VIRGINIA LAW WEEKLY

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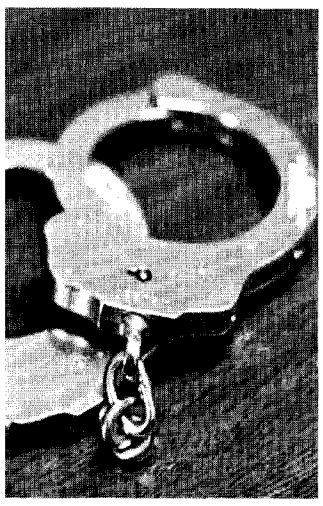
DICTA

● *Criminal Law Reform*

TITUS DISCUSSES OREGON CRIMINAL CODE REFORMS



Mr. Titus is Professor of Law at the University of Oregon. He received his LL.B. from Harvard University in 1962 and was a trial attorney with the United States Department of Justice. He has served as Assistant Professor of Law at the University of Oklahoma and Associate Professor of Law at the University of Oregon, and he was a Visiting Professor of Law at the University of Colorado in 1971-72. Mr. Titus teaches courses in Criminal Law, Administration of Criminal Justice, Legislation, Torts, Federal Courts, Constitutional Law, and Selective Service.

By Herbert W. Titus

When the One Great Scorer
comes to write against your name
He marks—not that you won or lost—
but how you played the game.[1]

In his 1968 campaign Richard Nixon made Ramsey Clark a number one target—Clark was soft on crime.[2] And, of course, he took up the cudgel against the Warren Court and promised to appoint men to the federal bench who are "strict constructionists"—i.e. those who support the "peace forces" over the "criminal forces." [3] The first demand of politics of law and order was clear — total victory over crime in America.

In the three years under the Nixon Administration even the most casual observer can detect the Nivon game plan. Not only has he fulfilled his promises to get a tough Attorney General and to turn the Supreme Court around,[4] he has vigorously supported and won legislative approval of preventive detention and "no knock" search warrants for the District of Columbia,[5] "use" immunity rather than "transactional" immunity for witnesses claiming protection against self-incrimination,[6] authorization for judges to imprison a recalcitrant grand jury witness for contempt for as long as 18 months [7] and to impose up to a 30 year sentence on anyone convicted of a felony if that person is found to be a "dangerous special offender," [8] placing control of narcotics and other dangerous drugs under a comprehensive criminal code to be administered by the Attorney General with nationwide authority to conduct "no knock" search warrants [9] and other proposals.[10]

In addition to obtaining new anti-crime legislation, President Nixon's Justice Department has vigorously utilized the eavesdropping authority granted in Title III of the 1968 Omnibus Crime Control Act [11] and as early as the Chicago Conspiracy case began its assertion of an executive privilege to use electronic surveillance whenever "national security" is at stake.[12] More recently, having resurrected its old Internal Security Division, Justice Department attorneys have been waging a vigorous attack on many of its political enemies on the left by conducting numerous grand jury proceedings primarily designed to gather intelligence information in order to obtain a "sociogram" of the Left to match the one of the Mafia left by the Justice Department under Robert Kennedy.[13]

President Opposes Partial Repeal

Not only has President Nixon made it clear that pleas for individual rights will be ignored, he has openly rebuffed any one urging repeal of some marginal criminal offenses. For example, he has publicly opposed even partial repeal of the obscenity laws before he had even read the report of the President's Commission on Pornography [14] and of the marihuana laws—before a Congressionally authorized study was hardly begun.[15] To support repeal of either would admit defeat before the ball game even got underway.

I think it is especially unfortunate that such a national game plan of total victory over crime in America has come at a time when there are nation-wide efforts to revise state criminal codes. Congress has been unable to resist the President's appeal to escalate the war by beefing up the police and prosecutorial forces as is evidenced by merely one Senate vote against the organized Crime Control Act of 1970 [16] and by almost guaranteed appropriations for state law enforcement assistance programs.[17] It should not be surprising to find state legislators unresistingly responding to the fear of crime. Yet at its last session, the Oregon legislature rejected the Oregon Criminal Law Revision Commission's proposed authorization to legitimate electronic eaves dropping pursuant to the invitation of Title III of the Omnibus Crime Control Act of 1968.[18] In addition, the legislature rejected a proposed bill authorizing "preventive detention," a darling of the Nixon Administration. Finally, the legislature approved the Oregon Law Revision Commission's proposed criminal code that abolished criminal penalties for adultery, lewd cohabitation, seduction and private consensual homosexual conduct between adults [19] and that abandoned attempts to control "obscene" material that is dispensed to or consumed by adults.[20]

Can this legislative response to criminal law reform be attributed to Oregon's geographic isolation from the high crime rates of the nation's large cities? Or is it yet another example of Oregon's political independence? Or was it largely the product of the Oregon Criminal Law Revision Commission's measured presentation of the many "sensitive and controversial" provisions contained in its draft code? Whatever the explanation for the legislature's adoption of the 1971 criminal code I think that many people have assumed that the new Code is a product of careful study of current law

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A Light Moment During Serious Confrontation

Confront 'Chauvinists'

Women Law Students Discuss Possible Female Faculty Post

By Willard P. McCrone

Dean Monrad G. Paulsen met with women law students last Thursday to discuss the possibilities of hiring a woman law professor for the coming year. Also present at the meeting were Professors Emerson G. Spies and Richard A. Merrill.

Elizabeth H. Trimble, president of the Virginia Law Women, began the meeting with a short reference to the purposes of the meeting and a qualification that the gathering was not intended to be a student-faculty confrontation. Mr. Paulsen then reviewed the appointment process by which a candidate is located and accepted to the Law School faculty. He listed personal contacts, law school referrals, a national meeting of the Association of Law Schools, and active recruitment of persons of known qualification such as Supreme Court clerks as the primary sources of faculty talent. Mr. Merrill indicated that two Supreme Court clerks had been hired as professors for the new school year.

