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University of Michigan Law School

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"Dance like a butterfly, sting like a bee."

WOODCOCK

The unassuming Prince came to the Law School Tuesday, March 7, speaking before a variety of courtiers and yeopeople in a half-filled room 100, the faculty lounge, and the Lawyers Club dining room. Leonard Woodcock, President of the United Auto Workers Union, never knew an Elsinore to come back to, but watching the Prince here at the fortress of success one couldn't help believing he thought it was just as well.

Mr. Woodcock began his career culminating in the Presidency he assumed following the tragic death of Walter Reuther in 1970, as a machinery assembler in 1933. From that time he held various offices, first in the CIO and then starting in 1940 with the UAW, as director of the Upper Peninsula region, and vice-president of the union for most of those years.

Addressing the Hutchins Hall audience in a well-cut modest brown suit and complementary brown-striped shirt and tie, Woodcock's principal theme was analysis and criticism of the Economin Stabilization Act of 1971, the present economic controls Woodcock termed "another Nixon surprise." Inflation, he said,was obviously the product of the War's escalation, quite contrary to the "mythology that labor cost-push was responsible." Asserting that labor did not become a party to inflation until the need to catch up with run-away prices occasioned labor action, Woodcock marshalled none other than Milton Friedman as authority that union

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KRAMER

ATTACK ON THE BROADCASTING CITADEL

There really is little mystery to the banality of programming on American television. But the result is nowhere near so inevitable as the average viewer is led to believe.

Al Kramer, public interest lawyer at the Citizens Communication Center (C.C.C.) aims to shake-up the status quo in the broadcasting industry and intends to do it through existing channels. Kramer visited the Law School on Monday, March 6, to discuss the objectives of his Washington, D.C.-based law firm.

The primary focus of the C.C.C.'s advocacy is the Federal Communications Commission, an agency often accused of being an industry patsy. Kramer admitted that FCC Commissioners and staff are "bought men" but "in a peculiar sense." He asserted they are "not evil, or small-minded or paid off." Rather, "they hear only from the industry; they are inundated with information from only one point of view." Informal office chats, telephone conversations, luncheon banter are all unofficial means by which broadcast industry representatives "curry the favor of the Commissioners," said Kramer.

Likewise formal administrative procedures are not ideal sources of unbiased perspective. In agency rule-making proceedings, batteries of industry attorneys submit literally thousands of pages of memos and

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Editorial

[The following editorial was written some time ago, all at once, in a fit of anger. We have witheld it for several months in order to take an opportunity to give it some "polish." The opportunity has never presented itself, and no one can recall when lack of polish was ever a reason for keeping anything from these pages. So this opinion is basically unaltered from its orginal draft.]

WHO'S SCARED?

After more than a year it is still astonishing to me how much fear controls the academic lives of law students. Especially the fear of being called on in class and more generally the fear of being found unqualified is some ill-defined way. It is a curious motivation for men and women soon to be released upon society with the purpose of facilitating conflict resolution, of urging justice and fairness on an overweening bureaucracy, of subordinating the irrational in society to a system of reason.

Is a person used to being driven by uncomprehending fright of much service to anyone? Or, is he likely to find release in dominance over those who seek his help?

David Riesmann spoke of inner-directed and other-directed personality types, a useful dichotomy. Theoretically fear of reprimand should have no more than nominal significance to one who is inner-directed. So it would seem that the trembling audiences which reluctantly seat themselves daily in the classrooms of the Law School act in response to that most prominent sanctioning group of "others," the professors.

If you've followed this far; you will not find it hard to agree that the burden is heavy on the minority group (the teachers) not to exploit their position of psychological (and incidentally intellectual) superiority over the majority group (the students). Some professors simply cannot resist. I suspect that the inability of some professors' to avoid abuse of their rank is an outgrowth of the fact that they, in their time, underwent the same scholastic duress which they feel now compelled to force upon their students. This takes on the character of an initiation rite, a trial by fire. A few are still disingenuous enough to suggest that the strain is "good" for students, teaching them to stand up under pressure, to subliminate stress while enhancing personal effectiveness. This ignores the plain fact that intimidation creates an incentive toward evasiveness, insecurity and, in the extreme, loss of a normative sense. The net result has been generation upon generation of slippery, overbearing instrumentalist lawyers who in many cases, having learned the implied lesson of law school, prey upon the vulnerable and confused. They will dance the tune of whomever pays pays most handsomely.

Legal ethics is no longer a course in law school, all pretense having been dropped. Now I believe it is a series of voluntary lectures offered by a judge. Apparently an ideal of self-automated professionals, defiant of stereotype, and dedicated to public service cognizant of the moral imperatives which their behavior should follow, is now paid only lip service. When one such lawyer comes into public prominance -- as, for example, Ralph Nader -- his motives are questioned with unusual vehemence. No one disrupts complacency without causing some sleeping dogs to stir. Still Nader's intellect and energy distinguish him from other lawyers and explain, perhaps, how he escaped the intimidation of law school.

The average law student, is surely , not so extraordinarily endowed as to be able to resist alone the trauma of being badgered in class. Learning should be a participatory -- not a predatory -- experience. When positions of relative emotional disparity are exploited, the process of learning loses

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its intrinsic reward and becomes an ordeal of survival. For some students its sheer hell, for others its just a drag.

