11-1983

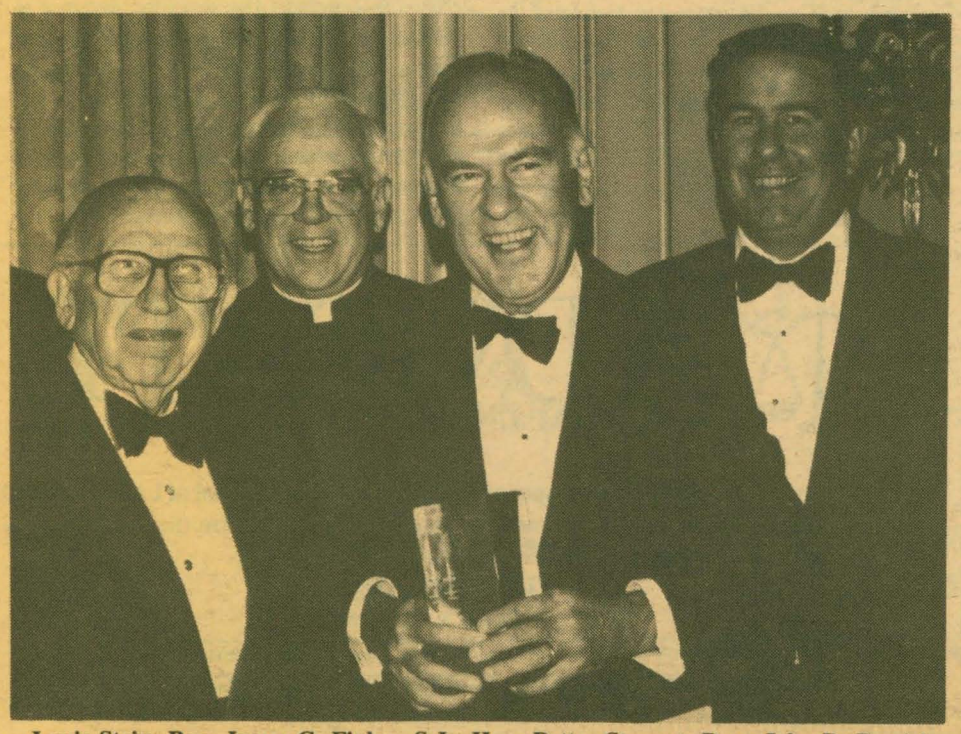
The Advocate

The Advocate, Fordham Law School

SPECIAL EXAMINATION ISSUE

The ADVOCATE
FORDHAM UNIVERSITY SCHOOL OF LAW

VOL. 15 NO. 4 © THE ADVOCATE NOVEMBER, 1983



Louis Stein, Rev. James C. Finlay, S.J., Hon. Potter Stewart, Dean John D. Feerick

Vicinanzo, Toner, Take Wormser

- BY DAVID HEIRES

The final round of the Wormser Moot Court Competition was held on Wednesday, November 2 in the Moot Court Room. After hearing the arguments of the four finalists, the judges decided that the excellent performances of David Vicinanzo and Kevin Toner could hardly be distinguished, and they were declared co-winners.

Vicinanzo, a second year student who also finished first in the Mulligan Competition over the summer, was named as co-authors of the best brief along wih his partner Mike Zetlin's showing has helped him earn a spot on the Jessup International Law Moot Court Team.

The other finalists were Jean Gardner and Jessica Hecht, who argued the respondent's case before the "U.S. Supreme Court" (three federal judges and one district attorney). Vicinanzo and Toner represented the petitioner. The finalists were judged on the basis of individual rather than joint performance, and their arguments were not necessarily from the side taken on their original briefs.

Dean Feerick and almost 200 people attended the final round of the Wormser Competition, which is held each fall in honor of I. Maurice Wormser, a distinguished faculty member at the law school from 1913-55. All students who have completed their first year are eligible. This year, a total of 135 participated, though many were busy with academic and other activities.

"The Wormser Competition invariably has a good turnout," noted Greg Franklin, Editor of the Moot Court Board. "Once again, we were pleased that such a large number of people participated." Franklin believes that the combined efforts of the administration and Moot Court Board have been continuously effective with regard to administering the program, particularly in the area of soliciting alumni to sit as judges in the early rounds, and that the resulting high standards have maintained student interest.

The issue conceived by the Moot Court Board this year was whether excludable illegal aliens have constitutional rights which protect them from indefinite detention. The final round "Justices" were particularly well suited for the purpose at hand. Judges Robert Sweet of the Southern District of New York and Jose Cabranes of the District of Connecticut had recently decided cases involving similar issues and Rudolf Giuliani, the U.S. Attorney for the Southern District of New York, had argued one. The other final round judge was Gerard Goettel of the Southern District of New York.

For those interested, the vote on the merits of the case was: Petitioner 2, Respondent 1, Undecided 1.

ONE NIGHT AT A STEIN

Having told you of the Fordam-Stein Prize and of this year's recipient - Justice Potter Stewart - I believed my role to be played out. Attendance at the affair was limited to luminaries; being not one I would not be there. As fate would have it, however, a tall, bespectacled fairly/father named Reilly tapped me with a twenty (for Tri-X) and turned me into the official photographer for the evening. Two hours later, laden with cameras, wearing my best blue suit, I arrived at my frist black-tie affair.

The pre-dinner reception raised in me thoughts of Hamlet's father--a near non-entity poised solemnly before a wall of great substance. Literally rubbing elbows with the likes of former Governor Malcolm Wilson was a circumstance with kept me somewhat quiet. Until, that is, Judge Goettel suddenly grabbed me from my blind side and reminded me that my presence there did not excuse my absence from his Trial Ad class 2 days earlier. From there I regained more of my substance and the wall of notables became less forboding.

Following the reception we were all invited into the dining hall where, after a fine but somewhat pressed (I couldn't even finish my soup and I got no dessert or cognac) repast, my real work began. Weaving my way between the tables of judges, professors, practitioners and friends, I looked for impressions of the evening. I sought pictures which would be interesting and yet not comical--no easy task in a dinner setting.

Seeing, as I was, each person one-at-a-time--while Louis Stein spoke of the honor of the profession, while Dean Feerick spoke of dedication and dependability, while Justice Stewart spoke of the Supreme Court's avalanche of cases and their attempts to deliver "swift justice" with "more than just swiftness" -- each one became framed not only by the lense but by the speakers as well. Each was a member of the profession, had been dedicated to it and had tried to serve justice. Were they not honorable members of the profession they could not have given genuine praise to another of their ranks.

As the speakers concluded and I lowered my lense I saw as well that I was a member too. Indeed that we all are here at Fordham. As the wall of substance split into its hundred single pieces I felt that I was one of them. It felt good.

I was one of them. Yet I had a nightcap at the Mad Hatter's while they retired to the Hotel Pierre Lounge. Ah well. One day at a time.

- BY CARLO ROSSI

SPECIAL EXAMINATION INTRO . . . . . BY MARK S. KOSAK

The ADVOCATE, in an effort to ease the tensions and uncertainties of test taking, has compiled a series of three articles aimed at making the examination process somewhat more managable.

The first is written by Richard Heath, a PhD. candidate in the Clinical Psycology Program at Fordham's Rose Hill campus. Mr. Heath has done a considerable amount of research on the effect that stress had on learners, and has written a number of articles on this very subject. His article highlights the symptoms of test anxiety and suggests ways in which an individual can deal with the problem.

The second is written by Professor Georgene M. Vairo, a concened member of the Fordham Law School faculty, who presently teaches Civil Procedure. It is a mere five years since Porfessor Vairo was a student at the Law School herself. For this reason, she is able to relate experiences from the perspective of a student as well as her vantage point as a professor. Her article offers a survey of practical test taking tips.

The third is written by Professor John Delaney, who presently teaches at New York University Law School. Professor Delaney is the author of **How To Do Your Best On Law School Exams** and **How To Brief A Case: An Introduction To Legal Reasoning.** Professor Delaney's article, reprinted with his permission, specifies a five step primer for spotting issues and a simple structure for organizing and writing a lawyerly answer.

The series' purpose is to provide additional insight into understanding and coping with the vagaries of the examination process. The suggestions should not be unconditionally followed, but should be used as a standard to evaluate one's own approach. In the final analysis, a student should only select a strategy with which he/she is comfortable.

INSIDE

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You verify your hypothesis by matching the facts with the elements. Your mental or quick, written matching using abbreviations is illustrated below:

Elements of Rule	Key Facts
a) intent-to-kill	
b) manifest. in an	shooting implies & manifests intent
c) act which	
d) fact. & legal. cause the	"but for" factual cause + legal (no supersed. interven.) cause when A shoots & kills B
e) death of a live person	

You have verified your hypothesis: the key facts spelling out the legal conflict prove the elements of the rule of intent-to-kill murder. This rule, also a cause-of-action, applies to these key facts. Your verification of your hypothesis is akin to what a lawyer does in court when he or she establishes a **primafacie** case by proving the elements of the cause-of-action.

Finally, you must ask yourself: are there facts in the particular legal conflict which raise a question about the application of a relevant defense. Again, the possibilities do **not** include all the defenses you have studied. Rather, they are limited to those defenses applicable to a killing and also covered in your professor's classes and/or in the assigned materials. Typically, these might be:

self-defense
defense-of-another
defense-home
prevention of a felony
apprehension of a fleeing felony

A moment's reflection should enable you to reject all these defenses because there are **no** facts presented which raise a question about the application of any of these defense. As noted, issues arise only out of facts. Avoid a beginner's blunder of raising issues when there is no factual basis for doing so, issues about which your professor is not inquiring, what some professors call "red herrings."

The A liable for intent-to-kill murder
when A shoots and kills B?

Note that this formulation of the issue is succinct, incorporates key facts, and refers to the applicable rule. Remember: An issue is both factual and a pointing to the applicable rule.

PART TWO

The Delaney Method For Organizing And Writing Your Answer

All your professors expect that you will display skill in issue-spotting. All your professors also expect that you will resolve the issues you have raised. You resolve the issue with a lawyerly answer: organized, direct, clear, succinct. While there are number of acceptable ways to organize your answer, I recomend CIRIP for first year law students. If your professor suggests another method, be sure to use that method and not **CIRIP.**

CIRIP

C - Conclusion
Is - Issue
R - Rule
In - Interweaving
P - Policy

It is lawyerly to begin your answer with your legal conclusing stated in one declarative sentence. It is a counterpart to writing a brief on appeal where it is good lawyerly form to begin each point with a one-sentence statement of your legal conclusion. You immediately follow with a one-sentence formulation of the issue. You then demonstrate that you know the rule or principle which applies by specifying the elements of the rule or principle, usually in one sentence. The next step is where many students fail: interweaving. You interweave the key facts with the elements of the applicable rule or principle. Lastly, you ask yourself: Is there any policy interest or objective which should be specified. Often, the answer is no, but occasionally, depending on your professor, the course and the key facts, the answer is yes.

An example of **CIRIP** applied:

C A is liable for intent-to-kill murder.
Is The issue is whether A is liable for intent-to-kill murder for A's shooting and killing of B.
R Intent-to-kill murder has five elements: a) intent to kill, b) manifested in an, c) act which, d) factually and legally causes, e) the death of a live person.
In When A shoots B, A's intent to kill is inferrable. The shooting also manifests A's intent in an act which factually ("but for") and legally causes the death of B.
P (No need to mention policy objective served here).

The CIRIP form of organizing your answer is a simple method to resolve, in quick lawyerly fashion, the issue you have formulated. CIRIP is valuable because its use should bar that disorganzed, unlawyerly answer which must be avoided. CIRIP is also adaptable to **many** legal conflicts which require you to argue two or more theories of liability and to legal conflicts to which there is no definite answer and where your lawyerly argument is the answer your professor will reward.

Another illustration of the verifying, organizing and writing process is provided by the following example from the first paragraph of a multi-issue exam problem in torts. Key facts are underlined; relevant facts are bracketed, a technique you should apply on exams.

The Facts

Last weekend, **Buck Hee,** a hardworking first year student at the Get Rich Quick Law School spent most of his time reading torts. By sunday afternoon, however, Buck Hee was so thoroughly frustrated with what he described as "nonsensical details of legal sophistry" that (in an exceptional moment of rage and anguish,) he **threw the hardcover torts book of seven hundred pages at the wall of his apartment,** screaming "I can't handle it." **The book flew out of a nearby window of his apartment which is situated on the seventh floor** (of a Landmark Greenwich Village building) **on a much-walked street. The book struck Sara Lee,** a senior citizen, who happened to be walking below on the sidewalk. Sara Lee instantly fell and fractured her knee joint (under the weight of her body.) Hearing the commotion on the sidewalk, Buck Hee ran downstairs and said to the Lady, ("I am extremely sorry,) **I had no intention to hurt you."**

Example of Verification (Step Five)

By applying the introductory check or steps two through four as specified above, you hypothesize that the issue raised is one of basic tort negligence. You verify your hypothesis that the key facts comprising this legal conflict raise an issue about tort negligence by first explicating the basic elements necessary to establish the rule of tort negligence, which is also a cause of action. The basic rule has five constituent elements:

A) existence of a legal duty
B) standard of care of a reasonable person
C) breach of standard
D) causation
- factual
- legal

E) actual harm

You then match, mentally or in quich outlining, the key facts with these rule-elements. For example:

Elements of Rule	Key facts
A) existence of a legal duty	Buck owes a duty to pedest.
B) reas. person standard of care	Buck owes reason. pers. stand. of care to Lee.
C) breach of standard	In throw. book at wall near open window, he breach. reas. pers. stand.
D) cause:	
- factual	"But for" Buck's act, Lee would not have fallen and been injured.
-legal	Lee: foresee. vict.; w/i scope of Buck's risk-creat.
E) actual harm	Lee fract. knee.

