with adequate financing and staffing to develop and implement solutions to the emergency.

Support an aggressive code enforcement program (along with the cost pass through system) to rejuvenate the deteriorating housing stock.

Permit the establishment of rent grievance boards after 1978 if conditions still warrant it.

Stimulation of New Housing Construction

Retain the provision that all housing constructed after 1969 will remain exempt from regulation. This will show good faith by the legislators in upholding its original exemption. To move the exemption date up to 1975, or 1976 would be a clear warning to the investing community that exemptions are merely temporary, and would be counterproductive to the goal of stimulating new construction.

Offer a tax holiday to property constructed between 1/1/76 and 12/31/78. One possible scheme for this program would be as follows: 0% property taxes due in years 1 and 2 of operation, 20% due in years 3 and 4, 40% due in years 5 and 6, etc., until the property is paying its full tax assessment beginning in year 11.

A possible refinement of the system might be that the state would reimburse the cities and towns 50% of the taxes lost under the incentive program.

Push Mass Transit Construction

Attractive commuter access to the suburbs would alleviate some of the housing demand in the metropolitan area by shifting it to the outlying areas.

With the mobility in today's society, convenient access to the city, coupled with the reduced noise and congestion of the suburbs, will entice some city residents to move outward.

Note that a campaign promise of the present state administration was to greatly increase the quality and scope of the commonwealth's public transportation network. This is an ideal opportunity for helping both the housing shortage and congestion in the metropolitan area.

Citations

3. U.S. CONST. amend. V.
8. Supra.
14. Id. at 700.
15. Id. at 703.
16. Id. at 693.
17. Russell, supra.
23. Sproles v. Hess, 23 N.J. Misc. 229, 43 A.2d 498 (1945). Held statute which made no provision to fix rents at fair levels during the emergency was unconstitutional.
24. Testimony of Charles Laverty, Jr. before (Mass.) Joint Legislative Committee for Local Affairs, 3/21/75.
25. Testimony of Mr. Walsh, former Administrator of the Housing Authority of the City of New York, before the (Mass.) Joint Legislative Committee for Local Affairs, 3/21/75.
The purpose of this article is to set forth in concise terms the function of a trial brief and the importance of its use at particular stages of litigation. It is hoped that the discussion which follows may have some value in convincing the contemporary trial advocate that the trial brief is one method of making absolutely certain that he is completely prepared to try the case for which he has been retained. A good trial brief can eliminate any uncertainty as to what should be done at any stage of the trial and alleviate any fear that some element of necessary proof has been overlooked.

The "trial brief" has been and always will by the most mysterious asset of a trial lawyer's working tool. There is a diversity of opinion among leading trial lawyers as to exactly what should be included in a trial brief. Some trial lawyers are satisfied to set forth their citations of authority substantiating the proposition of law they are contending is the correct one. Many others are content that the trial brief should contain only their collection of legal authorities covering the law favoring their side of the case. Some others add to the aforementioned that authorities should be cited to refute the contention of the adversary.

The trial brief in its final analysis represents the complete preparation of the case for trial. It should contain and include the preparation of the facts, the law and the pleadings of the particular case involved.

The text of a trial brief should be a well organized, coordinated, integrated exposition of the facts and the law of the case. A well structured trial brief should contain the following:

1. **A diagram of the case.** This means that the main facts to be proved must be listed. Opposite each fact to be proved must be listed the witness or witnesses who will prove those facts. Also, all documents, letters or records which will corroborate proof of the main facts must be listed. The diagram of each case should be planned to present the facts in logical sequence to an interesting climax. The function of the diagram of the case is not only to prove a prima facie case but one which will warrant a favorable verdict or ruling for your client.

2. **A resume of the facts in narrative form.** It is very important that the trial attorney prepare a general statement of the facts involved in the case from the plaintiff's point of view; he should also prepare the same from the defendant's point of view. These statements will be of great aid to the trial attorney in preparing his opening remarks and his opening statement to the court or jury.

3. **A list of the witnesses.** The trial brief should contain a list of the witnesses expected to testify in a particular case. Their names, addresses, and telephone numbers should be placed in the order in which it is expected that the witnesses will be presented to the court. As each witness testifies, a line should be drawn through his or her name; this procedure will prevent any errors being committed insofar as the calling of witnesses is involved.

4. **An abstract of each witness' story in narrative form.** A short narrative form resume or statement of what each witness will testify to should be included in every trial brief. This will enable the trial lawyer to use the abstract in an effective manner for his own information during the examination of the witness regarding what the witness' testimony will be as to the facts involved. The narrative form of statement when used for impeachment purposes is not as effective as the question and answer form taken down by a stenographer and signed by the witness.

5. **A detailed signed statement from each witness in question and answer form.** As stated in the preceding paragraph, most statements of witnesses should be taken by a stenographer in question and answer form. The witness should be allowed to read the questions and answers before he signs. Remember to use the words of the witness as closely as possible whenever an uneducated witness is the subject of your interrogation, because a jury can detect the difference in words substituted and such a statement will not be given much weight by the jury.
An abstract of the pleadings. One of the most important things that the trial lawyer should train himself to remember in the trial of all cases is to acquire the habit of reading and abstracting all the pleadings filed in the case before trial and then including the abstract of such pleadings in the trial brief. It is good practice to summarize the pleadings and to state briefly what has previously transpired in the case in the way of motions, pre-trial, if any, orders of the court and the like. Experience has shown that many lawyers go to trial without studying the pleadings. When questions arise as to whether or not proof offered is beyond the scope of the pleadings filed, the trial lawyer is astonished to learn that his pleadings are not broad enough to cover the offered proof or that his adversary has made admissions in his pleadings which eliminate the necessity for such offered proof. In order to protect himself from making any of these errors the trial attorney should always make an abstract of the pleadings in each case to show:

(a) Allegations and charges made.
(b) Elements and measure of damages to be proved.
(c) Admissions in opponent’s pleadings.
(d) Affirmative defenses set out by adversary.

Many embarrassing moments for the trial attorney will be avoided if the above procedure is followed.

Brief on the law. The trial brief should include an exhaustive analysis of the citation of authorities to substantiate the following:

(a) Favorable authorities showing the right to recover.
(b) Favorable authorities as to method of proof.
(c) Authorities reviewing opponent’s contentions.
(d) Copy of statute or statutes relied upon (where involved).
(e) Extra copies of brief on law for judge and adversary.
(f) Request for instructions or rulings of law. The trial brief should always contain a full and complete copy of all requests for instructions to the jury or requests for rulings of law (non-jury) which the trial lawyer wishes to be used in his case. The trial lawyer should have the citations of authority showing the legality of any requests for instructions to the jury and rulings of law which will aid the court in deciding which requests should or should not be allowed.

The preceding suggestions as to what a true trial brief should contain are those that are generally used by the leading trial lawyers throughout the country. However, it is to be noted that the matters that the trial brief may be required to cover are as numerous as the entire stage of the trial. There are various matters that might require the including of those items in a trial brief. Those matters, of course, cannot and will not all be involved in any one case, but the following list is set forth as a checklist for each trial lawyer to decide for himself whether or not that particular matter should be included in his trial brief. The list is as follows:

(1) Pleadings and objectives thereto;
(2) Venue;
(3) Discovery methods;
(4) Pre-trial conferences;
(5) Motions;
(6) Voir dire of jury;
(7) Opening statements;
(8) Admissibility of evidence;
(9) Judicial notice;
(10) Presumptions;
(11) Burden of Proof;
(12) Res ipsa loquitur;
(13) Affirmative defenses;
(14) Elements and measure of damages;
(15) Motions for directed verdicts;
(16) Closing arguments;
(17) Requests for instructions (jury) and requests for rulings of law (non-jury);
(18) Court’s charge;
(19) Jury verdict;
(20) Judgment;
(21) Post-trial motions.

It is hoped that this article will give the reader a working knowledge concerning the nature and scope of a trial brief, the manner of its preparation and the techniques to be used in making an effective presentation of a case by utilizing the trial brief to a successful completion of the litigation in favor of a client.
The Bartley-Fox Gun Law

"Beginning April 1, 1975 persons who carry firearms in Massachusetts without a license run the risk of a mandatory one-year prison sentence." (Boston Sunday Globe, March 16, 1975)

During the 1974 legislative session, the General Court enacted into law a tough new gun statute. The bill, which was sponsored by House Speaker David M. Bartley (D-Holyoke) and retired Judge J. John Fox, was signed into law as Chapter 649 of the Acts of 1974. According to the bill's sponsors, the rationale behind the law is the concern for the safety of all of us.

The scope of the statute is quite simple. It amends M.G.L. c. 269 § 10 so that it replaces optional jail penalties with mandatory sentences for violation of various state firearms laws. The existing gun laws of the Commonwealth are not affected except for the stronger penalties. During the three month delay in the implementation of the law (from January 1st to April 1st for advertising reasons), Judge Fox has repeatedly emphasized that the new law does not seek to regulate guns but rather is a "crime control" measure.

The gun law has received unfavorable criticism in various legal circles. This reaction focuses on the charge that the law takes away a judge's liberty in sentencing. The legislature has rebutted this argument by stating that only by making the sentencing mandatory could the law serve its purpose—to deter the bearing of arms.

There are several interesting ramifications of the Bartley-Fox enactment. First, the judge loses his discretion in sentencing to jail or probation. As mentioned before, the mandatory minimum of one year in jail must be carried out. Second, the judge does retain some discretion to determine whether certain parts of a gun found within a car constitute a gun within the meaning of the statute. Third, any weapon, such as an air rifle, which is defined as a firearm, must be licensed.

Possession of any firearm without a Massachusetts' Firearms Identification Card is considered a violation of the law. The offense carries the mandatory one-year sentence. For example, should an unlicensed friend pick up an individual's firearm and be apprehended with it in his possession, then he would fall within the scope of the new law.

In sum, the Bartley-Fox gun law is designed to create a "bad risk situation" for an unlicensed individual who carries a gun for psychological reasons, e.g. to feel more manly. The individual must weigh the psychological edge as compared to the certainty that he will spend one year in jail if convicted.

The Juror: A Profile

The importance of the juror to the judicial system is undeniable. Yet for years his needs have been neglected. In November, 1971, the Subcommittee on the Jury System, under a mandate from the Appellate Division of the Supreme Court, First and Second Departments, undertook a survey of juror attitudes and experiences in New York City.


The survey employed printed questionnaires distributed in all fourteen jury waiting rooms in the five boroughs of New York City. The return rate was 48.9 percent of the persons who performed jury duty during the test period, thereby assuring an accurate reflection of juror attitudes.

The questionnaire was designed to find out who serves as a juror. The results showed that 88 percent of all jurors were men and that 73 percent of all jurors were 41 years of age or older. The presence of middle-aged male jurors was disproportionately greater than their appearance in the area population as a whole based on the 1970 census data. To change this situation, it was recommended that women no longer be granted their present statutory exemption. Instead, only those persons engaged in child care should be exempted.

Frequency of juror service was found to be very close to the statutory minimum which permits service not more than once every two years. To solve this frequency problem, the subcommittee recommended that a longer period of time between service should be instigated; that greater attempts should be made to qualify jurors for first time service; and that a more appropriate sanction should be found and applied against those who evade service.