Dean Paulsen said that once the candidate is screened and found acceptable to the Faculty Selection Committee, he is invited to the Law School for interviews. All members of the faculty, with the exception of visiting professors, can then interview the candidate and vote on his appointment. Qualities looked for in prospective professors include a desire to teach, a desire to be at Virginia, an interest in discovery and scholarly research, and a willingness to teach the courses which are open, he said.

Moving to the subject of the meeting, Dean Paulsen affirmed a desire to obtain a woman on the faculty but would not make a firm commitment for next year. He cited the creation of a special faculty subcommittee for the selection of blacks and women professors as an indication of increased faculty interest in the problem.

Mr. Merrill pointed out that, given equal qualifications, a woman or a black competing with a white male would receive preference in the selection process. However, he said that a separate list or a separate slot on the faculty for blacks or women is not maintained, nor is such a plan contemplated.

He indicated that the policy of the faculty selection committee is still to hire the best qualified candidate for any opening on the faculty. Only when the black or woman candidate was among the best qualified would they be given preference. This policy was not

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Black Students Request Inquiry By Government

By Thomas J. Wray

Charging that the Law School has "failed to implement the mandate of justice, of its students and of its faculty by not appointing black lawyers to the faculty," the Black American Law Students Association (BALSA) announced Tuesday that it is requesting that the federal government conduct a full scale investigation of hiring practices at the Law School.

In a letter to Eliot Richardson, Secretary of the Department of Health, Education and Welfare (HEW), BALSA chairman Bobby N. Vassar claimed that the Law School does not have the necessary commitment, and consequently has not made the necessary effort, to recruit black professors. The organization is asking the HEW Civil Rights Division to investigate the efforts being made to recruit black professors to Virginia and to investigate the policies which guide those efforts.

"Black students over the past three years have voiced criticisms, sought answers, offered suggestions, and have had some direct input into the law faculty recruitment effort," Vassar said. "We have gone so far as to submit a list of names of black lawyers whom we felt were qualified to teach various subjects at the Law School. Many of those lawyers named were never contacted or formally approached by the Law School," he said.

Qualified Lawyers

The organization rejected the idea that no qualified black lawyer would be willing to teach at the University. "There are black law graduates whose records and experience place them in the same category as recent white graduates who are appointed here," Vassar said. "Moreover, it is submitted that there are several black professors already teaching at other law schools who may be dissatisfied with their present positions, or who for some other reason could be attracted to the University of Virginia."

In reply to the BALSA announcement, Dean Monrad G. Paulsen said that the law faculty spends "hundreds of man-hours each year" investigating candidates for positions, and that many of the candidates are blacks and women. "I am certain that we will continue to make appointments on the basis of an estimate respecting excellence in teaching and scholarship, being cognizant of the values which can be found in personal diversity," he said. "I reject the suggestion that our hiring practices reveal less than a commitment to the law of the land or the cause of human equality."

Other organizations and persons contacted by BALSA include the NAACP Legal Defense Fund, the United States Civil Rights Com-

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Law Review Picks Jeffries As Editor For Coming Year

John C. Jeffries Jr. has been elected editor-in-chief of next year's managing board of the *Virginia Law Review.*

Executive editors will be David R. Boyd of Paducah, Kentucky, and Gardner F. Gillespie III of Rye, New York. Other members of the managing board are Randal B. Kell, research and projects editor; A. Ross Wollen, managing editor; Richard F. Kingham and Ronald P. Mysliwiec, articles editors; and George H. Bostick, David B. Brown, Carl B. Nelson Jr., Cameron M. Smith Jr. and Richard E. Spies, notes editors.

The *Law Review* has modified several of the previous managing board positions. The post of executive editor has been created to replace that of associate editor. In addition, the position of research and projects' editor, dropped last year, has been reinstated and that of administrative editor has been eliminated.

Jeffries said he expects no major changes to be made in the journal next year. "We will try to create a product of good quality and

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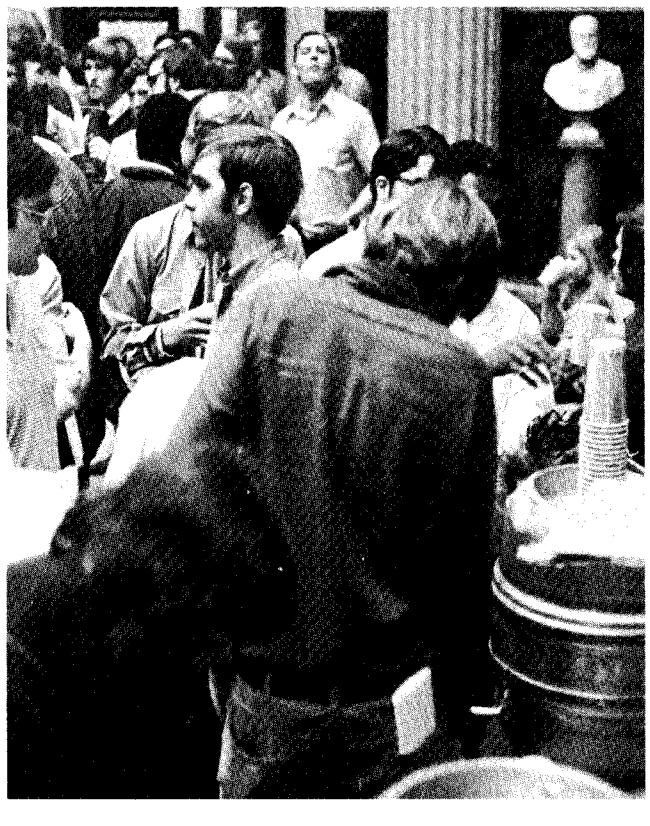
St. Paddy Enlivens Mural Hall

At least one campaign promise was kept last Friday when the Law School officers succeeded in organizing a St. Patrick's Day beer party in Mural Hall. During the afternoon festivities, students and faculty enjoyed green colored beer and each other's company in an atmosphere much less intimidating than the average classroom setting. A late hour crisis was avoided when Dean Monrad G. Paulsen stood another round after the first seven kegs were quickly emptied.



VIRGINIA LAW WEEKLY

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Clinical Legal Education . . .