You have verified your hypothesis. The answer might be written out, utilizing in part the outline above, as follows:

Writting the Answer

Buck Hee is liable in tort negligence. The issue is whether Hee is liable to Lee in tort negligence for throwing his book at his apartment wall when the book goes out a nearby window and injures Lee, a pedestrian on the much-walked street below? A cause-of-action in negligent tort requires that the defendant breach a legal duty owed to the plaintiff with the breach causing, both factually ("but for") and legally (proximate), actual loss or damage to the plaintiff. When Buck Hee threw the hardcover, 700-page book aat his apartment wall near his open window, he is engaged in behavior which creates an unreasonable risk of harm to pedestrians on this "much-walked street." He owes such pedestrians a duty to act reasonably so as not to endanger them. a reasonable person of ordinary prudence in Buck Hee's position would not have so acted (objective standard of conduct). Buck Hee threrfore breached his duty to Sara Lee who is within the class of protected

C pedestrians. Hee's breach of duty then caused Sara Lee to fall and injure her knee. Causation has two elements.
Is First, actual cause is plainly established: "but for" Hee's breach of duty, Lee would not have been struck and fallen. Second, legal (or proximate) cause is also plainly established. The existence of pedestrians on this "much-walked" street was reasonably foreseeable and the injury to Lee was clearly within the scope of the
R risk created by Hee's careless throwing of his book near his open window. Lee was within the zone of danger created by Hee's carelessness. Lee suffered actual damage -- a fractured knee joint. The tort of negligence
In is complete. Hee's apo;ogy to Lee and his denial of "intention to hurt" Lee does not eliminate his liability. Intent is not an element of negligence. (No need to mention policy here.)

Secon-dary Issue **P**

Two caveats here. First, on an exam, you must be quick in outlining your answer on scrap paper. Time is scarce. Second, the torts answer specified above is somewhat more model-like and detailed than time may permit in answering the frequent, multi-issue problem with six or seven issues and sixty or so minutes alloted. You can do well on exams without writing model-like answers.

Conclusion

1. This primer for spotting issues and writing your answer is only a beginning. These suggestions have implications, which cannot be spelled out here, for studying, reviewing, outlining of courses, compiling a checklist, and answering of exam problems. I address many of these matters in my book, **How To Do Your Best On Law School Exams;** and my new book, **How To Brief A Case: An Introduction To Legal Reasoning,** is also relevant.

2. Spotting and formulating issues is a culminating skill. It presupposes:
- skill in extricating key facts
- skill in selecting relevant topics of law
- knowledge of relevant rules, principles and policies

It must be accompanied by:
- skill in rule application, generally by interweaving
- skill in lawyerly writing
- skill in use of policy.

3. Skill in issue-spotting, including the presupposed skills specified above, is also of critical importance in law practice. A key difference, however, is that on law exams, the key facts are presented to you in your professor's exam problem and the facts are postulated as true, whereas in practice you must uncover the key facts from clients, witnessed, documents, etc. -- and you must also verify the truthfulness of the key facts.

4. Developing these skills is a matter of constant study and practice throughout the term, for a skill is a capacity for performance and not simply an abstract understanding. It is a blunder to attempt to apply these five steps on a law exam unless these steps previously have been practiced and internalized.

5. You must gradually develop the capacity to apply these skills quickly. All law exams have time pressures. Answering the typical multi-issue problem is like being in a pressure cooker.

6. This primer is applicable, in addition to the multi-issue problem, to another typical type of exam problem and raises fewer issues with the expectation that your answer will be more fully developed than your typical answer to the multi-issue problem. Where an exam problem presents one to foru harms, it may be possible to consider together all the harms, parties and harm-producing behaviors in the entire problem, rather than proceeding paragraph by paragraph. Sometimes, too, it is possible in an exam problem to consider together all the harms, parties and behaviors in two or three simple paragraphs, rather than proceeding paragraph by paragraph.

7. This primer is also adaptable, with modifications, to bar exams. Two quick modifications A) unlike law exams, one problem on a bar exam may raise issues from two, three or more subjects of law; and B) bar examiners expect you to apply the rule of the particular jurisdiction, not the majority and minority rule.

8. This primer for spotting issues and organizing and writing your answer does **not** apply to pure policy problems and, without modifications, is of more limited guidance to civil and criminal procedural problems and with multiple-choice or fill-in-short-answer exams.

ADVIOS.

In The Jesuit Tradition II: A Matter of Civility

REV. EDWARD G. ZOGBY, S.J.

One day in Trinity class at the Jesuit theologate known as Woodstock College (Maryland), as John Courtney Murray was lecturing, a hand shot up into the air requesting that the professor explain the rather lofty abstraction on the Trinity he had just delivered. Murray quipped that what he had just uttered was in the nature of a genial remark. "It is the place of the genius to utter it, and the task of lesser minds to interpret it." amazement seized his listeners. What amazed them was that he was serious and they were puzzled. But over the year since then the rememberance of those words by that rarest of scholars has signaled them to a basic truth about levels of usage in language; in definition and connotation, in public argument, in civil conversation.

The reader of *We Hold These Truths* is confronted by a deeply surgical mind that probes our common language to root out biases, prejudices, and hidden assumptions which often cloak the meaning of what is being said. For instance, Father Murray clarified the distinction between quarrel and public argument - public argument differs from quarrel because it takes as its premise the agreement to disagree. From this whole attitude emerges the possibility of seeing the Constitution and the Law as giving unity to the diversity of a pluralism of intricate traditions-in-relation without reducing them to a single stance that ignores the differences.

Perhaps the most significant into what is involved in a word is what Murray did as a political theologian with the word idiot. When Murray used the word it was not in its customary vernacular usage. He used it in its primitive greek usage where it first meant the private person, but later came to mean the person who does not possess the public philosophy. The idiot is no longer master of the knowledge and skills that underline the life of the civilized City; indeed, he does not know the meaning of "civility." For Murray, the idiot is just one step removed from the barbarian who can often today be seen "in a Brooks Brothers suit."

In this context, which I am using to show a mind awake carefully discerning the intricacies involved in public and political discourse, Murray once asked: "What is our contemporaty idiocy? What is the enemy within the city? If I had to give it a name, I think I would call it "technological secularism." The idiot today is the technological secularist who knows everything. He's the man who knows everything about the organization of all the instruments and techniques of power that are available in the contemporary world and who, at the same time, understands nothing about the nature of man or about the nature of true civilization.

And if this country is to be overthrown from within or from without, I would suggest that it will not be overthrown by Communism. It will be overthrown because it will have made an impossible experiment. It will have undertaken to establish a technological order of most marvelous intricacy, which will have been constructed and will operate without relations to true political ends; and this technological order will hang, as it were, suspended over a moral confusion; and this moral confusion will itself be suspended over a spiritual vacuum. This would be the real danger, resulting from a type of fallacious, fictitious, fragile unity could be created among us."

Obiously I am assuming that the Reader has a desire to learn from John Courtney Murray. Our battlefield (he frequently used martial metaphors to which a whole enjoyable study could be devoted) is not the same as it was when he was forging his categories in the face of those who were trying to show that the aim of American Catholicism was to subject America to the power of the Pope in Rome. In this article I am pursuing his method rather than his message, which in reality are inseparable. By seeing what he does with language, one can see that his real passion centers on a deep conviction that the morality of law, as the law undergirding our common experience, has to be saved from mere technicism. Jews, and secular humanists) with the insistence that we hold these truths and that they exist. They are to be found in our corporate existence as a free society.

For Murray, the serious questions of religious pluralism as they emerged in public situations spanning the times from Al Smith to John Kennedy, and needed to be confronted, was first and foremost what was happening to America, and was it for America's good? In his own argument, he is like the Finnish symphonic composer Jean Sibelius whose symphonies and tone poems grew from a passionate need to hear and record that one pedal note from which the whole work would get its proper signature. That pedal note for Murray was civility. Everything he wrote rested on this. He commented, "...the immediate question is not whether the free society is really free - but whether American society is properly civil." For "civilization is formed by men locked together in argument. From this dialogue the community becomes a political community" and not just "a herd association."

Civil society, he said, is a need of human nature before it becomes the object of human choice. The distinctive bond of the civil multitude is reason, "or more exactly, that exercise of reason which is the argument." For Murray, the City is the passion for justice, in which the very form of friendship is a special kind of moral virtue and wherein the will to justice is seen to have its origins in intelligence. The public argument is an argument about public affairs, the res publica, which seeks always the advantage of the public, and which calls for public He said, "The consensus is come to by the people; they become a people by coming to it."

He added that where consensus exists it is real, and among the people everything is not in doubt; that there is a core of agreement, acord, concurrence, and acquiescerce. We hold certain truths; therefore we can argue about them. "This consensus is the intuitional **a priori** of all the rationalities and technicalities of constitutional and statutory law. It furnishes the premises of the people's action in history and defines the larger aims which that action seeks in internal affairs and external relations." The first utterance of a people, he said, "...these are the truths that we hold." It includes a patrimony, an intellectual heritage whose final depository is the public mind holding them in high argument. The truths they hold are truths because they are true - found in the structure of reality by that dialectic of observation and reflection which is called philosophy. It is contact with experience, but experience illumined by principle.

Murray warns us that the enemy, the barbarian, is at the City gates. He "need not appear in bearskins with a club in hand. He may wear a Brooks Brothers suit and carry a ball-point pen with which to write his advertising copy."

"In fact," he concludes, "even beneath the academic gown there may lurk a child of the wilderness, untutored in the high tradition of civility who goes busily and happily about his work, a domesticated and law-abiding man, engaged in the construction of a philosophy to put an end to all philosophy, and thus put an end to the possibility of a vital consensus and to civility itself." With the barbarian, agrument cesases to be civil and is dominated by passion and prejudice, its vocabulary becomes solipsistic based on the premise that "my insight is mine and cannot be shared." Diaolgue becomes monologue with neither listening to the other. When such a thing occurs men cannot be locked together in argument. "Civility dies with the death of dialogue."

Faculty Headnotes:
MORALITY AND THE CRIMINAL LAW

- BY PROFESSOR ERNEST PHILLIPS

The Constitution prohibits criminal laws that reflect moral values. It is not the function of the penal law to articulate or enforce moral values. One hears that assertion from time to time, made by distinguished and seemingly knowledgeable persons, even judges. But is it true?

It is preposterous! No one made the assertion when we were all of the same mind concerning right and wrong, in the early days of the United States. But it is preposterous even today. True, we are now broken down into contending sects and factions which disagree about what is moral and immoral, not on just one or two trivial issues, but on dozens of important matters. Still the Constitution does not prohibit the majority from enacting criminal laws that reflect its moral values. In fact, it is the function of the penal law to, among other things, articulate and enforce the moral values of the majority.

It sounds very illiberal and oppressive, doesn't it? A majority imposing its will on a minority! Terrible, isn't it?

Well, no, it's not. If the People of New York may enact a law only when ninety-nine percent of the people believe it desirable, the People of New York may pass no laws at all. Whatever law you choose to name, there is today a substantial minority which opposes it, whether a law increasing the sales tax, or fixing a 55 mile an hour speed limit, or prohibiting the sale of hand guns. The purpose of every law ever passed is precisely to impose the will of the majority on the minority. So it is silly to object to particular laws on the ground that it is somehow unconstitutional for the majority to enact a law which a sizable minority finds disagreeable.

A given law may well be undesirable. A proposed tax increase, for example, may so discourage production that businesses would shut down and their employees lose their jobs. But the constitution contains no provisions that would invalidate the tax if special interests and the greed of politicians secured its passage despite the opposition of investors, employers, and employees. The majority may impose even an undesirable law on the minority. The Constitution does, of course, contain several restrictions on the power of the majority: It requires a state to conduct judicial proceedings with due process, for instance. It prohibits racial discrimination. But, I repeat, the Constitution does not invalidate a law simply because there is a minority which does not like it.

That may be true of laws that make the failure to pay a tax a crime, you will say; but surely there is something peculiarly obnoxious about criminal laws that reflect moral values and impose a view of right and wrong on a minority that does not share those moral values! Surely the Constitution prohibits that!

I think not. What is more, I expect that you will agree upon reflection.

Consider, for example, the sit-ins of the 1960's conducted by people who wanted to call attention to immoral state laws permitting racial discrimination by private persons. Their hope was that congress and state legislatures would enact laws, including criminal laws, reflecting the belief that it is immoral to deal with individuals on the basis of irrelevant considerations such as skin color. Take, as an example, someone who operates a lunch counter. He gives members of the public a license to enter his establishment and buy lunch. In 1960 the law of licenses permitted a licensor to arbitrarily revoke a license at will, for good reason, for no reason, or for an immoral reason such as skin color. Upon revocation the law required the licensee to immediately leave the premises. The failure to do so constituted criminal trespass. In this way an operator of a lunch counter in Mississippi could immorally but legally refuse to serve blacks. Those who sat-in at the lunch counter got themselves arrested to advertise this immoral legality. And in the end they accomplished their purpose: They secured passage of laws that make it a crime for the operator of a lunch counter to revoke a license on the immoral ground that the licensee's skin is colored black. Now ask yourself: Were these laws unconstitutional because they imposed a moral value held by one set of persons on a large group who, at the time, did not share that value? The proposition is absurd.

Robert F. Drinan, S.J., a former congressman, now a professor of law, in an address at Wake Forest on September 27, 1983, spoke of lawyers as "moral missionaries" and the "moral questions in America crying out for a legal resolution." He had in mind things such as the control of nuclear arms. Is he simply wrongheaded when he insists that laws relative to such matters may lawfully reflect his moral values, when there are a large number of quite reasonable persons who believe Father Drinan's moral values are askew? Father Drinan has been wrontheaded on almost every issue he has addressed, but may we agree that, in this instance, he is not; that laws may reflect moral values.

Somewhat over a year ago, a group of students at Columbia Law School banded together and called themselves the Columbia Law School Affirmative Action Task Force. This group thought that there had been insufficient affirmative action at Columbia. They filled a complaint against the university with the Department of Labor's office of Federal Contract Compliance, charging Columbia with "morally offensive and quite possibly illegal" conduct in failing to hire a sufficient number of women and blacks as faculty. Should the office of Federal Contract Compliance have dismissed the complaint on the ground that a punitive law should not articulate or enforce moral value? Of course not. Even liberal, progressive people such as you and I would view dismissal on that ground proposterous; just as we would consider proposterous an allegation by bloodthirsty militarists that a law governing nuclear weapons would be unconstitutional if it reflected Father Drinan's moral values.