An interesting result, related to the fact that jurors were found to spend an average of 61.8 percent of their time in the waiting room, was that the longer the time spent in the waiting room, the more negative the juror's attitude toward jury service. The subcommittee made a number of recommendations to achieve some solution to this problem. These included staggering reporting hours to avoid congestion; the use of a telephone reserve system to avoid jurors waiting at the courthouse; the use of a basic information card for each juror to facilitate voir dire, and the use of early dismissals if there is no demand or if a trial is scheduled for the following day.

The physical surroundings of the waiting rooms were criticized. Based on the physical facilities used by the jurors, a correlation was noted between those jurors whose attitudes toward jury service changed after service. Where facilities were good attitudes improved. Numerous recommendations aimed at improving the waiting rooms were made based on this information.

Jurors generally found orientation procedures and relations between themselves and court officials and staff to be favorable.

A small proportion of jurors were concerned about their safety and this concern increased in criminal courts. 15.5 percent of the jurors objected to parading their names and addresses during voir dire in open court and in front of the defendant in criminal cases. The subcommittee had recommended that juror buttons for identification and security be employed and further that there be a rule forbidding the address of a prospective juror from being stated aloud in open court.

Jurors were divided on the question of whether the fee of $12 a day was adequate. This figure was based on opinions of those who actually served, so a deviation might exist if all who had been called were polled. The subcommittee urges consideration of increasing this fee to improve juror attitudes toward service.

32.2 percent of jurors had a more favorable attitude toward the jury system after service, while 20 percent had a less favorable attitude. 47.8 percent of those polled showed no change in attitude.

The large number of comments from those polled indicates jurors have many opinions regarding their service. In line with this, the subcommittee recommended use of a suggestion box or other device to allow juror input.

One of the survey's major effects was to open up communication between jurors and the courts. A number of recommendations have been implemented since the survey was published in June of 1973 and efforts continue to make the jury experience in New York more rewarding. Similar action might well be taken in other jurisdictions in...
order to improve the jury experience and to recognize the importance of the juror to the function of our justice system.

Condominium Reforms
The concept of condominium law has been part of society's framework since early history. Beginning with the Romans, man has been coping with the intricacies of "horizontal property".

This particular area of law has accelerated since 1963 when the first modern condominium law was codified in Florida. Due to the persistent and relentless demand for vacation homes, condominiums developed almost overnight. Unfortunately, the legal framework appeared to have been conceived in the same amount of time and condominium abuses soon flourished.

A particular example of the so-called "black eye" that condominiums suffered is reflected by the case where Joel and Sue Hamilton invested $30,000 in a new Florida condominium only to learn soon thereafter that they forfeited the entire amount by not complying with a small clause in their lease. This clause stated that if the purchaser failed to pay the $60 monthly maintenance fee, then he would lose his entire investment. Should this occur the developer would be able to resell the unit. (The Hamiltons are currently suing the builder, but their chance of a full recovery appears slim.) Numerous abuses such as the one illustrated have spawned condominium reform legislation in several states including Massachusetts.

Approximately ten bills were filed with the Massachusetts Legislature for the 1975 session. Currently, the bills are progressing through hearings conducted by the Committee on Urban Affairs and it is becoming increasingly apparent that Senate Bill 1627 will be the major vehicle of any condominium reform the legislature will enact this year.

Essentially, this bill is a consumer protection bill for condominium buyers. The condominium developer is obliged to provide a one year warranty on the condominium for such items as plumbing and electrical equipment. The developer is not allowed to lease facilities to the condominium owners. Instead, he must turn them over outright. The developer must pay the maintenance fee on the unsold units. He also must disclose to the prospective purchasers the budget, his quarterly financial statement, the by-laws, a copy of the tax assessor's statement of taxes and, in conversion cases, an engineering report on the building to be converted. If a developer violates any of these provisions he is subject to three months in prison or a three thousand dollar fine. Furthermore, the proposed act states that if the developer fails to make full disclosure as the act requires, then the purchaser may void the agreement and receive a full refund and interest at the rate of eight percent per annum.

Legislation is only one of many areas where the broadening area of "horizontal property" has had an impact. Insurance companies have recently implemented an SMP Apartment Condominium form which covers common area liability. (This was approved for use in Massachusetts in late November, 1974.) Questions have also been posed concerning the concept of a condominium as a "security". The United States Supreme Court has recently granted certiorari to this particular issue and its determination has numerous ramifications, e.g. possibility of the unit's registration as a security?

Judicial Accountability
In search of a solution to the problem of the unfit judge, California formed the Judicial Qualifications Commission in 1960. This was a constitutional agency consisting of citizens, lawyers and judicial members. Its aim was judicial accountability. Since 1964, about thirty-five other jurisdictions have patterned agencies after the California model.

During the California Commission's first seven years, one of the most significant developments was the "ombudsman" aspect of its work. Much ques-
Malpractice Perspective: An Unhealthy Situation

American consumers may soon be faced by a situation even more drastic than the unchecked rise in health care costs — they may be forced to go without medical care. Doctors will not, and realistically, cannot be expected to practice their art if insurance companies make good on their threat to refuse to write any more malpractice policies.

The insurance companies justify their recalcitrance by reference to the high risks and increasing instability of the malpractice market. Statistics from California, for example, indicate that malpractice claims against doctors have risen from 13.5 claims per 100 doctors in 1969 to 25 claims per 100 doctors in 1974 — a nearly 200% increase. The dollar amount of damages shows an even more disparate rise. Awards in excess of $300,000 in California have risen from a total of 3 in 1969 to 34 in 1974. The most immediate result of these extraordinary figures has been an increase in premiums which parallels the rise in monies awarded to successful plaintiffs. It is not uncommon for a physician today to pay $20,000 per year in premiums if he has recently had a claim filed against him. In especially high risk specialties such as surgery or anesthesiology, costs are even higher.

As might be expected, it is the consuming public which is most adversely affected by this insurance crisis. Obviously, the increased insurance costs are passed along by the doctor to his patients in the form of higher fees. Less apparent, however, and in the long run even more expensive to the consumer are such results as (1) physicians, fearful of suit, ordering excessive testing, x-rays and consultations in an effort to be legally safe. Such defensive medicine tactics inevitably result in hospital bills of staggering proportions; (2) doctors refusing to undertake a hazardous medical procedure, even if it promises to be more beneficial to the patient than the conventional course of treatment; (3) doctors refusing to consult in cases which are proceeding poorly. This results directly from the success some plaintiffs have had against specialists who have done nothing more than offer a consulting opinion to the physician in charge.

Inevitably, the question “why?” must be asked. Few will dispute the contention that the state of the medical art is at its highest point, yet there are more malpractice cases than ever. The reasons lie elsewhere. First of all, the doctor-patient relationship is not as personal as it once was. Specialization, urbanization, third party payors of insurance and the chronic shortage of doctors have combined to make this relationship perfunctory, highly technical and de-personalized. The patient is no longer suing a friend or acquaintance, but an institution. Secondly, there is the “legal rights explosion”. People are more aware than ever of their rights and are more willing to have them enforced by litigation. Thirdly, lawyers have become more willing themselves to accept malpractice claims. As law schools continue to churn out graduates, further crowding an already tight job market, as the recession deepens, and as legislatures further confine the lawyer’s bailiwick via enactments such as no fault auto insurance, the lucrative malpractice field becomes ever more alluring. Fourth, the courts are holding doctors to ever higher standards. Not so very long ago, the duty of care owed by a physician was measured by the competence of the average practitioner in the defendant’s community. Today, that same doctor may be expected to perform up to the standards of specialists across the country.

What is being done to relieve this situation? There are presently a large number of remedies being considered. Among them:

(1) A professional liability compensation commission which would take malpractice cases out of the present system and place them before a commission or administrative agency. The standard then to be applied would be whether the injury was caused by medical intervention, not by the doctor’s negligence.

(2) Submission of malpractice cases to voluntary but binding arbitration in order to make them faster and more economical to resolve for all concerned.

(3) Screening of all malpractice cases prior to trial by a panel composed of judges, doctors and lawyers who will pass on the legitimacy of the claim at an informal hearing in order to encourage settlements.

(4) Structured damage payments whereby a defendant doctor could make periodic payments to an injured patient according to a predetermined schedule rather than lump sum payments which often result in “windfall awards”.

There are numerous other proposals dealing with solutions to this immensely complex situation. Ultimately, the burden for solving this dilemma will fall to our legislators on all levels. The problem will require all their talents.

Massachusetts Public Employee Retirement Law: Part II

As reported in this section of the Advocate’s last issue, M.G.L. c. 32, the Commonwealth’s public employee retirement law, continues to be an area of controversy. The most recent challenge to this law resulted in the February 6 decision McCarthy v. Sheriff of Suffolk County, -Mass.-, 75 A.S. 325 (1975).

The plaintiffs in this case are all court officers appointed to attend sessions of the Superior and Supreme Judicial courts. Their jobs place them in Group I of c. 32’s state employee classification system. All were hired prior to 1972 and are now between the ages of 65 and 70. Their complaint, which sought declaratory and injunctive relief, alleged that the 1972 amendment to M.G.L. c. 32, which reduced the mandatory retirement age from 70 to 65, is unconstitutional on the basis of its retroactive and adverse affect on their pension benefits. This, they claim, is an interference with their contract of employment with the state and thereby violative of the constitutions of both the United States and Massachusetts.

The court addressed itself primarily to the question of retroactivity and found no contravention of either constitution. They pointed out that the mere fact that a non-procedural statute applies to the plaintiffs does not by itself make that statute retroactive, even if the statute draws on antecedent facts for its operation. The proper determination of whether a statute is retroactive resides in a scrutiny of the parties’ rights and
obligations as they existed immediately prior and subsequent to the amendment date. Then, only if vested substantive rights have been adversely affected can it be said that a statute operates retroactively, and only then must the court examine the nature of the governmental interest involved to determine whether due process rights have been violated.

Thus, the court's task was to analyze the rights of the plaintiffs before and after the 1972 amendment. That the court officers possessed contractual rights in their pension benefits was not disputed by the court in light of their Opinion of the Justices, -Mass.-, 73 A.S. 1329 (1973). More difficult was a discussion of the nature and extent of those rights under M.G.L. c. 32 § 25(5).

It has long been settled that where a position is created by the legislature it may be further regulated by law as public policy or exigency dictate. The court thus found that the legislature is free to alter methods of appointment or removal of state officers, as well as to change their duties or tenures. Thus, the plaintiffs here had no contractual right to continued government employment.

The plaintiffs had argued, however, that since section 25(5) prohibits the legislature from taking any action which adversely affects the pension benefits of any public employee, and since a reduction of the mandatory retirement age would certainly do so, that the long standing rule just enumerated had been modified by legislative fiat. The court did not agree.

Referring again to their Opinion of the Justices, supra, the court held that the key to the contractual relationship under section 25(5) is "those material expectations which can reasonably be said to affect an employee's decision to accept, and stay employed in, a position with the Commonwealth... We cannot say that the plaintiffs, in accepting employment with the Commonwealth... could have had a reasonable expectation that they would be guaranteed employment... till age 70, considering the extensive power of the legislature to change or in fact, do away with their positions." (pg. 332). This conclusion thus disposed of the plaintiffs due process contentions.

The plaintiffs also argued that the amendment violated their equal protection. However, the court responded by pointing to countervailing concerns for public safety. As pointed out in the case of Mingra v. Commonwealth of Massachusetts Board of Retirement, 376 F. Supp. 753 (D. Mass. 1974), men of age 60 and greater are particularly susceptible to sudden incapacitation due to heart attack, stroke, etc. If a man is a public employee directly responsible for public safety, such an attack could pose a serious public danger. This is most obvious in cases of police or fire officers, but equally applicable to court officers who are responsible for the custody of prisoners during court sessions.