In this day and age it seems sad that people can still make cracks about fledgling lawyers who don't know where to find the courthouse door. It is also ironic that while many decry the breakdown of law and order, prosecutor and public defender offices, state correctional institutions, legal aid offices, and juvenile defender projects suffer from a lack of funds and small staffs.

Clinical legal education has been hailed as a way of teaching students the practicalities of the practice of law, while at the same time helping the poor and easing the burden on our legal and correctional institutions. A law student in a clinical or legal intern program can learn many things that he cannot in a classroom. He can learn the standard of performance that is demanded of an attorney, which he would not normally experience until he faced the pressures of paying secretaries and office rents and making commitments to clients. And he can learn in the facts of a case how to cope with social injustice and how to intervene in a constructive way in a complex social situation.

The problem with clinical legal education in many schools has not been so much its usefulness or feasibility, but rather the difficulty of adequately funding such a training program. Private funds are quite limited. This was one of the reasons that Congress passed Title XI of the Higher Education Act of 1968, which authorized up to $75,000 annually for each approved law school to implement and continue clinical experience programs.

The funds were to finance planning and salaries (which become a major expense when student-teacher ratios are lowered for the purposes of closer supervision), even providing for "reasonable stipends for students for public service rendered outside the academic year." The Congressional goal was to provide students with "clinical experience in the preparation and trial of cases." A $7.5 million annual appropriation was authorized for four years beginning in fiscal year 1970.

As of this date, no assistance has been extended to any law school under the provisions of Title XI, which has been extended until June, 1972. Despite the initial authorization, the Administration has never asked for appropriations to implement Title XI. Consequently, the Act is now in the midst of a legislative log jam created by pressures from all sorts of special educational interest groups demanding federal funds, and the likelihood of it being funded seems to be dimming.

New provisions in the Higher Education Act now in conference also cover clinical legal education. But even if this Act is passed, there is no guarantee that it will be funded any more generously than Title XI has been. We would urge that if Congress is serious about developing clinical programs, that it adequately fund Title XI before it is allowed to expire. We would urge the present Administration to make an effort to enable law students to obtain the valuable training that clinical programs offer, and at the same time to involve them in areas where they are sorely needed.

Awakening Spirits . . .

Some compared it to Andrew Jackson's inaugural, others suggested the July Monarchy of France. We think the inaugural beer party in Mural Hall last Friday was an appropriate tribute to that convivial patron, St. Patrick, and to the awakening spirit of humanism in the Law School.

The study of Law is at best a trying experience for many of us. By definition we are a select group, chosen in part for our past success in competitive education. It follows that the pressures of competition are multiplied at the Law School, resulting in unfortunate tension. Explanations of this tension range from "lack of feed-back" to "learning to think in abstractions." Perhaps a more obvious answer lies in the inability to ever drop one's guard, academically speaking.

Thus, it gave many of us great pleasure to be personally and familiarly addressed by those faculty members who chose to attend; to have an opportunity to B.S. without fear of jeopardizing the J.D.

Additionally, the bowels of the library and the recesses of The Cave disgorged many long forgotten classmates. Several spouses attended, some accompanied by children and pets. The atmosphere may not have been conducive to study, but the comraderie was, and is, a legitimate collateral goal.

For one bright shining moment there was indeed a Camelot!

R.B.G. Jr.

"Do you think passing this course will ruin our chances with the big city firms?"

Letters To The Editor

'Fundamental Principles'

To the Editor:

The issue of March 3, 1972, contains an article which states that there is a subcommittee on minority recruitment which has spent "two years of diligent searching for a black professor" and that 'top priority should be placed upon obtaining a black teacher." The article further states that the reason is that Virginia has about 20 per cent black population and that the black community undoubtedly attaches a different degree of moral culpability to certain criminal acts than does the white community. I submit that when one departs from fundamental principles trouble always ensues. The fundamental precept in this matter is that the objective in faculty recruitment should be to secure the best teachers, regardless of color, sex, creed or race.

The errors in the faculty's approach are as follows: (1) Attempting to satisfy precentages is ridiculous and impossible. It would lead to a faculty of about 50 per cent women, 20 per cent blacks, X per cent Protestants, X per cent Catholics, etc. It is not only impossible to meet a percentage requirement, but impossible to establish such a requirement. (2) The policy can lead to discrimination in reverse and itself be a form of racism. The implication is that a black will be hired if he meets minimum requirements, even though a white teacher be superior in qualifications. This is obviously unfair to the white applicant and unfair to the students who are deprived of a better teacher. (3) If a black is hired, he will be expected to reflect a "black perspective", thus "allowing white as well as black students to see legal institutions from a black perspective." This is a pre-imposed condition on this teacher and he may not be able to satisfy the requirement. Even blacks differ in their perspective, just as whites do, so this appears to be an artificial requirement. (4) The fact that a certain segment of society might "attach a different degree of moral culpability to criminal acts" is hardly a reason for hiring a member of that segment. This would lead to hiring members of the Mafia, homosexuals, atheists, and many others.

I believe the point is made. I wonder, in passing, if the Medical School, the Business School, the Department of Philosophy, and other branches of the University are motivated by the same erroneous thinking. If so, they surely must have their problems.

It does not matter to me if the law faculty is all black, all female, all Oriental, or whatever. If we adhere to the basic sound principle of hiring the best available, without discrimination, we will have the best faculty available. Shouldn't this really be the objective?

Robert M. Saunders '40

Credibility Gap

To the Editor:

The women of the Law School are distressed by the recent resignation of Mrs. Marshall and the administration's failure to hire a teaching woman faculty member for next year.

Mrs. Marshall has contributed to the Law School in many extracurricular functions which were of great significance to the present and future women here. This fall, she participated in the Law School's first attempt to recruit women. In addition to being a knowledgeable and effective interviewer, she contributed the credibility of a successful woman lawyer, an example of the opportunities which are open to women in a profession dominated by men. A woman faculty member is of particular importance in overcoming Virginia's reputation as a law school hostile to women.

Mrs. Marshall has been very helpful to women of the Law School in finding summer and permanent jobs. She has used her personal contacts to put women in touch with employers who are receptive to hiring women.