It is easy enough to reject the allegation when the law reflects our own moral values. On the other hand, it is very difficult not to make the allegation ourselves when the law reflects a rigid, narrow-minded morality, i.e., moral values we do not hold. Yet, we should resist the temptation. In a democratic, self-governing society, criminal laws democratically enacted are as legitimate when they reflect the moral values of others as when they reflect our own. The remedy is political action: Form a pressure group, write your legislator, contribute money to candidates you like, vote, until you get the law changed, if you can.

Therefore, you will, no doubt, join with me in rebuking the men on the New York Court of Appeals for the intolerance they displayed not long ago by their decision in **People v. Onofre,** 51 N.Y. 2d 476 (1980). Onofre was an adult male who enticed a 17 year old boy to Onofre's home, where he committed sodomy on the boy. The People of New York, outraged by the sexual abuse of a minor, prosecuted Onofre for deviate sexual intercourse. However, a majority of the men on the Court of Appeals held unconstitutional the provision of the penal law in question. Four of these men agreed to the proposition, which you can I have concluded is absurd, that "[I]t is not the function of the Penal Law . . . to provide either a medium for the articulation or the apparatus for the intended enforcement of moral or thelogical values." 51 N.Y. 2d at ..., footnote 3. For shame! What nonsense!

Lara Teeter and Galina Panova (Photo Credit: Martha Swope)

PERFORMING ARTS

BY EILEEN POLLOCK

In my first year Torts class, Professor Sweeney brought in a full page ad from the New York Times featuring a Fordham student striding across the plaza of Lincoln Center, briefcase in hand,, head down, oblivious of his surroundings, intent on getting to class. The purpose of the ad was to demonstrate how New Yorkers ignore the cultural opportunities the city has to offer. The Fordham student lost no time in pointing out to the advertiser that his likeness had been appropriated without his consent for advertising purposes, an invasion of his right of privacy, and settled for an undisclosed sum.

Be that as it may, I for one have never passed the plaza at Lincoln Center, just next door to Fordham Law School, without feeling uplifted and incredibly lucky that I go to school so close to the best performing arts center in the country. After days and nights of heavy thinking, it is a pleasure to soak in the emotional and aesthetic balm of beautiful music, dance and opera. And it is frequenctly an intellectual experience as well to listen to unfamiliar music and watch the geometrical shapes of a neoclassical ballet, an experience which expands your horizons and challenges your conceptions of beauty and art.

As an evening student, when I have an "early" class, one ending at 7:45 PM, I often run right across the street to the New York State Theater, and buy a ticket for the New York City Ballet, which has an 8:00 PM curtain. You can frequently get tickets at the last minute, sometimes even free tickets. On two separate occasions, as I stood in line to buy a last-minute ticker at the box office, ticket-holders came up to me and offered me a free orchestra seat. But the New York City Ballet (NYCB) is well worth the $23 for an orchestra seat, and third ring seats provide an excellent view for a very reasonable $15. The regular repertory season runs for the remainder of November. During December, the Company performs "The Nutcracker," and repertory resumes January 3rd. NYCB is no doubt the best and most original ballet company in the country, and it's right next door to Fordham! This is the company of the late, great choreorapher George Balanchine, and the repository of his marvelous and innovative ballets (more on Balanchine to follow).

If you are an opera lover, although the New York City Opera's season has just finished, and it won't be heard again until July, the Metropolitan Opera's season is now in full swing. The Met is much more expensive than the City Opera, probably prohibitively so for students and, for that matter, anyone else who is not on an expense account, but it has the legendary names - Te Kanawa, Cotrubas, Scotto, Pavarotti - to name a few who will be singing in the coming weeks, and its productions are the most elaborate and lavishly mounted. You can beat the high cost of seats ($65 in the orchestra on weekends!) by going standing room. It costs $7 for orchestra standees. Tickets for Monday through Friday performances go on sale the Sunday before the performance at noon, and for Saturday performances, the same day at 10:00 AM. If you go standing room, there are usually many empty seats left in the orchestra, and you can certainly discreetly aim for them at intermission.

The best bargain at Lincoln Center is probably rehearsals of the New York Philharmonic Orchestra, which are just $3 on Thursday morning, unreserved seating. It's probably extremely interesting, too, to watch how a conductor shapes a performance. I haven't seen this for myself, because of work commitments, but at $3, if you have the time, you really can't lose.

While waiting impatiently for the New York City Ballet season to open, I went to see "On Your Toes", the revival of the Rodgers and Hart musical of 1936, directed by George Abbott and choreographed, in part, by George Balanchine. The plot, which is basically irrelevant, concerns a tempestuous Russian ballerian (played by Galina Panova, in the role originated by Natalia Makarove earlier this year), and a scholarly music professor who happens to be a remarkable tap and jazz dancer (Lara Teeters), and their efforts to produce a new jazz ballet. The ballet, danced at the end of the show, is famous "Slaughter on Tenth Avenue". There is an excellent supporting cast, including Dian Merrill, George S. Irving, Christine Andreas and George de la Pena. Butbasically, as the dialogue chugs along, and the pleasant little songs are sung, everything is very tame and predictable. It is the big dance numbers that make "On Your Toes" come alive and take off. At the end of the first act, the "Princess Zenobia" number, a satirical look at Diaghilev's *Scheherazade,* is wonderfully funny, and beautifully danced by Galina Panova and George de la Pena. In the second act, two forms of dance compete in the title song, as teams of dancers, first in classical ballet, then in jazz and tap, try to out do each other.

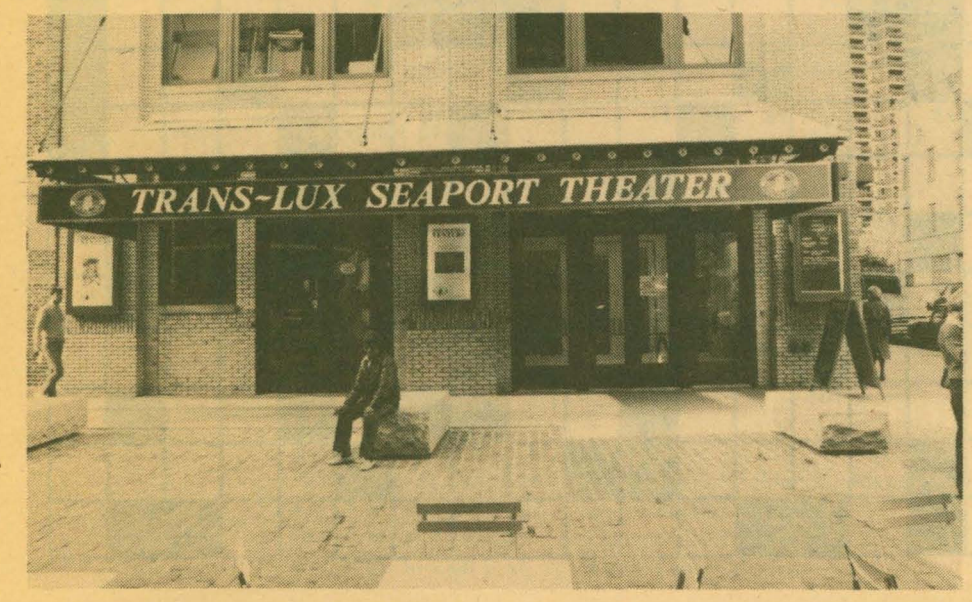
It is the climactic "Slaughter on Tenth Avenue" that is the event of the show, well worth waiting for. "Slaughter" is filled with the American energy and drive with which Balanchine, a Russian ex-patriot, powered so many of his ballets throughout his career. The dancers strut, lunge and leap with a frenetic anxiety that is as apt in the 80's as it was in the 30's. Mr. Teeters in motion is like a spring unwound; as he dances triumphantly around the body of the dead gangster, his limbs jerk like those of a marionette pulled by a manic master, and his splay-fingered hands play a vivid accompaniment to his feet. Miss Panova, formerly with the Kirov Ballet in Leningrad, is a superb classical dancer, with a perfect technique and all the verve the role demands.

The staging of "On Your Toes" is always smooth and interesting, utterly professional. Dina Merrill is charming in a small but elegantly costumed part, and Christine Andreas has a lovely voice, but seemed somewhat ungainly and out of place amidst all the dancers. She and the other singer tended to garble the song lyrics. The singing was generally drowned out by the orchestra, whose percussions, especially during "Slaughter", could certainly use some toning down. Miss Panova's acting was too often unintelligible, especially in her first scene in Act I, and she had a disconcerting habit of giving all too much emphasis to the wrong work in a line. As a comic actress, she is yet a fledgling; as a dancer, however, Miss Panova is nothing less than a fully-developed swan, in both technique and expressive ability. The entire cast could benefit by using less gesticulation - a little of flung arms goes a long way. Mr. Teeters is perfect as the music professor, a bit fumbling and self-effacing, but the moment he takes off into dance he is in his natural habitat. When he is on stage, he is the only person worth watching, with the occasional exception of Miss Panova.

The Rodgers and Hart songs are inoffensive; I liked "Glad to be Unhappy", and "The Heart is Quicker Than the Eye" is quite witty. But only the music for "Slaughter on Tenth Avenue" was serious enough to be really worth remembering.

Incidentally, although Balanchine originally choreographed the entire 1936 production, there existed notation only for the "Princess Zenobia" and "Slaughter" ballets. "Princess Zenobia" and "Slaughter" were reworked by Balanchine before his final illness, and completed by Peter Martins according to Balanchine's instructions. The rest of the dance numbers are choreographed by Donald Saddler.

According to the box office, "On Your Toes" is usually sold out on weekend evenings, but there are seats available weekdays and Sunday. There should be even greater availability after January 1st. You can get tickets for almost half price at the TKTS center at 47th Street and Broadway or at The World Trade Center on the day of the performance.



THE NEW SOUTH STREET SEAPORT

- BY ROBERT V. FONTE

Often times New Yorkers fail to realize the many attractions which the city of New York offers to them. One of the new additions to our city's vast collection of sites was unveiled last summer. On July 28, lower Manhattan witnessed a celebration rivaled by no other summer festival. After marching in a parade the city and state's major politicians spoke before 100,000 cheering specators while confetti and streamers fell from buildings and 30,000 balloons floated into the sky.

The occassion of this mid-summer celebration was the official opening of the South Street Seaport. In the space of one short year, the area bounded by John, White, Beekman and South Streets had been transformed by the Rouse Company, with the help of 400 million of public and private funds, into a modern showpiece.

Schermerhorn Row, the charming but deteriorating row of warehouses built by ship chandler Peter Schermerhorn in 1811, has been reincarnated into fashionable clothing stores, unique giftshops, and magnificent restaurants. One hundred and seventy years of history have been washed off the brick facades of these ancient buildings and the structures now look like new.

What is now known as the "Museum Block" houses the South Street Seaport Gallery and museum exhibits, the Trans-Lux Seaport Theatre, and twenty boutiques and restaurants. The oldest structure, a Greek revival building erected in 1794, now houses an Ann Taylor women's clothing store.

The centerpiece to the entire Seaport development is the Fulton Market, the fourth "Fulton Market" to be built on the site. It houses a four level emporium devoted to food, with forty shops and restaurants. The wide selection of food which is offered is designed to satify even the most exotic cravings.

What sets the Seaport development apart from Rouse's other projects is the existence of the South Street Seaport Museum as a cultural attraction. The museum is a highly regarded cultural institution.

The three blocks completed are merely the first phase of a four-phase plan. In phase two a brand new pier will be constructed, supporting a three story Victorian Style steel and glass pavillion housing no less than 120 restaurants, cafes, and stores.

The third and fourth phases have not been announced yet, because they are contingent on the success of the earlier stages.

Continued from page 8

to you! If the Professor says 30 minutes for question one, take 30 minutes. That seems obvious, but too many students end up spending too much time on short question, leaving themselves to little time for the ones the Professors have assigned a higher point total. If you don't get to a question, you don't get any points. Don't let that happen to you. There's no excuse for it.

If you can't finish in the alloted time, it means you're going into too much detail or discussing irrelevant material. Generally, students write too much. For example, rather than write a 50 page dissertation on the history of personal jurisdiction from *Pennoyer v. Neff* on, try simply analyzing the facts in the problem. It takes less time, and if you analyze the problem correctly, stating the law succinctly and applying it to those facts, you will be demonstrating your mastery of the subject to the Professor. Brevity, not verbosity, is the virtue.

9. **Thou Shalt Be Organized**

After you have read over the exam, think about the first question you want to answer. Then outline it. You already should have underscored most of the relevant facts. Now organize your discussion around an analysis of those facts. The outline should identify the legal issues, in a logical order; **i.e.,** offer before acceptance; or the existence of a duty before breach of duty. Under each legal issue, note 1) the relevant facts, and 2) the competing considerations. For example, state the facts that show the elements comprising a battery, but state also that facts showing the element of unwanted touching are not present; or state the facts to show battery, but state other facts showing a defense of self defense. Because a tort is not complete, or a defense may not succeed is no reason not to discuss it. If a fact has raised a legal issue in your mind, discuss it, brief stating your reasoning. Finally, don't forget to conclude. Once you have done all this, you'll be in a position to write a tight, precise, well-organized essay.

10. **Thou Shalt Apply the Law to the Facts.**

The difference between an "A" exam a "C" exam usually is explained by failure to obey this Commandment. Professors are not looking for vague general discussions of the law. They want you to demonstrate your ability to spot the legally relevant facts and to apply the law you have learned to those facts. Thus, in your answer, you should state what the issue is, **i.e.,** whether A made B an offer, then set forth the applicable legal principles and elements, then analyze the **facts** to show whether the legal standards are met. If you haven't discussed the facts pertaining to whether A made B an offer, don't expect to do well on the exam.

