The Transcript

Volume II—No. 4 | RUTGERS UNIVERSITY SCHOOL OF LAW, NEWARK, N. J. 07102 | March 1, 1967

—Staff Photo By Fred H. Kumpf

MOOT COURT TEAM poses in Rutgers moot court room. Members are, left to right, Bernard D. Pearl, Peter G. Ernster, captain, and Anthony G. Wahl, all '67.

Rutgers Team Eigh h In Moot Court Fin ls

By DANIEL FRIEDLAND

The Rutgers Moot Court Team advanced to the quarter final round of the National Moot Court Competition last December before bowing to Columbia, who went on to take first prize. This was the second time that a Rutgers team had made it to the national competition.

Arguing before a distinguished panel of judges and attorneys at the House of the Association of the Bar of the City of New York, the Rutgers team, composed of Peter Ernster and Bernard Pearl with Anthony Wahl on the brief, defeated Cornell Law School on its way to the quarter finals. Rutgers finished eighth in the competition for the best brief.

Nineteen teams participated in the final rounds. They were chosen from about 100 schools that participated in various regional competitions leading up to the national competition.

On route to its first triumph in its regional competition last November, the Rutgers team defeated Duquesne and Seton Hall law schools. Rutgers also won the best brief award in the six-team regional competition, held in Philadelphia.

The case used throughout this year's competition, Yugdab v. The People of the State of Erehwon, dealt with th onstitutionality of the admi on of evidence obtained by use of electronic eavesdrop g devices pursuant to a cou rder.

The Moot Court Team com- posed of the top three ontes- tants in the law sch s an- nual moot court com tion, which is held each spr

Ernster, who was captain of the team, expressed the team's thanks to Mark Hughes Jr., Newark attorney who directs the school's moot court program, and to Profs. Allan Axelrod, Charles Cottingham and Robert Knowlton.

Profs. Meet To Consider SBA Report

By JOHN L. SCHRUMPF JR.

The law school faculty will meet today to consider revisions in the school's honor system recommended by a Student Bar Association committee.

Key provisions in the Honor Code Investigative Committee's report issued Nov. 28 would compel automatic suspension for one year as the minimum discipline for violations and would have the dean appoint two third-year students to the committee which tries alleged violations of the honor system, presently the faculty's Committee on Scholastic Standing.

Dean C. Willard Heckel, chairman of the Committee on Scholastic Standing, promised his full support to the Student Bar proposals with the exception of the one-year suspension as the minimum penalty. He said the one-year minimum penalty provision would cut deeply into the wide disciplinary discretion the committee presently has.

An exercise of that discretion occurred last December when the Committee on Scholastic Standing placed a student on disciplinary probation for violation of the rules established by the Appellate Moot Court course. Although the committee found as a fact that the student had no intent to violate the honor system, it concluded that accidentally and

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Rutgers Prevails In Suit Charging Law Review Bias

By JOSEPH B. THOR

Rutgers University has successfully defended a suit claiming the Rutgers Law Review unconstitutionally discriminated against a would-be contributor in refusing to publish his article.

Judge Robert Shaw of the United States District Court for the District of New Jersey granted the University's motion for judgment Dec. 21 against the plaintiff, Alfred Avins of Tennessee, a professor at Memphis State University, who claimed the rejection of his piece violated the privileges and immunities clause of the United States Constitution as made applicable to the states by the Fourteenth Amendment. Avins had sought a declaratory judgment and a restraining order.

In granting the motion Judge Shaw concluded that "it has not been shown that there has been a denial of any substantial civil right for which the plaintiff is entitled to redress."

He also found as a fact that the reasons for rejection as stated by Lee Calligaro '67, the law review's articles editor, were valid and "that this particular article was one which it would not be unreasonable for any editorial review board of a law review to reject."

The article Avins submitted was entitled "De Facto and De Jure School Segregation: Some Reflected Light on the 14th Amendment from the Civil Rights Act of 1875."

The article followed the conservative jurisprudential approach, which Avins described in his complaint as using legislative history as "the only proper way of interpreting a constitutional provision."

"On information and belief," Avins charged in his complaint, "The Rutgers Law Review has a policy of only accepting articles reflecting a 'liberal' jurisprudential outlook in constitutional law which rejects the primacy of legislative his-

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Faculty, SBA Due To Take Positions On Adopting J.D.

The time apparently has come for the Rutgers Law School faculty and the Student Bar Association to take formal stands on the J.D. degree. Despite widespread discussion among students and faculty members during the last few years, neither body has voted on the question of replacing the present LL.B. degree.

C. Willard Heckel, dean of the law school, has indicated an intention to bring up the topic for discussion at the next faculty meeting to see if any interest has grown. He added, however, that the faculty is not presently considering adopting the J.D. degree.

The Student Bar Assoication, according to its president, William S. Greenberg '67, will consider a recommendation on the J.D. at its next meeting. Some observers feel that a favorable recommendation by the SBA would compel the faculty to take a definite stand.

The SBA has had committees studying the J.D. for the past two years. No report was ever received.

Two years ago practically the entire student body of Rutgers Law School signed a petition requesting the faculty and the University to adopt the J. D. degree. No action was ev-

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D.A., Reporter, Professor Clash on Pre-trial Publicity

BY RAYMOND G. CARRION

"News coverage in a criminal case has little effect, if any, on a jury," Essex County Prosecutor Brendan Byrne said Dec. 8 in a three-way discussion on "Free Press vs. Fair Trail."

Sidney E. Zion, legal reporter for The New York Times, also saw the problem of pretrial publicity as somewhat of an illusion. He reported that he had questioned reporters who had witten about several criminal cases and they could not remember what they had written. He wondered how an individual juror could be expected or presumed to remember what he had read once or twice.

Rutgers Law Prof. Robert E. Knowlton took the other view. He claimed it was "logically possible" that pre-trial publication of evidence would be prejudicial to an accused because of the danger of jurors forming an opinion as to the accused's innocence or guilt.

Byrne said there should be no conflict between the two constitutionally protected rights and that the real question is how to accommodate both rights in our societal value structure.

He indicated that there may

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Libel Play Probes Faculty Activities

By SAM MATLIN

Members of the senior class, in its annual libel play Dec. 20, staged a HUAC-type hearing into alleged subversive activities of faculty members of a nameless law school near the banks of the Passaic River.

Members of the SRO audience at Second Presbyterian Church generally agreed that, despite one or two instances of bad taste, the production con-

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Kinoy Describes HUAC Bout

Calls Court Action Most Important

BY ELLIOTT COLLINS

The real importance of what happened in Washington last summer took place the day before the hearing of the House Committee on Un-American Activities, Rutgers Law Prof. Arthur Kinoy told a large student audience Nov. 30 at a Student Bar Association program.

A picture of the "small but vigorous" Kinoy being forcibly ejected from the hearing by a burly marshall who had him in a stranglehold made the front page of almost every newspaper in the country and drew dramatic attention and disapproval to the procedures of the committee.

Prof. Kinoy was subsequently convicted in District of Columbia Municipal Court of disorderly conduct during the hearing in the course of representing his client. The decision is under appeal.