In addition, Mrs. Marshall has been a successful intermediary between the women of the Law School and the administration as well as a sounding board for grievances of the women. We appreciate all her efforts on our behalf and are troubled by the prospect of carrying on next year without her or another woman on the teaching faculty.

In a recent meeting with Dean Paulsen and Prof. Merrill, who represented the Faculty Appointments Committee, we requested that the administration make some commitment concerning a woman teaching at least part-time next year and full-time the following year. This request was denied.

Since our relatively small constituency may not be able to persuade the faculty of the urgency of our request, we seek the support of the rest of the Law School.

Elizabeth H. Trimble
President, Virginia Law Women

'Smoke Screen'

To the Editor:

In 1970, the black law students at Virginia were compelled to answer an uninformed and ill-reasoned editorial in the October 9, 1970 issue of the LAW WEEKLY regarding the employment of black lawyers as professors at the Law School. At that time we thought members of the Law School at least understood our position as

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Letters . . .

(Continued from this page)

clearly stated in our response to the editor. However on March 10, 1972 another editorial, which magnified the misconceptions of some short-sighted sophisticated racists and counseled patience to those who seek justice, appeared in the LAW WEEKLY. The appearance of the second editorial indicated to us that the Law School and the editors of the LAW WEEKLY are more interested in building and attempting to destroy bogus arguments and smoke screen theories, than in addressing themselves to the real issue. The real issue is that if the Law School were sincere in its desire to employ competent black professors, then it would have done so—certainly after 150 years of discrimination, after three years of prodding by its students, and after a supposed search by its Appointments and Tenure Committee.

The black law students choose not to respond to each paragraph of the LAW WEEKLY editorial as we did last year. We refer those who are sincerely interested in comprehending our position to our Letter to the Editor in the October 16, 1970 issue of the LAW WEEKLY, and to our Resolution on the Employment of Black Lawyers to the Faculty.

Whether or not the Law School and the editors of this paper are willing to understand our position and to address themselves to the real issue, they should be aware that our energies will not be diverted to mere verbal battles in the LAW WEEKLY.

Bobby N. Vassar
Chairman, Black American Law Students Association

'Whose Ox Is Being Gored'

To the Editor:

I see from Samuel Shepard Jones Jr.'s letter in the March 3, 1972 issue of the LAW WEEKLY that my old classmate has not changed. His attack on Judge Merhige is reminiscent of the line of reasoning some of us listened to for three years of association with him at the Law School.

Mr. Jones would have judges "tell us what the Constitution says," but, unfortunately, unless he hears the Constitution speaking when others of us cannot, we all shall have to continue to depend on interpretations of that document by the courts. This is the point which I understand Judge Merhige to have made in the statement that so offended Sam Jones.

The solution my classmate offers ("If you don't like the judge's law, change the judge.") suggests to me that he is not really in disagreement with Judge Merhige's statement. It is simply a question of whose ox is being gored at any given time, and poor Sam's oxen have suffered grievously at the hands of distinguished jurists for some time.

Vernon Swartsel '70

What Is The Law?

To the Editor:

As an alumnus of the Law School of the University of Virginia (1910) I cannot pass without notice the Letter to the Editor in your issue of March 3 entitled "Change the Judge." The writer of this letter apparently misconceives the remark of Judge Merhige "What the court says is the law, *is* the law. If you don't like it, change it."

If my recollection serves me correctly, this statement was first made many years age by the late Chief Justice Hughes, one of our greatest Chief Justices.

Article 3, § 1 of the Constitution of the United States provides:

> "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

It will thus be observed that the Constitution itself vests in the Supreme Court and the inferior courts created by Congress the right to say what the Constitution means and what the courts say the Constitution means is what the Constitution means. The inferior federal courts are of course bound by the construction placed on the Constitution by the United States Supreme Court, which is the final arbiter. These inferior courts in thus trying to follow the constructions of the Constitution by the United States Supreme Court when rendering decisions on constitutional questions, are announcing the law, and what they say the law is, is the law until their opinions are reversed by the Supreme Court. Judge Merhige did not say, "What the judge says is the law" but he said, "What the court says is the law, is the law" and he was absolutely correct, simply following the Constitution of the United States.

If the Constitution had not provided a judicial tribunal to construe the instrument and say what it means, there would be no stability whatsoever in government—chaos would result. So it is obvious that what the courts say is the law, *is* the law.

George E. Allen '10

Work Study Deadline Near

Numerous employment opportunities will be available for second and third-year students in September, according to a memorandum released by Assistant Dean H. Lane Kneedler.

Every faculty member at the Law School is entitled to one research assistant. Mr. Kneedler emphasized that students interested in these positions should contact the professors directly. The Dean's office will serve only as a supplementary clearing house. Those students unable to locate a position may leave a data sheet and transcripts which will be filed for the information of interested faculty members. "It is not an assignment process by this office," said Mr. Kneedler.

Students interested in positions with either the Placement or Admissions offices should contact Assistant Dean Albert R. Turnbull. Openings in these offices are restricted to those who qualify under the federal work-study Program. Part-time positions in the library also will be available. Applicants should contact the staff at the main desk.

Dean Kneedler said that work-study, scholarships and loans will be jointly administered by the Office of Financial Aid next year. "Mr. Spies' office will determine the student's total needs, and the individual's total assistance will be limited by that determination," he said. Those who are awarded financial aid will not be eligible for additional money through the work-study program.

The application deadline for 1972-1973 work-study positions is April 15. Students may pick up necessary forms in the Admissions office.

Mr. Kneedler said that the Law School will not hire students for summer work-study, but that a number of University positions are available. Applications must be submitted to the Office of Financial Aid in Levering Hall on East Range no later than April 1.

DICTA . . .

Cite as "Titus, VIRGINIA LAW WEEKLY, *DICTA*, Vol. XXIV, No. 19 (1972)"

(Continued from Page 1)

enforcement problems and of the effectiveness of the criminal sanction to solve today's problems. My study of the minutes of the meetings of the Commission and its three subcommittees and of the working documents of the Commission's staff casts serious doubt on this assumption.

