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ON THE COVER

Former Secretary of State Dean Acheson (center) poses with Michigan Law School international law authorities William Bishop (right) and Eric Stein (left). Mr. Acheson was on campus for a week in October during which time he gave a number of addresses to the University in general and the Law School specifically. He also held office hours in Hutchins Hall.

QUAD BRIEFS

New Michigan President Hopes to Maintain Active Law School Role

The many recent strikes by public employees present today's lawyers with a great challenge, said University of Michigan President-designate and Law School Professor Robben W. Fleming recently.

"It's not important whether, as a matter of theory, these strikes are legal. That is a purely academic question," Fleming explained. "What must be realized is that, legal or not, they are occurring, and the lawyer's challenge is to find some means of dealing effectively with the strikes when they do occur."

Though Michigan's President-designate will not assume his position as the University's head officially until January, Fleming has taken up residence in his Legal Research Building office and is presently teaching a labor law seminar, along with Law School labor expert Russell A. Smith. The subject of the seminar: public employee strikes.

A graduate of the University of Wisconsin Law School in 1941, Fleming says that his "first love" is still the law and that, as long as he is president at Michigan, he hopes to maintain an active role in the Law School.

"When I left my position as Professor of Law at the University of Illinois Law School to become Chancellor at Wisconsin in 1964, it was on the condition that I would also be a professor of law there," Fleming recalled. "I found that I was able to fit the teaching of a labor seminar into my schedule and that I enjoyed doing so very much since it forced me to keep current on the labor law field."

The author of numerous articles on labor relations and labor law sees in the teacher strikes of September, especially those in New York, an indication of the dilemma the lawyer faces today.

"Under a recently-passed New York law, the president of the New York teachers' union could be sent to prison for ordering a violation of the no-strike order. If he is not, this will make a dead letter of the law upon the first instance of its being tested," Fleming noted. But if he is sent to prison, he will become a martyr, and greatly enhance the cause of the public employee, making him willing to strike again, even in violation of the law."

Consequently, he continued, the lawyer faces the challenge of finding some way to meet effectively the problems created by public employee strikes, since they are likely to continue, legal or not.

Broadly commended for his excellent relationship with the students while Chancellor at Wisconsin, Fleming attributes his success in dealing

President-designate Robben W. Fleming

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Professor Yale Kamisar, publications chairman, University of Michigan Law School. Student Editor: George A. Dietrich; contributors: Sam Tsoutansis, Gary Wyner, Steve Wood; photographers: Gordon Conn, John Laughlin. Edited in the University Publications Office.

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with students to his willingness to listen to other peoples' ideas.

"I think that the administrator must be willing to face the fact that he may not always be right," Fleming said. "Actually the student must do the same thing. If we both can do this we can establish a meaningful dialogue."

Of course, he added, he does not think the ideas of the students are always good, but he does feel that they often have some excellent approaches to problems.

"Actually, I don't think the students today differ much from those of my college days," he explained. "Take the Vietnam war issue for instance. I don't really think that the students today are reacting much differently to it than the students of my day would have. Why, I remember back in 1939 when I was a senior, the students were joking about how 'the French are ready to fight to the last American.' All they needed for a change of attitude was Pearl Harbor. If there was something which occurred like that today, I think the student mood would change just as quickly," he predicted.

"Prospectus, A Journal of Legal Reform" To Be New Student-Edited Magazine

The Law School of The University of Michigan has recently formed a quarterly publication *Prospectus, A Journal of Law Reform,* and has named Professor Frank Cooper as the faculty editor-in-chief. The *Journal,* whose first issue will appear on or about February 1, 1968, is designed to afford law students an opportunity for doing supervised research, interviewing, and writing.

It will also serve as a format through which students and members of the legal profession will be able to articulate their goals for examining and changing various aspects of the legal system such as statutes or judicial trends.

The new journal will contain articles that discuss and analyze topics in a traditional case-book manner combined with an emphasis on field research. It is also intended that the writers will present some concrete suggestions to remedy the problem under discussion in either a judicial, legislative, or administrative manner.

Both Law School Dean Francis A. Allen and student Managing Editor David L. Callies have emphasized that there are no doctrinal limitations to the range of topics that might be covered. Some of the areas currently under study by the twelve student senior editors are fair housing legislation, criminal code revision, use of injunctions in teacher strikes, and federal rent supplements. Professor Cooper has solicited contributions from eminent judges and attorneys, which will appear in the journal also.

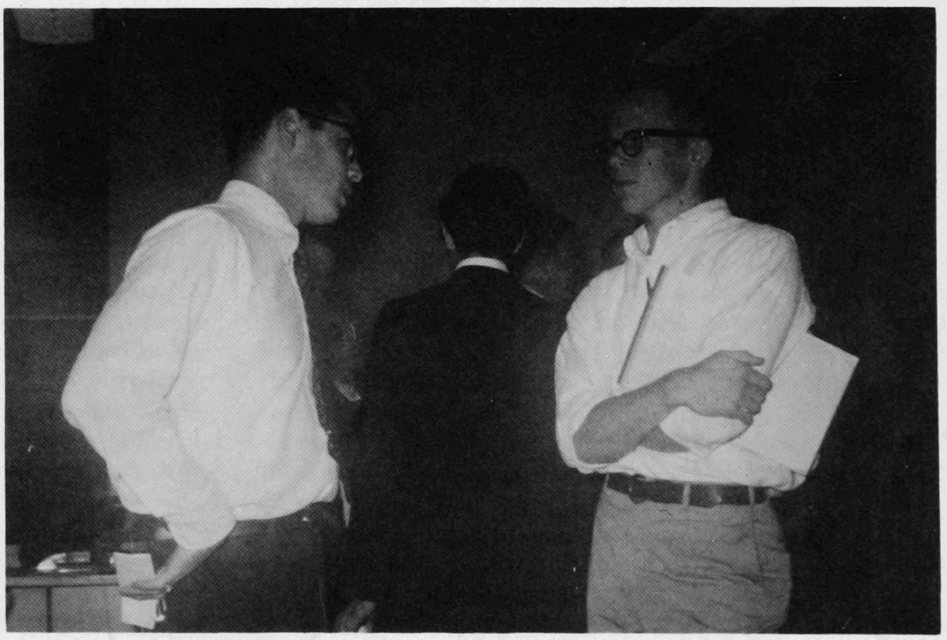
Perhaps the most noteworthy educational function which the *Journal* will enhance is giving students greater opportunities to do field research. Traditional law reviews have generally confined their works to case analysis and comment, but *Prospectus* intends to supplement its articles with data collected from the various people who are confronted every day with the problems about which the students are writing.

"One cannot fully rely on the library to understand a problem," Dean Allen remarked. "It is essential to his task as a legal analyst that he go out into the field and see the problems firsthand." He continued by noting that the legal profession seems to be changing. "The future of law is going to be involved with the confrontation of problems involving social data. It is thus important for the law student to acquire this technique as rapidly as possible, and I think that his work on *Prospectus* will facilitate this learning process."

Although the major goal of the *Journal* is to enhance the law student's education, Dean Allen also emphasized that it will serve another function. "The power of the good idea and its effects on modern society should not be overlooked. We tend to be cynical of the political process, but often the properly articulated idea will find a market. Our society has become so complex that few men in government can be both administrators and thinkers. The administrator is looking for new approaches to problems. Hopefully, the *Prospectus* in some way will contribute to this process."

The idea for a new student publication at the Law School originated a few years ago with Associate Dean Charles W. Joiner. A faculty committee had held periodic discussions since 1965, but the major impetus came

(continued on page 19, col. 3)



Managing Editor David Callies, left, talks with David Carpenter, second year appointee to the "Journal" staff.

Uniform Probate Code

Excerpts from remarks by Richard V. Wellman, Project Director, before Committee of the Whole, National Conference of Commissioners on Uniform State Laws in Honolulu, August 4, 1967

After more than five years of preliminary work, the reporters for the Uniform Probate Code Project are pleased to introduce a comprehensive draft of a complete code dealing with estates of deceased and disabled persons and with transfers effective at death.

Let me retrace some of the history of the project.

The work began in 1962 when it was jointly agreed by representatives of the National Conference and members of a special subcommittee of the Real Property Probate and Trust Law Section of the American Bar Association that effort should be made to update and revise the [1946] Model Probate Code. . . .

By 1964, a Committee of Reporters for this project had been assembled. Portions of preliminary drafts were presented at your meetings in 1964, 1965, and 1966. . . .

Last year at Montreal, we announced to you that the special committee had approved the reporters' proposal to broaden the project to include some coverage of the law of trusts. One specific objective is to provide a common pattern of procedures for inter vivos and testamentary trusts. While we have not abandoned this undertaking, we have not yet prepared any drafts dealing with this subject.