Postscript: Mike Hall of our staff, after reading the above, suggested that I place far too much of the burden for the classroom condition of fear on the faculty. The student, he thinks, bears considerably more responsibility for relieving the tension than does the faculty. Also he thinks that the large majority of professors here are solicitous, almost to a fault, of student hesitations in the classroom.

On both counts, I think he is right. Michigan's most notorious classroom ogres have either departed or mellowed, and students are well equipped by their numbers to discipline unruly teachers. Still I sense a reluctance in my classmates, which to some extent, I involuntarily share, to speak up in class. It helps to be prepared everyday.

-- J.J.S.

Ready or not

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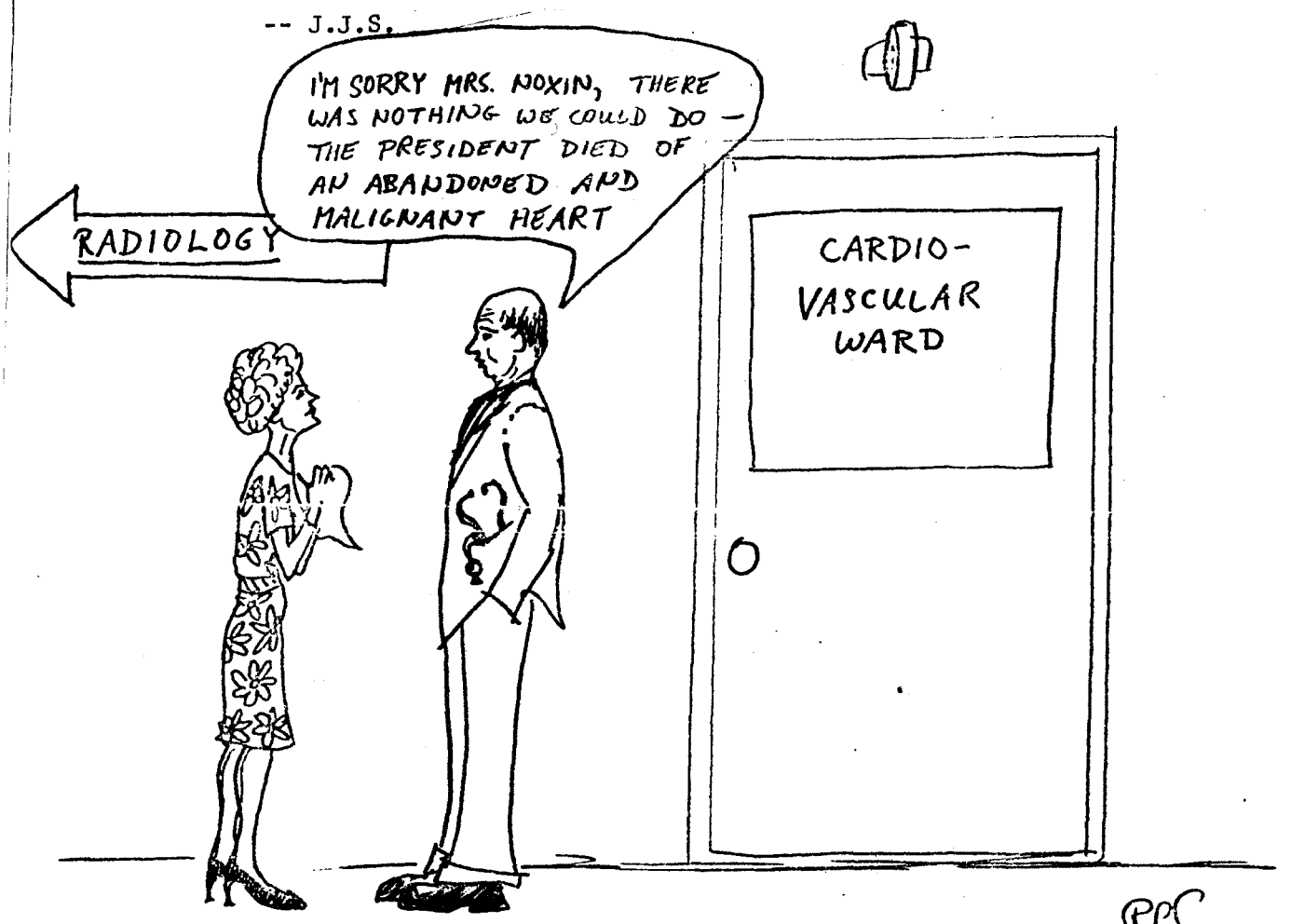
strolling in wearing my usual classroom attire. I don't mean to suggest that I felt out of place or anything, but I doubt if I could have drawn any more attention to myself if I had ridden my motorcycle into the dining room.

At the end of the year, I got to play the greatest of all law school games -- grade report roulette. Everyday I would run out to the mailbox to see if that magic letter from the law school had arrived. By the middle of June I began to wonder if they would ever come. By the middle of July I decided to invest in a phone call /Mr. Ginsberg resides in Baltimore. --Eds./ to the registrar. I was politely informed (probably by the same sadist) that the delay was due to Professor Harris' failure to turn in his grades for Contracts. It was close but my grades did arrive before I left to come back to Ann Arbor. I guess some things never change.



SIS

Big Sister is Watching You
Award of the Week

Sen. Ervin, erstwhile opponent of the Equal Rights Amendment, who exclaimed when it was passed by the Senate this week, "Father forgive them, for they know not what they do."