Not many would take issue with the working principle of the Commission as it was articulated by Chairman Anthony Yturri, in the forward to the Commission's final report:

> "The paramount and pervasive considerations that underscored all deliberations of the Commission were: (1) the protection of the citizens of the State of Oregon which should be enhanced by (2) eliminating or minimizing many of the current law enforcement problems by the adoption of (3) a Criminal Code that will better protect society from acts that threaten life or properly by providing a basic tool of law enforcement that does not invoke unenforceable criminal sanctions against activity that many persons either practice or condone."[21]

If this was an accurate statement of the Commission's working guidelines, one would expect to find in the minutes of the meetings of the Commission and its three subcommittees and in the work of the Commission staff and its Reporters studies, references to studies and other data relevant to current law enforcement problems, to current public attitudes and opinions and to the effectiveness of the criminal sanction to solve today's problems.

There is almost no such data in any of the working documents presented to the Commission by the staff and the reporters. The basic format of all of the preliminary and tentative drafts was to present the proposed statutory language, followed by an explanation of prior law and the proposed provisions with an attachment of similar statutes previously drafted. This format worked fine so long as the proposal covered conduct that no one would disagree ought to be covered by the criminal law. But if there was any dispute on this question the staff was not prepared to deal with the questions raised.

For example, a dispute arose over the staff's initial recommendation that the criminal law ought not prohibit "any consensual sexual activities engaged in by adolescents, where the parties involved are within four years of age of each other."[22] As Donald Paillette, the project director, explained to the Commission, the staff was presenting "a draft outlining the current trend in the law . . . which was to recognize that the attempts of legislatures throughout the years to legislate morality and ethics had been abysmal failures." [23]

Commission members did not question the general principle but expressed opposition to the specific exclusion of adolescent sexual activity from the new Code. Oregon's Attorney General Lee Johnson, speaking in favor of a motion to make sexual intercourse between consenting minors a crime, contended that

> There was a strong feeling on the part of the public that the criminal law should state the basic moral code and parents particularly would like to be reassured that society would help them in controlling this kind of conduct among adolescents even though such a law was to a large extent unenforceable." [24]

The staff, having done no work on the issues raised by Mr. Johnson's statement, were completely defenseless to such off-the-cuff remarks that public opinion was as Mr. Johnson stated or that continuing the criminal sanction against minor sexual conduct would have a deterrent, rather than a criminogenic, effect. After all, the only reason that the staff had even proposed the change in Oregon's sex laws was because it had been proposed by the American Law Institute in its model penal code and because such a change had been adopted in other states.[25] If the Commission members were not already prepared to follow the trend, then the staff was not in any position to persuade to the contrary.

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Munno

Munno Designated VLRG President In Board Election

The Managing Board of the Virginia Legal Research Group (VLRG) has elected M. William Munno president and Regina M. Mullen executive director for the coming year. R. Bruce Graham Jr., Leroy W. Bannister Jr. and David D. Green are the new writing directors.

Munno, who graduated *summa cum laude* from Union College in 1970, has participated on the Academic Review Committee and has worked as a research assistant at the Law School. He said he hopes to bring greater student participation to the organization next year.

"The writing experience it affords is invaluable," said Munno, "a fact recognized by most law firms that interview here. VLRG needs more people because it is beginning to receive more requests for memoranda than it can deal with, he said.

Miss Mullen, a native of Newton, Mass., is a 1970 graduate of Newton College of the Sacred Heart. At the Law School she has competed in Moot Court and researched for the Virginia Legislative Service.

Graham attended the University of Santa Clara and graduated *cum laude* in 1970. He is Executive Editor of the LAW WEEKLY.

Bannister graduated from Michigan State University in 1970. At the Law School he has been active in the Black American Law Students Association and has worked on the Legal Assistance Society Welfare Rights Project.

Green, Managing Editor of the LAW WEEKLY, attended the University, graduating with High Honors in 1970.

There are thirty researchers on the VLRG staff. Second- and third-year students are selected in a try-out period each fall. According to retiring President Peter V. Lacouture, VLRG wrote approximately sixty memoranda during the past year. Each was researched by two members of the staff, who receive one hour of academic credit for a year's work for the organization.

Photo Credits

Peter V. Lacouture
Page 1 (Beer keg, Women)
Page 3 (Moot Court, Munno)
Page 4 (Second-year)
Robert McCracken
Page 1 (Farmer)
William McClure
Page 4 (First-year, Business)

Women . . .

(Continued from Page 1)

seriously challenged by the students present at the meeting.

The meeting was attended by approximately twenty-five women and fifteen men. Several women cited this attendance as evidence of the urgency of student concern on this issue. Mr. Spies, however, questioned the belief that the students present represented the sentiments of the majority of students. Several women present admitted that each had been instructed to bring two males with her as a show of support.

Several women pointed out that it was more difficult for women students to attain the proper faculty qualifications such as editorship of a law review or Supreme Court clerkship. Mr. Merrill admitted the truth of this contention and indicated that some allowance was made for this problem, although he said that purely academic performance was not "sex cued." Irene Scott suggested that prominent women in the Federal Government were a source of talent which has been overlooked. Mr. Merrill agreed.

Reputation

Diane L. Hermann pointed out the poor national reputation enjoyed by the Law School among women law students. The absence of a woman on the faculty would make recruitment among prospective women students very difficult, she said.

Elizabeth A. Trimble explained the indispensable aid that Professor Gail S. Marshall had provided in assisting women students in job placement and counseling. Professor Marshall was also lauded for her assistance in recruiting women to attend the law school. No male faculty member is capable of providing a similar service to the law women, she said.

Norman Davidson raised the issue of placing a student representative on the Faculty Selection and Appointment Committee. Dean Paulsen suggested that since this issue had been fully discussed and dismissed by the faculty in the fall, it did not merit serious consideration at this time. He said that the faculty committees were not operated by student fiat.