Perhaps it is evident from the history of the project that a very determined attempt has been made to get as broad a base as possible for the drafts being distributed here. We started with the benefit of the very careful research and excellent thinking that went into the 1946 Model Probate Code. The reporters for this project . . . were selected with an eye toward obtaining geographic diversity, as well as experience in the teaching and practice of estates law. In the person of Reporter Paul Basye, we secured the expertise of a practitioner familiar with California procedures and community property problems, as well as of a scholar-author who worked closely with Professor Simes on the Model Probate Code. The seven other reporters represent many decades of teaching and practical experience with the law of estates.

Moreover, we have had the benefit of a good deal of contact with state and other efforts to improve probate law. Professors Richard Effland and James MacDonald are the principal draftsmen of a new probate code recently proposed in Wisconsin. Professor Allan Vestal has had a close relationship with Iowa's new probate code. Professor Eugene Scoles has worked closely with Illinois Bar Association committees on probate legislation there. Professor William Fratcher of Missouri worked with the New York Commission on Estates. Moreover, he was supported by a Ford Foundation Fellowship in a year's study of modern English probate law and practice and has written extensively of his observations. Incident to the proposed revision of the Michigan Probate Code, I have

Professor Richard V. Wellman

worked for about a year with a group of Michigan lawyers and judges in an intensive study of the draft which the national project spawned last summer. As a result of all of these contacts, many of the ideas that have found their way into the draft you are receiving today were first suggested by practicing lawyers, experimental trustmen, and probate judges.

Moreover, copies of last summer's draft were distributed to more than a hundred ABA committee members. Two *very active* subcommittees of the Real Property, Probate and Trust Law Section of the ABA have made projects of study of portions of last summer's preliminary draft. Another group of ABA advisors have commented to us on the entire draft. Thus, literally hundreds of interested persons have contributed very significantly to this new draft by their oral and written reactions to some of the major ideas as well as the detail of what you are receiving today. We have sought the broadest possible base for this draft and I believe we may have achieved it. . . .

During the early years of this project, many questioned the practicality of effort to produce a uniform probate code. Knowledgeable lawyers conceded the obsolescence of much of existing probate law, but expressed doubt that legislatures could be interested in the heavy work involved in recasting so formidably large an area of law. In many states, well-entrenched political establishments have grown about the existing probate structure and it seemed unlikely that the public or the bar could be sufficiently interested in probate innovation to mount the drive needed for new legislation.

But, in 1966, Mr. Dacey's controversial book, *How To Avoid Probate,* became a best seller. At about the same time, a *Reader's Digest* article "The Mess in our Probate Courts" attracted wide attention. Newspaper and magazine articles about the archaic and irrelevant character of probate law and procedure have proliferated. Those of

us like Messrs. Dunham, Pierce, and myself, whose names have been publicly associated with the possibility of probate reform, can attest to the fact of widespread public interest in the subject. Clearly the public will now support and encourage legislators in considering a different approach to many ancient probate problems. Indeed, I would hazard the guess that there is no area of civil law that is more concerning to the public. This is not surprising. Relatively fewer people are involved in divorce or auto accidents or commercial swindles than are concerned with inheritance at some time or another. Moreover, it's the reading and thinking part of our affluent public who are concerned with probate matters.

Practicing lawyers have many, *completely professional,* reasons for being interested in probate reform. Under present assumptions, clients are under pressure to turn to bankers, trust companies, life insurance salesmen, and a variety of other kinds of sellers of services for assistance in estate planning, and they are doing so in thousands and thousands of cases. Lawyers, whose stock in trade has been the will, cannot, in good conscience, describe the will as competitive from the standpoint of post-death expense and delay, with the host of will substitutes that are available. *But,* there is no totally satisfactory substitute for the will. The revocable trust comes closest, perhaps, and may be recommended to some as a satisfactory will substitute, but the trust device is, at best, awkwardly applied to situations where the parties in interest want to retain full ownership until death. Moreover, the trust is unsuited to modest estates ranging up to say $50,000 in value. Various forms of joint ownership supply useful answers for some small estate situations, but joint ownership does not offer the flexibility of testamentary schemes. In sum, modern emphasis on total estate planning has made lawyers increasingly aware that the will is of unique utility, but that it is also uniquely encumbered by post-death costs. They are also aware that the public associates the will with lawyers and compares them unfavorably wth other sellers of services whose specialties are more efficient. Lawyers would like to make the will as efficient a device in estate planning as possible and reform of probate codes is necessary to that end.

Moreover, of course, the day when we can afford to have different probate laws in fifty states has passed. People no longer live and die in one location of the country with the frequency of former times. Estates are more likely than not to involve assets or survivors located in several states. Lawyers need to be able to predict the estate laws and procedures of other states and clients need to be relieved of the necessity to recast estate plans with every change of domicile or new acquisition of out-of-state land. The present variance in state laws which requires replanning of wills with each inter-state move or acquisition is not only a nuisance; it's probably a positive hindrance to the free mobility of capital among the several states.

The over-all approach of the draft you are receiving is to *shift probate and estate laws away from their present historical orientation toward what people want and need.* We have attempted to implement this purpose on all fronts. For instance, the law's plan for persons who die intestate should be rational and as uncomplicated in respect to administrative detail as a statute can make it. We should not make intestacy a chambers of horrors so that people will be driven to write wills. Lawyers cannot afford the public irritation with the law that retention of obsolete patterns and practices respecting intestate estates generates. The formality required for wills must be rational, rather than ritualistic. The settlement of estates should be streamlined so that *if* there are no problems, there will be no need for involved court procedures. Procedures relating to settlement of estates should start from the assumption that *estates belong to the survivors,* and that the office of the law and rules is to assist rather than impede the natural desire to accelerate the transfer from dead to living. Guardianship also should be moved away from cumbersome historic assumptions. The law should cease to terrorize persons approaching old age and possible senility with the prospect that they may need to be adjudicated incompetent simply because assets may need to be sold to secure their support. Transfers serving as will substitutes should not be condemned nor discouraged. Rather, the office of the law should be to define transactions with a view to *implementing,* rather than discouraging, what people want. . . .

We want especially to emphasize Article III because we believe that its provisions relating to probate of wills and administration of decedents' estates may represent the most important steps in the effort to move probate matters closer to the needs of the people. It represents our effort to modernize probate *procedures;* e.g., the way estates are handled after death. Many of the other antiquities applicable to probate matters can be neutralized by well drawn wills. Thus, it is quite possible today for a well advised person to obtain a will which moves his affairs away from archaic rules concerning intestacy and from ancient traps that highlight such subjects as lapse, ademption and abatement of legacies, and exoneration, to mention a few. But, a will draftsman is *virtually helpless* when it comes to his ability to free an estate from unnecessary and expensive involvement by the probate court. Whatever the will may say, it must be proved

. . . we have sought to have the ultimate question of whether and when a judge will be involved determined by the interested persons, rather than by a system which denies survivors their assets until they have paid their homage to the probate court.

after death. In a large number of states, proof of the will may be obtained only by commencing a court proceeding after full notice to all *possibly interested* persons. Attesting witnesses must trudge to the courthouse to testify on matters that no one questions. Worse, perhaps, the court proceedings thus commenced may tend to entangle the estate for some time, for out of it comes the appointment of one who is technically an officer of the court and who is charged by law with pursuing a formidable number of steps, most of which must be culminated by an order of the court approving what the representative proposes to do. The result has been called the "probate deep-freeze" for assets are rather effectively frozen for a year or more after death while the archaic machinery of another era cranks through its process. There are, of course, exceptions to this dreary situation in the multi-

> The present variance in state laws which requires replanning of wills with each inter-state move or acquisition is not only a nuisance; it's probably a positive hindrance to the free mobility of capital among the several states.

tude of procedural patterns available in the several states. But, it remains true of a very great part of modern probate procedure that the process of proving a will after death, securing the appointment of a personal representative, and administering the estate is characterized by *required court proceedings* which have tended to become more and more cumbersome and complex as we lawyers have sought to make the system provide meaningful protections and also to reshape statutes and procedures to meet the modern demands of procedural due process.

The major change we propose is not novel or dramatic. We simply propose that the relationship of probate courts to estates be made more like the normal relationship that courts bear toward persons in respect to civil matters. Thus, we have designed a system under which the judge occupies a passive, supportive relationship to every estate. We have sought to give every interested person easy access to a judge capable of fully handling any kind of question relating to an estate. But, we have sought to have the ultimate question of whether and when a judge will be involved determined by the interested persons, rather than by a system which denies survivors their assets until they have paid homage to the probate court. We have sought also to keep the scope of necessary judicial matters to the dimensions dictated by questions raised in pleadings. Hence, unless someone with an interest in an estate wants a judicial order for the resolution of a question, or the elimination of a risk, no judicial order will be required by the state code.

It might be thought that we are making it difficult for persons interested in estates to gain the protection presently available or supposedly available, in probate proceedings. But this is not the case. We assume the continuation of a special court to handle estate problems. We continue the present ease with which persons interested in estates may be bound after fair notice in respect to their interests in a decedent's property. And, as suggested earlier, we provide easy access to the judge for those with problems.

