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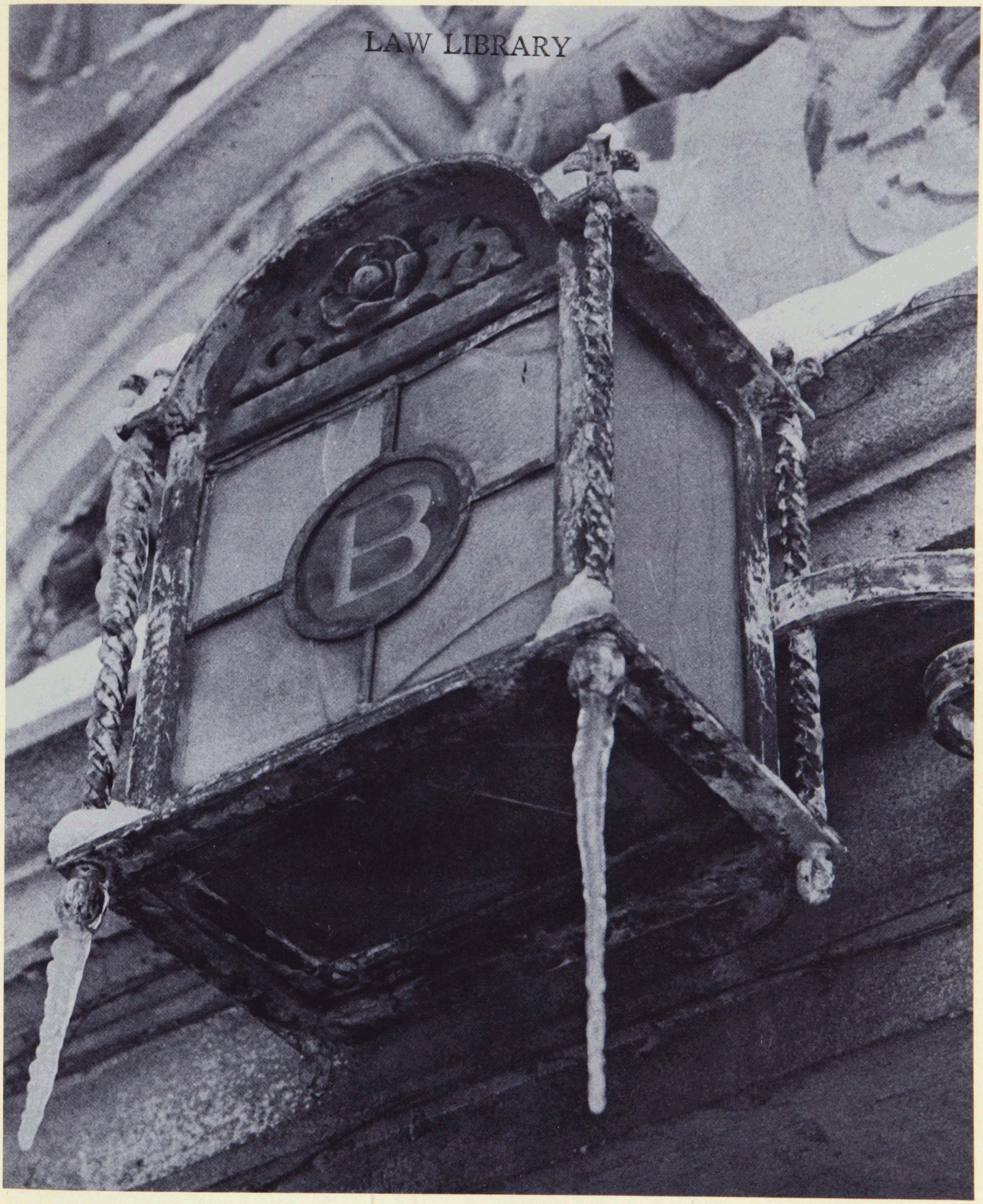

University of Michigan Official Publication

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On the cover: an entrance and winter teamed for this U-M Photo Services picture.

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Theodore St. Antoine Named U-M Law School Dean

Theodore J. St. Antoine, an authority on labor law and a member of the University of Michigan faculty since 1965, has been named dean of the U-M Law School.

The appointment was announced by U-M President Robben W. Fleming and confirmed by the Regents.

St. Antoine succeeds Francis A. Allen, who will relinquish the deanship June 30 to devote full time to research and teaching at the University. Allen has been dean of the Law School since 1966.

Allen said: "Although a young man, Ted St. Antoine brings to the deanship a background of widely varied experience and outstanding personal and professional success. As a practicing lawyer, teacher, scholar, and University colleague he has demonstrated qualities of mind and character that insure distinguished leadership to a distinguished Law School. He combines in a particularly impressive way a dedication to the highest intellectual standards and great facility in practical problem solving. Both he and the Law School are to be congratulated."

A graduate of Fordham College and the U-M Law School, St. Antoine returned to his alma mater to teach after 10 years of labor law practice, mostly at the Supreme Court level. At 41, he is the youngest dean of the Law School in this century.

In a recent interview, St. Antoine noted that American legal education—and the legal system itself—are changing rapidly. He said he planned to capitalize on two new trends which

are becoming increasingly evident at Michigan and other law schools.

On the one hand, he said, the law is being viewed as one in a broad spectrum of academic disciplines. And from this academic point of view, he continued, the law must change in order to keep pace with changes in other fields.

At the same time, he said, there is an increasing emphasis on "the practical." Law students, he noted, are now being given the opportunity to work in legal aid clinics and to participate in litigation dealing with such critical areas as the environment and civil rights.

Commenting on the deanship, St. Antoine said: "Most persons have an exaggerated idea of the role a dean plays in a school like ours. In reality, he functions mostly as a chairman of the board, or as a communications link, giving as much support and encouragement to the faculty as he can manage."

Prof. Cramton Named Chairman Of Administrative Conference

The U.S. Senate has confirmed the nomination of Roger C. Cramton as chairman of the Administrative Conference of the United States. Cramton, professor of law at The University of Michigan, was nominated for the position by President Nixon in September.

The Administrative Conference is a permanent, independent federal agency concerned with the fairness and effectiveness of the federal government's procedures in dealing with private citizens.

Prof. Cramton took up his duties in Washington in January. He succeeds Jerry S. Williams, who resigned Sept. 5 to return to the University of Texas.

Cramton received his A.B. magna cum laude in 1950 from Harvard College. In 1955 he received a law degree from The University of Chicago. He has been teaching law since 1957, first with The University of Chicago and since 1961 at the U-M.

Julin Appointed Dean of U. Florida College of Law

Associate Dean Joseph R. Julin has left the University of Michigan Law School to become dean of the University of Florida College of Law. The appointment, effective Jan. 1, was announced by University of Florida President Stephen C. O'Connell.

"For over a decade Dick Julin has made invaluable contributions to the U-M Law School," said Dean Francis A. Allen. "He is a dedicated teacher and scholar, an outstanding lawyer, a devoted public servant, and one of the finest academic administrators it has been my pleasure to know."

"His decision to undertake the Florida deanship involves a very substantial loss to Michigan," Dean Allen continued. "Nevertheless, it is satisfying to me and to his many other friends that Dean Julin's talents and capacities for distinguished future service are widely recognized."

Julin joined the U-M law faculty in 1959 and became associate dean in 1968. For the last five years he has served as chairman of the executive committee of the Institute of Continuing Legal Education here, one of the most successful programs for lawyers in the country.

Julin has been active in both civic and bar association affairs. He was a member of the Ann Arbor Board of Education from 1966-69, serving as president during 1968-69. He has taken a special interest in giving the laymen an understanding of the law through radio and television commentary.

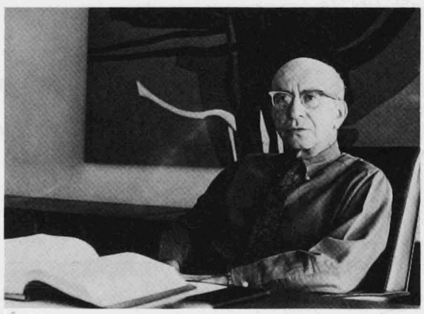
His weekly radio program "Law in the News," originating from the U-M Broadcast Service radio stations, is distributed nationally by the National Education Radio Network. "A Quest for Certainty," a 20-program television series on which he served as host, was awarded the American Bar Association Silver Gavel Award for outstanding public service. The series was produced and distributed by the U-M Television Center. Julin also has appeared nationally on other U-M-produced television series.

Julin has written extensively. He is co-author of a widely used law school text *Basic Property Law.*

He has had numerous University-wide responsibilities including membership on the U-M committee on honorary degrees.

Julin is a 1952 graduate of the Northwestern University School of Law where he served as a lecturer from 1952-59 while practicing in Chicago as a member of the firm Schuyler, Stough, and Morris.

Prof. Stein Authors Book On European Company Law



Professor Eric Stein's new book on the emerging European company law will be published in February by Bobbs-Merrill & Co. The volume, entitled *Harmonization of European Company Law—National Reform and Transnational Coordination,* offers a combination of positive legal analysis and political science-type study of the working of transnational institutions.

The book analyzes the difficulties of harmonizing company law in the countries of the Common Market, and studies in detail the methods and mechanics employed, at the levels of both EEC institutions and national lawmakers, to resolve these difficulties.

"The emphasis is on the processes of reforming law nationally and on

how the new institutional mechanics take advantage of national reforms and make them all similar," Stein says.

He hopes the book will be of interest to lawyers concerned with corporation, comparative, and international law, as well as to political and other social scientists. "The core of the volume," he notes, "deals with the political dynamics of the legal assimilation process, but it is heavily encrusted by an analysis of existing and projected company law norms."

Prof. Detlev F. Vagts of the Harvard Law School wrote that Professor Stein's "scholarly but readable volume will be required for any student of the slow but fascinating process of integrating the European community."

"To complete this study of the assimilation of company law in the EEC took a combination of linguistic, legal, and political talents that no one but Professor Stein could have mustered," Vagts added.

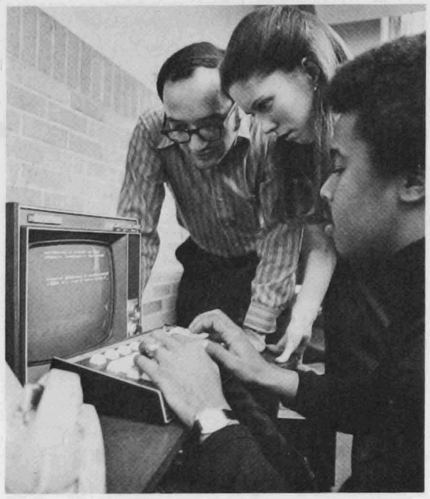
Stein received his law degree from Charles University in Prague, Czechoslovakia, and a doctorate from the University of Michigan Law School. He has served with the U.S. State Department and has been an advisor to the U.S. delegation to the United Nations General Assembly and to the U.S. representative on the United Nations Security Council. He also has appeared before the International Court of Justice.

Since 1956 Stein has been a member of the Law School faculty, as co-director of international and comparative legal studies and as professor of international law and organization. He has authored, co-authored, and edited several books, including a casebook on international trade and organizations.

Computers and the Law: New Legal Research Methods

A student sits behind a keyboard and types the words "breach of warranty." The phrase appears on a TV screen and is transmitted to a data bank in Dayton, Ohio.

In a matter of minutes the student receives a return message: a complete listing of all Ohio appellate and



From left, students Schulz, Kane, and Pickett.

supreme court cases dealing with "breach of warranty" since 1910.

This is one of the ways a University of Michigan law professor and his students are experimenting with computer equipment which might eventually revolutionize research methods in law offices around the country.