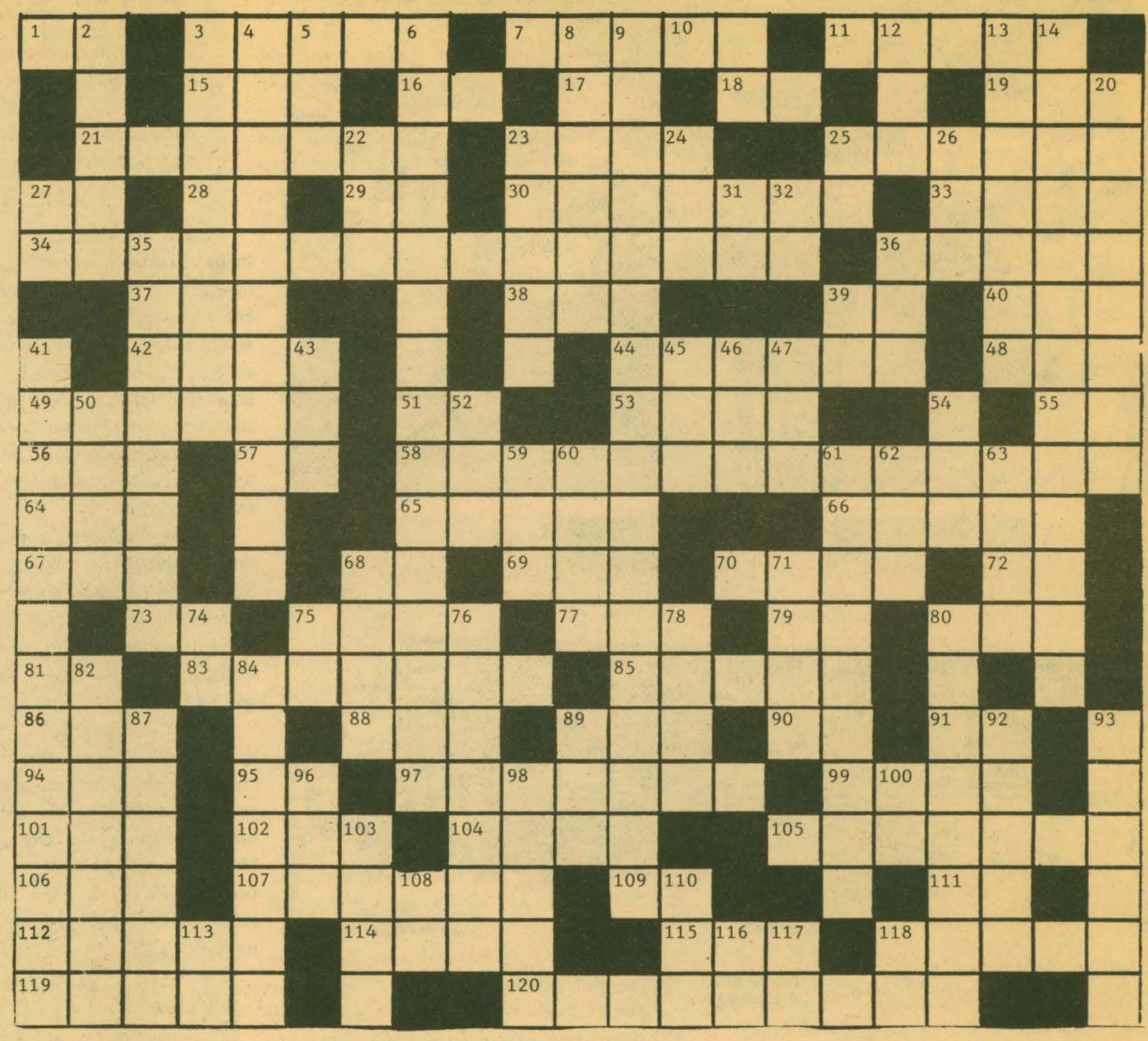
Now, suppose the next issue is whether B accepted A's offer, but you have concluded that A had not made an offer, or A had revoked the offer. Does that mean you may stop writing? Of course not! State "Assuming A had made an offer, . . ." then proceed to discuss the next issue.

Of course, your answers should be legible and well-written. Don't force the Professor to struggle! You're not likely to get the benefit of the doubt if he or she can't make out the words or can't follow a poorly constucted sentence or paragraph. Skip lines, write on every other page. Do what you have to do to make your answers clear.

Finally, a word about so called "Study Aides." Let me remind you there is **no** substitute for preparing your own outline from your own notes and the cases. There are no short cuts to doing well in law school. Preparation is the key, just as it is in the real world. Spend the time trying to understand the rules **and** practicing their application and you'll do well. Good luck to all.

LEGAL CROSSWORD

- BY ROBERT BIENSTOCK



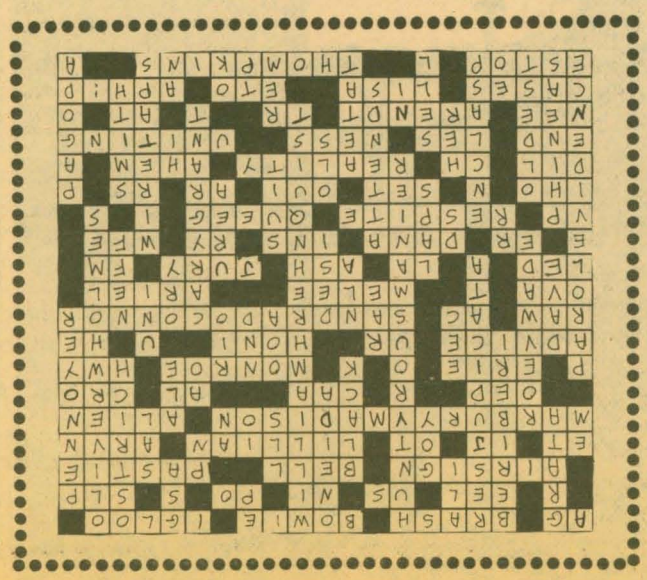
ACROSS

1. Attorney General (abrev)
3. Cheeky
7. Rock star or hunting knife
11. Aleut's abode
15. Conger
16. United States
17. Nickel
18. Italian river
19. English shipping reformer 1824-98 (init)
21. One of certain horoscopes
23. 1 across under Carter
25. Item of ecdysiast's garb
27. Hero of number one B. O. champ
28. Swedish heavyweight champ, 1959 (init)
29. Dickens hero who wanted more (init)
30. Gish
33. Vietnam combatants (init)
34. Case which established doctrine of judicial review
36. Film directed by Ridley Scott
37. Allegedly the best dictionary (init)
38. C.A.B. predecessor
39. With 92 down, 1928 presidential candidate
40. _____ Magnon
42. With 74 down and 120 across, plaintiff and defendant in case which established which law applies in diversity actions
44. Blonde bombshell
48. Tpk.
49. What Polonius gave to Laertes
51. Sumerian city
53. _____ soit qui mal y pense
55. Helium
56. Uncooked
57. Alternating current (abr)
58. Supreme Court Justice, 1981-
64. Gametes
65. Brawl
66. Character in The Tempest or gazelle
67. Light Emitting Diode (abr)
68. Musical note
69. Cigarette debris
70. Trier of fact
72. Radio band
73. Erbium
75. Wrote Two Years Before The Mast
77. Immigration agency
79. Guitarist Cooder
80. World Federation of Engineers (abr)
81. Vice president (abr)
83. Pause
85. Bogart role
86. International Hydrological Organisation (abr)
88. Tennis unit
89. Pierre's affirmative
90. Argon
91. Revised Statutes (abr)
94. Dilute (abr)
95. Customhouse (abr)
97. Not a fantasy
99. Conversation interrupter
101. Terminus
102. _____ Paul, performed with Mary Ford
104. Untouchable leader
105. Act of joining
106. Formerly known as
107. Political theorist, expert on Nazi mentality
109. The other one, not FDR
111. Astatine
112. Studied by law students
114. Mona
115. W.W. II arena
118. Plant juice sucker
110. To legally prevent
120. See 42 across

DOWN

2. Personna non _____
3. Deficiency disease
4. Claim preclusion
5. Three time champ
6. Seminal agency case
8. Utopian community
9. Supreme Court Justice, 1972-
10. Etiquette expert 1872-1960 (init)
12. General Services Agency
13. Large bird
14. Supreme Court Justice, 1902-1932
20. With 63 down, litigants in an early jurisdiction case
22. Gentile
23. Hugo L. _____
24. French revolutionist 1767-94 (init)
25. Pianist with same name as Roman Emperor (init)
26. Mineo
27. Printer's unit of measure
31. Moon of Jupiter
32. Preposition
35. Abortion case
36. Malt liquor
39. Film process: Todd _____
41. Rule first year students find unspeakable
43. Common market
45. On Or About (abr)
46. Northern North Dakota (abr)
47. Place to go flying down to
50. Winfield
52. Norma ____
54. Singular (prefix)
59. National Library Association (abr)
60. He loved Lucy
61. He helped bring up Baby
62. Relating to (suffix)
63. See 20 down
69. Pool lengths
71. Nitrogenous compound
74. See 42 across
75. From the sign
76. Look after
78. Litigation or three-piece
80. Buggings
82. Hero of Around the World in Eighty Days
84. Hold to ones bosom
87. Least recent
89. Old Latin School (abr)
92. See 39 across
93. Chinese temple
96. Pronoun
98. Age (Lat)
100. Greeting
103. Transfer to another for consideration
108. Next in (abr)
110. Quasi-in ____ jurisdiction -- subject of Harris v. Balk
113. Earliest (comb. form)
116. Township (abr)
117. Acknowledgment
118. Unsaturated carbon compound (suffix)

ANSWER TO LEGAL CROSSWORD PUZZLE



REV. EDWARD G. ZOGBY, S.J.

Rev. Zogby can be located in room 224B of The Lowenstein Center Law Students are encouraged to take advantage of the individual counselin services which are available. Rev. Zozby can be seen anytime during weekdays and in the evening by appointment. Rev. Zogby also celebrates mass each Thursday at 2:30 P.M. in room 221 of The Lowenstein Center.

EXAM SCHEDULE

The final examinations will be held on the dates and at the times indicated:

Wednesday ... December 7, 1983

10:00 A.M. to 2:00 P.M. ... Evidence (Capra)
10:00 A.M. to 1:00 P.M. ... Income Tax (Sharpe)
4:00 P.M. to 6:00 P.M. ... New York Practice (All)

Thursday ... December 8, 1983

4:00 P.M. to 6:00 P.M. ... Corporations (Kessler)
4:00 P.M. to 7:00 P.M. ... Estate & Gift (Katsoris, Reali)
4:00 P.M. to 7:00 P.M. ... Criminal Law (McQuillan)
4:00 P.M. to 7:00 P.M. ... SEC Regulations (Lanzarone)

Friday ... December 9, 1983

11:00 A.M. to 2:00 P.M. ... Commercial Paper (McLaughlin)
4:00 P.M. to 7:00 P.M. ... Commercial Paper (Zaretsky)

Saturday ... December 10, 1983

10:00 A.M. to 1:00 P.M. ... Remedies (Byrn, Yorio)

Monday ... December 12, 1983

11:00 A.M. to 2:00 P.M. ... Corporations (Fogelman)
4:00 P.M. to 2:00 P.M. ... Commercial Financing (McLaughlin)

Tuesday ... December 13, 1983

11:00 A.M. to 2:00 P.M. ... Criminal Law (Marcus, Abramovsky)
4:00 P.M. to 7:00 P.M. ... Antitrust (Lifland)
4:00 P.M. to 7:00 P.M. ... Commercial Transactions (Zaretsky)
4:00 P.M. to 7:00 P.M. ... Labor Law (Crowley)

Wednesday ... December 14, 1983

4:00 P.M. to 7:00 P.M. ... Antitrust (Hawk)
4:00 P.M.to 7:00 P.M. ... Federal Courts (Vairo)
4:00 P.M. to 7:00 P.M. ... Trusts (Magnetti)

Thursday ... December 15, 1983

11:00 A.M. to 1:00 P.M. ... Property (Friedman)
11:00 A.M. to 2:00 P.M. ... Admiralty (Sweeney)
11:00 A.M. to 2:00 P.M. ... Labor Law (Lanzarone)
4:00 P.M. to 6:00 P.M. ... Property (Abrams)
4:00 P.M. to 7:00 P.M. ... Law & Performing Arts (Lavey)

Friday ... December 16, 1983

11:00 A.M. to 2:00 P.M. ... Decedents' Estates (McGonagle)
4:00 P.M. to 7:00 P.M. ... Decedents' Estates (Freilicher)
4:00 P.M. to 7:00 P.M. ... Constitutional Criminal Law (Hansen)
4:00 P.M. to 7:00 P.M. ... Insurance (Roth)

Saturday ... December 17, 1983

10:00 A.M. to 12:00 P.M. ... Civil Procedure (Hawk, Martin)

Monday ... December 19, 1983

11:00 A.M. to 2:00 P.M. ... Contracts (Calamari, Yorio, Hadjiyannakis)
4:00 P.M. to 6:00 P.M. ... Contracts (Perillo)
4:00 P.M. to 7:00 P.M. ... Corporate Tax (Sharpe)
4:00 P.M. to 7:00 P.M. ... Landlord & Tenant (Sims)
4:00 P.M. to 7:00 P.M. ... Income Tax (Schmuded)

Tuesday ... December 20, 1983

4:00 P.M. to 7:00 P.M. ... SEC Regulations (Abrams)
4:00 P.M. to 7:00 P.M. ... International Law (Teclaff)
4:00 P.M. to 7:00 P.M. ... Land Use (McGonagle)
4:00 P.M. to 7:00 P.M. ... Contracts (Income Tax (Schmudde)
4:00 P.M. to 7:00 P.M. ... Municipal Corporations (Friedman)

Wednesday ... December 21, 1983

11:00 A.M. to 1:00 P.M. ... Torts (Byrn, Hollister, Magnetti)
4:oo P.M. to 6:00 P.M. ... Torts (Sweeney)
4:00 P.M. to 7:00 P.M. ... Domestic Relations (Phillips)

Thursday ... December 22, 1983

4:00 P.M. to 7:00 P.M. ... Domestic Relations (Martin)
4:00 P.M. to 7:00 P.M. ... N.Y. Criminal Procedure (Smith)

Lectures in all courses will continue up to and including Friday, December 2, 1983 for upper class and Friday, December 9, 1983 for First Year students.