Nor are we recommending a complete switch from common law assumptions about probate of wills and designation of representatives of decedents, to the civil law assumptions where succession may be a completely private, non-court affair centered around the heir who takes assets and liabilities of the decedent. We have retained the idea that a will is unavailable for proof of succession until it is officially validated, e.g., probated, after death. Also, a personal representative still derives authority from appointment by a public agency, rather than from will or relationship.

The key to our drafts is this: where there is no dispute, or wish for total protection, a will may be probated, and a personal representative may be appointed in what we call *"informal proceedings."* Informal proceedings may be handled by non-judicial persons who are employees of the estates court. Perhaps they will be called Registrars. . . . The name is unimportant. The important thing is that they can probate a will without adjudicating rights by making an administrative determination concerning certain necessary matters that are clearly defined by the Code. At the same time we do not make any set of survivors take the risks implicit in informal probate. The Code does not impose informal probate on survivors or attorneys who fear the risks involved. As indicated earlier, any interested party can get the judge to pass on the issue of will or no will, or to resolve disputes concerning who may be appointed. The important change is that he does not have to do so. Thus, the Code gives him a legitimate way to take risks. . . .

> Lawyers whose stock in trade has been the will, cannot, in good conscience, describe it as competitive from the standpoint of post-death expense and delay, with the host of will substitutes that are available. But, there is no totally satisfactory substitute for it.

What will the Code do to fees and costs of probate? In a nutshell, it eliminates much of the make-work aspects of probate administration. In time, as lawyers become acquainted with its potential, there will be a move toward charges based on the time spent on the estate, rather than a set percentage fee. The Code does nothing of a direct sort about this, however. Its only mention of fees relates to those of personal representatives who are stated to be entitled to "reasonable compensation." We believe, however, that the professional interest on the part of good lawyers to give service as needed and wanted by clients will lead the way toward a new approach to probate fees.

Placement Office Services on Rise

The wide ranging demand for the professional services of Michigan Law School graduates is reflected in the continuing increase in the number of prospective employers who either write to the school's Placement Service or come to the school in person to interview students, reported Director Kenneth Yourd recently.

During the 1966–67 school year, 615 different employers contacted the Placement Office seeking graduating seniors and 266 employers indicated a desire to talk to second year students about junior year summer clerkships. Included in these totals were 253 firms or organizations who conducted personal interviews at the school. In addition to this, the Placement Office received notice of 381 opportunities for those who had graduated one or more years ago and who are seeking to relocate.

Concerning geographical distribution of these job opportunities, inquiries were received from potential employers from all corners of the nation. As might be expected, most opportunities coming to the school's attention were from the north central states, the eastern states, and the Pacific coast states. Those who came in person to Ann Arbor to interview tended particularly to be from these areas.

Most of the potential employers were practicing lawyers seeking associates. One finds, however, an increasing recruitment activity among the governmental agencies to staff both Washington and regional offices, and a continuing interest in newly graduated law school students on the part of banks and trust companies, accounting and insurance firms, and some corporations.

The interest in hiring second year law students for summer clerkships continues to grow. Almost two-thirds of the 253 firms which came to Ann Arbor in the fall of 1966 interviewed students for summer clerkships at the end of the junior year in addition to talking to the seniors.

Last year the military draft situation created uncertainties for many graduating seniors which handicapped them in making career decisions. The same situation exists this year.

The 247 graduating seniors who had informed the Placement Office of their plans by the end of May, 1967, chose the following types of activity:

Law Firm Practice		131
Government:		
Federal	24	
State	5	
City	1	30
Judicial Clerkships:		
Federal	5	
State	4	9
Graduate Study:		
Law	7	
Other	4	11
Fellowships:		
Foreign	12	
Domestic	3	15
Corporate:		
Legal	8	
Non-legal	5	
Patent	3	16
Teaching:		
Law	5	
Business Law	3	
Law Librarian	1	9

CPA Firm	1
Banks	9
Military Commissions	12
Peace Corps	3
Legal Aid	1

The jobs represented in the above tabulation are located in 21 states and the District of Columbia. Several of the students who accepted fellowships or judicial clerkships have made more permanent commitments with law firms to follow their temporary assignments.

The range of starting salaries for law office associates in law firms, reported by students beginning work in the summer or fall of 1967, was from $5,200 to $10,200. The median of all such starting salaries reported was $8,400.

An analysis was made of the group of 125 seniors for whom such information was available to find out the size of the law firms and the size of the cities to which they were going. Starting salaries were also included in the review. The result is shown in the accompanying chart. The figures appearing in parenthesis on the chart represent *average* starting salaries (exclusive of bonuses and increases after admission to the bar) by size of city and by size of firm.

Number of Lawyers in Firm

Population of City	*6 & under*	*7 to 15*	*16 to 30*	*31 to 50*	*over 50*	
under 25,000	10					($6,488)
25,000 to 100,000	9	1				($7,563)
100,000 to 250,000	6	5	5	3		($7,677)
250,000 to 500,000		5	6	5		($8,007)
500,000 to 1,000,000		2	6	6	6	($8,495)
over 1,000,000	7	13	6	9	20	($8,762)
	32	26	21	20	26	
	($7,309)	($8,145)	($8,360)	($8,950)	($8,950)	

The Drinking Driver: *What Legal Controls?*

Excerpts of speech given by Professor Roger C. Cramton at the Institute of Continuing Legal Education Program on "Drunk Drivers" in Detroit, August 25, 1967

. . . Our problem today . . . is not the total accident situation, but the role of alcohol in highway accidents—the "drinking driver." Of the 95 million drivers in the United States, it is estimated that about 75 million of them occasionally, sometimes, or often consume alcoholic beverages, and perhaps 5 million of these drinkers are alcoholics.

Is consumption of alcohol by drivers causally related to our 50,000 fatalities, our 2 million injuries? Is the drinking driver a problem? Can he be controlled? . . .

The Alcohol Hazard

It is now well established that alcohol impairs driving ability; and that the extent of impairment is related to the amount consumed. . . .

Drinking by drivers (other than modest social drinking) is a major contributing factor to highway accidents. The scientific basis for this conclusion is as well-established as that cigarettes have an adverse effect on health. The argument in both cases is only, first, how great the effect is; second, what kind of drinking (or smoking) behavior is involved; and third, what to do about it.

There is also general agreement among the specialists throughout the world that the statutory presumptions of intoxication in the United States (.10 and .15) are set at too high a level. A driver who consumes 5 to 6 ounces of 80 proof whiskey, and attains a blood alcohol concentration of .05 percent is thought by many to be sufficiently impaired so that legal requirements should be imposed. A more conservative position is that an intermediate figure of .08 (8–10 ounces of 80 proof whiskey) should be selected as providing a basis for a presumption of intoxication.

Until recently it has been assumed that since the majority of persons who use alcohol are "social drinkers," most of the accidents in which alcohol is a factor involve driving after social drinking. A pamphlet widely distributed by the insurance industry, for example, states: "As far as safety is concerned the real highway delinquent appears to be the so-called social drinker."

The assumption that the social drinker is the real peril rests on arguments that alcoholics are much fewer in number, that they are more successful in masking their drinking or have a greater tolerance for alcohol, and that alcoholics don't drive after drinking. Regardless of the truth of these assumptions taken individually, the conclusion to which they are thought to point is now seriously questioned. A number of responsible investigators assert that pathological drinking accounts for a major part of alcohol-involved accidents. . . .

The dispute over whether social drinkers or alcoholics are the major problem cannot be resolved on existing data, but it is likely that various classes of drinkers make a substantial contribution to the drinking-driving problem. It is clear that the problem drinker plays an important role and this has major implications for lawyers who defend drunk drivers and for the design of the entire regulatory system. . . .

> To the extent that educational campaigns urge complete separation of drinking and driving, they are unrealistic, and no one pays any attention to them.

Effectiveness of Existing Programs

The Punitive Approach

Current measures to control the drinking driver have primarily relied upon enforcement, but also use mild doses of exhortation and education. For the most part, however, our approach is largely punitive in character.

1. *Criminal prohibition of driving after drinking.* Although safety slogans speak in terms of a total separation of driving and drinking ("if you drink, don't drive"), existing laws do not attempt the impossible. Most drivers occasionally indulge, and, if the truth be known, most of these social drinkers drive home from parties and other functions at which alcoholic beverages are served. . . .

Enforcement officials believe that the keystones to effective control of drinking-driving are: *first,* an implied consent law under which the accused must submit to a chemical test or lose his driver's license, and *second,* the establishment of objective blood level concentrations that define intoxication regardless of the availability of evidence on the accused's behavior. As of November 3, 1967, when Michigan's new implied consent statute went into effect, Michigan was in line with the general trend around the country toward more stringent laws. However, the laws in the United States are still far less stringent than those in other countries, especially in Scandinavia.

2. *Effectiveness of the punitive approach.* The punitive approach, involving successive stages of detection, prosecution, conviction, and penalization, has many problems and its effectiveness, at least with some classes of drinkers, is highly doubtful. A failure at any of the four stages results in a failure to deal effectively with a violator. There are no rewards or inducements built into the system, which relies almost exclusively on the negative approach of punishment.