So, the latest round in the battle over the public employee retirement law has been settled in favor of the statute. Other challenges will certainly be forthcoming, however, and will bear close examination.

Lawyer's Advice To Client To Assert Fifth Held Not Contempt

In January, 1973, Attorney Michael Maness represented a client before the Temple, Texas Municipal Court who was charged with selling obscene literature. The client was convicted. Subsequently, pursuant to Art. 527, § 13 of the Texas Penal Code, Maness's client, Michael McKelva, was served with a subpoena duces tecum directing him to produce some 50 magazines of a similar nature before the District Court. The purpose of that section is to afford the state a civil remedy via issuance of an injunction to prevent the illegal distribution of obscene materials.

A hearing on the subpoena was held February 1. At that time Maness filed a motion to quash on behalf of his client. He argued that the substance of the subpoena was to require McKelva to produceincriminating materials in violation of his Fifth Amendment rights. He further argued that insofar as the submarine duces tecum directing him to produce some 50 magazines of a similar nature before the District Court. The purpose of that section is to afford the state a civil remedy via issuance of an injunction to prevent the illegal distribution of obscene materials.

A hearing on the subpoena was held February 1. At that time Maness filed a motion to quash on behalf of his client. He argued that the substance of the subpoena was to require McKelva to produceincriminating materials in violation of his Fifth Amendment rights. He further argued that insofar as the magazines requested were of an obscene nature, the proper proceeding was via a search warrant. The fact that the present matter was technically civil could not eradicate the strong likelihood of subsequent criminal prosecution. In any event, Maness concluded, the Fifth Amendment's protections have long been held to extend beyond criminal prosecutions to civil proceedings.

The city attorney responded by emphasizing the civil nature of the proceeding and protesting that there was no intent on the part of the government to instigate further criminal action against McKelva. The trial court then denied the motion to quash and McKelva was called to the stand. In response to a request to produce the materials listed in the subpoena, he asserted his privilege against self-incrimination. Further questioning elicited the information that he was claiming his privilege on advice of counsel. At this time, the court recessed in order to allow Maness and McKelva to reconsider their position. In the afternoon session, McKelva repeated his claim of privilege and again stated it was on advice of counsel. The court found both parties in contempt. The question presented to the United States Supreme Court on these facts was whether Maness's advice to his client, given in good faith, constituted a contemptuous act. [See Maness v. Myers, -U.S.-, 16 Cr. L. Rep. 3023 (1975)].

The court noted at the outset that all orders and judgments of courts must be promptly obeyed. A person who believes an order is erroneous must seek his vindication on appeal. Ordinarily, injuries flowing from judicial orders are not irreparable, even though the remedies may seem cumbersome. Thus, in order to preserve the orderly processes which are so imperative to the operation of our adversary system, some means of enforcement must be afforded.

Occasionally, however, a different situation may be presented, such as where the court orders a person to reveal certain information. Here injury could very well be irreparable; even a favorable appeal would fail to "unring the bell". In such instances the person is left in the unenviable position of either complying with the order while he contests its validity on appeal, or refusing obedience and thereby challenging its merit in a contempt hearing. The court notes that this latter method of seeking pre-compliance review is especially applicable to Fifth Amendment matters.

Thus, turning to Maness's actions, the court notes that his advice was given to McKelva in good faith. Furthermore, there is absolutely no indication of any contumacy on his part. What Maness has in effect accomplished via his actions is to obtain a pre-compliance review of the substance of the subpoena and his client's privilege against self-incrimination. The court notes that our Fifth Amendment rights would be rendered empty if a lawyer, acting in good faith to preserve those rights, were to face the threat of punishment for his failure to obey a court order which would irreparably compromise the privilege. In asserting his Fifth Amendment rights, the lay client is nearly always completely reliant on his attorney's skills. Any impediment, therefore, to the good faith exercise of those skills is a threat to the substance of the right itself. Thus the court found Attorney Maness not subject to any penalty for contempt.
The Public Employee Collective Bargaining Law

Since July 1, 1974 public employees within the Commonwealth have had the advantage of a new collective bargaining law (M.G.L. Chapter 150). This statute, passed as Chapter 1078 of the Acts of 1973, has been heralded as a substantial gain for the state's public servants. Since the law is relatively unique, we thought that several sections should be highlighted:

Section 2 specifies the rights of the employees. The new law grants to state, county and municipal employees the equal right to bargain collectively through representatives of their own choosing. Bargaining in respect to wages and hours are permitted for the first time under the new law.

Section 3 instructs the Labor Relations Commission to determine the appropriate bargaining units. Certain employees such as "confidential employees" are denied bargaining rights under this section.

Section 5 and Section 6 relate to the employer and the exclusive negotiator. These sections provide that these parties shall negotiate in good faith with respect to wages, hours, standards of productivity and other terms and conditions of employment.

As to the funding of any written agreement which is reached at the bargaining table, Section 7 stipulates that the employer must file a request to the appropriate legislative body. If that body rejects the request, then the aforementioned parties are to return to the bargaining table.

Section 8 allows the employee two alternatives as to the grievance. The employee may follow the procedure which results in binding arbitration. On the other hand, the employee may pursue a statutory procedure, e.g., teacher tenure.

Section 15 lists various penalties for a violation of the collective bargaining law. For example, there are fines for wilful interference with official administration of the law and for filing false financial reports.

In sum, the law seeks to raise the standards of public employees throughout the Commonwealth. Throughout its provisions, the law emphasizes the importance of "good faith" bargaining and the creation of an overall upgrade of public employees' status.

Conflicts Between Courts and Computers

Increasing use of computer technology by courts raises a number of difficult issues which must be dealt with before total commitment is made to computers.

The courts are intended to operate as an adversary system. They must be impartial and they must appear impartial. Due process must be valued above efficiency. Therefore, any suggestion that the courts are part of a "law enforcement" effort, working together with the police and correction processes as part of a "criminal justice system" is misleading.

The approaches and goals of courts are different than those of other agencies and it is inappropriate for courts to "tag along" on another agency's computer system. Lines of responsibility may be blurred in such a "tag along" situation. Even if courts avoid acting as police agencies, they will endanger their role of neutrality by being thought of as part of a crime team.

Information sharing presents further problems. Today, there is no assurance that other jurisdictions sharing information will impose restraints similar to those of the collecting state. Thus, one participating agency's strict guidelines could lose all meaning. Some federal legislation is being considered particularly with reference to arrest records that are one year old and have no dispositions. These records would not be allowed to circulate to government and private agencies.

A most interesting application of computer technology is its use to predict future behavior. Analysis of characteristics of known offenders can be used to predict where to expect crimes and who will commit these crimes. Thus a conviction could be followed by a computer "judgment" of an offender's future and on the basis of such a forecast a judge could render a decision on sentencing or on other matters before him.

Such an application is a threat to the future of the courts, as well as to the rights of individuals who are so judged. The inherent problem is the weight which could be given to the computer prediction on grounds of scientific accuracy. Theoretically, a point could be reached where judges would be unnecessary in the sentencing process.

Gerald Stern in Courts and Computers, Judicature, December, 1974, suggests that the human element should not be replaced. "Nor should judges be given computerized conclusions based upon subjective variables which are unknown to them." Efficiency cannot be gained through the sacrifice of due process. The courts, he concludes, must live up to their special responsibility and proceed with caution in the development of computer systems.
The Evolution of Suffolk University Law School

Nina M. Wells

Suffolk was a late-comer to the formal effort of educating lawyers; Boston University, Harvard and Y.M.C.A. Law Schools were already in existence, nonetheless the founder of Suffolk Law, Gleason Archer, proclaimed Suffolk as the promulgator of revolutionary ideas in legal education. Archer was committed to educating the sons of “working-class” people, yet he ironically chose not to admit women for he considered them “distractions to the men.” An historical analysis reveals that Suffolk was instituted to teach a “traditionally excluded group.” This task was to be effectuated in a very untraditional lecture-oriented manner which was new to legal educators. Thus the originator of Suffolk fought a dual battle to convince the Boston legal community that: (1) its method of teaching, so unlike the case-method, had equal merit; and (2) that its students, some of whom had only a grammar school education, could effectively compete in the legal arena with what some critics described as a “double handicap.” In spite of widespread resistance and criticism to these “new” ideas, Archer opted to continue his fight for the acceptance of Suffolk Law. Archer’s first success was manifested by the acceptance of the law school by the Massachusetts legislature in 1914. In that year the charter was granted, thereby making Suffolk Law a public institution with degree conferring powers. Though Suffolk won that fight in 1914, in 1975 it is still struggling towards full-accreditation.

Perhaps an explanation of Suffolk’s “noble” but modest origin will explain why Suffolk is still struggling 69 years later for a national position as a competent law school with a reputation upon which its graduates can rely. On September 19, 1906, the law school was conceived as Archer’s Evening Law School. The first class of the law school was held in a small apartment in Roxbury, owned by Gleason Archer, who also served as the only professor; the total student enrollment at that time was nine students. During the early years of Suffolk Law, there were no prerequisites to entrance except for the determination to become a lawyer. This “open admissions” concept was adopted in order to limit the obstacles confronting many students who Archer felt had systematically been prevented from acquiring an education due to social and economic pressures. Archer felt the existing law schools in the area had an elitist attitude, catering only to the “high-brow element” and unwilling to educate students from “less-privileged” backgrounds.

Although numerous indicators predicted failure for the law school, Archer proceeded to defend his cause of educating young men who were forced to work for a living during the day and study law at night. Archer’s efforts were spurred on by the encouraging news that two of his students passed the Massachusetts Bar in July of 1908, only two years after the founding of the school. In July of 1911, Archer boasted that 75% of all Suffolk students who took the exam
bounded back even stronger, instituting a graduate law school in 1935. Suffolk continued to maintain a law school during two world wars, and by 1927 Suffolk had grown to the largest law school in the "world" with 2,604 students. In 1931-1932 with the onset of the depression, Suffolk's student body decreased to 1,407. However, the law school weathered the storm and bounded back even stronger, instituting a graduate law school in 1935.

Gleason Archer found that trying to maintain a law school during two world wars and a depression was very difficult, but what was more difficult was trying to change attitudes. He found that every step of the way there was resistance to his concept of legal education and his idea of educating working men. This caused Suffolk's fund-raising campaigns to be virtually fruitless. As a result, Archer had to maintain Suffolk for 40 years without the assistance of endowments or financial aid. He financed his dreams with his earnings as a private attorney and with personal loans and credits. It is not difficult to understand what motivated Archer to champion the cause of working-class people. His background, which began in a rural town near Lewiston, Maine was quite modest. Archer worked his way through B.U. undergraduate and law schools waiting on tables, scrubbing floors and tutoring fellow law students. In reading Archer's works, he emerges as an extremely proud person with a strong sense of personal commitment. He appeared to be a man too proud and devoted to his lifetime goals to allow anyone to defeat them. He served Suffolk unrelentingly as a professor and dean for 28 years.