Also winning this week is UPI whose writer reported the story of the first women to be sworn in as Secret Service Agents, saying:
"As seen from the back during the swearing-in, three were brunettes, one a golden blonde and one with short frosted hair. All had good figures."

Center for Law and Social Policy

To: Students interested in going to the Center in the Fall Term, 1972.

From: J. L. Sax

Applications should be given to me no later than March 31st. The Center promises to let you know whether there is a place for you no later than April 21st.

A lawyer from the Center will be at the law school to talk with interested students on March 24th at 3:15 p.m. Further details will be posted.

The following people have been elected to the Legal Aid Society Board of Directors:

Kathy Gerstenberger, President
Jim Forsyth, Secretary-Treasurer

Ed Cook
Pete Dodge
Rick Firestone
Tom Lichten
Ray Mullins
Mike Nelson
Sally Rutzky
Rocky Stone
Pam Stuart
Herb Trubo

KAMISAR SUPPORTS BILL ALLOWING FEMALES TO COMPETE IN NONCONTACT SPORTS

U-M Law Professor Yale Kamisar testified before the Michigan House Education Committee on March 21 that the present Michigan High School Athletic Association rule prohibiting females from competing in inter-scholastic athletics of the noncontact variety (e.g. tennis, golf, track and swimming) constitutes a denial of equal protection. Kamisar maintained that the principle of non-discrimination requires that high school females be considered on the basis of their individual capacities and abilities and not on the basis of any stereotypes about females generally. Sex, like race, he pointed out, is a "suspect classification" because it relegates a whole class to an inferior status without regard to individual capabilities and thus the state must show that sexual separation is compelling, if not necessary, in the particular context -- something, he concluded, the state is unable to do. As for the argument that participation in varsity sports by girls would "force an unpleasant association" upon boys, Kamisar retorted that if the directive of equality cannot be followed without displeasing male athletes then the status of what might be called "the reciprocal freedom" of the boys not to compete against females is automatically settled -- it must yield. At the hearings, a number of female tennis players (and their varsity coaches) testified that if they were allowed to participate, they could earn spots on their high school teams. At the conclusion of the hearings, the House Education Committee voted to report out to the floor a Senate bill allowing females to compete in noncontact sports.

[Professor Kamisar asked to have the record show that he is the "father of three junior tournament tennis players -- all boys." Alas! -- Eds.]

strength has been the same with or without inflation, and the problem is not one of labor power but monetary dislocation.

Arguing for modest increases geared to productivity and protected by cost-of-living boosters, instead of giant wage jumps, is and has been the labor leader's policy. For that moderate approach, he thought Phase I was unnecessary, but acquiesces to Phase II since a return to pre-control times would have been devastating without a smooth-over period. Yet Woodcock felt the administration of the controls has been manifestly unfair. He pointed out that the ten million enterprises not to be controlled but to be "spot-checked" by the IRS, would all not be examined even in a cursory manner until 20 years from now at the rate of spot-checking the IRS maintains. Furthermore, he said, the whole idea of a percentage appraach to wage hikes is wrong be cause "we're stre tching the gap between the lowest and highest paid in a most unfair way." That is, under a flat percentage limit to wage increases, the highest paid still get absolutely more then the lowest paid to further stratify working people.

In the area of historical parallels, Woodcock left to the audience's imagination what would happen under a Democratic administration if we had a 90 billion dollar deficit, and observed that two twentieth century leaders have instituted what they called a New Economic Policy - Lenin in 1920 and Nixon in 1971.

As for another principal in the Nixon econmic program, Woodcock noted that "Mr. Connally apparently thought he was roping in a Texas steer (in the international trade and monetart talks), rather than dealing with co-equal nations."

Woodcock reserved his harshest words, though blunted by his mild demeanor, for the so-called "job development credit" of 7%, and the whole Nixon litany of "more profits, more jobs." He asked if profits were actually that bad a few months ago, and why if the credit was a stimulus, was there a need for retroactivity; how could capital purchases already made be "stimulated?" Woodcock cited evidence that the liberalization of capital consumption allowances hides quite adaquate profits not shown in traditional net figures. Over-all, he concluded, the Nixon program was acting to further mal-distribute the country's wealth, which even at this time stands so that the top 1% have as much as the bottom 20%. The answer to unemployment, Woodcock said, was a program of public service job expansion, and increased social security payments, because the country's urban areas have plenty that needs done so that the notion of "make-work" in the public sector is nonsense, and social security expenditures are the quickest method of increasing comsumer spending. And as for umemployment figures, he noted that the Administration stops counting people who have gotten fed up with looking for work, and if these people shut out from the system were included, the unemployment rate would be 7.9% not 5.9%.

More mal-distribution of wealth features to the Nixon program are a "swiss cheese tax system" he ignoees as a revenue base in favor of taxing more heavily the lower income classes with the proposed value-added tax. Woodcock said what we need is a "good American cheese system of total closure of loopholes." He also assailed the complacent Congressional committee system that wastes so much money in domestic and foreign military bases. Except for Germany, where we need forces for mutual reduction talks, nowhere else do we need foreign bases given the jet aircraft capability so much money has been spent on. Woodcock concludes $20 billion could be cut from defense.