Effective deterrence because of fear of punishment depends upon a number of prerequisites: *first,* knowledge and understanding of the legal requirements on the part of the public; *second,* widespread agreement with the underlying premises and values of the legal requirement; *three,* a belief on the part of the affected public that detection and punishment will follow violation; and, *four,* the ability of the citizen to make a rational and conscious

choice to avoid the unpleasant consequence (*i.e.,* punishment) by not indulging in the prohibited behavior. There are problems at each step insofar as driving and drinking are concerned, which I will briefly review.

(a) *Knowledge of legal requirement.* The existence of laws prohibiting driving while intoxicated is probably known to most of the populace. But what constitutes "intoxication," "impairment," or "influence"? Public understanding of the circumstances and amounts in which alcohol may be safely consumed is woefully lacking. The effects of alcohol on the user enhance this problem, since the drinker minimizes his impairment and exaggerates his capacity. The "other fellow" can't hold his liquor, but he can!

Understanding of the legal requirement is complicated by the fact that the consequence we are worried about (highway accidents) is distinct from the act that the law prohibits (driving under the influence). To violate the law, the driver does not need a conscious intent to harm others nor the occurrence of any harm. All that is needed is a degree of impairment that meets statutory requirements which are framed in legal and scientific terminology not easily grasped by the layman.

(b) *Acceptance of implicit premises and underlying values.* No law can be enforced effectively in a democracy unless the public shares the values and premises which the law embodies. Our experiment with a more drastic form of liquor control—prohibition—demonstrated that. With respect to drinking-driving, there is widespread agreement that drinking-driving is a problem and that safety is an important value. These values are not viewed in isolation, however, but in relation to conflicting values, such as the individual's desire to use his vehicle as an extension of his personality, or to engage in pleasurable behavior such as partying or drinking. When the balance is struck, these latter values may well be preferred by a large portion of the populace. Moreover, it is likely that drivers do not assess the risks of driving after drinking nearly as starkly as the experts do. In particular, widespread understanding of the fact that impairment sets in at fairly modest levels of consumption is probably not present. If drivers do not realize this, and if they do not modify their driving behavior after drinking, accidents as well as drunk driving charges will result. The tendency of the young American male to believe that the "other fellow" is the problem, and the remoteness of death and injury to this same group, exacerbates the problem.

> The regulatory control of drinking and driving in the United States is rather lax precisely because the social climate does not favor more stringent controls.

(c) *Belief that detection and punishment will follow violation.* Effective deterrence requires a belief on the part of those involved that violation stands a good chance of being detected and, once detected, will inevitably lead to punishment. It is on this count that drunk

Professor Roger C. Cramton

driving, like other traffic offenses, falls far short of the ideal. The main problem is one of the low probability of detection. There is too much human behavior to be effectively watched—thousands of miles of highways, millions of drinking drivers, behavior which must be observed night and day around the clock. The enforcement officials, relatively small in number, employ selective enforcement and periodic campaigns (such as Christmas or holiday drives in major cities); but the odds of the drinking driver being apprehended are miniscule when viewed in the light of the total number of violations. In Michigan, for example, 1,500 state police watch 4.8 million Michigan drivers.

Further, the ubiquitous nature of drinking-driving increases sympathy for those who are caught and pushes police, prosecutors, courts, and juries toward a lenient approach. "There but for the grace of God go I" is the common sentiment of us all.

The stringent nature of the penalties adds to this pressure towards leniency. In the abstract the public believes that a drunk driver should have his license taken away from him; but in the concrete individual situation, considering a person who is thought to be like everyone else and who needs a license for work and pleasure, the punitive attitude softens. In fact, the drunk driver may be very different than the ordinary social drinker, but the public does not realize this. The reaction of the ordinary juror is likely to be that "we all live it up once in a while, only he was unfortunate enough to get caught."

Legislatures may find it easy to deal with the traffic problem by enacting laws with ever-stiffer penalties. After all, such laws don't even require increased appropriations. But enforcement officials and courts may find such laws even more difficult to enforce. . . .

(d) *Deterrence assumes a rational or conscious choice.* Finally, deterrence assumes a rational or conscious choice on the part of the affected public. The offender is thought of as a person who knows what is wrong, who deliberately decides to violate, and who once caught deserves to be

punished. Accumulating evidence that many or most of those who are caught in the net are alcoholics or problem drinkers, however, casts doubt upon the correctness of the deterrent assumption. Addicted persons cannot exercise rational choice. Punishing the alcoholic is unlikely to do any good; perhaps the system is merely reprocessing again and again the same sick people. Moreover, the trend of recent court decisions is to cast doubt upon the constitutionality of punishing the alcoholic. Like the insane person, his defect may deprive him of the basic ingredient of moral responsibility—the ability to make a rational choice.

The combination of all these factors makes it doubtful whether the punitive approach to drunk driving is an effective one.

Driver Education and Exhortation

Licensing and safety officials seek to exhort and to educate the driver by a variety of means, such as slogans, educational campaigns, and driver improvement interviews. These efforts may have desirable effects on the majority of drivers who want to conform and who fear the loss of driving privileges, but it is doubtful that they have any effect on alcoholics and heavy drinkers. Generalized advice and grisly slogans lack specific content to the driver and are not meaningful. To the extent that educational campaigns urge complete separation of drinking and driving, they are unrealistic, and no one pays any attention to them. Nor is the problem drinker cured by an interview with a driver licensing officer any more than he is by his earlier encounters with other people in the system—police officers, judges, and probation officers.

More Modest Penalties?

It is arguable that we would do a better job if we combined better detection techniques with more modest penalties. Periodic and random breath-testing of drivers would enhance detection of the drunk driver; and this approach might be politically and constitutionally acceptable if combined with reduced penalties.

One possibility would be as follows: traffic officers would stop and check random samples of drivers on a scientific basis; if a breath test showed a blood level concentration above .08 percent, the officer would take the driver home in a police car as unsafe to drive; if the driver's car was not a traffic hazard in its present location, it would be left there; otherwise it would be impounded. When the driver sobers up the next morning he faces the inconvenience of getting his car back. Instances of violation would be reported to driver licensing officials and included on a driver's record. If caught 3 or more times, the licensing officials would require him to come in for treatment as a problem drinker under pain of losing his license.

The system would operate without criminal penalties at all. The embarrassment of being driven home in a police car and the inconvenience of getting one's car back would be the exclusive "civil" penalties. Treatment for the problem drinker would be enforced by possible loss of license.

Identify and Treat Problem Drinkers

Whether or not such radical measures can be adopted, better identification and treatment of problem drinkers is in order.

Traffic spokesmen and public officials should stop propagating the myth that the social drinker is the real problem.

Possible Countermeasures

Thus far my theme has been largely a counsel of despair. What hope is there for the future? Are there effective methods of controlling the drinking driver?

More and Better Enforcement?

Enforcement officials tend toward the view that what is needed is more and better enforcement: more traffic police; better detection techniques such as roaming check lanes and wholesale breath-testing; and stricter penalties. While I believe that better detection techniques should be explored (including widespread breath-testing), I do not think increased severity will accomplish anything barring a monumental—and unlikely—change in public attitudes.

The regulatory control of drinking and driving in the United States is rather lax precisely because the social climate does not favor more stringent controls. Stiffer penalties will merely lead to more difficulty in enforcement. Nor is it likely that the problem drinker will be affected by stepped-up enforcement. What alternatives are available?

To what extent is the drinking-driving problem one of problem drinking? Can the involved groups of alcoholics be identified in advance of fatal or other accidents? Can adequate treatment facilities be established and staffed? These questions desperately need attention; and attempted solutions will need public support.

The probable existence of a large category of alcoholics in the group of drunk drivers encountered by lawyers places a special responsibility on the lawyer to be alert to symptoms of alcoholism in his client. The lawyer should be prepared to counsel him concerning possible treatment and rehabilitation (steps along this line may also gain more lenient responses from prosecutors and judges). An awareness of the treatment facilities in the community is a necessary first step.

Reshape Public Attitudes

Public attitudes toward the drinking-driving problem need to be reshaped. One needed change is a reduced emphasis on individual moral responsibility where alcohol use is involved, combined with increased attention

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Changes are Made In Case Club Program

From time to time over the past several years, the question of whether to make the voluntary Case Club (freshman moot court) program compulsory has been considered. Last year's senior judges, after several meetings on the subject, presented to the faculty Curriculum Committee a proposal for making successful participation in Case Clubs a requirement for graduation. The need for making such a change was summed up as follows:

The present non-compulsory, non-credit program of Freshman Case Clubs has failed to provide training in legal research, writing, and oral advocacy to a substantial number of first year law students. . . . It is the belief of the senior judges that the resulting absence of legal writing and oral advocacy experience for those who do not participate in Case Clubs is a serious weakness in the education offered by this law school. We believe that a compulsory Case Club program is the most feasible way to assure that each Michigan Law student develops basic skills in research and legal writing.