One objective of the U-M experiment is to find how use of the computer compares with manual methods of gaining legal information. But even more important, according to Prof. Arthur R. Miller, the experiment "exposes students to technology and makes them think about the ways technology is going to affect legal doctrines and the practice of law."

The experiment began in the fall when Mead Data Central Corp. of Dayton loaned two separate computer units to the U-M Law School for use by students in Prof. Miller's seminar on computers and the law. The students then solved a series of 30 legal questions both through use of the computer and by the standard research procedure of looking up the cases in law digests and court reporters.

Later this month the students—along with Prof. Miller and another member of the U-M law faculty, Layman Allen—will analyze the results, comparing research done with the aid of the computer with research done in the traditional way.

The Mead Data Central computer system, which is still in the experimental stages, now contains legal information dealing only with Ohio cases and statutes. A prototype of the system is being used by a small number of Ohio law firms. Eventually, the company plans to add information on federal law to its stockpile of legal data.

Prof. Miller, a nationally-recognized expert on the legal implications of computer technology and author of a new book on the subject, views the use of computers in legal research as inevitable, noting that the legal profession—like other professions—is a victim of the "information explosion."

"New laws and judicial decisions are filling volumes so quickly," he says, "that we are losing our capability to store them in our offices or to comb through them manually."

Although computer technology is likely to offset these problems, Miller emphasizes that the computer is not going to replace the "creative processes of lawyers and judges."

At the same time, Profs. Miller and Allen predict that computer technology is bound to have an effect on the way lawyers and other court personnel think about legal problems.

Allen notes, for example, that if the syntax of the English language were made more orderly, the computer would receive more precise instructions, enabling it to handle more complex problems—even those which call for deductive reasoning. But in order for this to come about, Allen says, lawyers will have to devise more precise methods of legal drafting.

According to some of the students involved in the U-M experiment, one of the benefits of the computer operation is that it minimizes "human error" in researching legal information. For example, they note that a data bank provides the original full text of statutes and court opinions dealing with specific subject areas. By contrast, researchers using traditional methods rely on the sometimes incomplete listings in annotated law digests.

In addition, the computer being tested by the law students can flash pages of the court opinions across the TV screen, allowing the students to skim a larger amount of material in a smaller amount of time—without ever entering the library. When the student desires printed material on the case he is viewing, he merely underlines sections of the text through the use of a computer indicator button, and the words are printed on a teletype to the right of the TV machine.

Another machine being tested by the students is a standard IBM high-speed teletype, which provides case listings from the data bank without use of the TV screen.

Prof. Conard Installed As President of AALS

University of Michigan law Prof. Alfred F. Conard was installed as president of the Association of American Law Schools at the association's December meeting in Chicago. He became the third Michigan law faculty member to hold the presidency of the association, which includes all fully accredited law schools in the nation.

In a statement at the meeting, Conard urged more support for legal research, saying that the law profession has been "lagging badly" in devising new ways to help solve the nations social problems.

A U-M Law School faculty member since 1954, Conard is editor-in-chief of the ***American Journal of Comparative Law.*** He is also active in other national legal organizations, including the Council of the Section on Corporation, Banking, and Business Law of the American Bar Association; the Council on Law-Related Studies; and the Law and Society Association.

Other U-M law professors serving as presidents of the Association of American Law Schools were Edson R. Sunderland in 1930 and Henry M. Bates in 1912-13.

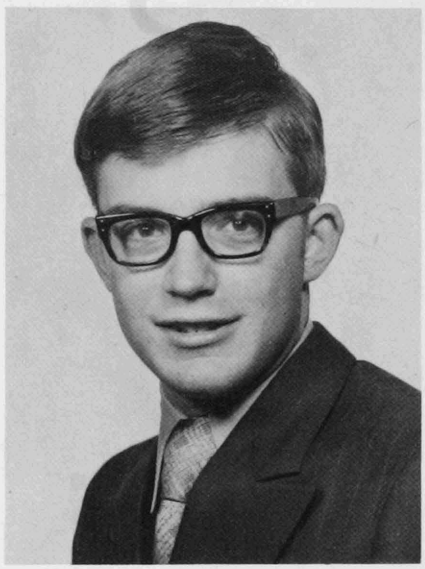
Congresswoman Griffiths, Alumna, Given Achievement Award

Congresswoman Martha W. Griffiths, who received a bachelor of law degree from the University of Michigan in 1940, was one of three U-M alumni to receive the University's Outstanding Achievement Award recently.

Mrs. Griffiths, U.S. Representative from Michigan's 17th District, has been a member of the Joint Economic Commission and the House Committee on Ways and Means, and has chaired the subcommittee on fiscal policy. Before being elected to Congress, she had practiced law with the Detroit firm of Griffiths and Griffiths, and served as a member of the Michigan House of Representatives and as judge of the Recorder's Court in Detroit.

The citation, which was presented by U-M President Robben W. Fleming, commended Mrs. Griffiths for her "uniformly humane" legislative efforts to further "the cause of the elderly, of the unemployed, and of the needy, including needy college students." "More recently," the citation read, "she has served also the cause of equal rights for womanhood."

James R. Bieke, Alumnus, Appointed Supreme Court Clerk



James R. Bieke, a 1970 graduate of the University of Michigan Law School, has been appointed law clerk for U.S. Supreme Court Justice John M. Harlan.

Bieke is currently serving as clerk for Chief Judge J. Edward Lumbard of the U.S. Court of Appeals, Second Circuit, in New York City. He will begin his duties in Washington this summer.

While at Michigan, Bieke served as editor-in-chief of the ***Michigan Law Review*** and earned a masters' degree in English while pursuing his law studies. He recieved his undergraduate education at Sacred Heart Seminary in Detroit.

Bieke joins two other recent graduates of the U-M Law School who are currently serving as Supreme Court law clerks. They are Richard H. Sayler, a clerk to Justice Byron R. White, and Robert E. Gooding, Jr., one of five "joint clerks" who are available to all the justices. Sayler and Gooding are 1969 graduates of the Law School.

Prof. Kahn Receives Prize For *Law Review* Article

Prof. Douglas A. Kahn of the Law School has been honored for his article on corporate law which appeared in the ***Michigan Law Review***.

Kahn received a $1,000 prize from the Emil Brown Fund, a legal foundation in Los Angeles, which cited his "praiseworthy article in the field of preventative law."

Kahn's article dealt with insurance and tax law problems stemming from the death of a shareholder in a family business or a corporation with a limited number of stockholders.

Titled "Mandatory Buy-Out Agreements for Stock of Closely Held Corporations," the article appeared in the November, 1969, issue of the ***Review.***

Kahn's article was selected by a panel of prominent legal experts, including F. Hodge O'Neal, former dean of the Duke University School of Law; David F. Cavers of Harvard University; and Chief Justice Frank Kenison of the New Hampshire Supreme Court.

A specialist in tax and corporate law, Kahn has been on the U-M faculty since 1964.

David C. Miller, Alumnus, Directs White House Fellows Program

David C. Miller, Jr., a 1967 graduate of The University of Michigan Law School, has been appointed director of the White House Fellows program in Washington.

The program is designed to give men and women between the ages of 23 and 35 first-hand experience in the workings of the federal government and to increase their sense of participation in national affairs. The program has been in operation for seven years.

Before getting his juris doctor degree from Michigan, Miller received his undergraduate education at Harvard University where he was a cum laude graduate.

U-M Law Students Draft Legislation for Michigan Towns

A group of law students at The University of Michigan is getting first-hand experience in the legislative process by drafting ordinances for municipalities around the state.

In nearly a year of operation, the organization—called the Legislative Aid Bureau (LAB)—has formulated legislation ranging from a gun control ordinance in Ann Arbor to a bill regulating the distribution of abandoned property in Grand Rapids.

Although LAB's services are customarily free of charge, one of the group's projects involved a $15,000 grant from the federal Office of Economic Opportunity (OEO) for the formulation of a state program to help solve housing, transportation, and medical problems of the elderly. The project culminated in a 475-page report on proposed state aid to the aged, which was submitted to a unit of the National Senior Citizen's League in Washington, D.C.

LAB chairman Thomas Brown, a second-year law student, notes that the program enables student volunteers to put their ideas to work by doing something "relevant."

"Students have tremendous ideas on ways to solve problems," he says. "And at The University of Michigan there are numerous resources at hand—such as the law library and the expertise of the faculty. It's a shame if all this were to go untapped."

Brown, who directs LAB along with five other law students who are on the board of directors, says that in the past year some 40 students have worked on one or more LAB projects. In most cases three to four students work on a project together, completing their research and drafting legislation in anywhere between 10 to 100 working hours. Other projects, however, require more time, such as the OEO-funded project on state aid to the aged, which was completed after 10 weeks of work during the summer.

Faculty adviser to the program is U-M law professor William J. Pierce, who serves as director of the Law School's Legislative Research Center here. The LAB program, Pierce says, "fills a gap" for many municipalities which have neither the resources nor the finances to research proposed ordinances on their own.

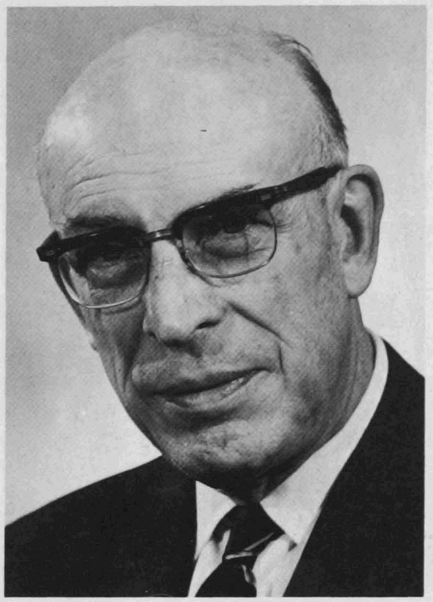
LAB volunteers have worked closely with Ann Arbor city officials in drafting several pieces of legislation, including a gun control bill which served as a basis for an ordinance that was adopted by the city last spring. In addition, the law students drafted a proposed Ann Arbor ordinance requiring local retailers to collect non-returnable bottles which the city would then distribute to glass recycling centers.

In other parts of the state, LAB volunteers have drafted a new school-crossing ordinance for Pittsfield Township and they are working on a bill to control air pollution in Kalamazoo.

In addition, the group is currently working on model legislation for solid waste disposal, political campaign spending limits, and for establishing sanitation, crowd, and noise control regulations at rock festivals. In the case of model ordinances, LAB's recommendations are often published in law journals or used for reference when municipalities wish to draft similar pieces of legislation.

Because their work is done in their spare time—without academic credit—the student lawyers generally receive more requests than they can fill. "We have to be selective," Brown says. "Usually we choose a project because it seems interesting."

Prof. Kauper Named Henry Russel Lecturer



Paul G. Kauper, University of Michigan law professor and an internationally recognized authority on constitutional law, has been named Henry Russel Lecturer for 1971. The selection was approved by the University's Board of Regents following Kauper's selection by the U-M Research Club.

The lectureship, which is the highest honor the University can bestow on a senior faculty member, was established in 1920 with a bequest from Henry Russel of Detroit, who earned three U-M degrees in the 1870's.