All examinations will begin promptly at the times indicated. No student will be permitted to enter the examination room after the first hour has passed nor will any student be permitted to leave the room during the first hour of the examination.

All examinations will end promptly at the times indicates. No one will be permitted to continue writing or to retain the paper after the examination has ended. Failure to comply with the Proctor's request to turn in the papers will result in a void examination.

EACH STUDENT IS ASSIGNED AN EXAMINTION NUMBER WHICH MUST BE USED ON ALL EXAMS. EXAMINATION NUMBERS DISTRIBUTED FOR THE MID-YEAR EXAMINATIONS WILL REMAIN THE SAME FOR THE FINAL EXAMINATIONS.

Each student will be assigned to a particular examination room. The list of the room assignments will be published prior to the examination period. The examination rooms will be opened 10 minutes before the time scheduled for the examination to begin. All students are expected to be in their assigned seats at 5 minutes to the hour so that the examination can begin promptly on the hour.

All students are reminded that they are not to bring books, papers or scratch papers into the examination rooms. When permitted by their respectice Professors, and authorized edition of a particular code may be used.

All examination papers must be written in ink.

At the conclusion of the examination, all papers, including scratch paper and the printed examination, must be returned with the examination books.

All students must sign out at the conclusion of the examination, giving both their name and examination number.

No student may exempt himself from an examination. The omission of an examination will result in the student receiving a failing grade therein.

After the exams have been graded, the faculty will not change their grade unless a mathematical error has been committed. The express purpose of this policy, agreed to by the faculty, is to avoid "forum-shopping" by students seeking to improve class standing or to acquire the mandatory weighted average of 70 %.

Required papers in a course or seminar must be submitted not later than the last day of classes for the semester. In individual cases of hardship, the deadline may be extended by the professor, but in no event may a paper be submitted later than the last day of examinations for the that semester without written approval prior to that date by the Dean or his designate. Failure to meet the deadline for submission of a paper will constitute of the course by the student.

N.B. THE SCHOOL OF LAW, ALONG WITH ALL FACILITIES OF THE UNIVERSITY, WILL CLOSE AFTER BUSINESS ON DECEMBER 22, 1983 AND WILL RE-OPEN ON TUESDAY, JANUARY 2, 1984.

THE ADVOCATE WISHES ALL STUDENTS... THE BEST OF LUCK ON THEIR EXAMS.

CALENDAR

Monday, December 5 and Tuesday, December 6

MEETINGS WITH FIRST YEAR STUDENTS
ON THE JOB SEARCH PROCESS FOR SUMMER JOBS.

We will be discussing resume/cover letter/mailing/use of contacts strategies. All participants will receive lists of employers (those who have hired in the past and those who want to hire this summer) as well as the JOB SEARCH MANUAL, New York City Law Firm list and list of government agencies which would like to hire first year students.

Week of January 23

David Rottman of the John C. Crystal Center, will address the students on evaluating yourself, your goals and identifying employment opportunities for a satisfying career match.

The Career Strategist will be published by time the students return from vacation and alumni advisors will be assigned.

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Locations already guaranteed videotape for Summer 1984 include: Albany, Boston/Cambridge area, Buffalo, Hempstead, Ithaca, NYU/Cardozo area, Queens County, Syracuse, Washington D.C., and Westchester County.

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- **BAR/BRI offers a special CPLR course taught by Prof. Irving Younger.** This program is in addition to the regular CPLR lectures contained in the winter and summer courses.

- **Q & A Clinic. An exclusive BAR/BRI program offering individualized answers to substantive questions.** Students who are unable to ask questions directly of our lecturers may send their questions in writing to: Editorial Director, BAR/BRI Bar Review. A written response will be returned. There is *no additional charge* for this program.

- **BAR/BRI offers a special "Take 2 Bar Exams"™ program.** This program allows students to be admitted to the New York Bar and another Multistate Bar.

- **BAR/BRI offers a free transfer policy.** If a student signs up for New York, does not mark his or her books and elects to take another state bar instead, all monies paid will be transferred to the BAR/BRI course in that state.

- **BAR/BRI offers the widest selection of course sites and allows students to freely switch locations.** Anticipated course locations for 1984 include:

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New York's Number One Bar Review.

Editorial: Uniformity & Equitablity In The 1st Year Program

CPA, GRE, SAT, and LSAT are all abbreviations of well known standardized examinations. Each is designed to measure an individual's expertise in a specific body of knowledge through the use of a standarized procedure. The underlying objective is to provide a uniform and equitable measurement of one's performance. Such an objective is also present in Fordam Law School, especially in the first year program where so much is contingent on one's academic performance. The subject of this editorial is the first year program's need to realize the objectives of uniformity and equitability.

The first year curriculum is compresed of eight pre-selected courses: Civil Procedure, Constitutional Law, Contracts, Legal Process, Legal Writing, Property, Crimes and Torts. Professors are arbitrarily assigned to alphabetically grouped student sections. Style of presentation, course syllabus, exam construction, and exam grading vary amongst professors. The question arises as to whether there are sufficient circumstantial gaurantees built into the system to afford a uniform and equitable first year program. Before attempting to resolve this question, one must examine the underlying nature of our present system.

The standardized curriculum is predicated on mandates from the New York State Court os Appeals. The time at which a course is to be taken is the only noticable distinction between the curriculums at Fordham and any other metropolitan law school. Most other schools have a program of four to five core courses during the first year, with the remainder of the requisite courses taken in the subsequent year, whereas at Fordham all seven courses are taken in the first year. The reason for the heavier course load is to create a more challenging environment and thus establish the law school's credibility. This theory is quite reasonable and does not require any further comment.

The arbitrary assignment of professors to alphabetized sections is a result of administrative necessity. It would be impractical for the administration to rank professors according to how demanding they are, and then evenly distribute the "tough" and "easy" professors. However, discrepancies in course syllabus, exam construction, and exam grading should not be permitted to exist since these elements violate the underlying objectives of uniformity and equitability.

Professors will inevitabley have differing styles of presentation. It would be an infringement of a professor's educational license to attempt or even suggest a modification of his/her individual approach in the classroom. However, it would not be improper if course syllabus, exam construction, and exam grading were administered on a uniform basis. Moreover, it would be in the best interest of first year students to do so.

In our scenario, the sections to which a student is assigned would be of little or no significance since all students would be subject to the same course work, the same exams, and the same panel of exam graders. Uniformity and equity would be achieved without interfering with the educational license of a professor. For this reason, we advocate the formation of a first year curriculum committee.

The committee would have ultimate responsibility for the creation and coordination of policies affecting first year students. The committee's membership should include all first year faculty and various administrative representatives. It would set quidelines for the drafting of a uniform syllabus by subject type, uniform mid-term & final examinations, and uniform grading policies. Sub-committees should be formed,, and organized by specialty type. These groups would be charged with the actual implimentation of policies that were agreed upon.

For example, once overall policies were established a sub-committee in Torts could meet to discuss the contents of the course, order of coverage, and the appropriate text. In addition, the sub-committee could determine whether a mid-term is necessary, and if so, its format and content. This same procedure could be used to draft a uniform final examination.

Special consideration should be given to the treatment of the Legal Writing program. In the past, it has been subject to a wide variety of inequities. Although it would be impractical to have a single section, the policies behind the program's administration should be more consistent. The accessability of instructors, issue determination, due date, format and length of writing assignments ought to be considered in this light.

The final area of responsibility of the subcommittees would be to grade the individual exams using a single bell curve. The professors in the various specialty type would resolve the actual mechanics of how the test papers should be reviewed. For example, the exam could be divided into sections, with all of section one reviewed by Professor X, and all of section two by Professor Y. Alternatively, an entire exam could be reviewed by Professor X first, and then by Professor Y.

In either case, each student would be subject to the same grading process to arrive at his/her individual raw score. An adjusted score would be conputed by fitting the raw score to a single bell curve. Although students would still have different professors, the uniform administation of the first year program would alleviate any unfair grading discrepancies that could haave arisen under pre-existing system.

To conclude, we advocate the adoption of two basic policies. First, the creation of a curriculum committee charged with the responsibility of drafting guidelines for a uniform first year program. Second, the formation of subcommittees organized by specialty, designed to implement the suggested guidelines in such areas as course syllabus, exam creation, and exam grading. If such a program were implemented, students would be able to preserve their competitive advantages, as well as have learning experiences which are materially equivalent to those of their peers.

The ADVOCATE
FORDHAM UNIVERSITY SCHOOL OF LAW

The Advocate is the official newspaper of Fordham University School of Law, published by the students of the school. Its goals are to enlighten and inform the Fordham Law School Community of news and activities concerning the school.

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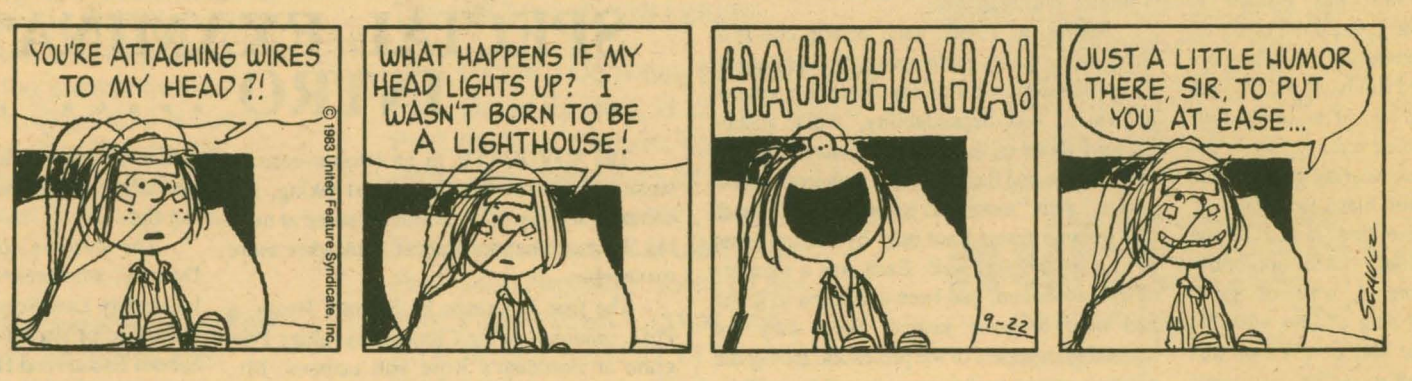

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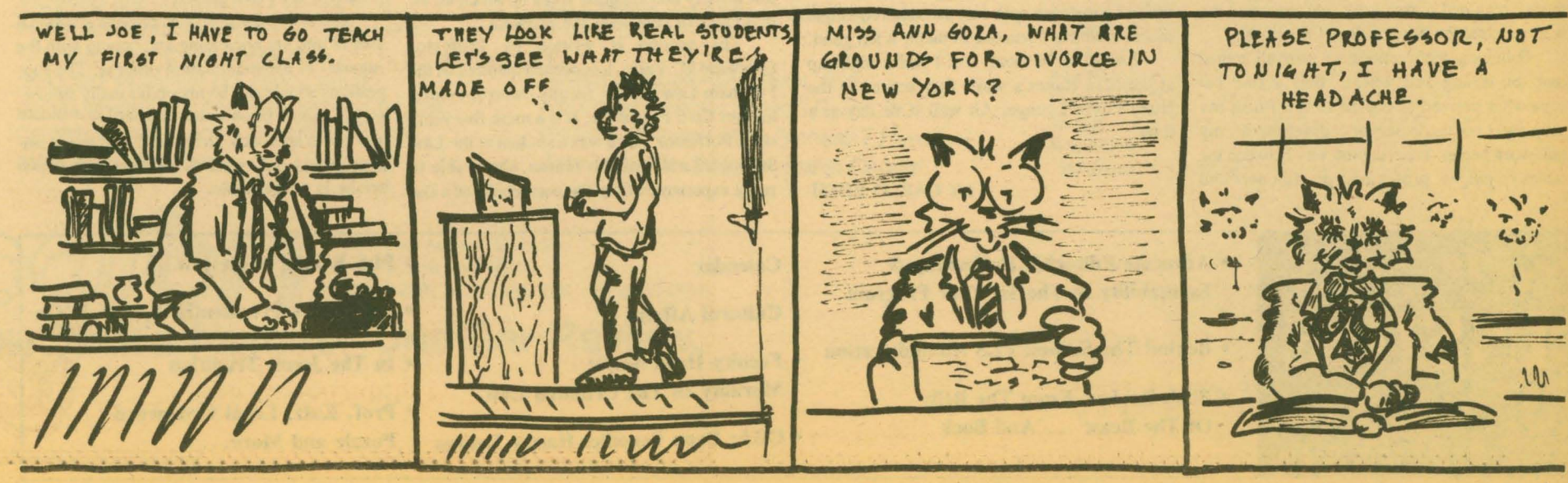

BEHIND THE SCENES: The Administration

BY DEAN JOHN D. FEERICK

This is the last in a series of columns designed to familiarize you with the duties and areas of responsibility of the staff at the Law School. Having discussed the clerical and library staffs in previous issue of the *Avocate,* I now would like to acquaint you with the Law School's administrators.

Associate Dean Joseph R. Crowley works closely with me in administering the academic affairs of the Law School. One of his roles is to coordinate the work of the various faculty committees, whether they be standing committees (e.g., Admissions, Academic Standards, or Clinical Legal Education) or **ad hoc** committees (e.g., a committee to work with the bookstore on a particular problem). Dean Crowley also oversees the reports and recommendations of these committees on topics within their sphere of concern. In addition, as you know, he continues to teach his many "brothers and sisters" in the field of Labor Law.