But the day before a federal district judge had certified the question of whether the House Committee on Un-American Activities is a violation of the First Amendment as worthy of consideration by a three-judge panel, which would have the power to grant a permanent injunction.

In addition the judge — "the most conservative judge on the D.C. bench"—issued an unrequested order temporarily restraining the HUAC from meeting.

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ARTHUR KINOY

Law Review . . .

MAKING THE GRADE

In order to even try out for an editorship on the Rutgers Law Review, which receives over $10,000 of the school's general funds each year, a student must be in the top quarter of his class according to the grades compiled in the first of his three years here. It is conceivable that this limitation was established with good reason originally, but its continued existence is now questionable.

The top-quarter limitation appears to serve no purpose in insuring that only top men get to compete for law review. Of the 30 people in the top quarter of the Class of 1967 at the end of its first year, 13 no longer were there at the end of the second year. Of the 13 people who took their places, only one got to compete after the third semester. It would seem that at least 12 academically qualified people from that class did not get to compete. This assumes that being in the top quarter after two years is no less of an achievement than being there after only one year. There appears no reason to assume otherwise.

The dean of the law school freely admits that, as the quality of the student body has increased over the years, most of the students now have the smarts to do law review work, although some can not write sufficiently well. These poor writers would not be able to survive the competition period even if they were in the top quarter.

Besides quality, a more meritorious reason for the top-quarter restriction might be to keep the size of the competing group manageable. Accepting the law review's statement that one editor can handle no more than three competitors, a problem could exist if competition were opened up to more students than at present (and a large number accepted). But that problem would only exist for one year of transition. As each additional editor were taken, each could handle three additional competitors.

There is the additional consideration that with more editors and a fixed number of pages, some competitors would not get pieces published. But even now student pieces are not credited to specific writers. More competitors would allow for the re-writing of articles by other students, as is the practice with other law reviews and many law firms.

There are many ways in which additional students could be allowed to compete for law review. One manner might be the addition to the curriculum of an optional course in legal writing, which would be in place of the present competition for law review. Students satisfactorily completing the course would be considered for membership on the law review. Competitors would get academic credit for their efforts, whereas presently competitors get none unless they are editors during their senior year. As the course would be optional, it is assumed that only those who have the desire and perseverance to do law review work would enroll.

The course could be administered by those editors of the law review who do not have specific positions, similar to the manner in which the Appellate Moot Court course is run. Faculty members could grade the output or a pass or fail could be given. In any event such a course would solve the problem of the faculty members who realize that many students are being deprived of legal writing experience, but do not want to establish a compulsory course and have to read a large quantity of material.

Underlying all this is the idea that grades and resulting class rank may not be a valid basis for denying a student a chance to wear the law review mantle. The Moot Court Board has dropped its grade requirement and the Legal Aid Society is going to do so. The law review, the faculty and the Student Bar Association might want to study an extension of this to the law review.

The Transcript

Vol. II, No. 4 Rutgers University School of Law Mar. 1, 1967

Winner, Special Recognition Award, American Law Student Assn.

A student newspaper published under the auspices of the Student Bar Association of Rutgers University School of Law.

Editorial views do not reflect the official position of Rutgers Law School or necessarily indicate the opinion of the student body or the Student Bar Association.

Letters to the Editor and signed articles of opinion are invited.

Joseph B. Thor: Editor-in-Chief
Arthur P. Attenasio: Magaging Editor

Staff: Raymond G. Carrion, Elliot Collins, Daniel Friedland, Adam Lawrence, Sam Matlin, John L. Schrumpf Jr., Kathryn T. Trenner.

Photography: Fred H. Kumpf

Observer

LAW REVIEW: A RUTHLESS IN-DEPTH STUDY

By Adam Lawrence

Few[1], if any, or perhaps fewer[1], seriously[2] question the necessity of law reviews. Law reviews promote a school's general welfare, provide for the common[3] defense[4] and secure the[5] blessings of liberty of placement for themselves and their competitors. "But within each burgeoning begonia,"[6] said Torquemada,[7] "sits a thorn." "Upon every radiant brow," said Ivan the Terrible,[8] "lies a dormant wrinkle."

FOOTNOTES

Footnotes may be abused in innumerable ways.[9] They may be arid[10] and uninformative.[11] They also may be used as devices to avoid explaining something in the body of the article itself, see note[12] Aside from the type,[13] the number of footnotes[14] provides a penetrating insight into the intellectual capabilities of the writer. It may be roughly generalized[15] that the number of footnotes is inversely proportionate to the creativity of the articleer.

SUBJECT MATTER?[17]

A trend has been evident which leans in the direction of giving the body of a law review article equal time with the footnotes. This trend should be encouraged.[10]

1. Two elderly gentlemen were overheard by the author questioning the necessity of law reviews about two years ago on the uptown AA train between 116th and 125th street. Another instance was reported to the author by the author's sister-in-law, who said she was standing next to two other people who had overheard another person in a drunken stupor in the parking lot of the Brussels World Fair cursing the concept of law reviews. (This latter sighting of a drunk the author tends to discredit, preferring instead to attribute the incident to swamp gas.)

2. One of the elderly gentlemen, cf. note 1, supra, was giggling uncontrollably.

3. "Common," e.g., ordinary, run-of-the mill. C.f. Words and Phrases Vol. III. Bouillabaisse to Cuneiform: " . . . common, let's get on with this damn case." Petulant, J. in Abigenses v. Ordio 102 A. 111, 115 Conn. 90, 23 ALR 1039, as grounds for a mistrial. Cf. "mistrial," Descriptive Word Index (14) (a) (1), where Riddler, J. J. C. in anudder (sic) case remarked: "If attorney for Indian no come to court, he mistrial."

4. What did one tom cat say to the other tom cat on the ground?

5. The words: "the," "and," "but," "for," "too," "hereinsoafter," "gesundheit," and "Jumpin Jimminy, Unca Bob" may be used interchangeably whichever best effectuates the purpose of this article, which is to get the thing published.

6. A flower. Cf. Black's Law Dictionary, also a command, 'begone there " Cf. note 3, "common" 39 USCA 171 (a): Agricultural Quarantine and Aphids and You. Cf. also a Charlie Parker piece by this name a few years back, quoted approvingly by Marshall, C. J. in **Hippolite v. Taine** 13 Roscoe 47:

" . . . be baba de dooodoops doop
do daph de doah be bae dah doop."

7. An inquisitor. Originally, according to La Rosano in "Spain, Moors, Mores, Aphids, and You," quite a decent fellow known as Mada which means "mothing" in Spanish. But as his mind and ambition became increasingly twisted, "Torque" was applied. Or was it the other way around?

8. Also said, "The greatest happiness for the greatest number." Bartlett's Familiar Quotations, p. 563. His whole name was really "Ivan, the Terrible Poet" (although the radiant brow image is far superior to the burgeoning begonia image - with the exception of the alliterative "b's).

9. State v. Lohengrin, 233 S. W. 2d 414 (severe punctuation), Ipecac v. Bumgum, 108 P. 2d. 17, 95 Utah 1 (uncontrolled use of colon), Fagin v. Dorf. (Ohio Juv. & Dom. Rel Ct., unreported) (Removal of prenatal exclamation marks).