After extended discussion with the senior judges, the Curriculum Committee recommended that the faculty adopt the proposal for a compulsory Case Club program. The faculty approved the Committee's four point resolution which:

1. made satisfactory participation in Case Clubs required of all students entering in or after the 1967 summer session, and
2. called for the appointment of a faculty advisor to each of the twenty-three clubs, and
3. called for the merger of the Library Orientation program into the Case Club program, and
4. called for the creation of a joint Faculty-Student Case Club Committee to work out the details of, and to supervise this program.

While the basic format of the Case Club program has been retained, several changes have been initiated. The most significant of these has been increased faculty participation in the program. This has been accomplished by the appointment of a faculty advisor to each of the twenty-three clubs.

Semi-finalists in the 1967 Campbell Competition and now leaders of Case Club program are: front, from left, Tom Smithson, Steve Wood, John Conley, Nick Eddes, and Carl Von Ende; rear, from left, Chris Cooke, Richard Egger, Richard Herrmann, Robert Hurlbert, James Lesniak, and Edward Robinson.

The advisor serves the dual function of advising the club on matters relating to legal research and argumentation, and of advising each individual freshman on other academic problems they may bring to his attention. In addition, many of the advisors have invited the members of their club to their homes for an informal get-together. The primary responsibility for instructing the freshmen, however, still rests with the senior judges who are assisted by the junior clerks.

The library orientation program has also been changed. Rather than trying to compress it into two days of rapid fire instruction in the use of the basic research tools, we have extended orientation instruction over two weeks. The freshmen meet as clubs approximately every other day, are given instruction in one or two of the basic tools at each meeting, and then asked to work a short hypothetical through that tool before the next meeting. The evaluation of this new system has not been completed, but it appears to have been more effective than the rapid fire system used in the past.

After completion of the library orientation, each club is given a hypothetical written by his senior judge in consultation with the faculty advisor. Each freshman will research the legal issues presented, prepare a legal memorandum, write an appellate brief, and then deliver an oral argument before a bench consisting of his senior judge, junior clerk, and a "visiting" judge who is usually a third year student. Throughout this program, the freshman is given instruction and individual assistance by his senior judge and junior clerk. This procedure is repeated during the second term, except that there is added a competitive element, with the top freshmen receiving prizes at the annual Case Club banquet in the spring.

While it is believed important that each freshman have the experience provided by Case Clubs, it is hoped by all concerned that the program does not become just another requirement in the minds of the freshmen. Most of those who participated in the voluntary program found Case Clubs to be both a rewarding *and* enjoyable experience, one which allowed them the opportunity to get some idea of what it is like to represent a "client before an appellate court." It is hoped that this year's freshmen will likewise enjoy the chance to try out the skills

(continued on page 19, col. 1)

Professors George, Israel Instrumental In Drafting Proposed Criminal Code Soon To Be Before Michigan Legislature

Sometime in January, 1968, it is anticipated that a new criminal code for the State of Michigan will be presented to the legislature for approval. The new code, which would radically reduce the bulk of existing legislation, is drafted to better protect the citizens of Michigan with its 350 sections than the approximately 3,500 sections which now form the state's criminal law.

The University of Michigan Law School deserves much of the credit for the production of this piece of legislation. The code was inspired, drafted, and substantially funded by the Law School and its personnel.

The development of the code began with the Institute of Continuing Legal Education's criminal law programs in the summer of 1964. Participants in these programs were particularly impressed by the urgent need for criminal law revision in Michigan. A proposal for revision of the present laws was approved by the Supreme Court of Michigan and the Commissioners of the State Bar. A special committee was then created for the revision of the criminal code.

Judge Horace W. Gilmore, a U-M law graduate and participant in ICLE's criminal law programs, was appointed head of the special committee. Prof. Jerold Israel of the Law School, the man basically responsible for the ICLE summer programs, was a logical choice as reporter for the committee. Prof. B. J. George of the Law School was also named reporter.

Selection of personnel for the committee was by the Commissioners of the State Bar. The committee was composed of approximately 60 lawyers, prosecuting attorneys, judges, legislators, police officers, corrections experts, and clergymen. Other members of the Law School who served on the Committee were Dean Francis Allen, former Dean Allan Smith, Associate Dean Charles Joiner and Assistant Dean Roy Proffitt. Also on the Committee were the deans of the Wayne State Law School, the University of Detroit Law School, and Detroit College of Law.

From the beginning it was anticipated that the bulk of the support for the project would come from William W. Cook funds. Almost all the secretarial and research assistant costs for the first two years, as well as the released time taken by Professors Israel and George, were paid for by Cook funds. In all, it is estimated that $50,000–$60,000 of University-administered funds went into the project. The State Bar also contributed an estimated $25,000 for printing and distribution of most of the drafts in 1966 and 1967 and for the meals and hotel bills of out-of-towners attending committee meetings. A substantial contribution was also made by the Kresge Foundation.

Professor B. J. George

Procedurally the Reporters first arrived at a tentative table of contents based on the Model Penal Code and the Illinois and New York Criminal Codes. Because the Reporters felt it was too difficult to get a conceptual picture of the Code in its present alphabetical arrangement, a major policy decision was made in the early stages by switching to a general part-special part format.

It was also decided early that the task at hand was not simply a reworking of certain portions of the law but a complete restatement of the law.

With such decisions out of the way, the Reporters were faced with the problem of deciding the order in which subject-matter areas would be covered. Profs. George and Israel felt various unnecessary problems would arise if the new committee was initially thrust into a resolution of controversial problems such as abortion and self-defense. To preclude the possible dissension and irresolution that could arise among people who had not worked together much previously, the tougher areas were put off till later and the property crimes dealt with first. In this area there was no strong sentiment for retention of the present mish-mash of overlapping provisions.

By the device of dealing with the non-controversial areas first, good rapport was established between the Committee and its Reporters.

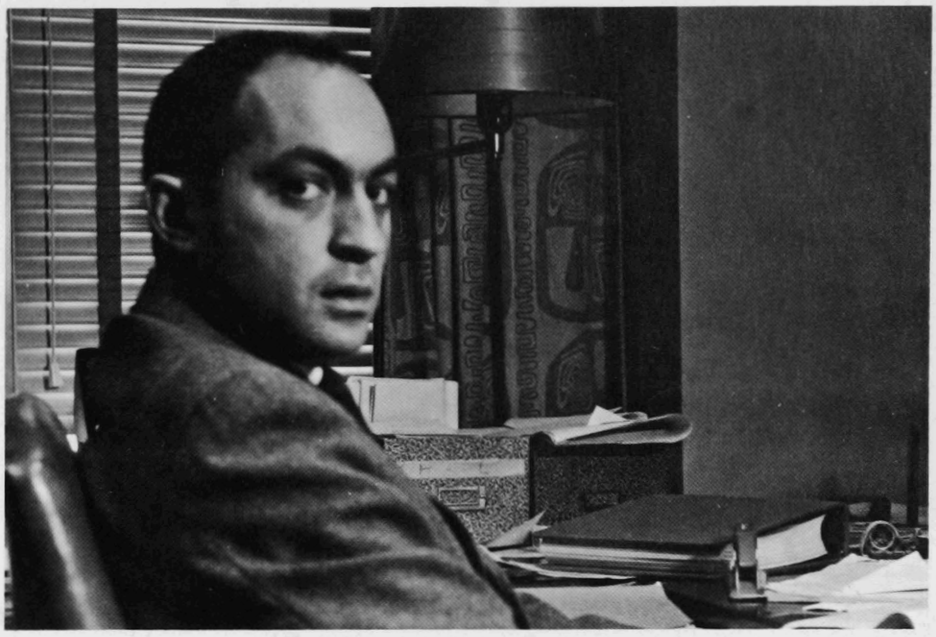
One of the primary goals of the project was a simplification of the law, with the main advance toward simplification being the above-mentioned reduction in the bulk of the statute law.

Simplification is also promoted by the use of every-day language whenever possible.

The new arrangement of the Code is one that promotes convenience. It is divided into two main parts. The first defines words used throughout the Code, requires that every crime rest on both an act and a purpose or attitude accompanying that act, delineates defenses to crimes, decrees when one person can be convicted of acts performed by a fellow criminal on the basis of his participation in a criminal scheme, and sets forth sentences that a court can impose on a convicted criminal.

The second part is composed of definitions of specific crimes, grouped according to their relationship to each other. The first grouping is of offenses posing danger to the person—murder, manslaughter, assault, kidnapping, and unlawful imprisonment, and forcible acts like rape. The second group comprises offenses involving damage to or intrusions upon property—criminal trespass and burglary, criminal mischief to or destruction of property, and arson. The third grouping is of theft in its several varieties and robbery. A related collection of crimes is titled forgery and fraudulent practices, and includes several provisions designed specifically for the protection of the citizen and neighborhood merchant. A major subdivision or title of the Code covers offenses against public administration, including obstruction of law enforcement personnel, escape and bail jumping, bribery, misconduct by public officials and employees, perjury, and witness tampering. Another portion of direct concern to the public brings together offenses against public order—riot and unlawful assembly, disorderly conduct, harassment, eavesdropping, firearms violations, narcotics, gambling, prostitution, and traffic in pornographic materials. The final major grouping comprises offenses against the stability of the family—bigamy, incest, abortion, criminal acts harming children, and acts endangering the welfare of incompetent persons.