Gleason Archer found that trying to maintain a law school during two world wars and a depression was very difficult, but what was more difficult was trying to change attitudes. He found that every step of the way there was resistance to his concept of legal education and his idea of educating working men. This caused Suffolk's fund-raising campaigns to be virtually fruitless. As a result, Archer had to maintain Suffolk for 40 years without the assistance of endowments or financial aid. He financed his dreams with his earnings as a private attorney and with personal loans and credits. It is not difficult to understand what motivated Archer to champion the cause of working-class people. His background, which began in a rural town near Lewiston, Maine was quite modest. Archer worked his way through B.U. undergraduate and law schools waiting on tables, scrubbing floors and tutoring fellow law students. In reading Archer's works, he emerges as an extremely proud person with a strong sense of personal commitment. He appeared to be a man too proud and devoted to his lifetime goals to allow anyone to defeat them. He served Suffolk unrelentingly as a professor and dean for 28 years.

Archer's defense of the common person did not end with the founding of Suffolk. In 1931, Archer presented a series of lectures pertaining to the law through a radio broadcast program; the series was entitled "Laws That Safeguard Society." The purpose of the talks were to "bring home to the hearts and minds of the listeners those principles of the law that safeguard 'our people' in their rights to life, liberty and the pursuit of happiness." Archer saw the law as the invisible framework upon which civilization was built. He felt that "without law enforcement, civilization would collapse like a book of cards." Archer also expressed the belief that if people are to live together in an "organized societal unit" then they must be willing to surrender some of their personal freedom for the benefit of all.

When the late Gleason Archer presented a speech before the now defunct Wig and Robe Society in 1956, he summed up his accomplishments by saying he had transformed his students of law both physically and mentally. He explained that he had fulfilled his wildest dream by educating a street laborer who later became one of the most successful lawyers in his section of the state. Archer went on to say how he made it possible for a newspaper boy to become a lawyer of the highest standing. Was this the goal which Archer originally sought to achieve? Was his fight to have poorer people become attorneys and assimilate or was his mission to
educate lawyers to work toward the equality of and equal representation under the law for all people? In that speech, Archer stated that the great mission of Suffolk Law School had abundantly been manifested and its future status rendered secure. Only time will be the judge of such a prophetic statement. The future of Suffolk Law as a recognized institution seems highly tenuous in light of the present economic crisis and the growing over-abundance of lawyers. Yet, it is probably presumptuous to say that any law school's future is secure at the present time with the exception of a choice few.

Are Suffolk's graduates' expectations of entrance into the legal profession being met? Are there realistically jobs for three or four hundred Suffolk lawyers each year? If there is a need, are Suffolk's graduates capable and willing to identify where the needs lie and secondly are they capable of positioning themselves in order to address these needs, i.e. financing such efforts? Perhaps Archer's dreams were never clouded with the realism of the present job market and with the increased competition for admission to state licensing Bars. Will Suffolk weather this storm? Were Archer's dreams and goals realistic when you add the stale attitudes of the legal establishment to the equation? If the American Bar Association takes on a selection posture similar to the American Medical Association, what will be the fate of Suffolk?

Footnotes

2. Presently Suffolk Law School is accredited by one of the two national accrediting agencies for Law Schools. Suffolk has the American Bar Association Accreditation but the Association of America Law Schools (AALS), which depicts the minimum standards recognized for a quality education by the foremost legal educators in the country, has not yet approved Suffolk. These standards enforced by AALS are concerned with student-faculty ratio, diversity of the faculty, faculty participation in instituting policies, adequacy of the law library and equality in legal education without discrimination or segregation on the ground of race, color, religion, national origin or sex.

3. See Archer at footnote 1.


5. Gleason Archer's writings include fifteen legal text books dealing with various substantive areas of the law and five historical texts.


7. See Archer at footnote 6.
Proposed Change in the Trustee Structure

“The Committee to Elect the Trustees of Suffolk University” has endorsed House Bill No. 5421 (REPRINTED IN FULL HEREIN) which would replace the present system of electing Trustees instituted in 1914. The proposed change would have every alumnus serve as an elector, and have fifteen of the twenty-one Trustees elected by direct vote of the alumni. The present system is one of self-election, i.e., the Board fills its own vacancies and consequently is a self-perpetuating body.

In 1914, when the present system was adopted, there were no alumni so it was not unusual for such a system to have been implemented. Today, however, there are over 12,000 living alumni, men and women who have distinguished themselves in every walk of life. Through a system of alumni election would come input from every phase of society as well as a feeling that the voice of the alumni was a meaningful voice having a direct impact on the development of the University. When alumni know that they are listened to, they then respond more favorably to appeals from their Alma Mater. There is little question but that the average Suffolk alumnus feels that he has not been afforded the opportunity to participate in the development and direction of his Alma Mater! Yet, who else has such a vested, personal interest in the welfare of Suffolk University?

The Committee solicits your active support on behalf of this legislation. There is an open office at One State Street, Boston, tel. 523-1395, and we would like to hear from you.

HOUSE . . . . . . No. 5421

The Commonwealth of Massachusetts

MEMORANDUM OF THE SECRETARY OF THE COMMONWEALTH PURSUANT TO GENERAL LAWS, CHAPTER 3, SECTION 7, WITH RESPECT TO PETITION OF ANGELO CATALDO, ANTHONY MICHAEL GALLUGI, TERRENCE P. MCCARTHY AND OTHERS RELATIVE TO THE MEMBERSHIP OF SUFFOLK UNIVERSITY.


To the Honorable Senate and House of Representatives:

The above-named petition was transmitted to me by the Clerk of the House of Representatives on January 20, 1975, with a request for a memorandum.


Section 1 of the bill before your honorable bodies seeks authority to provide for the manner in which vacancies in the membership of Suffolk University shall hereafter be filled.

Section 2 of the bill addresses itself to the system to be employed for the election of trustees and the terms of office of each, and the manner in which vacancies caused by death or registration shall be filled.

Section 3 of this bill provides in what manner the nominees referred to in section 2 shall be determined.

Section 4 provides a description of the ballot to be used for the election of those nominees printed on said ballot, which further includes a blank space for each office to be filled by a nominee whose name is written in said space by the elector.

Section 5 provides for the composition and membership of the nominating committee.

Special legislation is required to effect the desired result.

Whether or not this should be allowed is a matter of policy within your exclusive jurisdiction, and this office expresses no opinion on the merits of the bill. No fee is required to be paid by a corporation of this type under the provisions of Chapter 3, Section 7.

Respectfully submitted,

PAUL H. GUZZI,
Secretary of the Commonwealth.
You may ask the question: Why does this matter go before the Legislature? In 1914 when the Legislature granted the school its charter, it stated The Board “... shall have power to fill vacancies within itself.” Therefore, the Legislature is the body that must change that clause. If you would contact your State Representative and Senator to vote in the affirmative on House Bill 5421 it would be appreciated by all of us. The ADVOCATE respectfully requests that alumni, students, and faculty give this matter their most careful consideration.

By Messrs. Cataldo of Revere, Gallugi of Wakefield and McCarthy of Oak Bluffs, petition of Angelo Cataldo, Anthony Michael Gallugi, Terrence P. McCarthy and others relative to the membership of Suffolk University. Education.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Five.

AN ACT REGARDING THE MEMBERSHIP OF SUFFOLK UNIVERSITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. All vacancies whether occurring by death, resignation, or expiration of term in the membership of Suffolk University (established by Chapter 145 of the Acts of 1914 and amended by Chapter 237 of the Acts of 1937), shall hereafter be filled by election as provided in Section 2 of this Act. To qualify as an elector of members of the University, a person must either hold an ordinary or honorary degree from Suffolk University and be listed on the alumni rolls as certified by the alumni director, or hold an appointment as a full time Dean or faculty member with a minimal rank of instructor. No person shall have more than 1 vote at any election.

1 SECTION 2. All term memberships shall expire when this legislation becomes law. These fifteen seats shall be filled by election of the electors being those persons designated in section 1 of this Act, in accordance with the process provided for in sections 3, 4, 5 of this Act. At this election, the nominees shall be determined in accordance with section 3 of this Act. Those three nominees receiving the highest vote of the electors shall receive a term expiring five years from the next June following the election. The three nominees receiving the next highest vote of the electors shall receive a term expiring four years from the next June following the election. The three nominees receiving the next highest vote of the electors shall receive a term expiring three years from the next June following the election. The three nominees receiving the next highest vote of the electors shall receive a term expiring two years from the next June following the election. The three nominees receiving the next highest vote of the electors shall receive a term expiring one year from the next June following the election. Thereafter there shall be three trustees elected in June of each year for terms of five years, being further provided that vacancies which have occurred because of death or resignation during the previous year shall also be filled in the June election, for the remaining time remaining in that term. Presently existing life seats shall remain until the present holder dies or resigns upon such vacancy in a life seat, that seat shall become a special term seat, to be filled
An Opposing View

One can agree that students, faculty, and alumni of a university, and more particularly a law school, are the heart of an institution and still not be comfortable with the proposed legislation. There can be no question but that the people who are the institution should have a major role in the selection of trustees. But as lawyers we recognize a need for some conservatism, an anticipation of the future without losing the values of the past. For some who favor in principle the election of trustees and the creation of a more responsive board, there is still a recognition that in many respects the present system has produced outstanding trustees who served, and continue to serve, the needs of the institution. The bill calls for the election of a vast majority of the board by what is theoretically an extremely large group of people. In fact, it presents a threat of a few organized alumni, and/or faculty-alumni, gaining control of the board. Reformers are not interested in political control of the board, but in the principle that the board which is responsive to the true needs of the university and the law school. This result could be accomplished by a system in which the faculties of the various schools of the university each elect a trustee, and the alumni elect a designated and limited number of trustees. If it is demonstrated by experience that the election of trustees does in fact serve the interests of the university, then the application of the principle could be expanded. Merely because a system has some defects over a half century of experience which has produced a great educational institution is not totally discarded in one moment. Lawyers know the value of human experience in shaping reform. It is that need for experience which causes some grave doubts about the desirability of the proposed legislation.
Interview with Professor Lemelman

Frederic Ury

For a large majority of the students at Suffolk Law School, the faculty are a group of names listed in the front of the Student Handbook. If you have not had one of the professors for a class, there is a good chance you do not know anything about him or her. Even if you do have a professor for a class, it is hard within the confines of the fifty minute lecture to get to really appreciate him or her as a person. The Advocate has decided to start a series of faculty profiles.

We felt that Professor Lemelman would be a good professor to interview first because he is well known by all three classes and a large number of the alumni. Even if a student has not had Professor Lemelman, he has probably heard about him from other students.

Advocate—Why do you teach?

Lemelman—In 1960 I started at Suffolk as a part-time instructor. At that time I thought of myself as a practitioner who happened to teach. Around 1967, I began to think of myself as a teacher who happened to practice. I enjoy teaching and think that it is quite evident in the classroom. I get a great deal of satisfaction from teaching and having an effect on each student, up or down. I like to feel that through teaching I am making a contribution to the legal system as well as the students' education.

Advocate—What is your teaching philosophy?

Lemelman—I think the most important function in teaching is to generate some interest in students in "lawyering". Giving information is not teaching. The idea of teaching ought to be to generate interest in administering the social system and in making the system work in the legislatures and the courts. During my time here at Suffolk, the school has always placed a premium on classroom teaching ability.

Advocate—Should law professors practice on the outside?

Lemelman—That would completely depend on your definition of practice. I feel that extensive litigation practice unrelated to the field in which one is teaching would be disruptive to the teaching process and would not afford the teacher the time to adequately prepare for the classroom and deal with other equally important parts of law school life. Structured non-court practice in areas in which one teaches is an advantage to the teacher. This is acknowledged by the A.B.A. standards, which prohibits an outside office but does not prohibit practice as long as it is limited and related to teaching areas.