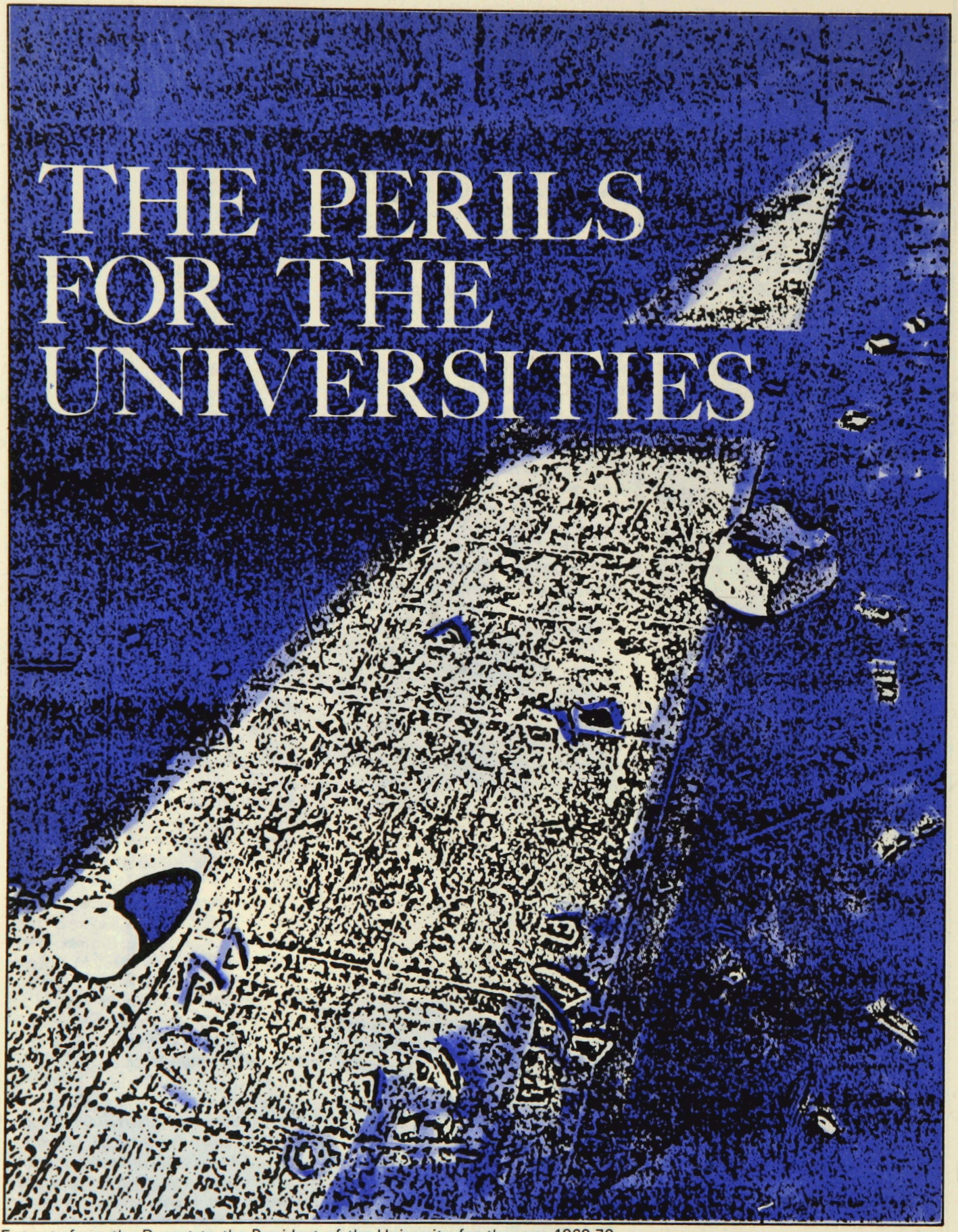
Kauper will deliver the lecture on March 11.

A member of the University's law faculty since 1936, Kauper is the holder of a distinguished professorship at the Law School as Henry M. Butzel Professor of Law. Over the years he has been the recipient of numerous honors, including honorary degrees from four American colleges and universities and the Heidelberg University in West Germany.

He is author of several books, including ***Cases and Material on Constitutional Law, Frontiers of Constitutional Liberty, Civil Liberties and the Constitution,*** and ***Religion and the Constitution.*** He has written numerous articles in legal publications.

Born in Richmond, Ind., Kauper attended Earlham College and received a juris doctor degree from U-M.

THE PERILS FOR THE UNIVERSITIES



Extracts from the Report to the President of the University for the year 1969-70

BY DEAN FRANCIS ALLEN

Dean Francis A. Allen

. . . I note a peculiar hiatus in discussions now going forward on university campuses. My complaint, of course, is not that there is an absence of talk. On the contrary, this is a time when fierce and raucous contentions rage on the campus and in which universities are receiving noisy and unflattering attention from persons not associated with higher education. Appropriately enough, there is much talk on the campuses about the great issues of domestic and international policy. We debate questions of student participation in university administration and we contend over faculty prerogatives. These also are important matters deserving discussion. In fact, we talk copiously about almost everything except those things that are of the most fundamental importance to university people: What is a university, and what are its vital missions in these times? What are the minimum conditions necessary to be insisted on if the university is to fulfill its mission and realize its purposes? What forms of activity and commitment must be rejected by the university because they obstruct or prevent the realization of its purposes? I find these questions rarely discussed, and even more rarely, discussed persuasively and helpfully. Whatever the reasons for this strange silence in a noisy age, the consequences are becoming increasingly clear. I breach no confidence when I say that a good deal of nonsense is being spoken on the campuses these days. Although many, and I hope most, of those comprising a university community recognize this talk for what it is, nonsense often goes unchallenged, and has often achieved a kind of validity for want of challenge. One suspects, also, that not infrequently in recent years universities under pressure have accepted inimical solutions, in large part because of the absence of a clear and workable conception of the nature and purposes of a university.

Young people express much concern today about the perversion of institutions. The general point is sound, and it applies to universities. Universities, perhaps even more frequently than some other institutions, face periodic crises in which fundamental questions must be put if futility or worse is to be avoided. The quality and intensity of these crises have differed considerably over time. Today the crisis is acute, and in large measure involves questions of the proper relation of the university to "politics" or political action. Like so much modern talk about important topics, the discussion of the university's relations to political action is marred by sloganeering. On the one hand, many students and some faculty members call stridently for the "politicizing" of the university. Like other campus slogan-words, the content of this term defies precise definition. Presumably what is being called for is a greater involvement of students, faculty, and even the institution itself in political action, controversy, and propaganda. On the other hand, an increasing demand, no more precise in meaning, is being expressed by public figures and the news media that the university confine itself to "intellectual pursuits" (including, presumably, intercollegiate athletics) and forswear "politics."

A moment's reflection reveals that what is involved in this controversy is nothing less than the problem of defining the relations of the university to the larger society. This has always been a task of great delicacy and complexity, and the difficulties are not reduced by the crises of modern society. Thus it is surely fatuous and mistaken to assume that the intellectual concerns of the modern American university can or should be separated from the problems and issues that make up contemporary politics. This is true because so much that is of profound human concern is encompassed in today's political struggles. Today "Politics" encompasses issues of life and death, justice and inequity, the beautiful and the ugly, affluence and want. Unless the university is to be reduced to mere intellectual needlework, concern for various aspects of the political context will characterize almost every one of the university's departments and units. Moreover, the university is one of many institutions coexisting in a political society. As such it must engage in certain sorts of "political" activities to secure its operating resources, to assert its valid prerogatives, and to protect itself from attack and unwarranted aggression.

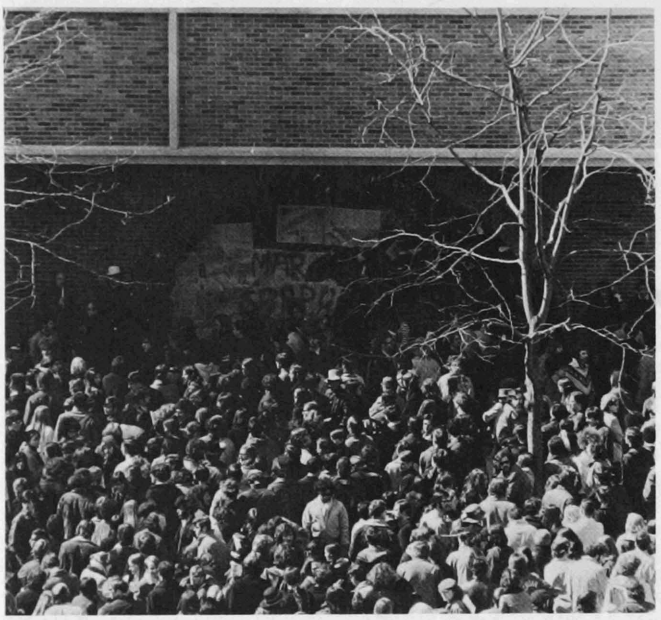
To say that the university is inevitably concerned with "politics" in its intellectual life and in its institutional operations is to say that the university cannot achieve its purposes separated from the society of which it is a part. It is essential, however, that there be a clear conception of what the university's principal purposes are; for these purposes ought ultimately to determine the ***nature*** of the university's relations to politics. The argument I am making is based on the proposition that a university's principal purposes are the discovery and accumulation of knowledge, and the transmission of knowledge. By knowledge I do not mean simply "facts." The discovery of knowledge encompasses the identification and analysis of values, for example, and contributions to aesthetic sensibility. The transmission of knowledge includes the communication of professional techniques. I say that these are the principal purposes of the university, not simply because this has been a traditional view of the university's functions, but because they are increasingly vital to this society and because, as yet, we have devised no other institutions capable of performing any substantial part of the university's task. Any institution as complex as a university has many goals and activities. I do not assert that a university can or should be concerned only with the discovery and transmission of knowledge; but I do contend that the university cannot properly undertake

functions and commitments that obstruct the realization of its principal purposes.

If what I have said is true or substantially true, I believe it follows that a university must not be converted into a political party or action group, on the one hand, or into an agency for dispensing welfare services, on the other. This is not because political action is useless or necessarily evil, or because welfare is to be scorned. It is, rather, because these are commitments incompatible with the university; and their incompatibility resides partially in the fact that they tend to destroy that freedom which the university must possess to realize its principle purposes. It is no fortuity that some of those seeking to "politicize" the university also frankly acknowledge a purpose to destroy it. The means are appropriate to the end; and hence what is at issue is the survival of the university.

"Politicizing" the University

Although one is aware these days of a widespread belief that there is nothing old under the sun, there is, in fact, nothing new about efforts to "politicize" the American university. These efforts may have sources either within or outside the university. The threat of external political inter-



ference with the university is a continuing reality in American life. There are always sinister figures in the wings eager to "politicize" the campus when provided opportunities to do so; and no one who was associated with higher education during the Joseph McCarthy era is likely to discount this possibility or its dangers. Despite the threat of "external politicizing," a structure of academic freedom was erected in this country which has ordinarily proved sturdy enough to resist the worst manifestations of external political harassment. In many ways this is a remarkable achievement. Inevitably, views will be expressed on the campus that are unpopular with large and powerful segments of the community. This circumstance produces grumbling and occasional efforts at retaliation at budget time; but in most instances academic dissent has been tolerated and the freedom of the campus defended.

How can the phenomenom of academic freedom be explained? One cynical response might be that until recently the university has not been regarded as important or dangerous enough to warrant the hostile attention of powerful political forces. This scarcely squares with history, however; and, in any event, it is far from the whole truth. It comes closer to the truth to say that academic freedom gained public support because of a widespread belief that the inconveniences associated with the expression of views thought by some to be dangerous and mistaken, are outweighed by advantages derived from free inquiry on the campus. It should be noted, however, that this tolerance is founded on the assumption that the inquiry protected is, in fact, free, and that the university is not simply a political faction espousing objectives and employing means repugnant to persons called upon to give financial and moral support to it. The most effective way to destroy the foundations of academic freedom is to persuade the community that it has been naive in accepting earlier assurances of the university that objective inquiry, while difficult, is possible, and that great social gains result from its pursuit. If objectivity and disinterestedness are shams and charades, and if the university is converted into an instrumentality for direct political action, on what ground can the university claim immunity from political retaliation to which all other political factions are subject? What is the intellectual and moral basis for resisting external political interference or control? One very important reason for repudiating efforts at "internal politicizing" of the university is that they hasten, and may make inevitable, the "external politicizing" of the university.