Assistant Dean William J. Moore continues as Director of Admissions. Last year his office received and processed over 5,000 applications to the Law School. For many years, Dean Moore handled both admissions and financial aid, and this proved to be a monumental task. With the appointment last year of James A. McGough as Director of Financial Aid, Dean Moore is now devoting all his energies to admitting qualified students. while Jim McGough spends his days seeking new ways to provide financial assistance to you.

Assistance Dean Robert M. Hanlon, Jr. continues to handle many internal functions of the Law School--class and examination schedules, registration and summer school, to name a few. On hand to answer questions and assist our evening students is Ms. Marian Montenigro, who is available each evening from 5:00 to 8:00 p.m. in Room 103.

Also housed in Room 103 is our new Assistnat Dean for Student Affairs, Linda H. Young. Dean Young replaces Assistant Dean Gail D. Hollister, who rejoined the full-time faculty after serving for one year as Assistant Dean. Dean Young is a graduate of our Law School. She is responsible for handling all the varied tasks that impact upon students; futhermore she is available to offer advice and counselling, whenever necessary.

Assistant Dean Robert J. Reilly is our liaison with the Law Alumni Association. He works closely with Frances Blake, the Executive Secretary of the Association, and organizes such vital school functions as the Stein Dinner and Dean's Day. In addition, Dean Reilly has assisted me in several of my fund raising projects and has become active in many of the ongoing student events.

Ms. Maureen Provost is the Director of our Career Planning Center and Ms. Carol Vecchio is the Assistant Director. They and their staff are doing a Herculean job in this busy interview season to help students in their search for employment. Career assistance, of course, is a community effort, and all members of the faculty and administration stand ready to assist you in any way.

Kathleen Keenan, formerly Dean McLaughlin's administrative assistant during his tenure as Dean of the Law School, left Fordham to join Judge McLaughlin at the Brooklyn Courthouse. Kathy returned to the Law School in September 1982 as the Director of Administration. Her responsibilities are varied and range from the preparation and administration of the Law School budget to arranging to have light bulbs replaced in the hallways and classrooms.

As you can see, the size of the administrative staff has increased during the past few years. These appointments were made with the student in mind. If a student needs information, seeks guidance, or wishes to discuss a particular problem, please feel free to call upon any one of the above staff members. All are here to make daily living at the Law School a pleasant experience.

ARCHIBALD MURRAY VISITS FORDHAM

On November 7 Archibald Murray F.L. '60, Executive Director and Attoney-in-Chief of the Legal Aid Society of New York, spoke at Fordham Law School. Appearing as a guest of the Democratic Law Student Association, Mr. Murray talked about how the Legal Aid Society has been an initiator of change. After discussing its pathbreaking history, Mr. Murray discussed the Society's present operations.

In discussing the history of the Legal Aid Society, Mr. Murray noted that the society was over one hundred years old. The Legal Aid Society was originally formed by German immigrants to aid in civil litigation. However, after the Supreme Court's decision in **Gideon v. Wainright,** which guaranteed the criminally accused a right to counsel, the Legal Aid Society expanded from one hundred lawyers to its present level of over seven hundred. Criminal defense work of the Society represents the bulk of Legal Aid's work.

Despite being primarily a criminal defense organization, the Society does remain active in civil matters. Over one hundred Legal Aid attorneys handle such matter as Landlord-Tanant, Domestic Relations, and Civil Rights. The Society also has an active volunteer division which deals in many of the same matters.

After giving his prepared speech, Mr. Murray spent 25 minutes answering questions from the audience. When asked about what effect determinant sentencing would have on the Legal Aid Society, Mr. Murray replied that he could not speculate. However, he did note that determinant sentencing would have serious effects on the prison system. First, states which have determinant sentencing have experienced an increase in the length of terms served in prison which in turn leads to a larger prison population. Given the present problem with cell space in New York, Mr. Murray felt that determinant sentencing could lead to problems with overcrowding in prison cells. Second, since prisoners would lose any chance of parole their incentive to conform in order to be granted parole would lessen. This condition could then create an unruly prison population and subsequent problems with discipline.

In response to a question concerning the role of plea bargaining in the Criminal Justice System, Mr. Murray stated that plea bargaining serves an indispensable function. To support his point, Mr. Murray said that the Criminal Justice System does not have the resources to bring the staggering number of cases pleaded to trial. Mr. Murray noted that more justices it would help, but since only 11% of all cases make it to trial how much it would help was really questionable.

Mr. Murray attended a reception afterwards, where he answered various student questions concerning career information and clinicals at the Legal Aid Society.

- BY ANDREW ARSIOTIS

LEGAL INNOVATOR: VICTOR YANNACONE, JR

- BY CAROLE CLEAVER

Victor Yannacone, Jr. the environmental litigator, spoke to a large and interested group at Fordham Law School November 10. In a cooperative venture, the Environmental Law Council and the Career Planning and Placement Office presented the program. Dean Feerick introduced the speaker.

The intense and dynamic Yannacone, known to many as the 'father of environmental law', has been responsible for much progress in this area of law. He spoke about his beginnings in law, from his days as a nonchalant student at Brooklyn Law School, where he would climb out his classroom window into New York Tech, next door, for inspiration from their engineering clases, to his early legal practice in Patchogue, Long Island.

Yannacone's first environmental case was representing his wife Carol Yannacone and the citizens of their town against the Suffolk County Mosquito control Department, to enjoin the use the pesticide DDT.

The widely used chemical had contaminated the local swimming hole. Since fish and wildlife were being poisoned by it, Mrs. Yannacone, a bilolgist, thought it not too farfetched to suspect a poisoning of people who swam there. The case was won and DDT was banned. Yannacone describes it as the first time a chemical was the real defendant.

Mr. Yannacone, still based in Patchogue but with a nationwide practices then went on to successfully enjoin developers from destroying certain Salt Flats in Colorado, which contained a tremendous wealth of fossil history. It was during one of his early cases that he discovered what he contends underlines the value of not having been a star pupil: having a different enough perspective to be innovative. One humorous example of this condition was his never having learned about the eleventh amendment - he attempted to sue a state in a federal district court. Fortunately, immediately after being dismissed, he discovered that a new federal circuit court had just opened its doors near by and the judges were still awaiting their first case. Needless to say, Yannacone retyped the cover of his brief and brought suit across the street.

Most recently, Mr. Yannacone has been pursuing the case against Agent Orange (Dioxin) manufacturers on behalf of veterans who were exposed to it in Vietnam. They allege that as a result of this exposure they are suffering health problems such as cancer, psychological and skin disorders, and a very high frequency of birth defects. One maior legal problem still to be worked out in such cases is the running of statutes of limitations. The Agent Orange case is currently under the judicial supervision of Judge Weinstein of the Eastern District of New York.

We look forward to Mr. Yannacone's future activities and applaud his contribution to the field of environmental law.

INVESTMENT BANKING

On November 15, 1983 the placement Office hosted an informative Investment Banking Career Opportunity Seminar. The principal speaker was Mr. Saul Cohen, Esq., General Counsel at Lehman Bros,. Kuhn & Loeb.

Mr. Cohen noted that the nature of the work could be divided into six basic segments: broker/dealer regulatory compliance, merger & acquisitions, arbitration, supervising litigation, litigating, and questions regarding client relations. He also stated the industuy is very small and capital-intensive in structure.

From a practical standpoint, he felt the industry offers more security than a private practice, but revealed that Brokerage Firms prefer to "raid" other firms rather than train a new employee.

In conclusion, Mr. Cohen enumerated a series of entrees into the field: Securities and Exchange Commission, New York State Attorney General's Office, litigation firms, securities Industry Association, an M.B.A., or New York Stock Exchange.

- BY ROBERT ALTMAN

STEIN INSTITUTE

- BY JOSEPH MAZZARULLI

The establishment of the Louis Stein Institute for Professional Responsibility and Leadership at Fordham Law School was announced on November 2, 1983, by President Finlay and Dean Feerick. Named as director of the Institute is Professor Perillo, a distinguished member of the faculty since 1963. The creation of the Institute was made posssible through a gift from Louis Stein, a prominent business executive, lawyer and philanthropist, who is a graduate of the Law School class of 1926.

The Institute conducted its initial workshop on October 27th, focusing on two issues: the function of law schools in the cause of law reform, and the appropriate role of an institution for professional responsibility and leadership. Those present were Director Perillo, Deans Feerick and Crowley, the Deans of Cornell and U. Va. law schools, and Associate Deans from Yale, N.Y.U., and Northwestern. Other guests included Justice Murphy, presiding judge of the First Department; Carolyn Gentile, Chairperson of the N.Y. State Law Revision Commission; and Archibald Murray, director of the N.Y.C. Legal Aid Society.

In describing the Institute, Dean Feerick said, "although the development of professional standards, particularly in the younger generation of lawyers, will have top priority, the new Institute will work to encourage all members of the legal profession to assert a leadership role in assuring that our society will continue to be governed by the rule of law; that legal representation will be made available to all; that justice will be duly and efficiently admininstered; and that the substantive law will be under constant review to increase its capability of producing a just society.

"Striving toward these goals," he concluded, "it is hoped that this new Institute will be able to increase the public perception of the role the legal profession has had in the past, and continues to have, in maintaining a democratic and ordered society."

The first undertaking of the Institute will be to commission a study examining the responsibility of a lawyer to disclose a client's criminal purposes. The A.B.A.'s newly adopted Model rules of Professional Conduct (August, 1983) has narrowed the attorney's right or responsibility to reveal such a confidence. Under the Code, (ABA Model Code of Professional Responsibility, 1969) a lawyer "may reveal the intention of his client to commit a crime and the information necessary to prevent the crime." This option existed regardless of the seriousness of the proposed crime. Under the Model Rules, the lawyer may reveal information about a client to prevent the client from committing a crime that is likely to result in the specified serious consequences (imminent death or substantial bodily harm).

These current changes in the principle of confidentiality will be closely scrutinized by a forum consisting of lawyers, philosophers, and theologians selected by the Institute.

In the future, the Institute plans to investigate parts of the legal system that are ignored by scholars, such as the governance of hospitals and nursing homes. Activities at the Institute will include conferences and lectures by academics, practicing attorneys, and leaders of the legal ethics. Several Fordham law students will be selected to serve as Fellows to assist with Institute programs.

BLOOOOD DRIVE A SUCCESS

Countess Gail Hollister's request "I vant your blooood!!!!" was certainly answered, since nearly 125 pints of the red stuff were collected for use in The Greater New York Blood Program. Countess Hollister attributed the tremendous success of the blood drive to the wholehearted cooperation on the part of administration, faculty and students. Countess Hollister, on behalf of The Greater New York Blood Program wishes to thank all those charitable individuals who gave of themselves to save another's life. Be wary!!! The Countess is already planning the nest blooood drive to be held some time next March.

A BEAUTIFUL DAY IN THE NEIGHBORHOOD

Can you say "walking tour"? I knew that you could.

Seven Fordham Law students did on Monday, November 14. A day that began looking better suited to a brandy by the fireplace than to a stroll through the park did not deter these eager beavers in their desire to enjoy the Historic Walking Tour of Central Park that had been organized by the Fordham Environmental Law Council.

Nor was their undauntedness unrewarded. Soon after the trek to the park began, the rain which had soaked the skin but not soured the spirit subsided. The clouds, parting, served as a perfect backdrop for the now crisply lit trees in their full fall foliage.

At the Dairy in Central Park the group met the Urban Rangers, Kevin and Jacquelyn, who would be their guides. During the tour the group was told of the designing and building of the Park. (No, it didn't just come that way.) They were treated to tales of the political struggles which have shaped the Park in its hundred-year history. They saw meadows and meers, rushes and rambles, a fairy-tale castle and a fairy-tale teller as well as fairy-tale tollers. They found out why it is that one part of the Park smells so foul. (The Dinko tree, of which there are several in that area, drops a seed fruit the pulp of which smells like rotting flesh.)

As the tour was closing in front of the former armory which now houses the offices of the Parks Department, the group was unexpectedly introduced to Commisioner Henry Stern. Mr. Stern, a wonderful host, invited the tour group up to his office and to the Department's roof garden to enjoy the view. In Mr. Stern's office the group was introduced to, among other Department notables, Filmore the Mallard.

The day was one no member of the little band will soon forget. Those who wish to keep themselves apprised of the future activities of the Fordham Environmental Law Council will certainly make it a point to check the Council's bulletin board on the lower level, facing the sculpture between the cafeteria and the reading room.

-- BY CARLO ROSSI

ENTERTAINMENT & SPORTS LAW COUNCIL TAKES SHAPE?

- BY DAVID HEIRES

The newly formed Entertainment and Sports Law Council took further steps last month in mapping out its plans for the year. The Council selected officers and committee chairmen, and sponsored a visit by Fordham alumnus James Quinn ('71), a prominent entertainment and sports attorney, on Monday November 14.

At its second meeting, the Council chose Brian Murphy, one of the initiators of the group, to serve as President. The other officers elected were Bob Eimicke (Vice-President); Anthony Paccione (Secretary); and Joyce Boyland (Treasurer). Four subcommittees were formed, and individual chairmen named for each: Diana Frost-(Newsletter); Ted Weis-(Speakers); Heidi Young-(Clinical); and Robert Bienstock-(Curriculum).

The visit by Mr. Quinn, who practices at Weil, Gotshal & Manges and, among other things, represents Dave Winfield, turned out to be successful. Speaking to a group which congregated in the Moot Court Room, Mr. Quinn related a variety of experiences which he has had since graduating from the Law School in 1971 (having been a member of The Law Review). They ranged from working on litigation involving the NBA Reserve and Option clauses (on the players' side) to representing the Buffalo Bridge Group Radio Station in an antitrust action against entertainment user groups.

After his involvement in the NBA litigation, which resulted in the formulation of the basic framework of current NBA player-management relations, Mr. Quinn represented the North American Soccer League in an antitrust action against the NFL owners. He was recently involved with Winfield's proceedings against Yankee owner George Steinbreener, wherein Winfield alleged that Steinbrenner had reneged on his commitment to the Dave Winfield Foundation. Mr. Quinn has also worked on other litigation involving the Baseball and Basketball Player Associations, and represents Group W Broadcasting, a cable television group.