Chauvinist

An hour after the meeting had begun, Leonard L. McCants joined the gathering and expressed impatience, arguing that the problem of obtaining a black man on the faculty was much more important than "women's lib crap." He was labeled a "male chauvinist pig" by several women present.

BALSA members present indicated that McCants did not speak for the organization. Diane Hermann attempted to placate his sentiments by expressing that her priorities were to obtain a firm commitment that "the next member of the faculty hired be a woman; the only exception being the hiring of a black."

Right-On

The meeting began to degenerate after that incident and Dean Paulsen was not again called upon to answer student queries. Linda Howard summed up the essence of the next forty-five minutes by saying, "What you men still don't realize is that women are on the way up!" Her statement was greeted by a chorus of "Right-on!"

The net result of the meeting was that Dean Paulsen admitted he would make no absolute commitments to hiring a woman professor.

Tanous, Igoe, Swett and Stanton

Moot Court Final Round Set For Debate On Sterilization

Two teams of third-year students arguing opposite sides of the same issue survived the semi-final round of the Lile Moot Court Competition last weekend, and will face each other in the final round on Law Alumni Day, May 6.

James J. Tanous and Thomas J. Igoe Jr. argued successfully for a petitioner who was trying to prevent mandatory sterilization as a condition of her release from a state hospital. Patrick M. Stanton and Jay T. Swett successfully supported the decision of an administrative board which ordered the sterilization to prevent the passing on of the Tay-Sachs disease, which may cause incurable imbecility in infants born to a couple each of whom carry the defective gene.

Such compulsory sterilization laws exist presently in half of the states and the Moot Court Board felt a serious remedy applied so widely deserved some attention, said Board president George E. Clark. The same topic will be debated in the final round which will highlight the Law Alumni Day activities.

Several important judicial figures judged the arguments. Justice Thomas C. Gordon Jr. of the Virginia Supreme Court and Hon. Robert R. Merhige Jr. of the United States District Court for the Eastern District of Virginia sat with Hon. Orman W. Ketchum of the Superior Court of the District of Columbia on Saturday night. On Friday, Hon. Albert V. Bryan and Hon. John D. Butzner Jr. joined Hon. E. Gordon West of the United States District Court for the Eastern District of Louisiana, the father of a second-year student at the Law School, to hear the arguments.

ALUMNI NEWS

Frederick Goldstein '58 has become a partner in the Boston firm of Brown, Rudnick, Freed & Gesmer.

John M. Wilkins '67 of Fairfax recently announced the opening of his office for the general practice of law.

Willis, Butler & Scheifly of Los Angeles has announced the association of **David R. Decker '67** with that firm.

Manley P. Caldwell '24, senior member of Caldwell, Pacetti, Barrow & Salisbury died recently in Palm Beach, Fla.

Martin L. Keith '70 has been appointed county attorney by the Fairfax County Board of Supervisors.

Paul Scarborough '59 was one of two trial attorneys associated with Hobery, Finger, Brown and Abramson of San Francisco, California who recently won the largest personal damage award ever received in the United States by a single plaintiff. The jury award in California Superior Court totaled $12,500,000.

The case involved a 1967 airplane crash in which the plaintiff, Raymond Rosendin, lost both his legs and his wife. Attorneys for the plaintiff established that the manufacturer of the engine, Avco Lycoming Division of Avco Corporation, was guilty of consumer fraud.

Specifically, Avco represented their engine as being built in accordance with federal aviation requirements when in fact the corporation knew it to be a rebuilt engine meeting only more lenient "overhaul specifications."

The bulk of the verdict consisted of a $10,500,000 punitive damage award.

Law Review . . .

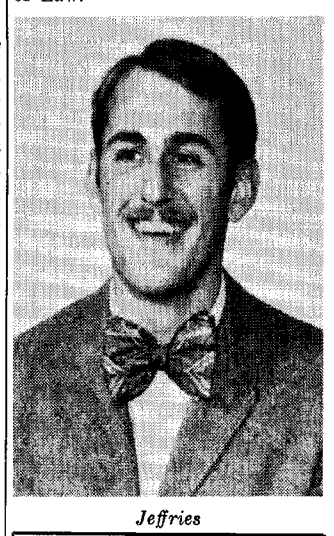
(Continued from Page 1)

come closer to getting the issues out on time," he said.

He foresees no alterations in the selection procedure for the staff of the *Law Review*. With the appointment of this year's staff last spring, suggestions were made for liberalizing the strict traditional academic qualifications, but Jeffries indicated that no such changes are now planned.

A graduate of Yale University, Jeffries' home is in Raleigh, North Carolina.

Wollen, the new managing editor, is the first transfer student to be elected to the managing board of the *Law Review*. He previously attended Emory University School of Law.



Jeffries

The LAW WEEKLY *invites contributions from part-time William Styrons and budding Ayn Rands. If you have a story of interest to the Law School, write it up and leave a copy in our mailbox.*

DICTA . . .

Cite as "Titus, VIRGINIA LAW WEEKLY, *DICTA*, Vol. XXIV, No. 19 (1972)"

(Continued from Page 3)

It is not surprising then to find in the new Oregon Criminal Code prohibitions against a host of activities such as prostitution, gambling, possession of marihuana, and public intoxication. The last named activity remains a criminal offense in Oregon despite the fact that a majority of the Criminal Law Revision Commission believed "that the problem of public drunkenness should be handled on a professional socio-medical basis rather than by an agency of the criminal law." [26]

I think the failure of the Oregon Criminal Law Revision Commission to follow its good judgment that public drunkenness is no crime simply highlights the fact that the Commission was neither prepared nor willing to be prepared to examine what the President's Crime Commission's Task Force on the Courts had identified as the central problem of criminal law reform:

> "The overready assumption that the way to control behavior is by making it criminal may interfere with the operation of the criminal law and inhibit the development of solutions to underlying social problems. Too infrequently have the limits of the effectiveness of criminal law been critically examined and the costs that must be paid for its use appraised." [27]

The name of the game was "clean up"—rid the statute books of "overlapping" and "badly worded" statutes and of inconsistent penalties and the work is done.