I feel that it is very good for younger members of the faculty to practice. First of all, it is good for them economically. Second, it also gives students the feeling that the professor knows what is going on; that when all the teaching is done, he or she in a pinch can draft that contract, will or other document.

Advocate—Do you think the caliber of faculty teaching at Suffolk has improved in the last few years?

Lemelman—Suffolk has always had, in my 13 years here, an excellent teaching faculty. Recent additions generally support the philosophy of the importance of classroom teaching. The main question asked of new faculty when they are hired is whether that person function in the classroom.

Advocate—Do you think the caliber of the administration has improved in the past few years?

Lemelman—Thirteen years ago when I came to Suffolk it was a very parochial school which mainly turned out Massachusetts lawyers. It was a small school with limited space. At that time, Dean McDermott was the dean of the Law School. He was, in my opinion a very good administrator for the School at that time. At his death, Dean Simpson was appointed to the Deanship. Dean Simpson became dean at a time when the profile of the school was changing. You could say that a coincidence of events was occurring. The baby-boom children were entering law school and to meet this demand Suffolk began to expand. But Dean Simpson did not move with the changes. He was attuned to the idea of a small school and was not positively responsive to change. There was a great deal of agitation for change from both students and faculty. During this time the school just floated along from day to day. It did not take any particular posture. Because of this agitation, Dean Simpson left and I think for about a year there were temporary Deans. Again, during this time, the school just floated along with no evident changes in philosophy. A search committee was organized to find a new Dean and Dean Larkin was appointed, but left shortly after his appointment.

Now, under Dean Sargent, we have a positive administration. Its goal is not only to increase the quality of education, because Suffolk has always had a good quality program, but to reinforce that message to the students and the community in general, including the legal profession. The administration has vowed to take the necessary steps for A.A.L.S. accreditation.

I think Suffolk is an exciting place to be for faculty. We have a young and forward thinking administration.

Advocate—Do you think the caliber of student at Suffolk has improved in the past few years?

Lemelman—To call the recent classes smarter would be unfair to the past classes. There are higher scoring people in the school now by way of L.S.A.T. scores. Possibly students do better here now because of the superior facilities than those that existed in the past. Thus, it is hard to compare students in the past to those of today. I will say that we have always had bright and capable students.

The students entering today have a more varied background educationally and geographically. It is a better mixture today than before. When I first began teaching, students were quiet and took their lumps the first year. Then, during the Cambodia bombings and the student unrest, some students became very belligerent. Now students are not as predictable or homogenous. They are more interesting and much more confident. I am not able to intimidate everyone anymore.

Advocate—Do you think the course structure and course emphasis has improved at Suffolk?

Lemelman—Each course is what each faculty member makes it. When I teach property it is not property but the Lemelman version of property. That reminds me of a story about Professor Frankfurter at Harvard before he became Justice Frankfurter. The Dean at Harvard was not pleased that the Professor was spending as much time as he was in Washington working on the New Deal. So when he returned to Harvard he was assigned a course in Patent Law instead of Constitutional Law. When he arrived in class for the first day he said, "Call it what you will,
but I am going to teach Constitutional Law.

The spectrum of a course gets broader as the number of faculty teaching it increases; sometimes so wide that it does not even resemble the basic course, and that isn’t good either. But once the instructor has touched all the basics, I think he or she should be able to expand upon various areas in the field and present a point of view.

Advocate—Has Suffolk’s prestige in the city of Boston improved in the past few years?

Lemelman—I think the answer to that question depends on how you measure it. If you measure it by the number of graduates being hired by the large firms in Boston, then I would have to say that the prestige is going up. But if you measure it by what judges and lawyers think, then I would have to say that it has always been high. Lawyers and judges have always thought that Suffolk can turn out lawyers who can practice, which in my view is what a legal education at Suffolk ought to be about.

Advocate—Do you feel that it is important that we get the A.A.L.S. accreditation?

Lemelman—I think that it is better to have it than not to have it. It will help some students who have had trouble getting into either graduate school or transferring. Beyond that, I do not think that it is going to mean all that much.

Advocate—Do you feel that there is a student/faculty apathy on campus?

Lemelman—I don’t think there is a faculty apathy on campus, although prior to 1973 there was. I have no idea if there is a student apathy on campus.

Advocate—Should there be a student enrollment ceiling?

Lemelman—Yes, and I think the school is definitely committed to a gradual reduction in the number of students admitted to the law school. Thus, it will be a few years before this effect is carried through the entire law school.

Advocate—Should students have a vote on faculty committees?

Lemelman—in some of the committees such as the faculty-student committee they do have a vote. In others, which are liaison types of committees, I feel that students should have a vote. But in other committees, which are administrative or policy-making, I do not feel students should have a vote. The ultimate responsibility to run the school is in the faculty and I think the faculty members should be the ones to vote on the issues that affect basic policy positions or administrative matters. To allow students to vote on all matters is an abdication of faculty responsibility.

Advocate—What do you think of the disparity among grading techniques by professors on campus?

Lemelman—I do not think that there is that much of a grading disparity among professors. I think if you give three professors an examination book you are going to get three grades back which are all in the same range.

Advocate—Is it possible to have the grading system speeded up so that students can get the exam results back sooner?

Lemelman—I definitely think so. I have been advocating for years to have graduate students read all the books, and the professor only read those books that have grades below 75 and those books which are above average. Since most of the books are average, this would reduce the reading level from 100 percent to 40 percent and speed up the process.

Advocate—What is the general term that law students be shooting for in law school?

Lemelman—I think that the law student should immerse himself or herself in the process of lawyering, what it takes to be a student of law and how the system functions. I think the student should study the advantages and disadvantages of the system. It is important for the student to know how to administer the law in society so that he helps the system to function in an orderly manner.

Advocate—What is your opinion of the future of the job market for lawyers?

Lemelman—Well, right now it is very bad, but I think that this is only a temporary situation and will hopefully be over soon. The problem as I see it is that, because of the economic situation, government and industry are holding back from expanding and hiring. In the past almost everybody obtained a legal position. It might not have been their first choice but, nonetheless, a law-related position. The reason for this was that government, industry and private firms were getting bigger and needed lawyers.

Once we are past this economic crisis, government will continue to get bigger, as will industry. Thus, the need for lawyers will increase.

Advocate—Do you think there is any area in the law which needs more lawyers?

Lemelman—I don’t think there is a field that is in need of more lawyers. But there is more reluctance, I think, for lawyers to go to the small town to practice. I think this is so because many people feel that it is less prestigious. But I think that there is a great deal of satisfaction in practicing in the small town. The lawyer has a lot more control over his client and can live in a little more style without all of the hustle and bustle and pressure of the city. In the city, a lawyer’s life is just one crisis after another.

Advocate—Are there any emerging trends in the commercial world which interest you?

Lemelman—I truly feel that with the increase of the federal and state consumer legislation, we are going to price the consumer right out of the market. The consumer has to pay for the various regulations placed on business by government. It might take five years to reach him, but it will. I think the Truth-in-Lending Act is a good example. It shows government regulating an area so broadly that it reaches situations which do not need regulation. Consumer legislation has sex appeal. There are a lot of consumers who vote, and they make an appetizing group for a politician. But at some point, the same consumer is going to pay the increased cost of business complying with unnecessary and unwarranted regulatory activity. The ever-expanding intrusion of government (at every level) into the private lives of people ought to be examined more closely. The goal may not be worth the race.

Suffolk Lawyers Guild

Are human rights more important than property interests? Are evolving standards of social, economic and political justice more important than the veneration of precedent? Is it a priority that the American legal system be demystified? Can and should people with legal training use their skills to help unempowered groups gain control over their own lives? Can law be studied and practiced in a non-competitive, supportive fashion with a premium on justice rather than on individual power, status and money?

The National Lawyers Guild is an organization consisting of 54 chapters and some 4000 lawyers, legal workers and law students who believe the above questions can be answered affirmatively.
This year a division of the Boston
Guild Chapter was formed at Suffolk to
offer legal education seminars to com-
munity groups and Suffolk students,
and to work with the Greater Boston
Chapter on a variety of projects.

To date the Suffolk Lawyers Guild
has sponsored a speaker from the Geor-
gia Power Project; held a forum on
Alternative Forms of Law Practice led
by three Boston attorneys and two
Suffolk legal workers; held a number of
meetings to share information about
ongoing projects and events in the
Boston area; and worked with the Law
Students' Civil Rights Research Council
on workshops for Law Day and Law
Week. In addition, individual Suffolk
Guild members are working with other
Boston Guild people on a school deseg-
regation suit on behalf of the Spanish
community; litigation concerning racist
activities of the Boston School Commit-
tee; a Hospital Patients' Rights Hand-
book; the Attica Defense Committee; a
theater class for Boston Guild members;
and a summer project involving busing
and racism in Boston.

Members are also organizing a Crimi-
nal Jury Trials Seminar to be held in
April. The seminar will focus on jury
composition and challenges, constitu-
tional arguments, the Model Jury Act,
how to relate to a jury, and jury selection
in terms of voir dire, investigation and
social science techniques. It will be
presented by two lawyers, one social
scientist, and a Guild organizer.

Students interested in working on
these or other projects are urged to
contact Sue Herz at 440-8137 or Jim
Packer at 521-0576.

How did the National Lawyers Guild
come about? Founded in 1937 as a
multi-racial and progressive alternative
to the American Bar Association, the
Guild drafted and defended New Deal
legislation which was then under attack
by the U.S. Supreme Court. Much of the
Guild's resources at that time went into
the legal support of the labor movement.
During the war years, the Guild lobbied
diligently for an anti-poll tax bill, par-
ticipated in litigation opposing the ex-
clusion of black people from primary
elections in the South, and investigated
the race riots of Detroit and Los An-
geles, exposing the collusion of law
enforcement officials in the shooting
deaths of many black civilians. The
Guild also exposed the failure of the
House Un-American Activities Com-
mittee to prosecute Nazi subversives.

The Cold War years found the Na-
tional Lawyers Guild struggling almost
single-handedly to protect the civil
liberties of those under attack by the
right. The Guild was involved in the
defense of virtually every victim of the
anti-communist witch hunts, and con-
tinued to lobby against H.U.A.C., alien
deporation legislation, and other re-
pressive measures aimed at the left. The
Guild emerged from the McCarthy
period smaller, but organizationally
whole and ready to move ahead.

The 25th Anniversary Convention in
Detroit in 1962 ushered in a new era for
the organization. The Convention cre-
ated a Committee to Aid Southern
Lawyers and the Guild moved into the
thick of the black Civil Rights Move-
ment. In 1964 the Guild opened an
office in Jackson to support Mississippi
Freedom Summer. The office stayed
open for over a year, staffed by a steady
stream of lawyers recruited by the Guild
who defended hundreds of Civil Rights
workers arrested while registering per-
tsons to vote.

Soon after Mississippi Summer, an-
other mass struggle unfolded: the anti-
war movement. Again, Guild lawyers
were on hand to defend demonstrators
and activists. Early in 1967, the Guild
National Office began to concentrate its
resources on the problem of the draft
and Selective Service law. The Guild
held conferences on draft and military
law, taught classes in law schools, train-
ed draft counselors and counseled
registrants.