After his presentation, Mr. Quinn took questions from the audience on specific points of his areas of practice. He re-emphasized what he had maintained throughout the evening: That knowledge of labor, antitrust, and particularly contract law are most important in his field, and that familiarity with patent, trademark and copyright law are also valuable.

Murphy, who was pleased with this initial speaker visit, said that the Council will be working on separate panel discussions in Entertainment and Sports Law to be held in the spring term. The Sports Panel, which is tentatively scheduled for February 9, will hopefully be comprised of individuals from a variety of spectums so that a wide perspective can be presented.

The Council intends to publish a newsletter, which will be distributed as an insert to the Advocate next term. Professor Sims has agreed to act as an advisor and editor. The Council also plans to take further initiatives with regard to focusing the administration's attention on the strong student interest in having a Sports Law course in the curriculum and clinicals in both entertainment and spots law. Members have expressed their willingness to assist in the planning and execution of such programs.

FORDHAM'S PRESIDENTIAL SEARCH IS ON

- BY GIULIANA MUSILLI

Some time during the beginning of the semester (if you can remember that far back), Father James C. Finley, the President of Fordham University, announced his plans to retire in June 1984. Since then, the Board of Trustees has been busy in organizing a search for Father Finley's successor.

A search committee was appointed to the task of conducting the preliminary stages of the search. It is composed of members from each of the various branches of the University so as to ensure that candidates for the position were reviewed by as broad a group as possible. Professor Martin Fogelman represents the Law School on this committee, which is chaired by Mr. Richard J. Bennett, the Chairman of the Board of Trustees.

The search committee's aim is to receive applications and nominations, evaluate them and then to make its recommendations to the Board of Trustees. Thus far, it has formally announced in journals of higher education that it would be accepting nominations for the position of University President. Resumes were to be sent in by November 15, 1983. The committee will examine these and choose which candidates are to be interviewed by the Board of Trustees in the spring.

At this point, the committee is unable to give a specific description of the person it would like to serve as University President. It has, however, stated that although there is a long line of Jesuit tradition in the office of University President, it will consider applications and nominations of non-Jesuits as well. A statement drawn up by the committee indicates that it is searching for a person who is able to act as an "administrator, educator, statesman, financier, expert in faculty and student affairs and problems and -- far from least in today's world -- a dedicated fundraiser. "That's a tall order for any one person to fill; however, the committee members seen confident that it will embody the values that Fordham University wishes to express to the world. The Advocate wishes the search committee well in its difficult task.

DEAN HARTER LEAVES FORDHAM

- BY PAUL CALAMARI

Benedict T. Harter has been Dean of the Graduate and Undergraduate Schools of Business and the Faculty of Business at Fordham University since the Fall of 1979. To say he will be missed is an understatement.

Dean Harter has raised the standards and improved the faculty of GBA immeasurably in the past four years, with emphasis on quality. Among his many accomplishments are obtaining AACSB accreditation and setting up a committee on curriculum to evaluate the needs of the University, now and in the future. In addition, Dean Harter has conceptionalized a program, now under consideration, whereby an MBA and JD degree can be earned in four years at Fordham Law School. We could go on.

Ben Harter's ability to understand and relate to the students is probably one of his most admirable attributes. His sense of fair play shines through under all circumstances.

His immediate plans for the future are uncertain, yet he knows he "wants to help kids in whatever manner he can" and, according to Harter, "a kid is anyone, one year younger, and ten years older than himself." Unquestionably, he has helped a lot of "kids" during the past four years he has been with us.

FACULTY ARRIVALS

Professor Albert A. Eustis will give the course in Corporate Acquisitions. Professor Eustis, a graduate of the Harvard Law School, is Executive Vice President, General Counsel and Secretary of W. R. Grace & Co. He oversees a staff of 60 attorneys and has had extensive experience in all aspects of corporate law, principally mergers, acquisitions, SEC. and antitrust.

Joining us in the area of Advocacy is Professor Jo Ann Harris. For the past year Professor Harris has been the Executive Assistant United States Attorney for the Southern District of New York. Prior to that she served as Senior Litigation Counsel for the Southern District, as Chief of the Fraud Section of the Department of Justice Criminal Division, and as Deputy Chief of the Division. She is now with the firm of Schulte, Roth & Zabel.

Professor John J. Morgan. a member of the Faculty at the University of Bridgeport, will be teaching the course in Administrative Law. He is a graduate of Washington University Law School and the Harvard Law School (LL.M.). He is presently at work on a book in Administrative Law.

BOOK REVIEW:

From The Belly Of The Beast... And Back

BY L. AIELLO

In The Belly of the Beast: Letters from Prison by Jack Henry Abbott (Vintage, 1981).

At the close of *In the Belly of the Beast* Jack Henry Abbott claims it is his right "at least, to walk free at some time in my life, even if the odds are by now overwhelming, that I may not be as other men..."

Admidst much controversial publicity, Abbott, convicted of murdering a fellow inmate, did get his chance to walk free. Soon after his book, a compilation of fragmented, well thought out letters written from prison to author Norman Mailer, came out, he was released on parole. *In the Belly of the Beast* exhibits, among other things, Mailer recognized Abbott's talent early on. Unfortunately, soon after his parole Abbott's prophecy was to prove accurate. He did not in fact act as do most other men. He murdered; actor and waiter Richard Adan was stabbed to death by Abbott in a seemingly trivial altercation over the use of a bathroom.

And so in April 1982 Abbott returned to prison to serve 15 years to life for his crime. For one who had spent a major portion of his life in a series of foster homes, juvenille detention centers and state penitentiaries (at age 18, he was convicted of issuing a check backed by insufficient funds) it was perhaps only "more of the same."

The news of Abbotts "rise and fall" elicited emotional responses--frustration and anger, both at Abbott's initial release and his subsequent crime were not uncommon reactions among the public. Indeed Abbott let many people down. He was intelligent (he states that he only "learned to think" at age 30). Many seemed to feel he "should have known better." Other felt the authorities in charge of his release should have known better and kept him behind bars.

In his book Abbott tells of his experiences in institutional settings. His perceptions and convictions are moving. He critically examines subjects such as the American justice and prison systems, racism, and foreign affairs. (He is a strong advocate of Karl Marx).

What Abbott has to say about "state raised convicts" is interesting, especially in hindsight. It might explain his seemingly irrational behavior the night of the Adan murder. Abbott writes, "Just as an adolescent is denied the keys to the family car for any disobedience...I am subjected to the hole (solitary confinement)." The length of time served, Abbott notes, is unrelated to the seriousness of the manhood, "in the highest sense, involves dangerous killers who act alone and without emotion, with calculation and principles, to avenge themselves."

Two things about Abbott's book disturb me. First, his later actions merely seemed to confirm, or, better yet, emphasize what he had warned: the system cultivates violence. His voice was among the "I told you so's" who seemed to think, perhaps accurately, that you can take the man out of prison but hardly can you remove the prison from the man. Second, there is the gnawing feeling that Abbott, a man of obvious intelligence and potential, should have known better.

In spite of the turn of events, or perhaps because of them, Abbotts writings might be useful in promoting a better understanding of what prison may do to the individual man. If we are to continue to release or parole prisoners, (and who can say, for certain that one is "not potentially dangerous") they are something that should not be ignored. Information, from whatever source, should be digested for possible solutions to this one of many dilemmas facing our criminal justice system.

TEST ANXIETY • TEST ANXIETY • TEST ANXIETY • TEST ANXIETY

- BY RICHARD F. HEATH

An experience shared by law students is the Law School Admission Test. Memories of practice exams, preparation courses, the test itself, and the limbo of waiting for the results are probably permanently engraved upon the minds of some--and permanently erased from the minds of others! Many students may recall the doubts and the unpleasant feelings they experienced during that time. Most, if not all, experienced some form of **test anxiety** --feelings of tension and apprehension elicited by some aspect or aspects of the testing situation.

Test anxiety is a common problem among students, whether they are in the first grade or law school. The anxiety may be associated with a specific test, such as the LSAT, a specific subject, or tests in general. Students may feel anxious at a particular point in the testing process, be it discussing an upcoming examination, studying, taking the actual test, or awaiting the grade; other students may find the entire process to be anxiety-provoking.

Traditionally, psychological research has considered two components of the experience of test anxiety--worry and emotionality. Worry, the cognitive component, manifests itself in various doubts and questions: Have I studied enough? Am I intelligent enough to pass this simple test? If I fail, what will people think of me? How would my failure affect my grades? my degree? my career? If I do manage to pass, will my grade be high enough? Am I incompetent because I feel this way? Clearly, such thoughts are both self-defeating and self-perpetuating. Emotionality also assumes many forms. A student might feel uneasy, on edge, and have difficulty is concentration; there might be disturbances in sleep patterns, or a general inability to relax. There could also be a number of physiological symptoms as well--dizziness, sweating, dry mouth, upset stomach. The emotional experience of test anxiety ranges from discomfort to distress and interferes with test performance.

Psychologists have developed a numbr of instruments to assess the presence and strentgth of test anxiety. For example, the Test Anxiety Inventory is a questionnaire which lists different reactions to the test-tasking process which reflect anxiety. Students then indicate the frequency of each reaction in their experience. However, formal assessment is not an absolute necessity to determine if test anxiety is a significant problem for you. If anxiety interferes with your test performance, if your discomfort makes testing a painful experience, or if you simply feel more uncomfortable than you would like, then you might consider seeking help to alleviate your test anxiety.

Perhaps the first approach to take in dealing with a recurrent problem is prevention. With test anxiety, this might involve improving study skills to eliminate, or at least reduce, the realistic aspect of worry--insufficient perparation. A great amount of research has been conducted on optimal study conditions. For example, it is not a good idea to begin studying the night before the test; cramming does not promote retention and may increase anxiety. Study period should be spaced over time, rather than massed in marathon sessions. You might also reward yourself with a rest or recreation break after a successful study period. Proper sleep and nutrition are essential to studying and optimal test performance; in fact, some research has suggested that scheduling a study period before sleep improves retention by decreasing the amount of interference. Numerous techniques, such as the SQ3R (survey, question, read, recite, review) method, have also been suggested for efficient studying. Descriptions of these techniques are available in various books and pamphlets, and are often included in introductory psychology texts.

While effective study skills can aid in reducing test anxiety, they may not sufficiently resolve the problem. Numerous treatment methods have been used to successfully alleviate test anxiety. Perhaps the most frequently applied method is the cognitive behavioral model. This approach includes both the examination of thise beliefs and attitudes which contribute to test anxiety, as well as training in relaxation. Students are desensitized to various aspects of the test-taking process, with emphasis placed upon those situations which are particularly relevant to their fears. Treatment can be either individually or in groups, although group treatment appears to be the preferred modality.

Unfortunately, there is no simple prescription for test anxiety; there is no series of easy-to-follow steps that can be described in a brief article. There are many different experience of test anxiety--one student might only be anxious in a certain professor's class, another might be anxious while taking any test, and yet another might be anxious as a general life style. No matter what your own experience may be, it is important to seek help if you feel that test anxiety prevents you from using your capabilities with minimal stress. Various agencies can provide assistance--clinics, therapy institutes, psychotherapists in private practice--but the most immediate and available source of help is your university counseling center.

Test anxiety is a common phenomenon and can be helped, whether it has been a constant factor in your education or a recent problem arising from the pressures of law school. Some anxiety is necessary for motivation--no anxiety is often as detrimental to test performance as severe anxiety--but no one needs to feel miserable in a situation where he should be learning and developing his career goals.

EXAM TAKING . . . Preparation and Execution

- BY PROFESSOR G. VAIRO

Are you nervous? Have you developed a tic or some other neurotic sympton within the last few weeks? If so, it may be because exams are just around the corner. Hopefully most of you have been keeping up with required reading and have been reviewing throughout the semester. But for those who haven't, BEWARE! You can not expect to cram an entire course or semester worth of material into your head or to do well in only a few days of study. The time to begin your exam preparation is now. Consider the following commandments as you prepare:

The typical law school exam presents fact patterns that require the performance of five tasks: 1) sifting the relevant facts from the problem; 2) examining the facts to determine the legal issues that are lurking about; 3) stating the applicable legal rules, detailing each of their elements; 4) applying the legal rules to the facts presented; and finally, 5) writing a tight, crisp, well-organized and precise answer.

As you can see, the critical task is identifying and analyzing the legal issues. This makes sense because you will be useless as a lawyer if you are unable to uncover the facts presented by your client which carry legal implications.

THE TEN COMMANDMENTS

PREPARATION

1. **Know Thy Professor Better Than Thou Knowest Thyself.**

If you listen carefully in class, you should get a pretty good idea about which topics your Prefessor thinks are important and therefore you may be able to predict which topics will be emphasized on the exam. You also will develop insight, by listening to Professor/Student colloquy, into the kinds of answers the Prefessor values highly. Each Professor is diffrent. Listen to the signals, conscious and otherwise, that he or she is sending. If a professor gives advice on how to prepare for and take an exam, listen. Finally, go to the library, which collects copies of old exams, and make copies of all the Professor's old exams. If the course is taught by a new Professor, ask him or her what kind of exam, essay, short answer, etc., he or she expects to give. Then go to the library and see if you can find exams by Professors that match that description.

2. **Thou Shalt Not Lose the Forest for the Trees**

When you begin your serious study, don't lose the forest for the trees. That is, do not get hung up on the picky details. If you try to just memorize all the rules you've learned, without first developing an understanding about the main themes and topics of the course, you will be frustrated and probably not do well. Review the Table of Contents of your casebook or textbook to get an overview of the course. Then try to understand the course, topic by topic. For example, once you have a general idea about what an "offer" is, it will be easier for you to learn all of the rules because they will make better sense to you.