During the question period, Woodcock replied to a query about his support for Muskie by saying that though he was closer ideologically to McGovern, Muskie seemed better able to unite the party to beat Nixon. When asked what he would do if Wallace were nominated, Woodcock said, "I would go fishing, I guess." Cont. pg. 6

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Woodcock doesn't know whether Nixon will run against labor, but understands the AFL-CIO convention affair was a put-up job by the Administration by a variety of evidence. Many features of the original plan at the convention were changed at the last minute by Nixon, although the "act II" comment by Meany was better left unsaid.

And at this time, Woodcock, as unassuming Prince, began to come through more clearly as the evening shifted in favor of the courtiers over the yeopeople. Sir Rattle-on of the Environmental Law Society clothed a purported question in five minutes of oratory on the environment and labor. But the Prince listened and answered politely that a union must stick to its three bases for existence, wages, hours, and working conditions, however crass, in order to be effective.

But he said, of course what we need is a NASA type attitude toward solving the pollution problem.

At the conclusion of the question session, Woodcock presented the UAW alternative to Nixon controls. He said wages should be geared to national productivity, and then if the auto industry, say, has a higher rate than the national average, the savings should be passed along to consumers in lower prices. Under the UAW system, there would be no controls, but a price review board with subpoena power to call pacesetting industries in to explain price increases, labor being called in if they're related to increases, and then the results would be published. There would also be a consumer council with the same powers to call in industries about why price reductions should not be made. Henry Reuss, Rep.(D) of Wisconsin already has similar legislation prepared for Phase III.

The Prince was next to go to the faculty lounge for cocktails, but Mr. S the organizer led him to the Lawyers Club lounge instead. Discovering the error, the party headed back to the faculty lounge and who should be holding the door for everybody than Leonard Woodcock. Then once inside, the Prince leaned slightly stooped as is his manner, against a pillar in the faculty lounge, while the courtiers spun out their grandiose lines, garroting the unaware. The Prince's sad eyes glanced at the courtiers before him, no doubt wondering where these labor experts were in 1937 and 1946 - probably in other limestone halls like this, looking at their great tomes but thinking about a weekender coming up at the Club. And cocktails only embolden courtiers as the yeopeople know themselves too well.

At the Lawyers Club dining room, the Prince sat next to old Lord Holdforth, as he spewed his embarrassed message about the room that he had mistaken the Prince for an economics professor. What greater vice could the Prince be afflicted with? He was there in 1937 and 1946. How tired the Prince must be of being compared to a mere professor. But then there was the Duke of Fluffington, gaily blaring his views of the course of American labor across to a tight-lipped Prince, under the pretense of a question. Such ruses at court must be well-remembered by the Prince as he longs to be back with real people again.

-- M.G.S.

PIRGIM APPROVED

The Regents of the University of Michigan today announced their unanimous approval of the Public Interest Research Group in Michigan (PIRGIM), a non-partisan, non-profit, state-wide organization seeking to represent students in areas such as: consumer protection, environmental quality, racial and sexual discrimination, unsafe housing, health care and in general, the structure and functioning of public and private institutions.

The Regent's decision officially launches the Ann Arbor group through approval of its on-going funding mechanism.

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briefs, which are abbreviated in "work-ups" by FCC staff and then re-processed again by the legal aides to the Commissioners before reaching the decision-head. The resulting "filtration" Kramer emphasized, prevents representation of any but the most abundantly documented industry viewpoint. Ajudicatory rule-making, while supplying the added element of an independent hearing examiner, still yields up"twice-refined" information to the Commissioners, said Kramer, "and the process of continued pounding and educative input goes on," despite the safeguards.

Adding to the preponderance of influence from the television industry establishment is its "tremendous economic concentration," in what Kramer called "a cross-owned medium, locked into the larger industrial structure of the country by being dependent on it for its livelihood: advertising." Station ownership is either in the hands of great diversified conglomerates, AVCO, Westinghouse, GE or RCA; the media conglomerates, Storer Broadcasting, Capitol Cities or Time-Life (now leaving the broadcasting industry by selling its television properties to McGraw-Hill); or the networks, NBC (which is owned by RCA); CBS (itself a conglomerate owning a toy company and a baseball team among other things) or ABC (frustrated in a merger attempt with ITT by a then unregenerate anti-trust division). While the FCC recognizes that "the First Amendment diversity of tongues" requires decentralization of control, said Kramer, "the agency position has not been implemented by effective regulation." FCC multiple-ownership rules have proven quite liberal in practice. There are no independent station owners in the largest markets.

"So the only method," said Kramer, "is to proceed by challenge in individual license renewals, which come up every three years." This procedure is not without its perils. In 1965, in a renewal challenge, WHDH, a Boston station, was denied relicensing for lack of diversity of ownership, under a new set of FCC rules which tended to neutralize the traditional presumption in favor of the incumbant licensee. In effect HDH was considered on an equal footing with other applicants and lost. Apparent abandonment by the FCC of incumbant protectionism in favor of a policy of local community ownership generated a furious reaction: industry lobby gearing up to propose amendments to FCC enabling legislation and a flurry of apocalyptic comment in trade and law journals, all crying foul. Upon rehearing, the FCC backed off and narrowed the WHDH decision to its specifics, negativing its future usefulness.

Last year CCC revived the controversy by suing FCC in the D.C. Circuit Court [447 F.2d 1201 (1971)] for review of an agency order, enforcing a 1970 Policy Statement, which embodied the presumption favoring incumbent owners. Judge Shelly Wright struck down the Policy Statement as exceeding the agency's delegated powers. This opened the way for groups such as CCC and its minority group clients to obtain the "full hearing" required by the Federal Communications Act for license challenges at renewal time.