The Tyranny of Politics.

There are other considerations less frequently voiced. "Great minds need elbow room," wrote Cardinal Newman over a century ago. "And so indeed do lesser minds, and all minds." And later: "If we reason, we must submit to the conditions of reason. We cannot use it by halves." There is surely grave cause to assert that the conditions of reason are being widely disregarded on the campuses today. The problem goes beyond the fact that contentions and disorder distract and sometimes physically prevent thought,

". . . there has been a net loss of liberty on the campuses, a constriction of the elbow-room for minds . . ."

research, and teaching. This has occurred, and gives rise to the genuine possibility that in the years ahead much of the serious thought of the nation may be pursued in institutions other than universities. Direct interference and distraction are only part of the problem, however. A climate pervades the campuses which seriously restricts that freedom and scope for minds that Newman identified as essential.

In times like these it is not easy to write critically of political commitment. The political furor that has overtaken the campuses and our entire society reflects unsolved problems that are real and almost overwhelming. Some encompass threats to our very survival. There are few responsible members of today's society who either can or wish to insulate themselves from these issues, and few would be disposed to deny either the propriety or the urgent necessity of direct political action to cure or ameliorate our social ills. The very importance of many of the issues that are contested in modern politics, however, is a source of peril; and the peril is particularly acute for the universities. The obvious importance of politics is in danger of paralyzing our critical capacities, and there have been few periods in which it has been more vital that these capacities be kept intact and functioning.

Recognizing the necessity of political action and political participation by responsible individuals should not cause us to ignore the fact that the practice of politics, even

in behalf of liberal causes, is often illiberal and inhumane. Recent manifestations of political commitment on the campuses abundantly illustrate the point. Too often politics, both on and off the campus, seeks the capture of minds, not their liberation. Its methods are those of oversimplification, sloganeering, mindless chanting, derision, and conscious distortion. Its appeal is essentially anti-intellectual and anti-rational. It seeks first to stimulate, then to recruit basic human emotions—pride, envy, anger, fear, and, ultimately, terror. Its tendency is imperialistic in that it attempts to dominate all things human, including the aesthetic and the intellectual. Fortunately for those who retain hopes for a liberal and democratic society, the objectives of political action can be achieved and the worst extremes of political practice contained, if our understanding is clear and our will is strong. The university has a part to play in achieving this objective, but it must be a part consistent with its nature. The methods of politics are not the methods of free inquiry; and it is free inquiry for which the university stands. Efforts to impose the methods of political action on the university, therefore, threaten its fundamental character. None of the university's contributions to the political life of the nation is more important than its role as a critic of politics. Politics tends to excess; and this tendency is especially strong when, in times like these, political movements arise supported by adherents indisposed to question the virtue of their cause or the truth of their perceptions. Performance of this important critical function by the university presupposes not only that the university is free from overt coercion, but also free of binding commitments that limit the play of skeptical intelligence.

I regret to say that, in my judgment, there has been a net loss of liberty on the campuses, a contriction of the elbow-room for minds, in the years since the second world war. More courage is now required than formerly to raise certain questions publicly, or to pursue certain lines of inquiry. Prominent figures are effectively denied forums in the universities by threats of insult, disorder, or worse; and this in institutions which fought hard and costly battles to establish the principle that the university is a place where all views, however uncongenial to the larger community, must be given opportunities for free expression. Other less obvious losses of freedom are also the product of political contention and political commitment. Hamlet concluded that "conscience does make cowards of us all"; but commitment can also make men timerous. With increasing frequency in recent years persons on the campus have been deterred from speaking plainly about disturbing and important matters for fear that what they say will be put to improper political uses by persons they regard as political opponents. The result has been silence when speech was needed, a decline in truth-telling by the universities, and a loss in the quality of freedom on the campuses.

"Efforts to impose the methods of political action on the university . . . threaten its fundamental character."

It is not my intention in these comments simply to mourn the loss of a golden age on the campus. In one of the novels of E. M. Forster a character is made to say: "You use the intellect, but you no longer care about it. That I call stupidity." Perhaps this is the malaise that constitutes the heart of the crisis confronting the American university. It is not a new illness, however; it did not suddenly reveal itself in the decade just past. While the origins of the problem could probably be traced to a much earlier time, I am inclined to agree with those who regard World War II as the source of much of our difficulty. It was in those years that the universities demonstrated their enormous utility as creators of military weapons and as contributors to industrial production. The university thus acquired prestige, not primarily as a place where intellect is cultivated and honored, but as an invaluable utilitarian instrumentality. One might find much to applaud in the denunciations of campus reformers who protest the uses to which our society has put the university during the past generation, were it not so apparent that these critics reveal the same stupidity that Forster perceived and which has been revealed by others in practice. The critics' complaint, as I understand it, is not that the university has failed to display a sufficient concern for the intellect, or that we are guilty of attempting to "use reason by halves." Rather, the position reaffirms in even stronger terms a view of the university as an instrumentality of political and economic power, and objects only that, at present, it serves as handmaiden to the wrong masters. It seems apparent that if this dangerous and perhaps fatal stupidity is to be escaped, the premise must be rejected.

I hope I do not underestimate the practical difficulties encountered in making this escape. One of these relates to identifying the distinction between political commitments of students and faculty members when acting in their personal capacities (which must at all costs be respected) and the obligations of those same persons acting as and for the university. The line is not easy to draw, and at times the distinctions may appear narrow and even metaphysical. For all who have a stake in the future of the university (and this excludes few in our society), it is of the highest importance, however, that this line be conscientiously drawn and strongly maintained. . . .

Woodstock Nation Goes to Law School

by
Matthew P. T. McCauley
Assistant Dean, Admissions

Friends of The University of Michigan Law School might wonder, in these times of campus tumult, if the wise undergraduate is directing his steps elsewhere. In fact just the opposite of what one might assume is true. Michigan, Harvard, and Berkeley, all active campi, have all had extremely large numbers of applicants to their law schools. In 1969-70 the Admissions Office had 4,000 applications, almost a thousand more than in the previous year, which in turn had also set a record. It is comforting to know that so many college seniors have such high regard for Michigan—garnered in the main from contacts with alumni, students, and faculty, one assumes, and not from the lure of student protest—but when viewed in any other light, 4,000 is too many.

It is too many to allow for leisurely consideration of each candidate, and too many to assure complete confidence in the decisions which must be made. Indeed the pressure has become so great that the idea of a lottery among those candidates who meet certain minimum requirements has been broached. Those who remember the confusion of applying to several schools will be pleased to know that one of the ways that the schools are coping with the great upsurge in the number of applicants is by introducing cooperative services. This year Educational Testing Service will perform the task of translating all the grades into an intelligible 4=A system, and will analyze parental statements in support of scholarship applications. Work on a uniform application and recommendation form has also been done although it looks less promising.

As if an enormous number of applicants were not problem enough, *Quad Note* readers will be interested to learn that 102 students were readmitted, having gained admission in an earlier year and deferred enrollment. Most of these people had been in the armed services, and the number of veterans now in the Law School must be at the highest level since the early 50's. The readmissions, honoring guarantees made two or three years ago, meant that as a practical matter there were almost 13 applicants for every slot in the freshman class.

In an article I wrote last year for this publication, I described several interviews which struck me as interesting. I should have made it clear that interviews are not required for admission and, indeed, that I feel they infrequently produce information on which it is safe to rely in making the necessarily difficult admission decisions. Hundreds of people, however, feel the urge to "talk to someone about the Law School" and I suppose I am the most visible "someone" in Ann Arbor.

This year once again I met an assortment of interesting individuals. I think most fondly of the doctor who felt that national affairs had reached such a pass that he should forsake his practice and take up the law. He was inspired by the example of Theodore Roosevelt, and urged me to read Roosevelt's biography. I had to confess that *Arsenic and Old Lace* had ruined T.R. for me as a potential model, but the thought of this man finding in Teddy Roosevelt the same inspiration others were finding in H. Rap Brown and Jerry Rubin carried me through some drab days.

In an effort to get more information about student motivation we added a question about future plans. Most of the applicants, however, had virtually no plans beyond law school. Some indicated a wish to teach, others hoped to help the poor, but all were pretty noncommittal. It was obviously hard to answer the question and be certain that you were saying what the school wanted to hear—though in fact we had no conscious preconceptions as to the "correct" answer. Also apparent was the fact that college seniors are only just beginning to give the idealism of their age and time some personal meaning. Typical, poignant, and mildly amusing to me was the fellow who wrote that he planned to be "a businessman and civil liberties lawyer." Maybe he will indeed be both, but I could not help feeling, as I read thousands of such responses (some a good deal more subtle) that the law school would be a time for lots of growing up as well as for learning. I hasten to add that I do not feel that growing up means losing one's ideals, only that a sympton is caution about saying idealistic things.

One aspect of admissions which deserves some comment is the sustained effort which the law school has mounted for the past five years to assure the black students and members of other disadvantaged minorities are made aware of the many opportunities open to them in pursuing legal careers and the substantial financial assistance available to them if they choose to study law. In evaluating these applicants we have declined to place exclusive reliance on grades and test scores. Our experience and that of other schools lends support to this policy. We have found that the college records of many black applicants are not true indica-

tors of their abilities and potential—for such reasons as substantial term-time employment; lack of motivation and confidence in early years of college; lack, or inadequate number, of successful models to emulate; sub-standard training, not infrequently in segregated schools; problems of adjustment from all-black high schools to mostly-white colleges, often in small towns. Weak early schooling also has a marked effect on the test scores presented by the average black or Mexican-American.

The school's admission efforts in this area have been cautious, but the commitment which underlies them has been constant. Black enrollment has grown steadily as we gain confidence in our ability to identify young men and women who will be able to make a success of their study here in spite of unspectacular grades and test scores. We remain, of course, happy to get black students who have spectacular grades as well, and there are signs that the day when such applicants will appear in substantial numbers may not be far off. In 1970 many of the institutions which traditionally send us outstanding students graduated their first classes with sizeable black enrollments We have black students in the first-year, for example, from Duke, Oberlin, Stanford, Williams, and Yale. The all-black schools with which we have steadily built up good relations, such as Howard and Dillard, continue to be represented as well.

The success which our black graduates are finding in their chosen areas of the law is some evidence that the school has chosen wisely both in selecting the individuals it did and in responding to the need for black attorneys at a time when the confidence of black people in the legal system was low and diminishing. This year the Law School enrolled 50 black freshmen.

I am a bit more hesitant than last year to spot trends on the basis of the freshmen class's make-up. My prediction that we would see a decline in the number of Ivy-Leaguers around Hutchins Hall has proved wrong. Princeton (13 Law School freshmen) and Harvard (10) are the fourth and fifth most heavily represented colleges in the current first-year class. The bastion of the Ivy-League, Yale (8), is tied for sixth place with Indiana and Oberlin. The first three are our old friends Michigan and Michigan State, and a new hot-shot school from the far west, Stanford (14).

One of the premises on which every admissions office operates is that somewhere amidst the pile of manila folders is another Holmes and Cardozo. It is this hope which makes the crush of numbers so discouraging, because one cannot be certain that the leaders of the bar in the rest of this century and the beginning of the next will all have high LSAT's or good grades in their freshman science courses. Indeed, one can be almost certain that some of the leaders will not have had outstanding pre-law credentials. On the other hand if a great potential lawyer failed to apply to Michigan, then we would never even get a chance to discover him. We have therefore made efforts in the past few years to insure that Michigan's strengths were fairly put to graduating seniors. The make-up of the first-year class may to some extent reflect this recruitment program. Professor John Jackson, a Princeton alumnus, visited Princeton last year to talk to interested seniors, and Professor Whitmore Gray has filled a similar role at Stanford for several years. Professor Richard Lempert, a graduate of Oberlin, has returned there for the past two years and the result has been an increasing flow of promising students, including some outstanding black students.