In many instances a crime is divided into two or three degrees. Usually the reason for increasing punishment in the higher degree is either danger of death or physical injury to the victim of the crime, or the fact that the way the aggravated crime is committed makes it probable that the defendant is a confirmed or professional criminal.



Professor Jerold Israel

New Protections in the Code

Because the citizen is not always adequately protected against fraud today, particularly in his role as consumer, the Code is designed to give him an increased amount of protection. For example, traditional law is divided into three separate crimes of larceny, embezzlement, and obtaining title to property by false pretenses. If a citizen is "conned" into giving title on the basis of promises of future activity that the defrauder did not expect to happen, or on misrepresentations of legal ideas, or through grossly exaggerated puffing of merchandise, courts in Michigan and elsewhere have ruled that this is not larceny (because title was granted to the defrauder) nor obtaining by false pretenses (because future events or "the law" can not be misrepresented). Under the proposed Code, the important question is whether the citizen was misled by statements from the defendant intended to part the victim from his property. If the citizen suspects he is being vicitimized and calls in the police, the con man can be held for attempted theft under the broad concept of attempt in the Code.

The Code also prohibits the use of false advertising, the use of bait advertising when the offending merchant does not have the "bait" merchandise on hand, available at the stated price, or on hand in sufficient quantity to meet the expected demand (unless he specifically indicates the quantity is limited), and a variety of misrepresentations about the quality or quantity of merchandise to be sold.

Many have been defrauded by swindlers who go from house to house offering repairs or other services, and either abscond with deposit money or create the impression that the contracted-for job has been done when it was not. Because the amount obtained from each householder is usually small enough to be under the figure at which larceny or obtaining becomes a felony, these schemers risk only the possibility of concurrent sentences for minor misdemeanors. The Code provides that if there is a series of thefts committed as part of a scheme or plan, the amounts obtained in all of the thefts can be added together, which means that in many of these cases the theft will be a felony, and the criminal can be removed from circulation.

A related concern is to protect the merchant, particularly the smaller merchant, against theft and other depredations. The definition of theft in the Code protects him against fraud, as it does the citizen consumer, by

eliminating artificial legal restrictions on what can be fraud. To protect him against shoplifting, theft in a building or from a vehicle (including trucks) is second-degree theft and in the felony range, though after conviction the judge may reduce the matter to a misdemeanor for sentencing purposes. The new definition of theft also makes it possible for the first time to prosecute a bad-check artist or a member of a credit card ring directly for theft; anyone who obtains over $1,000 on one of these sprees—and all his takings can be cumulated—faces a serious felony charge. It still remains an offense, however, to pass a bad check or use a credit card without authorization. Persons who deliberately obtain services or the use of property, including rented cars and equipment, and intentionally default on payment can be punished for the crime of theft of services.

> The problems encountered in defining riot and punishing rioters after the events in Detroit and other Michigan cities would not have been problems if the proposed Code were in effect.

Most businesses and occupations are thoroughly regulated by law, which in turn means protection for both employees and customers. The chief change made by the code is to substitute two sections for the nearly 800 criminal penalty sections scattered through Michigan statute law, one that punishes a person who engages in any occupation for which a license is required without obtaining the required license, and a second that makes it a misdemeanor intentionally to violate any regulation or law that controls how the occupation is to be performed. But there are some provisions specifically protecting the employee, particularly a new offense applicable if an employer who has "withheld" part of his employees' wages, but in fact received no "property" that can be the object of theft, fails to transfer his own funds to the intended recipient like a union, government tax office, or united fund.

The Code also deals with the widespread demand for public security through adequate and fair law enforcement. It contains comprehensive definitions of riot, unlawful assembly for the purpose of riot, and failure of disorderly persons to disperse not found in present law. The problems encountered in defining riot and punishing rioters after the events in Detroit and other Michigan cities would not have been problems if the proposed Code were in effect. The Code also stresses protection for people against disorderly conduct that is violent, threatening, or obscene or that disturbs any lawful assembly of persons. It makes any physical contact for the purpose of annoyance, harassing, or alarm the crime of harassment; also included is the act of following a person in or about public places, the kind of conduct that in particular causes alarm to women walking or driving by themselves. If a person for no proper purpose frightens or annoys another by telephone or in writing, or if he makes a telephone call with or without an ensuing conversation for the purpose of alarming another, he commits the related crime of harassing communications.

If there is a more direct effort to prevent a citizen from doing what he wants to do or remaining inactive when he wishes, the offender commits the crime of coercion; if the actor uses threats of harm in the future to obtain property, a concept broadly defined, he commits the felony of extortion, a crime that is not adequately covered under the present statute. Force against a citizen or a companion is assault or attempted assault, depending on whether physical injury actually results; if the force is used or threatened to obtain property on the spot, the criminal commits robbery in one of its degrees, depending on whether there are two or more criminals and on whether a deadly weapon or what appears to be a deadly weapon is used.

> The proposed Code's protection of the policeman is therefore greater than under present law when he acts properly or when he is confronted by physical resistance.

The Code also rests on the premise that effective police work is indispensable to public order. Therefore, the citizen is not permitted to use physical force or violence to resist an arrest; if violence is not to escalate into greater violence, the determination of whether the officer is acting properly should be made in court by a judge. Of course, if the officer is not making a lawful arrest, and deliberately exceeds his known powers, he himself commits a crime under the Code; even if the officer does not act intentionally and therefore criminally, the municipality that employs him and the officer himself can be held civilly liable. If actual physical injury is inflicted on the officer, this constitutes the felony of second-degree assault. Escapes from prisons and jails or from custody while a prisoner is being transported also move into the serious felony range if physical force, and particularly deadly weapons, are used or if there is a mass escape. The proposed Code's protection of the policeman is therefore greater than under present law when he acts properly or when he is confronted by physical resistance.

> . . . the Code authorizes a court in its discretion to annul and expunge the record of conviction if the applicant successfully completes a period of probation. . . .

Incorporating Actual Community Standards

The proposed Code rests on actual mores and practices and not those professed for public consumption. It rests also on a premise of economy that criminal penalties should be provided only when there is no more efficient and less draconic way of preventing and controlling undesired conduct.

The chief changes have been made where family relationships and sexual activity are concerned. The modern medical and social premise is that homosexuality represents an arrested

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Uniform State Laws

Address of President William J. Pierce to National Conference of Commissioners on Uniform State Laws in Honolulu, July 31, 1967

We live in an age of rapid social and economic evolution and revolution. Some of its salient features are the breakdown of class restrictions, the emancipation of women and the employment of an increasing number of the female sex in the labor force, the steady, but sometimes painfully slow, progress of the Negro toward first class citizenship, the breakdown of the family as a social and economic interdependent unit, a lessening of the influence of religious institutions over both spiritual and temporal affairs, an increase in the senior citizen population, a population explosion, an increased mobility of population, a concentration of population in complex urban centers, the rapid acceptance by Americans of new knowledge and new products, an increased concern with cultural affairs, and the development of modern sciences and technology which are as yet not fully appreciated or understood. These changes necessarily place new demands upon the legal structure. The law, like the physical and social sciences, cannot stand outside a society having a rate of change that appears to be accelerating.

The National Conference of Commissioners on Uniform State Laws was established to promote uniformity in state laws. In a society that I envisage in the future, uniformity of state law in a larger number of areas will be more desirable or necessary than it has been in the past. If uniformity is not achieved by the states, uniformity will be imposed by the federal government as witnessed by several recent federal legislative efforts that parallel or duplicate some of our proposals. The federal government, however, is not adequately equipped to handle every problem area. This has been recognized by several federal officials and by President Johnson, who has actively sought state assistance in developing solutions to many problems. As state officials, we are interested in the development of state laws, enacted in every state, that will meet the demands of our citizenry. I view the years immediately ahead of us as years of opportunity for the Conference. We must be prepared and willing to seize those opportunities in the service of our states and our fellow citizens.

Under the leadership of Bill McKenzie and his predecessors, the Conference has made substantial progress. We have embarked on three major projects that will consume a substantial share of the Conference's efforts during the next five years. These are the consumer credit, probate, and family law projects. At the same time we have endeavored to undertake a number of smaller, but nonetheless significant, projects. Because of the rapid changes occurring in our society, we must exert every effort to anticipate the needs for uniform legislation, and we must join in the exercise of sound judgment in selecting subjects. Each Commissioner and Associate Member of the

Professor William J. Pierce

Conference should suggest topics for future consideration to the Subcommittee on Scope and Program. Greater participation in the selection of topics will assist in assuring the Conference that it is undertaking suitable and urgent topics for the promulgation of uniform laws.