Foremost among the arguments raised by established broadcasters to defend the presumption favoring incumbents is equity. They point out that establishing a studio involves undertaking large capital expenditures to obtain and improve equipment. Once these expenditures are made in reliance on a "rubber-stamp" regulatory policy, it is unfair, the argument goes, to bar the investors from recovering their original outlay and a reasonable profit. The argument pales, however, when compared with actual rates of return in the industry e.g. CBS-TV, N.Y.C. recovered 2,290% of its investments in 1955. Kramer suggests that the three year term of the FCC license in many cases is sufficient time to reclaim equity and in any case that formulas are available whereby costs can be averaged out and excess profits be applied to amortize purchase price. Rights in station equipment are easily assigned or sold to the successor station if an incumbent is overturned.

A second industry argument (espoused by Professor Jaffee at Harvard among others) is that absence of incumbent-favoritism will induce instability in the broadcasting industry. The econ-

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Prof. Jaffee of Harvard

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omic incentive to large scale capitalization, it is said, would be lessened. Kramer believes that a period of transitional instability, as corporately-owned stations move over to community control, is a beneficial result. The desire of groups previously unrepresented in the media to have their voice, he indicated, is incentive enough to full resource utilization.

Realistically speaking, Kramer admitted, the access route of comparative applications is difficult since it requires that the challenger show he is financially qualified with studio, staff, cameras, transmitter site and like, to take up the channel. "The favorite tool of minorities seeking access," therefore, he said, "is the petition to deny. It's cheaper," and offers the strong possibility that the incumbent will agree to a settlement which allows a number of hours of air time to the minority petitioners. The petition to deny is filed at renewal time against the incumbent alleging that he is unfit for renewed licensing; petitioners need not offer or qualify for alternative ownership. Access takes other forms as well, Kramer observed. "Without ever touching a microphone, a community group can demand a three hour weekly "gripe" session with a station manager to vent their grievances about his programming."

Whatever form the input takes, Kramer urged, the key "is to make the whole system more responsive to the particular social interest you think is important. Such fundamental change means that you must assume the advocate's role." Al Kramer and the Citizens Communications Center should suggest some of the possibilities open to socially-motivated lawyers.

-- J.J.S.

REFLECTIONS OF A JAUNDICED EYE

By Richard B. Ginsberg '72

There's a sadist loose in the administration office. I know there is. For four years as an undergraduate, I juggled courses so as not to have any classes earlier than ten o'clock. I get to law school and some petty bureaucratic clown hands me a schedule which gives me two eights and three nines. But, this isn't enough. To add insult to injury, I'm also given afternoon classes every day.

During my first year here, I came to hate two places: Dominick's and the Union snack bar. When it's nine o'clock and you've just sat through an hour of Torts, you've got to go somewhere for a cup of coffee and a donut. Going back to bed for an hour and then getting up again for Property is just too painful. Unless you're into walking long distances in sub-zero weather, the only places to go are either of the above-mentioned establishments.

I'm not trying to put the nix on Dominick's. It is a fine place to go for a cup of coffee or a sandwich. But twice a day, five days a week, for a whole year? Even two years later, I sometimes wake up in the middle of the night and can taste pastrami on rye with mustard no lettuce.

The best thing I can say about the Union snack bar is that there was usually room to sit down. You can only begin to appreciate this if you've spent as much time as I have standing in line at Dominick's. If you've ever eaten at the bar, I'm sure that you also include a few words of thanks of the Bagel Factory in your nighttime prayers.

The highlight of the social season was the Crease Ball. I got a kick out of all the posters and signs. Unfortunately, no one ever bothered to inform me that people dressed up for this particular event. So I came

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ELS

ELS GOES TO D.C. II

As you may remember from last week ELS sent a large task force to Washington to subvert the ALI-ABA Environmental Law Conference. The tenor of the assembled attorneys was such, that when it was announced there was coffee in the lobby only seven people were injured from the flying debris of trampled chairs. It was reported later that riot police had ringed the auditorium, but we could not investigate the rumor as we were in the middle of the row, facing a barricade of initialed Samsonite briefcases.

As you may further recall the opening speaker Prof. Roger Cramton gave the keynote speech and asserted that there should be more trust in the agencies and more restraint on judicial review of agency action in areas other than procedural. Professor Cramton's act was followed by the NEPA panel discussion, which along with the session on power plants were easily the most interesting discussions of the conference. This is not to say that the NEPA discussion was all light and air.

The first speaker was Mr. Quarrles, a Elmer-Fudd tongued functionary of the Environmental Protection Agency. He droned on explaining how EPA operated under the Federal Water Quality Act and said nothing illuminating about NEPA. (His views on pollution law will be disected/discussed later in this series.) The next speaker was David Sine, a New York attorney who is largely responsible for organizing the conference. He gave a brief half-hour history of the recent case law in environmental law generally (including citations). Finally, Mr. Stoul, a D.C. environmental lawyer began to flesh out the developments of the past year under NEPA.

He noted that the environmentalists had initially chosen their cases carefully, being sure to pick controversial projects, hopefully ones without strong Congressional overseers. In this context it was established that the courts would routinely enjoin a project when the agency involved failed to comply with NEPA's procedural requirements and irreversible harm would occur.