The rise in the number of law students from Oberlin and Chicago (6 students in the first year) is some evidence that undergraduates who might formerly have gone on to graduate studies are turning to law school. Disillusion with life in an ivory tower seems to be a factor, and the poor job market for PhD's provides a practical incentive for doing what one is inclined to do anyway. We have come some distance from the time when the dean spoke to me of his concern that the best college students were not heading into the law, but into esoteric corners of academe. T.V. program manufacturers are not the only ones who get all starry-eyed when they think of "Storefront Lawyers." College seniors do too.

I would apologize for continually returning to the idealism of the applicants to law school, but it is the single most obvious, impressive, and dramatic fact about them. They display no motives but high motives. They expect great things of the Law School and the profession. One feels continually challenged to live up to his principles as he faces this well-intentioned crowd and I think it important to try to get across some sense of what is in the minds of our students, even a vague and general sense. We can all be proud that the law, and the Michigan Law School, exert the appeal they do to such able people with such lofty goals. I am even hopeful that some will develop a sense of humor after the rigorous competition of law school admission has ended.

Geographically the class is as diverse as its predecessor. As usual the states of Michigan, Illinois, Ohio, and New York have sent us the largest numbers of students. California seems to be in the top six or seven states to stay, and some thanks for this should be expressed to our alumni on the West Coast who have set up a special scholarship for residents of California. For the first time in four years we have students from New Mexico, Alabama, Mississippi, Rhode Island, and New Hampshire

We were able to award full-tuition scholarships to 39 of the freshmen, and 17 were able to get some help in loan form when they were turned down by their state bank loan programs. The parents who read this publication need hardly to be told that the cost of higher education has risen rapidly in the past few years, and the needs of the incoming students have risen at the same pace. We may soon have to abandon our boast that no one has to drop out of Michigan for financial reasons, but raising money is Roy Proffitt's province, and an admissions officer can only go so far from his bailiwick and expect people to listen to him.

I anticipate an admissions year very much like the one just past in 1970-71. There will be pressures from all sides, another one hundred or so men returning from the service, and another shock wave from the post-World War II baby boom. Next year's article might well be called "Son of Woodstock." One consolation for a beleaguered paper shuffler is the fact that this year's freshmen are so extra-ordinarily able that among their ranks may well be a Holmes or Cardozo (or both).

Some of the characteristics of the first-year class are:

Size of Class	419
Number of Women	35
Number of Blacks and Mexican-Americans	52
Number of Veterans (not counting reservists or ROTC members)	52
Median LSAT [91st percentile]	648
Median GPA	3.30

Assistant Dean McCauley

Defending The Environment: The Court As Catalyst

Based on a chapter of Professor Sax's new book, **Defending the Environment: A Strategy for Citizen Action,** published in the United States by Alfred A. Knopf, Inc., N. Y., and simultaneously in Canada by Random House of Canada Limited, Toronto.

by Professor Joseph L. Sax

If every state were to pass a law making clear that courts should consider the merits of citizen-initiated environmental cases, part of the problem considered in the preceding chapter would be mitigated—that is, judges and attorneys would not feel compelled to twist the questions that the litigants are actually trying to raise into such traditional issues as a claim of arbitrariness or a failure to comply with some explicit statutory command such as how a dike must be authorized or how wide a highway right-of-way may be.

Even if these constraints were to be removed, a serious problem would remain, for neither judges nor attorneys clearly see the nature of the governmental problem with which they are faced. . . . two questions particularly trouble them. First, courts fear that if they embark upon a consideration of the "merits" of environmental disputes, they will be taking upon themselves a primary role in public policy-making which they feel—with justification—should reside in the legislative branch of government. Second, judges are troubled about their competence to decide what seem to be highly technical issues—how much radiation can a nuclear plant safely emit, how fragile is the Alaskan tundra, how sensitive are fish to hot water discharges in a river?

Of these two concerns, the question of judicial competence is disposed of most easily. Courts are never asked to resolve technical questions—they are only asked to determine whether a party appearing before them has effectively borne the burden of proving that which he asserts. Thus the question is not one of substituting judicial knowledge for that of experts, but whether a judge is sufficiently capable of understanding the evidence put forward by expert witnesses to decide whether the party who has the burden of proof has adduced evidence adequate to support his conclusion.

Why this question has seemed particularly troublesome in this context of environmental litigation is rather perplexing—courts are called upon frequently to decide cases in which the evidence of technical experts is crucial. Medical malpractice, product safety, and industrial accident cases, to take only a few examples, are routine grist for the judicial mill. Indeed, the very issues that arise in environmental cases of the type discussed in this book are today subject to judicial inquiry if they arise in a slightly different context. For example, if an oil spill such as occurred at Santa Barbara gave rise to a suit for damages after the fact, courts would have to decide whether the oil drilling had been carried out in a reasonably safe fashion. Similarly, if an accident occurred at a power plant and suit were brought to recover damages, a court would have to decide whether the plant had been adequately constructed and operated.

The sort of environmental litigation proposed here simply shifts the questions involved forward in time. Rather than

deciding the issue of reasonable precautions against the risk of harm retrospectively, the courts will be asked to decide those questions prospectively. To be sure, we know less about risks before they occur, but that does not change the legal issues involved—in a damage case for harm done, the question is what precautions the defendant should have taken in advance to avoid risks of harm that might reasonably have been foreseen. The question is thus always what should have been known before action was taken—and this is exactly the issue in environmental crises.

In short, the question of judicial competence is a false issue, a red herring. The case studies presented in chapters 8-10 of *Defending the Environment* indicate specifically the ability of courts to cope with the merits of environmental litigation. . . .

Far more important is the issue of judicial infringement of legislative policy-making, for most environmental litigation turns not on technical issues, but on disputes over policy. . . .If there is any significant issue to be raised about environmental lawsuits, it is their impact on the legislative policy-making function. Here one reaches the central point about environmental litigation: the role of courts is not to make public policy, but to help assure that public policy is made by the appropriate entity, rationally and in accord with the aspirations of the democratic process.

The job of courts is to raise important policy questions in a context where they can be given the attention they deserve and to restrain essentially irrevocable decisions until those policy questions can be adequately resolved.

The New Jersey highway dispute, discussed in chapter 5 of *Defending the Environment*, neatly exemplifies this distinction. . . .the court should have considered the plaintiffs' testimony regarding an alternative plan to that of the highway department and should have enjoined the highway department if the court found that the weight of evidence established inconsistencies between the highway department proposal and an intelligent highway policy or found existing highway policy unmet by the highway department plan.

Nothing in such a case suggests that the court should usurp the legislative role in formulating highway policy. At most, it asks one of two things: (1) The court should test the existing official plan against policies already articulated (more or less specifically in the law) and withhold approval of a proposal that is at odds with the policy or raises serious doubts about its effectuation. Or (2), if the court finds the proposal at odds with an environmentally sound policy, though it may now be expressed in any legislation, and it finds no urgency for immediate construction, it withholds approval until and unless the policy question is returned to the legislative forum for open and decisive action. . . .the court can help to promote open and decisive action in the legislative forum in several ways. By enjoining conduct on the part of government or industry, it can thrust upon those interests with the best access to the legislature the burden of obtaining legislative action. Also, the very presence of a lawsuit and the information it reveals promote attention in the press, which serves to alert citizens that an issue is arising which deserves their attention. In this way, too, litigation helps to realize a truly democratic process.

Notably, nothing in a case like the Interstate 95 controversy in New Jersey suggests that the courts ought to displace legislative judgment. The court serves either to implement an existing legislative policy against administrative disregard or to withhold irrevocable action until a policy can be considered and adequately formulated for action. To be sure, judges must make some tentative judgment about what the policy is, or should be—but the important reservation is the word "tentative." It is a judgment that is subject to—indeed, that encourages—legislative consideration, not one which displaces legislative consideration. Rather than being at odds with legislative policy-making, the courts are promoting that process and—at most—prodding it to operate with open consideration of important issues, and with an alerted public.

. . . .this is a most important point, for the decisions which comprise the great bulk of environmental lawsuits are *not* decisions articulated by legislatures, but almost always decisions by administrators, usually at a rather low level in the hierarchy, employing their own discretion from their perspectives in the presence of vague and sometimes contradictory statutory policies. For this reason, paradoxical though it may seem, judicial intervention, rather than posing the threat of undermining the legislative function, actually operates to enhance it.

A most instructive example of this problem is noted in chapter 8 of *Defending the Environment.* There a state highway department took parkland for a proposed highway right-of-way. Citizens sued and the highway department defense was that it was enforcing legislative policy to build highways. The citizen plaintiffs said the highway department was undermining other legislative policies in favor of saving parks. The dispute—an important issue of policy choice, which no statute clearly resolved as to a given highway condemnation case—was brought to court. The court found that a serious question was raised about the balance between roads and parks, found that the highway department was deciding the policy question for itself in favor of roads, and sent the case back to the legislature for action and clarification.

To understand that the principal role of courts is to raise important policy questions is to understand as well the fear that judicial intervention will interfere with large-scale long-term planning. As noted earlier, environmental litigation does not ask of a judge that he devise national policy nor that he repeal any settled statutory policy in contravention of explicit legislative desires. Rather, by inquiring into the effects of such policies in individual instances, it asks the court to help promote the sort of continuous review and re-evaluation that any large-scale program needs—and that legislatures often find themselves without time or adequate initiatives to undertake on a regular basis.

Again, the federal highway program provides a useful example. Plainly, there is a large federal transportation policy embodied in the highway program. It is, however, a policy that is necessarily implemented over a long period of time and hence eminently deserving of periodic reconsideration. Presumably, as the program goes forward, we learn some things and want to rethink some of our earlier assumptions about the program. The courts help Congress and state legislatures to do this, both in the large and the small sense.

In the smaller sense, courts can call attention to the impact of the highway program on parklands or on housing and can send highway agencies back to the legislatures both to get more detailed policy statements about the costs they are willing to incur to promote the program and to educate the legislatures from time to time on what those costs are. In this respect the courts serve to gather and feed useful information back into the legislative policy process, which, it must be emphasized, must be continuous if it is to be at all rational.

In the larger sense, judicial injunctions

against various elements of the highway program, on the ground that they infringe other national policies or do unseemly harm, promote a search for better alternatives or new technologies.

One only understands this if he begins to see planning as something more than a legislative commitment once made to spend a lot of money, which is never to be reexamined or requestioned over the years and decades that follow. Only if we could be persuaded that every large project—whether governmental or private—was perfectly conceived at the outset, impregnable to new facts or new public concerns, and perfectly executed, could we view litigation as an infringement of planning and large-scale social policy activities. That, of course, is the posture that challenged administrators and enterprisers take, but. . .if we take them not on their assertions, but on the demonstrable facts, it is a position of the greatest possible dubiety. There may be no more needed public function today than a forum that can send some of our Big Planners back to the drawing boards.

One final comment should be made on the problem of judicial interference with established legislative policies. There is a pervasive notion that every statute on the books is to be treated as a pure and thoroughly considered embodiment of the legislative will. This is the way in which lawyers always talk, for example, when they are defending a statute as stating the "intent of Congress."

Not to put too fine a point on it, this is bunk. There are all kinds of laws, and any effort to deal intelligently with environmental or other serious problems must begin by moving away from this preposterous concept. Some laws do indeed represent the conclusion of a carefully considered, hard and openly fought legislative enterprise. The federal Wilderness Act. . .is an example of such a statute. This is not to say that it is a perfect law or one that does not reflect some considerable horse-trading, but only that the various interests had their say, fought it out, and got the most they could get, including a rather clear statement of national policy.