3. **Thou Shalt Carefully, Thoroughly and Meticulously Review Thy Class Notes.**

Your class notes are your bible, Make sure they accurately reflect what the Professor has said. If something in your notes doesn't make sense, you should do several things. First, compare your notes with a classmate's. One of the primary functions of a study group is to provide a vehicle for clarification of class notes. It's tough to get everything down. In a study group you can "compare notes," and discussion to inconsistencies will lead to better ultimate understanding. Chances are, you'll find the answer right there. Third, take a look at a hornbook recommended by the Professor. Make sure you review and understand the hypo's and examples discussed by the Professor. They may show up in slightly altered form on the exam. Plus, they give you practice in learning how the rules are applied to different fact situations.

4. **Thou Shalt Not Forget to Review the Readings.**

If you are sure your notes are accurate and complete, don't forget to review the cases and statutes you have studied. You'll be surprised how much more you get out of a case on review. In fact, it may even begin to make sense to you. Lightbulbs will go on in your head, thereby removing the cobwebs. It's a great feeling. Try it. Of course it takes time. But I don't have to remind you what's at stake.

5. **Outline, Outline, Outline**

There is no substitute for sitting down with your notes, casebook and other materials and meticulously preparing an outline. Some students write out short outlines, comprised of topical outline with short synopses of legal rules and elements that must be memorized, once they're satisfied they understand the material. That's the approach I would take. Other students prefer longer outlines, almost a rewrite of their notes. You should do what fits your style. Just make sure you're not mechanically rewriting. Don't write anything until you understand the concept or material.

6. **Practice, Practice, Practice**

The first commandment requires you to make copies of a Professor's old exams. Why? In the first place, it helps you figure out what the Professor emphasizes on exams. More importantly, however, it provides you with an excellent vehicle for practicing issue identification and legal analysis. Take the old exam as if it were the real exam. Write out answers, or at least outline answers, to as many questions as you can. Once you've done that, critique your answers. Go over them with study-group mates. Think about them. Ask yourself: Did I just write down legal rules, or have I done a good job of applying the rules to the facts? Are there any curious facts in the problem I have not discussed? Figure out why they are there. If the facts tell you there is a tractor out in a field somewhere, its probably there for a reason. What was the Professor getting at? If you don't think about it you'll lose points.

EXECUTION:

7. **Thou Shalt Read Before Thy Write**

Read the whole exam before you write anything. As you go through the fact patterns, underline the facts that catch your attention and make a note in the margin as to the legal issue the fact raises. Reading through the whole exam gives you perspective on the overall difficulty of the exam and the approximate time you should spend on each question. You may decide to answer question number three first because you're more comfortable with that question, rather than question number one, about which you haven't the faintest clue. Remember that you rarely have time to spare. Don't waste time agonizing on a difficult question. Get right down to answering one you can handle.

8. **Thou Shalt Not Exceed the Recommended Times and Thou Shalt be Brief.**

"If only I'd left more time for question 3. I really could have written a great answer to it." Don't ever let that happen

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A PRIMER FOR SPOTTING ISSUES ON LAW EXAMS AND WRITING YOUR ANSWER

BY
PROFESSOR JOHN DELANEY

Introduction

Issue-spotting on law exams is like the weather. Everyone talks about it but no one does anything about it. While everyone agrees on the importance of the issue-spotting skill, there is, nevertheless, little systematic unravelling of the specific steps nesessary to apply the skill on exams.

The locus of issue-spotting is the classic, multi-issue exam problem: A dense fact pattern extending for one, two, or more, pages at the end of which you are asked, quite typically, to "identify and resolve all relevant legal issues." There may be anywhere from five to ten or more issues in these multi-issue problems. The time allotted may be as little as fifty or sixty minutes.

What Is A Legal Issue?

Issue-spotting presupposes that you clearly understand what a legal issue is. a simple definition is that a legal issue is a question posed by certain facts about a particular legal liability or a defense to such liability. More concretely, a legal issue poses a question about liability arising from a cause-of-action rooted in tort, contract, criminal law, etc., or a question about a defense to such a cause-of-action.

It is important to appreciate that issues about liability arise from facts. Issues are not abstract. Indeed, it is a legal maxim that "out of the facts, the issue arises" and without facts there is no issue. You must, therefore, begin your search for issues by scrutinizing the facts in your professor's exam problem.

To illustrate: is there a legal issue raised by the facts that A stared at B on the street? The first requirement is satisfied -- there are facts --but you have not satisfied the second requirement -- these facts do **not** pose a question about legal liability. The reason is simply. No cause of action claiming liability of A in tort or criminal law, or elsewhere, arises from the fact that A stared at B. stated differently, no legal right of B (and no legal rule) is violated by the fact that A stared at B. Distinguish legal liability from violations of etiquette, custom, or morality. There may be an Emily Post violation of etiquette: A may have been rude to B: Rudeness, however, is different from legal liability.

If, in contrast, the facts specify that A stared at B and then rushed at B waving a threatening first in B's face, these different facts pose a question about A's intentional and unprivileged infliction of an apprehension of a harmful touching on B -- the tort of assault. (Criminal liabilit is omitted.) The issue here might be formulated as follows:

> Is A liable to B for assault when A rushes
> at B waiving a threatening fist in B's face?

With a clear understanding of what a legal issue is, you can concentrate on my method for spotting issues.

PART ONE

The Delaney Method For Issue-Spottine

I specify below a systematic, five-step approach for identifying issues. I list an introductory check, set forth each of these five steps and then explain and illustrate.

FIVE STEPS

Check for "Light-bulb" issue-spotting
1. Identify the harm(s) in each paragraph
2. Identify who has harmed whom and how
3. Identify which topic(s) of the subject
   seems applicable to each harm and behavior
4. Hypothesize which rule(s) seems most applicable
5. Verify hypothesis

INTRODUCTION TO FIVE STEPS

Check For "Light-bulb" issue-spotting

Happily, when you carefully read the exam problem, certain facts will switch on in your mind a light-bulb type of issue recognition. You almost immediately, without elaborate thinking and without applying the five steps, identify the issue(s) raised by the facts. Why? The reason is that you have seen and heard comparable facts -- in your cases, in classroom and study-group hypotheticals, and in relevant sections of the hornbook. You therefore know that these particular facts raise a question about legal liability.

Suppose, for example, in a criminal law exam problem, you read that A shot his rifle into a crowded gondola transposkiers up the mountain and killed X, a skier. A was doing his best to avoid hitting the skiers. You might immediately recognize that these facts are similar to illustrative, model examples of extreme recklessness murder -- **e.g.,** shooting into an quickly formulate the issue on scrap paper where you are outlining your answer:

> Is A liable f/extr. reck. murd. f/shoot.
> into a crowded ski gondola and kill. X?

Suppose for example, in a torts exam, you read that A silently approaches B from behind and punches B on the back of his head? You might immediately recognize the obvious, model example of the intentional tort of battery, which is the intentional and unprivileged infliction of a harmful or offensive touching of another. You might in seconds formulate the issue on your scrap paper:

> Is A, by strik. B in the head, liab. to B
> f/battery?

If you have practiced a fact-centered approach in your studying, you might pause on the facts of "A silently approaching B from behind" and punching B on the "back of his head." You might quickly recall that while assault and battery go together like "ham and eggs", there are exceptions -- and these facts illustrate an exception you have seen before in studying assault and battry. In seconds, you might recall that an assault in torts is the intentional and unprivileged infliction of an **apprehension** of an imminent battery -- it requires **awareness** by the victim. On these facts, B is unaware. This less obvious issue could be spelled out:

> Is A liab. to B f/assault when he silent.
> punch. B from behind?

With careful, fact-centered studying, reviewing and outlining of your courses, this type of almost spontaneous issue-spotting followed by verification (see step five below) may enable you to spot a fair number of the issues raised by the fact pattern. It is a blunder, however, to rely on this type of issue-spotting.

Using the five-step approach, you must also meticulously study the entire fact pattern for the hidden issue which lurk therein. What follows in Part One is an explanation of this five-step process for extricating these hidden issues. It should be applied systematically to each paragraph in your professor's exam problem. After frist scanning and then carefully reading the entire problem at least twice, you begin with the first paragraph.

1. Identify exactly the harm(s) revealed in each paragraph.

You should begin by concentrating on the first paragraph to identify the harm(s) revealed therein. Harm is used in its popular, everyday sense. For example, in a criminal law exam, a killingl In a torts exam, a personal injury from a car collision. In a contracts exam, a seller of goods is not paid. In a property exam, someone intruding on the land of another. Identifying the harm(s) is the first step in identifying and specifying the issue(s).

2. Identify who has harmed whom and how.

You next scrutinize the harm(s) in a paragraph to identify who has harmed whom and how. These are, first, the parties to the harm and, second, the behavior(s) which produced the harm(s). Illustrations follow. First, as to parties, in criminal law, A shot and killed B. The parties are A and B. In torts, A, driver, hit and injured C in a car collision. The parties are A and C. In contracts, S (seller) is not paid by B (buyer). The parties are S and B. In property, A, against B's wishes, intrudes on B's land. The parties are A and B.

Second, as to harm and harm-producing behavior, in criminal law, when A shoots and kills B, the harm is B's death, and the harm-producing behavior is A shootin B. In torts, when A, driver, hits and injures C, the harm is C's injury, and the harm-producing behavior is A's poor driving.

In identifying the harm(s), the parties to the harm(s), and the harm-producting behavior(s), starting with the first paragraph, you identify the legal conflict(s). Each legal conflict has three parts: a harm, parties to the harm, and harm-producing behavior. Each legal conflict raises **at least** one legal issue. While some paragraphs contain only one legal conflict, many paragraphs contain two or more legal conflicts.

In identifying the legal conflicts, you have also identified the key facts: those facts which pose a question(s) about liability or a defense to such liability. Of equal importance, you have also identified the non-relevant facts: those facts which raise no question about liability.

3. Identify which topic(s) in your professor's course seems applicable to each harm and behavior.

For example, in a criminal law exam, when A shoots and kills B, you hypothesize that the criminal homicide topic of your professor's course is relevant to this harm and behavior. In torts, when A, driver, hits and injures B in a car accident, you hypothesize that the negligence topic of your professor's course is relevant to this harm and behavior. In contracts, when S (seller) is not paid by B (buyer) for S's delivery of goods, you hypothesize that the breach of contract and damages topics of your professor's course are relevant. In property, when A, against B's wishes, intrudes on B's land, you hypothesize that the trespass topic of your professor's course is relevant.

In selecting one or more topics as relevant to the harm(s) and behavior(s), you are tentatively excluding as irrelevant the other topics covered in your professor's course. For example, if you hypothesize criminal homicide in the above-cited, criminal law example, you are implicitly excluding the topics of larceny, arson, rape, etc.

As you review the topics presented in your professor's course to identify which topic(s) seems applicable to the particular harm and behavior, you must be sensitive to the possibility that the legal conflict you have identified may require the application of **more than one topic.** To illustrate, if A shoots and kills B to further an ongoing narcotics venture of A, X and Z, the conspiracy segment of your professor's criminal law course is **also** relevant. If A, driver, hits and injures B and the car's wheel then flies off and injures D because of a manufacturer's defect, the product liability segment to your professor's tort course is **also** relevant.

In the criminal law example, issues about the liability of A, X and Z for murder and conspiracy are raised. In the latter example, an issue about the liability of A to B for tort negligence and an issue about the liability of the munufacturer to D are raised. The lesson is clear: do **not** assume that a single legal conflict involves only two parties and one issue. ON scrap paper, and using abbreviations, link the parties to the topic(s) which applies to the harm(s) and behavior(s). For example:

> A, X, Z liab. f/Mur. & conspir?
> A liab. to B f/T. Neg?
> M liab. to D f/Prod. liab?

4. Hypothesize which rule(s) seems most applicable.

Next, you must identify which rule(S), within the topic(s) selected, seems to be applicable to the harm(s) by the parties and to the harm-producing behavior(S). The universe of possibly applicable rules is sharply narrowed by selecting one or two topics as relevant (step three). It is only those rules within the topic(s) covered in your professor's classes and/or in the assigned materials which are candidates for application. For example, in criminal law, when A shoots and kills B, you have identified criminal homicide as the relevant topic. Within this topic, your professor typically may have covered the following theories (rules) of criminal homicide liability:

> -a- intent-to-kill murder
> -b- premeditated and deliberated murder.
> -c- felony murder
> -d- extreme recklessness murder
> -e- voluntary manslaughter
> - "heat of passion" killing
> -f- invountary manslaughter
> - criminal negligence

With the facts of a shooting and killing B, you could exclude felony murder (no underlying felony); extreme recklessness murder (no extreme risk creation exists); voluntary manslaughter (no "heat of passion"); invountary manslaughter (no criminal negligence). You could quickly eliminate all but the first two possibilities, a and b. With only modest additional scrutiny, you could promptly exclude the premeditated and deliberated murder because there are **no** facts presented upon which to base premeditation and deliberation. You are left with an hypothesis of intent-to-kill murder.

As you eliminate, you are thinking not in broad concepts but **concretely.** For example, in assessing the option of extreme recklessness murder by the test of "extreme risk creation" -- you concentrate on the specific model illustrations of "extreme risk creation" -- e.g., shooting into a crowd or an occupied house or car, dropping boulders from a roof on a crowded street. Using these vivid, model illustrations, you can quickly conclude that A shooting B is **not** in legal terms an example of "extreme risk creation" which would trigger a possible application of the rule of extreme recklessness murder.

You are applying legal reasoning -- analyzing by comparison. You search for similarities and differences between the harm(s) and harm-producing behavior(s) contained in each identified legal conflict and similar harm(s) and behavior(s) contained in the cases, hypotheticals and hornbook sections you have studied. This search for similarities and differences is comparable to what you do in class in reconciling and distinguishing cases.

5. Verify hypothesis

Your last step is verification of your hypothesis that a particular rule or rules apply. To illustrate, you verify your intent-to-kill murder hypothesis by first matching the key facts in this legal conflict with the elements of this rule, which are:

> a) intent-to-kill
> b) manifested in an
> c) act which
> d) facually and legally causes the
> e) death of a live person.

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