Selection of topics for uniform laws is but the first step. Thereafter we must devote our energies to the preparation of quality drafts. That responsibility rests initially upon the Special Committee assigned to the topic. Through the offices of our Executive Director every effort will be made to assure adequate research and drafting assistance to the Special Committee. If additional financing is necessary, the Executive Committee and the Executive Director will attempt to assure that the funds are made available. However, it must remain clear that the drafts presented to the conference are the responsibility of the Special Committee.

Many members of this Conference have labored untold hours during this last year and given freely of their time and effort in preparing the drafts that will be considered by the Conference this week. The Conference is grateful for these achievements. In the future, however, we must take advantage of every talent available within the Conference in the distribution of assignments. The assistance of each Commissioner and Associate Member is requested. If you have a special knowledge or interest in any topic on our agenda, an expression of that interest to your officers would be helpful. We desperately need major contributions from each member. Furthermore, if your state delegation is not at maximum strength, we request that you use your good offices with the appointing official in your state to assure the appointment of replacements. A full complement of active Commissioners is essential to the future of the Conference and to the quality of its production.

Our major assignment must and will continue to be the production of quality uniform acts. Former presidents have emphasized the necessity of improving our research facilities, and a major step to achieve necessary research assistance was accomplished with the appointment of an

executive director in 1963. Professor Dunham has assisted competently and imaginatively the officers and the members of the Conference in the performance of their assignments. With his assistance, substantial sums of money have been raised for the purpose of financing research and drafting by legal scholars throughout the United States. Last December the Ford Foundation made a grant of $60,000 to the Conference for the family law project which has enabled us to hire a reporter for the Special Committee, Professor Robert Levy of Minnesota Law School. Furthermore, the American Bar Endowment provided funds necessary to finance a summer seminar of the reporters for the Uniform Probate Code. The product of that seminar will be considered by the Conference later this week. Without outside financial and academic support, it would be impossible for the Conference to undertake these major projects.

During this last year a major activity of the Conference has been the development of the Uniform Consumer Credit Code. Over $215,000 has been raised for the project, and we have had the benefit of the able and conscientious services of the Reporters, Professors William Warren and Robert Jordan of U.C.L.A., and the Reporter Economist, Robert Johnson of Purdue. The Special Committee early in its history established an Advisory Committee representative of various segments of the credit industry and various consumer groups. Thereafter, the Special Committee selected panels of advisors on such subjects as credit and related insurance, door-to-door sales, credit cards, and real property transactions. Several consultants were also hired to assist the panels and the Special Committee. Our Advisory Committee and panel members and our consultants have made and continue to make substantial contributions to our efforts. The Conference is grateful for their cooperation and guidance.

In June of this year a special meeting of Section F was held in Chicago. Nearly 200 interested persons attended the meeting, and numerous written comments have been received. The results of these deliberations will be presented to you this week, and the Conference will be asked to finalize its recommendations at the next annual meeting. The United States Congress now has under consideration legislation dealing with disclosure in consumer credit transactions which would displace on July 1, 1969, state laws unless substantially similar state legislation exists. The Special Committee has spent thousands of man-hours on this undertaking. If our efforts are successful, the National Conference will have provided the American public with an outstanding legislative solution to a number of pressing problems. Your thoughful and careful consideration of the draft presented to you this week will assure that success.

Other committees have prepared provocative and important proposals which will be presented to you for your consideration this week. I respectfully urge each member and associate member of the Conference to attend all the sessions of the Committee of the Whole as well as the section meetings which will be held today.

Thus far, I have addressed myself to the "production" side of our activities. Our "sales" efforts, however, cannot be neglected, and I hope that the elimination of the legislative session at this annual meeting will not be taken as any indication that we can be complacent. Unless our hopefully excellent products receive favorable legislative action, our efforts will have been in vain. When I testified on behalf of the Conference on the pending federal legislation on disclosure in credit transactions before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency, Senator Proxmire argued that uniform legislation was not feasible because of our enactment record. He pointed out that only nine uniform acts have been adopted by as many as 45 states and that an average of 26 years was required to complete action. He asked me: "Do you think that the American people should wait this long with the small chance that the states might enact truth in lending?"

If uniformity is not achieved by the states, uniformity will be imposed by the federal government as witnessed by several recent federal legislative efforts that parallel or duplicate some of our proposals.

The fact is that our enactment record has not kept up with our production record. Various corrective actions have been taken and will be taken to attempt to improve our record. Improvements have been made in screening subjects to assure an audience for our proposals. We have initiated, at the suggestion of President McKenzie, closer working relationships with the Council of State Governments. Our Legislative Committee has attempted to open new avenues for introduction and drafting of our proposals for the state legislatures. In the final analysis, however, the Commissioners in each state must continue to experiment with and develop new approaches essential to the favorable consideration of uniform acts by their state legislatures. I recognize that each Commissioner has other major responsibilities and that each state legislature is faced with a host of pressing public problems making liaison with legislative leaders difficult and sometimes impossible. I urge each Commissioner to prepare this fall for the next legislative session in his state even if it is more than a year away. Establish working relationships with your state bar organizations, with your legislative leaders, and with your governors. Personal contact has no substitute. If our proposed act affects any particular private organizations or interests, obtain their support.

If after these efforts, passage cannot be obtained, the Legislative Committee and the Executive Committee

would benefit from your comments on the reasons for failure. If your state already has comparable legislation, I suggest that we indicate that the state has substantially uniform legislation even though the exact text of the uniform act has not been adopted. I suspect that we have achieved a greater degree of uniformity than is revealed by our present method of tabulating enactments. Finally, if you desire assistance in the legislative process, the Legislative Committee, the Executive Director, and the Executive Secretary are available at your request. The adoption of the Uniform Commercial Code in 49 states, the District of Columbia, and the Virgin Islands stands as an example of what can be achieved by Commissioners' activities under the leadership of the Chairman of a Special Committee. I suggest that the chairmen of special committees assume in the future the responsibility for alerting Commissioners from each state to possible methods of obtaining favorable legislative consideration of its product. . . .

We welcome our new Commissioners, and we look forward to working with you on the affairs of the Conference. This Conference has the great heritage of over 75 years of service to the American public. We shall attempt to honor that heritage and continue to meet the challenges and opportunities of the future.

DRINKING DRIVER from page 10

to the addicted drinker. Secondly, as already indicated, we need to minimize use of the criminal law and concentrate on civil regulatory approaches with loss of license as the ultimate penalty.

A further step is long overdue. Traffic spokesmen and public officials should stop propagating the myth that the social drinker is the real problem. This not only appears to be untrue, but restricts effective steps that otherwise might be taken. The constant reiteration of this theme provides alcoholics with a rationalization for their behavior (on the theory that "we are all the same; everyone does it"); leads to leniency on the part of judges and jurors for the same reasons; and fails to give the social drinker the guidance that he really needs. The public needs to be told, convincingly and repeatedly, to drink slowly; to eat when they drink; and to let someone else drive home if they have had more than 2 stiff drinks within 2 hours of driving.

Reduce Severity of Accidents Involving Drinking Drivers by Concentrating Attention on Other Factors

Pious observations that drinking drivers are involved in more serious accidents than other drivers is not enough. Accidents involving drinking drivers will continue to occur in large numbers no matter what we do. But the severity of the consequences can be ameliorated by (1) better packaging of vehicle occupants (vehicle safety standards); (2) better roadway design to reduce head-on collisions and limit the severity of running off the road (two types of accidents in which drinking drivers specialize); and, (3) increasing the quality and quantity of emergency medical care. Drinking drivers have most of their accidents at night. The lag between accident and availability of medical care, and deficiencies in the speed and quality of emergency medical care when provided, result in many unnecessary casualties each year. We need the same standards for quick care of highway victims that our soldiers get in Vietnam.

I am not suggesting that one should be uncritical in adopting suggestions in any of these areas. A cost-benefit approach should be used. What will a particular measure cost? What benefits will it produce? If the balance is clear, do it; otherwise don't. But opportunities for reducing the severity of the consequences of accidents exist and should be explored.

Participating in a panel discussion entitled "The Detroit 'Riot': A Challenge to Society and the Legal Profession" held in the Lawyers' Club lounge on October 11 were, from left: William F. Bledsoe, Assistant State Attorney General assigned to the Civil Rights Commission; Judge John C. Emery, Chairman and Chief Defender of the Legal Aid and Defender Association of Detroit; Dr. Nathan S. Caplan, Program Associate, University of Michigan Institute for Social Research; and Yale Kamisar, Professor of Law, University of Michigan.

Chinese Law Authority Visiting on Faculty

Communist China provides a fair system of law for the vast majority of its people in spite of few lawyers, few laws, and a formal legal system which has not yet been fully developed.

This is the opinion of Victor Hao Li, a visiting professor this term at the University of Michigan Law School.

Professor Li, a native of Hong Kong and a graduate of Columbia Law School, has done extensive research on the law in Communist China. His research has included a trip to Hong Kong to interview refugees and explore Communist Chinese publications.