Today, Guild chapters across the
country have programs based on the
legal needs of their communities. Many
of the projects which are widespread
locally are coordinated by national
Guild projects. These include projects
concerning grand juries, electronic sur-
veillance, military law, immigration,
peoples' law schools, international
struggles, women's issues, summer pro-
jects, prisons, juries, criminal defense,
and labor. The organization publishes a
national monthly newsletter, Guild
Notes, and an analytical, legal journal,
the Guild Practitioner. In addition, many
chapters and regional offices publish
their own newspapers: the one in this
area is Mass Disent.

While avoiding the position that the
law can overcome, untangle or other-
wise resolve today's contradictions,
Guild members continue to fight racist,
sexist and elitist attitudes within and
without the courtroom, refusing to bow
to the legal sanctification of property,
corporate power, and upper-middle-
class interests. They note that at best
the law reflects the stratification of classes
and economic relationships in our so-
ciety: at worst it shapes them. Guild
people work with a variety of groups
and individuals actively challenging
some of society's misplaced priorities,
not unaware that ultimately there can
be no just system of civil and criminal
justice in an unjust society.

AALS: A Progress Report

Craig T. Rockwood

The American Association of Law
Schools (AALS) has never received an
application for accreditation from Suf-
folk University Law School. In 1968,
however, Professor Ernest Roberts of
Cornell University, an AALS-recom-

"
present intention is to file an application with the Association upon completion of firm and final relocation plans. If the plan and application are not acceptable until completion of the construction itself, AALS inspectors cannot be expected to evaluate Suffolk Law School within the next few years. If, on the other hand, it is permissible for an application to be assessed on the basis of anticipated improvements and definite budget commitments, it is not improbable that the law school could be visited in September of 1976.

For prospective law school graduates, time is of the essence of the accreditation process. Certain U.S. law schools simply do not accept applications for further legal study from graduates of non-AALS accredited institutions. Although the percentage of Suffolk students denied such an opportunity remains relatively small, the failure of simply one student to study further at a school of his choice seems unjust. Further, professors of non-accredited schools are not permitted to serve on any AALS committees. Such a lack of direct involvement serves to isolate Suffolk Law School from AALS-sponsored programs and opportunities which affect virtually every other U.S. law school.

Yet the means and methods of rectifying the condition have only recently become available to the law school. The institution of a program designed to secure AALS accreditation is anticipated and is evidenced by the development of a separate and self-contained law school building. Steps are being taken, each in its logical sequence, to provide the much-needed AALS accreditation, but budget considerations and renovation problems present stumbling blocks that must be recognized. If in April the Board of Trustees determines that it is not feasible for the law school to utilize the entire Donahue Building, AALS accreditation cannot be realized for many years. And further, if the space is in fact available for exclusive law school use, the relocation project will not be an immediate operation. The procedure will probably extend well into 1977 at least, and if the AALS cannot acknowledge Suffolk’s application until actual completion of the project, Suffolk Law School will certainly not be accredited until well after that date.

Clark Competition

The Final Argument of the 1975 Justice Tom C. Clark Annual Moot Court Competition was held on Tuesday evening, March 25, 1975, in the Moot Court Room. The Co-chairman of the Competition, William J. Heaphy III and Thomas H. Ward arranged a distinguished Bench consisting of the Honorable G. Joseph Tauro, Chief Justice of the Supreme Judicial Court of Massachusetts; the Honorable Charles S. House, Chief Justice of the Supreme Court of Connecticut; and the Honorable Levin H. Campbell, Circuit Judge, United States Court of Appeals for the First Circuit. The finalists in the Competition were Mrs. Nancy Brown and Mr. Joseph Cove for the Petitioners and Mr. Edward White and Mr. Marshall Gallop, Jr. for the Respondents.

The evening began with a reception in the President’s Conference Room, where our distinguished panel met the Faculty and members of the Board of Trustees. The Argument followed immediately thereafter; an audience of approximately three hundred persons watched in the Court Room and, via closed-circuit television, in Room 311.

Chief Justice Tauro was presented a plaque during preliminary ceremonies in recognition of his endeavors to promote and encourage the development of oral advocacy programs in the law schools of America. Due to the illness of Co-chairman Ward, Mr. Frank Leone presented this award on behalf of Suffolk University Law School.

The arguments were truly excellent, with the team of Brown and Cove prevailing by a slight edge. In recognition of their achievement, they were presented Revere Bowls by Chief Justice Tauro. Messrs. White and Gallop were presented plaques signifying their achievements in oral advocacy.

This year, the Moot Court Board instituted the Honorable G. Joseph Tauro Best Advocate Award to be presented to the Outstanding Advocate in the Final Round of the Competition. The winner of the initial G. Joseph Tauro Best Advocate Award was Mrs. Nancy Viano Brown.

After the Argument, the Judges, faculty, and invited guests adjourned to the Faculty Dining Room for a Cocktail Hour and, soon thereafter, to the University Dining Room for a formal Dinner.

The evening was a complete success, the distinguished panel being extremely impressed with the Clark Competition, the Co-chairmen who arranged the events, and most importantly, with Suffolk University Law School.

The month of March was a busy month for Moot Court activities. The Client Counseling Team comprised of Richard White and Rosemary Harvey was accompanied to New York University Law School by Professor Pizzano. The team unfortunately was eliminated in the Regional Competition but succeeded in casting a favorable impression of Suffolk University Law School.

While the Client Counseling Team was competing in New York City, the International Moot Court Team com-
prized of Jim Connolly, Walter Jacobsen and Bruce Pritzker was competing in the Philip C. Jessup International Law Moot Court Competition held at Syracuse University Law School. The team placed fourth in the overall Regional Competition and managed to defeat Harvard in the opening round. Jim Connolly was cited as one of the best orals in the Competition.

Faculty Review Board: A Proposal

The Advocate believes that at times it is beneficial to the Suffolk Law School community if certain recommendations are initiated by this magazine. One issue going to the essence of law school study is the classroom relationship between student and professor. Maintenance of a vital and productive class process is of paramount importance to law scholar-

ship.

For this reason, it has been suggested that a Faculty Review Board, composed of students, be instituted for the 1975-1976 academic year. Such a board will allow for transmission to the respective parties of student criticism of faculty lectures and faculty dissatisfaction with student performance. It is a form of direct, mass communication becoming increasingly popular in graduate schools.

The process is, simply, that each student will be requested to discuss, on a printed form, his assessment of each professor's appreciation of his subject, his sensitivity toward students, and further qualities pertaining to lecture presentation. Evaluation of the lecture content, however, appears to be a responsibility better reserved to follow academicians, namely, the faculty's own Faculty Review Committee. Results of the process will then be submitted to the Faculty Review Board for collation, and the Board will, in turn, forward its suggestions to the individual professors, if desired, or to the Faculty Review Committee. Of course, all information will remain strictly confidential. The Board will thus serve in an independent, advisory rather than regulatory, capacity.

The calibre and credentials of Suffolk Law School professors are impressive, and it is essential that each faculty member's lecture presentation be commensurate with his ability. The proposed Faculty Review Board is viewed favorably by both faculty and administrative personnel. It is hoped that students will prove themselves equally concerned and support such a program with interest and honest insight.

SULAB

At its inception four years ago, Suffolk University Legal Assistance Bureau Inc. (SULAB) was known as Beverly Legal Aid. This non-profit corporation was created by a handful of Suffolk law students determined to provide needed legal assistance to the North Shore of metropolitan Boston. With the exception of Lynn, Essex County was devoid of legal services for the poor. Through donations from members of the community, funds from the Office of Economic Opportunity and appropriations from the Suffolk Law School Bar Association, Beverly Legal Aid was born. Borrowing form letters and manuals from other legal aid offices in greater Boston, and soliciting advice from clerks, judges and members of the local bar, a group of idealistic students began to furnish legal services to the indigents of Essex County.

In 1973, Suffolk University Law School, impressed by the effectiveness of the program and cognizant of the need for a clinical program in the civil area of law, adopted Beverly Legal Aid. The Law School changed the name of the Corporation to SULAB and totally funded the operation. With its official recognition of the program, the law school supplied a faculty sponsor, Professor Charles B. Garabedian, and a local attorney of record, John D. Schatzt. Mr. Schatz, a founder of the original organization, was charged with the responsibility of locally administering the program. In addition to faculty supervision, four points of academic credit and pre-admission requirements and training were instituted by the university.

In order to participate in the program, an interested student must be in good academic standing and be enrolled in, or have completed, a course in evidence. Second year day and third year evening students may participate in a course offered by Mr. Schatz in the fall of each academic year. The material covered is concerned with probate court practice and procedure as it relates to family law matters. At the conclusion of this course each student must pass an examination given by Mr. Schatz to qualify for further participation in the program. A formal course in family law and landlord and tenant would also be helpful to a student interested in clinical work at SULAB.

During Spring semester, those qualifying students committed to the program for the following year, make several visits to the SULAB office at 88 Elliott Street, Beverly. While there, visiting students assist in client interviews, observe senior students appearing in court, and familiarize themselves with the workings of the office. At the end of the spring term, new officers are selected from the new members to direct the
non-profit corporation the following academic year. This year’s officers are: President, Charles Mancuso; Vice-President, Fred Knapp; Executive Director, Joel Meirowitz; Treasurer, Gerald St. Hilaire; and Secretary, Sally Walker.

SULAB has grown from a handful of students to fifteen this year, handling over two hundred clients. Next year’s candidates, who number over thirty, are presently assisting in the office and going to court with senior students.

Why has this program become so popular with students? What effect has it had in the community where it resides? What benefit does it provide to legal education?

SULAB is the only clinical program at Suffolk University which offers the student trial experience in civil court. The typical senior student in SULAB averages ten court appearances during his/her senior year. Most matters are in the area of family law, including: divorce, separation, child custody and support. Students may appear for clients who entertained SULAB’s services last year seeking a divorce, but whose trial (due to a six month backlog on the docket) was marked for this year.

In addition to interviewing clients and representing clients in pending divorce and separation proceedings, students appear immediately for clients, ex parte, in matters regarding: Temporary Restraining order (TRO), Temporary Support order (TSO), Temporary Custody order (TCO), and orders to vacate the marital home.

Aside from frequent court appearances, one of the most appealing aspects of the SULAB program is the initial client interview. Students conduct their own interviews, but more importantly, they digest the facts and make independent legal decisions. Students follow through on their decisions by filing libels, notifying opposing counsel, and researching questionable issues. Later, follow-up letters are sent to clients describing the course of proceedings to date. Mr. Schatz is available to advise students on questionable procedural and substantive problems that arise. Patricia Ketchum, SULAB secretary, relieves students of many clerical headaches.

Valuable experience is also gained through day-to-day dealings with members of the bar. Few students have the opportunity to negotiate with attorneys over real matters during the course of their law school education. Being an attorney is more than advocacy in the court room. Many an issue has been settled over the phone, by letter or in the lobby of the courthouse. One learns which brothers of the bar may be relied on to keep their word, and which change their agreement as they argue before the judge. This savoir-faire of day-to-day practice is neither taught nor alluded to in law school.

SULAB has an excellent reputation on the North Shore. Its client appointment schedule is booked one month in advance, and its office receives referrals from the welfare department, community service organizations, and members of the bar. All of SULAB’s prospective clients are carefully screened to make certain they qualify for free legal services. Their only costs are actual filing fees and sheriff’s costs. Those clients whose income is outside of the allowable range are referred to local bar associations for information regarding retaining private counsel.

Another indication of SULAB’s popularity in the community is the cordiality shown its student-lawyers by officers and clerks of Essex County Probate Court, whose helpfulness has been an aid to students on many occasions. The judges of the Probate Court, the Honorable Henry R. Mayo, and the Honorable Albert P. Pettoruto, take a paternal attitude toward the student-lawyers appearing before them. They never hesitate to take a moment to explain procedural or substantive issues to a student in a manner which leaves the student free of embarrassment.