From this base he felt it was possible to expand the uses of NEPA. Gillham Dam (1 ELR 20130) where the Arkansas District Court halted a substantially started (65-80% complete) project until the Corps of Engineers comply with NEPA was viewed as an example of a thrust from the firm base into a new area, retroactivity. The review that was given the Amchitka test, though not successful, again showed the range of NEPA's application where review of NEPA complaince was had despite prior Presidential approval of the blast.

He felt the major area of present expansion is the study of alternatives provision, §102(2)(c). He mentioned NRDC v. Morton 2 ELR 20029 in which the impact statement on the sale of Gulf Coast oil leases was deemed inadequate. There the court required that NEPA demanded study of alternatives outside Interior's expertise, i.e. all alternative sources of energy. He felt that this development was justified but gave no support. Kalur v. Resor 3ERC 1458 made the same point with respect to the Corps of Engineers decision not to study impacts which solely effect water quality. There the D.D.C. on requiring the Corps to file NEPA impact statements on Refuse Act Permits gave a good explanation of the policy underlying the requirement. It pointed out that the EPA was not concerned with whether the point source pollution was degrading, instead their overview makes their inquiry one which concerns itself with the aggregate effect of point source polluters. This perspective is inadequate to insure, as NEPA mandates, that each major federal action be considered for its own sake, in this case refuse permits.

Stoul then described Calvert Cliffs (1 ELR 20346) the grand-daddy of all NEPA cases to date in which Skelly Wright castigated the REC and insisted that they "move faster than a funeral procession" in reforming their procedures to comply with NEPA. Stoul asserted that C^2 would continue as the leading

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case for a good while. He said that the new trend is toward attempting to apply NEPA to more marginal situations, such as a practice naval landing, decisions of Price Commission and the like. This trend flies in the face of increasing agency agility at NEPA procedural compliance. His outlook was that soon agency compliance with the procedures would become routine and that there would be an impasse until the courts construe §101 & §102(1) as subjecting the agencies to policy mandates in their decisionmaking.

A Mr. John Nolan, another D.C. attorney, reiterated most of what Stoul had put forth, adding only comments about Greene County (see other article for description of the case, if you're still interested.) Now the stage was set for an anti-NEPA view, or at least some criticism instead of praise. It was duly provided by choose one: a) a power company lawyer, b) general council for GM, c) Lt. Gen. Clarke of the Corps of Engineers, d) a Nixonian appointee to the Council on Environmental Quality.

If one had any political naivete about environmental law it could not endure for long. Timothy Atkeson, hand picked by President Nixon for the CEQ slithered up to the microphone, and announced the Official Line. He said that NEPA had already been applied in situations in which it was inappropriate. He said that it had succeeded in altering agency consciousness of environmental issues which he felt was its side purpose and now it was interfering with the efforts of the agencies to pursue their mandated goals. He specifically called for the reversal of Kaher v. Resor because it put industry in the dilemma of violating the law or closing down on non-navigable rivers and enduring the expense and delay of impact statements for point source discharge on navigable rivers. He said the burden on the Corps of Engineers was intolerable. He said further as part of the new water pollution bill it was introducing, the Administration was including a provision which would eliminate the Refuse Act part of the Rivers and Harbors Act of 1899. He heralded the environmental progress that had been made on all fronts, especially within the executive and administrative fields and adjourned the meeting for the evening. Quer y: Did Atkeson notice that most of the progress of which he spoke came in suits against the despoilation those agencies are attempting to work on the environment?

This article, long as it already is, hovers on the brink of a tirade against Nixon's environmental two-facedness, not to mention his handling of Supreme Court nominations, the continuing slaughter of life in South East Asia, the taking bribes from the milk industry, etc., etc. However, a brief consideration of the Administrations' requested changes in the law and its judicial enforcement is more informative. Basically the policy being pursued calls for a lessening of the instances subject to judicial review, and tight limits on that review constraining it to procedural issues to give the agencies room in which they may operate and then they will do so with environmental awareness because of the procedural requirements. Clearly this view is simplistic, and as Prof. Sax has repeated so often, the agencies are often captives of the industries they affect, and often slaves of their own tunnel-vision. Furthermore, I submit that the judicial scrutiny should pierce even deeper into the throes of agency and administration decisions because the political "ins" in our quasi-spoils system most often are subject to an unbalanced vested interest bias in favor of environmental degration. Pork barrel projects, industry lobbying and political contributions, not to mention bribes and gifts to the administrators themselves are but a few of the forms this pressure toward exploitation takes. The pressure goes unbalanced in large part because benefits in untrammeled natural resources are difusely held and of small magnitude to each individual. The interests seeking to exploit the resource are attempting to take these benefits, aggregate them and redivide them between a vastly smaller number of people each of whom then has a significant interest in seeing that the project is undertaken, an interest large enough that it will more than repay the costs of its procurement.

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The proposed administration changes would further insulate the decision-making subject to the aforementioned pressures from any meaningful review. It seems clear, Professor Cramton, that until there is an avenue for meaningful environmental input into the policy and planning of the agencies the Administration and industry itself, any relaxation of judicial scrutiny, be it through less inquiries or more restricted inquiries, is a mistake of the gravest magnitude. Conversely, expansion of review, whether by NEPA construction or otherwise, is progress to be applauded.

RECENT ENVIRONMENTAL CASES

The following article marks the first in an irregular series on developments in Environmental Law. The ELS offers R.G. this series in hopes that

a) it will be enlightening
b) it will be interesting
c) it may prompt some of you, first year students included, to come down to the ELS office and find out what we do
d) it will make me read all the recent cases to prepare the column.