10. See 16 Hawaii L. J. 33, Yong K'hai, "Rights of the Mauna-Loa Redevelopment Ass'n in Free Standing Grass Huts," where Mr. Yong spent two whole pages of footnotes attempting, in vain, to elucidate certain landlord tenant issues. For instance, he writes:

. . . y'ang koo an-chi bokai'do
anseiku, k'loki buang si ando."

When he could have written:

When huts are cheap we live content
When prices changed, she upped and went.
With each new lease her heart grows cold.
Our relationship is rent-controlled.

Which, translated, becomes:

I told her "Yes, you may share my room."
My super had other ideas, poor me.
Alas he sublet 'er to another bedder.
I miss my naked licensee.

11. Bracton (1512-1470) first recognized the class of footnotes we know today as uninformative ones (unes uninformativas) in his lengthy work, "De Minimus," (all about Minnie Mouse) in which he said, in Middling to Fair English, certain things which need not be repeated. The jist, or rather, as Bracton would have it, the joust of the thing was that footnotes could be divided up into the soporific, the spurious and the spontaneous. The first class, to which Bracton assigned (arbitrarily in Holdsworth's opinion) the number one, characterized by its length, convolutions and tediousness. The second class was comprised of footnotes which served no informative purpose but existed as so much academic veneer. The third class is those bona fide footnotes arising, by necessity, from the body of the article. Nobody reads Bracton any more.

12. Too often footnotes are used when the substance they contain rightly belongs in the main article but is omitted either because the articleer was too lazy to incorporate his ideas into the existing sentence structures, or he couldn't. This is actually what I meant when I said, supra, that footnotes may be used as "devices to avoid explaining something in the body of the article itself."

13. "Type," in the sense of "variety," as variations.

14. Number, in the sense of how many of them there are - not the particular number affixed to a particular footnote. As those the number 14 was possessed of any special significance. What a ridiculous idea.

15. In over 50,000 law review articles analyzed before this in-depth study was begun the author could not find one confirmation of his generalization. This finding is significant as it tends to question the applicability of the generalization. But with the publication of this article, the author feels the generalization will have been validated.

16. It is well, at this point, to speak of the absence of the "creative" in law writing. But before the "creative" is spoken of, it would be even well-er to speak of the first sentence in this note. Now many of the ablest critics of things (which raises a point Taney, may he rest in peace, also used to raise: "Can one," said Taney, "criticize no-things?" - a sentence which set the majotriy pondering and eventually resulted in Taney's civil commitment. Be that as it may, it will often happen, even in the best of law reviews, that a note, scrupulated to elucidate a point in the article will in turn need further elucidation by another note. For example, in Note 9, supra, Ipecac v. Bumgum alone means nothing to the average reader who casually picks up a law review at his newsstand. I submit that it is wrong both legally and morally, to arbitrarily truncate a note at a citation but would propose extending the citation to an explanation of the citation and then one further step back to an explanation of the explanation. (This system would supply a ready means of eliminating unzealous competitors, since anyone who has left a note in the first or second generation without extending it further back proves himself to be entirely unmotivated.)

17. Yes

18. For an interesting discussion of an out-of-state creditor's right to lean, unencumbered on an attachment without being executed, read further in this note. Rogers, V.D., in Overholse v. Getz, 133 U. S. 131, 2 L. Ed. 2d 963, 980, had little, if nothing, to say on the subject. His per curiam sentence, affirming the lower court without opinion, should be read in its entirety.

19. It all depends on the sophistication of the student body. Some schools have trained pep rallies and cheering squads. Others have simply held cake sales and sold flowers and vegetable seeds.

Student Aristocracy

Editors of Law Review Receive Status, Advantages

By KATHRYN T. TRENNER

In its twenty-first year of publication, the Rutgers Law Review contains articles of first-rate quality. In return for this substantial achievement, the members of the law review staff receive status and advantages that are also substantial. The extent of these special considerations gives the impression that equal rights minded Rutgers Law School is not only financing, but cultivating a student aristocracy.

This feeling is not unique at Rutgers. Speaking of law reviews in "The Bramblebush," Karl Llewellyn said: "We have in law schools an aristocracy of a peculiar kind. We may almost say it is a perfect aristocracy. One achieves membership exclusively in terms of his performance."

It is the barriers which must be overcome before the law student gets to perform, however, that are under question by a number of students, and not only at Rutgers.

The Harvard Law Record reported recently that the Harvard Law Review is studying the possibility of recruiting other than the highest-ranking students. The move apparently was occasioned by a student-faculty committee which is studying the validity and the impact of the Harvard Law School grading system. Presently those students in the top 10 per cent of the class are automatically editors of the Harvard Law Review. There is no written competition.

At Rutgers two feats are necessary for a student to become a member of the law review staff. First a would-be "aristocrat" must compile examination grades which place him in the top 20 to 25 per cent of the first-year class. Then he must write two "publishable" articles.

Whether an article is "publishable" for purposes of election to the law review is determined by the current editors of the review. The presumption is that a competitor if going to be successful and a vote of a majority of all the editors of the law review—not just those present—is necessary before a competitor is dropped.

A few years ago, however, a competitor who after nine months of effort had had one article published and whose second piece was reliably reported to have been of good quality was not elected. The student, who happened to have a beard, was notified in the middle of the night. "You didn't make it," the caller said, and hung up.

Despite the heavy investment of time and effort a student puts into law review competition, he has no means of appeal from the editorial board's decision.

THEORIES ON PURPOSE

There are two major theories as to the purpose of law reviews. The educational theory places primary emphasis on defining the problem, exacting research, high power of discrimination in handling results and imagination in arriving at conclusions. The reform theory stresses opportunity to be a force for change through influencing judges and lawyers.

Law review is the most meaningful educational experience in law school, according to Dean C. Willard Heckel '40, a former editor-in-chief of the University of Newark Law Review, which was succeeded by the Rutgers Law Review in 1946.

"The intensely individual nature of the work transcends seminar and classroom experiences. All aspects of legal education are brought into play," he said.

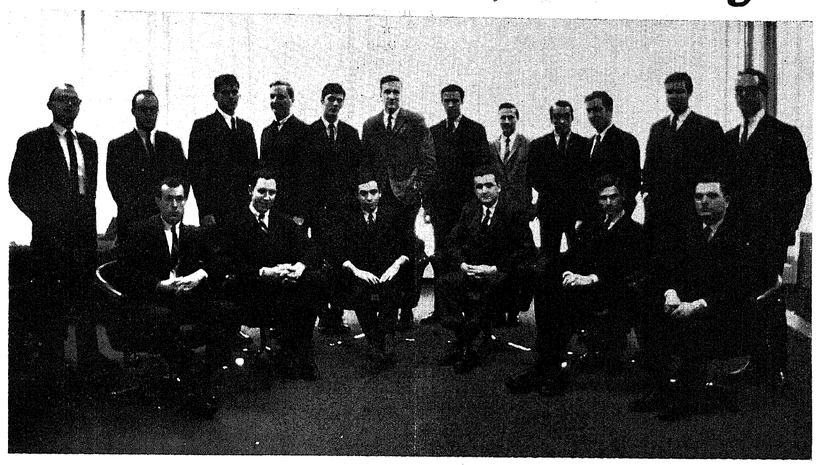
Prof. Ruth Ginsburg (Harvard Law Review '58, Columbia Law Review '59) said that a student's greatest gain from law review is the development of a critical, questioning attitude toward his own work.