Clinical programs like SULAB serve to fill the void left in the traditional approach to legal education. A student graduating from law school has few tools of experience with which to build a practice in the legal profession upon graduation. Even after successful completion of a bar examination, the neophyte attorney has only book learning as a guide in decision-making. There is no substitute for experience. One would not think of seeking care from a doctor whose only contact with the human body was a cadaver. Yet, we think nothing of graduating and licensing attorneys whose only encounter with legal problems has been in the mortified pages of law books. We tend to forget and intentionally disregard the real people, whose feelings, emotions, and acts are portrayed in the narrative of facts in our casebooks. Many human as well as legal decisions are made by counsel for both sides before the case is even brought to trial. A future practitioner of law should be exposed to the realities underlying issues of law studied. Clinical programs like SULAB afford the student that opportunity.

Juriscan

With the nation’s law school enrollment reaching a record high of 106,000 students and last year’s number of persons admitted to the Bar reaching a record high 30,879, science and the computer have been called upon to solve the job placement problem. In contrast to the large number of future lawyers, the United States Department of Labor has estimated that only 16,500 legal jobs will be available each year until 1980. The American Bar Association has introduced a computerized job-search system, Juriscan, to help ease the employment burden for both students and employers.

Juriscan, which began operation in January, 1975, is a program open only to Law Student Division members attending A.B.A.-approved schools. There is a five dollar fee for students, while prospective employers receive the service free. Juriscan is not a profit-making venture. To the contrary, both the Law Student Division and the A.B.A. are contributing substantially to underwrite the program and its many costs of printing, mailing, and handling. Without their aid, it would be impossible to keep the fee down.

Mechanically, the system works by having the student answer a series of job-related questions. Questions that the law student must answer relate to legal practice emphasis, type of employer, location of employment, and size of office. Students for their part answer questions relating to courses taken, skills and experience, and major field of study. Employers will be able to specify certain skills or backgrounds for which they are looking. Students will be sent the close matches among the employers, if any, as openings are listed in the system. The student’s name will remain in the computer until he or she has received approximately five employer matches or until late April, whichever occurs first. The employer will receive a list of approximately fifteen potential employees. If the employer is not satisfied with this list, he can request another list, also free.

The purpose of Juriscan is to introduce a large number of students to a wide and diverse field of employers with significant savings in time and money. A by-product of Juriscan is to give small firms, in less populated areas, vast exposure to the full diversity of potential employees.

Lest anyone think that a panacea has been created, he should realize that a
student may not receive any matches, his matches may be based on his or her third preference, and a student's grades or school will not play a part in the match-up. However, the system is worth the fee when used in conjunction with the traditional letter-sending and door-knocking methods. Who knows, perhaps you will win "The Match Game '75."

---

**International Law Society**

The International Law Society was organized last October to bring to the law student a subject of broader application than those in the traditional law school program. The study of comparative and international law, though seemingly exotic and remote, becomes more recognizable and familiar when note is taken that the increasing integration of world economics, pollution control, and conflict resolution have been dominating the news in recent years. The new awareness of the interdependence of nations and the necessity of cooperation in the exploration and exploitation of natural resources will generate work for lawyers competent in this area of practice.

The International Law Society functions to provide a forum in which the interested student can exchange ideas with educators and practitioners active in the field. The Society does this by providing access to a video tape library, national publications and continuing participation in the Philip Jessup International Moot Court Competition.*

The ILS explored opportunities in both public and private international law in two information sessions earlier this year. Additional briefings will follow as materials and speakers become available from our national organization, The Association of Student International Law Societies.

A representative of Suffolk's ILS participated in the World Trade Conference at the Regional Meeting of the A.S.I.L.S. last Fall in Albany. Our representative returned with instructional materials for the Society's files and a firm commitment for Suffolk to host the Spring Regional Meeting of the national society's executive secretary.

By far the most visible accomplishment of the Society this year was its conference on the Status of the Law of the Sea which drew international recognition for both the Society and the University. A committee of Society members worked closely with conference organizer and Society faculty advisor, Professor Basil Yanakakis, to make it an outstanding success.

ILS plans include publication of a year end review of a specific area of international law, additional conferences on a biennial basis and sponsorship of a regional Jessup competition.

*Our continued participation in the Jessup Competition requires membership in the A.S.I.L.S. through a recognized law school affiliate.

---

**BALSA—A PROFILE**

In surveying a list of student organizations at the Law School, it becomes obvious that three minority groups saw the need to establish student organizations. Why did the women, Spanish-speaking and Black students decide to organize themselves? Was this organizational strategy necessary for their survival at Suffolk? Wasn't Suffolk meeting the needs of these students and didn't Suffolk have as its goal to increase the enrollment of women and minorities?

Frustrated with Suffolk's lack of commitment towards minorities, the Black American Law Students Association (BALSA) was instituted to specifically address the particular needs and goals of the minority law student. BALSA began in 1960 as a national organization to unify Black law students in an effort to address national problems affecting the Black lawyer and his effectiveness in the American Legal Structure. These problems ranged from minority recruitment to discriminatory practices by state bar licensing boards. The goals of national BALSA are to foster and encourage professional competence; to focus upon the relationship of the Black attorney to the American legal structure; to instill in the Black attorney and law student a greater awareness of and commitment to the needs of the Black community; and to influence American law schools, legal fraternities and associations to use their expertise and prestige to bring about change within the legal system in order to make it responsive to the needs of the Black community.1

The Suffolk Chapter of BALSA, which has been functioning for two years, supports the above national goals and purposes. In addition we have adopted more specific goals to address the special needs of Suffolk Law's Black student body. These goals are: 1) to develop channels of communication with the administration to effectively address such issues as minority recruitment, financial aid and administrative decisions affecting academic concerns of minority students, 2) to sponsor activities and speakers which relate the Black law student's academic experience with their future role as Black lawyers, 3) to promote and encourage academic excellence through legal writing, exam-taking seminars and organized review sessions on course material, 4) to serve as a central resource for the dissemination of information on employment opportunities, and legal, cultural and social events in the Boston area of interest to minority law students.

In an effort to achieve its goals, during the course of the year, BALSA has conducted several programs. In September an orientation program for first year minority law students was sponsored in conjunction with Northeastern Law School's BALSA chapter. Prior to composite examinations, BALSA conducted a Legal Writing-Exam Taking Seminar for all interested first year students. Suffolk BALSA participated in a Law Day recruitment program for minority undergraduates interested in pursuing a legal career. This program was sponsored by the Combined Boston BALSA (CBB) which is comprised of area law
schools. We also participated in a Law Day recruitment program at Yale University. In addition to these activities and programs, BALSA provided the impetus for the Dean’s establishment of an Ad Hoc Faculty committee on Minority Concerns.

BALSA intends to continue functioning as an intricate part of the law school. Hopefully we will be supported by the entire law school community.

Footnote
1. BALSA Reports, Vol. 4, No. 2, St. Louis, Missouri, 1975.

Faculty Notes

Professor Alvan Brody is among the sponsors of Mass. House Bill 4055 which would limit smoking in public places.

Professor Charles Burnim was a panelist in a program entitled “Trial of a Criminal Case” which was sponsored by the New England Law Institute on March 15 at the John Hancock Hall. The program revolved around a hypothetical robbery case and included demonstrations, lectures and discussions on trial tactics.

Professor Alexander Cella has been asked by members of the Governor’s Council to prepare a possible court challenge to the constitutionality of the new Judicial Nominating Commission created by Governor Dukakis by executive order. According to the order judicial appointments in the Commonwealth would be made from among individuals approved by the Commission. The constitutional issues seem to be whether the executive power of appointment can be partially delegated to such a group and whether the Governor had the power to create this body by executive order.

Professor Clark has been asked by the minority community of Greater Boston to re-draft the “Boston Plan” and set up the corporation which will train minority members in the construction trades. He has also been named to the board of the Model Cities Program in Cambridge and to the board of directors of the Prisoners’ Rights Project.

Associate Dean Clifford Elias has been elected to the Alumni Council of Phillips Academy for a three year term. He has also been appointed to a joint trustee-council committee to plan the school’s bicentennial in 1976. Dean Elias has also been elected a trustee of Bon Secours Hospital in Methuen.

Professor Charles B. Garabedian has been re-elected to a two year term on the Board of Advisors of the Court Practice Institute. The Institute has headquarters in Illinois. Its purpose is to foster the improvement of trial skills and the administration of justice. An article by Professor Garabedian entitled “Why a Trial Brief” will appear in the Newsletter of the Court Practice Institute.

Professor Charles P. Kindregan is Chairman of the Committee on Genetic Counseling, Screening and Law of the Special Legislative Commission on Clinical Therapy and Human Experimentation. Professor Kindregan is also listed in the 1975 issue of the American Bar Association Redbook.

Dean David J. Sargent has been named by Governor Michael Dukakis to the eleven member, bi-partisan Judicial Nominating Commission. The Commission was created by the Governor by executive order on Jan. 3, 1975. All future judicial vacancies in the Commonwealth will be filled from lists of

| List of commonly used abbreviations in law school and in the profession at large. |
|-----------------|-----------------|-----------------|
| Accept          | Acc             | Law             |
| Action          | Ac              | Liable          |
| Adequate        | Adeq            | Misrepresent    |
| Appellant       | Aplt            | Mortgage        |
| Appellee        | Apee            | Negligence      |
| Bankruptcy      | Bky             | Nuisance        |
| Beneficiary     | Ben             | Ordinance       |
| Bilateral       | Bilar           | Partnership     |
| Bona Fide Purchaser | BFP           | Personal        |
| Breach          | Br              | Plaintiff       |
| Buyer           | B               | Possession      |
| Cause of Action | C/A             | Principal(le)    |
| Chattel         | Chat            | Privity         |
| Common Law      | C/L             | Property        |
| Condition       | Cond            | Quasi contract  |
| Consideration   | Cons            | Question        |
| Contract        | K(AL)           | Reliance        |
| Convert(sion)   | Conv            | Remedy          |
| Corporate       | Corp            | Repudiate       |
| Counter Claim   | C/C             | Restatement     |
| Court           | Ct              | Seller          |
| Creditor        | C’or            | Specific Performance |
| Covenant        | Cov             | Statute of Limitations |
| Damage          | Dam             | Statute of Uses  |
| Debtor          | D’or            | Subrogation     |
| Defense         | Def             | Supreme Ct.     |
| Donor           | D’nor           | Ten              |
| Equitable       | Eq’ble          | Title           |
| Evidence        | Evid            | That is         |
| Grant           | Gt              | The, these      |
| Husband & Wife  | H & W           | j/se            |
| Hypothetical    | Hyp             | Title           |
| Impossible      | Imposs          | Tresp           |
| Injunction      | Injunc          | Trust           |
| Injury          | Irap            | Unilateral      |
| Irreparable     | Irrep           | Value           |
| Irrevocable     | Irrev           | With(out)       |
| Issue           | I               | w/w/o           |
| Judgement       | J               | A line under the last letter of a word indicates an “ing” ending. Example: walk. |
| Judgement Affirmed | J/A           | [Reprinted with permission of Midwestern Advocate] |
| Jurisdiction    | Juris           |                |
| Landlord & Tenant | L & T         |                |
Alumni News

1923

Frank M. Daniels has been elected President of the Class of 1919 of Boston English High School.