The choice was hardly inadvertent. At its second meeting on September 22, 1967, Representative Edward Elder (R.-Eugene)

> "noted that the crime rate was increasing faster than the administration of justice could cope with the problem."

Robert Chandler, publisher of the *Bend Bulletin*,

> "commented that this situation was probably aggravated by the fact that there were too many laws for the people to break and suggested a reduction in the number and categories of crime."

Chairman Yturri then

> "pointed out that Representative Elder's concern was crime prevention which might go beyond the province of the Commission except in a subsidiary role." [28]

Not surprisingly the Commission and its staff, dominated by lawyers, followed Senator Yturri's lead. This comes as no surprise since a lawyer is an expert at drafting statutory language to prohibit certain conduct after it has been determined that the conduct should be prohibited.

Such a modest, indeed timid, goal might be justified as "practical politics." The Commission, after all, was engaged in the art of the possible, not in windmill tilting. I came away from the Commission's minutes with the distinct impression that those Commission members who often-times argued that the legislature would never "buy" a particular reform measure were camouflaging their real reasons for opposition. Even if they were not, there can be no question that they were playing the game "by ear" since the Commission had made no efforts to seek systematically opinions of the public on any matter before them. Their "hunches" may well have been right, but one would hope that a law revision commission would have eliminated not only as much guess work as possible but would have set for itself a higher goal than simply reflecting current "public opinion."

1. G. Rice, "Alumnus Football' in BARTLETTS FAMOUS QUOTATIONS 961 (14th ed. 1968).
2. R. HARRIS, JUSTICE 11-13 (Avon 1970).
3. The phrases in quotation are from a Nixon television address made after he had become President and not during the campaign.
4. He has not just been working on a "law and order" Supreme Court. For an example of the Justice Department Deputy Attorny General, Richard Kleindienst's efforts to follow the same policy on appointments to lower federal courts consider his rejection of New Jersey Republican Senator Clifford Case's suggestion of black lawyer and then Ambassador to Uganda, Clyde Ferguson Jr. for a vacancy on the Third Circuit Court of Appeals. Kleindienst: "No, he's soft on law and order." See C. Rowan, "Justice Department Shows Bias," DENVER POST (Tuesday Feb. 19, 1971).
5. District of Columbia Court Reform and Criminal Procedure Act of 1970, 23 D.C. Code Sections 522, 1321 et seq. (July 29, 1970).
6. Organized Crime Control Act of 1970, 18 *United States Code* Section 6002. Relying on *Counselman v. Hitchcock*, 142 U.S. 547 (1892), the Third, Fifth and Seventh Circuit Courts of Appeals have found "use" immunity unconstitutional. See "Decisions in Brief," 10 Cr. L. Reptr. 2043-44 and see *In Re Kinoy*, 326 F. Supp. 407 (S.D.N.Y. 1971).
7. Id., 28 *United States Code* Section 1826. In an earlier version, contempt could have resulted in a sentence of three years. See Report on S. 30, Organized Crime Control Act of 1969, 91st Cong., 1st Sess., 56-57.
8. Id., 18 *United States Code* Section 3575.
9. Comprehensive Drug Abuse Prevention and Control Act. 21 *United States Code* Sections 811, 812, 879 and 880 (1970).
10. In addition to the above named acts see H. Packer, "Nixon's Crime Program and What It Means," 15 THE NEW YORK REVIEW No. 7 (October 22, 1970).
11. See 18 *United States Code* Sections 2510 et seq. Efforts attacking the constitutionality of the warrant provisions of this act have so far proved unsuccessful. *United States* v. *Escandar*, 8 Cr. L. Rptr. 2121 (S.D. Fla. 1970); *United States* v. *Perillo*, 9 Cr. L. Rptr. 2513 (D. Dela. 1971) and *United States* v. *Leta*, 10 Cr. L. Rptr. (M.D. Pa. 1971).
12. Although the "national security" exception was not new with the Nixon Administration, the assertion that it applied even to "domestic" as contrasted with "foreign" threats is. With the exception of the government's victory in the Chicago Conspiracy case, other courts have not bought the arguments for such an exception. See *United States* v. *Smith*, 321 F. Supp. 424 (C.D. Calif. 1971); and *United States* v. *Sinclair*, 321 F. Supp. 1074 (E.D. Mich. 1971); *United States* v. *U.S. District Court for E. D. Mich.*, 444 F.2d 651 (6th Cir. 1971).
13. F. Donner and E. Cerruti, "The Grand Jury Network," 214 NATION 5 (Jan. 3, 1972).
14. The President's Commission on Obscenity and Pornography recommended the repeal of all federal and state statutes "prohibiting the consensual distribution of 'obscene' material to adults." THE REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY 65 (1970). This recommendation and others were denounced by Nixon through his press secretary even though the President had not read the report. H. Packer, "Nixon's Crime Program and What It Means," 15 NEW YORK REVIEW, *supra* note 10.

(Please see this Page, Col. 3)

FACULTY NOTES

An article by Professor Ernest L. Folk III has been published in the February issue of the *Georgia State Bar Journal*. Mr. Folk expanded a December address to the Corporate and Banking section of the Georgia Bar Association on the topic: "Does State Corporation Law Have a Future?" He concludes that it does, subject to the inevitable growth of federal law and certain modifications.

Professor Walter J. Wadlington III spoke to a luncheon meeting of the Roanoke Bar Association on medical neglect and the case for court intervention in medical decision making for children.

The Procedural Aspects of International Law Institute and the Carnegie Endowment for International Peace co-sponsored a closed conference on "Humanitarian Intervention and the United Nations" at the Boar's Head Inn recently. The two day conference was organized by Professor Richard B. Lillich, the Institute's director.

Attending the conference were international lawyers and political scientists from Argentina, Canada, India and the United States. In addition to Professors Lillich and John N. Moore, participants included Professor Inis Claude of the University Department of Government and Foreign Affairs, Bert B. Lockwood '71 (LL.M.) and Robert K. Goldman '71.

BALSA . . .