"This grows each time the student sees his 'best' work being ripped apart by the editors," she said.

Law review also is a means by which Rutgers Law degrees are compared with those of other schools.

"It is the public face," said Prof. J. Allen Smith (University of Florida Law Review '48). "And since students have complete control of the review, the product demonstrates the caliber of the faculty as teachers," he added.

Most students, however, consider the most tangible value of law review to be its door-opening function, since most employers prefer law review people. Reasons for this preference include the facts that these students generally rank at the top of the class, have proven their capacity for hard work and have evidenced their legal skills. Llewellyn thought this preference arises from a self-perpetuating clique that likes to keep its bread buttered.



—Staff Photo By Fred H. Kumpf

RUTGERS LAW REVIEW Board of Editors. Seated, left to right, are: Robert Cirafesi, student writing editor; Stanley Kallman, projects editor; Melvin Altman, editor-in-chief; William Robertson, managing editor; Jeffrey Cahn, research and development editor; and Lee Calligaro, articles editor. Standing left to right, are: Richard Clemack, business manager; Arthur Penn, Theodore Maloof, Roger Cukras, Michael Kirschner, Howard Davis, Thomas Ashley, James Smith, Frederick Gruen, Thomas Winfield, III, Lawrence Smith and Jeffrey Mintz. All are '67.

Besides a boost in job seeking, law review members receive other advantages that set them apart from the rest of the student body.

Review members receive one academic credit per semester during their third year. While competing in their second year, they are exempt from the one-credit Appellate Moot Court course.

It has long been school policy to give them special placement consideration. Prof. Smith added law review students might also receive "warmer" letters of recommendation since professors have first-hand evidence of their work.

Classroom considerations are positively not given, faculty members said. Their reactions were quick, blunt "no's." However, law review students are often called on in class and a number of professors do give credit for classroom participation.

As with other student groups, members of the law review have the use of plant facilities. The keys to the law review offices on the third floor also open the outer doors to the building so that entrance can be gained when the school is closed. These keys used to fit other locks in the building, but last month nearly all locks in the building were changed.

The review office is equipped with a business phone. A sign posted below the phone says that social calls are to be kept brief. Free photocopying service is available. Typing service is given in a very limited way only to the editor-in-chief and members are left to their own devices to get the necessary typing done.

Prof. Eva Morreale (UCLA Law Review '60), faculty adviser to the law review, noted that Columbia Law School provides two full-time secretaries for law review work.

MINORITY VIEW

Despite its many merits and advantages, there is a minority view that law review experience is not necessary or even desirable. Two New Jersey attorneys, graduates of Columbia and New York University Law Schools and both not review members, were quick to agree to the "door-opening" function of law review. They were equally quick to point out that a review man was likely to join a firm of reviewers where competition for advancement will be particularly stiff. In such a firm other factors might determine promotion. High on this list, even in review firms, they said, is ability to conjure up business.

Prof. Smith said that oral performance, office management, negotiations, client relations and integrity are all important to legal success. He pointed out that, by and large, law reviews can not test those qualities.

Prof. Robert Knowlton (University of Iowa Law Review '49) said, however, that law review does give a man a head start.

One attorney felt that lawyers must now specialize and that law review is only one kind of expertise. He saw additional opportunities for specialization in moot court, legal aid, research programs, summer jobs with law firms and court jobs.

Dean Heckel said that another alternative exists. A student may get his permission to do individual research with a faculty member. Four academic credits are given for this, he said.

The fact remains that those students who do not compete for law review—over three-fourths of the student body—do not get a substitute experience in research and writing.

"Seminar papers could be equivalent to law review pieces," one student said, "but the faculty doesn't expect it."

"The faculty is still talking about a substitute experience for non-review students," Heckel said, "but no agreement has been reached."

He explained that past attempts at writing courses were considered valueless by most faculty members. Students considered such courses as annoying hurdles to jump before getting to interesting learning experiences, he said.

Other law schools offer students alternative writing experience to law review. Prof. Morreale said that NYU has an intramural law review for those just missing the regular review. Prof. Ginsburg said that Columbia has a yearly journal on special legal topics.

GETTING TO COMPETE

The number of students who do get to compete for the law review is determined by the editor-in-chief who sets the cut-off point. Below this average students are not invited to compete.

Editor-in-Chief Melvin Altman '67 said consideration is given to obtaining a manageable group. Presently each editor is handling three competitors, which Altman felt was the maximum number that would still allow for adequate attention to the articles. Generally a gap in the grade range makes the cut-off point easy to locate, he said.

During the summer following the first year, 29 members of the Class of 1967 were invited to compete for law review. This was a little less than 23 per cent of the class. Of the Class of 1968, 36 or 24.7 per cent were invited.

Of those invited some decide not to compete for law review. From the Classes of 1967 and 1968, a total of 10 students immediately declined law review invitations. Altman said the reasons given generally ranged from health conditions to financial problems, from family considerations for married students to feelings of too much labor for too little harvest.

Another factor that might weigh against competing is the review's policy that law review work take priority over classroom and other activities. Such unexciting chores as checking citations and proofreading require considerable hours. Altman, who will join the Wall Street firm of Stroock & Stroock & Lavan next fall, said he often spends up to 60 hours a week on law review activities.

During the year there are more casualties among those who do compete. From the Classes of 1967 and 1968, 11 students voluntarily dropped out of

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Rejected Author Loses Suit Charging Law Review Biased

(Continued from Page 1)

tory or original intent of the framers of a constitutional provision." He claimed his article was rejected "solely on the grounds that this article reflected a 'conservative' ideological or jurisprudential premise."

Avins deleted from his complaint a charge that the Rutgers Law Review constituted "the operation of an ideologically partisan journal in violation of the state statutes." This eliminated the University's contention that the doctrine of abstention—that federal courts should abstain from applying a state statute until that statue has been interpreted by the state courts -- should apply.

Judge Shaw said in his oral opinion that Avins' claim in substance was "that he has a right to have his views as to what the law ought to be published in the Rutgers Law Review."

He noted that Avins did not seek use of the educational facitilies of the law school.

He pointed out that he did not foreclose an attack on a policy prevailing by regulation or otherwise which systematically discriminated against plaintiff or those of like mind to have their articles published in the Rutgers Law Review. Shaw added that he did not feel it necessary to deal with that question in this case.

Avins, representing himself, had conceded the good faith of the statement by Calligaro and its credibility, but qualified the concession by suggesting that notions were injected into the mind of the editor which made it impossible for him to be capable of objective thinking.

"Moreover, the Court has serious doubt as to whether the right of freedom of speech embraces a privilege to use a law school review publication as a medium," Judge Shaw said. "Freedom of speech is guaranteed by the Constitution, but the right to have others listen is not guaranteed, nor is anyone obiglated to read articles that an author is able to publish. It could not be contended reasonably that the Editorial Board of Rutgers Law Review must accept for publication every treatise on law which is submitted to it. There must necessarily be a broad area for the exercise of discretion.