He also said that criminal punishment in Communist China is, on the whole, more lenient than that of the United States. "Rehabilitation is highly regarded in China," he said, "and a criminal is directed toward self-criticism of his political and personal misdeeds. Although prisoners are constantly engaged in this self-criticism and endless study sessions, prison sentences are light. The system is linked to the Chinese and Communist concept of the perfectibility of man."

"Even in the case of capital crimes," he continued, "most criminals are not shot immediately, but are given a year in which to correct the fault that led to the crime. If this happens, and it seems to frequently be the case, the prisoner's sentence is commuted to imprisonment."

Professor Li, who will be teaching part of a class in comparative Russian and Chinese law this term and a course on Chinese law exclusively next term, said that until 1958 Communist China had attempted to install a formal legal system much like that of the Soviet Union.

Partly because of the political rift with the Soviet Union and partly because the system was not working satisfactorily, the Chinese seem to have discontinued this attempt.

The legal procedure is now simple, as it must be if it is to be administered by the poorly educated old revolutionaries who serve as judges. Part of the reason that the system works is that these judges have empathy with the peasants who come before them.

There are a few laws relating to marriage, counter-revolution and labor but most cases are handled individually and are not serious, explained Professor Li. The removal of private property eliminates a great many possible legal problems, and leaves most cases matters of "people not getting along."

Most cases, in fact, do not get beyond the local mediator of the neighborhood committee. If the people involved do not agree on the mediation, and they often do not, the case can be taken to a higher level government district office.

Professor Li emphasized that while the "poor man gets a better shake," perhaps 15 per cent of the people are considered "enemy" and not deserving of the protection of the law.

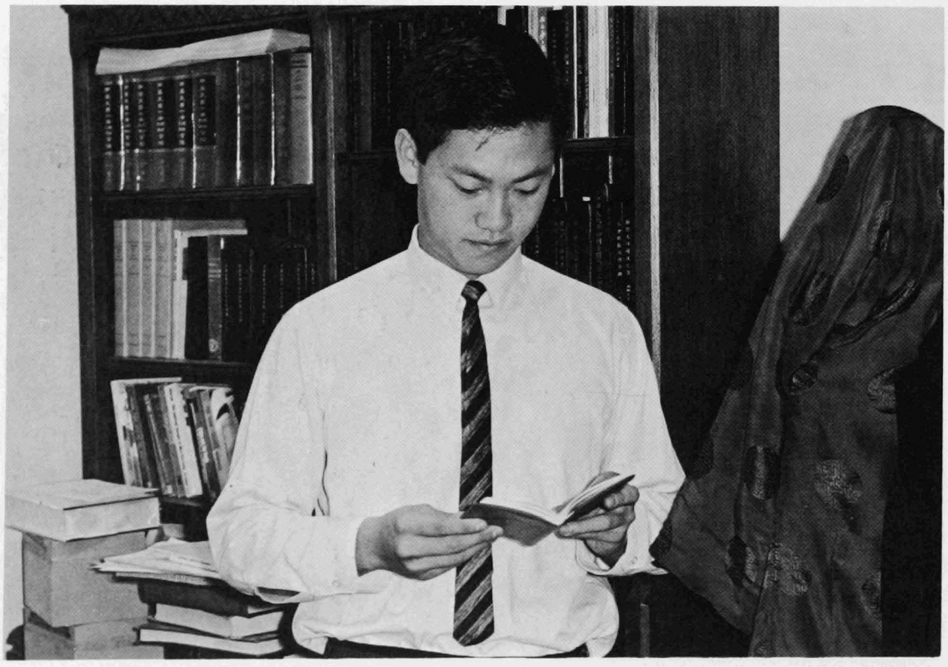
Enemies are defined for political as well as for criminal reasons, he explained. "A former official under the Nationalists or a former rich peasant, landlord, or capitalist would fall into this category. This stigma can even extend to their children under the weak presumption that they might be counter-revolutionary because of their bad class background."

Professor Li said that when a person is finally convicted of a crime he can be sentenced either to reform-through-labor or to the more lenient re-education-through-labor. Various forms of control can also be imposed under which the criminal is let out under supervison. In such a situation, all of one's neighbors know of the control and can constantly watch and advise the criminal. A still more lenient punishment involves public or private criticism of the offender.

Professor Li believes that the Communist Chinese can continue to operate without a formal legal system, but that more complex laws will arise in economic areas. He believes a body of economc rules is developing. These laws are needed to handle questions involving delivery of products, production deadlines, and availability of materials.

Historically, he concluded, China has never had a viable formal legal system. The formal Nationalist system was too complex to penetrate beyond the large cities. Before the Nationalists, there was a harsh, formal code administered by regional magistrates who represented a literate aristocracy. Traditionally, people did not go to the magistrate unless they had to and disputes were settled by elders, clans, or guilds.

Professor Li came to the United States in 1947 at the age of 6 and was naturalized in 1957.



Professor Victor Hao Li

CRIMINAL CODE from page 14

state of sexual development and that a homosexual has no greater choice of the basic form of his sexual expression than a heterosexual does; criminal penalties as such have no bearing on sexual development itself. Therefore, heterosexual and homosexual activities are treated exactly the same way in the proposed law. Forcible heterosexual intercourse is punished as first-degree rape, forcible homosexual intercourse as first-degree sodomy with the same penalty as its rape counterpart. Heterosexual or homosexual intercourse with a physically helpless or mentally incompetent person is uniformly undesirable; both are punished at the same level. A young person is as adversely affected (but in most instances not more adversely affected) by homosexual intercourse as by heterosexual; therefore, any intercourse with a minor is punished, the level of punishment varying according to the age differential between defendant and the younger partner. This means that the common instance of "statutory rape" in which the male defendant is just over 16 or 17 and his partner just under will no longer be a heavily-punished felony, but a misdemeanor only. Since private consensual heterosexual intercourse between adults is not now punished under Michigan law, and has not been for many years, private consensual homosexual intercourse is not punished either under the proposed Code.

Existing abortion legislation has not significantly affected the desire of many women to be aborted; it has only encouraged the performance of abortions by medically unqualified persons to the degree that the greatest single cause of maternal death is illegal abortion. In line with recent legislation in California, Colorado, and North Carolina, the Code would permit a licensed physician to perform an abortion in a licensed hospital if he believes it necessary to protect the physical or mental health of the mother, if the conception occurred through rape or incest, or if the fetus in his opinion would be born with a grave physical or mental defect.

Sentencing

A major area of concern in the Code is sentencing and disposition of offenders, an area that has been the most common source of complaints against the present law. Particular concern has been expressed about inconsistency in sentences imposed for offenses committed under similar circumstances, the failure of the present sentencing structure to take into account variations in the gravity of related offenses, the need to stress rehabilitation if that is possible, and the need of society to be protected against those who cannot be rehabilitated.

The fact of a criminal conviction continues to prejudice a person who has successfully completed a period of probation and thus rehabilitated himself. To eliminate this prejudice, the Code authorizes a court in its discretion to annul and expunge the record of conviction if the applicant successfully completes a period of probation and if the annulment will aid his rehabilitation and be consistent with the public welfare. Annulment is also possible for a person sent to prison, provided he was under 21 at the time of the criminal act and provided he keeps a clean record for 5 years. Annulment of conviction is not available, however, to a person sent to prison for an act done after he reached age 21.

CASE CLUB from page 11

they will have to rely upon within a few short years.

In any event, Michigan has joined the other major law schools which require first year students to participate in a moot court program. In so doing, the objective of Case Clubs remains the same as it has always been: to teach the first year student the essential skills of legal analysis, legal writing, and appellate advocacy in order to assist him in making the long step from layman to lawyer as well as to help him in his study of the law.

"PROSPECTUS" from page 3

last year from Detroit attorney and Michigan Law School alumnus Jason Honigman.

Mr. Honigman is currently the chairman of the Michigan Law Revision Commission and has been active in the field of law reform for several years. His private fund, the Honigman Foundation, donated $45,000 to the Law School for the purpose of forming a periodical which would be devoted to reform in the legal system. The funds are to be used for three years, at the end of which time it is hoped that *Prospectus* will be on a self-supporting basis.

With the necessary funds available, Dean Allen quickly formed a six-member faculty committee. The faculty accepted applications and samples of writing from all interested second-year law students. From this group of about fifty, the committee selected the present twelve-man senior editorial board.

The executive committee currently is composed of Callies; Malachy R. Murphy, Articles Editor; Elizabeth A. Kinney, Staff Editor; and Daniel F. Ross, Research Editor. The remaining senior editors are Thomas H. Chamberlin, Michael W. Cotter, Richard J. Egger, Richard L. Herrmann, George Preonas, Michael D. Saphier, and Gary F. Wyner.

In order to provide as broad a base as possible, the Editorial Board has adopted a policy of considering for publication seminar papers and research articles written by students who are not members of the staff. Also, the senior editors have recently selected second-year staff members who will be able to work on their own short articles and assist some of the seniors with field research.

The distribution of the first issue will be gratis and anyone who is interested in receiving this copy may send his name and address to the *Journal's* office in 110 Legal Research Building, Ann Arbor, Michigan 48104.

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