Many other laws cannot with any degree of honesty be so described. The state bill authorizing the conveyance of the lands at Hunting Creek in Virginia did not meet this test. It was essentially a one-man bill, enacted without hearings or publicity by a busy legislature unaware of the competing interests that would have defined the issues if the bill had been adequately considered. Indeed, once the issues had been defined, the legislature repealed the law; fortunately, other forces kept the project in abeyance until this happened.

The dike law in the 1899 Rivers and Harbors Act represents still another sort of flawed legislation. Though it was used in the Hudson River Expressway case in support of a good environmental cause, it would be fatuous to claim that its congressional assent provisions for dikes reflected any meaningful 1970's policy of the Congress of the United States. It is certainly not a Wilderness Act nor a National Labor Relations Act.

Plainly courts cannot, and should not, be asked to declare laws now on the books to be dead letters or to engage in judicial repeal. But courts can, and should, use their powers to forestall projects lacking a demonstrated imminency of need, which are justified on the basis of dubious legislation, in order to encourage the legislature to take another look, and perhaps a more careful and open one, at the policy problems resulting from the way in which such laws are being implemented.

Courts have many devices available that enable them to act in a discriminating fashion without taking on overtly the function of weighing the quality of various kinds of legislation. The courts may read a law very narrowly if they have doubt about the propriety of the policy it embodies, or about the manner in which it was passed. Or the courts may hold that some readings of a dubious law would raise constitutional questions, and they may interpret the law restrictively to avoid such issues. In each instance, the courts thrust upon the legislature the obligation to affirm openly its true intent. These devices are well established and have been used in various settings. They deserve particular attention in the environmental area, where some bureaucrat may seize upon some provision in a statute in the name of the solemn intent and desire of the legislature.

In sum, the court serves as a catalyst, not a usurper, of the legislative process.

the ASSAULT on PRIVACY:

information technology a study of good and evil

by professor arthur r. miller

Based on the Prologue and Epilogue to Professor Miller's new book, *The Assault on Privacy: Computers, Data Banks and Dossiers,* published in the United States by the University of Michigan Press, and simultaneously in Canada by Longmans Canada Limited.

When historians come to write the story of our time, they may well characterize it as the Age of Cybernetics. Surely one of the most significant aspects of this period is the technological revolution centered around a species of machine we call "the computer," a revolution that is dramatically increasing man's capacity to accumulate, manipulate, retrieve, and transmit knowledge. Without this resource we would be unable to enjoy the fruits of contemporary society's information explosion or to reap the full benefits of our capacity to thrust a rocket to the moon and the planets beyond.

A number of contemporary prophets have predicted that the new information technologies eventually will prove to be as significant to mankind as was the invention of movable type. As seers such as Sir Arthur Clarke and Marshall McLuhan perceive the future, information will not be recorded or conveyed in the form of alphabetical imprints or pictures in a book but rather as holes in punch cards, magnetic fields on tapes or discs, electrical impulses moving through the memory core of a computer, and, perhaps, radiations generated in vats of complex chemicals.

Although claiming no gift of clairvoyance, I, too, can foresee a time when today's brick-and-mortar library will be obsolete. Our primary source of knowledge will be electronic information nodes or communications centers located in our homes, schools, and offices that are connected to international, national, regional, and local computer-based data networks. Through these systems will come the newspapers and magazines of the future, the literature and arts of the world, and the intellectual achievements of society. Much of the recorded experience of mankind literally will be at our fingertips. The day also will come when children learn to operate a computer terminal even before they begin to write. It seems inevitable that typewriterlike consoles, light pencils, and television cathode-ray tubes will join crayons, building blocks, and modeling clay in the kindergarten of the future. . . .

All too often we fall prey to the fallacy that computers live in their own self-contained world, functioning independently and beyond the control of man. In our awe over the pinpoint accuracy of the voyages of Apollo 11 and Apollo 12 to the moon, let us not forget that humans programmed the computers that gave us an unremitting stream of data about those flights, dictated the character of the data that would be recorded and analyzed, and made their own decisions based on the mass of information stored in the electronic behemoths. Because of the canonization of astronauts Aldrin, Armstrong, and Collins, few people remember that it was Stephen G. Bales, a young guidance officer at the Manned Space Center in Houston, who at the critical point in Apollo 11's landing recognized that the onboard computer system was not functioning, quickly referred to the information available to him in Houston, almost 300,000 miles away from the descending spacecraft, and made the decision that Eagle was on target for a landing in the Sea of Tranquillity. In many ways, this example of the relationship between man and machine, as well as the way disaster was averted on the ill-fated flight of Apollo 13, more accurately reflects the reality of our electronic way of life than does the popular image projected by Hal, the neurotic but domineering computer in *2001: A Space Odyssey.*

In spite of the successful adjustment man has made to the machine in many contexts, it would be foolish not to recognize that the transition to an electronic way of life is bound to be accompanied by abrasive dislocations, as almost all significant deviations from traditional life styles have been. Already there is a growing awareness of the effects that certain applications of the computer may have on the elusive value we call "personal privacy." In the past the very ponderousness of movable-type technology inhibited man's urge to collect and preserve information about his peers and thereby served to limit the amount of data that was recorded about an individual. But many people have voiced concern that the computer, with its insatiable appetite for information, its image of infallibility, and its inability to forget anything that has been stored in it, may become the heart of a surveillance system that will turn society into a transparent world in which our homes, our finances, and our associations will be bared to a wide range of casual observers, including the morbidly curious and the maliciously or commercially intrusive. These fears have been exacerbated by the clarion call in some quarters for the establishment of a National Data Center, by the emergence of criminal-intelligence data centers and computer-based credit-reporting services, and by the hypnotic attraction for electronic record-keeping being exhibited throughout government, industry, and academe.

A brief recital of a few of the blessings and blasphemies of the new technology makes the computer-privacy dilemma abundantly clear. In various medical centers, doctors are using computers to monitor physiological changes in the bodies of heart patients in the hope of isolating those alterations in body chemistry that precede a heart attack. The quest, of course, is to provide an "early warning system" so that treatment is not delayed until the actual heart attack, which often renders the patient moribund for all practical purposes. But on the opposite side of the ledger, the same electronic sensors that can warn us of an impending heart attack can be used to locate us, track our movements, and measure our emotions and thoughts.

Returning to the positive, some information specialists have suggested providing everyone with a birth number to identify him for tax, banking, education, social security, military, and various other purposes. This would be done in conjunction with the computerization of a wide range of individualized records and their reorganization by birth number. The goal is to eliminate much of the existing multiplicity in record-keeping while at the same time expedite the business of society. There are other valuable payoffs as well. For example, if a person falls ill while away from home, a local doctor could use the patient's birth number to retrieve his medical history and drug reactions from a central medical data bank. But there are risks. The identification number given us at birth might become a leash around our necks and make us the object of constant monitoring through a womb-to-tomb computer dossier. Similarly, the administrative conveniences provided by the high degree of information centralization made possible by widescale use of computers would give those who control the recordation and preservation of personal data an ability to influence our lives, which, if abused by misleading disclosures, might make the so-called "credibility gaps" beween governmental statements and reality look like bidding misunderstandings at the bridge table.

It is all too easy to think of the dangerous aspects of the technology as problems for a future generation. The unpleasant truth is that many of the present applications of computer science constitute a potential or actual threat to personal privacy. A description of one such application will illustrate how the uses of the technology can intrude upon the individual. The August 20, 1969, issue of ***Computerworld*** contained the following story by writer Joseph Hanlon:

> *Little Rock, Ark.*—A national data bank with records of 300,000 migrant children is being set up here. . . .
>
> The system is designed to aid the rapid placement of children in school. Using a Wats [Wide Area Telephone Service] line, a school official will be able to call the Little Rock center free of charge and get the school and health records of the child. With this system, "the child can be placed immediately," according to Joe Miller [no relation to the author], newly appointed director of the Data Bank for Migrant Children.
>
> When asked who had access to the data, Miller replied: "Well, I suppose anyone." Asked if there were any restrictions on the use of the data, he said: "Well, I wouldn't think so."

None of the information in the data bank could be used in a derogatory way, Miller said. Personal information, such as questions about the family and their moral habits, has been excluded, he explained.

But he said that the file contained an "extensive record of tests and health information, including the child's "strong and weak points" in school.

The data bank is being set up by the federal programs divisions of the Arkansas Department of Education under a $426,150 grant from the U.S. Office of Education. School and health records of 300,000 children of migrant farm workers will be stored . . . at the University of Arkansas Medical Center. . . . .

Data will come from files of "record-transfer forms" maintained by the 47 state directors of migrant education. Beginning this fall, copies of these files will be mailed to Little Rock for keypunching and insertion into the data bank. . . . .

According to Miller, the data bank can be updated each time the child moves.

Apparently concerned by the lack of attention being paid to the privacy of the migrant children, reporter Hanlon followed up the story and in the October 1 issue of *Computerworld* he wrote:

> . . . At a Sept. 5 meeting, the Committee on student record transfer of the National Conference of Directors of Migrant Education issued a policy statement and said: "The information disseminated . . . will be available to the U.S. Office of Education and state educational agencies. State educational agencies . . . will be responsible for safeguarding the information received to protect personal privacy. State educational agencies are encouraged to use the same regulations and procedures followed in disseminating other academic and school health records information in their respective states."
>
> Joe Miller, director of the data bank, said that he interpreted the statement to mean that state educational agencies could release information only to schools, and not to private parties. But Lee Lopez, California director of migrant education and chairman of the committee on student record transfers, said that California would release information from the files to anyone who had access to individual school records.
>
> In particular, Lopez said that he would release information to persons identifying themselves as propsective employers, and that he would include derogatory information such as negative character traits. "I'm sure this information would be given out to prospective employers," he emphasized.
>
> Information will be entered into the data bank through a standardized "uniform migrant student transfer form." The form includes normal questions such as academic achievement on standardized tests, physical health, vaccinations, etc. It also includes results of IQ tests and psychological tests and may include comments such as "short attention span." But the form does not have provision for general personal remarks or deprecatory comments such as "lazy."

No doubt an efficient computerized information system of this type will enable school and health officials throughout the country to integrate the children of migrant workers into their educational programs effectively and perhaps upgrade the schooling and health treatment generally accorded these children. However, the United States Office of Education and the University of Arkansas apparently do not appreciate that they are presiding over a data bank containing quantities of highly personal and potentially damaging information that is likely to be preserved long after the purposes for its collection have ceased to exist. If Joe Hanlon's stories accurately reflect the level of sensitivity and thoughtfulness of those who will control and have access to this data bank, what we are witnessing is the construction of an information time-bomb that may have a disastrous impact on children who already are among society's most disadvantaged. These well-meaning do-gooders are unaware of the destructive capability of recorded remarks such as "short attention span" when read ten years later or the possible injury that might be caused by giving the results of an untrustworthy psychological test to a corporate employer or a government official.

Other concerns become apparent on reflection. How reliable is some of the information that will be preserved? After all, we do not have anything that approaches uniform evaluation standards in the nation's primary and secondary schools. Thus, it is unreasonable to assume that everyone who might see a pupil's record can accurately interpret the significance of a remark by a teacher in Modesto, California, that the child "does not play well with others," or "fails to work to his capacity," or is "inattentive." Nor can we be certain of the legitmacy of the reactions of all teachers, especially those who are not trained to handle and have had no experience with the special problems of migrant children.

"The day . . . will come when children learn to operate a computer terminal even before they begin to write."

In the past there was a limited risk that subjective appraisals by individual teachers would be widely circulated. Now, with missionary zeal our well-intentioned information handlers are ready to offer their files "to anyone who had access to individual school records" as well as to "prospective employers." Unless someone begins to give extensive and careful attention to the nature of the data to be recorded, the procedures for insuring their accuracy, the length of time they should be preserved, and the rules regarding those who may have access to the data or the right to augment or change them, there is every possibility that the system ultimately will do more harm than good.