These diverse purposes in mind, this particular edition is also a supplement to the article in this issue on the National Environmental Policy.

NEPA CASES

Greene County Planning Board v. FPC, 2 ELR 20018 (2nd Cir. Jan. 17, 1972) After approving of the D.C. Circuit's reading of §102 of NEPA (in Calvert Cliffs), the 2nd Circuit required that the FPC must prepare its own (not applicant's) draft environmental impact statement prior to hearings on transmission line location. Further intervenors should be allowed to cross examine both power company and FPC officials in light of the statement.

NRDC v. Morton, 2 ELR 20029 (D.C. Cir. Jan. 13, 1972) The D.C. Circuit speaking through Judge Leventhal granted a preliminary injunction preventing defendants from proceeding to sell leases for offshore oil driling on the Outer Continental Shelf off Louisiana. The Court construed NEPA strictly, relying on Calvert Cliffs, and held that the Interior Department's final impact statement violated §102(2)(c)(iii) by failing to adequately consider alternatives to the leasing. The court indicated that the alternatives should include other sources of oil, such as imports, as well as the use of other fuels to solve the nation's energy crisis.

Izaak Walton League v. Schlesinger, D.D.C. Dec. 17 (1971) The AEC was injoined from issuing interm operating permits for a nuclear power plant for failure to file a §102 impact statement.

EDF v. TVA, (E.D. Tenn. Jan. 11, 1972) An injunction was issued against the TVA barring completion of the half finished Tellico Project until an adequate §102 impact statement is filed.

PUBLIC TRUST

Marks v. Whitney 2 ELR 20049 (Calif. Sup. Ct. Dec. 9, 1971) In a quiet title action, the owner of tidelands sought a declaration that he had a right to fill and develop the tidelands. The Court said that tidelands were part of the public trust and that the concept of the trust includes navigation, commerce, fisheries and recreation (all familiar ideas) also the Court went on to say, "the public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one utlization over another. There is a growing public recognition that . . . a use encompassed within the tideland trust -- is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life . . . ." at 20050 Further, any member of the public has standing to raise the violation of the public trust issue.

N.J. Sports and Exposition Authority v. McCrane, 2 ELR 20051 (N.J. Super. Ct. Bergen Co. Nov. 15, 1971) But luckily sports fans the Public Trust doctrine will not stop the New Jersey

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legislature from using tidelands in Hackensack Meadows as the cite for a sports complex. Also such action is not inconsistent with a state law that dedicates state-owned tidelands to the support of public education. Guess where they're holding the N.J.H.S. basketball championships?

HIGHWAYS

Citizens to Preserve Overton Park v. Volpe, 2 ELR 20061 (W.D. Tenn. Jan. 5, 1972) Back from the Supreme Court on remand, the District Court found that Transportation Secretary Volpe had not complied with 4(f) of the DoT Act in that he did not adequately study alternatives and used the wrong standard for his determination. The case was remanded to the agency for redetermination.

CLASS ACTIONS

Inglewood v. Los Angeles, 2 ELR 20004 (9th Cir. Nov. 12, 1971) The $10,000 jurisdictional amount is satisfied as long as the Court cannot conclude with legal certainty that no member of the class can recover the necessary amount.

Diamond v. General Motors Corp. et. al., 2 ELR 20046 (Calif. Ct. 2nd Div. Sept. 30, 1971) Action for damages and injunction on behalf of himself and 7,119,184 other residents of Los Angeles County was held properly dismissed as unmanageable.

SAX ACT

Circuit Ct. Livingston Co.
Judge Mahinske (The one who declared the A^2 billboard ordince unconstitutional)

ELS

There will be a meeting on Thursday, March 30, at 7:30 p.m. in room 138.

The following is the ELS Board of Directors for 1972-73

Bo Abrams, Chairman
Roger Conner, Denny Cotter, Glen Gronseth, Doug McGraw, Zyg Plater, Mary Richman, Peter Schroth, Sterling Speirn, Jim Wangelin

Honorary Members:
John Watts, Chairman
Jay McKirahan, Flunkie

Our Faculty Advisor remains Professor Sax.

LAW WIVES ASSOCIATION

Art

The art of candle making is being revived and once again it shares a place with other crafts and hobbies. The various shopes and sizes of today's molds make it possible for one to create anything from the traditional cylindrical candle to a detailed Spartan warrior.

On Wednesday, March 29 at 8:00 p.m. different methods of candle-making will be demonstrated. For those who call at least four days prior to the meeting, egg candles will be made at 20 cents per egg. The meeting will be at 2510 ArrowWood Trail. For directions or questions please call 662-5447. This will be the last art meeting of the year and we will elect next year's chairman.

Literary

The literary meeting for this month will be on Thursday, March 30 at 7:30 p.m. It will be at 303 E. Madison.

The book selection for this month is Tom Wolfe's Radical Chic and Mau-Mauing the Flak Catchers. (Flak Catchers is bound with Radical Chic.) Radical Chic is Wolfe's highly publicized satire of Leonard Bernstein's benefit for the Black Panthers. Written in a manner which is continuously mocking, the book attacks phony philanthropy. Although Flak Catchers has not received the attention Radical Chic has, it certainly possesses equal merit. An incredibly funny novel, its prime target is the government lifer. Copies of the book can be obtained at Follett's and the U-Cellar. Other recommended novels by Tom Wolfe are Pump House Gang, Electric Kool-Aid Acid Test, and Candy Colored Tangerine Flaked Streamlined Baby.