(Continued from Page 1)

mission, Virginia Governor Lynwood Holton, and University President Edgar F. Shannon. BALSA also announced that it is submitting a resolution to the Law Council and to the Law School Faculty which calls for the appointment of competent black professors by next September and for a refusal to make any further appointments until black lawyers are hired. In addition, the resolution requests participation by BALSA in the selection of black professors, BALSA representation on the faculty Appointments and Tenure Committee, and regular progress reports from the committee on efforts to recruit black professors.

Endow Chair

Norman Davidson, Law Council President, voiced support for the BALSA effort. "At a certain point, faculty lack of initiative and action in the name of neutrality must be construed as a lack of concern and commitment for the most pressing social need facing this law school," he said. Davidson called on faculty members to use their personal contacts and influence to obtain black recruits, and for the Law School to endow a chair for a black professor in order that Virginia be able to recruit on an equal financial basis with other prominent law schools.

Wymer, McCrone, Wagner and Haseman

Council Gains New Members, Second Year Men Unopposed

Law Council representatives for this year's first and second-year classes were chosen last week in an election marked by the small number of candidates.

Elected from the Class of 1974 were Paul B. Haseman of Alexandria; Willard P. McCrone of Fairfax; William B. Wagner of Gainesville, Fla.; and John F. Wymer III of West Palm Beach, Fla. The four were elected from a field of five candidates.

Second-year students who became members of the Law Council without opposition are Americo R. Cinquegrana of Salem, N. H.; Hugh M. McIntosh of Collins, Miss.; Robert A. Mittelstaedt of Tujunga, Cal.; and John O. Terry of Ft. Myers, Fla.

Haseman focused on improvement of the Placement Office's services, including expansion of non-traditional opportunities.

Wymer pledged to propose the creation of a "buddy system" to reduce "first-year trauma." He indicated that he will ask the Law Council to establish an upper-classman advisor program for the first-year students to take effect next year.

Flippin, Ferrara, Main, Glaser, Horsley, Johnson

Law Weekly Appoints Staff To Handle Business Operation

LAW WEEKLY Business Manager Howard E. Gordon has announced the selection of G. Franklin Flippin to head the paper's business staff for the coming year.

Flippin will be joined by Associate Business Manager Arthur H. Glaser and Advertising Managers Albert E. Ferrara Jr. and Ralph E. Main Jr. *DICTA* Managers J. Pegram Johnson III and Guy W. Horsley Jr. and Circulations Manager David J. Brewer were also selected.

A graduate of Hampden-Sydney College, Flippin has been active on the Honor Code Revision Committee and as a member of the Legal Assistance Society. He is a member of Phi Alpha Delta Legal Fraternity.

Glaser graduated from Hampden-Sydney College in 1968. He was active in student activities there and has participated in Moot Court at the Law School as well as serving on the WEEKLY Business Staff.

"One thing we hope to do is to increase the paper's circulation among student families, alumni, and the legal community in general," said Flippin. "Otherwise we will simply try to improve the business operations of the LAW WEEKLY."

Pre-Registration

Spring pre-registration for next year is scheduled for April 20-21. Drop-Add procedures will extend from May 1 through June 2.

Curriculum and course descriptions will be available on Monday, April 10, and afternoon panel discussions on five specific areas of study will be scheduled that week. Faculty members have been asked to schedule voluntary office hours for course counseling during the week of April 12-19.

Assistant Dean H. Lane Kneedler said that the five separate discussions, including such areas as Corporate Law and Taxation, Public Law, and International Legal Studies, and the voluntary counseling efforts of faculty members constitute an initial step toward individualized counseling. A memorandum will soon be available outlining the 1972 calendar and describing the pre-registration procedures, which are substantially similar to those used last fall.

DICTA . . .

(Continued from Col. 2)

15. The Commission on Marihuana and Drug Abuse was created by the Congress when it passed the Comprehensive Drug Abuse Prevention and Control Act. See 21 *United States Code* Section 601. Marihuana was singled out for special study.
16. Senator Lee Metcalf (D. Mont.) cast the only no vote. (The Act passed 73 to 1.) He stated off the floor: "I stand here . . . ready to vote for more policeman on the streets, more grants-in-aid to sheriffs and municipalities to help them train their police services. But I feel that this will take away individual constitutional rights that will not contribute to the law enforcement that we seek." CONGRESSIONAL QUARTERLY, Weekly Report, 1,499 (June 5, 1970).
17. A report on N.B.C. Nightly News revealed that much of this money goes unspent because many of the recipients do not know what to do with it. Reports that much of the money appropriated has been spent for more and more sophisticated hardware for police are legion.
18. The proposed eavesdropping provisions were in Article 27. See OREGON CRIMINAL LAW REVISION COMMISSION, PROPOSED OREGON CRIMINAL CODE FINAL DRAFT AND REPORT 220-238 (1970). Hereinafter referred to as CRIMINAL COMMISSION FINAL REPORT. Article 27 was deleted by amendment. 2 OREGON LAWS 1971 1936.
19. 2 OREGON LAWS 1971 1907-1910.
20. 2 OREGON LAWS 1971 1937-1941.
21. CRIMINAL COMMISSION FINAL REPORT, supra note 18, at XXIII.
22. Oregon Criminal Law Revision Commission, Sexual Offenses, Preliminary Draft No. 1, 1 (Jan. 1969).
23. Minutes, Oregon Criminal Law Revision Commission, 11th meeting, 2-3 (July 19, 1969).
24. Minutes, Oregon Criminal Law Revision Commission, 16th meeting, 4 (Jan. 9, 1970).
25. See Minutes, Oregon Criminal Law Revision Commission, 11th meeting, 2-3 (July 19, 1969) and Oregon Criminal Law Revision Commission, Sexual Offenses, Preliminary Draft No. 1 52, 60 (Jan. 1969).
26. CRIMINAL COMMISSION FINAL REPORT, *supra* note 18, at 215.
27. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 98 (1967). See also, H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION (1968) and N. NORRIS AND J. HAWKINS, THE HONEST POLITICIANS GUIDE TO CRIME CONTROL (1970).
28. Minutes, Criminal Law Revision Commission, 2d meeting, 8 (Sept. 22, 1967).