Avowedly, ***The Assault on Privacy*** has been written with a bias. I am one who believes that although the new information technology has enormous long-range beneficial consequences for society, we must be concerned about the axiom—so frequently verified since the industrial revolution—that man must shape his tools lest they shape him. The computer is not simply a sophisticated indexing machine, a miniaturized library, or an electronic abacus with a gland condition; rather, it is the keystone of a new communications medium that eventually will have global dimensions and enormous impact on our lives and those of generations yet to come. Thus, it would be highly simplistic to examine the computer-privacy issue from the perspective of a particular machine operating in a federal office building, in the headquarters of one of the nation's major industrial complexes, or in the recesses of a great university.

On the contrary, there is a strong similarity between the difficulties that gave rise to the complex and multifaceted regulation of the airlines, railroads, radio, and television and the problems that already are generating pressure for the regulation of computer transmissions and facilities in both the public and private sectors. It is against the template provided by past experiences in the communications field that the question of protecting individual privacy in the computer age will be examined.

. . . To avoid any confusion on the point, it should be made clear that I do not oppose the development and utilization of the information technologies and I do recognize that to gain the advantages offered by the computer we will have to strike new balances that may affect individual privacy. Moreover, lest some think that I have cast my net too wide, I am aware that the vast majority of information systems, data banks, and computer applications pose no threat to privacy whatsoever for the simple reason that they do not involve information about individuals. But that proposition is not inconsistent with another—those information systems, data banks, and computer applications that do relate to people bear close watching. The lesson to be learned from the current ecological crisis, which dawns on us only after years of indifference to the wanton soiling of our natural habitat, is that we cannot continue to spawn new generations of computers or to stockpile huge stores of personal data without anticipating and guarding against deleterious side effects on our way of life. . . . .

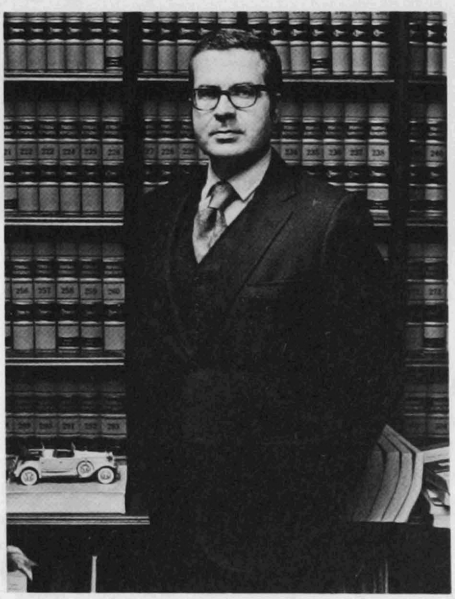
. . . The need for a rational and comprehensive plan becomes obvious once the computer's ever-widening impact on our society and its permeation of our daily affairs is appreciated. With considerable justification, the emerging information transfer networks can be described as society's electronic equivalent to the biological central nervous system. This analogy seems apt because of the computer's unprecedented ability to integrate the activities of social institutions, improve our capacity to respond to human problems, and maintain a massive store of aggregate or individualized information that is subject to instant recall. As such, the computer is capable of immense social good, or monumental harm, depending upon how human beings decide to use it. As one commentator has observed: "Processed information about individuals could be the basis for a police state. . . . But on the positive side this information could and should compel government to take account of every single individual in the development of its policy. Just to exist will be to participate." Given the significance of the new technology, a response from the national level seems desirable and, to me, quite natural.

And if some of the foregoing has seemed slightly alarmist in tone, that may be necessary to counteract the all-too-complacent attitude of many citizens toward the management of our affairs by astigmatic administrators in both government and the private sector. As e. e. cummings once observed, "progress is a comfortable disease." The considerable benefits conferred on us by computer technology may opiate our awareness of the price that is being exacted in terms of personal freedom. It thus seems imperative to sound the klaxon as a warning that the computer may be precipitating a subtle realignment of power within our society as it begins to play a greater role in the decision-making processes of practically all of our significant governmental and nongovernmental institutions. As the importance of information increases, the central issue that emerges to challenge us is how to contain the excesses of this new form of power, while channeling its benefits to best serve the citzenry. If we really believe that personal privacy is fundamental to our democratic tradition of individual autonomy, and that its preservation is thought desirable, then my raising a voice against the trend toward a Dossier Society seems justified.

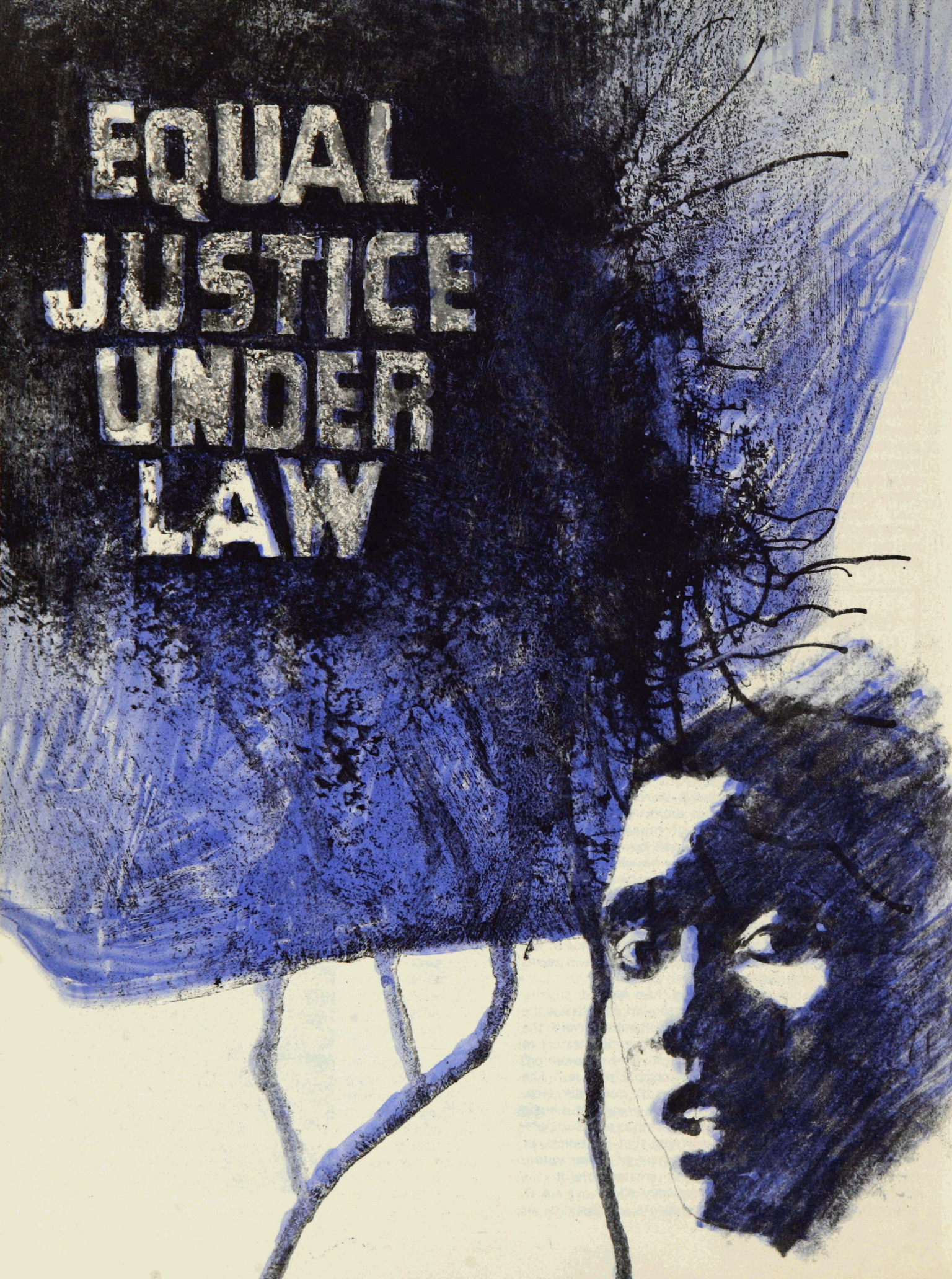
Perhaps the single most imperative need at this point in time is a substantial input of human resources to help solve the difficult problem of balancing privacy and efficiency. The experimental laboratories exist—the federal agencies and several private organizations can provide the necessary structural context in which to test the privacy-protecting capabilities of hardware, software, and various administrative procedures. There have been hopeful developments in several critical professions. For example, the scientific and business communities are becoming attuned to the issue, privacy-protection techniques appear to be receiving increased attention in the literature, and the National Academy of Sciences now has a Project on Computer Data Banks underway.

But I fear that my own profession—the law—is being somewhat laggard in coming to grips with the broader ramifications of the computer. Leading groups within the legal fraternity, such as the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and the American Bar Association, have yet to energize themselves in any significant way. If these associations continue to slumber and fail to join forces with corresponding organizations in other disciplines, we probably will continue to stumble in the dark. There will be no one to blame but ourselves if we then discover that the mantle of policymaking is being worn by those specially trained technicians who have found the time to master the machine and have purpose. As Jacques Ellul has pointed out: "That it is to be a dictatorship of test tubes rather than of hobnailed boots will not make it any less a dictatorship."

"... we must be concerned about the axiom ... that man must shape his tools lest they shape him."



Arthur R. Miller


EQUAL
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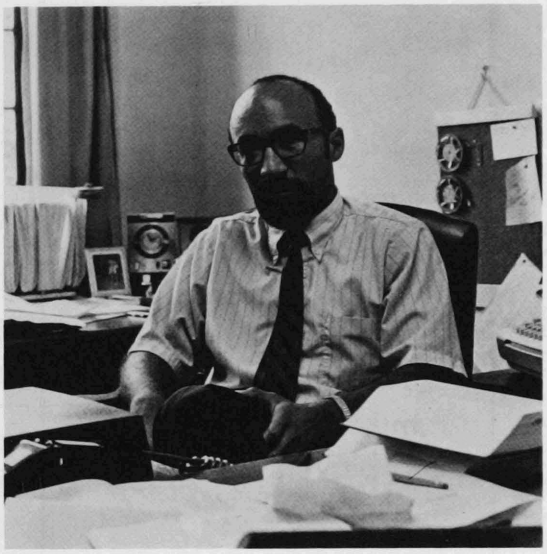
BLACK PERSPECTIVE

JUSTICE AND THE JUDICIAL SYSTEM



BY PROFESSOR HARRY T. EDWARDS

Based on a speech delivered at the University of Michigan Center for Afro-American and African Studies, Nov. 4, 1970

To most blacks in America, "equal justice under law" is nothing more than a neat slogan etched into the stone and marble in and around those glorious structures we call "courthouses."

Judge J. Skelly Wright of the U.S. Court of Appeals, in an article dealing in part with the plight of the poor black ghetto dweller, has explained why this is true:

"The law's inhumanity to . . . minorities generally, is nowhere more apparent than in the administration of criminal justice. . . the law's performance is decidedly uneven in at least three categories: (1) crimes committed by the poor more often than not result in prosecution, whereas white collar and organized crime goes unreported, undetected, and unprosecuted. (2) Where both kinds of crimes do result in prosecution, the poor are convicted more often. (3) Even where both kinds of offenders are convicted, the poor goes to jail more often."

When, as Judge Wright tells us, certain groups in society are prosecuted and convicted while others are treated less harshly for the same alleged offenses, then we must recognize that "justice" and the "judicial system" must be some sort of a GAME in America. If this is so, then we must ask ourselves, why do we, as blacks, always lose in this game?

The reason is simple: we don't have enough players!