"The is particularly true because of the purpose which a law review serves," Shaw continued. "Obviously the Editorial Board must be selective in what it publishes, and a selective process requires the exercise of opinion as to what particular subject matter of the law will at a given time be of educational value, not only to the student body, but also to the subscribers.

"The plaintiff in this case seems to feel that the subject matter of his article is of paramount significance and should be published to the exclusion of other articles that were apparently selected to fill the space that this article would have taken in the Law Review," Shaw said.

"In this respect he seeks to intrude his opinion upon that of the Editorial Board," Shaw went on. "Further, it should be mentioned in connection with the exercise of discretion that there are limitations of space and finance.

"The Court read the article that was rejected," Shaw said. "It is a very lengthy article. It would not be appropriate for the court to express any opinion as to the merits of the subject matter, but the Court did find that there could be reasonable differences of opinion as to whether the publication of this article would be of such educational value in the light of all that has gone before it so that it could be said that the rejection of it on the grounds stated by the defendant would permit an inference of a discriminatory practice violating a federally secured civil right."

In the law review's letter of rejection last May, articles editor Calligaro said: "It is our feeling that approaching the problem from the point of view of legislative history alone is insufficient. Most of the material you have presented here was before the court in Brown, and, as the court pointed out, 'although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best they are inconclusive.' 347 U.S. 483, 489.

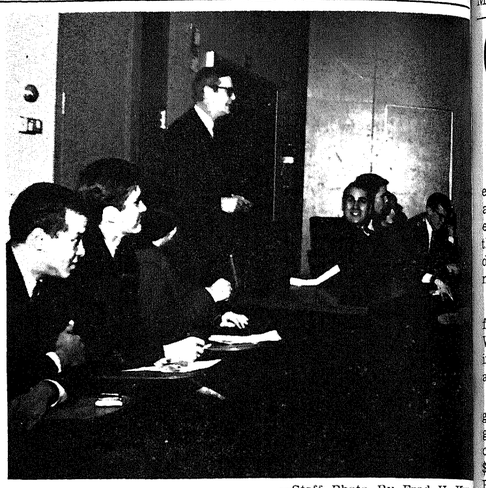
"I want to make it very clear that we are not rejecting this article merely because of the conclusion it reaches," Calligaro continued. "We would be happy to consider an article taking a pro-segregation position, but feel that such an article would have to present a more comprehensive and original analysis of the legal rationale for limiting or rejecting the Brown rule."

Judge Shaw subtly unbraided John G. Graham '63, assistant dean of the law school and former assistant prosecutor for Essex County who represented the University, for the manner in which he dealt with some of plaintiff's interrogatories.

Shaw quoted in full six interrogatories which dealt with the research, studies and beliefs of Calligaro on segregation and constitutional law. Graham, who answered the interrogatories, replied, "Known to defendant" to all save although an affidavit by Calligaro was filed. Shaw ruled, however, that the six questions were not relevant.

Since 1961 Avins has contributed over 25 articles to law reviews throughout the country, including the Cornell University of Pennsylvania, Texas and Duke law reviews. An article by him entitled "Civil Rights Act of 1875: Some Reflected Light on the Fourteenth Amendant and Public Accommodations" appeared in the May, 1966, issue of the Columbia Law Review.

Avins holds a B.A. from Hunter College, an LL.B. from Columbia University and an LL.M. from New York University. During the 1957 school year he was a research assistant at Rutgers Law School. He later received LL.M. and S.J.D. degrees from Chicago and a Ph.D. from Cambridge.



—Staff Photo By Fred H. Kumpf

PROF. J. ALLEN SMITH introduces recent graduates who returned Dec. 14 to discuss "Getting Started." Participating are, left to right: Furman Templeton, Albert Cooper, Stuart Steinmark, Melvin Bergstein, David Brown, Virginia Long, Charles Cottingham and Joseph Lunin.

SBA SETS SPEAKERS PROGRAMS

Programs on insurance, constitutional law and international law have been scheduled by the Speakers Committee of the Student Bar Association.

Otto C. Lee, president of the Harleysville Insurance Co. of Harleysville, Pa., will speak on the "Impact and Effect of Insurance on the Law" at 1 p.m. today.

Rutgers Law Prof. Arthur Kinoy will discuss the case of Dombrowski v. Eastland at 1 p.m. Mar. 15. Prof. Kinoy argued the case before the United States Supreme Court Feb. 20. At issue is the legislative immunity of a Senate sub-committee to a suit for damages for wrongful confiscation of the records of a Louisiana civil rights attorney.

Prof. Milton Sacks of Brandeis University will debate Marcus Raskin of the Institute of Policy Studies of Washington on the legal issues involved in South Viet Nam at 7:30 p.m. Apr. 5.

Prof. Sacks is a former consultant on Indo-China for government agencies and the Center for International Studies at Massachusetts Institute of Technology. In 1964-65 he traveled and did research in Southeast Asia on a Ford Foundation grant. In 1965-66 he was an exchange professor at the Universities of Hue and Saigon.

All programs will be held in Muller Auditorium.

Editors of Law Review Receive Substantial Status, Advantages

(Continued from page 3)

competition. Reasons given to Altman ranged generally from an unwillingness to forego summer or part-time earnings, declining grades, high grades but a lack of ability to endure the "abrasiveness" of review discipline, to a dawning fear of unsuccessful completion of competition.

If a student's cumulative average after three semesters rises above the original cut-off point for his class, he may be invited to join a small additional group of competitors. This assumes that the law review editors feel they need more people and that the editor-in-chief comes across the student's grades so his average can be computed. The law school does not compute class rank or cumulative averages based on three semesters of grades.

This also assumes the student has been graded. Some faculty members do not post January examination grades until as late as April.

Selection of additional competitors is greatly hampered by the dilatorious trickle of grades, Altman said. This leaves the new competitor little time in which to produce his two publishable articles.

Only one student from the Class of 1967 was invited to compete after his third semester. He was elected to the editorial board last fall.

In addition to formal invitations, there is no "rule" that prohibits uninvited students from competing for law review. However, nobody has ever heard of a student unilaterally competing. It is most likely feared that such a student with lower grades might have to meet much higher, if not unattainable, standards than the invited competitor in the top quarter of the class.

With the increased quality of today's law students, limitation of law review eligibility according to class rank appears questionable to many.

"This is only a practical matter," Dean Heckel said, "for the academic span of the student body is quite narrow and most of the students have the ability to make law review." On a later occasion Heckel attempted to hedge a bit, pointing out that although most students are bright enough to do law review research, not all have the requisite writing skills to make law review.

However, the determination of a student's writing skill is supposedly one of the purposes of a competition period, an observer pointed out.

In addition, official figures show that between the end of the first year and the end of the second year there was a 43 per cent turnover in the students ranking in the top quarter of the Class of 1967. Of the 30 students in the top quarter after their first year, 13 had dropped out after the second year. In five cases the students' averages did not go down, but other students' averages overtook them as all averages generally increased. Four students, however, dropped from the first to the third quarter.