1931

James F. Donahue has been elected chairman of the Malden Redevelopment Authority.

1939

Retired Judge Joseph Vinciguerra has been appointed acting chairman of the Merrimack Valley Chapter of the Suffolk Alumni Association.

1953

George W. Arvantis has been named an assistant attorney general by Attorney General Francis X. Belloti. Jerry DiGeronimo has been appointed to the Natick Advisory Board of the Community National Bank.

1954

John Petze has recently been appointed master in the Probate Court of Plymouth County.

1955

Richard Leahy is Chairman of the Board of Selectmen in Norwell.

1956

William Fitzgerald is the President of Meeting House Hill Cooperative Bank. Rep. John Joseph Moakley was named to the Rules Committee.

1967

Henry F. Quill has been elected to the Winchester Trust Company's Board of Directors.

1968

James Barry, Jr. has been named as Governor Meldrin Thompson's legal counsel in Concord, N. H. Mark Berson has joined the law firm of Levy, Winer & Hodos in Greenfield. Charles B. Butnam is associated with the law firm of Graham, Hodge, Swan and Larson in Florida. James T. Dangora has been selected to appear in Who's Who as one of the outstanding citizens of Mass. for 1973-1974. Peter I. Elinsky has been elected a fellow of the Mass. Society of Certified Public Accountants. Sheldon A. Fine has been appointed as the seventh member of the local Community Development Board in Medford. David E. Guthro was elected vice-chairman of the Melrose School Board. William L. Phipps will serve as Legislative counsel for the Mass. Retail Grocer's Association.

1969

John A. Acompora is currently a partner in the New Haven, Conn. firm of Cohen, DeMayo & Acompora. Bruce E. Bergman has opened a law office in Hartford, Conn. Marcus Bourdiere was elected to the Conn. General Assembly as a state representative for the 1975-1976 session. George Jooveleagian has been named to handle district court prosecutions in R. I. Imelda S. LaMountain has opened a civil practice in Pittsfield, Mass. Lawrence F. O'Keefe is associated with the law firm of Pearl, McNiff, Crean & Cook in Peabody. Murray Schulman has joined with two partners in forming the new law firm of Tillman, Tillman & Schulman in Springfield. Dominic S. Terrenova is presently serving the town of Andover as Chairman of the Zoning Board of Appeals. Harold L. Vaughan has been chosen by Mayor Kevin White as Chairman of the Board of Review of Boston's Assessing Department.

1970

Ronald G. Doucette has been promoted to the office of Assistant Treasurer & Legal Counsel of the Home Savings Bank of Boston. John Grant has been appointed an assistant district attorney in Middlesex County. Stephen Kurkjian is a member of the New Globe spotlight team.

1971

Joseph C. Broderick has been appointed to the Finance Committee in the town of Avon. Richard J. DeAngelis is associated with the law firm of Belmonte and Faiman in Framingham. Helen Murphy Doona has been named an assistant district attorney in Plymouth County. William J. Lyons is presently serving as Town Prosecutor for West Springfield. Harley M. Sacks has joined the firm of Morse & Morse in Northampton. Alfred E. Saggese, Jr. was recently sworn in as East Boston's new state representative.

1972

Phil Boncore has been selected to appear in the 1974 edition of Who's Who in Massachusetts. John I. Fitzgerald is associated with the firm of Mavros & Fitzgerald in Lynn. John Larsen is practicing law in Vineyard Haven. Philip D. O'Connell, Jr. is an assistant district attorney in Norfolk County and maintains law offices in Worcester and Auburn. Carlton Purcell has been appointed Director of Purchasing at Beth Israel Hospital. Douglas Wielding is an assistant district attorney in Bristol County. Steven A. Whitkin is associated with the law firm of Kraft and Hall of Chelsea.

1975 CLERKSHIPS

Dennis McCarten: Supreme Court of Rhode Island.
Lawrence Kenna: Supreme Judicial Court of Massachusetts.
Kevin Toomey: Superior Court of Massachusetts.
James Sahakian: Superior Court of Massachusetts.
Donna Filoso: Superior Court of Massachusetts.
Lilian Almeida: Supreme Court of Rhode Island.
Peter Agnes: Supreme Court of New Hampshire.
William Corbett: Supreme Judicial Court of Maine.
Thomas Ward: Superior Court of New Jersey.
James A. Braga is presently serving as a captain with the Judge Advocate General Corp of the U.S. Army. Garen Bresnick has been appointed Executive Vice President of the Home Builders Association of Massachusetts. Coleman Coyne, Jr. has been named to District Attorney Thomas E. Delahanty's staff in Maine. Daniel J. Foley, Jr. has joined the law firm of Hartwell, Driscoll, Reardon and Keenan. Neil C. Giroux has been elected to the Board of Directors of Hoosic River Basin Citizens' Environmental Protection Association in North Adams. George B. Handran has been appointed trust officer of the Boston Safe Deposit & Trust Company. Lawrence M. Iaco has been appointed a Special Assistant Attorney General in R.I. Earle Jacobs, III has joined the Internal Revenue Service as an Estate & Gift Tax Attorney in Trenton, N.J. Charles R. Levin has been named Director of Field Housing for the New England Mutual Life Insurance Co. Thomas L. McDonald has been appointed Assistant City Solicitor for the City of Warwick. John Michelmore is serving as Vice-Chairman of the Foxboro Advisory Committee and Chairman of the Sub-Committee on the Protection of Life and Property. Nancy Newbury has been appointed Executive Secretary of the Rhode Island Commission for Human Rights. Robert W. O'Leary has been named President of the Illinois Hospital Association of Illinois. Howard L. Potash has become an associate in the Worcester law firm of Corbin, Aspras, Madaus & Arakelian. Stephen Shamban is with the firm of Wasserman and Salter in Boston. Raymond E. Shawcross has been appointed attorney for Child Welfare Services in R.I. Dennis M. Spurling has joined the office of Attorney Paul Kazarosian in Groveland as an associate.

1974

Victor M. Anop is serving as lobbyist for the Council of Sportsmen's Clubs of Massachusetts. R. Edward Beard has opened law offices in Millis. Robert A. Bianchi is practicing law in the firm of Staff and Bianchi. John L. Bonee, III has joined the law firm of Kenyon, Bonee and Greenspan in Conn. Mr. Bonee has also had an article entitled "Runaway Children" published in the Dec., 1974 Connecticut Bar Journal. The article was originally submitted as a paper in Professor Brody's Constitutional Law Problems Seminar. Angela Bonin has been named a corporate pension assistant for Stop & Shop Companies, Inc. Phillips Brooks Carpenter has established an office for the practice of law in Waltham. Edmund J. Brown is a law clerk for a Cambridge law firm. Norman M. Clarke was named a County Commissioner in Greenfield. Stephen B. DiPace is associated with Attorney John G. LeMay in offices in Fitchburg. Robert N. Fratar has been named an associate with the law firm of Park & Dee. Richard J. Harb announces the opening of his law office in Brockton. Peter T. Johnson is a resident attorney for Keydata Corp. in Watertown. Stephen Kaufman is employed with Boston Mutual in the Manager-Group Contracts and Compliance Division. Thomas A. Kenefick has joined the law firm of Egan, Flanagan and Egan. Vincent R. Luise will open an office for the practice of law in Lynn. Mr. Luise has also been appointed to the Committee of Probate Law and Estate Planning of the American Bar Association's section of General Practice. Mary Mahoney is currently employed by General Foods Corporation in the field of labor law. Vincent J. McCaughey has opened his law offices in Worcester. Mary Ellen Niles has joined the Northampton law firm of Growhoski and Callahan. Bob Paraday is serving as a law clerk for James McMahon, Jr. in Buzzards Bay. J. Lincoln Passmore has become associated with the firm of Jameson, Locke & Fullerton. Anthony F. Penski has opened a law office in Gardiner. David G. Sacks has become associated with the law firm of Davenport, Millane and Connon in Holyoke. John Woods Spencer has been appointed an assistant attorney general. Ronald Wayland is a member of the board of directors of the New England Broadcasting Association and served as its president this past year. Edward Wickham is presently associated with the firm of Gargano & Tiffany in Cambridge.

Necrology

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

Class of 1921
Frank J. Linehan died on Dec. 26, 1974. He was a member of the Boston Bar Association and the American Bar Association. He was a veteran of World War I.

Class of 1925
Francis Hurney, a retired Internal Revenue Service Attorney, died on Dec. 29, 1974. Mr. Hurney had served for forty-five years in the I.R.S. legal department.

J. E. Rosengard died on Dec. 26, 1974. He was a member of the Massachusetts and American Bar Associations and had been admitted to practice before the U.S. District Court and the U.S. Supreme Court. Mr. Rosengard was also a certified public accountant.

Class of 1932
H. Ernest Cummings died on Dec. 25, 1974. Mr. Cummings was a retired attorney and claims manager for the Aetna Life and Casualty Company. He was a member of the Mass. Bar Association and the Federal Bar Association.
A SPECIAL SERVICE VALUED AT $52.00 FREE

Members of Suffolk Law School—Attention!

FREE—A SPECIAL SERVICE VALUED AT $52
For a limited time only, every customer will be presented with a Special Service Card, entitling him to have suit or top coat pressed and sponged once a week for one year—52 times—value $52.00.

If you purchase your suit of me, I will press and sponge it once a week for one year. This offer is worthy of your consideration.

TOM WILSON.

I promise to make you garments that are as fashionable, well-tailored and perfect fitting as those worn by your best dressed acquaintance who pays extravagant prices for his clothes at so-called “exclusive tailors”—More than this, you will experience the satisfaction that comes from the knowledge of many dollars saved without the slightest sacrifice of your appearance.

TOM WILSON.

I Prepared Myself Six Months Ago
To Meet Present Conditions in the Woolen Market

Anticipating the advance in cost of fabrics in addition to a record-breaking 1916 Spring season’s business, I placed the heaviest orders of my business career at most advantageous prices fully six months ago. My purchasing power is owing to the tremendous outlet through my large chain of stores.

I Invite You to Inspect My Spring Stock

I want to show you the finest and most bewildering assortment of woolens ever displayed—every conceivable design and coloring to suit your fancy—Serges, Silk Mixtures, Scotchies, Vicunas, Fancy Worsted, Clays, Cassimeres, Unfinished Worsted, Drapie Cloth and hosts of others too numerous to mention. No obligation to buy because you look. COME!

Two Piece Suit to Order $13.50
WOODROW BLUE SERGE, $30.00 VALUE, SUIT TO ORDER $18.00

Tom Wilson 169 Washington St.
BOSTON, MASS.

OPEN EVENINGS TILL 9 SATURDAYS TILL 10

Reprinted from the Suffolk Law School Register, May 1916
SUFFOLK UNIVERSITY BOOKSTORE

LAW BOOKS

NEW AND USED CASEBOOKS

AND HORNBOOKS

BOUGHT AND SOLD

GILBERT OUTLINES
SMITH LAW REVIEWS
NUTSHELL SERIES
DICTIONARIES
SUPPLEMENTS – REFERENCE BOOKS

PERSONALIZED PLAQUES - PAPERWEIGHTS

GIFT ITEMS

SUFFOLK LAW SCHOOL CHAIRS

AND

CLASS RINGS

SUFFOLK UNIVERSITY BOOKSTORE

41 TEMPLE STREET – BOSTON, MASS. 02114
TELEPHONE (617) 227-4085