If you have any questions, please call Ann Goeltz (665-2364) or Jeanie Stayman (763-6382).

CLINICAL PROGRAM IN INTERNATIONAL LAW

The United States Department of State has invited the Michigan Law School, along with several other leading law schools, to participate in a clinical program in international law that is being instituted in the Department on a limited, experimental basis. The Michigan Law School has now approved the participation in this program which was described by the Deputy Legal Adviser in the following terms:

"The participating student from the third year law school class 'would spend one semester working in a designated branch of the Office. While he would have an opportunity to participate in some of the day-to-day operational work of the Office, his emphasis would be on a selected number of long-range problems of current interest to the Office. He would be expected to do thorough research into these problems and to produce a major written product as a result of his research. The product would be unclassified. This combination of work experience and research-writing would be under the immediate supervision of an Assistant Legal Adviser and under the general supervision of a Deputy Legal Adviser. The Counselor on International Law (currently Professor Richard R. Baxter) would also meet regularly with the student and provide him with supervised reading on subjects in the area to which he is assigned. We would also hope to organize a series of seminar-like sessions within the Office of the Legal Adviser, with other officials of the Department, with officers of other Government agencies and with individuals from private life in the Washington area.'"

The Law School faculty may recommend to the State Department one or two second-year students on the basis of their record and proven interest in the international field for a one-term appointment. The first such appointment will be for the fall term 1972. The faculty will maintain general superivison over the Michigan participant and a faculty committee will evaluate the major research paper which each participant will be expected to produce. Upon satisfactory completion of the term the participant will receive 12 hours "pass" credits toward graduation.

Students interested in the program should contact Prof. W.W. Bishop, Jr. (971 Legal Research) or Prof. Eric Stein (918 Legal Research), the Co-directors of International and Comparative Legal Studies at the Law School.

JANE MIXER MEMORIAL AWARD NOMINATIONS

"Students in the Law School, friends, faculty, staff, and her family contributed to a fund to establish an annual award in memory of Jane L. Mixer who met an untimely death while in her first year in the Law School. The award will go to the law student who has made the greatest contribution to activities designed to advance the cause of social justice in the preceding year."

Provisions for this award further provide that "nominations for the award will be made by students in the Law School with the recipient to be chosen from among those nominated by a committee of the faculty".

Nominations are now in order. Please submit them to Asst. Dean Kuklin's secretary, Marilyn Williams, at the counter in the Administrative Offices. Closing date for nominations will be 12 noon, Tuesday March 28, 1972.

The faculty committee would appreciate a brief statement of the activities of the various nominees thought to qualify them for the award. The recipient will be announced at the Honors Convocation on April 14.

The Journal of Law Reform is pleased to announce the selection of the Editorial Board for Volume 6:

Editor-in-Chief	William A. Newman
Managing Editor	David C. Zalk
Articles Editor	Jeffrey M. Petrash
Research Editor	Fred A. Summer
Administrative Editor	Mark F. Mehlman
Staff Editors	Steven C. Douse
	Lawrence A. Margolis
	Eric A. Oesterle
	John A. Payne
	Nancy S. Warder

On Thursday, March 23rd, John Montgomery, Special Assistant to H.E.W. Secretary Elliot Richardson will be speaking in the Lawyers' Club Lounge at 3:15 p.m. He will be discussing the Nixon Workfare program that is currently before Congress.

Before his talk at 3:15, Mr. Montgomery will hold a "press conference" where he will be available to discuss the Nixon plan and to answer questions. This will take place from 1:30 p.m. until about 3:15 p.m. also in the Lawyers' Club Lounge.

LAW REVIEW ED BOARD

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OUTSIDE THE LEGAL PARADIGM

The eclipse of the death sentence does not herald a new reverence for life, does not proclaim a renewed celebration of the human existence, does not stand for the acceptance of more communal concepts of responsibility, nor does it reflect the implementation of more effective programs for the rehabilitation of delinquents. Rather it signifies an admission that the life taken in the murderous act was just not that valuable, and was not so intimately tied to the community; therefore the act did not represent an attack on the community. Essentially, there is less and less community to attack, or to be attacked.

An eye for an eye is a valid and holy order only when there are things worth seeing. If most are blind anyway, then eyes and lives suffer sufficiently in the normal course of non-events. Perhaps one cannot take a life that is never established.

Punishment is not revenge, nor does it make amends. Junkies are expendable, persistent weeds among resigned others. Forgiveness must be impossible, since it assumes a prior condition of "giving."

One buys insurance with money.

from The Visigoth

Frank Wilkinson, Executive Director of the National Committee Against Repressive Legislation will be speaking at the Lawyers' Club Lounge at 3:15 p.m. on Friday, March 31st. Mr. Wilkinson has been heavily involved in attempting to abolish the former House Un-American Activities Committee, now known as H.I.S.C. He will be speaking on the Nixon Court and its impact on civil liberties.

Anyone who is going to be in the area over the summer and who would be interested in doing volunteer work at Legal Aid, please sign the list in the Legal Aid office (Room 217 Hutchins). FIRST YEAR STUDENTS are eligible to fully participate in Legal Aid (including court appearances) after receiving 30 hours credit.