EDITORS SEE PROBLEMS

A few editors of the law review saw problems with opening competition to more than the top quarter of the class. They predicted crushing administrative burdens in handling so many competitors, although they did not say how many they expected. The Yale Law Review has a practice of selecting, in addition to those chosen solely by class rank, 10 or so students on the basis of writing ability alone.

The editors also pointed out that the law review can only afford to print 800 pages a year. While the quality of the student body may be increasing, the law review budget is not, they said.

Like most law reviews, the Rutgers Law Review does not pay for itself. Its income mainly consists of $6 a year from about 1,700 subscribers, a year from the compulsory subscriptions of each Rutgers Law student, $10,000 from the law school budget. Some money also is derived from advertisements and the sale of back copies. Dean Heckel uses discretionary funds to take care of any further deficit and to finance the spring law review dinner at the posh Roost Restaurant.

Although new graduates are canvassed, the law review has not had a circulation drive in years. Heckel pointed out that Rutgers only has a volunteer business manager who is also a student while other reviews have salaried business managers. He said a salaried business manager is needed, but that the state Legislature had not allocated lines in the budget for such a position.

The editors also felt that the status that accompanies an editorship on a law review would be diminished if additional students were allowed to compete. One explained that one of the first questions asked at the employment interview about the law review is who is allowed to compete. "Being on law review does not mean as much if anyone can make it," he said.

A few faculty members agree, admitting that they are fostering a carrot-and-stick approach.

Some students feel, however, that law review should stand for accomplished research, writing and editing ability, and that evidence of this which is synonymous with review membership should be carrot enough. Any status not inherent in this, they feel, should be derived from other sources.

Only $10 of Student Fee Goes to School Activities

Of the $40 student fee paid each term by law students in addition to tuition, only $10 goes to law school activities. Of the $20 a term increase in student fees inititated this year, none is given to the law school.

Distribution of the student fee was explained by Alfred Wilson, newly appointed business manager of Rutgers-Newark, in a recent interview.

Of the $10 per student which goes to the law school, $7.50 goes to the Student Bar Association for its activities and $2.50 goes to the Rutgers Law Review as half of each student's compulsory $5 subscription to the review.

Neither Wilson nor members of the Student Bar Association knew whether the compulsory subscription to the Law Review had been established by the SBA, the law school administration or the University. C. Willard Heckel '40, dean of the law school, said the subscription had been in effect as long as the law review had been in existence and he saw no reason to do anything about it.

Of the other $10 law students have been paying for years, $9 goes to the University for registration processing, $.50 goes for a student identificiation card, and $.50 goes into a special student activities fund of Rutgers-Newark for special functions for undergraduate and graduate students.

Of the new $20 per term increase, $15 goes toward amortization of the cost of the new student center at the other end of the Rutgers-Newark campus, $1 goes for student center activities, and $4 pays for a student accident insurance policy.

The $4 accident insurance fee, an increase of $1 over previous rates for other students, is a new item for law students.

At $30 per year per student, over $12,600 will be paid this year by over 420 law students toward the cost of a student center in which few have ever been.

According to Wilson, who assumed his position Jan. 1, the student fee is reviewed and set annually by the University Board of Governors and is filed through a college fee clearing account separate from the law school.

The student fee is essentially the same for all Rutgers-Newark schools. A student in the School of Pharmacy pays $38 a term, even though the school's location at 1 Lincoln Ave. is a few miles from the new student center.

None of the fee paid by students in Newark is used for expenses of the New Brunswick campus, Wilson said. Students there pay $64 a term, but are admitted free to all athletic events.

J.L.S.

Series Set On Careers

A series of informal career seminars will be held this semester by the Placement Office and Phi Delta Phi fraternity, Helen Hoffman, assistant to the dean for placement and special projects, has announced.

The first meeting, devoted to general practice, will be held in the Student-Alumni Lounge at 5 p.m. tomorrow.

Participating in the discussion will be Aaron Dines, assistant director of the Institute for Continuing Legal Education who practices in Morris County, and Justin Walder '61, chairman of the Rutgers Law Alumni Association's placement committee who practices in Newark.

Future sessions, to be held every second Thursday, will deal with real estate practice, negligence practice and corporate practice. Coffee and refreshments will be served.

Lawrence G. Welle '68 is in charge of speaker procurement.

Faculty to Consider SBA Proposals For Revising School's Honor System

(Continued from Page 1)

unknowingly having the actual brief of the case on which the student was working in his possession was such a violation.

Under the SBA proposal, a first offender would receive, besides a failing grade in the course, either suspension for one year or dismissal. A second offense would require dismissal.

Dean Heckel said the Committee on Scholastic Standing would discuss the SBA proposals before the entire faculty met.

Other recommendations of the Honor Code Investigative Committee were:

– That the accused be given the right to require that the accusor be called as a witness.

– That the dean and a justice of the Supreme Court of New Jersey deliver an explanation of honor and its importance to the legal profession to incoming students as part of their orientation program.

– That the president of the SBA deliver a detailed explanation of the honor system during the orientation program.

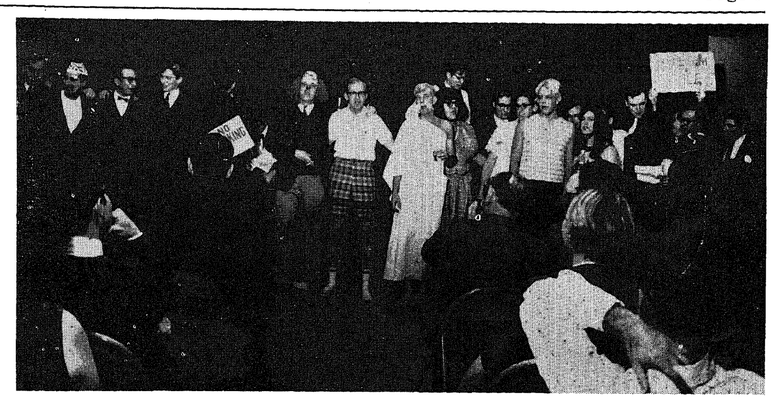
– That students be required to sign a pledge at the conclusion of orientation that they understand and will abide by the honor system.

— That a pledge of compliance with the honor system, apparently to be signed, be printed on each law school examination booklet.

– That examinations be permitted to be taken anywhere in the law school building.

The Honor Code Investigative Committee's report was based on public hearings held on three occasions last November, submitted statements, study of other college and law school honor systems and analysis of an SBA student questionnaire.

William S. Greenberg '67, president of the SBA, was chairman of the committee. Other members were: Robert Chimileski, Gerald Rovner, both '67, Frank Accisano, Peter Henry, both '68, and Bruce Edington '69.



—Staff Photo By Fred H. Kumpf

CAST OF SENIOR CLASS libel play gathers for grand finale, "There's No Business Like Law Business." Each year students impersonate faculty members for an afternoon of good-natured fun and some sweet revenge. This year' show took the form of a HUAC-type hearing on subversive activities.