Let us understand that there are four principle teams in our judicial game in America. These are: the legislative team, composed of the players who make the laws; the administrative team, composed of the players who carry out and enforce the laws; the judicial team, composed of the players who interpret and apply the laws; and the team of practicing attorneys, composed of players who counsel, prosecute, and defend those subject to the laws. If "equal justice under law" is supposed to be the basic rule of the judicial game in America, then it is my premise that there must be more black players on the teams so as to provide us with equal representation.

From the beginning of this nation, white cultural bias against blacks has been

formulated, articulated, and approved by lawyers. At the Constitutional Convention in 1787, a black man was defined for constitutional purposes as 3/5 of a person. Of the 56 delegates at the convention, thirty were lawyers.

This domination of legislative bodies by lawyers carries over to the present day. At the federal level today, of 435 congressmen, 242 are lawyers, and of 100 senators, 68 are lawyers. Only 9 of the 435 Congressmen and 1 of the 100 senators are black. (These figures reflect the Congressional population prior to the November 3, 1970 elections.)

Moving to the state and local levels, we find that state legislators, city and county officials, school board members, and the like number over 300,000, and according to American Bar Association figures, "the percentage of lawyers has remained as a fairly constant 25 per cent since 1900." But, as with the federal level, very few state and local legislative positions are held by blacks. If the figures are combined, it is found that an overwhelming percentage of the players at the federal, state, and local levels are lawyers. These lawyers are concerned with making the rules, codifying the mores, and spelling out the cultural standards by which the nation is to be governed. But less than 1/4 of 1 per cent of all these players on the legislative team are black.

The administrative team is no better. Among the administrative team players we have law enforcement officials (excluding patrolmen), the executive branch of our national government, governors, mayors, commissioners, members of regulatory boards, and so on. The ABA has recently reported that "ten per cent of American lawyers are employed in governmental positions" and "in the executive branch of government, law training is a recommendation for employment in all kinds of policy-making and administrative agency positions." But again we find a gross underrepresentation of black players on the administrative team. For example, there are only 51 black mayors in the United States; only 228 black law enforcement officials; and but a handful of other black administrators in America today.

In the judicial game the two most important teams are probably those consisting of the judges and the practicing attorneys. Among the thousands of judges presently sitting in the United States, only 214 are black. At the state and municipal court level most of the black judges are sitting in New York, Illinois, Michigan, California, Ohio, and Pennsylvania; this means that in most states in America there are few if any black judges.

If there is a sense of urgency generated by the paucity of black participation in this judicial game, that sense of urgency should now reach a level of alarm when we consider the number of black lawyers presently practicing in America today. The role of the practicing lawyer, who advises, counsels, prosecutes, and defends those subject to the system of justice, suffers no better than the other roles.

Of the nearly 300,000 lawyers in America today, less than 4,000 are black. In a free, democratic society that prides itself on rule by law, we find an over-all white ratio of 1 lawyer to every 560 white persons. But we can note that there is only 1 black man practicing law for every 4,800 black persons in society. But even 1 to 4,800 is illusory, for although it is 1 to 820 in the District of Columbia, or 1 to 1,500 in Illinois, and even 1 to 2,900 in Michigan; witness the imbalance of 1 to 12,500 in Texas, 1 to 37,500 in Georgia, 1 to 16,000 in North Carolina, 1 to 38,500 in Louisiana, 1 to 40,800 in Alabama and 1 to 75,400 in South Carolina.

"If 'equal justice under law' is . . . to be the basic rule of the judicial game in America . . . there must be more black players on the teams . . ."

In summary, it will suffice here to say that "white power," not "black power," is the reality of the judicial game in America, and this, more than anything, explains why blacks are the losers.

The white power concept was legalized in 1856 by the Supreme Court of the United States in the famous *Dred Scott* decision, when the Court, in a unanimous opinion, ruled:

"That a person of African descent, whether emancipated or free, could not be a citizen under the Constitution of the United States and that he had no right which a white man was bound to respect."

Even after the adoption of the Thirteenth Amendment in 1865, the Fourteenth Amendment in 1868, and the Fifteenth Amendment in 1870, which respectively abolished slavery, bestowed citizenship on black Americans, and gave them the right to vote, the white power concept was re-established firmly in our constitutional law by the *Slaughterhouse Cases* in 1873, the *Civil Rights Cases* in 1883, and *Plessy vs. Ferguson* in 1896, in which the Supreme Court of the United States affirmed racial segregation under the guise of "state action" and "separate but equal" theories and left the basic human rights of black Americans under the control of the states. It was not until 1950 in the higher education case of *Sweatt v. Painter,* and in the interstate travel case of *Henderson v. Unites States,* that the U.S. Supreme Court began to erase in constitutional law racial segregation and discrimination by abolishing the infamous doctrine of "separate but equal."

Modern history is now beginning to destroy the invincibility of the white power concept. Blacks are no longer willing to suffer in silence.

Malcolm X once very aptly observed that:

"The worst crime the white man has committed against us is to teach us to hate ourselves."

But the tide has now begun to change. The black man has come to realize that he needs a zealous, intense, and strong black power concept, both to counterbalance the notion of white supremacy and to attain self-identification, self-fulfillment, self-acceptance, and self-integration.

Black men, who have not been players in the judicial game, are now shouting for change from the sidelines. Their shouts have resulted in change. Meager, token, often insincere. . . But change nevertheless.

The white man in America does not like to be exposed as a blatant hypocrite. He has therefore begun to concede the fallacy of white power as a viable constitutional principle. But the process of

eliminating the constitutional basis for the white power concept from our law has been long and costly. It has been accomplished on a tedious case by case basis. For example, in 1968, in the case of *Jones vs. Mayer*, the Supreme Court circumvented the "state action" theory and gave recognition to the Civil Rights Act of 1866 by applying a "private action" theory to prevent racial discrimination in the sale and rental of real estate. Likewise, in 1969, in the case of *Daniel vs. Paul,* the Supreme Court held that where an alleged "private club" is operated to provide recreational facilities that affect interstate commerce, it cannot practice racial discrimination as prohibited by the 1964 Civil Rights Act. During the 1960's Congress and the Supreme Court of the United States have repealed and struck down virtually all of the legislation or court decisions supporting the white power concept as a legal basis of racial discrimination and segregation in America.

So we can concede—there has been *some* progress.

Now let's put the problem in perspective. Some of the rules of the judicial game have changed during the past 15 years, but the black man is still the loser. Why? The answer is still the same, we do not have enough players. We are not the law makers, the administrators, the judges, or the lawyers. So even though some of the rules of the game have been modified, we are, for the most part, still watching the game being played from the sidelines.

What can we do? Bear with me for a few moments, so that we can re-examine our statistics from a different vantage point.

We recall that there are about 3,800 black lawyers in America today. There were about 2,200 in 1960. Thus, in the past ten years, the number of black lawyers has grown by 75 per cent. Now, if we hypothesize based upon this historical data, we find the following:

1. To get proportionate or representative participation by black lawyers based on the 1960 black population level of 19 million, would demand about 34,000 new black lawyers *today*. This would just equal the 1 to 560 ratio of white lawyers to white population.
2. Today's 3,800 black attorneys growing at a compounded rate of 75 per cent every decade would not equal the necessary 34,000 black lawyers until the year 2010.
3. Remember that this is assuming that:
   a. The black population will not increase over the 1960 levels, which it already has.
   b. Black needs in kind, type, and quantity of representation will not increase, which is refuted by the very needs premising this discussion.
   c. All present and future black lawyers will exclusively minister to the legal needs of the black community, which is not a present reality.
   d. None of the present or future black lawyers will die, choose to leave the law profession, or in any other way deny his services and skill toward meeting black needs.

". . . witness the imbalance of . . . 1 to 38,500 in Louisiana, 1 to 40,800 in Alabama, and 1 to 75,400 in South Carolina."

Granting that it is unrealistic to suggest that the black community's needs for legally-trained black representation may be delayed for four more decades, we still face the fact that to develop the requisite 30,000 plus new black legal practitioners will call for 750 black graduates each and every year for 40 years.

These 750 new black lawyers must be developed by the existing instrumentalities of legal training, and the burden is upon society to make a massive step *now*. Considerations of finance, physical resources, curriculum, etc., are secondary when measured against the need. In fact, these considerations are more often interposed only as "excuses" rather than as considerations and, as such, serve only to erect further barriers to increase black participation in the system of justice.

I recently read a 1969 letter written by Macklin Fleming, a Justice of the Court of Appeals for California, to Louis Pollak, dean of the Yale Law School, in which he criticized the admission of 43 black students to the school without regard to their qualifications, under what he called "regular standards." He predicted these black students would find themselves unable to compete with the white students, and the result would be agitation by the blacks to change the environment to their own level of competition, and thus reduce standards of performance.

In his reply to Mr. Fleming, Dean Pollak pointed out that the admissions policies at Yale were not new, for other indices of promise besides college grades and LSAT scores had always been considered. Only the number of black students admitted had been changed. He felt that increasing black enrollment was justified, for:

"Leadership training is needed on many fronts but it seems particularly clear that the country needs far more and especially far more well-trained black lawyers. Happily law schools throughout the country are recognizing the depth and urgency of the training obligation which our profession must assume."

Given the chance, blacks can and will perform and hold their own in the nation's best law schools. As Louis Pollak, former Yale Dean noted, "so many black alumni have in entering the profession, speedily demonstrated professional accomplishments of a high order."

There were between 75,000 and 110,000 total law students in 1969. Black enrollment was approximately 2,400, or between 2-3 per cent of the total. The ABA's estimated figures for 1970 suggest that there will probably be a slight increase in black enrollment this year. But even so, this would only give us a figure slightly greater than the 750 graduates per year minimum needed to reach a state of effective black representation in the judicial game by the year 2010.

A 1970 *Time*-Louis Harris survey revealed that 40 per cent of blacks between the ages of 14 and 21 felt that violence was necessary to win black rights. This age group is the one upon whom we apparently will try to posit the burden of four more decades of delay before securing equal legal representation. Can we ask or expect their patience?

Some people have suggested that the

" . . . to train some blacks as para-legals . . .
is just another scheme to appease blacks . . ."

way to respond to the legal needs of the black community is to train some blacks as para-legals, that is half-lawyers. But recognizing it for what it's worth, this plan is just another scheme to appease blacks in the short run and ignore the basic problem. The fallacy of this idea is that it, like the white power concept, assumes that blacks cannot be absorbed as players in the *real* judicial game in America.

It is important to stress here the vast responsibility of employers to open their doors for equal employment of black law school graduates. Several black law students at The University of Michigan—even this year, in 1970—have commented that they are finding doors are still closed because of their race. This is not surprising, but if this is the case, it would be a sad commentary on the lack of progress in the legal profession. It would seem that some within the white establishment are still looking for *THE* most outstanding black student, with the remainder being written off as suited for only the most meager legal aid or government jobs. This, of course, is blatant discrimination, because for years even the "average" white student at the University of Michigan Law School has succeeded with relative ease in finding a place in the job market in the legal profession upon graduation.

Unfortunately, some employers seem to harbor the erroneous notion that blacks graduating from law schools today have somehow gone through a less strenuous program than their white counterparts. At Michigan, as at most law schools, this is a ludicrous suggestion, if for no other reason than the fact that exams are graded anonymously by number, and no concessions are given to *any* student. *All* students must achieve satisfactorily according to the same standards. Such erroneous notions are usually mere excuses for denying qualified black students access to decent jobs, and thus denying them status in the *real* judicial game.

Notwithstanding such obstacles, I suggest that we must continue to press for admission to the best law schools throughout the nation, and then we must be prepared to assume important positions on each of the four teams in the judicial game. If we fail to assume these positions, we will again be playing right into the hands of the racist portion of white America.

We *can* be participants and we *will* be participants in the real judicial game, for blacks *must* have a full share in the power and responsibility of running this nation—if this nation is to survive as a free and democratic society.