Annual Senior Class Libel Play Takes Form of HUAC Probe

(Continued from Page 1)

tained large doses of devastating and almost vicious satire backed up by numerous puns that ranged from the inspired to groaners. It was the funniest such show in recent years.

The theme of the activities was set by guitarist Jerrold Fond, who led a protest march singing "I'm Gonna Tell God How You Treat Me." The marchers carried signs advocating "Make Love, Not War," "Impeach Earl Warren," "Impeach Everyone" and "Eat at McGovern's."

The stage setting represented a hearing room where each witness underwent the probing questioning of the bewigged prosecutor, portrayed by William Tuohey.

Narrator Anthony Wahl set the scene when he reported that it had been suggested that Rutgers could end the criticism brought on by Viet Nam critic Prof. Eugene Genovese by sending him to the law school where he could get lost in the crowd.

Bailiff Arnold Scott guided, led, carried or dragged the witnesses to the stand, depending on the amount of cooperation shown.

The testimony was led off by a toga-clad, mustachioed, cigar smoking member of the Roman Forum who bore a close resemblance to Prof. Thomas A. Cowan who teaches Jurisprudence. The interpretation by Frank Roux set the tone for what was to come.

John Doyle and David Rosenberg portrayed Profs. Frank Askin and Charles Cottingham, respectively, who joined the faculty upon graduation last June, as youngsters in bright plaid shorts with all-day suckers who were unable to sing their song because they could not carry a tune.

An overstuffed, gaudily attired Leonard Wolkstein burlesqued the normally fashionably attired Prof. Ruth Ginsburg and her trip to Sweden last summer.

Robert Chimileski played Prof. J. Allen Smith with rich Southern accent as he unsuccessfully tried to explain to the investigating committee what property was. He was careful that each committee member got one of the sticks from his bundle of property rights as he distributed them " to you who take, then to you who take, and then to you who would like like to take."

A product of a hopefully bygone outlook was hinted at by Thomas Chesson who had a chainsmoking Prof. David Haber recommending use of a war machine to effect urban renewal.

After affirming that he had had J. Allen Smith as a student when he taught at Yale, the German-born witness offered, "If you strike that, I admit to being SS captain."

Norman Friedman appeared as Sidney Snoozwell, who fell asleep in the witness chair exhausted from answering three questions. He gave the fact that he stayed up all night trying to figure out the Uniform Commercial Code as the reason for his laconical manner.

Michael Kates portrayed a well relaxed Prof. Gerard Moran discoursing on an irrelevant matter. "Do you know what I'm going to do about it?" he asked rhetorically. "Nothing," he replied. "Do you know why?" he continued. "Tenure," he leered.

As one witness was being sworn in, the procedings were interrupted by law librarian Cameron Allen, played by Melvin Altman. He wanted to know if the Bible had been signed out.

Perfection, perfection, perfection was the theme of Robert Severinsen's portrayal of Prof. Eva Morreale, who claimed he came to this country from Germany not by U-boat, but as a stewardess on the Hindenburg. His guttural denunciation of the lackadaisical efforts of students and his genuine disappointment in their failure to meet his standards, together with the authoritatively angry "I won't stand for it," hit the mark.

Alan Karcher as Helen Hoffman, assistant to the dean for placement and another fashion plate, appeared in a skintight, low-cut, short-skirted ensemble that seemed to have difficulty containing him. His song dealt with the perennial dissatisfaction with placement.

As the bailiff escorted "small but vigorous" Prof. Arthur Kinoy, played by Robert Warren, toward the witness chair, the prosecutor, standing tall, asked, "Will Prof. Kinoy please stand up?"

"I am standing up," Warren answered and set off a wave of laughter.

At the completion of his song, Warren began to sing it again, despite the chairman's calls for order. The 6-6 bailiff grabbed him around the neck and carried him off the stage in a manner reminiscent of the way Prof. Kinoy was escorted from the House Committee on Un-American Activities hearing in Washington last August.

Ronald Rock played ex-marine Prof. Robert Knowlton in highly decorated uniform, including one medal for World's Biggest Liar. "I machine-gunned 300 Japs in World War II," Knowlton testified.

"At Iwo Jima?" the prosecutor asked.

"No, at a bar in San Francisco," the witness replied.

Sanford Gibbs did double duty in two skits as Prof. Robert Carter and Assistant Dean John Graham for some of the afternoon's most biting satire.

Yale Greenspoon appeared as Prof. Victor Brudney in disheveled overcoat and discussed the possibility of a prophylactic rule.

Joel Brotman portrayed Prof. Alexander Brooks clutching a security blanket. After protesting his emotional stability, he ran from the stand in tears when he was reminded that the new version of the New Jersey Rules of Evidence, which he drafted four years ago, still have not gone into effect.

Jack Madden played Prof. Julius Cohen with Clarabelle headgear and got some of the best laughs of the day. The profusion of loosely combed red hair, stuffed animal pets and the typical greeting of "How are youoooooo?" brought round after round of applause.

"What are your qualifications to teach?" the prosecutor asked.

"I once ran a delicatessen in Weequahic," Prof. Cohen answered.

Henry Gordon as Prof. John Lowenthal, who teaches tax, went right to the Internal Revenue Service's regulations at the first question and was still citing them as the cast sang the finale, "There's no Business Like Law Business."

The show was written by Adam Lawrence in collaboration with Tuohey and Madden and produced by Chimileski, class president. Lois Duncan Lyon accompanied at the piano.

Prosecutor, Reporter, Professor Clash On Harm Caused by Pre-trial Publicity

(Continued from Page 1)

be no conflict if the newspapers behave responsibly. Quoting from a recent American Bar Association report, he pointed out that of 786 crime stories reported in the Newark Evening News over a six-month period, 565 were found "buried," only two received a banner headline and not one was found prejudicial to an accused.

Byrne also criticised former Attorney General Nicholas Katzenbach's rules governing the release of information to newspapers by federal agents and attorneys. He explained that the rules prohibit the release of expressions of opinion but allow statements of fact. He felt the prosecutor's version of the facts might be more prejudicial to an accused.

Zion attacked the ABA report, which concluded that there was a problem with pretrial publicity and recommended that coverage be withheld until after the trial.

He said that the committee did "very little statistical evaluation, and what it did was faulty." He added that the committee members "didn't know anything about criminal law," none of them being criminal lawyers. "And for obvious reasons there were no newspapermen on the committee," he said.

"The report was the result of a preconceived notion," Zion said.

Zion, a graduate of Yale Law School and former assistant United States attorney for New Jersey, also objected to the ABA committee's proposal that attorneys who violate the proposed rules be subject to disciplinary action by the ABA Ethics Committee.

He claimed that the proposed sanction against those who cooperate with the press was out of proportion to the significance of the problem.

He added that this would result in harassment of defense counsel and virtually isolate prosecutors from disciplinary action because of the political advantages they enjoy and because a leak from a large prosecutions office could not be traced.

"There's only one defense attorney," he said.

PROF. ROBERT KNOWLTON makes point on the effect of pretrial publicity while, left to right, Essex County Prosecutor Brendan Byrne, New York Times reporter Sidney Zion and Assistant Dean John Graham look on.

Zion suggested that the legal profession should instead concentrate its attention on some of the existing evils in the legal system which are actually dangerous to individual rights, such as the suppression of evidence by prosecutors.

In spite of the many times prosecutors have been chastised by appellate courts because of this, nobody ever gets into trouble, he charged.

"We're not talking about the average punk who is held for attrocious assault and battery for hitting his wife, but rather about the exceptional case where there are substantial penalties involved," Prof. Knowlton said.

A strong opinion as to guilt, as the type held by jurors in the case of Irvin v. Doud, must effect their deliberation, he said.

In Irvin v. Doud, 366 U.S. 717, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961), the Supreme Court vacated a murder conviction because widespread newspaper publicity had impaired a fair trial. The voir dire examination showed that eight of the jurors impaneled had an opinion that the defendant was guilty and were familiar with the material facts and circumstances involved, including the fact that other murders were attributed to him.

He cited the Kavanaugh and Coppolino cases as recent examples of situations of which the public is very much aware.

"I'm not willing to concede that there aren't many cases where there is a problem," Knowlton said.

Knowlton, who teaches criminal law and constitutional law, suggested that there should be no comment on evidence because the evidence may be held inadmissible at trial.

"What is the social utility in printing those five per cent of the cases where the problem arises?" he asked. "How can abstention from printing them cause hurt?"

Referring to a statement by Zion that a case testing the newspapers' right to print what they feel necessary would be decided in their favor, Knowlton responded that he would not bet on it.

"Black's 'clear and present danger' test wouldn't help the press where there is reason to believe, logically though not empirically, that the jury was affected," he siad.

The program, sponsored by the Student Bar Association, was moderated by Assistant Dean John Graham, a former assistant Essex County prosecutor.

SBA Sets Dinner-Dance

The Student Bar Association's annual dinner-dance will be held at the Westmont Country Club in West Paterson on Friday, Mar. 31, Robert Chimileski '67, chairman of the SBA social committee, has announced. Tickets will be available shortly.

Faculty, SBA Seen Taking J.D. Stands

(Continued from Page 1)

er taken.

Surveys of the J.D. situation invariably find that there are credible arguments pro and con regarding the status of the institution awarding and the graduate receiving the J.D. as the first professional degree in law.

The one area in which telling points are made for the J.D. is the claim that holders get higher starting salaries from employers outside the legal profession. Examples are hard to come by, however.

The classic example is that of the LL.B. holder who applied to teach business law at a state college in Minnesota. The Minnesota College Board regulations treat an LL.B. as equivalent to a master's degree and limit his starting position to instructor. If he had a J.D., which is treated as equivalent to a Ph.D., he could have been an assistant professor at an additional $1,000 a year.

Two more examples of differentiation between the LL.B. and the J.D. have recently come to light.

A recent Rutgers Law graduate employed by the Internal Revenue Service reported that the IRS was paying $1,000 more to starting lawyers who held a J.D. He said he tried to inform the agency's personnel arm that the requirements for a J.D. or an LL.B. are identical, but did not know if his efforts had been successful.

William M. McCarty, national vice president of American Law Student Association for the Third Circuit and a senior at Dickinson Law School, which adopted the J.D. last year, reported that he was offered $1,200 more a year as a starting salary by the Bethlehem Steel Corp. when they learned he was going to receive a J.D. rather than an LL.B. He said it was the second time this had happened to him.

While disparties in starting salary based on the degree the lawyer has do exist, it does not appear that they are widespread. A reporter recently checked on the starting salaries for J.D. and LL.B. holders with some of the larger business firms, where hiring practices would be thought more likely to be governed by formal regulations.

Spokesmen for Public Service Electric & Gas Co., Prudential Insurance Co., International Business Machines, International Telephone and Telegraph, Standard Oil of New Jersey and the New York office of General Motors Corp. all responded that there is no difference.

While the debate goes on, the number of schools giving the J.D. grows slowly. Joining the almost 50 schools that award the J.D. to all or nearly all of their graduates, the University of Michigan School of Law announced last fall that it concurred with the recommendation of the Section of Legal Education and Admissions to the Bar of the American Bar Association.

Beginning this June the basic degree for all graduates of U. of Michigan Law School will be the J.D.

Kinoy Describes Bout with HUAC; Says Court Action Instilled Fear

(Continued from Page 1)

Although the restraining order was dissolved early the next morning in time to avoid a showdown between the judicial and the legislative branches of the federal government, Kinoy said that the fact that the order was issued at all was enough to instill fear in the members of HUAC that the committee might be further subject to judicial sanction in the future.

Kinoy said he agreed to go before the HUAC "on the assurance that it would be a small, one-day affair, but subsequent information revealed that the HUAC had worked out a nationwide schedule of hearings designed to place a stamp of disloyality, a stamp of treason, a stamp of Un-Americanism upon the active critics of the war in Viet Nam."

During the anticipated wave of hysteria following the hearings, Kinoy said, the Committee expected to obtain passage of the Pool Bill, which was designed to make it a crime to protest American Policy in Viet Nam. The bill would effectively silence protestors for a time even if later declared unconstitutional.

Kinoy described the meeting in New York a week before the hearings at which he and other volunteer attorneys for the American Civil Liberties Union determined the strategy to be used to defend their clients, some of the most ardent and outspoken of the anti-Viet Nam demonstrators.

"We were frightened. We were worried," Kinoy said. "It was the nightmare experience."

Some counsel favored playing the traditional defensive role of the advocate while others discussed " a different route, a different way of defending," Kinoy recalled. This approach would utilize the equity power of the courts to secure an injunction against activities which create "a chilling effect on the exercise of First Amendment rights by all citizens."

Finally, Kinoy said, the lawyers decided they had an "affirmative responsibility to strike at the institution itself which is creating the chilling effect."

The suit for injunction began with Kinoy's motion for certification of a three-judge panel. When the federal judge who had been selected to hear the motion walked out, Kinoy said, an expression of gloom enveloped the face of the local lawyer and he knew he would have an "up-hill argument."

"Mr. Kinoy, what are you here for at all?" the judge asked.

Yet after a few hours of court room presentation and a few more hours of reading cases in his chambers, the judge certified the panel and, as his own conception of "such other relief as the court deems proper," also signed an order temporarily restraining HUAC from meeting.

That night Kinoy and the other attorneys on the motion were summoned before the U.S. Court of Appeals for the District of Columbia. The government wanted to appeal the afternoon's decision before HUAC would meet in defiance of the court order.

But they could not appeal until the three-judge panel sat, Kinoy said, and he did not think such a panel could be assembled in time.

Even so the Court of Appeals said it would hear arguments early the next morning. Kinoy and his associates, assisted by a handful of law students from Howard University who had been in the courtroom, spent the night in a court library preparing their brief.

In the morning, however, Kinoy said, the clerk of the court came into the court room and told them that a three-judge panel — consisting of two judges from the Court of Appeals and the required district court judge who had heard the motion—had just been convened and had dissolved the temporary restraining order. The question of a permanent injunction was postponed.

Thus the scene was set for the HUAC hearings that day at which all present knew that the committee's existence was under attack.

"The rest is history," Kinoy said.